

Memorandum 92-18

Subject: Study F-1000 - Family Code (Conforming Revisions in Other Statutes -- AB 2641)

Attached to this memorandum is a set of conforming revisions in other statutes needed to conform to the Family Code. The conforming revisions will be in a separate bill, Assembly Bill 2641, also authored by Assembly Member Speier. A spot bill was introduced to meet the bill-introduction deadline and we are now at the point where we need to amend the attached material into AB 2641.

The preparation of the conforming revisions was largely the work of the Commission's Family Code Consultant, John DeMouilly. The staff has reviewed the proposed amendments and they have been sent to Legislative Counsel for formal preparation. We are also distributing the proposed conforming changes to interested persons for their review.

The staff does not believe there are any major issues concerning these 160 sections that require Commission attention at this point. As the staff continues to review this material, we may raise issues for Commission consideration. Interested persons may also detect some matters requiring further consideration. Some staff notes are included in the draft to bring some questions to the attention of persons reviewing the conforming revisions. We will bring any comments we receive on this material to the March meeting.

The Commission needs to approve the conforming revisions for amendment into AB 2641, subject, of course, to later amendment if corrections are required or additional provisions are discovered.

Respectfully submitted,

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Assistant Executive Secretary

CONFORMING REVISIONS

Business & Professions Code

Bus. & Prof. Code § 1320 (technical amendment). Grounds for denial, revocation or suspension of license

SEC. . Section 1320 of the Business and Professions Code is amended to read:

1320. The department may deny, suspend, or revoke any license issued under this chapter for any of the following reasons:

(a) Conduct involving moral turpitude or dishonest reporting of tests.

(b) Violation by the applicant or licensee of this chapter or any rule or regulation adopted pursuant thereto.

(c) Aiding, abetting, or permitting the violation of this chapter, the rules or regulations adopted under this chapter or the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(d) Permitting a licensed trainee to perform tests or procure specimens unless under the direct and responsible supervision of a person duly licensed under this chapter or physician and surgeon other than another licensed trainee.

(e) Violation of any provision of the Business and Professions Code governing the practice of medicine and surgery.

(f) Proof that an applicant or licensee has made false statements in any material regard on the application for a license or renewal issued under this chapter.

(g) Conduct inimical to the public health, morals, welfare, or safety of the people of the State of California in the maintenance or operation of the premises or services for which a license is issued under this chapter.

(h) Proof that the applicant or licensee has used any degree, or certificate, as a means of qualifying for licensure which has been purchased or procured by barter or by any unlawful means or obtained from any institution which at the time said degree, certificate, or title was obtained was not recognized or accredited by the department

of education of the state where said institution is or was located to give training in the field of study in which the degree, certificate, or title is claimed.

(i) Violation of any of the premarital or prenatal laws or regulations pertaining thereto in ~~Article 3 (commencing with Section 4300) of Chapter 2 of Title 1 of Part 5 of Division 4 of the Civil Code~~ Part 5 (commencing with Section 580) of Division 3 of the Family Code and Article 1 (commencing with Section 1125) of Group 4 of Subchapter 1 of Chapter 2 of Part 1 of Title 17 of the California Code of Regulations, or of Article 2 (commencing with Section 3220) of Chapter 4 of Division 4 of the Health and Safety Code.

(j) Knowingly accepting an assignment for clinical laboratory tests or specimens from and then rendering a report thereon to persons not authorized by law to submit those specimens or assignments.

(k) Rendering a report on clinical laboratory work actually performed in another clinical laboratory without designating clearly the name and address of the laboratory in which the test was performed.

(l) Conviction of a felony or of any misdemeanor involving moral turpitude under the laws of any state or of the United States arising out of or in connection with the practice of clinical laboratory technology. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(m) Unprofessional conduct.

(n) The use of drugs or alcoholic beverages to the extent or in such manner as to be dangerous to a person licensed under this chapter, or any other person to the extent that that use impairs the ability of the licensee to conduct with safety to the public the practice of clinical laboratory technology.

Comment. Section 1320 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Civil Code

Civ. Code §§ 25-42 (repealed). Persons

SEC. . Part 1 (commencing with Section 25) of Division 1 of the Civil Code is repealed.

Comment. Part 1 (commencing with Section 25) is superseded by new Part 1 (commencing with Section 38) of Division 1 of the Civil Code

(persons of unsound mind), by Division 11 (commencing with Section 6500) of the Family Code (minors), and by Civil Code Section 43.1 and Code of Civil Procedure Section 340.4.

Civ. Code §§ 38-41 (added). Persons with unsound mind

SEC. . Part 1 (commencing with Section 38) is added to Division 1 of the Civil Code, to read:

PART 1. PERSONS WITH UNSOUND MIND

§ 38 (added). Contract by person without understanding; liability for necessities

38. A person entirely without understanding has no power to make a contract of any kind, but the person is liable for the reasonable value of things furnished to the person necessary for the support of the person or the person's family.

Comment. Section 38 restates former Section 38 of the Civil Code without substantive change.

§ 39 (added). Conveyance or contract by person of unsound mind before adjudged incapable

39. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before the incapacity of the person has been judicially determined, is subject to rescission, as provided in Chapter 2 (commencing with Section 1688) of Title 5 of Part 2 of Division 3.

Comment. Section 39 restates former Section 39 of the Civil Code without substantive change.

§ 40 (added). Person of unsound mind adjudged incapable

40. (a) Subject to Section 1871 of the Probate Code, and subject to Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, after his or her incapacity has been judicially determined a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right, until his or her restoration to capacity.

(b) Subject to Sections 1873 to 1876, inclusive, of the Probate Code, the establishment of a conservatorship under Division 4

(commencing with section 1400) of the Probate Code is a judicial determination of the incapacity of the conservatee for the purposes of this section.

Comment. Section 40 continues former Section 40 of the Civil Code without substantive change.

§ 41 (added). Civil liability of person of unsound mind

41. A person of unsound mind, of whatever degree, is civilly liable for a wrong done by the person, but is not liable in exemplary damages unless at the time of the act the person was capable of knowing that the act was wrongful.

Comment. Section 41 continues former Section 41 of the Civil Code without substantive change insofar as former Section 41 related to a person of unsound mind.

Civ. Code § 43.1 (added). Child conceived but not yet born

SEC. . Section 43.1 is added to the Civil Code, to read:

43.1. A child conceived, but not yet born, is deemed an existing person, so far as necessary for its interests in the event of its subsequent birth.

Comment. Section 43.1 continues the first portion of former Civil Code Section 29 without substantive change. See also Code of Civil Procedure Section 340.4 (statute of limitations for action for personal injuries sustained before or in the course of person's birth).

Civ. Code § 56.30 (technical amendment). Exemptions from confidentiality of Medical Information Act

SEC. . Section 56.30 of the Civil Code is amended to read:

56.30. The disclosure and use of the following medical information shall not be subject to the limitations of this part:

(a) (Mental health and developmental disabilities) Information and records obtained in the course of providing services under Division 4 (commencing with Section 4001), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) of the Welfare and Institutions Code.

(b) (Public social services) Information and records which are subject to Sections 10850, 14124.1, and 14124.2 of the Welfare and

Institutions Code.

(c) (State health services, communicable diseases, developmental disabilities) Information and records maintained pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of the Health and Safety Code and pursuant to Division 4 (commencing with Section 3000) of the Health and Safety Code.

(d) (Licensing and statistics) Information and records maintained pursuant to Division 2 (commencing with Section 1200) and Division 9 (commencing with Section 10000) of the Health and Safety Code; pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code; and pursuant to Section ~~222, 26, 224, 70, or 226, 35 of the Civil Code~~ 8608, 8706, 8817, or 8909 of the Family Code.

(e) (Medical survey, workers' safety) Information and records acquired and maintained or disclosed pursuant to Sections 1380 and 1382 of the Health and Safety Code and pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

(f) (Industrial accidents) Information and records acquired, maintained, or disclosed pursuant to Division 1 (commencing with Section 50), Division 4 (commencing with Section 3201), Division 4.5 (commencing with Section 6100), and Division 4.7 (commencing with Section 6200) of the Labor Code.

(g) (Law enforcement) Information and records maintained by a health facility which are sought by a law enforcement agency under Chapter 3.5 (commencing with Section 1543) of Title 12 of Part 2 of the Penal Code.

(h) (Investigations of employment accident or illness) Information and records sought as part of an investigation of an on-the-job accident or illness pursuant to Division 5 (commencing with Section 6300) of the Labor Code or pursuant to Section 2950 of the Health and Safety Code.

(i) (Alcohol or drug abuse) Information and records subject to the federal alcohol and drug abuse regulations (Part 2 (commencing with Section 2.1) of subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations) or to Section 11977 of the Health and Safety Code dealing with narcotic and drug abuse.

(j) (Patient discharge data) Nothing in this part shall be

construed to limit, expand, or otherwise affect the authority of the California Health Facilities Commission to collect patient discharge information from health facilities pursuant to Section 441.18 of the Health and Safety Code.

(k) Medical information and records disclosed to, and their use by, the Insurance Commissioner, the Division of Industrial Accidents, the Workers' Compensation Appeals Board, or the Department of Insurance.

Comment. Subdivision (d) of Section 56.30 is amended to correct section references in subdivision (d).

Civ. Code § 687 (amended). Community property

SEC. . Section 687 of the Civil Code is amended to read:

687. Community property is property ~~acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either~~ that is community property under Section 760 of the Family Code.

Comment. Section 687 is amended to adopt the definition of community property provided by Section 65 of the Family Code. Part 2 (commencing with Section 760) of Division 4 of the Family Code contains detailed rules that determine whether property is community or separate property. This Comment should pick up discussion under Section 65 of Family Code.

Civ. Code § 1102.1 (technical amendment). Disclosures on transfer of residential property

SEC. . Section 1102.1 of the Civil Code is amended to read:

1102.1. The provisions of this article do not apply to the following:

(a) Transfers which are required to be preceded by the furnishing to a prospective transferee of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code and transfers which can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code.

(b) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(c) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

(d) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(e) Transfers from one co-owner to one or more other co-owners.

(f) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(g) Transfers between spouses resulting from a ~~decree--of dissolution-of-marriage-or-a-decree~~ judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to such a decree judgment.

(h) Transfers by the Controller in the course of administering Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(i) Transfers under Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(j) Transfers or exchanges to or from any governmental entity.

Comment. Section 1102.1 is amended to substitute "judgment" for "decree" in subdivision (g) to conform to the terminology used in the Family Code.

Civ. Code § 1557 (repealed). Capacity of minors and persons of unsound mind to contract

SEC. . Section 1557 of the Civil Code is repealed.

~~1557.--Minors-and-persons-of-unsound-mind,-have-only-such-capacity as-is-defined-by-part-one-of-division-one-of-this-code.~~

Comment. Section 1557 is restated in new Section 1557 without substantive change.

Civ. Code § 1557 (added). Capacity of minors and persons of unsound mind to contract

SEC. . Section 1557 is added to the Civil Code, to read:

1557. (a) The capacity of a minor to contract is governed by Division 11 (commencing with Section 6500) of the Family Code.

(b) The capacity of a person of unsound mind to contract is governed by Part 1 (commencing with Section 38) of Division 1.

Comment. Section 1557 restates former Civil Code Section 1557 without substantive change.

Civ. Code § 1799.98 (technical amendment). Provisions of title not to affect rights of bona fide purchaser for value of property sold pursuant to enforcement of security interest; evidentiary effect of delivery of notice to contract signatory

SEC. . Section 1799.98 of the Civil Code is amended to read:

1799.98. (a) Nothing in this title shall be construed to make applicable or affect or operate as a waiver of any of the provisions of any of the following:

(1) Title 13 (commencing with Section 2787) of Part 4 of Division 3 of this code ~~or of Title 8 (commencing with Section 5100) of Part 5 of Division 4~~ .

(2) Parts 1 (commencing with Section 700), 2 (commencing with Section 760), 3 (commencing with Section 900), and 4 (commencing with Section 1100) of Division 4 of the Family Code.

(3) Sections 4301 and 4302 of the Family Code.

(4) Subdivision (c) of Section 2035 of the Family Code.

(b) The delivery of notice pursuant to Section 1799.91 is not evidence that the person to whom the notice was delivered entered or did not enter the transaction in the capacity of a surety.

Comment. Section 1799.98 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Civ. Code § 1812.30 (technical amendment). Denial of credit

SEC. . Section 1812.30 of the Civil Code is amended to read:

1812.30. (a) No person, regardless of marital status, shall be denied credit in his or her own name if the earnings and other property

over which he or she has management and control are such that a person of the opposite sex managing and controlling the same amount of earnings and other property would receive credit.

(b) No person, regardless of marital status, managing and controlling earnings and other property shall be offered credit on terms less favorable than those offered to a person of the opposite sex seeking the same type of credit and managing and controlling the same amount of earnings and other property.

(c) No unmarried person shall be denied credit if his or her earnings and other property are such that a married person managing and controlling the same amount of earnings and other property would receive credit.

(d) No unmarried person shall be offered credit on terms less favorable than those offered to a married person managing and controlling the same amount of earnings and other property.

(e) For accounts established after January 1, 1977 or for accounts in existence on January 1, 1977 where information on that account is received after January 1, 1977, a credit reporting agency which in its normal course of business receives information on joint credit accounts identifying the persons responsible for such accounts, or receives information which reflects the participation of both spouses, shall:

- (1) at the time such information is received file such information separately under the names of each person or spouse, or file such information in another manner which would enable either person or spouse to automatically gain access to the credit history without having in any way to list or refer to the name of the other person, and
- (2) provide access to all information about the account in the name of each person or spouse.

(f) For all accounts established prior to January 1, 1977, a credit reporting agency shall at any time upon the written or personal request of a person who is or has been married, verify the contractual liability, liability by operation of law, or authorized use by such person, of joint credit accounts appearing in the file of the person's spouse or former spouse, and, if applicable, shall file such information separately and thereafter continue to do so under the names of each person responsible for the joint account or in another manner which would enable either person responsible for the joint account to

automatically gain access to the credit history without having in any way to list or refer to the name of the other person.

(g) For the purposes of this chapter, "credit" means obtainment of money, property, labor, or services on a deferred-payment basis.

(h) For the purposes of this chapter, earnings shall include, but not be limited to, spousal, family, and child support payments, pensions, social security, disability or survivorship benefits. Spousal, family, and child support payments shall be considered in the same manner as earnings from salary, wages, or other sources where the payments are received pursuant to a written agreement or court decree to the extent that the reliability of such payments is established. The factors which a creditor may consider in evaluating the reliability of such payments are the length of time payments have been received; the regularity of receipt; and whether full or partial payments have been made.

(i) Nothing in this chapter shall be construed to prohibit a person from: (1) utilizing an evaluation of the reliability of earnings provided that such an evaluation is applied to persons without regard to their sex or marital status; or (2) inquiring into and utilizing an evaluation of the obligations for which community property is liable pursuant to the provisions of ~~Title--8--(commencing with Section 5100) of Part 5 of Division 4~~ the Family Code for the sole purpose of determining the creditor's rights and remedies with respect to the particular extension of credit, provided that such is done with respect to all applicants without regard to their sex; or (3) utilizing any other relevant factors or methods in determining whether to extend credit to an applicant provided that such factors or methods are applicable to all applicants without regard to their sex or marital status. For the purpose of this subdivision, the fact that an applicant is of childbearing age is not a relevant factor.

(j) Credit applications for the obtainment of money, goods, labor, or services shall clearly specify that the applicant, if married, may apply for a separate account.

Comment. Section 1812.30 is amended to add a reference to "family" support in subdivision (h) and to replace the reference in subdivision (i) to Civil Code provisions with a reference to the Family Code.

Code of Civil Procedure

Code Civ. Proc. § 124 (technical amendment). Court hearings to be public

SEC. . Section 124 of the Code of Civil Procedure is amended to read:

124. Except as provided in ~~Sections 221.60 and 4306 of the Civil Code~~ Section 214 of the Family Code or any other provision of law, the sittings of every court shall be public.

Comment. Section 124 is amended to substitute a reference to Section 214 of the Family Code for the former Civil Code references which were found in Section 124. Section 214 of the Family Code gives the court general authority to direct that the trial of any issue of fact joined in a proceeding under the Family Code be private and to exclude all persons except the officers of the court, the parties, their witnesses, and counsel. Section 124 also recognizes that other provisions of law may qualify the rule stated in Section 124 or provide a contrary rule.

Other provisions of the Family Code may provide more restrictive rules that prevail over the rule stated in Family Code Section 214 or may provide special rules concerning exclusion of the public from hearings under the Family Code that prevail over the general rule stated in Section 214. See the Comment to Section 214 of the Family Code.

Code Civ. Proc. § 128 (technical amendment). Powers and duties of courts

SEC. . Section 128 of the Code of Civil Procedure is amended to read:

128. (a) Every court shall have the power to do all of the following:

(1) To preserve and enforce order in its immediate presence.

(2) To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.

(3) To provide for the orderly conduct of proceedings before it, or its officers.

(4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.

(5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected

with a judicial proceeding before it, in every matter pertaining thereto.

(6) To compel the attendance of persons to testify in any action or proceeding pending therein, in the cases and manner provided in this code.

(7) To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.

(8) To amend and control its process and orders so as to make them conform to law and justice.

(b) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting an attorney, his or her agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of any action or proceeding, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt except for the conduct as may be proscribed by subdivision (b) of Section 6068 of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.

(c) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting a public safety employee acting within the scope of employment for reason of the employee's failure to comply with a duly issued subpoena or subpoena duces tecum, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "public safety employee" includes any peace officer, firefighter, paramedic, or any other employee of a public law enforcement agency whose duty is either to maintain official records or to analyze or present evidence for investigative or prosecutorial purposes.

(d) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting the victim of a sexual assault, where the contempt consists of refusing to testify concerning that sexual assault, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary

relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "sexual assault" means any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.

(e) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting the victim of domestic violence, where the contempt consists of refusing to testify concerning that domestic violence, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "domestic violence" means abuse perpetrated against any of the following:

(1) A spouse, former spouse, cohabitant, former cohabitant, any other adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has had a dating or engagement relationship.

(2) A person who is the parent of a child and the presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act ~~(Part 7 (commencing with Section 7000) of Division 4 of the Civil Code)~~ (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

Comment. Subdivision (e)(2) of Section 128 (as amended by 1991 Cal. Stat. ch. 866, § 1) is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Code Civ. Proc. § 259 (technical amendment). Powers of court commissioners

SEC. . Section 259 of the Code of Civil Procedure is amended to read:

259. Subject to the supervision of the court every court commissioner shall have power to do all of the following:

(a) Hear and determine ex parte motions, for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

(b) Take proof and make and report findings thereon as to any

matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

(c) Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

(d) Administer oaths and affirmations, and take affidavits and depositions in any action or proceeding in any of the courts of this state, or in any matter or proceeding whatever, and take acknowledgments and proof of deeds, mortgages, and other instruments requiring proof or acknowledgment for any purpose under the laws of this or any other state or country.

(e) Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, or by written consent of an appearing party. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.

(f) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary alimony spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in ~~divorce~~, ~~maintenance, and annulment of marriage cases~~ proceedings for support, dissolution of marriage, nullity of marriage, or legal separation.

(g) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of subdivision (e).

(h) Charge and collect the same fees for the performance of official acts as are allowed by law to notaries public in this state for like services. This subdivision does not apply to any services of the commissioner, the compensation for which is expressly fixed by law. The fees so collected shall be paid to the treasurer of the county, for deposit in the general fund of the county.

(i) Provide an official seal, upon which must be engraved the

words "Court Commissioner" and the name of the county, or city and county, in which the commissioner resides.

Comment. Subdivision (f) of Section 259 is amended to conform to the language used in the Family Code.

Staff Note: Should "temporary restraining orders" be added to subdivision (f) of Section 359? See Section 397 of the Code of Civil Procedure.

Code Civ. Proc. § 263 (repealed). Domestic relations investigator

SEC. . Section 263 of the Code of Civil Procedure is repealed.

~~263.--In any county, or city and county, which is authorized by law to have domestic relations cases investigators, it shall be the duty of such domestic relations cases investigators, in any divorce action then pending wherein the parties thereto have minor children, to investigate and to report to the judge of the court wherein such action is to be tried all pertinent information as to the care, welfare and custody of the minor children of the parties to the divorce action.~~

~~Such report shall be filed not less than 10 days before the date set for the trial of the divorce action with the clerk of the court wherein such action is to be tried, and not less than 10 days before the trial of such action a copy of the report shall be served on each party to the divorce action.~~

~~The report of the investigators shall be admitted in evidence upon the stipulation of both parties, and shall be competent evidence as to all matters contained therein.~~

~~Such investigator or investigators who have investigated the care, welfare and custody of the minor children as provided for in this section, shall be present at the trial of the divorce action of the parties who are the parents or custodians of such minor children, and may be called to testify by the judge or either party as to any matter which they have investigated. The testimony of such investigators shall be subject to questions direct and cross which are proper, and shall be competent as evidence.~~

~~Nothing in this section shall be construed as limiting a domestic relations cases investigator's duty to assist the superior court appointing him in the transaction of the judicial business of said court.~~

Comment. Former Section 263 is superseded by Sections 3110-3112

of the Family Code.

Code Civ. Proc. § 340.4 (added). Statute of limitations for action by minor for personal injuries sustained before or during birth

SEC. . Section 340.4 is added to the Code of Civil Procedure, to read:

340.4. An action by or on behalf of a minor for personal injuries sustained before or in the course of its birth must be commenced within six years after the date of birth, and the time the minor is under any disability mentioned in Section 352 shall not be excluded in computing the time limited for the commencement of the action.

Comment. Section 340.4 is a new provision that continues the last portion of former Section 29 of the Civil Code without substantive change.

Code Civ. Proc. § 395 (amended). Venue

SEC. . Section 395 of the Code of Civil Procedure is amended to read:

395. (a) Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants or some of them reside at the commencement of the action is the proper county for the trial of the action. If the action is for injury to person or personal property or for death from wrongful act or negligence, either the county where the injury occurs or the injury causing death occurs or the county in which the defendants, or some of them reside at the commencement of the action, shall be a proper county for the trial of the action. In a proceeding for dissolution of marriage, the county in which the petitioner has been a resident for three months next preceding the commencement of the proceeding is the proper county for the trial of the proceeding. In a proceeding ~~to determine parental relation under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code or to enforce an obligation of support under Section 196a of the Civil Code~~ 3900 of the Family Code, the county in which the child resides is the proper county for the trial of the action. In a proceeding to establish and enforce a foreign judgment or court order for the support of a minor child, the county in which the child resides is the proper county for the trial of the action. Subject to subdivision (b), when a

defendant has contracted to perform an obligation in a particular county, either the county where the obligation is to be performed or in which the contract in fact was entered into or the county in which the defendant or any such defendant resides at the commencement of the action shall be a proper county for the trial of an action founded on such obligation, and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the state or if residing in the state and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his or her complaint, and, if the defendant is about to depart from the state, the action may be tried in any county where either of the parties reside or service is made. If any person is improperly joined as a defendant or has been made a defendant solely for the purpose of having the action tried in the county or judicial district where he or she resides, his or her residence shall not be considered in determining the proper place for the trial of the action.

(b) Subject to the power of the court to transfer actions or proceedings as provided in this title, in an action arising from an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use, other than an obligation described in Section 1812.10 or Section 2984.4 of the Civil Code, or an action arising from a transaction consummated as a proximate result of an unsolicited telephone call made by a seller engaged in the business of consummating transactions of that kind, the county in which the buyer or lessee in fact signed the contract, the county in which the buyer or lessee resided at the time the contract was entered into, or the county in which the buyer or lessee resides at the commencement of the action is the proper county for the trial thereof.

(c) If within the county there is a municipal or justice court having jurisdiction of the subject matter established, in the cases mentioned in subdivision (a), in the judicial district in which the defendant or any defendant resides, in which the injury to person or personal property or the injury causing death occurs, or, in which the obligation was contracted to be performed or, in cases mentioned in

subdivision (b), in the judicial district which the buyer or lessee resides, in which the buyer or lessee in fact signed the contract, in which the buyer or lessee resided at the time the contract was entered into, or in which the buyer or lessee resides at the commencement of the action, then such court is the proper court for the trial of such action. Otherwise, any municipal or justice court in such county having jurisdiction of the subject matter is a proper court for the trial thereof.

(d) Any provision of an obligation described in subdivision (b) or (c) waiving those subdivisions is void and unenforceable.

Comment. Section 395 (as amended by 1991 Cal. Stat. ch. 228, § 3) is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section. The portion of the fourth sentence of subdivision (a) relating to an action to determine parental relations has been deleted because it was inconsistent with and in effect superseded by subdivision (b) of Section 7620 of the Family Code.

Staff Note: Section 395 is revised on the assumption that the venue provisions it contains relating to family law will not be moved into the Family Code.

If some of the provisions of Section 395 are moved to the Family Code, subdivision (b) of Section 201 of the Family Code, which was drawn from a portion of the fourth sentence of subdivision (a) of Section 395, should be deleted because it is inconsistent with and in effect superseded by subdivision (b) of Section 7620 of the Family Code.

Code Civ. Proc. § 396b (technical amendment). Transfer

SEC. . Section 396b of the Code of Civil Procedure is amended to read:

396b. (a) Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. Upon the hearing of the motion the court shall, if it appears

that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court.

(b) In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees shall be the personal liability of the attorney not chargeable to the party. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after opportunity to be heard.

(c) The court in a proceeding for dissolution of marriage or legal separation, may, prior to the determination of the motion to transfer, consider and determine motions for allowance of temporary ~~alimony~~ spousal support, support of children, counsel fees and costs, and make all necessary and proper orders in connection therewith.

(d) In any case, if an answer is filed, the court may consider opposition to the motion to transfer, if any, and may retain the action in the county where commenced if it appears that the convenience of the witnesses or the ends of justice will thereby be promoted.

(e) If the motion to transfer is denied, the court shall allow the defendant time to move to strike, demur, or otherwise plead if the defendant has not previously filed a response.

Comment. Subdivision (c) of Section 396b is amended to conform to the language used in the Family Code.

Staff Note: Should "temporary restraining orders" be added to subdivision (c) of Section 396b? See Section 397 of the Code of Civil Procedure.

Code Civ. Proc. § 397 (amended). Changing place of trial

SEC. . Section 397 of the Code of Civil Procedure is amended to read:

397. The court may, on motion, change the place of trial in the

following cases:

1. When the court designated in the complaint is not the proper court.
2. When there is reason to believe that an impartial trial cannot be had therein.
3. When the convenience of witnesses and the ends of justice would be promoted by the change.
4. When from any cause there is no judge of the court qualified to act.
5. When a proceeding for dissolution of marriage has been filed in the county in which the petitioner has been a resident for three months next preceding the commencement of the proceeding, and the respondent at the time of the commencement of the proceeding is a resident of another county in this state, to the county of the respondent's residence when the ends of justice would be promoted by the change. If a motion to change the place of trial is made pursuant to this paragraph, the court may, prior to the determination of such motion, consider and determine motions for allowance of temporary spousal support of the other party and of any children of the marriage, support of children, temporary restraining orders, attorneys' fees, and costs, and make all necessary and proper orders in connection therewith.

Comment. Paragraph 5 of Section 397 is amended to more closely conform to the language used in Sections 259(f) and 396b(c).

Code Civ. Proc. § 412.21 (repealed). Temporary restraining orders in summons

SEC. . Section 412.21 of the Code of Civil Procedure is repealed.

