

## Memorandum 92-63

Subject: Study F-1001 - Family Code (Support of Adult Children)

Many sections in the Family Code refer to the duty to support a "minor" child. Most of these references are too narrow, because a parent must also support an adult child in three situations:

(1) When the parent has made a stipulated agreement to support an adult child. Fam. Code § 3587.

(2) When the child is between 18 and 19, unmarried, a full-time high school student, and resides with a parent. *Id.* § 3901.

(3) When an adult child is incapacitated from earning a living and is without sufficient means. *Id.* § 3910.

Four Family Code sections recognize the duty to support an adult child by referring to a minor child or a child for whom support is authorized under Section 3901 or 3910. *Id.* §§ 3600, 3800, 4001, 4007. Two Civil Code sections (superseded by the Family Code) recognize the duty to support an incapacitated adult child. Civ. Code §§ 4700, 4700.10. But when the provision for support of a high school student between 18 and 19 residing with a parent was enacted in 1985, other Civil Code sections were not conformed. See 1985 Cal. Stat. ch. 379; see also 1988 Cal. Stat. ch. 153, § 2.

The Family Code continued the flawed scheme of the Civil Code. Thus, although Family Code Sections 3587, 3901, and 3910 establish a duty to support an adult child, many procedural provisions in the Family Code fail to recognize that duty. Exhibit 1 would add new Section 58 to the Family Code to define "child for whom support may be ordered" to mean a minor child and an adult child for whom support is authorized under Sections 3587, 3901, or 3910. Exhibit 1 sets out the Family Code sections that should be amended to pick up this definition, thereby recognizing the existing duty to support an adult child.

Section 2337 permits the court in a bifurcated case to require a party to maintain health insurance for "minor" children. Should this be expanded to permit the court to order a party to maintain health insurance for an adult child for whom support may be ordered?

Respectfully submitted,

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Fam. Code § 58 (added). "Child for whom support may be ordered"

58. "Child for whom support may be ordered" means a minor child and a child for whom support is authorized under Section 3587, 3901, or 3910.

Comment. Section 58 is added for convenience in drafting. Section 3587 permits a court to order child support for a child over 18 if a parent has made a stipulated agreement to pay such support. Section 3901 permits a court to order support for an unmarried child between the ages of 18 and 19 who is a full-time high school student and resides with a parent. Section 3910 permits a court to order support for an adult child who is incapacitated from earning a living and is without sufficient means. See also Sections 4000, 4001 (court order for support).

Fam. Code § 150 (amended). "Support"

150. "Support" refers to a support obligation owing on behalf of a child, spouse, or family, or an amount owing pursuant to Section 11350 of the Welfare and Institutions Code. It also includes past due support or arrearage when it exists. "Support," when used with reference to a minor child or a child described in Section 3901, includes maintenance and education.

Comment. Section 150 is amended to make clear that "support" includes maintenance and education of a minor child and an unmarried child between 18 and 19 who is a full-time high school student and resides with a parent. Section 3901.

Note. Should the amendment to Section 150 use the newly-defined term, "child for whom support may be ordered"? This would expand the section to permit the court to include educational expenses in a support order for an adult child who is "incapacitated from earning a living and without sufficient means." See Section 3910.

Under existing law, the court may require a parent to pay for special educational needs of a minor child. In *In re Marriage of Aylesworth*, 106 Cal. App. 3d 869, 165 Cal. Rptr. 389 (1980), the court required the father to pay private school tuition of \$2,400 a year for an epileptic child because the child could get more personal attention than at a public school.

If an adult child is "unable to maintain himself by work" (former Civ. Code § 206), there is some authority for requiring a parent to pay educational expenses. In *Woolams v. Woolams*, 115 Cal. App. 2d 1, 251 P.2d 392 (1952), a 36-year-old polio victim sought support from her father under Civil Code Section 206, to include lessons in ceramics, which she hoped to teach some day, and physiotherapy. The trial court ordered the father to pay \$250 per month for her support. The appellate court affirmed. In *Rebensdorf v. Rebensdorf*, 169 Cal. App. 3d 138, 215 Cal. Rptr. 76 (1985), an 18-year-old boy sought support

from his father so he could finish high school. The trial court gave summary judgment for the father, but the appellate court reversed, holding that under Civil Code Section 206 there was a triable question of fact whether the child was "in need" and "unable to maintain himself by work."

In *Jones v. Jones*, 179 Cal. App. 3d 1011, 225 Cal. Rptr. 95 (1986), an 18-year-old woman brought an action to compel her father to pay for her college education. The trial court held Civil Code Section 206 did not apply because there was no showing the child was unable to maintain herself by work, inferring that had there been such a showing an order to pay educational expenses would have been proper. See generally 10 B. Witkin, *Summary of California Law Parent and Child* § 263, at 316-17, § 329, at 375-76 (9th ed. 1989).