~~412.21. (a) Commencing on July 1, 1990, in an action for dissolution of marriage, legal separation, or annulment of marriage, the summons shall additionally contain temporary restraining orders set forth in this section. Upon the filing of a petition for dissolution of marriage, legal separation or annulment of marriage by the petitioner and issuance of the summons and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, a temporary restraining order shall be in~~

~~effect against both parties until the final decree is entered or the petition is dismissed, or until further order of the court:~~

~~(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.~~

~~(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days prior to incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party. However, nothing in the restraining order shall preclude the parties from using community property to pay reasonable attorney's fees in order to retain legal counsel in the action.~~

~~(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children.~~

~~The restraining order is enforceable in any place in this state, but is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to the provisions of this subdivision, has otherwise received a copy of the order, or the officer enforcing the order has been shown a copy of the order.~~

~~The summons shall state on its face that the order thereon is enforceable in any place in this state by any law enforcement agency that has received mailed notice thereof, by any other law enforcement agency that has received the order, or by any officer who has been shown the order. Any willful and knowing violation of the order by removing a child from the state without the written consent of the other party or an order of the court shall be punishable as provided in Section 278.5 of the Penal Code. Any willful and knowing violation of any of the other orders in the summons shall be punishable as provided~~

~~in Section 273.6 of the Penal Code,~~

~~Nothing in this subdivision shall preclude either party from applying to the court for further temporary orders, an expanded temporary ex parte order, or modification or revocation of the order.~~

~~The automatic granting of these ex parte orders is not a court determination or competent evidence in any proceeding of any prior history of the conduct so proscribed occurring between the parties.~~

~~(b) In an action under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, the summons shall additionally contain the temporary restraining orders set forth in this subdivision. Upon the filing of a petition hereunder by petitioner and issuance of the summons and upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent, a temporary restraining order shall be in effect against the parties until the final decree is entered or the petition is dismissed, or until further order of the court restraining all parties from removing from the state any minor child or children for whom the action seeks to establish a parent and child relationship, without the prior written consent of the other party or an order of the court.~~

~~The restraining order is enforceable in any place in this state, but is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to the provisions of this subdivision, has otherwise received a copy of the order, or the officer enforcing the order has been shown a copy of the order.~~

~~The summons shall state on its face that the order thereon is enforceable in any place in this state by any law enforcement agency that has received mailed notice thereof, by any other law enforcement agency that has received the order, or by any officer who has been shown the order. Any willful and knowing violation of the order by removing a child from the state without the written consent of the other party or an order of the court shall be punishable as provided in Section 273.5 of the Penal Code. Any willful and knowing violation of any of the other orders in the summons shall be punishable as provided in Section 273.6 of the Penal Code.~~

~~Nothing in this subdivision shall preclude either party from applying to the court for further temporary orders, and expanded~~

~~temporary ex parte order, or modification or revocation of the order.~~

~~The automatic granting of these ex parte orders is not a court determination or competent evidence in any proceeding of any prior history of the conduct so prescribed occurring between the parties.~~

Comment. Former Section 412.21 is continued without substantive change in Part 3 (commencing with Section 231) of Division 2 of the Family Code and Sections 2030 and 7700 of the Family Code.

Code Civ. Proc. § 429.10 (repealed). Facts required in petition for dissolution of marriage

SEC. . Section 429.10 of the Code of Civil Procedure is repealed.

~~429.10. In a proceeding for dissolution of marriage, the petition shall set forth among other matters, as nearly as can be ascertained, the following facts:~~

- ~~(a) The state or country in which the parties were married.~~
- ~~(b) The date of marriage.~~
- ~~(c) The date of separation.~~
- ~~(d) The number of years from marriage to separation.~~
- ~~(e) The number of children of the marriage, if any, and if none a statement of that fact.~~
- ~~(f) The age and birth date of each minor child of the marriage.~~
- ~~(g) The social security numbers of the husband and wife, if available and if not available, a statement to such effect.~~

Comment. Former Section 429.10 is continued without substantive change in Section 2330(b) of the Family Code, except that the new section is made applicable to a legal separation proceeding.

Code Civ. Proc. § 429.40 (repealed). Application to proceedings under Family Code

SEC. . Section 429.40 of the Code of Civil Procedure is repealed.

~~429.40. This title does not apply in a proceeding under Part 5 (commencing with Section 4000) of the Civil Code unless otherwise provided by rule of the Judicial Council under Section 4001 of the Civil Code.~~

Comment. Section 429.40 is repealed because the section is no longer necessary. This title formerly contained Sections 429.10 (now Section 2330(b) of the Family Code) and 429.20 (repealed by 1977 Cal.

Stat. ch. 676, § 1). Section 429.40 was included in the title to make clear that Sections 419.10 and 429.20 did not limit the authority of the Judicial Council to provide by rule for the practice and procedure under the former Family Law Act. See the Legislative Committee Comment to Section 429.40 (1991 Addition). The Judicial Council has authority to prescribe rules governing the practice and procedure in proceedings under the Family Code. See Family Code § 211 and the Comment to that section. See also Family Code § 210 (applicability of general rules of practice and procedure to proceedings under Family Code).

Code Civ. Proc. § 527 (technical amendment). Injunctions and temporary restraining orders

SEC. . Section 527 of the Code of Civil Procedure is amended to read:

527. (a) An injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. A copy of the complaint or of the affidavits, upon which the injunction was granted, must, if not previously served, be served therewith.

A temporary restraining order or a preliminary injunction, or both, may be granted in a class action, in which one or more of the parties sues or defends for the benefit of numerous parties upon the same grounds as in other actions, whether or not the class has been certified.

No preliminary injunction shall be granted without notice to the opposite party; nor shall any temporary restraining order be granted without notice to the opposite party, unless (1) it shall appear from facts shown by affidavit or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice and (2) ~~except when applying for an order under Section 546 or under Section 4357, 4359, or 7020 of the Civil Code,~~ the applicant or the applicant's attorney certifies to the court under oath (i) that within a reasonable time prior to the application he or she informed the opposing party or his or her attorney at what time and where the application would be made; (ii) that he or she in good faith attempted to inform the opposing party and his or her attorney but was unable to so inform the opposing party or his or her attorney, specifying the efforts made to contact them; or (iii) that for reasons

specified he or she should not be required to so inform the opposing party or his or her attorney. In case a temporary restraining order shall be granted without notice, in the contingency above specified, the matter shall be made returnable on an order requiring cause to be shown why the injunction should not be granted, on the earliest day that the business of the court will admit of, but not later than 15 days or, if good cause appears to the court, 20 days from the date of the order. ~~In cases under Section 4359 of the Civil Code the matter shall be made returnable not later than 20 days or if good cause appears to the court, 25 days from the date of the order.~~ When the matter first comes up for hearing the party who obtained the temporary restraining order must be ready to proceed and must have served upon the opposite party at least two days prior to the hearing, a copy of the complaint and of all affidavits to be used in the application and a copy of the points and authorities in support of the application; if the party is not ready, or if he or she fails to serve a copy of his or her complaint, affidavits and points and authorities, as herein required, the court shall dissolve the temporary restraining order. The defendant, however, shall be entitled, as of course, to one continuance for a reasonable period, if he or she desires it, to enable him or her to meet the application for the preliminary injunction. The defendant may, in response to such order to show cause, present affidavits relating to the granting of the preliminary injunction, and if such affidavits are served on the applicant at least two days prior to the hearing, the applicant shall not be entitled to any continuance on account thereof. On the day upon which the order is made returnable, the hearing shall take precedence of all other matters on the calendar of the day, except older matters of the same character, and matters to which special precedence may be given by law. When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence of all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

(b) ~~The court may, upon the filing of an affidavit by the plaintiff that the defendant could not be served on time, reissue any temporary restraining order previously issued pursuant to Section 546 and dissolved by the court for failure to serve the defendant. Any~~

~~order reissued under this subdivision shall state on its face the date of expiration of the order. No fees shall be charged for the issuance of any order under this subdivision, unless such order had been dissolved three times previously.~~ This section does not apply to an order described in Section 240 of the Family Code.

Comment. Section 527 is amended to delete those provisions that applied only to orders described in Section 240 of the Family Code, those orders now being governed by Part 4 (commencing with Section 240) of Division 2 of the Family Code, not by Section 527.

Former subdivision (b) of Section 527, which has been deleted, is continued in Section 245 of the Family Code. A new subdivision (b) is added to Section 527 to make clear that the section does not apply to an order described in Section 240 of the Family Code. The provisions of Section 527 that applied to the orders described in Section 240 of the Family Code have been duplicated in Part 4 (commencing with Section 240) of Division 2 of the Family Code.

Code Civ. Proc. § 527.6 (technical amendment). Temporary restraining order and injunction prohibiting harassment

SEC. . Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order, and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527. A temporary restraining order may be granted with or without notice upon an affidavit which, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would

result to the plaintiff. A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(d) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response which explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive such testimony as is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) Nothing in this section shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and his or her attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal advisor and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. Nothing in this subdivision precludes the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(f)

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition.

~~(g)~~

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

~~(h)~~

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

~~(i)~~

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

~~(j)~~

(k) This section does not apply to any action or proceeding covered by Section 4359 or 7020 of the Civil Code, or by Chapter 4 (commencing with Section 540) of this title, or by Title 1.6C (commencing with Section 1788) of the Civil Code or by Part 4 (commencing with Section 240) of Division 2 of the Family Code. Nothing in this section shall preclude a plaintiff's right to utilize other existing civil remedies.

~~(k)~~

(l) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

Comment. New subdivision (f) of Section 527.6 continues the substance of former Civil Code Section 4351.6 (added by 1990 Cal. Stat. ch. 994 § 1) insofar as that section applied to a proceeding under Section 527.6.

A reference has been inserted in new subdivision (k) of Section 527.6 to provisions of the Family Code that replaced the provisions of the Civil Code that formerly were referred in Section 527.6.

Code Civ. Proc. § 529 (technical amendment). Undertaking when injunction granted

SEC. . Section 529 of the Code of Civil Procedure is amended to read:

529. (a) On granting an injunction, the court or judge must require an undertaking on the part of the applicant to the effect that the applicant will pay to the party enjoined such damages, not exceeding an amount to be specified, as the party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction. Within five days after the service of the injunction, the person enjoined may object to the undertaking. If the court determines that the applicant's undertaking is insufficient and a sufficient undertaking is not filed within the time required by statute, the order granting the injunction must be dissolved.

(b) This section does not apply to any of the following persons:

(1) Either spouse against the other in a proceeding for legal separation or dissolution of marriage.

~~(2) The plaintiff in proceedings pursuant to Chapter 4 (commencing with Section 540).~~

~~(3) The plaintiff in proceedings pursuant to Section 7020 of the Civil Code.~~

(2) The applicant for an order described in Section 240 of the Family Code.

~~(4)~~

(3) A public entity or officer described in Section 995.220.

Comment. New paragraph (2) is added to subdivision (b) of Section 529 to add a reference to relevant provisions of the Family Code that superseded the provisions listed in former paragraphs (2) and (3) of subdivision (b) of Section 529.

Code Civ. Proc. § 583.161 (technical amendment). Dismissal of petition for dissolution or legal separation

SEC. . Section 583.161 of the Code of Civil Procedure is amended to read:

583.161. No petition filed pursuant to Section ~~4503 of the Civil~~

Code 2330 of the Family Code shall be dismissed pursuant to this chapter if an order for child support has been issued in connection with the proceeding and the order has not been ~~reoked~~ (1) terminated by the court or ~~has not terminated pursuant to Sections 196, 196.5, and 4700 of the Civil Code~~ (2) terminated by operation of law pursuant to Sections 3900, 3901, 4007, 4013, and 4101 of the Family Code.

Comment. Section 583.161 is amended to delete references to provisions of the Civil Code superseded by the Family Code and to conform Section 583.161 to Section 3601 of the Family Code.

Code Civ. Proc. § 664.5 (technical amendment). Notice of entry of judgment

SEC. . Section 664.5 of the Code of Civil Procedure is amended to read:

664.5. (a) In any contested action or special proceeding in a superior court, ~~other than a proceeding for voidable marriage pursuant to the Family Law Act (Title 2 (commencing with Section 4400)) or dissolution of marriage, legal separation and summary dissolution pursuant to Title 3 (commencing with Section 4500) of the Civil Code~~, the party submitting an order or judgment for entry shall prepare and mail a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with the proof of service by mail. This subdivision does not apply in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation.

(b) Promptly upon entry of judgment in a contested action or special proceeding in a municipal or justice court, the clerk of the court shall mail notice of entry of judgment to all parties who have appeared in the action or special proceeding and shall execute a certificate of such mailing and place it in the court's file in the cause.

(c) For purposes of this section, "judgment" includes any judgment, decree, or signed order from which an appeal lies.

(d) Upon order of the court in any action or special proceeding, the clerk shall mail notice of entry of any judgment or ruling, whether or not appealable.

Comment. Section 664.5 is amended to reflect the fact that the

Civil Code provisions formerly referred to in the section have been superseded by provisions of the Family Code. The reference to a proceeding for "summary dissolution" has been omitted from Section 664.5 as unnecessary, since summary dissolution is included under the language "dissolution of marriage" which is used in the amended section. See Chapter 5 (commencing with Section 2400) of Part 3 of Division 6 of the Family Code.

Code Civ. Proc. § 674 (amended). Abstract of judgment or decree

SEC. . Section 674 of the Code of Civil Procedure is amended to read:

674. (a) Except as otherwise provided in subdivision-(b) Section 4507 of the Family Code, an abstract of a judgment or decree requiring the payment of money shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following:

(1) The title of the court where the judgment or decree is entered and cause and number of the action.

(2) The date of entry of the judgment or decree and of any renewals of the judgment or decree and where entered in the records of the court.

(3) The names and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record.

(4) The name and address of the judgment creditor.

(5) The amount of the judgment or decree as entered or as last renewed.

(6) The social security number and driver's license number of the judgment debtor if they are known to the judgment creditor; and, if either or both of those numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.

(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(8) The date of issuance of the abstract.

~~(b) An abstract of a judgment or decree ordering a party to pay spousal, child, or family support to the other party shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following:~~

~~(1) The title of the court where the judgment or decree is entered~~

~~and the cause and number of the action.~~

~~(2) The date of entry of the judgment or decree and of any renewal of the judgment or decree.~~

~~(3) Where the judgment or decree and any renewals are entered in the records of the court.~~

~~(4) The name and last known address of the party ordered to pay support.~~

~~(5) The name and address of the party to whom support payments are ordered to be paid.~~

~~(6) The social security numbers, birth date, and driver's license number of the party to whom support payments are to be paid. If any of those numbers are not known to the party to whom support payments are to be paid, that fact shall be indicated on the abstract of the court order.~~

~~(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.~~

~~(8) The date of issuance of the abstract.~~

~~(9) Any other information deemed reasonable and appropriate by the Judicial Council.~~

~~(e) The Judicial Council may develop a form for an abstract of a judgment or decree ordering a party to pay spousal, child, or family support to another party which contains the information required by subdivision (b).~~

~~(d)~~

(b) An abstract of judgment, recorded after January 1, 1979, that does not list the social security number and driver's license number of the judgment debtor, or either of them, as required above by subdivision (a) or by Section 4507 of the Family Code, may be extended by the recording of a document entitled "Amendment to Abstract of Judgment." The Amendment to Abstract of Judgment shall contain all of the information required by this section or by Section 4507 of the Family Code, shall list both the social security number and driver's license number if both of those numbers were known at the date of recordation of the original abstract of judgment, or one of them, if only one was known, and shall set forth the date of recording and the book and page location in the records of the county recorder of the original abstract of judgment.

A recorded Amendment to Abstract of Judgment shall have priority as of the date of recordation of the original abstract of judgment, except as to any purchaser, encumbrancer, or lessee who obtained their interest after the recordation of the original abstract of judgment but prior to the recordation of the Amendment to Abstract of Judgment without actual notice of the original abstract of judgment. The purchaser, encumbrancer, or lessee without actual notice may assert as a defense against enforcement of the abstract of judgment the failure to comply with this section or Section 4507 of the Family Code regarding the contents of the original abstract of judgment notwithstanding the subsequent recordation of an Amendment to Abstract of Judgment. With respect to an abstract of judgment recorded between January 1, 1979, and July 10, 1985, the defense against enforcement for failure to comply with this section or Section 4507 of the Family Code may not be asserted by the holder of another abstract of judgment or involuntary lien, recorded without actual notice of the prior abstract, unless refusal to allow the defense would result in prejudice and substantial injury as used in Section 475. The recordation of an Amendment to Abstract of Judgment does not extend or otherwise alter the computation of time as provided in Section 697.310.

Comment. Section 674 is amended to delete subdivisions (b) and (c) which are continued without substantive change in Section 4507 of the Family Code and to make other revisions to conform to that revision.

Code Civ. Proc. § 680.145 (added). "Child support"

SEC. . Section 680.145 is added to the Code of Civil Procedure, to read:

680.145. "Child support" includes family support.

Comment. Section 680.145 is a new provision that is consistent with Section 4501 of the Family Code (family support order is enforceable in the same manner and to the same extent as a child support order).

Code Civ. Proc. § 683.130 (technical amendment). Application for renewal of judgment

SEC. . Section 683.130 of the Code of Civil Procedure is amended to read:

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for

renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) Except as otherwise specified in subdivisions (c), and (d), and (e), in the case of a money judgment payable in installments, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amounts that became due and payable after the previous renewal, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(c) Notwithstanding any other provision of law to the contrary, in the case of a money judgment payable in installments for the payment of child support or family support, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts if the child has not attained the age of 23 years and, thereafter, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amount that became due and payable after the previous renewal, at any time if the child has not attained the age of 23 years and, thereafter, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(d) Any judgment for the payment of child support or family support, for which the enforcement of that support is sought by a writ of execution pursuant to ~~Section 4383 of the Civil Code~~ Chapter 5 (commencing with Section 5100) of Part 5 of Division 9 of the Family

Code, may be renewed at any time within 10 years after it was made or entered or previously renewed.

(e) ~~However,~~ a judgment for child, family, or spousal support shall not be renewed if the application is filed within five years from the time the judgment was previously renewed.

Comment. Subdivision (d) of Section 683.130 (as amended by 1991 Cal. Stat. ch. 110, § 14) is amended to substitute a reference to provisions of the Family Code which replaced former Section 4383 of the Civil Code. The last sentence of Section 683.130--now subdivision (e)--has been amended to make clear that it applies to child, family, and spousal support judgments. Subdivision (e) supersedes the last sentence of former Civil Code Section 4384.5 which provided the same rule as to child and spousal support.

Code Civ. Proc. § 683.310 (technical amendment). Judgments under Family Code

SEC. . Section 683.310 of the Code of Civil Procedure is amended to read:

683.310. Except as otherwise provided in Section ~~4384.5 of the Civil Code~~ 4502 of the Family Code, this chapter does not apply to ~~judgments made, entered, or enforceable pursuant to the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code~~ a judgment or order made or entered pursuant to the Family Code.

Comment. Section 683.310 (as amended by 1991 Cal. Stat. ch. 110, § 15) is amended to substitute "a judgment or order made or entered pursuant to the Family Code" for the former reference to the Family Law Act. Family Code Section 4502 provides that a judgment for child, family, or spousal support may be renewed in manner specified in Article 2 (commencing with Section 683.110) of Chapter 3 of Title 9 of Part 2 of the Code of Civil Procedure. The methods of enforcement of a judgment or order made or entered pursuant to the Family Code are prescribed by Sections 290 and 291 of the Family Code.

Code Civ. Proc. § 684.010 (technical amendment). Notice to attorney of record

SEC. . Section 684.010 of the Code of Civil Procedure is amended to read:

684.010. Subject to Chapter 1 (commencing with Section 283) of Title 5 of Part 1 of this code and Section ~~4809 of the Civil Code~~ 216 of the Family Code, when a notice, order, or other paper is required to be served under this title on the judgment creditor, it shall be served on the judgment creditor's attorney of record rather than on the

judgment creditor if the judgment creditor has an attorney of record.

Comment. Section 684.010 is amended to substitute a reference to the section of the Family Code that superseded Section 4809 of the Civil Code.

Code Civ. Proc. § 695.020 (technical amendment). Community property

SEC. . Section 695.020 of the Code of Civil Procedure is amended to read:

695.020. (a) Community property is subject to enforcement of a money judgment as provided in ~~Title 8-(commencing with Section 5100)-of Part 5-of-Division 4-of-the-Civil-Code~~ the Family Code.

(b) Unless the provision or context otherwise requires, if community property that is subject to enforcement of a money judgment is sought to be applied to the satisfaction of a money judgment:

(1) Any provision of this division that applies to the property of the judgment debtor or to obligations owed to the judgment debtor also applies to the community property interest of the spouse of the judgment debtor and to obligations owed to the other spouse that are community property.

(2) Any provision of this division that applies to property in the possession or under the control of the judgment debtor also applies to community property in the possession or under the control of the spouse of the judgment debtor.

Comment. Subdivision (a) of Section 695.020 is amended to substitute a reference to the Family Code which contains provisions that superseded the provisions of the Civil Code formerly referred to in the section.

Code Civ. Proc. § 697.320 (technical amendment). Judgment lien for installments under judgment for support or against health care provider

SEC. . Section 697.320 of the Code of Civil Procedure is amended to read:

697.320. (a) A judgment lien on real property is created under this section by recording an abstract or a certified copy of any of the following money judgments with the county recorder:

(1) A judgment for ~~spousal--or child, family, or spousal~~ support payable in installments.

(2) A judgment entered pursuant to Section 667.7 (judgment against health care provider requiring periodic payments).

(b) Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under this section continues for a period of 10 years from the date of its creation. The duration of a judgment lien created under this section may be extended any number of times by recording during the time the judgment lien is in existence a certified copy of the judgment in the manner provided in this section for the initial recording. Such rerecording has the effect of extending the duration of the judgment lien created under this section until 10 years from the date of the rerecording.

Comment. Subdivision (a)(1) of Section 697.320 is amended to make clear that Section 697.320 applies to a judgment for family support. See Family Code § 4501 (family support order is enforceable in the same manner and to the same extent as a child support order). See also Section 680.145 ("child support" includes family support).

Code Civ. Proc. § 699.510 (technical amendment). Issuance of writ of execution

SEC. . Section 699.510 of the Code of Civil Procedure is amended to read:

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the ~~Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code~~ Family Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of ~~Sections 4380 to 4384, inclusive, of the Civil Code~~ Chapter 5 (commencing with Section 5100) of Part 5 of Division 9 of the Family Code and Sections 290, 291, 2026, and 3556 of the Family Code.

Comment. Subdivision (b) of Section 699.510 is revised to reflect the fact that the Civil Code provisions formerly referred to in the

subdivision have been superseded by provisions of the Family Code.

Code Civ. Proc. § 699.560 (technical amendment). Return of writ of execution

SEC. . Section 699.560 of the Code of Civil Procedure is amended to read:

699.560. (a) Except as provided in subdivisions (b) and (c), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting of amounts collected and costs incurred, at the earliest of the following times:

- (1) Two years from the date of issuance of the writ.
- (2) Promptly after all of the duties under the writ are performed.
- (3) When return is requested in writing by the judgment creditor.
- (4) If no levy takes place under the writ within 180 days after its issuance, promptly after the expiration of the 180-day period.
- (5) Upon expiration of the time for enforcement of the money judgment.

(b) If a levy has been made under Section 700.200 upon an interest in personal property in the estate of a decedent, the writ shall be returned within the time prescribed in Section 700.200.

(c) If a levy has been made under ~~Section 4383 of the Civil Code~~ Section 5103 of the Family Code on the judgment debtor's right to the payment of benefits from an employee pension benefit plan, the writ shall be returned within the time prescribed in that section.

Comment. Subdivision (c) of Section 699.560 is amended to substitute a reference to the relevant provision of the Family Code that superseded the section of the Civil Code formerly referred to in the subdivision.

Code Civ. Proc. § 703.070 (technical amendment). Exemptions where judgment is for child, family, or spousal support

SEC. . Section 703.070 of the Code of Civil Procedure is amended to read:

703.070. Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to a judgment for child, family, or spousal support.

(b) If property is exempt without making a claim, the property is

not subject to being applied to the satisfaction of a judgment for child, family, or spousal support.

(c) Except as provided in subdivision (b), if property sought to be applied to the satisfaction of a judgment for child, family, or spousal support is shown to be exempt under subdivision (a) in appropriate proceedings, the court shall, upon noticed motion of the judgment creditor, determine the extent to which the exempt property nevertheless shall be applied to the satisfaction of the judgment. In making this determination, the court shall take into account the needs of the judgment creditor, the needs of the judgment debtor and all the persons the judgment debtor is required to support, and all other relevant circumstances. The court shall effectuate its determination by an order specifying the extent to which the otherwise exempt property is to be applied to the satisfaction of the judgment.

Comment. Section 703.070 is amended to add references to "family" support. See Family Code § 4501 (family support order is enforceable in the same manner and to the same extent as a child support order). See also Section 680.145 ("child support" includes family support).

Code Civ. Proc. § 704.070 (technical amendment). Paid earnings

SEC. . Section 704.070 of the Code of Civil Procedure is amended to read:

704.070. (a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) ~~"Wage-assignment~~ "Earnings assignment order for support" means ~~a wage-assignment~~ an earnings assignment order for support as defined in Section 706.011.

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are

exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or a ~~wage assignment~~ an earnings assignment order for support.

(2) Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or a ~~wage assignment~~ an earnings assignment order for support.

Comment. Section 704.070 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

Code Civ. Proc. § 704.110 (technical amendment). Public retirement benefits

SEC. . Section 704.110 of the Code of Civil Procedure is amended to read:

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes or payment of disability or death benefits.

(b) All amounts held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied

to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a ~~wage-assignment~~ an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from each payment made pursuant to a ~~wage assignment~~ an earnings assignment order under this paragraph an amount reflecting the actual cost of administration caused by the wage assignment order up to two dollars (\$2) for each payment.

(d) All amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system are exempt.

Comment. Section 704.110 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). See Family Code § 4501 (family support order is enforceable in the same manner and to the same extent as a child support order). See also Section 680.145 ("child support" includes family support).

Code Civ. Proc. § 704.113 (technical amendment). Vacation credits

SEC. . Section 704.113 of the Code of Civil Procedure is amended to read:

704.113. (a) As used in this section, "vacation credits" means vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) All vacation credits are exempt without making a claim.

(c) Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order served

under Chapter 5 (commencing with Section 706.010) or any wage assignment earnings assignment order for support as defined in Section 706.011 and are exempt to the same extent as earnings of a judgment debtor.

Comment. Subdivision (c) of Section 704.113 is amended to conform to Section 706.011(g). "Earnings assignment order for support" is defined in Section 706.011.

Code Civ. Proc. § 704.114 (technical amendment). Service of assignment on public entity

SEC. . Section 704.114 of the Code of Civil Procedure is amended to read:

704.114. Notwithstanding any other provision of law, when a certified copy of any ~~order-of-assignment~~ earnings assignment order for support is served on any public entity described in Section 704.110 other than the United States government, that entity shall comply with any request for a return of employee contributions by an employee named in the order by delivering the contributions to the clerk of the court from which the order issued, unless the entity has received a certified copy of an order terminating the ~~order--of~~ assignment order. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the fact to the parties, and any agency through whom payments have been ordered under ~~Section 4702 or 4801.7 of the Civil Code~~ Article 4 (commencing with Section 4200) of Chapter 2 of Part 2 of Division 9 of the Family Code or Chapter 4 (commencing with Section 4350) of Part 3 of Division 9 of the Family Code. These moneys shall be subject to any procedure available to enforce an order for support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting employee or his or her heirs. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for support upon the issuance of such a request by such an employee.

Comment. Section 704.114 is amended to substitute references to the relevant provisions of the Family Code for the former references to

Sections 4702 and 4801.7 of the Civil Code. "Earnings assignment order for support" is defined in Section 706.011.

Code Civ. Proc. § 704.115 (technical amendment). Private retirement plans

SEC. . Section 704.115 of the Code of Civil Procedure is amended to read:

704.115. (a) As used in this section, "private retirement plan" means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1954 as amended, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code.

(b) All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a ~~wage-assignment~~ an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a

private retirement plan are exempt.

(e) Notwithstanding subdivisions (b) and (d), except as provided in subdivision (f), the amounts described in paragraph (3) of subdivision (a) are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires. In determining the amount to be exempt under this subdivision, the court shall allow the judgment debtor such additional amount as is necessary to pay any federal and state income taxes payable as a result of the applying of an amount described in paragraph (3) of subdivision (a) to the satisfaction of the money judgment.

(f) Where the amounts described in paragraph (3) of subdivision (a) are payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

Comment. Subdivision (c) of Section 704.115 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). See Family Code § 4501 (family support order is enforceable in the same manner and to the same extent as a child support order). See also Section 680.145 ("child support" includes family support).

Code Civ. Proc. § 704.120 (technical amendment). Unemployment benefits and contributions; strike benefits

SEC. . Section 704.120, as amended by Section 1 of Chapter 261 of the Statutes of 1988, is amended to read:

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

(1) Benefits payable under Division 1 (commencing with Section 100) of the Unemployment Insurance Code.

(2) Incentives payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(3) Benefits payable under an employer's plan or system to supplement unemployment compensation benefits of the employees generally or for a class or group of employees.

(4) Unemployment benefits payable by a fraternal organization to its bona fide members.

(5) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

(d) During the payment of benefits described in paragraph (1) of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, through the appropriate district attorney, seek to apply the benefit payment to satisfy the judgment as provided by Section 11350.5 of the Welfare and Institutions Code.

(e) During the payment of benefits described in paragraphs (2) to (5), inclusive, of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, directly or through the appropriate district attorney, seek to apply the benefit payments to satisfy the judgment by ~~a wage assignment~~ an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure. If the benefit is payable periodically, the amount to be withheld pursuant to the wage assignment order or other procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest whole dollar. Otherwise the amount to be withheld shall be the amount the court determines under subdivision (c) of Section 703.070. The paying entity may deduct from each payment made pursuant to ~~a wage~~ an assignment order under this subdivision an amount reflecting the actual cost of administration caused by the wage assignment order up to two dollars (\$2) for each payment.

Comment. Subdivision (e) of Section 704.120 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

Code Civ. Proc. § 704.950 (technical amendment). Judgment lien on real property

SEC. . Section 704.950 of the Code of Civil Procedure is

amended to read:

704.950. (a) Except as provided in subdivisions (b) and (c), a judgment lien on real property created pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 does not attach to a declared homestead if both of the following requirements are satisfied:

(1) A homestead declaration describing the declared homestead was recorded prior to the time the abstract or certified copy of the judgment was recorded to create the judgment lien.

(2) The homestead declaration names the judgment debtor or the spouse of the judgment debtor as a declared homestead owner.

(b) This section does not apply to a judgment lien created under Section 697.320 by recording a certified copy of a judgment for child, family, or spousal support.

(c) A judgment lien attaches to a declared homestead in the amount of any surplus over the total of the following:

(1) All liens and encumbrances on the declared homestead at the time the abstract of judgment or certified copy of the judgment is recorded to create the judgment lien.

(2) The homestead exemption set forth in Section 704.730.

Comment. Subdivision (b) of Section 704.950 is amended to make clear that the section applies to a judgment for family support. See Family Code § 4501 (family support order is enforceable in the same manner and to the same extent as a child support order). See also Section 680.145 ("child support" includes family support).

Code Civ. Proc. § 706.011 (technical amendment). Definitions

SEC. . Section 706.011 of the Code of Civil Procedure is amended to read:

706.011. As used in this chapter:

(a) "Earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) "Employee" means a public officer and any individual who performs services subject to the right of the employer to control both what shall be done and how it shall be done.

(c) "Employer" means a person for whom an individual performs services as an employee.

(d) "Judgment creditor," as applied to the state, means the

specific state agency seeking to collect a judgment or tax liability.

(e) "Judgment debtor" includes a person from whom the state is seeking to collect a tax liability under Article 4 (commencing with Section 706.070), whether or not a judgment has been obtained on such tax liability.

(f) "Person" includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

(g) "~~Wage-assignment~~ Earnings assignment order for support" means an order, made pursuant to ~~Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code~~ Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code or Section 3088 of the Probate Code, which requires an employer to withhold earnings for support.

Comment. Subdivision (g) of Section 706.011 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). A reference to the relevant Family Code provisions is substituted for the former reference to provisions of the Civil Code.

Code Civ. Proc. § 706.020 (technical amendment). Withholding earnings

SEC. . Section 706.020 of the Code of Civil Procedure is amended to read:

706.020. Except for ~~a wage-assignment~~ an earnings assignment order for support, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any judicial procedure other than pursuant to this chapter.

Comment. Section 706.020 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

Code Civ. Proc. § 706.031 (technical amendment). Earnings assignment order for support

SEC. . Section 706.031 of the Code of Civil Procedure is amended to read:

706.031. (a) Nothing in this chapter affects ~~a wage-assignment~~ an earnings assignment order for support.

(b) ~~A wage-assignment~~ An earnings assignment order for support shall be given priority over any earnings withholding order. An

employer upon whom ~~a-wage-assignment~~ an earnings assignment order for support is served shall withhold and pay over the earnings of the employee pursuant to the wage assignment order ~~for--support~~ notwithstanding the requirements of any earnings withholding order. When an employer is required to cease withholding earnings pursuant to an earnings withholding order, the employer shall notify the levying officer who served the earnings withholding order that a supervening ~~wage-assignment~~ earnings assignment order for support is in effect.

(c) Subject to subdivisions (b), (d), and (e), an employer shall withhold earnings of an employee pursuant to both ~~a-wage-assignment~~ an earnings assignment order for support and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to any ~~wage-assignment~~ earnings assignment order for support and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 706.050).

(e) The employer shall withhold pursuant to an earnings withholding order for taxes only to the extent that the sum of the amount withheld pursuant to any ~~wage-assignment~~ earnings assignment order for support and the amount withheld pursuant to the earnings withholding order for taxes does not exceed the amount that may be withheld under Article 4 (commencing with Section 706.070).

Comment. Section 706.031 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

Code Civ. Proc. § 706.052 (technical amendment). Earnings assignment order for support

SEC. . Section 706.52 of the Code of Civil Procedure is amended to read:

706.052. (a) Except as provided in subdivision (b), one-half of the disposable earnings (as defined by Section 1672 of Title 15 of the United States Code) of the judgment debtor, plus any amount withheld from the judgment debtor's earnings pursuant to any ~~wage-assignment~~ earnings assignment order for support, is exempt from levy under this chapter where the earnings withholding order is a withholding order for

support under Section 706.030.

(b) Except as provided in subdivision (c), upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support.

(c) An order made under subdivision (b) may not authorize the withholding of an amount in excess of the amount that may be withheld for support under federal law under Section 1673 of Title 15 of the United States Code.

Comment. Subdivision (a) of Section 706.052 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

Code Civ. Proc. § 706.124 (technical amendment). Judgment debtor's financial statement

SEC. . Section 706.124 of the Code of Civil Procedure is amended to read:

706.124. The "judgment debtor's financial statement" shall be executed as provided in Section 703.530 and contain all of the information required by that section and the following additional information:

(a) Whether any earnings withholding orders are in effect with respect to the earnings of the judgment debtor or the spouse or dependents of the judgment debtor.

(b) Whether any ~~wage-assignments~~ earnings assignment orders for support are in effect with respect to the earnings of the judgment debtor or the spouse or dependents of the judgment debtor.

Comment. Subdivision (b) of Section 706.124 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

Code Civ. Proc. § 706.126 (technical amendment). Employer's return

SEC. . Section 706.126 of the Code of Civil Procedure is amended to read:

706.126. (a) The "employer's return" shall be executed under oath. The form for the return provided to the employer shall state all of the following information:

(1) The name and address of the levying officer to whom the form is to be returned.

(2) A direction that the form be mailed to the levying officer by first-class mail, postage prepaid, no later than 15 days after the date of service of the earnings withholding order.

(3) The name, the address, and, if known, the social security number of the judgment debtor.

(b) In addition, the employer's return form shall require the employer to supply all of the following information:

(1) The date the earnings withholding order was served on the employer.

(2) Whether the judgment debtor is employed by the employer or whether the employer otherwise owes earnings to the employee.

(3) If the judgment debtor is employed by the employer or the employer otherwise owes earnings to the employee, the amount of the employee's earnings for the last pay period and the length of this pay period.

(4) Whether the employer was required on the date of service to comply with an earlier earnings withholding order and, if so, the name of the judgment creditor who secured the earlier order, the levying officer who served such order, the date it was issued, the date it was served, the expiration date of such order, and which of the earnings withholding orders the employer is required to comply with under the applicable statutory rules concerning the priority of such orders.

(5) Whether the employer was required on the date of service to comply with ~~a wage assignment~~ an earnings assignment order for support and, if so, the court which issued such assignment order and the date it was issued and any other information the Judicial Council determines is needed to identify the order.

(6) The name and address of the person to whom notices to the employer are to be sent.

Comment. Subdivision (b)(5) of Section 706.126 is amended to conform to the terminology used in the Family Code. See Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support).

Code Civ. Proc. § 708.510 (technical amendment). Assignment of right to payment

SEC. . Section 708.510 of the Code of Civil Procedure is amended to read:

708.510. (a) Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments:

(1) Wages due from the federal government that are not subject to withholding under an earnings withholding order.

(2) Rents.

(3) Commissions.

(4) Royalties.

(5) Payments due from a patent or copyright.

(6) Insurance policy loan value.

(b) The notice of the motion shall be served on the judgment debtor. Service shall be made personally or by mail.

(c) Subject to subdivisions (d), (e), and (f), in determining whether to order an assignment or the amount of an assignment pursuant to subdivision (a), the court may take into consideration all relevant factors, including the following:

(1) The reasonable requirements of a judgment debtor who is a natural person and of persons supported in whole or in part by the judgment debtor.

(2) Payments the judgment debtor is required to make or that are deducted in satisfaction of other judgments and wage assignments, including earnings assignment orders for support.

(3) The amount remaining due on the money judgment.

(4) The amount being or to be received in satisfaction of the right to payment that may be assigned.

(d) A right to payment may be assigned pursuant to this article only to the extent necessary to satisfy the money judgment.

(e) When earnings or periodic payments pursuant to a pension or

retirement plan are assigned pursuant to subdivision (a), the amount of the earnings or the periodic payments assigned shall not exceed the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(f) Where a specific amount of the payment or payments to be assigned is exempt by another statutory provision, the amount of the payment or payments to be assigned pursuant to subdivision (a) shall not exceed the amount by which the payment or payments exceed the exempt amount.

Comment. Subdivision (c)(2) of Section 708.510 is amended to make clear that the court is to take into consideration any earnings assignment order for support.

Code Civ. Proc. § 708.730 (technical amendment). Money owed by public agency

SEC. . Section 708.730 of the Code of Civil Procedure is amended to read:

708.730. (a) If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by this article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail.

(c) If the judgment is for support and related costs and money is owing and unpaid to the judgment debtor by a state agency, including, but not limited to, money owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, and the district attorney is enforcing the support obligation pursuant to Section 11475.1 of the

Welfare and Institutions Code, the claim may be submitted as follows: The district attorney may file the affidavit referred to in subdivision (a) without filing an abstract or certified copy of the judgment. In lieu thereof, the affidavit shall also state that an abstract of the judgment could be obtained. Where there is more than one judgment debtor, the district attorney may include all the judgment debtors in a single affidavit. Separate affidavits need not be submitted for each judgment debtor. The affidavit need not on its face separately identify each judgment debtor or the exact amount required to satisfy the judgment, so long as it incorporates by reference forms or other automated data transmittals, as required by the State Department of Social Services, which contain this information. Affidavits submitted pursuant to this subdivision by the district attorney shall meet the standards and procedures prescribed by the state agency to which the affidavit is submitted, except that those affidavits submitted with respect to moneys owed and unpaid to the judgment debtor as a result of a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporations Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, shall meet the standards and procedures prescribed by the Franchise Tax Board.

In serving the notice required by subdivision (b), the Director of the State Department of Social Services or his or her designee may act in lieu of the judgment creditor as to judgments enforced under this division.

(d) If the judgment is for child, spousal, or family support and related costs and money is owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, or as a result of the judgment debtor's winnings in the California State Lottery, the judgment creditor may file with the court an abstract or a certified copy of the judgment ~~or-dee~~ decree ordering the payment of child, spousal, or family support, together with a request that the court issue a

Notice of Support Arrearage, as provided in Section 708.780, to which any personal income tax refunds and lottery winnings owed the judgment debtor by the State of California will be subject. The request shall be accompanied by an affidavit which shall state that the judgment creditor desires the relief provided by this subdivision and shall state the exact amount then required to satisfy the judgment ~~or~~ decree. In addition, the affidavit shall specify the beginning and ending dates of all periods during which the arrearage for support occurred, specify the arrearage for each month, and state that each specified arrearage has been delinquent for at least 30 days. It shall also certify that the child or children are not recipients, and during the period for which payment is requested, were not recipients, of Aid to Families with Dependent Children and there was no assignment to a state or county agency of support and shall certify on information and belief that there is not current or past action by a district attorney pending for support or support enforcement on the judgment creditor's behalf.

The request shall have attached a proof of service showing that copies of the request, the affidavit, and the abstract or certified copy of the judgment ~~or--decree~~ ordering the payment of support have been served on the judgment debtor and the district attorney of the county in which the support judgment is entered. Service shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service.

This subdivision does not apply in any instance in which a district attorney initiated or participated as counsel in the action for support or if support is required to be paid through a district attorney's office.

This subdivision shall be operative only until January 1, 1994.

(e) For purposes of this section, "support" means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

Comment. Section 708.730 is amended to delete the phrase "or decree" which was used in several places in the section. See Section 680.230 (defining "judgment" to include decree).

Code Civ. Proc. § 724.250 (technical amendment). Child and spousal support

SEC. . Section 724.250 of the Code of Civil Procedure is

amended to read:

724.250. (a) An acknowledgment of satisfaction of matured installments under an installment judgment shall be made in the same manner and by the same person as an acknowledgment of satisfaction of judgment and shall contain the following information:

(1) The title of the court.

(2) The cause and number of the action.

(3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. The judgment debtor's name shall appear on the acknowledgment of satisfaction of mature installments as it appears on the certified copy of the judgment that was recorded to create the judgment lien.

(4) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(5) A statement that the matured installments under the installment judgment had been satisfied as of a specified date.

(6) A statement whether a certified copy or abstract of the judgment has been recorded in any county and, if so, a statement of each county where the certified or abstract copy has been recorded and the book and page of the county records where the certified copy or abstract of the judgment has been recorded.

(b) If any amount of child or spousal support provided in a support order has been directed to be made to an officer designated by statute or by the court pursuant to ~~Section 4702 of the Civil Code~~ Article 4 (commencing with Section 4200) of Chapter 2 of Part 2 of Division 9 of the Family Code or Chapter 4 (commencing with Section 4350) of Part 3 of Division 9 of the Family Code or any other provision of law and the directive is set forth in the certified copy or abstract of the judgment that was recorded to create the judgment lien on real property, or in a similarly recorded certified copy or abstract of an amended or supplemental order, the acknowledgment of satisfaction of matured installments under the installment judgment is not effective and does not affect the judgment lien unless the acknowledgment is executed by or approved in writing by the designated officer.

Comment. Subdivision (b) of Section 724.250 is amended to substitute references to the relevant provisions of the Family Code in place of the former reference to Section 4702 of the Civil Code.

Code Civ. Proc. § 904.1 (technical amendment). Appealable judgments and orders

SEC. . Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. An appeal may be taken from a superior court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment, other than as provided in subdivisions (h) and (i), (2) a judgment of contempt which is made final and conclusive by Section 1222, (3) a judgment on appeal from a municipal court or a justice court or a small claims court, or (4) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or a justice court or the judge or judges thereof which relates to a matter pending in the municipal or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(d) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(e) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(f) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(g) From an order appointing a receiver.

(h) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(i) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and

directing partition to be made.

(j) From an order made appealable by the provisions of the Probate Code or the ~~Family Law Act, Part 5 (commencing with Section 4000)~~ Family Code.

(k) From a superior court judgment directing payment of monetary sanctions by a party or an attorney for a party only if the amount exceeds seven hundred fifty dollars (\$750). Lesser sanction judgments against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

Comment. Subdivision (j) of Section 904.1 is amended to substitute a reference to the Family Code for the former reference to the Family Law Act.

Code Civ. Proc. § 917.7 (amended). Stay of proceedings

SEC. . Section 917.7 of the Code of Civil Procedure is amended to read:

917.7. The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child in any civil action, in an action filed under the Juvenile Court Law, or in a special proceeding, or the provisions of a judgment or order for the temporary exclusion of a party from the family dwelling or the dwelling of the other party, as provided in ~~Section 4359 of the Civil Code~~ the Family Code. However, the trial court may in its discretion stay execution of such provisions pending review on appeal or for such other period or periods as to it may appear appropriate. Further, in the absence of a writ or order of a reviewing court providing otherwise, the provisions of the judgment or order allowing, or eliminating restrictions against, removal of the minor child from the state are stayed by operation of law for a period of 30 days from the entry of the judgment or order and are subject to any further stays ordered by the trial court, as herein provided.

Comment. Section 917.7 is amended to substitute a reference to the Family Code in place of the former reference to Section 4359 of the Civil Code. For provisions of the Family Code relating to the temporary exclusion of a party from the family dwelling or the dwelling of the other party, see, e.g., Family Code §§ 2035-2043, 2045, 5550,

5551, 5600-5807, 7710-7722, 7750.

Code Civ. Proc. § 1006.5 (technical amendment). Appearance of counsel by telephone; standard of judicial administration; incorporation by superior courts in local rules

SEC. . Section 1006.5 of the Code of Civil Procedure is amended to read:

1006.5. (a) The Judicial Council shall adopt a standard of judicial administration governing the appearance of counsel by telephone at any hearing of a demurrer, an order to show cause, or a motion heard before the action is called for trial.

(b) The standard of judicial administration shall provide that counsel for a party to a civil action may appear by telephone at any of those hearings unless , (1) the action or proceeding is one filed pursuant to the ~~Family-Law-Act~~ Family Code, (2) any party notices an intent to present oral testimony, or (3) the court orders the personal appearance of counsel.

(c) Within six months after the Judicial Council has adopted that standard of judicial administration, the superior court of each county shall advise the Judicial Council whether it will incorporate the standard, a modified version thereof, or not provide for the appearance of counsel by telephone in its local rules.

Comment. Subdivision (b) of Section 1006.5 is amended to substitute a reference to the "Family Code" for the reference to the "Family Law Act" that formerly appeared in the section. The effect of this substitution is to extend the exception under subdivision (b) to include provisions of the Family Code that were not part of the former Family Law Act.

Staff Note: Should all or a portion of Section 1006.5 be repealed because it is obsolete the Judicial Council having adopted the standard of judicial administration as required by the section? See *Standards of Judicial Administration Recommended by the Judicial Council, Section 21 (Appearance by Telephone, as amended effective January 1, 1989).*

Code Civ. Proc. § 1209.5 (technical amendment). Noncompliance with order for support of child as contempt

SEC. . Section 1209.5 of the Code of Civil Procedure is amended to read:

1209.5. When a court of competent jurisdiction makes an order

compelling a parent to furnish support or necessary food, clothing, shelter, medical attendance, or other remedial care for his or her child, proof that such the order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced and proof of ~~noncompliance therewith shall be~~ that the parent did not comply with the order is prima facie evidence of a contempt of court.

Comment. Section 1209.5 is amended to make clear that the section applies to an order directed to a mother as well as to a father. This is not a substantive change. See Code Civ. Proc. § 17 (masculine gender includes the feminine).

Code Civ. Proc. § 1219 (technical amendment). Punishment for contempt

SEC. . Section 1219 of the Code of Civil Procedure is amended to read:

1219. (a) Except as provided in subdivisions (b) and (c), when the contempt consists of the omission to perform an act which is yet in the power of the person to perform, he or she may be imprisoned until he or she has performed it, and in that case the act shall be specified in the warrant of commitment.

(b) Notwithstanding any other law, no court may imprison or otherwise confine or place in custody the victim of a sexual assault for contempt when the contempt consists of refusing to testify concerning that sexual assault.

(c) In a finding of contempt for a victim of domestic violence who refuses to testify, the court shall not incarcerate the victim, but may require the victim to attend up to 72 hours of a domestic violence program for victims or require the victim to perform up to 72 hours of appropriate community service, provided that in a subsequent finding of contempt for refusing to testify arising out of the same case, the court shall have the option of incarceration pursuant to subdivision (a).

(d) As used in this section:

(1) "Sexual assault" means any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.

(2) "Domestic violence" means abuse perpetrated against any of the following:

(A) A spouse, former spouse, cohabitant, former cohabitant, any

other adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has had a dating or engagement relationship.

(B) A person who is the parent of a child and the presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act ~~(Part 7 (commencing with Section 7000) of Division 4 of the Civil Code)~~ (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

Comment. Subdivision (d)(2)(B) of Section 1219 (as amended by 1991 Cal. Stat. ch. 866, § 4) is amended to substitute a reference to the relevant Family Code provisions for the former reference to Civil Code provisions.

Code Civ. Proc. § 1276 (technical amendment). Petition for change of name

SEC. . Section 1276 of the Code of Civil Procedure is amended to read:

1276. All applications for change of names shall be made to the superior court of the county where the person whose name is proposed to be changed resides either (a) by petition signed by the person or, if the person is under 18 years of age, by one of the person's parents, if living, or if both parents are dead, then by the guardian of the person and, if there is no guardian, then by some near relative or friend of the person or (b) as provided in ~~subdivision (d) of Section 7007 of the Civil Code~~ Section 7638 of the Family Code.

The petition or pleading shall specify the place of birth and residence of the person, his or her present name, the name proposed, and the reason for the change of name, and shall, if neither parent of the person is living, name, as far as known to the person proposing the name change, the near relatives of the person, and their place of residence.

In an action for a change of name commenced by the filing of a petition:

(a) If the person whose name is proposed to be changed is under 18 years of age and the petition is signed by only one parent, the petition shall specify the address, if known, of the other parent if living.

(b) If the person whose name is proposed to be changed is 12 years

of age or over, has been relinquished to an adoption agency by his or her parent or parents, and has not been legally adopted, the petition shall be signed by the person and the adoption agency to which the person was relinquished. The near relatives of the person and their place of residence shall not be included in the petition unless they are known to the person whose name is proposed to be changed.

Comment. Section 1276 is amended to substitute a reference to the provision of the Family Code that superseded subdivision (d) of Section 7007 of the Civil Code.

Code Civ. Proc. § 1277 (technical amendment). Notice of application for change of name

SEC. . Section 1277 of the Code of Civil Procedure is amended to read:

1277. (a) Where an action for a change of name is commenced by the filing of a petition, the court shall thereupon make an order reciting the filing of the petition, the name of the person by whom it is filed and the name proposed, and directing all persons interested in the matter to appear before the court at a time and place specified, which shall be not less than four or more than eight weeks from the time of making the order, to show cause why the application for change of name should not be granted. A copy of the order to show cause shall be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation to be designated in the order published in the county. If no newspaper of general circulation is published in the county, a copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the county in which the court is located, for a like period. Proof shall be made to the satisfaction of the court of this publication or posting, at the time of the hearing of the application.

Four weekly publications shall be sufficient publication of the order to show cause. If the order is published in a daily newspaper, publication once a week for four successive weeks shall be sufficient.

Where a petition has been filed for a minor and the other parent, if living, does not join in consenting thereto, the petitioner shall cause, not less than 30 days prior to the hearing, to be served notice of the time and place of the hearing or a copy of the order to show cause on the other parent pursuant to Section 413.10, 414.10, 415.10,

or 415.40.

(b) Where application for change of name is brought as part of an action under ~~Part 7-(commencing with Section 7000)-of-Division 4-of-the Civil Code~~ the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), whether as part of a petition or cross-complaint or as a separate order to show cause in a pending action thereunder, service of the application shall be made upon all other parties to the action in a like manner as prescribed for the service of summons, as is set forth in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Upon the setting of a hearing on the issue, notice of the hearing shall be given to all parties in the action in a like manner and within the time limits prescribed generally for the type of hearing (whether trial or order to show cause) at which the issue of the change of name is to be decided.

Comment. Subdivision (b) of Section 1277 is amended to substitute a reference to the provisions of the Family Code that superseded the provisions of the Civil Code formerly referred to in Section 1277.

Code Civ. Proc. § 1278 (technical amendment). Hearing and order without hearing in change of name

SEC. . Section 1278 of the Code of Civil Procedure is amended to read:

1278. (a) Except as provided in subdivision (b), the application shall be heard at the time designated by the court, only if objections are filed by any person who can, in those objections, show to the court good reason against the change of name. At the hearing, the court may examine on oath any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name, or dismissing the application, as to the court may seem right and proper.

If no objection is filed the court may, without hearing, enter the order that the change of name is granted.

(b) Where the application for a change of name is brought as part of an action under ~~Part 7-(commencing with Section 7000)-of-Division 4-of-the Civil Code~~ the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), the hearing on the issue of the change of name shall be conducted pursuant to statutes and rules of court governing those proceedings, whether the hearing is conducted upon an order to show cause or upon trial.

Comment. Subdivision (b) of Section 1278 is amended to substitute a reference to the provisions of the Family Code that superseded the provisions of the Civil Code formerly referred to in Section 1278.

Code Civ. Proc. § 1279.5 (amended). Common law right to change name not abrogated

SEC. . Section 1279.5 of the Code of Civil Procedure is amended to read:

1279.5. {a} Nothing in this title shall be construed to abrogate the common law right of any person to change one's name.

~~{b} No person engaged in any a trade or business of any kind whatsoever or in the provision of a service of any kind whatsoever shall refuse to do business with any woman or refuse to provide such service to any woman regardless of her marital status, because she has chosen to use or regularly uses her birth name or former name. No such person shall impose as a condition of doing business of any kind whatsoever with any woman or as a condition of providing a service of any kind whatsoever to any woman, a requirement that any woman, regardless of her marital status, use any name other than her birth name or former name if she has chosen to use or regularly uses her birth name or former name.~~

Comment. Subdivision (b) of Section 1279.5, which is deleted by the amendment, is continued without substantive change in Section 1279.6.

Code Civ. Proc. § 1279.6 (added). Refusal to do business with woman who uses her birth name or former name

SEC. . Section 1279.6 is added to the Code of Civil Procedure, to read:

1279.6. No person engaged in a trade or business of any kind or in the provision of a service of any kind shall do any of the following:

(a) Refuse to do business with a woman, or refuse to provide the service to a woman, regardless of her marital status, because she has chosen to use or regularly uses her birth name or former name.

(b) Impose, as a condition of doing business with a woman, or as a condition of providing the service to a woman, a requirement that the woman, regardless of her marital status, use a name other than her birth name or former name if she has chosen to use or regularly uses

her birth name or former name.

Comment. Section 1279.6 continues without substantive change former subdivision (b) of Section 1279.5 of the Code of Civil Procedure and subdivision (d) of former Civil Code Section 4362 and subdivision (d) of former Civil Code Section 4457 without substantive change.

Code Civ. Proc. § 1710.10 (technical amendment). Sister state money judgments

SEC. . Section 1710.10 of the Code of Civil Procedure is amended to read:

1710.10. As used in this chapter:

(a) "Judgment creditor" means the person or persons who can bring an action to enforce a sister state judgment.

(b) "Judgment debtor" means the person or persons against whom an action to enforce a sister state judgment can be brought.

(c) "Sister state judgment" means that part of any judgment, decree, or order of a court of a state of the United States, other than California, which requires the payment of money, but does not include a support order as defined in ~~subdivision (k) of Section 1653~~ Section 155 of the Family Code.

Comment. Subdivision (c) of Section 1710.10 is amended to substitute a reference to the relevant provision of the Family Code for the reference to subdivision (k) of former Section 1653.

Code Civ. Proc. § 2032 (technical amendment). Physical or mental examinations

SEC. . Section 2032 of the Code of Civil Procedure is amended to read:

2032. (a) Any party may obtain discovery, subject to the restrictions set forth in Section 2019, by means of a physical or mental examination of (1) a party to the action, (2) an agent of any party, or (3) a natural person in the custody or under the legal control of a party, in any action in which the mental or physical condition (including the blood group) of that party or other person is in controversy in the action.

(b) A physical examination conducted under this section shall be performed only by a licensed physician or other appropriate licensed health care practitioner. A mental examination conducted under this section shall be performed only by a licensed physician, or by a

licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders. Nothing in this section affects tests under the Uniform Act on Blood Tests to Determine Paternity ~~(Chapter 2 (commencing with Section 890) of Division 7 of the Evidence Code)~~ (Part 2 (commencing with Section 7550) of Division 12 of the Family Code).

(c) (1) As used in this subdivision, plaintiff includes a cross-complainant, and defendant includes a cross-defendant.

(2) In any case in which a plaintiff is seeking recovery for personal injuries, any defendant may demand one physical examination of the plaintiff, provided the examination does not include any diagnostic test or procedure that is painful, protracted, or intrusive, and is conducted at a location within 75 miles of the residence of the examinee. A defendant may make this demand without leave of court after that defendant has been served or has appeared in the action, whichever occurs first. This demand shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the physician who will perform the examination.

(3) A physical examination demanded under this subdivision shall be scheduled for a date that is at least 30 days after service of the demand for it unless on motion of the party demanding the examination the court has shortened this time.

(4) The defendant shall serve a copy of the demand for this physical examination on the plaintiff and on all other parties who have appeared in the action.

(5) The plaintiff to whom this demand for a physical examination has been directed shall respond to the demand by a written statement that the examinee will comply with the demand as stated, will comply with the demand as specifically modified by the plaintiff, or will refuse, for reasons specified in the response, to submit to the demanded physical examination. Within 20 days after service of the demand the plaintiff to whom the demand is directed shall serve the original of the response to it on the defendant making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the defendant making the demand the court

has shortened the time for response, or unless on motion of the plaintiff to whom the demand has been directed, the court has extended the time for response.

(6) If a plaintiff to whom this demand for a physical examination has been directed fails to serve a timely response to it, that plaintiff waives any objection to the demand. However, the court, on motion, may relieve that plaintiff from this waiver on its determination that (A) the plaintiff has subsequently served a response that is in substantial compliance with paragraph (5), and (B) the plaintiff's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The defendant may move for an order compelling response and compliance with a demand for a physical examination. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel response and compliance with a demand for a physical examination, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a plaintiff then fails to obey the order compelling response and compliance, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction the court may impose a monetary sanction under Section 2023.

(7) If a defendant who has demanded a physical examination under this subdivision, on receipt of the plaintiff's response to that demand, deems that any modification of the demand, or any refusal to submit to the physical examination is unwarranted, that defendant may move for an order compelling compliance with the demand. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand for a physical examination, unless it finds that the one subject to the sanction acted

with substantial justification or that other circumstances make the imposition of the sanction unjust.

(8) The demand for a physical examination and the response to it shall not be filed with the court. The defendant shall retain both the original of the demand, with the original proof of service affixed to it, and the original response until six months after final disposition of the action. At that time, the original may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

(d) If any party desires to obtain discovery by a physical examination other than that described in subdivision (c), or by a mental examination, the party shall obtain leave of court. The motion for the examination shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt to arrange for the examination by an agreement under subdivision (e). Notice of the motion shall be served on the person to be examined and on all parties who have appeared in the action.