**Fam. Code § 213 (amended). Respondent's request for affirmative alternative relief**

213. (a) In a hearing on an order to show cause, or on a modification thereof, or in a hearing on a motion, other than for contempt, the responding party may seek affirmative relief alternative to that requested by the moving party, on the same issues raised by the moving party, by filing a responsive declaration within the time set by statute or rules of court.

(b) This section applies in any of the following proceedings:

(1) A proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

(2) A proceeding relating to a domestic violence prevention order.

(3) Any other proceeding in which there is at issue the visitation, custody, or support of a ~~mine~~ child.

**Comment.** Paragraph (3) of subdivision (b) of Section 213 is amended to delete "minor" to recognize that the proceeding may be for support of an adult child. See Sections 3587, 3901, 3910, 4000, 4001.

**Fam. Code § 215 (amended). Notice prerequisite to validity of order**

215. After entry of a judgment of dissolution of marriage, nullity of marriage, or legal separation of the parties, or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a ~~mine~~ child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior notice otherwise required to be given to a party to the proceeding is served, in the same manner as the notice is otherwise permitted by law to be served, upon the party. For the

purposes of this section, service upon the attorney of record is not sufficient.

Comment. Section 215 is amended to delete "minor" to recognize that the proceeding may have been for support of an adult child. See Sections 3587, 3901, 3910, 4000, 4001.

Fam. Code § 2010 (amended). Authority of court

2010. In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgment and make such orders as are appropriate concerning the following:

(a) The status of the marriage.

(b) The custody ~~and support~~ of minor children of the marriage and ~~children for whom support is authorized under Part 2 (commencing with Section 3900) of Division 9.~~

(c) The support of children for whom support may be ordered.

~~(e)~~ (d) The support of either party.

~~(d)~~ (e) The settlement of the property rights of the parties.

~~(e)~~ (f) The award of attorney's fees and costs.

Comment. Section 2010 is amended to do the following:

(1) To revise subdivision (b) to make clear the court's authority to make a custody order applies to minor children, but not to adult children. The authority of a parent ceases when the child attains the age of majority. Section 3015.

(2) To add subdivision (c) to replace the former reference in subdivision (b) to "children for whom support is authorized under Part 2 (commencing with Section 3900) of Division 9" with a reference to "children of the marriage for whom support may be ordered." See Section 58 ("children for whom support may be ordered" defined). Support of adult children may be ordered under Sections 3587, 3901, and 3910. This amendment is nonsubstantive, because Sections 3901 and 3910 are in Part 2, and Section 3587 permits the court to enforce a stipulated agreement by a parent to support an adult child.

Fam. Code § 2023 (amended). Payment of obligation directly to creditor

2023. (a) On a determination that payment of an obligation of a party would benefit either party or a ~~minor~~ child for whom support may be ordered, the court may order one of the parties to pay the obligation, or a portion thereof, directly to the creditor.

(b) The creditor has no right to enforce the order made under this section, nor are the creditor's rights affected by the determination made under this section.

Comment. Subdivision (a) of Section 2023 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 2030 (amended). Temporary restraining order in summons

2030. In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(a) 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.

(b) 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 before 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 proceeding.

(c) 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 for whom support may be ordered.

Comment. Subdivision (c) of Section 2030 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 2334 (amended). Continuance for reconciliation

2334. (a) If it appears that there is a reasonable possibility of reconciliation, the court shall continue the proceeding for the dissolution of the marriage or for a legal separation of the parties

for a period not to exceed 30 days.

(b) During the period of the continuance, the court may make orders for the support and maintenance of the parties, the custody, ~~and support~~ of the minor children of the marriage, the support of children for whom support may be ordered, attorney's fees, and for the preservation of the property of the parties.

(c) At any time after the termination of the period of the continuance, either party may move for the dissolution of the marriage or a legal separation of the parties, and the court may enter a judgment of dissolution of the marriage or legal separation of the parties.

Comment. Subdivision (b) of Section 2334 is amended to add the reference to "the support of children for whom support may be ordered." This makes clear that the court may make an order for support of adult children entitled to support under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 2623 (amended). Debts after separation but before judgment

2623. Debts incurred by either spouse after the date of separation but before entry of a judgment of dissolution of marriage or legal separation of the parties shall be confirmed as follows:

(a) Debts incurred by either spouse for the common necessities of life of either spouse or the necessities of life of the ~~mine~~ children of the marriage for whom support may be ordered, in the absence of a court order or written agreement for support or for the payment of these debts, shall be confirmed to either spouse according to the parties' respective needs and abilities to pay at the time the debt was incurred.