The court shall grant a motion for a physical or mental examination only for good cause shown. If a party stipulates that (1) no claim is being made for mental and emotional distress over and above that usually associated with the physical injuries claimed, and (2) no expert testimony regarding this usual mental and emotional distress will be presented at trial in support of the claim for damages, a mental examination of a person for whose personal injuries a recovery is being sought shall not be ordered except on a showing of exceptional circumstances. The order granting a physical or mental examination shall specify the person or persons who may perform the examination, and the time, place, manner, diagnostic tests and procedures, conditions, scope, and nature of the examination. If the place of the examination is more than 75 miles from the residence of the person to be examined, the order to submit to it shall be (1) made only on the court's determination that there is good cause for the travel involved, and (2) conditioned on the advancement by the moving party of the reasonable expenses and costs to the examinee for travel to the place

of examination.

(e) In lieu of the procedures and restrictions specified in subdivisions (c) and (d), any physical or mental examination may be arranged by, and carried out under, a written agreement of the parties.

(f) If a party required by subdivision (c), (d), or (e) to submit to a physical or mental examination fails to do so, the court, on motion of the party entitled to the examination, may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may, on motion of the party, impose a monetary sanction under Section 2023.

If a party required by subdivision (c), (d), or (e) to produce another for a physical or mental examination fails to do so, the court, on motion of the party entitled to the examination, may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023, unless the party failing to comply demonstrates an inability to produce that person for examination. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

(g)(1) The attorney for the examinee or for a party producing the examinee, or that attorney's representative, shall be permitted to attend and observe any physical examination conducted for discovery purposes, and to record stenographically or by audio tape any words spoken to or by the examinee during any phase of the examination. This observer may monitor the examination, but shall not participate in or disrupt it.

If in the judgment of the observer the examiner becomes abusive to the examinee or undertakes to engage in unauthorized diagnostic tests and procedures, the observer may suspend it to enable the party being examined or producing the examinee to make a motion for a protective order. If the observer begins to participate in or disrupt the examination, the person conducting the physical examination may suspend the examination to enable the party at whose instance it is being conducted to move for a protective order.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one

subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If the examinee submits or authorizes access to X-rays of any area of his or her body for inspection by the examining physician, no additional X-rays of that area may be taken by the examining physician except with consent of the examinee or on order of the court for good cause shown.

(2) The examiner and examinee shall have the right to record a mental examination on audio tape. However, nothing in this article shall be construed to alter, amend, or affect existing case law with respect to the presence of the attorney for the examinee or other persons during the examination by agreement or court order.

(h) If a party submits to, or produces another for, a physical or mental examination in compliance with a demand under subdivision (c), an order of court under subdivision (d), or an agreement under subdivision (e), that party has the option of making a written demand that the party at whose instance the examination was made deliver to the demanding party (1) a copy of a detailed written report setting out the history, examinations, findings, including the results of all tests made, diagnoses, prognoses, and conclusions of the examiner, and (2) a copy of reports of all earlier examinations of the same condition of the examinee made by that or any other examiner. If this option is exercised, a copy of these reports shall be delivered within 30 days after service of the demand, or within 15 days of trial, whichever is earlier. The protection for work product under Section 2018 is waived, both for the examiner's writings and reports and to the taking of the examiner's testimony.

If the party at whose instance the examination was made fails to make a timely delivery of the reports demanded, the demanding party may move for an order compelling their delivery. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel delivery of medical reports, unless it finds that the one subject to the sanction acted with substantial

justification or that other circumstances make the imposition of the sanction unjust.

If a party then fails to obey an order compelling delivery of demanded medical reports, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to those sanctions, the court may impose a monetary sanction under Section 2023. The court shall exclude at trial the testimony of any examiner whose report has not been provided by a party.

(i) By demanding and obtaining a report of a physical or mental examination under the provisions of subdivision (h), or by taking the deposition of the examiner, other than under subdivision (i) of Section 2034, the party who submitted to, or produced another for, a physical or mental examination waives in the pending action, and in any other action involving the same controversy, any privilege, as well as any protection for work product under Section 2018, that the party or other examinee may have regarding reports and writings as well as the testimony of every other physician, psychologist, or licensed health care practitioner who has examined or may thereafter examine the party or other examinee in respect of the same physical or mental condition.

(j) A party receiving a demand for a report under subdivision (h) is entitled at the time of compliance to receive in exchange a copy of any existing written report of any examination of the same condition by any other physician, psychologist, or licensed health care practitioner. In addition, that party is entitled to receive promptly any later report of any previous or subsequent examination of the same condition, by any physician, psychologist, or licensed health care practitioner.

If a party who has demanded and received delivery of medical reports under subdivision (h) fails to deliver existing or later reports of previous or subsequent examinations, a party who has complied with subdivision (h) may move for an order compelling delivery of medical reports. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion to compel delivery of medical reports, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party then fails to obey an order compelling delivery of medical reports, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to the sanction, the court may impose a monetary sanction under Section 2023 against that party. The court shall exclude at trial the testimony of any health care practitioner whose report has not been provided by a party ordered to do so by the court.

(k) Nothing in this section shall require the disclosure of the identity of an expert consulted by an attorney in order to make the certification required in an action for professional negligence under Sections 411.30 and 411.35.

Comment. Subdivision (b) of Section 2032 is amended to substitute a reference to the relevant Family Code provisions in place of the former reference to Evidence Code provisions.

Corp. Code § 420 (technical amendment). Immunity from liability of corporation, transfer agent, or registrar

SEC. . Section 420 of the Corporations Code is amended to read:

420. Neither a domestic nor foreign corporation nor its transfer agent or registrar is liable:

(a) For transferring or causing to be transferred on the books of the corporation to the surviving joint tenant or tenants any share or shares or other securities issued to two or more persons in joint tenancy, whether or not the transfer is made with actual or constructive knowledge of the existence of any understanding, agreement, condition or evidence that the shares or securities were held other than in joint tenancy or of a breach of trust by any joint tenant.

(b) To a minor or incompetent person in whose name shares or other securities are of record on its books or to any transferee of or transferor to either for transferring the shares or other securities on its books at the instance of or to the minor or incompetent or for the recognition of or dealing with the minor or incompetent as a

shareholder or security holder, whether or not the corporation, transfer agent or registrar had notice, actual or constructive, of the nonage or incompetency, unless a guardian or conservator of the property of the minor or incompetent has been appointed and the corporation, transfer agent or registrar has received written notice thereof.

(c) To any married person or to any transferee of such person for transferring shares or other securities on its books at the instance of the person in whose name they are registered, without the signature of such person's spouse and regardless of whether the registration indicates that the shares or other securities are community property, in the same manner as if such person were unmarried.

(d) For transferring or causing to be transferred on the books of the corporation shares or other securities pursuant to a judgment or order of a court which has been set aside, modified or reversed unless, prior to the registration of the transfer on the books of the corporation, written notice is served upon the corporation or its transfer agent in the manner provided by law for the service of a summons in a civil action, stating that an appeal or other further court proceeding has been or is to be taken from or with regard to such judgment or order. After the service of such notice neither the corporation nor its transfer agent has any duty to register the requested transfer until the corporation or its transfer agent has received a certificate of the county clerk of the county in which the judgment or order was entered or made, showing that the judgment or order has become final.

(e) The provisions of the California Commercial Code shall not affect the limitations of liability set forth in this section. ~~Section 5125 of the Civil Code~~ Chapter 2 (commencing with Section 1150) of Part 4 of Division 4 of the Family Code and Section 1110 of the Family Code shall be subject to the provisions of this section and shall not be construed to prevent transfers, or result in liability to the corporation, transfer agent or registrar permitting or effecting transfers, which comply with this section.

Comment. Subdivision (e) of Section 420 is amended to substitute a reference to the Family Code provisions that superseded Section 5125 of the Civil Code.

Educ. Code § 22401.6 (technical amendment). Applications for benefits; spousal signature; exceptions; refusal to sign; actions; purpose

SEC. . Section 22401.6 of the Education Code is amended to read:

22401.6. An application for a retirement allowance, an application for an election, change, or cancellation of a preretirement option, an application for the withdrawal of accumulated annuity deposit contributions, and an application for a refund of the member's accumulated contributions shall contain the signature of the spouse of the member, unless the member declares, in writing, under penalty of perjury, that either: (a) the member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse; (b) the spouse is incapable of executing the acknowledgement because of an incapacitating mental or physical condition; (c) the member and spouse have executed a marriage settlement agreement pursuant to ~~Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code~~ Part 5 (commencing with Section 1500) of Division 4 of the Family Code, which makes the community property law inapplicable to the marriage; (d) the member is not married; or (e) the current spouse has no identifiable community property interest in the benefit.

If a spouse refuses to sign an application, the member may bring an action in court to enforce the spousal signature requirement or to waive the spousal signature requirement. Either party may bring an action pursuant to ~~Section 5125.1 of the Civil Code~~ Article 2 (commencing with Section 1110) of Chapter 1 of Part 4 of Division 4 of the Family Code to determine the rights of the party.

The sole purpose of this section is to provide for spousal protection in the selection of specified benefits made by a member.

Comment. Section 22401.6 (as amended by 1991 Cal. Stat. ch. 543, § 6) is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code, which was referred to in Section 22401.6, was repealed by 1985 Cal. Stat. ch. 1315, § 2. The repealed provisions were replaced by the provisions which are now compiled as Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See 1985 Cal. Stat. ch. 1315, § 3, enacting Title 11 (commencing with Section 5200) of Part 5 of Division 4 of the former Civil Code. Accordingly, a reference to Part 5 (commencing with Section 1500) of Division 4 of the Family Code has been substituted for the former reference to Chapter 6 (commencing with Section 5133) of Title 8 of

Part 5 of Division 4 of the Civil Code.

Educ. Code § 22662 (technical amendment). Retirement allowance; determination of community property rights; retirant share; rights on death

SEC. . Section 22662 of the Education Code is amended to read:

22662. Upon the legal separation or dissolution of marriage of a retirant, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance of the retirant consistent with this section. Upon election under subdivision ~~(e) of Section 4800.8 of the Civil Code~~ (d) of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the benefits of a retirant shall be consistent with this section.

(a) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving a retirement allowance under any section other than Section 24200, the court shall require only that the system pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(b) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving an allowance which has been actuarially modified pursuant to Section 24200, the court shall order only one of the following:

(1) The retirant shall maintain the retirement allowance without change; or

(2) The retirant shall cancel the retirement allowance pursuant to Section 24200.1 and select a new joint and survivor option or a new beneficiary or both, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant, the option beneficiary, or both.

(3) The retirant shall cancel the retirement allowance pursuant to Section 24200.1 and select an unmodified retirement benefit and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(c) If the option beneficiary, other than the nonmember spouse, dies before the retirant, the court shall order the retirant to select a new option beneficiary pursuant to Section 24200.2 and shall order the system to pay the nonmember spouse, by separate warrant, his or her

share of the community property interest in the retirement allowance of the retirant or the new option beneficiary, or both.

(d) The right of the nonmember spouse to receive his or her community property share under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary to receive his or her community property share of accumulated retirement contributions in the event that accumulated retirement contributions become payable.

Comment. The introductory portion of Section 22662 is amended to substitute a reference to the Family Code provision that superseded the Civil Code provision formerly referred to in the section.

The former reference in Section 22662 to subdivision (c) (Public Employees' Retirement System) of Section 4800.8 of the Civil Code appears to have been in error; the reference apparently was intended to refer to subdivision (d) (State Teachers' Retirement System) of Section 4800.8. For this reason, the amendment to Section 22662 refers to subdivision (d), rather than to subdivision (c), of the Family Code provision that superseded the Civil Code provision.

Educ. Code § 23702 (technical amendment). Designation of beneficiary; revocation

SEC. . Section 23702 of the Education Code is amended to read:

23702. A member or retirant may at any time designate a beneficiary to receive those benefits as may be payable under this part, except that no beneficiary designation may be made in derogation of the community property share of any nonmember spouse when any such benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for distribution pursuant to ~~Section 4800.8 of the Civil Code~~ 2610 of the Family Code. Any change of beneficiary shall be in writing on a form prescribed by the system, executed by the member, witnessed by two witnesses, neither of whom may be beneficiaries. To be valid the instrument shall be received in the office of the system in Sacramento before the member's death.

Except as otherwise stated in this section, the designation of beneficiary, other than an option beneficiary, may be revoked at the pleasure of the person making the nomination, and a different beneficiary designated in the same manner as herein provided.

Comment. Section 23702 is amended to substitute a reference to

the Family Code section that superseded the Civil Code section formerly referred to in Section 23702.

Educ. Code § 24603 (technical amendment). State Teachers' Retirement System

SEC. . Section 24603 of the Education Code is amended to read:

24603. Payment pursuant to the board's determination in good faith of the existence, identity or other facts relating to entitlement of persons constitutes a complete discharge of and release of the system from liability for the payment so made.

~~Notwithstanding Sections 5105 and 5125 of the Civil Code Chapter 2 (commencing with Section 1150) of Part 4 of Division 4 of the Family Code and Sections 751 and 1110 of the Family Code~~ relating to community property interests, whenever payment or refund is made by this system to a member, former member, or beneficiary of a member pursuant to this part, the payment shall fully discharge the system from all adverse claims thereto unless, before payment is made, the system has received at its office in Sacramento a written notice of adverse claim.

Comment. Section 24603 is amended to substitute a reference to the Family Code provisions that superseded Sections 5105 and 5125 of the Civil Code.

Evidence Code

Evid. Code § 621 (repealed). Motion for blood tests

SEC. . Section 621 of the Evidence Code is repealed.

~~621. (a) Except as provided in subdivision (b), the issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusive presumed to be a child of the marriage.~~

~~(b) Notwithstanding the provisions of subdivision (a), if the court finds that the conclusions of all the experts, as disclosed by the evidence based upon blood tests performed pursuant to Chapter 2 (commencing with Section 890) of Division 7 are that the husband is not the father of the child, the question of paternity of the husband shall be resolved accordingly.~~

~~(c) The notice of motion for blood tests under subdivision (b) may be filed not later than two years from the child's date of birth by the husband, or for the purposes of establishing paternity by the presumed father or the child through or by the child's guardian ad litem.~~

~~(d) The notice of motion for blood tests under subdivision (b) may be filed by the mother of the child not later than two years from the child's date of birth if the child's biological father has filed an affidavit with the court acknowledging paternity of the child.~~

~~(e) Subdivision (b) shall not apply to any case coming within the provisions of Section 7005 of the Civil Code or to any case in which the wife, with the consent of the husband, conceived by means of a surgical procedure.~~

~~(f) The notice of motion for the blood tests pursuant to subdivision (b) shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court. This requirement shall not apply to any case pending before the court on September 30, 1980.~~

~~(g) Subdivision (b) shall not apply to any case which has reached final judgment of paternity on September 30, 1980.~~

~~(h) As used in this section "presumed father" has the meaning given in Section 7004 of the Civil Code.~~

Comment. Former Section 621 is continued without substantive change in Sections 7500 and 7501 of the Family Code. The second sentence of subdivision (f) has been omitted as obsolete.

Evid. Code § 1037.7 (technical amendment). Domestic violence; abuse; family or household member; other persons

SEC. . Section 1037.7 of the Evidence Code is amended to read:

1037.7. (a) "Domestic violence" is abuse perpetrated against a family or household member, or against a person as provided in subdivisions (d) and (e).

(b) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to herself, himself, or another.

(c) "Family or household member" means a spouse, former spouse, parent, child, any other adult person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who within the last six months regularly resided in the household.

(d) A person who is the parent of a minor child where (1) there exists the presumption that the male parent is the father of any minor

child of the female parent pursuant to the Uniform Parentage Act, ~~Part 7--(commencing with Section 7000)--of Division 4 of the Civil Code~~ Part 3 (commencing with Section 7600) of Division 12 of the Family Code, and (2) one parent has perpetrated abuse as defined in subdivision (b) against the other parent.

(e) A person who is in, or has been in, a dating, courtship, or engagement relationship and abuse as defined in subdivision (b) has been perpetrated against that person by the person with whom they have had a dating, courtship, or engagement relationship.

Comment. Section 1037.7 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Evid. Code § 1107 (technical amendment). Expert testimony regarding battered women's syndrome

SEC. . Section 1107 of the Evidence Code is amended to read:

1107. (a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding battered women's syndrome, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on battered women's syndrome shall not be considered a new scientific technique whose reliability is unproven.

(c) For purposes of this section, "abuse" and "domestic violence" are defined as provided in ~~Section 542 of the Code of Civil Procedure for purposes of the Domestic Violence Protection Act~~ Sections 55 and 70 of the Family Code.

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

Comment. Subdivision (c) of Section 1107 (added by 1991 Cal. Stat. ch. 812, § 1) is amended to substitute references to the provisions of the Family Code that superseded the relevant provisions of Section 542.

Evid. Code § 1152.5 (technical amendment). Mediation

SEC. . Section 1152.5 of the Evidence Code is amended to read:

1152.5. (a) Subject to the conditions and exceptions provided in this section, when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute:

(1) Evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(2) Unless the document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(b) Subdivision (a) does not limit the admissibility of evidence if all persons who conducted or otherwise participated in the mediation consent to its disclosure.

(c) This section does not apply unless, before the mediation begins, the persons who agree to conduct and participate in the mediation execute an agreement in writing that sets out the text of subdivisions (a) and (b) and states that the persons agree that this section shall apply to the mediation.

(d) This section does not apply where the admissibility of the evidence is governed by ~~Section 4351.5 or 4607 of the Civil Code or by Section 1747 of the Code of Civil Procedure~~ 1818 or 3156 of the Family Code.

(e) Nothing in this section makes admissible evidence that is inadmissible under Section 1152 or any other statutory provision, including, but not limited to, the sections listed in subdivision (d). Nothing in this section limits the confidentiality provided pursuant to Section 65 of the Labor Code.

(f) Paragraph (2) of subdivision (a) does not limit either of the following:

(1) The admissibility of the agreement referred to in subdivision (c).

(2) The effect of an agreement not to take a default in a pending civil action.

Comment. Subdivision (d) of Section 1152.5 is amended to substitute a reference to the Family Code provisions that superseded the provisions of the Civil Code and Code of Civil Procedure formerly referred to in the section.

Government Code

Gov't Code § 21204 (technical amendment). Designation of beneficiary

SEC. . Section 21204 of the Government Code is amended to read:

21204. A member may at any time designate a beneficiary to receive such benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board, except that no designation may be made in derogation of the community property share of any nonmember spouse when any such benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for division pursuant to ~~Section 4800.8 of the Civil Code~~ 2610 of the Family Code.

The designation, subject to such conditions as may be imposed by board rule, may be by class, in which case the members of the class at the time of the member's death shall be entitled as beneficiaries. The designation shall also be subject to the board's conclusive determination, upon evidence satisfactory to it, of the existence, identity or other facts relating to entitlement of any person designated as beneficiary, and payment made by the system in reliance on any such determination made in good faith, notwithstanding that it may not have discovered a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of the system for further liability for the benefit.

Comment. Section 21204 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 21204.

Gov't Code § 21209 (technical amendment). Notice to spouse of member's selection of benefits or change of beneficiary; spouse's applications for refund, etc.; exceptions; operative date of section

SEC. . Section 21209 of the Government Code is amended to read:

21209. The sole purpose of this section is to notify the current spouse of the selection of benefits or change of beneficiary made by a member. Nothing in this section is intended to conflict with community property law. An application for a refund of the member's accumulated contributions, an election of optional settlement, or a change in beneficiary designation shall contain the signature of the current spouse of the member, unless the member declares, in writing under penalty of perjury, any of the following:

- (a) The member is not married.
- (b) The current spouse has no identifiable community property interest in the benefit.
- (c) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.
- (d) The current spouse has been advised of the application and has refused to sign the written acknowledgment.
- (e) The current spouse is incapable of executing the acknowledgment because of incapacitating mental or physical condition.
- (f) The member and the current spouse have executed a marriage settlement agreement pursuant to ~~Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code~~ Part 5 (commencing with Section 1500) of Division 4 of the Family Code which makes the community property law inapplicable to the marriage.

This section shall become operation on January 1, 1990.

Comment. Subdivision (f) of Section 21209 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code, which was referred to in Section 21209, was repealed by 1985 Cal. Stat. ch. 1315, § 2. The repealed provisions were replaced by the provisions which are now compiled as Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See 1985 Cal. Stat. ch. 1315, § 3, enacting Title 11 (commencing with Section 5200) of Part 5 of Division 4 of the former Civil Code. Accordingly, a reference to Part 5 (commencing with Section 1500) of Division 4 of the Family Code has been substituted for the former reference to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code.

Gov't Code § 21209.3 (technical amendment). Application for refund of member's accumulated contributions or election of optional settlement and beneficiary designation; signature of spouse; exceptions; operative

date of section

SEC. . Section 21209.3 of the Government Code is amended to read:

21209.3. An application for a refund of the member's accumulated contributions or an election of optional settlement and beneficiary designation shall contain the signature of the current spouse of the member, unless the member makes, in writing under penalty of perjury, any of the following declarations:

(a) That the member is not married.

(b) That the member does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.

(c) That the current spouse has been advised of the application and has refused to sign the written acknowledgment.

(d) That the current spouse is incapable of executing the acknowledgment because of incapacitating mental or physical condition.

(e) That the member and the current spouse have executed a marriage settlement agreement pursuant to ~~Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code~~ Part 5 (commencing with Section 1500) of Division 4 of the Family Code which makes the community property law inapplicable to the marriage.

No retirement or refund payment shall be made when there is no spousal signature or when the member has made no declaration under subdivisions (a) to (e), inclusive.

The sole purpose of this section is to notify the current spouse of the selection of specified benefits made by a member.

This section shall become operative on January 1, 1990.

Comment. Subdivision (e) of Section 21209.3 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code, which was referred to in Section 21209.3, was repealed by 1985 Cal. Stat. ch. 1315, § 2. The repealed provisions were replaced by the provisions which are now compiled as Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See 1985 Cal. Stat. ch. 1315, § 3, enacting Title 11 (commencing with Section 5200) of Part 5 of Division 4 of the former Civil Code. Accordingly, a reference to Part 5 (commencing with Section 1500) of Division 4 of the Family Code has been substituted for the former reference to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code.

Gov't Code § 21210 (technical amendment). Public Employees' Retirement Law

SEC. . Section 21210 of the Government Code is amended to read:

21210. ~~Notwithstanding the provisions of Sections 5105 and 5125 of the Civil Code~~ Chapter 2 (commencing with Section 1150) of Part 4 of Division 4 of the Family Code and Sections 751 and 1110 of the Family Code, whenever payment or refund is made by this system to a member, former member, beneficiary of a member or estate of a member pursuant to any provision of this part, such payment shall fully discharge this system from all adverse claims thereto unless, before such payment or refund is made, this system has received at its office in Sacramento written notice by or on behalf of some other person that such person claims to be entitled to such payment or refund.

Comment. Section 21210 is amended to substitute a reference to the Family Code provisions that superseded Sections 5105 and 5125 of the Civil Code.

Gov't Code § 21215 (technical amendment). Marriage dissolutions or legal separations; accounts for accumulated contributions and service credits; rights of nonmembers

SEC. . Section 21215 of the Government Code is amended to read:

21215. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided in accordance with subdivision (c) of Section ~~4800.8 of the Civil Code~~ 2610 of the Family Code, the court shall order that the accumulated contributions and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember, respectively. Any service credit or accumulated contributions which are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) The court shall address the rights of the nonmember to the following:

(1) The right to a retirement allowance, and the consequent right to elect an optional settlement and designate a beneficiary.

(2) The right to a refund of accumulated contributions.

(3) The right to redeposit accumulated contributions which are eligible for redeposit by the member under Sections 20654 and 20654.3.

(4) The right to purchase service credit which is eligible for purchase by the member under Article 4 (commencing with Section 20890) and Article 5 (commencing with Section 20930) of Chapter 7 of this part.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(7) The right to elect coverage in the second tier, provided that the election is made within one year of the establishment of the nonmember account or prior to the nonmember's retirement, whichever occurs first. Immediately upon establishment of a nonmember account, the board shall provide, by certified mail, the necessary form and information so that the election may be made.

(d) In the capacity of nonmember, he or she shall not be entitled to any disability or industrial disability retirement allowance, any basic death benefit, any special death benefit, any monthly allowance for survivors of a member or retired person, any insurance benefit, or retired member lump sum death benefit. No survivor continuance allowance shall be payable to a survivor of a nonmember.

Comment. Subdivision (b) of Section 21215 is amended to substitute a reference to the Family Code provision that superseded the Civil Code provision formerly referred to in the section.

Gov't Code § 26832 (technical amendment). Marriage dissolution record; certified copies

SEC. . Section 26832 of the Government Code is amended to read:

26832. (a) Notwithstanding the fee authorized by Section 26833, a fee of three dollars (\$3) shall be paid by a public agency applicant for a certified copy of a marriage dissolution record that the agency is required to obtain in the ordinary course of business. A fee of six dollars (\$6) shall be paid by any other applicant for a certified copy of a marriage dissolution record. Three dollars (\$3) of any six-dollar (\$6) fee shall be transmitted monthly by each county clerk to the state for deposit into the General Fund as provided by Section ~~5183~~ of the ~~Civil Code~~ 1852 of the Family Code.

(b) As used in this section, "marriage dissolution record" means the judgment.

Comment. Section 26832 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 26832.

Gov't Code § 26833.5 (technical amendment). Certified copies of order under certain domestic relations laws; indigent plaintiff; exemptions

SEC. . Section 26833.5 of the Government Code is amended to read:

26833.5. No fee shall be charged to an indigent plaintiff for certified copies of any order issued pursuant to ~~Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure or Section 4359 or 7020 of the Civil Code.~~ any of the following provisions:

(a) Article 2 (commencing with Section 2035) of Chapter 4 of Division 6 of the Family Code.

(b) Division 10 (commencing with Section 5500) of the Family Code.

(c) Article 2 (commencing with Section 7710) or 3 (commencing with Section 7720) of Chapter 6 of Part 3 of Division 12 of the Family Code.

Comment. Section 26833.5 is amended to substitute references to the relevant Family Code provisions that superseded the provisions of the Civil Code and Code of Civil Procedure formerly referred to in the section.

Gov't Code § 26840.1 (technical amendment). Marriage certificate

SEC. . Section 26840.1 of the Government Code is amended to read:

26840.1. (a) The fee for filing a marriage certificate pursuant to ~~Section 4213 of the Civil Code Part 4 (commencing with Section 500) of Division 3 of the Family Code~~ is fourteen dollars (\$14), to be collected at the time an authorization for the performance of the marriage is issued or a blank authorization form is obtained from the county clerk pursuant to ~~subdivision (b) of Section 4213 Part 4 (commencing with Section 500) of Division 3 of the Family Code.~~ Four dollars (\$4) of the fee shall be paid to the State Registrar of Vital Statistics. One dollar (\$1) of the fee shall be paid to the county treasurer and shall be used to defray any local costs incurred pursuant to ~~Section 4213 Part 4 (commencing with Section 500) of Division 3 of~~

the Family Code.

(b) Notwithstanding the provisions of subdivision (a), in addition to the amount authorized by subdivision (a) the county clerk may impose an additional amount, not to exceed three dollars (\$3), if he or she determines that the additional amount is necessary to defray local costs.

Comment. Section 26840.1 is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Staff Note: The language of Section 26840.1 used in connection with the former reference to subdivision (b) of former Civil Code Section 4213 is not consistent with the provisions of subdivision (b) of former Section 4213.

Gov't Code § 26840.3 (amended). Increase of fees for support of family conciliation court and mediation services; conditions

SEC. . Section 26840.3 of the Government Code is amended to read:

26840.3. (a) The superior court in any county may, for the support of the family conciliation court or for conciliation and mediation services provided pursuant to ~~Section 4607 of the Civil Code,~~ or for mediation services provided pursuant to ~~Section 4351.5 of the Civil Code~~ Chapter 11 (commencing with Section 3155) of Part 2 of Division 8 of the Family Code, upon action of the board of supervisors to provide all space costs and indirect overhead costs from other sources, increase:

(1) The fee for filing a petition, except a joint petition filed pursuant to ~~Section 4551 of the Civil Code~~ 2401 of the Family Code, for dissolution of a marriage, legal separation, or nullity of a marriage, and the fee for a response to such a petition, by an amount not to exceed ~~seventeen dollars (\$17).~~ ~~In addition to the amount otherwise authorized by this paragraph, the superior court may increase that fee for filing such a petition, and the fee for a response thereto, by an additional five dollars (\$5) for the mediation services required by the amendments to Section 4351.5 of the Civil Code enacted at the 1983-84 Regular Session of the Legislature~~ twenty two dollars (\$22).

(2) The fee for issuing a marriage license, by an amount not to exceed five dollars (\$5).

(3) The fee for issuing a marriage certificate pursuant to ~~Section 4213 of the Civil Code~~ Part 4 (commencing with Section 500) of Division 3 of the Family Code, by an amount not to exceed five dollars (\$5).

(b) The funds shall be paid to the county treasury and an amount equal thereto shall be used exclusively to pay the costs of maintaining the family conciliation court or conciliation and mediation services provided pursuant to ~~Section 4607 or 4351.5 of the Civil Code~~ Chapter 11 (commencing with Section 3155) of Part 2 of Division 8 of the Family Code.

Comment. Section 26840.3 is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section. Paragraph (1) of subdivision (a) is further amended to consolidate the fee increase provisions of that paragraph, thereby making unnecessary the former reference to "the mediation services required by the amendments to Section 4351.5 of the Civil Code enacted by the 1983-84 Regular Session of the Legislature."

Gov't Code § 26840.8 (technical amendment). Marriage authorization

SEC. . Section 26840.8 of the Government Code is amended to read:

26840.8. In addition to the fee prescribed by Section 26840.1 and as authorized by Section 26840.3, the person issuing an authorization for the performance of a marriage pursuant to ~~subdivision--(a)--of Section 4213 of the Civil Code~~ Part 4 (commencing with Section 500) of Division 3 of the Family Code or the county clerk, upon providing a blank authorization form pursuant to ~~subdivision--(b)--of Section 4213 of the Civil Code~~ Part 4 (commencing with Section 500) of Division 3 of the Family Code, shall collect a fee of nineteen dollars (\$19) at the time of providing the authorization. The fee shall be disposed of pursuant to the provisions of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code.

Comment. Section 26840.8 is amended to substitute references to the Family Code provisions that superseded Section 4213 of the Civil Code.

Staff Note: Section 16840 was drafted in light of the wording of former Civil Code Section 4213 prior to various amendments made to Section 4213. Section 16840 should be revised to make its application clear. There no longer appears to be a provision for a "blank authorization form."

Gov't Code § 26841 (technical amendment). Fees for protective order

SEC. . Section 26841 of the Government Code is amended to read:

26841. The superior court in any county may increase the fee for the filing of any paper in response to an order or an application for an order described in ~~paragraph (2) or (3) of subdivision (a) of Section 4359 of the Civil Code~~ subdivision (b) or (c) of Section 2035 of the Family Code, issued pursuant to that section, or issued to any person in accordance with ~~Chapter 4 (commencing with Section 540) of Part 2 of Title 7 of the Code of Civil Procedure~~ Division 10 (commencing with Section 5500) of the Family Code, by five dollars (\$5), upon the adoption of a resolution to that effect by the board of supervisors. The five dollars (\$5) shall be disposed of pursuant to the provisions of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code.

Comment. Section 26841 is amended to substitute references to the Family Code provisions that superseded the provisions formerly referred to in Section 26841.

Gov't Code § 26861 (technical amendment). Performance of marriage

SEC. . Section 26861 of the Government Code is amended to read:

26861. A fee of fifteen dollars (\$15) may be charged for performing a marriage ceremony pursuant to ~~Section 4205.1 of the Civil Code~~ 401 of the Family Code, which shall be paid into the county treasury.

Comment. Section 26861 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 26861.

Gov't Code § 27752 (technical amendment). Financial evaluations and collections

SEC. . Section 27752 of the Government Code is amended to read:

27752. A county financial evaluation officer is authorized to make financial evaluations and collect moneys pursuant to ~~Section 4602 of the Civil Code~~ 3111 of the Family Code; Sections 987.4, 987.8, 1203, 1203.1, 1203.1b, 1203.1c, 1203.1e, 1205, and 1209 of the Penal Code; and Sections 353, 353.5, 376, 700, 727, 751, 903, 903.1, 903.2, 903.3, and 903.45 of the Welfare and Institutions Code.

Comment. Section 27752 is amended to substitute a reference to the relevant Family Code provision that superseded the Civil Code provision formerly referred to in the section.

Gov't Code § 31760.3 (technical amendment). Notice to spouse of member's selection of benefits or change of beneficiary; spouse's applications for refund; exceptions; adoption by county

SEC. . Section 31760.3 of the Government Code is amended to read:

31760.3. The sole purpose of this section is to notify the current spouse of the selection of benefits or change of beneficiary made by a member. Nothing in this section is intended to conflict with community property law. An application for a refund of the member's accumulated contributions, an election of optional settlement, or a change in beneficiary designation shall contain the signature of the current spouse of the member, unless the member declares, in writing under penalty of perjury, any of the following:

(a) The member is not married.

(b) The current spouse has no identifiable community property interest in the benefit.

(c) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.

(d) The current spouse has been advised of the application and has refused to sign the written acknowledgment.

(e) The current spouse is incapable of executing the acknowledgment because of incapacitating mental or physical condition.

(f) The member and the current spouse have executed a marriage settlement agreement pursuant to ~~Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code~~ Part 5 (commencing with Section 1500) of Division 4 of the Family Code which makes the community property law inapplicable to the marriage.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make this section applicable in the county.

Comment. Subdivision (f) of Section 31760.3 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code, which was referred to in Section 31760.3, was repealed by 1985 Cal. Stat. ch. 1315, § 2. The repealed provisions were replaced by the provisions which are now compiled as Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See

1985 Cal. Stat. ch. 1315, § 3, enacting Title 11 (commencing with Section 5200) of Part 5 of Division 4 of the former Civil Code. Accordingly, a reference to Part 5 (commencing with Section 1500) of Division 4 of the Family Code has been substituted for the former reference to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code.

Gov't Code § 68514 (technical amendment). Report of administrative office of California courts; record of motions seeking and orders granting retroactive child support

SEC. . Section 68514 of the Government Code is amended to read:

68514. (a) The Judicial Council shall include as part of the Council's Annual Report of the Administrative Office of the California Courts the total number of Order to Show Cause and Notices of Motions filed seeking retroactive child support pursuant to Sections 196, 4700, and 7010 of the Civil Code, or pursuant to Article 3 (commencing with Section 4100) of Chapter 2 of Part 2 of Division 9 of the Family Code, and the total number of orders granting retroactive support pursuant to these sections.

(b) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

Comment. Section 68514 is amended to add a reference to the Family Code provisions that will supersede the Civil Code provisions formerly referred to in the section.

Gov't Code § 75050 (technical amendment). Judges' retirement benefits

SEC. . Section 75050 of the Government Code is amended to read:

75050. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided pursuant to subdivision (c) of Section ~~4800+8--of--the--Civil--Code~~ 2610 of the Family Code, the court shall order that the accumulated contributions and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions which are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) The court shall address the rights of the nonmember to the following:

(1) The right to a retirement allowance.

(2) The right to a refund of accumulated retirement contributions.

(3) The right to redeposit accumulated contributions which are eligible for redeposit by the member under Section 75028.5.

(4) The right to purchase service credit which is eligible for purchase by the member under Sections 75029 to 75030.5.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

Comment. Subdivision (b) of Section 75050 is amended to substitute a reference to the Family Code provision that superseded the Civil Code provision formerly referred to in Section 75050.

Gov't Code § 77003 (technical amendment). "Court operations"

SEC. . Section 77003 of the Government Code is amended to read:

77003. As used in this chapter, "court operations" means the county share of superior and municipal court judges' salaries, benefits, and public agency retirement contributions, and the salary, benefits, and public agency retirement contributions for justice court judges, subordinate judicial officers, other court staff including all municipal court staff positions specifically prescribed by statute, those deputy marshals, constables, and sheriffs as the court deems necessary for court operations, court-appointed counsel in juvenile court dependency proceedings, counsel appointed by the court to represent a minor pursuant to ~~Section 4606 of the Civil Code~~ Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code, services and supplies relating to court operations, collective bargaining under the Meyers-Milius-Brown Act with respect to court employees specified in Section 3501.5, and actual indirect costs, not to exceed 18 percent of the block grant, for county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to

statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services. However, in a county with a population of 350,000 or less as determined by the Department of Finance, to the extent that the block grant for a given fiscal year exceeds the 1987-88 funding level for the trial courts in that county, as adjusted by the current consumer price index, "court operations" includes probation services, indigent criminal defense, and pretrial release services. The salaries, benefits, and public agency retirement contributions to be used in computing "court operations" are those salaries, benefits, and public agency contributions in existence on June 30, 1991, and any reclassification made thereafter primarily for the purposes of granting a salary increase shall not be applicable for purposes of this section.

Comment. Section 77003 (as amended by 1991 Cal. Stat. ch. 716, § 99) is amended to substitute a reference to the Family Code provisions that superseded the Civil Code section formerly referred to in Section 77003.

Health & Safety Code

Health & Safety Code § 1522.4 (technical amendment). Community care facilities

SEC. . Section 1522.4 of the Health and Safety Code is amended to read:

1522.4. (a) In addition to any other requirements of this chapter and except for foster family homes, small family homes, and certified family homes of foster family agencies, all of the following apply to any community care facility providing 24-hour care for children:

(1) The facility shall have one or more facility managers. "Facility manager," as used in this section, means a person on the premises with the authority and responsibility necessary to manage and control the day-to-day operation of a community care facility and supervise the clients. The facility manager, licensee, and administrator, or any combination thereof, may be the same person provided he or she meets all applicable requirements. If the administrator is also the facility manager for the same facility, this person shall be limited to the administration and management of only one facility.

(2) The facility manager shall have at least one year of experience working with the client group served, or equivalent education or experience, as determined by the department.

(3) A facility manager shall be at the facility at all times when one or more clients are present. To ensure adequate supervision of clients when clients are at the facility outside of their normal schedule, a current telephone number where the facility manager can be reached shall be provided to the clients, licensing agency, school, and any other agency or person as the department determines is necessary. The facility manager shall instruct these agencies and individuals to notify him or her when clients will be returning to the facility outside of the normal hours.

(4) The Legislature intends to upgrade the quality of care in licensed facilities. For the purposes of Sections 1533 and 1534, the licensed facility shall be inspected and evaluated for quality of care at least once each year, without advance notice and as often as necessary, without advance notice, to ensure the quality of care being provided.

Paragraphs (1), (2), and (3) shall apply only to new facilities licensed for six or fewer children which apply for a license after January 1, 1985, and all other new facilities licensed for seven or more children which apply for a license after January 1, 1988. Existing facilities licensed for seven or more children shall comply by January 1, 1989.

(b) No employee of the state or county employed in the administration of this chapter or employed in a position that is in any way concerned with facilities licensed under this chapter shall hold a license or have a direct or indirect financial interest in a facility described in subdivision (a).

The department, by regulation, shall make the determination pursuant to the purposes of this section and chapter, as to what employment is in the administration of this chapter or in any way concerned with facilities licensed under this chapter and what financial interest is direct or indirect.

This subdivision does not prohibit the state or county from securing a license for, or operating, a facility that is otherwise required to be licensed under this chapter.

(c) A licensed private full-service or noncustodial adoption agency, as respectively defined in ~~subdivisions (h) and (i) of Section 220.20 of the Civil Code~~ Sections 8521 and 8533 of the Family Code, which advises a person as specified in ~~Section 224.50 of the Civil Code~~ 8812 of the Family Code or which assesses the prospective adoptive family as specified in ~~subdivision (e) of Section 224.50 of the Civil Code~~ subdivisions (g) and (h) of Section 8812 of the Family Code shall not have received financial contributions in excess of five hundred dollars (\$500) or volunteer or paid services from the adoption petitioners, the attorneys advising the petitioners in connection with the adoption, members of the immediate families of the petitioners or the attorneys advising them in connection with the adoption, or members or employees of any such attorney's firm during a one-year period immediately prior to the beginning of the advice or assessment services and shall not accept financial contributions in excess of five hundred dollars (\$500) or volunteer or paid services from any of those persons for at least one year after the advice or assessment service is completed. This does not include fees for services charged by the agency. This subdivision shall be inoperative on January 1, 1994.

Comment. Subdivision (c) of Section 1522.4 (as amended by 1991 Cal. Stat. ch. 697, § 6) is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions formerly referred to in Section 1522.4.

Health & Safety Code § 10125.5 (technical amendment). Confidentiality of certificate of live birth

SEC. . Section 10125.5 of the Health and Safety Code is amended to read:

10125.5. (a) The second section of the certificate of live birth as specified in subdivision (b) of Section 10125 shall be confidential. Access to such portion of any certificate of live birth shall be limited to the following:

(1) State Department of Health Services staff.

(2) Local registrar's staff and local health department staff when approved by the local registrar or local health officer, respectively.

(3) Persons with a valid scientific interest as determined by the State Registrar, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree to maintain

confidentiality as prescribed by this division and by regulation of the State Registrar.

(4) The parent who signed the certificate or, if no parent signed the certificate, the mother.

(5) The person named on the certificate.

(6) Any person who has petitioned to adopt the person named on the certificate, subject to Section 10439 of the Health and Safety Code and ~~Sections 229.10 and 229.40 of the Civil Code~~ 9200 and 9203 of the Family Code.

(b) The State Department of Health Services shall maintain an accurate record of all persons who are given access to the confidential portion of the certificate. The record shall include: the name of the person authorizing access; name, title, and organizational affiliation of persons given access; dates of access; and specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the State Department of Health Services.

(c) All research proposed to be conducted using the confidential medical and social information on the birth certificate shall first be reviewed by the appropriate committee constituted for the protection of human subjects which is approved by the federal Department of Health and Human Services and has a general assurance pursuant to Part 46 of Title 45 of the Code of Federal Regulations. No information shall be released until the request for information has been reviewed by the Vital Statistics Advisory Committee and the committee has recommended to the State Registrar that the information shall be released.

Comment. Subdivision (a)(6) of Section 10125.5 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in subdivision (a)(6) of Section 10125.5.

Health & Safety Code § 10125.6 (technical amendment). Notice to mother of newborn

SEC. . Section 10125.6 of the Health and Safety Code is amended to read:

10125.6. (a) The State Department of Health Services and the State Department of Social Services shall cooperatively develop an informational notice which advises the mother of a newborn child of her

right to retroactive child support as provided by ~~Sections 196, 4700,~~
~~and 7010 of the Civil Code~~ Article 3 (commencing with Section 4100) of
Chapter 2 of Part 2 of Division 9 of the Family Code. The notice shall
also advise the mother of her right to have a certified copy of the
public portion of the certificate of birth mailed to the father
pursuant to subdivision (b) of Section 10061.

(b) The State Department of Health Services and the State
Department of Social Services shall distribute copies of the notice
formulated pursuant to subdivision (a) to each health facility that
provides maternity services. Each such health facility shall provide a
copy of the notice to each pregnant woman admitted for delivery of a
child.

(c) This section shall remain in effect only until January 1,
1993, and as of that date is repealed, unless a later enacted statute,
which is enacted before January 1, 1993, deletes or extends that date.

Comment. Subdivision (a) of Section 10125.6 is amended to
substitute a reference to the Family Code provisions that superseded
the Civil Code provisions formerly referred to in subdivision (a) of
Section 10125.6.

Health & Safety Code § 10351 (technical amendment). Marriages of
members of religious society or denomination

SEC. . Section 10351 of the Health and Safety Code is amended
to read:

10351. (a) Sections 10325 and 10350 do not apply to marriages
entered into pursuant to Section ~~4216 of the Civil Code~~ 306 of the
Family Code. Subdivisions (b) and (c) govern the registration and the
content of the License and Certificate of Declaration of Marriage of
those marriages.

(b) Each marriage entered into pursuant to Section ~~4216 of the~~
~~Civil Code~~ 306 of the Family Code shall be registered by the parties
entering into the marriage or by a witness who signed under paragraph
(2) of subdivision (a) of Section ~~4216~~ 306 within four days after the
ceremony with the local registrar of marriages for the county in which
the License and Certificate of Declaration of Marriage was issued.

(c) The License and Certificate of Declaration of Marriage entered
into pursuant to Section ~~4216 of the Civil Code~~ 306 of the Family Code
shall contain as nearly as can be ascertained the following:

(1) The personal data of parties married, including the date of birth, full name, birthplace, residence, names and birth places of their parents, maiden name of their mothers, the number of previous marriages, marital status, and the maiden name of the female, if previously married and if her name has been changed.

(2) The license to marry.

(3) The county and date of issuance of the license.

(4) The marriage license number.

(5) The certification of the parties entering into the marriage, which shall show the following:

(A) The fact, time, and place of entering into the marriage.

(B) The signature and address of two witnesses to the marriage ceremony.

(C) The religious society or denomination of the parties married, and that the marriage was entered into in accordance with the rules and customs of the religious society or denomination.

(6) The signatures of the parties married.

(7) Any other items that the State Registrar shall designate.

The License and Certificate of Declaration of Marriage shall not contain any reference to the race or color of parties married or to a person performing or solemnizing the marriage.

Comment. Section 10351 is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions formerly referred to in Section 10351.

Health & Safety Code § 10433.2 (technical amendment). Inclusion of name of deceased adopting parent

SEC. . Section 10433.2 of the Health and Safety Code is amended to read:

10433.2. If both adopting parents were in the home at the time of the initial placement of the child for adoption the newly amended birth record may include the names of both adopting parents despite the death of one of the adopting parents, upon receipt of an order from the court granting the adoption which directs under the authority of Section ~~221.72 of the Civil Code~~ §615 of the Family Code that the names of both adopting parents shall be included on the newly amended birth record.

Comment. Section 10433.2 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly

referred to in Section 10433.2.

Health & Safety Code § 10433.3 (technical amendment). Additional amended record

SEC. . Section 10433.3 of the Health and Safety Code is amended to read:

10433.3. Notwithstanding any other provision of law, an adopting parent who has adopted a child for whom an amended record has already been prepared under authority of this article may have another amended record prepared for such child, upon application, furnishing a copy of the court order made in an action brought pursuant to Section 221.72 of the Civil Code 8615 of the Family Code, and payment of the required fee.

Comment. Section 10433.3 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 10433.3.

Health & Safety Code § 10605 (technical amendment). Certified copies

SEC. . Section 10605 of the Health and Safety Code is amended to read:

10605. (a) A fee of three dollars (\$3) shall be paid by the applicant for a certified copy of a fetal death or death record.

(b) A fee of three dollars (\$3) shall be paid by a public agency or licensed private adoption agency applicant for a certified copy of a birth certificate that the agency is required to obtain in the ordinary course of business. A fee of seven dollars (\$7) shall be paid by any other applicant for a certified copy of a birth certificate. Four dollars (\$4) of any seven-dollar (\$7) fee is exempt from subdivision (e) and shall be paid to either a county children's trust fund or to the State Children's Trust Fund, in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(c) A fee of three dollars (\$3) shall be paid by a public agency applicant for a certified copy of a marriage record, that has been filed with the county recorder or county clerk, that the agency is required to obtain in the ordinary course of business. A fee of six dollars (\$6) shall be paid by any other applicant for a certified copy of a marriage record that has been filed with the county recorder or county clerk. Three dollars (\$3) of any six-dollar (\$6) fee is exempt

from subdivision (e) and shall be transmitted monthly by each local registrar, county recorder, and county clerk to the state for deposit into the General Fund as provided by Section ~~5183 of the Civil Code~~ 1852 of the Family Code.

(d) A fee of three dollars (\$3) shall be paid by a public agency applicant for a certified copy of a marriage dissolution record obtained from the State Registrar that the agency is required to obtain in the ordinary course of business. A fee of six dollars (\$6) shall be paid by any other applicant for a certified copy of a marriage dissolution record obtained from the State Registrar.

(e) Each local registrar, county recorder, or county clerk collecting a fee pursuant to this section shall transmit 15 percent of the fee for each certified copy to the State Registrar by the 10th day of the month following the month in which the fee was received.

(f) The additional three dollars (\$3) authorized to be charged to applicants other than public agency applicants for certified copies of marriage records by subdivision (c) may be increased pursuant to Section 114.

Comment. Subdivision (c) of Section 10605 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 10605.

Insurance Code

Ins. Code § 10172 (technical amendment). Life insurance

SEC. . Section 10172 of the Insurance Code is amended to read:

10172. ~~Notwithstanding the provisions of Sections 5105 and 5125 of the Civil Code Chapter 2 (commencing with Section 1150) of Part 4 of Division 4 of the Family Code and Sections 751 and 1110 of the Family Code~~, when the proceeds of, or payments under, a life insurance policy become payable and the insurer makes payment thereof in accordance with the terms of the policy, or in accordance with the terms of any written assignment thereof if the policy has been assigned, such payment shall fully discharge the insurer from all claims under such policy unless, before such payment is made, the insurer has received, at its home office, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy.

Comment. Section 10172 is amended to substitute a reference to the Family Code provisions that superseded Sections 5105 and 5125 of the Civil Code.

Labor Code

Lab. Code § 300 (technical amendment). Assignment of wages

SEC. . Section 300 of the Labor Code is amended to read:

300. (a) As used in this section, the phrase "assignment of wages" includes the sale or assignment of, or giving of an order for, wages or salary but does not include an order or assignment made pursuant to ~~Section 4701 or 4801.6 of the Civil Code~~ Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code or Section 3088 of the Probate Code.

(b) No assignment of wages, earned or to be earned, is valid unless all of the following conditions are satisfied:

(1) The assignment is contained in a separate written instrument, signed by the person by whom the wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates.

(2) Where the assignment is made by a married person, the written consent of the spouse of the person making the assignment is attached to the assignment. No such consent is required of any married person (i) after entry of a judgment decreeing a legal separation from such person's spouse or (ii) if the married person and the spouse of the married person are living separate and apart after entry of an interlocutory judgment of dissolution of their marriage, if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(3) Where the assignment is made by a minor, the written consent of a parent or guardian of the minor is attached to the assignment.

(4) Where the assignment is made by a person who is unmarried or who is an adult or who is both unmarried and an adult, a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(5) No other assignment exists in connection with the same transaction or series of transactions and a written statement by the person making the assignment to that effect is attached to or included

in the assignment.

(6) A copy of the assignment and of the written statement provided for in paragraphs (2), (4), and (5), authenticated by a notary public, is filed with the employer, accompanied by an itemized statement of the amount then due to the assignee.

(7) At the time the assignment is filed with the employer, no other assignment of wages of the employee is subject to payment and no earnings withholding order against the employee's wages or salary is in force.

(c) Under any assignment of wages, a sum not to exceed 50 per centum of the assignor's wages or salary shall be withheld by, and be collectible from, the assignor's employer at the time of each payment of such wages or salary.

(d) The employer is entitled to rely upon the statements of fact in the written statement provided for in paragraphs (2), (4), and (5) of subdivision (b), without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by the employer to an assignee under any assignment in reliance upon the facts so stated.

(e) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof. No revocation of such an assignment or power of attorney is effective as to the employer until the employer receives written notice of revocation from the maker.

(f) No assignment of wages, earned or to be earned, is valid under any circumstances if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a.

(g) This section does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or the employee's family at the request of the employee, or for charitable, educational, patriotic

or similar purposes.

(h) No assignment of wages is valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

Comment. Subdivision (a) of Section 300 is amended to substitute a reference to the Family Code provisions that superseded Sections 4701 and 4801.6 of the Civil Code. Section 4701 and 4801.6 were repealed by 1989 Cal. Stat. ch. 1359, which enacted Civil Code Sections 4390-4390.19 to supersede Sections 4701 and 4801.6. Civil Code Sections 4390-4390.19 were superseded by the Family Code provisions to which reference is now made in Section 300.

Penal Code

Penal Code § 70.5 (technical amendment). Commissioner of civil marriages; acceptance of fees or gratuities

SEC. . Section 70.5 of the Penal Code is amended to read:

70.5. Every commissioner of civil marriages or every deputy commissioner of civil marriages who accepts any money or other thing of value for performing any marriage pursuant to ~~Section 4205.1 of the Civil Code~~ 401 of the Family Code, including any money or thing of value voluntarily tendered by the persons about to be married or who have been married by the commissioner of civil marriages or deputy commissioner of civil marriages, other than a fee expressly imposed by law for performance of a marriage, whether the acceptance occurs before or after performance of the marriage and whether or not performance of the marriage is conditioned on the giving of such money or the thing of value by the persons being married, is guilty of a misdemeanor.

It is not a necessary element of the offense described by this section that the acceptance of the money or other thing of value be committed with intent to commit extortion or with other criminal intent.

This section does not apply to the request or acceptance by any retired commissioner of civil marriages of a fee for the performance of a marriage.

The provisions of this section are inapplicable to the acceptance of a fee for the performance of a marriage on Saturday, Sunday, or a legal holiday.

Comment. Section 70.5 is amended to substitute a reference to the

Family Code section that superseded the Civil Code section formerly referred to in Section 70.5.

Penal Code § 208 (technical amendment). Punishment; victims under 14 years of age; probation; intent to commit rape or other sex-related offenses

SEC. . Section 208 of the Penal Code is amended to read:

208. (a) Kidnapping is punishable by imprisonment in the state prison for three, five, or eight years.

(b) If the person kidnapped is under 14 years of age at the time of the commission of the crime, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. This subdivision is not applicable to the taking, detaining, or concealing, of a minor child by a biological parent, a natural father, as specified in ~~subdivision (a) of Section 7004 of the Civil Code~~ Section 7611 of the Family Code, an adoptive parent, or a person who has been granted access to the minor child by a court order.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) If the person is kidnapped with the intent to commit rape, oral copulation, sodomy, or rape by instrument, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years.

Comment. Subdivision (b) of Section 208 is amended to substitute a reference to the Family Code section that superseded the Civil Code provision formerly referred to in Section 208.

Penal Code § 270c (technical amendment). Failure of child to support indigent parent

SEC. . Section 270c of the Penal Code is amended to read:

270c. Except as provided in ~~Section 206.5 of the Civil Code~~ Chapter 2 (commencing with Section 4410) of Part 4 of Division 9 of the Family Code, every adult child who, having the ability so to do, fails to provide necessary food, clothing, shelter, or medical attendance for

an indigent parent, is guilty of a misdemeanor.

Comment. Section 270c is amended to substitute a reference to the Family Code provisions that superseded Section 206.5 of the Civil Code.

Penal Code § 270h (technical amendment). Support order included in order granting probation; issuance of execution; earnings assignment order

SEC. . Section 270h of the Penal Code is amended to read:

270h. In any case where there is a conviction under either Section 270 or 270a and there is an order granting probation which includes an order for support, the court may:

(a) Issue an execution on the order for the support payments that accrue during the time the probation order is in effect, in the same manner as on a judgment in a civil action for support payments. This remedy shall apply only when there is no existing civil order of this state or a foreign court order that has been reduced to a judgment of this state for support of the same person or persons included in the probation support order.

~~(b) Require assignment of wages pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code~~ Issue an earnings assignment order for support pursuant to Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code as a condition of probation. This remedy shall apply only when there is no existing civil order for support of the same person or persons included in the probation support order upon which an ~~order of assignment~~ order has been entered pursuant to Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code or pursuant to former Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code.

These remedies are in addition to any other remedies available to the court.

Comment. The first sentence of subdivision (b) of Section 270h (as amended by 1991 Cal. Stat. ch. 1091, § 118) is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the sentence. The second sentence of subdivision (b) is amended to add a reference to the Family Code provisions that superseded the Civil Code provisions referred to in the sentence. The terminology used in subdivision (b) has been revised to conform to the terminology used in the Family Code. See Family Code § 5208 ("earnings assignment order for support").

Penal Code § 273.5 (technical amendment). Willful injury to spouse or others

SEC. . Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person of the opposite sex with whom he or she is cohabiting, or any person who willfully inflicts upon any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 3 or 4 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

(d) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father as set forth in ~~Section 7004 of the Civil Code~~ Sections 7611 and 7612 of the Family Code.

(e) In any case in which a person is convicted of violating this section and probation is granted, the court shall require participation in a batterer's treatment program as a condition of probation unless, considering all of the facts and the circumstances, the court finds participation in a batterer's treatment program inappropriate for the defendant.

(f) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted under subdivision (a) for an offense that occurred within seven years of the offense of the second conviction, it shall be a condition thereof that he or she be imprisoned in the county jail for not less than 96 hours and that he or she participate in for no less than one year, and successfully complete, a batterer's treatment program, as designated by the court.

However, the court, upon a showing of good cause, may find that the mandatory minimum imprisonment, or the participation in a batterer's treatment program, or both the mandatory minimum imprisonment and participation in a batterer's treatment program, as required by this subdivision, shall not be imposed and grant probation or the suspension of the execution or imposition of a sentence.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted of two or more violations of subdivision (a) for offenses that occurred within seven years of the most recent conviction, it shall be a condition thereof that he or she be imprisoned in the county jail for not less than 30 days and that he or she participate in for no less than one year, and successfully complete, a batterer's treatment program as designated by the court. However, the court, upon a showing of good cause, may find that the mandatory minimum imprisonment, or the participation in a batterer's treatment program, or both the mandatory minimum imprisonment and participation in a batterer's treatment program, as required by this subdivision, shall not be imposed and grant probation or the suspension of the execution or imposition of a sentence.

Comment. Subdivision (d) of Section 273.5 is amended to substitute a reference to the Family Code provisions that superseded Section 7004 of the Civil Code.