(b) Debts incurred by either spouse for nonnecessaries of that spouse or ~~mine~~ children of the marriage for whom support may be ordered shall be confirmed without offset to the spouse who incurred the debt.

Comment. Section 2623 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 3555 (amended). Forwarding support paid through county

3555. Where support is ordered to be paid through the county officer designated by the court on behalf of a ~~minor~~ child or other party not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the designated county officer shall forward the support received to the designated payee within the time standards prescribed by federal law and the State Department of Social Services.

Comment. Section 3555 is amended to delete "minor" to recognize that support may have been ordered for an adult child. See Sections 3587, 3901, 3910, 4000, 4001.

Fam. Code § 3623 (amended). Jurisdiction of court

3623. (a) An application for the expedited support order confers jurisdiction on the court to hear only the issue of support of the ~~minor~~ child or children for whom support may be ordered.

(b) Nothing in this chapter prevents either party from bringing before the court at the hearing other separately noticed issues otherwise relevant and proper to the action in which the application for the expedited support order has been filed.

Comment. Subdivision (a) of Section 3623 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 3902 (amended). Support from child's property

3902. The court may direct that an allowance be made to the parent of a ~~minor~~ child for whom support may be ordered out of the child's property for the child's past or future support, on conditions that are proper, if the direction is for the child's benefit.

Comment. Section 3902 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 3930 (amended). Support of grandchild

3930. A parent ~~of a minor child does not have the~~ has no duty to support a child of the ~~minor~~ parent's child.

Comment. Section 3930 is amended to broaden the former rule (parent of a minor child has no duty to support a child of the minor child) to apply as well to a child of the parent's adult child. In some cases, a parent may have a duty to support an adult child. See Sections 3587, 3901, 3910. The duty of a parent to support an adult child does not extend to a child of that adult child.

Fam. Code § 4003 (amended). Preference for trial on issue of support

4003. In any case in which the support of a ~~minor~~ child is at issue, the court may, upon a showing of good cause, order a separate trial on that issue. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date. If the court has also ordered a separate trial on the issue of custody pursuant to Section 3023, the two issues shall be tried together.

Comment. Section 4003 is amended to delete the reference to support of a "minor" child, since support of an adult child may be at issue in some cases. See Sections 3587, 3901, and 3910.

Fam. Code § 4004 (amended). Child receiving public assistance

4004. In a proceeding where there is at issue the support of a ~~minor~~ child, the court shall require the parties to reveal whether a party is currently receiving, or intends to apply for, public assistance under the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) for the maintenance of the child.

Comment. Section 4004 is amended to delete the reference to support of a "minor" child, since support of an adult child may be at issue in some cases. See Sections 3587, 3901, and 3910. The Family Economic Security Act of 1982 may apply to a child over 18 in an appropriate case. See Welf. & Inst. Code §§ 11253, 11403.

Fam. Code § 4005 (amended). Factors in determining child support

4005. (a) In determining the amount due for child support, the court shall consider the following circumstances of the parents:

- (1) The earnings or earning capacity of each parent.
- (2) The needs of each parent.
- (3) The obligations and assets, including the separate property, of each parent.
- (4) The ability of each parent to engage in gainful employment

without unduly interfering with the interests of dependent children in the custody of the parent.

(5) The time required for a parent to acquire appropriate education, training, and employment.

(6) The age and health of the parents.

(7) The standard of living of the parents.

(8) The preservation of the adequacy of the child support award over the length of time during which the parents will be obligated to support a ~~minor~~ child for whom support may be ordered, by utilizing an age increase factor in the standard used for the determination of child support. The Judicial Council shall develop a formula for the determination of that factor for the use of the courts.

(9) Any other factors the court determines are just and equitable.

(b) At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for support of the child is based.

Comment. Paragraph (8) of subdivision (a) of Section 4005 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

**Fam. Code § 4010 (amended). Notice of modification procedures**

4010. In a proceeding in which the court orders a payment for the support of a ~~minor~~ child, the court shall, at the time of providing written notice of the order, provide the parties with a document describing the procedures by which the order may be modified.

Comment. Section 4010 is amended to delete "minor" to recognize that in some cases the court may order support of an adult child. See Sections 3587, 3901, 3910.

**Fam. Code § 4051 (amended). Child support according to parent's circumstances and station in life**

4051. (a) A parent's first and principal obligation is to support the parent's ~~minor~~ child for whom support may be ordered according to the parent's circumstances and station in life.