Penal Code § 273.6 (technical amendment). Willful violation of court order

SEC. . Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any A willful and knowing violation of any of the court orders ~~set forth in this subdivision~~ described in subdivision (c), when obtained pursuant to the Family Code or Section 4359, 4458, 4516, 7020, or 7021 of the Civil Code, Section 412, 21 or 527.6 of the Code of Civil Procedure, or Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure ~~shall be~~ is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in a physical injury, the person shall be imprisoned in the county jail

for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, or disturbing the peace of the other party, or other named family and household members.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the orders under subdivision (a) or (d).

(d) A second or subsequent conviction for a violation of an order issued pursuant to subdivision (a) occurring within seven years of a prior conviction for a violation of such an order and involving an act of violence or "a credible threat" of violence as defined in subdivision (b) of Section 139 is punishable by imprisonment in the county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(e) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to the provisions listed in subdivisions (a), (b), and (d).

Comment. Subdivision (a) of Section 273.6 is amended to substitute a reference to the Family Code for the former references to provisions that have been superseded by provisions of the Family Code.

Staff Note: The references to subdivisions (c) and (e) of Section 273.6 in Section 273.6 should be reviewed and some replaced by a reference to "this section" or some other language. Since the enactment of Section 273.6 by 1985 Cal. Stat. ch. 1387, numerous amendments to the section have made revisions of internal section references that should be reviewed.

Penal Code § 277 (technical amendment). Child concealment

SEC. . Section 277 of the Penal Code is amended to read:

277. In the absence of a court order determining rights of custody or visitation to a minor child, every person having a right of custody of the child who maliciously takes, detains, conceals, or entices away that child within or without the state, without good

cause, and with the intent to deprive the custody right of another person or a public agency also having a custody right to that child, shall be punished by imprisonment in the county jail for a period of not more than one year, a fine of one thousand dollars (\$1,000), or both, or by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars (\$10,000), or both.

A subsequently obtained court order for custody or visitation shall not affect the application of this section.

As used in this section, "good cause" means a good faith and reasonable belief that the taking, detaining, concealing, or enticing away of the child is necessary to protect the child from immediate bodily injury or emotional harm. "Good cause" also includes the good faith and reasonable belief by a person with a right of custody of the child who has been the victim of domestic violence by another person with a right of custody of the child, that the child, if left with the other person, will suffer immediate bodily injury or emotional harm. The person who takes, detains, or conceals the child shall file a report with the district attorney's office of his or her action, and shall file a request for custody, within a reasonable time in the jurisdiction where the child had been living, setting forth the basis for the immediate bodily injury or emotional harm to the child. The address of the parent, or a person who has been granted access to the minor child by a court order, who takes, detains, or conceals the child, with good cause, shall remain confidential until released by court order.

As used in this section:

(a) "Domestic violence" means abuse perpetrated against any of the following persons:

(1) A spouse, former spouse, cohabitant, former cohabitant, any other adult person related by consanguinity or affinity within the second degree, or a person with whom the person has had a dating or engagement relationship.

(2) A person who is the parent of a child and the presumption applies that the male parent is the father of any child of the female parent pursuant to the Uniform Parentage Act (Part 7--~~(commencing with Section 7000)~~ of Division 4 of the Civil 3 (commencing with Section 7600) of Division 12 of the Family Code).

(b) "Emotional harm" includes having a parent who has committed domestic violence against the parent who is taking and concealing the child.

Comment. Section 277 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Penal Code § 279 (technical amendment). Protective custody; return to lawful charge; resolution of conflicting custodial orders; order; enforcement; appeal; expenses; jurisdiction

SEC. . Section 279 of the Penal Code is amended to read:

279. (a) A peace officer investigating a report of a violation of Section 277, 278, or 278.5 may take a minor child into protective custody if it reasonably appears to the officer that any person unlawfully will flee the jurisdictional territory with the minor child.

(b) A child who has been detained or concealed shall be returned to the person, guardian, or public agency having lawful charge of the child, or to the court in which a custody proceeding is pending, or to the probation department of the juvenile court in the county in which the victim resides. Notwithstanding any other provision of law, when a person is arrested for an alleged violation of Section 277, 278, or 278.5 the court shall, at the time of the arraignment, impose the condition that the child shall be returned to the person or public agency having lawful charge of the child, and the court shall specify the date by which the child shall be returned. If conflicting custodial orders exist within this state, or between this state and a foreign state, the court shall set a hearing within five court days to determine which court has jurisdiction under the laws of this state, if the conflicting custodial orders are within this state, or if the conflict exists between this state and a foreign state, the court shall determine which state has subject matter jurisdiction to issue a custodial order under the laws of this state, the Uniform Child Custody Jurisdiction Act (~~Title 9 (commencing with Section 5150) of Part 5 of the Civil Code~~ Part 3 (commencing with Section 3400) of Division 8 of the Family Code), or federal law, if applicable. At the conclusion of the hearing, the court shall enter an order as to which custody order is valid and is to be enforced. If the child has not been returned at the conclusion of the hearing, the court shall set a date within a

reasonable time by which the child shall be returned to the person or agency having lawful charge of the child, and order the defendant to comply by this date, or to show cause on that date why he or she has not returned the child as directed. The court shall only enforce its order, or any subsequent orders for the return of the child, under subdivision (a) of Section 1219 of the Code of Civil Procedure, to ensure that the child is promptly placed with the person or agency having lawful charge of the child. An order adverse to either the prosecution or defense is reviewable by a writ of mandate or prohibition addressed to the appropriate court.

(c) The offenses enumerated in Sections 277, 278, and 278.5 are continuous in nature, and continue for so long as the minor child is concealed or detained.

(d) Any expenses incurred in returning the child shall be reimbursed as provided in Section ~~4605 of the Civil Code~~ 3134 of the Family Code. Those expenses, and costs reasonably incurred by the victim, shall be assessed against any defendant convicted of a violation of Section 277, 278, or 278.5.

(e) Pursuant to Sections 27 and 778, violation of Section 277, 278, or 278.5 is punishable in California, whether the intent to commit the offense is formed within or without the state, if the child was a resident of California or present in California at the time of the taking, if the child thereafter is found in California, or if one of the parents, or a person granted access to the minor child by a court order, is a resident of California at the time of the alleged violation of Section 277, 278, or 278.5 by a person who was not a resident of or present in California at the time of the alleged offense.

(f) For purposes of Sections 277, 278, and 278.5:

(1) "A person having a right of custody" means the legal guardian of the child, a person who has a parent and child relationship with the child pursuant to Section ~~197 of the Civil Code~~ 3000 of the Family Code, or a person or an agency that has been granted custody of the child pursuant to a court order.

(2) A "right of custody" means the right to physical custody of the child. In the absence of a court order to the contrary, a parent loses his or her right of custody of the child to the other parent if the parent having the right of custody is dead, is unable or refuses to

take the custody, or has abandoned his or her family.

Comment. Section 279 is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Penal Code § 280 (technical amendment). Concealment or removal of child in adoption proceeding

SEC. . Section 280 of the Penal Code is amended to read:

280. Every person who willfully causes or permits the removal or concealment of any child in violation of ~~Section 222-50, 224-33, or 226-40 of the Civil Code~~ 8714, 8803, or 8912 of the Family Code is punishable as follows:

(a) By imprisonment in the county jail for not more than one year if the child is concealed within the county in which the adoption proceeding is pending or in which the child has been placed for adoption, or is removed from that county to a place within this state; or

(b) By imprisonment in the state prison, or by imprisonment in the county jail for not more than one year if the child is removed from that county to a place outside of this state.

Comment. Section 280 is amended to substitute references to the Family Code provisions that superseded the Civil Code Sections formerly referred to in the section.

Penal Code § 360 (technical amendment). Solemnizing marriages; license not first presented; false return; failure to file license and certificate; false record

SEC. . Section 360 of the Penal Code is amended to read:

360. Every person authorized to solemnize any marriage, who solemnizes a marriage without first being presented with the marriage license, as required by ~~Section 4207 of the Civil Code~~ 421 of the Family Code; or who solemnizes a marriage pursuant to ~~Section 4213 of the Civil Code~~ Part 4 (commencing with Section 500) of Division 3 of the Family Code without the authorization required by that ~~section~~ part; or who willfully makes a false return of any marriage or pretended marriage to the recorder or clerk; or who, having solemnized a marriage, fails for more than 30 days, to file with the recorder or clerk the marriage license with the certificate indorsed thereon, as

required by ~~Section 4208 of the Civil Code~~ 423 of the Family Code; or who having solemnized a marriage pursuant to ~~Section 4213 of the Civil Code~~ Part 4 (commencing with Section 500) of Division 3 of the Family Code, fails for more than 30 days to file the certificate required to be filed by ~~that section~~ Section 506 of the Family Code, and every person who willfully makes a false record of any marriage return, is guilty of a misdemeanor.

Comment. Section 360 is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Penal Code § 2625 (technical amendment). Actions affecting prisoner's parental or marital rights; dependency guardianship; notice; order for appearance

SEC. . Section 2625 of the Penal Code is amended to read:

2625. In any ~~action~~ proceeding brought under ~~Section 232 of the Civil Code~~ Part 4 (commencing with Section 7800) of Division 12 of the Family Code, and Section 366.26 of the Welfare and Institutions Code, where the ~~action~~ proceeding seeks to terminate the parental rights of any prisoner or any ~~action~~ proceeding brought under Section 300 of the Welfare and Institutions Code, where the ~~action~~ proceeding seeks to adjudicate the child of a prisoner a dependent child of the court, the superior court of the county in which the ~~action~~ proceeding is pending, or a judge thereof, shall order notice of any court proceeding regarding the ~~action~~ proceeding transmitted to the prisoner.

For the purposes of this section only, the term "prisoner" includes any individual in custody in a state prison, in the California Rehabilitation Center, or a county jail, or who is a ward of the Department of the Youth Authority or who, upon a verdict or finding that the individual was insane at the time of committing an offense, or mentally incompetent to be tried or adjudged to punishment, is confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private treatment facility.

Service of notice shall be made pursuant to ~~Section 235 of the Civil Code~~ Sections 7881 or 7882 of the Family Code or Section 337 or 366.23 of the Welfare and Institutions Code, as appropriate.

Upon receipt by the court of a statement from the prisoner or his or her attorney indicating the prisoner's desire to be present during

the court's proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner's production before the court. No proceeding may be held under ~~Section 232 of the Civil Code~~ Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 366.26 of the Welfare and Institutions Code and no petition to adjudge the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions Code may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent or other person in charge of the institution, or his or her designated representative stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding.

In any other action or proceeding in which a prisoner's parental or marital rights are subject to adjudication, an order for the prisoner's temporary removal from the institution and for the prisoner's production before the court may be made by the superior court of the county in which the action or proceeding is pending, or by a judge thereof. A copy of the order shall be transmitted to the warden, superintendent, or other person in charge of the institution not less than 48 hours before the order is to be executed. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to keep the prisoner safely, and when the prisoner's presence is no longer required, to return the prisoner to the institution from which he or she was taken; the expense of executing the order shall be a proper charge against and shall be paid by, the county in which the order shall be made.

The order shall be to the following effect:

County of _____ (as the case may be).

The people of the State of California to the warden of _____:

An order having been made this day by me, that A.B. be produced in this court as a party in the case of _____, you are commanded to deliver A.B. into the custody of _____ for the purpose of (recite purposes).

Dated this _____ day of _____, 19__.

When a prisoner is removed from the institution pursuant to this section, the prisoner shall remain in the constructive custody of the warden, superintendent, or other person in charge of the institution.

Comment. Section 2625 (as amended by 1991 Cal. Stat. ch. 820, § 1) is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section. The word "proceeding" has been substituted for "action" in various places in the section. This reflects the terminology used in the Family Code. See, e.g., Family Code § 7802 ("proceeding" to have minor child declared free from custody and control of either or both parents).

Penal Code § 11105.3 (technical amendment). Record of conviction involving sex crimes, drug crimes, or crimes of violence; availability to employer or human resource agency for applicants for positions with supervisory or disciplinary power over minors

SEC. . Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other provision of law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest for which the person is released on bail or on his or her own recognizance pending trial, involving any sex crimes, drug crimes, or crimes of violence of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under their care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the requester for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization or any agency responsible for the licensing of facilities pursuant to Article 1 (commencing with Section 1500) of Chapter 3, Chapter 3.2 (commencing with Section 1569), and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code for processing the request. The department shall destroy an application

within six months after the requested information is sent to the employer and applicant.

(c) A human resource agency may request from the Department of Justice full criminal history records, to the extent those records are otherwise available under ~~Section 226.55 of the Civil Code~~ Sections 8712, 8811, and 8908 of the Family Code, or Section 1522 of the Health and Safety Code, for persons who apply to the agency to adopt a child or to be a foster parent. Requests for criminal history information obtained pursuant to this subdivision shall be used only for the purposes stated and in compliance with any requirements or conditions provided in those sections.

(d) The department shall adopt regulations to implement the provisions of this section.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) As used in this section, "sex crime" means a conviction for a violation or attempted violation of Section 220, 261, 261.5, 264.1, 267, 272, 273a, 273d, 285, 286, 288, 288a, 289, 314, 647.6, or former Section 647a, or subdivision (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare

and Institutions Code.

(h) As used in this section, "drug crime" means any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this subdivision or subdivision (g) within the immediately preceding 10-year period.

(i) As used in this section, "crime of violence" means any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for any of the offenses specified in subdivision (c) of Section 667.5 or a violation or attempted violation of Chapter 3 (commencing with Section 207), Chapter 8 (commencing with Section 236), or Chapter 9 (commencing with Section 240) of Title 8 of Part 1, provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this subdivision or subdivision (g) within the immediately preceding 10-year period.

(j) Conviction for a violation or attempted violation of an offense committed outside the State of California is a sex crime, drug crime, or crime of violence if the offense would have been a crime as defined in this section if committed in California.

(k) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

Comment. Subdivision (c) of Section 11105.3 (as amended by 1991 Cal. Stat. ch. 937, § 5) is amended to substitute a reference to the Family Code sections that superseded the Civil Code section formerly referred to in Section 11105.3. The former reference in Section 11105.3 to Section 226.55 of the Civil Code was a reference to Section 226.55, relating to fingerprinting and criminal record of persons desiring to adopt, which was repealed by 1990 Cal. Stat. ch. 1363 § 2.

Penal Code § 11167 (technical amendment). Report; contents

SEC. . Section 11167 of the Penal Code is amended to read:

11167. (a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the

name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led that person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.

(c) Information relevant to the incident of child abuse may be given to the licensing agency when it is investigating a known or suspected case of child abuse, including the investigation report, and other pertinent materials.

(d) The identity of all persons who report under this article shall be confidential and disclosed only between child protective agencies, or to counsel representing a child protective agency, or to the district attorney in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to Section 318 of the Welfare and Institutions Code, or to the county counsel or district attorney in ~~an action initiated under Section 232 of the Civil Code~~ a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Persons who may report pursuant to subdivision (d) of Section 11166 are not required to include their names.

Comment. Subdivision (d) of Section 11167 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provision formerly referred to in the section.

Penal Code § 11170 (technical amendment). Indexed reports

SEC. . Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not

contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b)(1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisory or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code 8713, 8802, 8911, or 9000 of the Family Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if

investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

Comment. Subdivision (b)(3) of Section 11170 is amended to substitute references to the Family Code provisions that superseded the Civil Code Sections formerly referred to in the section.

Penal Code § 12021 (amended). Firearms

SEC. . Section 12021 of the Penal Code is amended to read:

12021. (a) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c)(1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 241, 243, 244.5, 245, 245.5, 246.3, 247, 417, 417.2, 626.9, subdivision (b) or (d) of Section 12034, subdivision (a) of Section 12100, 12320, or 12590 and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that

imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2).

(2) Any person whose continued employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction prior to the effective date of the amendments which added this paragraph to this section, at any time until January 1, 1993, may petition the court for relief from this prohibition. The court may reduce or eliminate the prohibition, impose conditions on the elimination or reduction of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate. In making its decision, the court may consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature in enacting this paragraph to permit persons who were convicted of an offense specified in this subdivision prior to the effective date of the amendments which added this paragraph to this section to seek relief from the prohibition imposed by this subdivision.

(d) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense

listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a restraining order issued pursuant to ~~subdivision (a) of Section 546 of the Code of Civil Procedure, or paragraph (2) of subdivision (a) of Section 547 of the Code of Civil Procedure,~~ Division 10 (commencing with Section 5500) of the Family Code and predicated on ~~paragraph (2), (3), or (6) of subdivision (a) of Section 4359 of the Civil Code~~ subdivision (b), (c), or (d) of Section 2035 of the Family Code, is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom

the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in ~~subdivision--(f)--of--Section--550--of--the--Code--of--Civil--Procedure~~ Section 5515.5 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to ~~Section--4800--of--the--Civil--Code~~ Division 7 (commencing with Section 2500) of the Family Code.

Comment. Subdivision (g) of Section 12021 (as amended by 1991 Cal. Stat. ch. 955, § 3) is amended to substitute references to the Family Code provisions that superseded the Civil Code provisions that formerly were referred to in the subdivision.

The former reference in subdivision (g) of Section 12021 to the Code of Civil Procedure is replaced by a reference to Section 5515.5 of the Family Code, which requires the court to give the respondent notice that the respondent is prohibited from purchasing or receiving or attempting to purchase or receive a firearm, including a notice of the penalty for violation.

Penal Code § 12025.5 (technical amendment). Justifiable violations of Section 12025

SEC. . Section 12025.5 of the Penal Code is amended to read:

12025.5. A violation of Section 12025 is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This section may not apply when the circumstances involve a ~~reciprocal~~ mutual restraining order issued pursuant to ~~Section--4359--of--the--Civil--Code~~ Sections 2035 and 2036 of the Family Code, or Sections 5514 and 5550 of the Family Code, or Sections 7710 and 7711 of the Family Code, absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating Section 12025, the trier of fact shall

determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

Comment. Section 12025.5 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provision formerly referred to in the section and to include similar mutual restraining orders issued under other domestic violence provisions. The word "mutual" has been substituted for "reciprocal" in Section 12025.5 to conform to the terminology used in the Family Code provisions referred to in Section 12025.5.

Penal Code § 12028.5 (technical amendment). Custody of firearm or other deadly weapon

SEC. . Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Domestic violence" is abuse perpetrated against any of the following:

(A) A spouse, former spouse, cohabitant, former cohabitant, any other adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has had a dating or engagement relationship.

(B) A person who is the parent of a child and the presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (~~Part 7 (commencing with Section 7000) of Division 4 of the Civil Code~~) (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (c) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (d) of Section

830.2, and a peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained as use for evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any firearm or other deadly weapon which has been taken into custody which has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(d) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, or by a peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of

Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (i), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(e) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

(f) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the domestic violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(g) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(h) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law

enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(i) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(j) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

Comment. Subdivision (a)(2)(B) of Section 12028.5 (as amended by 1991 Cal. Stat. ch. 866, § 6) is amended to revise the reference to the Uniform Parentage Act.

Penal Code § 12031 (technical amendment). Carrying loaded firearms; misdemeanor; punishment; exceptions

SEC. . Section 12031 of the Penal Code is amended to read:

12031. (a) (1) Except as provided in subdivision (b), (c) or (d), every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

(2) Notwithstanding subdivisions 2 and 3 of Section 836, a peace officer may make an arrest without a warrant:

(A) When the person arrested has violated this section, although not in the officer's presence.

(B) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(3) (A) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in a county jail, or, if granted probation, or

if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

(B) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer retired after January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in

subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer, described in paragraph (1), retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a firearm.

(3) An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after that date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law

enforcement agencies including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age nor more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated

by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons, or by persons who are authorized to carry the weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as a peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (A) if hired prior to January 1, 1977; or (B) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their

places of employment and security guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a ~~reciprocal~~ mutual restraining order issued pursuant to ~~Section 4359 of the Civil Code~~ Sections 2035 and 2036 of the Family Code, or Sections 5514 and 5550 of the Family Code, or Sections 7710 and 7711 of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(1) Nothing this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

Comment. Paragraph (2) of subdivision (j) of Section 12031, as amended by 1991 Cal. Stat. ch. 1022, § 1.1, is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provision formerly referred to in the section and to include similar mutual restraining orders issued under other domestic violence provisions. The word "mutual" has been substituted for "reciprocal" in

Section 12031 to conform to the terminology used in the Family Code provisions referred to in Section 12031.

Penal Code § 12076 (technical amendment). Register of firearm sales

SEC. . Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser or transferee of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser or transferee. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) Two copies of the original sheet of the register, on the date of sale or transfer, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento. The third copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale or transfer is made. Where the sale or transfer is made in a district where there is no municipal police department, the third copy of the original sheet shall be mailed to the sheriff of the county wherein the sale or transfer is made.

The third copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser or transferee is a

person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale or transfer was made, or if the sale or transfer was made in a district in which there is no municipal police department, the sheriff of the county in which the sale or transfer was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or transferee or the pistol, revolver, or other firearm to be purchased or transferred, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased or transferred, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse all of the following:

(1)(A) The department for the cost of furnishing this information. All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Section 12289.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act

which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision ~~(b) of Section 550 of the Code of Civil Procedure~~ (a) of Section 5804 of the Family Code created by the act which also added this paragraph.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision ~~(b) of Section 550 of the Code of Civil Procedure~~ subdivision (a) of Section 5804 of the Family Code created by the act which added paragraph (5) to this subdivision, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, its acts or omissions shall be deemed to be discretionary within the meaning of the

California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

Comment. Section 12076 (as amended by 1991 Cal. Stat. ch. 954, § 1.7) is amended to substitute references to the Family Code provision that superseded the Code of Civil Procedure provision formerly referred to in the section.

Probate Code

Prob. Code § 104 (technical amendment). Community property held in revocable trusts

SEC. . Section 104 of the Probate Code is amended to read:

104. Notwithstanding Section 100, community property held in a revocable trust described in Section ~~5110-150 of the Civil Code~~ 761 of the Family Code is governed by the provisions, if any, in the trust for disposition in the event of death.

Comment. Section 104 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 104.

Prob. Code § 143 (technical amendment). Enforceability

SEC. . Section 143 of the Probate Code is amended to read:

143. (a) Subject to Section 142, a waiver is enforceable under this section unless the surviving spouse proves either of the following:

(1) A fair and reasonable disclosure of the property or financial obligations of the decedent was not provided to the surviving spouse prior to the signing of the waiver unless the surviving spouse waived such a fair and reasonable disclosure after advice by independent legal counsel.

(2) The surviving spouse was not represented by independent legal counsel at the time of signing of the waiver.

(b) Subdivision (b) of Section ~~5103 of the Civil Code~~ 721 of the Family Code does not apply if the waiver is enforceable under this section.

Comment. Subdivision (b) of Section 143 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 143.

Prob. Code § 144 (technical amendment). Enforceability under certain circumstances

SEC. . Section 144 of the Probate Code is amended to read:

144. (a) Except as provided in subdivision (b), subject to Section 142, a waiver is enforceable under this section if the court determines either of the following:

(1) The waiver at the time of signing made a fair and reasonable disposition of the rights of the surviving spouse.

(2) The surviving spouse had, or reasonably should have had, an adequate knowledge of the property and financial obligations of the decedent and the decedent did not violate the duty imposed by subdivision (b) of Section ~~5103 of the Civil Code~~ 721 of the Family Code.

(b) If, after considering all relevant facts and circumstances, the court finds that enforcement of the waiver pursuant to subdivision (a) would be unconscionable under the circumstances existing at the time enforcement is sought, the court may refuse to enforce the waiver, enforce the remainder of the waiver without the unconscionable provisions, or limit the application of the unconscionable provisions to avoid an unconscionable result.

(c) Except as provided in paragraph (2) of subdivision (a), subdivision (b) of Section ~~5103 of the Civil Code~~ 721 of the Family Code does not apply if the waiver is enforceable under this section.

Comment. Section 144 is amended to substitute references to the Family Code section that superseded the Civil Code section formerly referred to in Section 144.

Prob. Code. § 146 (technical amendment). Agreement; requirements

SEC. . Section 146 of the Probate Code is amended to read:

146. (a) As used in this section, "agreement" means a written agreement signed by each spouse or prospective spouse altering, amending, or revoking a waiver under this chapter.

(b) Except as provided in subdivisions (c) and (d) of Section 147, unless the waiver specifically otherwise provides, a waiver under this chapter may not be altered, amended, or revoked except by a subsequent written agreement signed by each spouse or prospective spouse.

(c) Subject to subdivision (d), the agreement is enforceable only if it satisfies the requirements of subdivision (b) and is enforceable under either subdivision (e) or subdivision (f).

(d) Enforcement of the agreement against a party to the agreement

is subject to the same defenses as enforcement of any other contract, except that:

(1) Lack of consideration is not a defense to enforcement of the agreement.

(2) A minor intending to marry may enter into the agreement as if married, but the agreement becomes effective only upon the marriage.

(e) Subject to subdivision (d), an agreement is enforceable under this subdivision unless the party to the agreement against whom enforcement is sought proves either of the following:

(1) A fair and reasonable disclosure of the property or financial obligations of the other spouse was not provided to the spouse against whom enforcement is sought prior to the signing of the agreement unless the spouse against whom enforcement is sought waived such a fair and reasonable disclosure after advice by independent legal counsel.

(2) The spouse against whom enforcement is sought was not represented by independent legal counsel at the time of signing of the agreement.

(f) Subject to subdivisions (d) and (g), an agreement is enforceable under this subdivision if the court determines that the agreement at the time of signing made a fair and reasonable disposition of the rights of the spouses.

(g) If, after considering all relevant facts and circumstances, the court finds that enforcement of the agreement pursuant to subdivision (f) would be unconscionable under the circumstances existing at the time enforcement is sought, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provisions, or limit the application of the unconscionable provisions to avoid an unconscionable result.

(h) Subdivision (b) of Section ~~5103 of the Civil Code~~ 721 of the Family Code does not apply if the agreement is enforceable under this section.

Comment. Section 146 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 146.

Prob. Code § 1514 (technical amendment). Appointment of guardian

SEC. . Section 1514 of the Probate Code is amended to read:

1514. (a) Upon hearing of the petition, if it appears necessary

or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both.

(b) In appointing a guardian of the person, the court is governed by the provisions of ~~Section 4600 of the Civil Code~~ Chapters 1 (commencing with Section 3020) and 2 (commencing with Section 3040) of Part 2 of Division 8 of the Family Code, relating to custody of a minor.

(c) The court shall appoint a guardian nominated under Section 1500 insofar as the nomination relates to the guardianship of the estate unless the court determines that the nominee is unsuitable.

(d) The court shall appoint the person nominated under Section 1501 as guardian of the property covered by the nomination unless the court determines that the nominee is unsuitable. If the person so appointed is appointed only as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate:

(1) The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.

(2) If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed.

Comment. Subdivision (b) of Section 1514 is amended to substitute a reference to the Family Code provisions that superseded the Civil Code provisions formerly referred to in the section.

Prob. Code § 1901 (technical amendment). Order respecting capacity

SEC. . Section 1901 of the Probate Code is amended to read:

1901. (a) The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in ~~Part 5 (commencing with Section 4000) of Division 4 of the Civil Code~~ Part 1 (commencing with Section 300) of Division 3 of the Family Code, at the time the order is made.

(b) A petition for an order under this section may be filed by the conservator of the person or estate or both, the conservatee, any

relative or friend of the conservatee, or any interested person.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Subdivision (a) of Section 1901 is amended to substitute a reference to the relevant provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the subdivision.

Prob. Code § 3002 (technical amendment). Community property

SEC. . Section 3002 of the Probate Code is amended to read:

3002. "Community property" means community real property and community personal property, including, but not limited to, a community property business that is or was under the primary management and control of one of the spouses, but does not include community property in a revocable trust described in ~~Section 5110.150 of the Civil Code~~ 761 of the Family Code.

Comment. Section 3002 is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 3002.

Prob. Code § 3057 (technical amendment). Protection of rights of spouse lacking legal capacity

SEC. . Section 3057 of the Probate Code is amended to read:

3057. (a) Where a spouse lacks legal capacity and does not have a conservator, any interested person who has knowledge or reason to believe that the rights of such spouse in the community property are being prejudiced may bring an action on behalf of such spouse to enforce the duty ~~of good faith in~~ imposed by Sections 721 and 1110 of the Family Code with respect to the management and control of the community property and to obtain such relief as may be appropriate.

(b) If one spouse has a conservator and the other spouse is managing or controlling community property, the conservator has the duty to keep reasonably informed concerning the management and control, including the disposition, of the community property. If the conservator has knowledge or reason to believe that the rights of the conservatee in the community property are being prejudiced, the conservator may bring an action on behalf of the conservatee to enforce

the duty of ~~good faith~~ imposed by Sections 721 and 1110 of the Family Code with respect to the management and control of the community property and to obtain such relief as may be appropriate.

Comment. Section 3057 is amended to substitute a reference to the relevant Family Code provisions in place of the former reference to the "duty of good faith." The relevant provisions of the Civil Code, now compiled in the Family Code, were amended in 1991 to replace the "duty of good faith" with "the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721" of the Family Code. See Section 1110 of the Family Code.

Prob. Code § 3071 (technical amendment). Satisfaction of joinder or consent requirement where spouse lacks legal capacity

SEC. . Section 3071 of the Probate Code is amended to read:

3071. (a) In case of a transaction for which the joinder or consent of both spouses is required by ~~Section 5125 or 5127 of the Civil Code~~ Chapter 2 (commencing with Section 1150) or Chapter 3 (commencing with Section 1200) of Part 4 of Division 4 of the Family Code or by any other statute, if one or both spouses lacks legal capacity for the transaction, the requirement of joinder or consent shall be satisfied as provided in this section.

(b) Where one spouse has legal capacity for the transaction and the other spouse has a conservator, the requirement of joinder or consent is satisfied if both of the following are obtained:

(1) The joinder or consent of the spouse having legal capacity.

(2) The joinder or consent of the conservator of the other spouse given in compliance with Section 3072.

(c) Where both spouses have conservators, the joinder or consent requirement is satisfied by the joinder or consent of each such conservator given in compliance with Section 3072.

(d) In any case, the requirement of joinder or consent is satisfied if the transaction is authorized by an order of court obtained in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

Comment. Subdivision (a) of Section 3071 is amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the subdivision.

Prob. Code § 3072 (technical amendment). Joinder or consent by

conservator

SEC. . Section 3072 of the Probate Code is amended to read:

3072. (a) Except as provided in subdivision (b), a conservator may join in our consent to a transaction under Section 3071 only after authorization by either of the following:

(1) An order of the court obtained in the conservatorship proceeding upon a petition filed pursuant to Section 2403 or under Article 7 (commencing with Section 2540) or 10 (commencing with Section 2580) of Chapter 6 of Part 4.

(2) An order of the court made in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

(b) A conservator may consent without court authorization to a sale, conveyance, or encumbrance of community personal property requiring consent under ~~subdivision (e) of Section 5125 of the Civil Code~~ Section 1152 of the Family Code if the conservator could sell or transfer such property under Section 2545 without court authorization if the property were a part of the conservatorship estate.

Comment. Subdivision (b) of Section 3072 is amended to substitute a reference to the provision of the Family Code that superseded the Civil Code provision formerly referred to in the subdivision.

Prob. Code § 3073 (technical amendment). Manner of joinder or consent

SEC. . Section 3073 of the Probate Code is amended to read:

3073. (a) The joinder or consent under Section 3071 of a spouse having legal capacity shall be in such manner as complies with ~~Section 5125 or 5127 of the Civil Code~~ Chapter 2 (commencing with Section 1150) or Chapter 3 (commencing with Section 1200) of Part 4 of Division 4 of the Family Code or other statute that applies to the transaction.

(b) The joinder or consent under Section 3071 of a conservator shall be in the same manner as a spouse would join in or consent to the transaction under the statute that applies to the transaction except that the joinder or consent shall be executed by the conservator and shall refer to the court order, if one is required, authorizing the conservator to join in or consent to the transaction.

Comment. Subdivision (a) of Section 3073 is amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the subdivision.

Prob. Code § 3088 (technical amendment). Application of income and principal for support and maintenance; circumstances; periodic payments; jurisdiction to modify or vacate; order

SEC. . Section 3088 of the Probate Code is amended to read as follows:

3088. (a) The court may order the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee (including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) as ordered by the court.

(b) In determining the amount ordered for support and maintenance, the court shall consider the following circumstances of the spouses:

- (1) The earning capacity and needs of each spouse.
- (2) The obligations and assets, including the separate property, of each spouse.
- (3) The duration of the marriage.
- (4) The age and health of the spouses.
- (5) The standard of living of the spouses.
- (6) Any other relevant factors which it considers just and equitable.

(c) At the request of any interested person, the court shall make appropriate findings with respect to the circumstances.

(d) The court may order the spouse who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or to such other person as is designated in the order. The court may order the spouse required to make the periodic payments to give reasonable security therefor.

(e) The court may order the spouse required to make the periodic payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support and maintenance of the conservatee. Such order operates as an assignment and is binding upon any existing or future employer upon whom a copy of the order is served. The order

shall be in the form for an ~~order assigning salary or wages~~ earnings assignment order for support prescribed by the Judicial Council for use in family law proceedings. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment unless otherwise ordered by the court or unless the other assignment is made pursuant to ~~Section 4701 of the Civil Code~~ Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. No employer shall use any assignment authorized by this subdivision as grounds for the dismissal of such employee. As used in this subdivision, "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code. The provisions of this subdivision apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such moneys and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(f) The court retains jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing under that chapter.

(g) In a proceeding ~~under Title 3 (commencing with Section 4500) of Part 5 of Division 4 of the Civil Code~~ for dissolution of the marriage or for legal separation, the court has jurisdiction to modify or vacate an order made under this section to the same extent as it may modify or vacate an order made in a the proceeding ~~under that title for~~

dissolution of the marriage or for legal separation.

Comment. Section 3088 is amended to substitute appropriate references for the references to repealed Civil Code provisions. Section 4701, which was referred to in Section 3088, was repealed by 1989 Cal. Stat. ch. 1359, which enacted Civil Code Sections 4390-4390.19 to supersede Section 4701. Civil Code Sections 4390-4390.19 were superseded by the Family Code provisions to which reference is now made in Section 3088.

Prob. Code § 3301 (repealed). Consent for hospital or medical care or enlistment in armed services

SEC. . Section 3301 of the Probate Code is repealed.

~~3301.--Whenever it appears to the satisfaction of the superior court by application of the minor concerned that the consent of a parent or guardian is necessary to permit hospital or medical care or enlistment in the armed services for or by a minor of the age of 16 years or over residing in this state and that such minor has no parent or guardian available to give such consent, the court may summarily grant such consent.--No fee may be charged for proceedings under this section.~~

Comment. Former Section 3301 is continued in substance in Family Code Sections 200, 6911, and 6950.

Prob. Code § 3302 (repealed). Contract for attorney's fees

SEC. . Section 3302 of the Probate Code is repealed.

~~3302.--A contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved by the court in which the litigation is pending or the court having jurisdiction of the guardianship estate of the minor, upon petition of any interested person.--When no such contract is approved and a judgment is recovered by or on behalf of a minor, the attorney's fees chargeable against the minor shall be fixed by the court rendering the judgment.~~

Comment. Former Section 3302 is continued in substance in Family Code Section 6602.

Prob. Code § 5305 (technical amendment). Presumption that married persons hold their funds in deposit account as community property

SEC. . Section 5305 of the Probate Code is amended to read:

5305. (a) Notwithstanding Sections 5301 to 5303, inclusive, if parties to an account are married to each other, whether or not they

are so described in the deposit agreement, their net contribution to the account is presumed to be and remain their community property.

(b) ~~Notwithstanding Sections 4800.1 and 4800.2 of the Civil Code 2580 and 2640 of the Family Code~~, the presumption established by this section is a presumption affecting the burden of proof and may be rebutted by proof of either of the following:

(1) The sums on deposit that are claimed to be separate property can be traced from separate property unless it is proved that the married persons made an agreement that expressed their clear intent that such sums be their community property.

(2) The married persons made a written agreement, separate from the deposit agreement, that expressly provided that the sums on deposit, claimed not to be community property, were not to be community property.

(c) Except as provided in Section 5307, a right of survivorship arising from the express terms of the account or under Section 5302, a beneficiary designation in a trust account, or a P.O.D. payee designation, may not be changed by will.

(d) Except as provided in subdivisions (b) and (c), a multiple-party account created with community property funds does not in any way alter community property rights.

Comment. Subdivision (b) of Section 5305 is amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the subdivision.

Prob. Code § 6408 (technical amendment). Relationship of parent and child

SEC. . Section 6408 of the Probate Code is amended to read:

6408. (a) A relationship of parent and child is established for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(1) Except as provided in subdivisions (b), (c), and (d), the relationship of parent and child exists between a person and his or her natural parents, regardless of the marital status of the natural parents.

(2) The relationship of parent and child exists between an adopted person and his or her adopting parent or parents.

(b) The relationship of parent and child does not exist between an

adopted person and the person's natural parent unless both of the following requirements are satisfied:

(1) The natural parent and adopted person lived together at any time as parent and child, or the natural parent was married to, or was cohabitating with, the other natural parent at the time the child was conceived and died before the birth of the child.

(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(c) Neither a parent nor a relative of a parent (except for the issue of the child or a wholeblood brother or sister of the child or the issue of that brother or sister) inherits from or through a child on the basis of the relationship of parent and child if the child has been adopted by someone other than the spouse or surviving spouse of that parent.

(d) If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied:

(1) The parent or a relative of the parent acknowledged the child.

(2) The parent or a relative of the parent contributed to the support or the care of the child.

(e) For the purpose of determining intestate succession by a person or his or her descendants from or through a foster parent or stepparent, the relationship of parent and child exists between that person and his or her foster parent or stepparent if (1) the relationship began during the person's minority and continued throughout the parties' joint lifetimes and (2) it is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

(f) For the purpose of determining whether a person is a "natural parent" as that term is used in this section:

(1) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, ~~Part 7 (commencing with Section 7000) of Division 4 of the Civil Code~~ Part 3 (commencing with Section 7600) of Division 12 of

the Family Code.

(2) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section ~~7006--of--the--Civil--Code~~ 7630 of the Family Code unless either (A) a court order was entered during the father's lifetime declaring paternity or (B) paternity is established by clear and convincing evidence that the father has openly and notoriously held out the child as his own.

(g) Nothing in this section affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or his or her descendants.

Comment. Subdivision (f) of Section 6408 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the subdivision.

Revenue and Taxation Code

Rev. & Tax. Code § 11927 (technical amendment). Deed, instrument or other writing which purports to transfer, divide or allocate property assets between spouses under judgment of dissolution of marriage, separation or agreement in contemplation of judgment or order

SEC. . Section 11927 of the Revenue and Taxation Code is amended to read:

11927. (a) Any tax imposed pursuant to this part shall not apply with respect to any deed instrument, or other writing which purports to transfer, divide, or allocate community, quasi-community, or quasi-marital property assets between spouses for the purpose of effecting a division of community, quasi-community, or quasi-marital property which is required by a judgment decreeing a dissolution of the marriage or legal separation, by a judgment of nullity, or by any other judgment or order rendered pursuant to ~~Part 5--(commencing with Section 4000)--of--Division 4--of--the--Civil--Code~~ the Family Code, or by a written agreement between the spouses, executed in contemplation of any such judgment or order, whether or not the written agreement is incorporated as part of any of those judgments or orders.

(b) In order to qualify for the exemption provided in subdivision (a), the deed, instrument, or other writing shall include a written

recital, signed by either spouse, stating that the deed, instrument, or other writing is entitled to the exemption.

Comment. Section 11927 is amended to substitute a reference to the Family Code for the former reference to Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the Family Law Act), which has been superseded by the Family Code. The Family Code includes some provisions that were not included within the former Family Law Act.

Vehicle Code

Veh. Code § 17150.5 (technical amendment). Limitation on civil code presumptions

SEC. . Section 17150.5 of the Vehicle Code is amended to read:

17150.5. The presumptions created by Section ~~5110 of the Civil Code~~ 803 of the Family Code as to the acquisition of property by a married woman by an instrument in writing shall not apply in an action based on Section 17150 with respect to the acquisition of a motor vehicle by a married woman and her husband.

Comment. Section 17150.5 is amended to substitute a reference to the Family Code provision that superseded the Civil Code provision formerly referred to in the section.

Welfare & Institutions Code

Welf. & Inst. Code § 304 (technical amendment). Custody of dependent child of the court

SEC. . Section 304 of the Welfare and Institutions Code is amended to read:

304. When a minor has been adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360, no other division of any superior court may hear proceedings pursuant to ~~Section 4600 of the Civil Code~~ Part 2 (commencing with Section 3020) of Division 8 of the Family Code regarding the custody of the minor. While the minor is a dependent child of the court all issues regarding his or her custody shall be heard by the juvenile court. In deciding issues between the parents or between a parent and a guardian regarding custody of a minor who has been adjudicated a dependent of the juvenile court, the juvenile court may review any records that would be available to the domestic relations division of a superior court hearing such a matter. The juvenile court, on its own motion, may

issue an order directed to either of the parents enjoining any action specified in ~~paragraph (2) or (3) of subdivision (a) of Section 4359 of the Civil Code~~ subdivision (b), (c), or (d) of Section 2035 of the Family Code. The Judicial Council shall adopt forms for these restraining orders. These form orders shall not be confidential and shall be enforceable in the same manner as any other order issued pursuant to ~~Section 4359 of the Civil Code~~ 5550 of the Family Code.

This section shall not be construed to divest the domestic relations division of a superior court from hearing any issues regarding the custody of a minor when that minor is no longer a dependent of the juvenile court.

Comment. Section 304 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section. The reference to subdivision (c) of Section 2035 of the Family Code is added to conform to various provisions of the Family Code. See, for example, Family Code Sections 5650(b), 5804(a), 5805(a), 5807.

Welf. & Inst. Code § 361.5 (technical amendment). Child welfare services; reunification of family; adoption assessments

SEC. . Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b), whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or

parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parents is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent. The posting or publication of notices is not required in such a search.

(2) That the parent is suffering from a mental disability that is described in ~~Section 232 of the Civil Code~~ Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor had been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or parents or guardian or guardians from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse. However, this section is not applicable if the jurisdiction of the juvenile court has been dismissed prior to the additional abuse.

(4) That the parent of the minor has been convicted of causing the death of another child through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision

of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

When paragraph (3), (4), or (5), inclusive, of subdivision (b) is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable service unless the court determines those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of

detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between parent and child through collect phone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), or (5) of subdivision (b), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be

detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

Comment. Paragraph (2) of subdivision (b) of Section 361.5 (as amended by 1991 Cal. Stat. ch. 820, § 3) is amended to substitute a reference to the Family Code provisions that superseded the Code of Civil Procedure provisions formerly referred to in the section.

Welf. & Inst. Code § 362.4 (technical amendment). Order of juvenile court concerning custody or visitation

SEC. . Section 362.4 of the Welfare and Institutions Code is amended to read:

362.4. When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and proceedings

for the declaration of the nullity or dissolution of the marriage, or for legal separation, of the minor's parents, or proceedings to establish the paternity of the minor child brought under the Uniform Parentage Act ~~(Part 7 (commencing with Section 7000) of Division 4 of the Civil Code)~~ , Part 3 (commencing with Section 7600) of Division 12 of the Family Code, are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue an order directed to either of the parents enjoining any action specified in ~~paragraph (2) or (3) of subdivision (a) of Section 4359 of the Civil Code~~ subdivision (b), (c), or (d) of Section 2035 of the Family Code or determining the custody of, or visitation with, the child.

Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity, at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof.

If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides. The court may direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior court of the county in which the order is to be filed. The clerk of the superior court shall, immediately upon receipt, open a file, without a filing fee, and assign a case number.

The clerk of the superior court shall, upon the filing of any juvenile court custody order, send by first-class mail a copy of the order with the case number to the juvenile court and to the parents at the address listed on the order.

The Judicial Council shall adopt forms for any custody or restraining order issued under this section. These form orders shall not be confidential.

Comment. Section 362.4 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section. The reference to subdivision (c) of Section 2035 of the Family Code is added to conform to various

provisions of the Family Code. See, for example, Family Code Sections 5650(b), 5804(a), 5805(a), 5807.

Welf. & Inst. Code § 366.2 (technical amendment). Status review hearings

SEC. . Section 366.2 of the Welfare and Institutions Code is amended to read:

366.2. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services offered to the family, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. The probation officer shall provide the parent or parents with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody

of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to any such hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider any such report and recommendation prior to determining any disposition.

(e) The court shall proceed as follows at the review hearing: The court shall order the return of the minor to the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided; shall make appropriate findings; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to ~~Section--232 of the Civil Code~~ Part 4 (commencing with Section 7800) of Division 12 of the Family Code may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

(f) This section shall apply only to minors made dependents of the court pursuant to subdivision (c) of Section 360 prior to January 1, 1989.

Comment. Subdivision (e) of Section 366.2 is amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provision formerly referred to in the section.

Welf. & Inst. Code § 366.25 (technical amendment). Permanency planning hearing

SEC. . Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) In order to provide stable, permanent homes for children, a court shall, if the minor cannot be returned home pursuant to subdivision (e) of Section 366.2, conduct a hearing to make a determination regarding the future status of the minor no later than 12 months after the original dispositional hearing in which the child was removed from the custody of his or her parent, parents, or guardians, and in no case later than 18 months from the time of the minor's original placement pursuant to Section 319 or 16507.4 and periodically, but no less frequently than once each 18 months, thereafter during the continuation of foster care. The hearing may be combined with the six months' review as provided for in Section 366. In the case of a minor who comes within subdivision (b) of Section 361.5 and for whom the court has found that reunification services should not be provided, a hearing shall be held pursuant to Section 361.5.

(b) Notice of the proceeding to conduct the review shall be mailed by the probation officer to the same persons as in an original proceeding, to the minor's present custodian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons not earlier than 30 days, nor later than 15 days prior to the date the review is to be conducted.

(c) Except in cases where permanency planning is conducted pursuant to Section 361.5, the court shall first determine at the hearing whether the minor should be returned to his or her parent or guardian, pursuant to subdivision (e) of Section 366.2. If the minor is not returned to the custody of his or parent or guardian the court shall determine whether there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months. If the court so determines it shall set another review hearing for not more than six months, which shall be a hearing pursuant to this section.

(d) If the court determines that the minor cannot be returned to

the physical custody of his or her parent or guardian and that there is not a substantial probability that the minor will be returned within six months, the court shall develop a permanent plan for the minor. In order to enable the minor to obtain a permanent home the court shall make the following determinations and orders:

(1) If the court finds that it is likely that the minor can or will be adopted, the court shall authorize the appropriate county or state agency to proceed to free the minor from the custody and control of his or her parents or guardians pursuant to ~~Section 232 of the Civil Code~~ Part 4 (commencing with Section 7800) of Division 12 of the Family Code unless the court finds that any of the following conditions exist:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing this relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The minor's foster parents, including relative caretakers, are unable to adopt the minor because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the minor, but are willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the minor.

(2) If the court finds that it is not likely that the minor can or will be adopted or that one of the conditions in subparagraph (A), (B), or (C) of paragraph (1) applies, the court shall order the appropriate county department to initiate or facilitate the placement of the minor in a home environment that can be reasonably expected to be stable and permanent. This may be accomplished by initiating legal guardianship proceedings or long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is in a foster home and the foster parents, including relative caretakers, are willing and capable of providing a stable and permanent environment, the minor shall not be removed from the home if the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the

foster parents. The court shall also make orders for visitation with the parents or guardians unless the court finds by a preponderance of evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(3)(A) If the court finds that it is not likely that the minor can or will be adopted, that there is no suitable adult available to become the legal guardian of the minor, and that there are no suitable foster parents except certified homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

(B) The licensed foster family agency shall only use a suitable licensed or other family home which has been certified by the agency as meeting licensing standards. When the care, custody, and control has been transferred to a foster family agency, it shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for support of the minor shall not in and of itself create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(C) Subsequent reviews for these minors shall be conducted every six months by the court. The licensed foster family agency shall be required to submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

(e) The proceeding for the appointment of a guardian for a minor who is a dependent child of the juvenile court shall be in the juvenile court. The court shall receive into evidence a report and

recommendation concerning the proposed guardianship. The report shall include, but not be limited to, a discussion of all of the following:

(1) A social history of the proposed guardian, including screening for criminal records and prior referrals for child abuse or neglect.

(2) A social history of the minor, including an assessment of any identified developmental, emotional, psychological, or educational needs, and the capability of the proposed guardian to meet those needs.

(3) The relationship of the minor to the proposed guardian, the duration and character of the relationship, the motivation for seeking guardianship rather than adoption, the proposed guardian's long-term commitment to provide a stable and permanent home for the minor, and a statement from the minor concerning the proposed guardianship.

(4) The plan, if any, for the natural parents for continued involvement with the minor.

(5) The proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship.

The report shall be read and considered by the court prior to ruling on the petition for guardianship, and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(f) Physical custody of a minor by his or her parents or guardians for insubstantial periods during the 12-month period prior to a permanency planning hearing shall not serve to interrupt the running of those periods.

(g) Notwithstanding any other provision of law, the application of any person who, as a foster parent, including relative caretakers, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the foster parent and removal from the foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(h) Subsequent hearings need not be held if (1) the child has been freed for adoption and placed in the adoptive home identified in the previous hearing and is awaiting finalization of the adoption or (2) the child is the ward of a guardian.

(i) This section applies to minors adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 prior to January 1, 1989.

(j) An order by the court that authorizes the filing of a petition to terminate parental rights pursuant to ~~Section 232~~ Part 4 (commencing with Section 7800) of Division 12 of the Family Code or that authorizes the initiation of guardianship proceedings is not an appealable order but may be the subject of review by extraordinary writ.

Comment. Subdivisions (d) and (j) of Section 366.25 are amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the subdivisions.

Welf. & Inst. Code § 366.26 (technical amendment). Termination of parental rights

SEC. . Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; ~~Section 4600 of the Civil Code~~ Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections ~~221, 20, 222, 10, and 7017 of the Civil Code~~ 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the

report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the ~~parent-or-parents'~~ rights of the parent or parents and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or Section 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility,

adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days. During this 60-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of

the conditions in subparagraph (A), (B), (C) or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare service, except for emergency response services pursuant to Section

16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require such protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(f) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become

acquainted with the case.

(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(h) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(i) If the court, by order or judgment declared the minor free from the custody and control of both parents, or one parent if the other no longer has custody and control, the court shall at the same time order the minor referred to a licensed county adoption agency for adoptive placement by the agency. However, no petition for adoption may be heard until the appellate rights of the natural parents have been exhausted. The licensed county adoption agency shall be responsible for the care and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted.

(j) Notwithstanding any other provision of law, the application of

any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(k) An order by the court directing that a hearing pursuant to this section be held is not an appealable order, but may be the subject of review by extraordinary writ.

Comment. Subdivision (a) of Section 366.26 (as amended by 1991 Cal. Stat. ch. 820, § 5) is amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the subdivision.

Welf. & Inst. Code § 11155.5 (technical amendment). Retention of cash savings

SEC. . Section 11155.5 of the Welfare and Institutions Code is amended to read:

11155.5. (a) In addition to the personal property permitted by other provisions of this part, a child declared a ward or dependent child of the juvenile court, who is age 16 years or older, and who is a participant in the Independent Living Program pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) may retain any cash savings, including interest, accumulated pursuant to the child's Independent Living Program case plan. The cash savings shall be the child's own money and shall be deposited by the child or on behalf of the child in any bank or savings and loan institution whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The cash savings shall be for the child's use for purposes directly related to emancipation pursuant to ~~Part 2.7 (commencing with Section 60) of Division 1 of the Civil Code~~ Part 6 (commencing with Section 7000) of

Division 11 of the Family Code.

(b) The cash savings accumulated and deposited pursuant to this section shall be kept separate from other types and sources of cash savings. The withdrawal of the savings shall require the written approval of the child's probation officer or social worker and shall be directly related to the goal of emancipation.

Comment. Subdivision (a) Section 11155.5 is amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the subdivision.

Welf. & Inst. Code § 11350.1 (technical amendment). Action for support

SEC. . Section 11350.1 of the Welfare and Institutions Code is amended to read:

11350.1. (a) Notwithstanding any other statute, in any action brought by the district attorney for child support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or caretaker parent. The caretaker parent shall not be a necessary party in the action but may be subpoenaed as a witness. In an action under this section there shall be no joinder of actions, or coordination of actions, or cross-complaints, and the issues shall be limited strictly to the question of paternity, if applicable, and child support, including an order for medical support. A final determination of parentage may be made in any action under this section as an incident to obtaining an order for support. An action for support or paternity pursuant to this section shall not be delayed or stayed because of the pendency of any other action between the parties. Judgment in an action brought pursuant to this section, and in an action brought pursuant to Section 11350, if at issue, may be rendered pursuant to a noticed motion, which shall inform the defendant that in order to exercise his or her right to trial, he or she must appear at the hearing on the motion.

If the defendant appears at the hearing on the motion, the court shall inquire of him or her if he or she desires to subpoena evidence and witnesses, if paternity is at issue and blood tests have not already been conducted whether he or she desires blood tests, and if he or she desires a trial. If his or her answer is in the affirmative, a continuance shall be granted to allow him or her to exercise those rights. Unless the case is determined to be complex as defined in

paragraph (2) of subdivision (e) of Section 11475.1, the continuance shall not postpone the hearing to more than 75 days from the date of service of the summons and complaint. In the event that a continuance is granted, the court may make an order for temporary support without prejudice to the right of the court to make an order for temporary support as otherwise allowed by law.

(b) In any action to enforce a spousal support order the action may be pled in the name of the county in the same manner as an action to establish a child support obligation. The same restrictions on joinder of actions, coordination of actions, and cross-complaints, and delay because of the pendency of any other action as relates to actions to establish a child support obligation shall also apply to actions to enforce a spousal support order. Nothing contained in this section shall be construed to prevent the parties from bringing an independent action under the Family Law Act ~~(Part 5 (commencing with Section 4000) of Division 4 of the Civil Code)~~ Code or otherwise, and litigating the issue of support. In that event, the court in those proceedings shall make an independent determination on the issue of support which shall supersede the support order made pursuant to this section.

Comment. Subdivision (b) of Section 11350.1 (as amended by 1991 Cal. Stat. ch. 542, § 4.7) is amended to substitute a reference to the Family Code for the former reference to the Family Law Act.

Welf. & Inst. Code § 11475.1 (technical amendment). Action by district attorney to enforce child and spousal support

SEC. . Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to establish, modify, and enforce child support and when appropriate enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, to take the same actions on behalf of

a child who is not receiving public assistance, including Medi-Cal.

(b) To the extent required by federal law, actions brought by the district attorney to establish or enforce support obligations in all cases, other than paternity cases or those cases involving complex issues, shall be completed within the following time limits: (1) 90 percent of the actions shall be completed within three months from the date of service; (2) 98 percent of the actions shall be completed within six months from the date of service; and (3) 100 percent of the actions shall be completed within 12 months from the date of service. As used in this section, "service" means the service of process required by law for the particular proceeding. The district attorney's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(c) In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(d) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(e) In any action to establish a child support order brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during

the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Law Act ~~(Part 5 (commencing with Section 4000) of Division 4 of the Civil Code)~~ Code.

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under ~~subdivision (a) of Section 7004 of the Civil Code~~ Section 7611 of the Family Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

As used in subdivision (b), "complex issues" means issues arising in the following types of cases: (1) any case which could directly

result in a person's incarceration; (2) any case involving the right to jury trial; and (3) any case so deemed by a commissioner, a referee, or a superior court judge.

In counties which operate an expedited process in accordance with Section 640.1 of the Code of Civil Procedure, commissioners and referees shall order a temporary support obligation under the expedited process in complex cases, as defined in this section, prior to referring those cases to the full judicial system.

(f) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the district attorney of an initial order for child support, which may include medical support or which is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, and (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(g) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(h) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). The district attorney shall seek ~~a wage assignment~~ an earnings assignment order for support in any case as soon as the obligor is in arrears in payment of support pursuant to ~~Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code~~ Chapter 6 (commencing

with Section 5200) of Part 5 of Division 9 of the Family Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law.

(i) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Law Act ~~(Part 5 (commencing with Section 4000) of Division 4 of the Civil Code)~~, the Uniform Parentage Act ~~(Part 7 (commencing with Section 7000) of Division 4 of the Civil Code)~~ Code, or other proceeding wherein child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request such relief as appropriate which the district attorney is authorized to seek.

(j) The district attorney shall comply with any guidelines established by the State Department of Social Services which set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

(k) As used in this article, medical support activities which the district attorney is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

Comment. Section 11475.1 is amended to substitute a reference to the Family Code for the former reference to the Family Law Act and to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section. The terminology used in subdivision (h) is conformed to the terminology used in the Family Code.

Welf. & Inst. Code § 11475.3 (repealed). Report concerning compatible family law forms

SEC. . Section 11475.3 of the Welfare and Institutions Code is repealed.

~~11475.3.---(a)---The Judicial Council shall solicit comment from district attorneys throughout the state regarding the need for computer~~

~~compatible-family-law-forms, the current methods of form preparation, and existing word processing or computer systems and their compatibility with computer-compatible-family-law-forms.~~

~~(b) Commencing on January 1, 1985, the Judicial Council shall conduct a statewide project on the use of computer-compatible Judicial Council family-law forms. In evaluating the project, the Judicial Council shall consider the comment of district attorneys and other members of the State Bar of California, court clerks, and judges.~~

~~(c) The Judicial Council shall report to the Legislature by December 31, 1985, on the results of the project and the feasibility of the expanded use of computer-compatible forms.~~

Comment. Former Section 11475.3 is repealed as obsolete.

Welf. & Inst. Code § 11476.1 (technical amendment). Agreements with noncustodial parents

SEC. . Section 11476.1 of the Welfare and Institutions Code is amended to read:

11476.1. (a) In any case where the district attorney has undertaken enforcement of support, the district attorney may enter into an agreement with the noncustodial parent, on behalf of a minor child or children, a spouse, or former spouse for the entry of a judgment without action determining paternity, if applicable, and for periodic child and spousal support payments based on the noncustodial parent's reasonable ability to pay or, if for spousal support, an amount previously ordered by a court of competent jurisdiction. An agreement for entry of a judgment under this section may be executed prior to the birth of the child and may include a provision that the judgment is not to be entered until after the birth of the child.

(b) A judgment based on the agreement shall be entered only if one of the following requirements is satisfied:

(1) The noncustodial parent is represented by legal counsel and the attorney signs a certificate stating: "I have examined the proposed judgment and have advised my client concerning his or her rights in connection with this matter and the consequences of signing or not signing the agreement for the entry of the judgment and my client, after being so advised, has agreed to the entry of the judgment."

(2) A judge of the court in which the judgment is to be entered, after advising the noncustodial parent concerning his or her rights in connection with the matter and the consequences of agreeing or not agreeing to the entry of the judgment, makes a finding that the noncustodial parent has appeared before the judge and the judge has determined that under the circumstances of the particular case the noncustodial parent has willingly, knowingly, and intelligently waived his or her due process rights in agreeing to the entry of the judgment.

(c) The clerk shall file the agreement, together with any certificate of the attorney or finding of the court, without the payment of any fees or charges. If the requirements of this section are satisfied, the court shall enter judgment thereon without action. ~~The provisions of Section 4702 or Section 4801.7 of the Civil Code~~ Article 4 (commencing with Section 4200) of Chapter 2 of Part 2 of Division 9 of the Family Code or Chapter 4 (commencing with Section 4350) of Part 3 of Division 9 of the Family Code shall apply to such judgment. A judgment for support so entered may be enforced by any means by which any other judgment for support may be enforced.

(d) Upon request of the district attorney in any case under this section, the clerk shall set the matter for hearing by the court. The hearing shall be held within 10 days after the clerk receives the request. The district attorney may require the person who signed the agreement for the entry of judgment to attend the hearing by process of subpoena in the same manner as the attendance of a witness in a civil action may be required. The presence of the person who signed the agreement for entry of judgment at the hearing shall constitute the presence of the person in court at the time the order is pronounced for the purposes of Section 1209.5 of the Code of Civil Procedure if the court makes the findings required by paragraph (2) of subdivision (b).

(e) The district attorney shall cause the following to be served, in the manner specified in Section 415.10, 415.20, 415.30, or 415.40 of the Code of Civil Procedure, upon the person who signed the agreement for entry of the judgment and shall file proof of service thereof with the court:

(1) A copy of the judgment as entered.

(2) If the judgment includes an order for child or spousal support payments, a notice stating the substance of the following: "The court

has continuing authority to make an order increasing or decreasing the amount of the child or spousal support payments. You have the right to request that the court order the child and spousal support payments be decreased or eliminated entirely."

(f) An order for child and spousal support included in a judgment entered under this section may be modified or revoked as provided in ~~Section 4700 or Section 4801 of the Civil Code~~ Article 1 (commencing with Section 3650) of Chapter 6 of Part 1 of Division 9 of the Family Code and in (1) Articles 1 (commencing with Section 4000) and 3 (commencing with Section 4100) of Chapter 2 of Part 2 of Division 9 of the Family Code or (2) Chapters 2 (commencing with Section 4320) and 3 (commencing with Section 4330) of Part 3 of Division 9 of the Family Code. The court may modify the order to make the support payments payable to a different person.

(g) For the purposes of this section, in making a determination of the noncustodial parent's reasonable ability to pay, any relevant circumstances set out in ~~Section 246 of the Civil Code~~ Section 4005 of the Family Code shall be considered.

(h) After arrest and before plea or trial, or after conviction or plea of guilty, under Section 270 of the Penal Code, if the defendant appears before the court in which the criminal action is pending and the requirements of paragraph (1) or (2) of subdivision (b) have been satisfied, the court may suspend proceedings or sentence in the criminal action, but this does not limit the later institution of a civil or criminal action or limit the use of any other procedures available to enforce the judgment entered pursuant to this section.

(i) Nothing in this section applies to a case where a civil action has been commenced.

Comment. Section 11476.1 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section.

Welf. & Inst. Code § 11478 (technical amendment). Cooperation of agencies

SEC. . Section 11478 of the Welfare and Institutions Code is amended to read:

11478. All state, county, and local agencies shall cooperate in the enforcement of any child support obligation or to the extent

required under the state plan under Section 11475.2 of this code and Section 1650 of the Code of Civil Procedure and Chapter 4 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, spousal support orders and in the location of parents who have abandoned or deserted children, irrespective of whether the children are or are not receiving aid to families with dependent children, and shall, on request, supply the county department, the Department of Justice, any county probation officer, the district attorney of any county in this state, or the California Parent Locator Service with all information on hand relative to the location, income, or property of any absent parents, spouses, or former spouses, notwithstanding any other provision of law making the information confidential, and with all information on hand relative to the location and prosecution of any person who has, by means of false statement or representation or by impersonation or other fraudulent device, obtained aid for a child under this chapter.

Comment. Section 11478 (as amended by 1991 Cal. Stat. ch. 943, § 1) is amended to substitute references to the provisions of the Family Code that superseded former Section 1650 of the Code of Civil Procedure.

A reference to the Uniform Reciprocal Enforcement of Support Act, now compiled in the Family Code, has been substituted for the reference to Section 1650 of the Code of Civil Procedure formerly referred to in Section 11478. Former Section 1650 merely provided the short title for the uniform act. The substituted reference in Section 11478 includes the entire uniform act.

Welf. & Inst. Code § 11478.1 (amended). Confidentiality of records

SEC. . Section 11478.1 of the Welfare and Institutions Code is amended to read:

11478.1. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or

former spouse to the extent required by the state plan under Section 11475.2 of this code and Section 1650 of the Code of Civil Procedure and Chapter 4 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(b) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United State Code and this article, shall be confidential, and shall not be open to examination or released for disclosure for any purposes not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United State Code, and any other plan or program described in Section 303.21 of Title 45 of the Code of Federal Regulations.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the

Government Code) may be released.

(5) After a noticed motion and a finding by the court, in a case in which enforcement actions are being taken, that release or discharge to the obligor is required by due process of law, the court may order a public entity, which possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor for examination or copying, or to disclose to the obligor the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part.

(6) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a minor child, or location of a concealed or abducted child or the location of the concealing or abducting person, may be disclosed to any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(7) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d)(1) "Administration and implementation of the child and spousal support enforcement program," as used in this section, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this section, "obligor" means any person owing a duty of support.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a

recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

Comment. Subdivision (a) of Section 11478.1 (added by 1991 Cal. Stat. ch. 943, § 2) is amended to substitute references to the provisions of the Family Code that superseded former Section 1650 of the Code of Civil Procedure.

Welf. & Inst. Code § 11478.2 (technical amendment). Actions involving paternity or support; representation by district attorney and attorney general; notices; independent actions; consent to stipulations

SEC. . Section 11478.2 of the Welfare and Institutions Code is amended to read:

11478.2. (a) In all actions involving paternity or support, including, but not limited to, proceedings under ~~Title 3 (commencing with Section 241) of Part 3 of Division 1 of the Civil Code, under Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, under Title 10a (commencing with Section 1650) of Part 3 of the Code of Civil Procedure~~ the Family Code, and under this division, the district attorney and Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. No attorney-client relationship shall be deemed to have been created between the district attorney or Attorney General and any person by virtue of the action of the district attorney or the Attorney General in carrying out these statutory duties.

(b) The provisions of subdivision (a) are declarative of existing law.

(c) In all requests for services of the district attorney or Attorney General pursuant to Section 11475.1 relating to actions involving paternity or support, not later than the same day an individual makes a request for these services in person, and not later than five working days after either (1) a case is referred for services from the county welfare department, (2) receipt of a request by mail for an application for services, or (3) an individual makes a request for services by telephone, the district attorney or Attorney General shall give notice to the individual requesting services or on whose behalf services have been requested that the district attorney or

Attorney General does not represent the individual or the children who are the subject of the case, that no attorney-client relationship exists between the district attorney or Attorney General and those persons, and that no such representation or relationship shall arise if the district attorney or Attorney General provides the services requested. Notice shall be in bold print and in plain English and shall be translated into the language understandable by the recipient when reasonable. The notice shall include the advice that the absence of an attorney-client relationship means that communications from the recipient are not privileged and that the district attorney or Attorney General may provide support enforcement services to the other parent in the future.

(d) The district attorney or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 11475.1 who have not otherwise been provided that notice, not later than the date of the next annual notice required under Section 11476.2. This notice shall include notification to the recipient of services under Section 11475.1 that the recipient may inspect the clerk's file at the county clerk's office, and that, upon request, the district attorney, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The district attorney, or, if appropriate, the Attorney General, shall provide to recipients of support services under Section 11475.1, not later than 30 calendar days after the filing of a complaint for paternity or support, or both, information sufficient to identify the cases, including the case name and docket number and address of the court where the complaint has been filed. In this initial notice, the district attorney or Attorney General shall inform the recipient that the district attorney or Attorney General may enter into a stipulated order resolving the complaint, and that if the recipient wishes to assist the prosecuting attorney, he or she should send all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f) The district attorney or Attorney General shall give reasonable notice to recipients of services under Section 11475.1 of the initial date and time, and purpose of every hearing in a civil

action for paternity or support. The district attorney or Attorney General shall make reasonable efforts to ensure that the district attorney or Attorney General has current addresses for recipients of support enforcement services. The notice shall be made no later than seven calendar days prior to the hearing, or within two days of the receipt of notice of the hearing by the district attorney or Attorney General, if notice is received less than seven calendar days prior to the hearing. The failure of the district attorney or Attorney General to comply with this subdivision shall not affect the validity of any order.

(g) The district attorney or Attorney General shall give notice to recipients of services under Section 11475.1 of every order obtained by the district attorney or Attorney General that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, by sending a copy of the order to the recipient. The notice shall be made within 30 calendar days after the order has been filed. The district attorney or Attorney General shall also give notice to these recipients of every order obtained in any other jurisdiction, that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, and which is received by the district attorney or Attorney General, by sending a copy of the order to the recipient within 30 calendar days after the district attorney or Attorney General has received a copy of the order. In any action enforced under ~~Title--10a--(commencing with Section--1650)--of--Part--3--of--the--Code--of--Civil--Procedure~~ Chapter 4 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, the notice shall be made in compliance with the requirements of that ~~section~~ chapter. The failure of the district attorney or Attorney General to comply with this subdivision shall not affect the validity of any order.

(h) The district attorney or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the district attorney or Attorney General is not the attorney representing any individual, including, but not limited to, the custodial parent, the child, or the noncustodial parent.

(i) Nothing in this section shall be construed to preclude any person who is receiving services under Section 11475.1 from filing and

prosecuting an independent action to establish, modify, and enforce an order for current support on behalf of himself or herself or a child if that person is not receiving public assistance.

(j) A person who is receiving services under Section 11475.1 but who is not currently receiving public assistance on his or her own behalf or on behalf of a child shall be asked to execute, or consent to, any stipulation establishing or modifying a support order in any action in which that person is named as a party, before the stipulation is filed. The district attorney or Attorney General shall not submit to the court for approval a stipulation to establish or modify a support order in such an action without first obtaining the signatures of all parties to the action, their attorneys of record, or persons authorized to act on their behalf.

(k) The district attorney or Attorney General shall not enter into a stipulation which reduces the amount of past due support, including interest and penalties accrued pursuant to an order of current support, on behalf of a person who is receiving support enforcement services under Section 11475.1 and who is owed support arrearages that exceed unreimbursed public assistance paid to the recipient of the support enforcement services, without first obtaining the consent of the person who is receiving services under Section 11475.1 on his or her own behalf or on behalf of the child.

(l) The notices required in this section shall be provided in the following manner:

(1) In all cases in which the person receiving services under Section 11475.1 resides in California, notice shall be provided by mailing the item by first-class mail to the last known address of, or personally delivering the item to, that person.

(2) In all actions enforced under ~~Title 10a--(commencing with Section 1650)--of--Part 3--of--the--Code--of--Civil--Procedure~~ Chapter 4 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, unless otherwise specified, notice shall be provided by mailing the item by first-class mail to the initiating court.

Comment. Subdivision (a) of Section 11478.2 (as amended by 1991 Cal. Stat. ch. 495, § 4) is amended to substitute a reference to the Family Code for the provisions formerly referred to in the subdivision which have been superseded by provisions of the Family Code. Subdivision (g) and subdivision (l)(2) are amended to substitute a reference to the Family Code provisions that superseded the Code of

Civil Procedure provisions formerly referred to those subdivisions.

Welf. & Inst. Code § 11478.8 (amended). Request by district attorney for information

SEC. . Section 11478.8 of the Welfare and Institutions Code is amended to read:

11478.8. (a) Upon receipt of a written request from a district attorney enforcing the obligation of parents to support their children pursuant to Section 11475.1, every employer and labor organization shall cooperate with and provide relevant employment and income information which they have in their possession to the district attorney for the purpose of establishing, modifying, or enforcing the support obligation. No employer or labor organization shall incur any liability for providing this information to the district attorney.

(b) Relevant employment and income information shall include, but not be limited to, all of the following:

(1) Whether a named person has or has not been employed by an employer or whether a named person has or has not been employed to the knowledge of the labor organization.

(2) The full name of the employee or member or the first and middle initial and last name of the employee or member.

(3) The employee's or member's last known residence address.

(4) The employee's or member's date of birth.

(5) The employee's or member's social security number

(6) The dates of employment.

(7) All earnings paid to the employee or member and reported as W-2 compensation in the prior tax year and the employee's or member's current basic rate of pay.

(8) Whether the dependent health insurance coverage is available to the employee through employment or membership in the labor organization.

(c) The district attorney shall notify the employer and labor organization of the district attorney case file number in making a request pursuant to this section. The written request shall include at least three of the following elements regarding the person who is the subject of the inquiry: (A) first and last name and middle initial, if known; (B) social security number; (C) driver's license number; (D)

birth date; (E) last known address; or (F) spouse's name.

(d) The district attorney shall send a notice that a request for this information has been made to the last known address of the person who is the subject of the inquiry.

(b)

(e) An employer or labor organization which fails to provide relevant employment information to the district attorney within 20 30 days of receiving a request pursuant to subdivision (a) may be assessed a civil penalty of a maximum of five hundred dollars (\$500), plus attorney's fees and costs. Proceedings to impose the civil penalty shall be commenced by the filing and service of an order to show cause.

(e)

(f) "Labor organization," for the purposes of this section means a labor organization as defined in Section 1117 of the Labor Code or any related benefit trust fund covered under the federal Employee Retirement Income Security Act of 1974 (Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code).

(d)

(g) Any reference to the district attorney in this section shall apply only when the district attorney is otherwise ordered or required to act pursuant to existing law. Nothing in this section shall be deemed to mandate additional enforcement or collection duties upon the district attorney beyond those imposed under existing law on the effective date of this section.

Comment. Section 11478.8 (as amended by 1991 Cal. Stat. ch. 542, § 7) is amended to change the time under subdivision (e) from 20 to 30 days. The 30-day period is drawn from former Civil Code Section 4390.16 as amended by 1991 Cal. Stat. ch. 542, § 4. Subdivisions (a) and (c) of former Civil Code Section 4390.16 (as amended by 1991 Cal. Stat. ch. 542, § 4) overlapped and duplicated Section 11478.8, but Section 11478.8 was broader in scope because it applied to a labor organization as well as to an employer. This duplication caused a problem. The employer was required to provide information within 30 days under subdivision (c) of former Civil Code Section 4390.16 by virtue of an amendment to that section (by 1991 Cal. Stat. ch. 542, § 4) which increased the time therein provided for the report from 20 to 30 days, but Section 11478.8 (as amended by 1991 Cal. Stat. ch. 542, § 7) was not amended to increase the time therein provided in that section for the report from 20 to 30 days. Both sections dealt with the same report from an employer and the Civil Code section allowed 30 days for the report and the Welfare and Institutions Code section allowed 20 day for the same report. The provisions of subdivisions (a) and (c) of the Civil Code section are no longer continued and the

Welfare and Institutions Code section is amended to adopt the 30 day time allowed for the report.

Welf. & Inst. Code § 11489 (technical amendment). Assignment of earnings

SEC. . Section 11489 of the Welfare and Institutions Code is amended to read:

11489. After judgment in any court action brought to enforce the support obligation of an absent parent pursuant to the provisions of this chapter, the court may ~~order an assignment of earnings pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code~~ issue an earnings assignment order for support pursuant to Chapter 6 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

Comment. Section 11489 is amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section and to adopt the terminology used in the Family Code.

Welf. & Inst. Code § 11490 (technical amendment). Medical insurance

SEC. . Section 11490 of the Welfare and Institutions Code is amended to read:

11490. (a) The state medical insurance form required in ~~Section 4726 of the Civil Code~~ Article 1 (commencing with Section 3750) of Chapter 7 of Part 1 of Division 9 of the Family Code shall include, but shall not be limited to, all of the following:

(1) The parent or parents' names, addresses, and social security numbers.

(2) The name and address of each parent's place of employment.

(3) The name or names, addresses, policy number or numbers, and coverage type of the medical insurance policy or policies of the parents, if any.

(4) The name, AFDC case number, social security number, and Title IV-E foster care case number or Medi-Cal case numbers of the parents and children covered by the medical insurance policy or policies.

(b) In any action brought or enforcement proceeding instituted by the district attorney under this article for payment of child or spousal support, a completed state medical insurance form shall be

obtained and sent by the district attorney to the State Department of Health Services in the manner prescribed by the State Department of Health Services.

Where it has been determined under Section ~~4726 of the Civil Code~~ 3751 of the Family Code that health insurance coverage is not available at no or reasonable cost, the district attorney shall seek a provision in the support order which provides for health insurance coverage should it become available at no or reasonable cost.

Health insurance coverage shall be considered reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. As used in this section, "health insurance coverage" also includes provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.

(c)(1) The district attorney shall request employers and other groups offering health insurance coverage that is being enforced under this article to notify the district attorney if there has been a lapse in insurance coverage. The district attorney shall be responsible for forwarding information pertaining to the health insurance policy secured for the dependent children for whom the district attorney is enforcing the court ordered medical support to the custodial parent.

(2) The district attorney shall periodically communicate with the State Department of Health Services to determine if there have been lapses in health insurance coverage for public assistance applicants and recipients. The State Department of Health Services shall notify the district attorney when there has been a lapse in court-ordered insurance coverage.

(3) The district attorney shall take appropriate action, civil or criminal, to enforce the obligation to obtain health insurance when there has been a lapse in insurance coverage or failure by the responsible parent to obtain insurance as ordered by the court.

(4) The district attorney shall inform all individuals upon their application for child support enforcement services that medical support enforcement services are available.

If the spouse or child does not receive public assistance or aid and is not a Medi-Cal applicant or recipient, the district attorney shall obtain the applicant's consent prior to providing medical support enforcement services.

Comment. Section 11490 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section.

Welf. & Inst. Code § 12300 (technical amendment). Purpose; inclusions; remuneration of persons under a legal duty to provide services; respite care

SEC. . Section 12300 of the Welfare and Institutions Code is amended to read:

12300. The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

Supportive services shall include domestic services and services related to domestic services, heavy cleaning, nonmedical personal services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites and other essential transportation as determined by the director, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

Where these supportive services are provided by a person having the legal duty pursuant to the ~~Civil-Code~~ Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following supportive

services: services related to domestic services, nonmedical personal services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, other essential transportation as determined by the director, and protective supervision only as needed because of the functional limitations of the child and paramedical services.

To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

Comment. Section 12300 is amended to substitute a reference to the Family Code for the former reference to the Civil Code. The provisions of the Civil Code relating to support have been superseded by provisions of the Family Code. See ,e.g., Sections 3900-4414 of the Family Code.

Welf. & Inst. Code § 12350 (technical amendment). Liability of relatives under state supplementary program for aged, blind, and disabled

SEC. . Section 12350 of the Welfare and Institutions Code is amended to read:

12350. No relative shall be held legally liable to support or to contribute to the support of any applicant for or recipient of aid under this chapter. No relative shall be held liable to defray in whole or in part the cost of any medical care or hospital care or other service rendered to the recipient pursuant to any provision of this code if he is an applicant for or a recipient of aid under this chapter at the time such medical care or hospital care or other service is rendered.

~~Notwithstanding the provisions of Section 206 of the Civil Code~~ Sections 3910, 4400, and 4401 of the Family Code, or Section 270c of the Penal Code, or any other provision of this code, no demand shall be made upon any relative to support or contribute toward the support of any applicant for or recipient of aid under this chapter. No county or city and county or officer or employee thereof shall threaten any such relative with any legal action against him by or in behalf of the county or city and county or with any penalty whatsoever.

Comment. Section 12350 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code section

formerly referred to in the section.

Welf. & Inst. Code § 14010 (technical amendment). Responsibility of parents for person under 21 years for health care

SEC. . Section 14010 of the Welfare and Institutions Code is amended to read:

14010. (a) Notwithstanding any other provision of law, the parent or parents of a person under 21 years of age shall not be held financially responsible, nor shall financial contribution be requested or required of such parent or parents for health care or related services to which the person may consent under any express provision of law, including, but not limited to, Sections ~~25.9, 34.5, 34.7, 34.8, 34.9, and 34.10 of the Civil Code~~ 6924, 6925, 6926, 6927, 6928, and 6929 of the Family Code, and including, but not limited to, maternity home care, social service counseling, and other services related to pregnancy of the person which are provided by a licensed maternity home.

Federal financial participation in providing such services shall not be claimed to the extent that the exemption from financial responsibility provided by this section is inconsistent with federal law.

(b) Notwithstanding the provisions of subdivision (a), the parent or parents of a person under 21 years of age, who is living in the home of the parent or parents, shall be held financially responsible for health care or related services to which the person under 21 years of age may consent pursuant to ~~Section 25.6 of the Civil Code~~ paragraph (1) of subdivision (e) of Section 7050 of the Family Code, but excluding health care and or related services to which a person may consent under Sections ~~25.9, 34.5, 34.7, 34.8, 34.9, and 34.10 of the Civil Code~~ 6924, 6925, 6926, 6927, 6928, and 6929 of the Family Code.

Comment. Section 14010 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section.

Welf. & Inst. Code § 16100 (technical amendment). License

SEC. . Section 16100 of the Welfare and Institutions Code is amended to read:

16100. Any county may apply for, and the department may issue pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of

the Health and Safety Code to any county agency designated by the county making the application, a license to perform the home-finding and placement functions, to investigate, examine, and make reports upon petitions for adoption filed in the superior court, to act as a placement agency in the placement of children for adoption, to accept relinquishments for adoption, and to perform such other functions in connection with adoption as the department deems necessary, or to do any of them. Nothing in this section shall be construed to authorize licensed county adoption agencies to provide intercountry adoption services.

In order to extend the services of county adoption agencies to the maximum number of counties practicable within the limits of funds appropriated therefor, the department may license a county adoption agency to operate in such other counties in the general area of the agency as it deems conducive to the effective and efficient administration of the adoption program.

A license issued to a county agency pursuant to this section constitutes the holder thereof a "county adoption agency" and the holder shall be deemed to be an "organization" within the meaning of this code and of ~~Chapter 2 (commencing with Section 221) of Title 2 of Part 3 of Division 1 of the Civil Code~~ Division 13 (commencing with Section 8500) of the Family Code.

Comment. Section 16100 is amended to substitute a reference to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section.

Welf. & Inst. Code § 16101 (technical amendment). Cost of administration

SEC. . Section 16101 of the Welfare and Institutions Code is amended to read:

16101. The cost of administering the adoption programs undertaken by a county under license issued pursuant to Section 16100 of this code shall be borne by the state in the amount found necessary by the department for proper and efficient administration. The state shall reimburse the county for all such necessary administrative costs, after deducting therefrom the amount of fees collected by the county agency pursuant to ~~Section 222.72 of the Civil Code~~ 8716 of the Family Code.

Comment. Section 16101 is amended to substitute a reference to

the Family Code section that superseded the Civil Code section formerly referred to in Section 16101.

Welf. & Inst. Code § 16106 (technical amendment). Adjustments

SEC. . Section 16106 of the Welfare and Institutions Code is amended to read:

16106. The state shall reimburse each county for the cost of care of any child placed under the custody of a county department pursuant to ~~Section 224.37 or 226.66 of the Civil Code~~ § 8805 or 8918 of the Family Code. County claims for reimbursement of expenses incurred pursuant to ~~Section 224.37 or 226.66 of the Civil Code~~ § 8805 or 8918 of the Family Code shall be filed with the department at the time and in the manner specified by the department, and the claims shall be subject to audit by the department. Whenever a claim covering a prior fiscal year is found to have been in error, adjustment may be made on a current claim without the necessity of applying adjustment to the appropriation for the prior fiscal year.

Comment. Section 16106 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section.

Welf. & Inst. Code § 16120 (technical amendment). Payment of benefits

SEC. . Section 16120 of the Welfare and Institutions Code is amended to read:

16120. Adoption Assistance Program benefits shall be provided only on behalf of special needs children for whom all of the following conditions are met:

(a) The department or licensed adoption agency and the prospective adoptive parent have signed an adoption assistance agreement which stipulates the need for and the amount of Adoption Assistance Program benefits. The adoption assistance agreement shall, at a minimum, specify the duration of assistance, the responsibility of the adopting family for reporting changes in circumstances, and the periodic recertification required for reevaluating the continuing needs of the family.

(b) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap which warrants the continuation of assistance.

(c) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and have signed an adoption assistance agreement.

(d) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(e) The child has been either relinquished for adoption to a California agency or freed for adoption through termination of parental rights by a California court, or committed to the department pursuant to ~~Section 224.37 or 226.66 of the Civil Code~~ 8805 or 8918 of the Family Code.

Comment. Subdivision (e) of Section 16120 is amended to substitute references to the provisions of the Family Code that superseded the Civil Code provisions formerly referred to in the section.

Welf. & Inst. Code § 16507.6 (technical amendment). Voluntary out-of-home placement

SEC. . Section 16507.6 of the Welfare and Institutions Code is amended to read:

16507.6. (a) If a minor has been voluntarily placed with the county welfare department subsequent to January 1, 1982, for out-of-home placement by his or her parents or guardians pursuant to this chapter and the minor has remained out of their physical custody for six consecutive months, the department shall do one of the following:

(1) Return the minor to the physical custody of his or her parents or guardians.

(2) Refer the minor to a licensed adoption agency for consideration of adoptive planning and receipt of a permanent relinquishment of care and custody rights from the parents pursuant to ~~Section 222.10 of the Civil Code~~ 8700 of the Family Code.

(3) Apply for a petition pursuant to Section 332 and file the petition with the juvenile court to have the minor declared a dependent child of the court under Section 300.

(4) Refer the minor placed pursuant to paragraph (2) of subdivision (a) of Section 16507.3 to an interagency administrative review board as may be required in federal regulations. One member of the board shall be a licensed mental health practitioner. The review

board shall review the appropriateness and continued necessity of six additional months of voluntary placement, the extent of the compliance with the voluntary placement plan, and the adequacy of services to the family and child. If the minor cannot be returned home by the 12th month of voluntary placement services, the department shall proceed pursuant to paragraph (2) or (3).

(5) Refer the minor placed pursuant to paragraph (1) of subdivision (a) of Section 16507.3 to an administrative review board as may be required in federal regulations and as described in subdivision (b) of Section 16503. If the minor cannot be returned home by the 12th month of voluntary placement services, the department shall proceed as described in paragraph (1) or (2).

(b) For those children placed voluntarily prior to January 1, 1981, the six-month consecutive time period for provision of child welfare services shall commence October 1, 1982.

Comment. Subdivision (a)(2) of Section 16507.6 (as amended by 1991 Cal. Stat. ch. 1203, § 24) is amended to substitute a reference to the Family Code section that superseded the Civil Code section formerly referred to in Section 16507.6.

Uncodified Savings Clause for Other Enactments in 1992

SEC. . Any section of any act enacted by the Legislature during the 1992 calendar year, which takes effect on or before January 1, 1993, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted before or after this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

Comment. This section is drawn from Section 167 of Chapter 1091 of the Statutes of 1991. It provides that a provision of another act enacted in 1992 is not "chaptered out" by a provision of this act, even though this act is "chaptered" after the other act. The effect of this section is that the provision of the other act will become operative on the operative date of the other act, and the provision of this act will not become operative. In this situation, it may be necessary to make a technical amendment at the 1993 legislative session to the provision (as contained in the other 1992 act) to make the conforming amendment that otherwise would have been made to the provision by this act.