(b) In this regard, the Legislature recognizes that a parent's circumstances and station in life are dependent upon a variety of factors, including the following:

(1) The parent's earned and unearned income, earning capacity, and assets.

(2) The income of the parent's subsequent spouse or nonmarital partner, to the extent that the obligated parent's basic living expenses are met by the spouse or other person, thus increasing the parent's disposable income.

Comment. Subdivision (a) of Section 4051 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 4200 (amended). Child support payable to parent receiving welfare

4200. In any proceeding where a court makes or has made an order requiring the payment of child support to a parent receiving welfare moneys for the maintenance of ~~mine~~ children for whom support may be ordered, the court shall do both of the following:

(a) Direct that the payments of support shall be made to the county officer designated by the court for that purpose.

(b) Direct the district attorney to appear on behalf of the welfare recipient in any proceeding to enforce the order.

Comment. Section 4200 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 4201 (amended). Child support payable to person having custody of minor child

4201. (a) In any proceeding where a court makes or has made an order requiring the payment of child support to the person having custody of a ~~mine~~ child for whom support may be ordered, the court may do either or both of the following:

(1) Direct that the payments shall be made to the county officer designated by the court for that purpose.

(2) Direct the district attorney to appear on behalf of the minor children in any proceeding to enforce the order.

(b) The court shall include in its order made pursuant to this section any service charge imposed under the authority of Section 279 of the Welfare and Institutions Code.

Comment. Subdivision (a) of Section 4201 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Note. As proposed to be amended, Section 4201 will refer to "custody" of a "child for whom support may be ordered," which will include an adult child. Although a parent has no legal authority over an adult child without a conservatorship of the person, "custody" here appears to mean physical custody without reference to legal relationships. Accordingly, "custody" in this context seems acceptable.

Fam. Code § 4573 (amended). Payment where support paid through district attorney for child not receiving public assistance

4573. If support is ordered to be paid through the district attorney on behalf of a ~~minor~~ child not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the district attorney shall forward the support received pursuant to this chapter to the custodial parent or other person having care or control of the ~~minor~~ child or children involved.

Comment. Section 4573 is amended to delete "minor" to recognize that in some cases the court may order support for an adult child to be paid through the district attorney. See Section 4201; see also Sections 3587, 3901, 3910, 4000, 4001.

Fam. Code § 4610 (amended). Order for deposit of assets

4610. (a) Subject to Sections 4613, 4614, and 4615, in any proceeding where the court has ordered either or both parents to pay any amount for the support of a ~~minor~~ child for whom support may be ordered, upon an order to show cause or notice of motion, application, and declaration signed under penalty of perjury by the person or county officer to whom support has been ordered to have been paid stating that the parent or parents so ordered is in arrears in payment in a sum equal to the amount of 60 days of payments, the court shall issue to the parent or parents ordered to pay support, following notice and opportunity for a hearing, an order requiring that the parent or parents deposit assets to secure future support payments with the deposit holder designated by the court.

(b) In a proceeding under this article, upon request of any party, the court may also issue an ex parte restraining order as specified in Section 4620.

Comment. Subdivision (a) of Section 4610 is amended to include both a minor child and a child over the age of 18 for whom support is authorized under Section 3587, 3901, or 3910. See Section 58 ("child for whom support may be ordered" defined).

Fam. Code § 4614 (amended). Determination by court of assets subject to order

4614. The designation of assets subject to an order pursuant to this article shall be based upon concern for maximizing the liquidity and ready conversion into cash of the deposited asset. In all instances, the assets shall include a sum of money up to or equal in value to one year of support payments or six thousand dollars (\$6,000) whichever is less, or any other assets, personal or real, designated by the court which equal in value up to one year of payments for support of the ~~minor~~ child, or six thousand dollars (\$6,000), whichever is less, subject to Section 703.070 of the Code of Civil Procedure.

Comment. Section 4614 is amended to delete "minor" to recognize that in some cases the court may order support of an adult child. See Sections 3587, 3901, 3910, 4000, 4001.

Fam. Code § 4630 (amended). Use or sale of assets

4630. (a) Upon an obligor-parent's failure, within the time specified by the court, to make reasonable efforts to cure the default in child support payments or to comply with a court-approved payment plan, if payments continue in the arrears, the deposit holder shall, not less than 25 days after providing the obligor-parent or parents with a written notice served personally or with return receipt requested, unless a motion or order to show cause has been filed to stop the use or sale, use the money or sell or otherwise process the deposited assets for an amount sufficient to pay the arrearage and the amount ordered by the court for the support ~~of~~ currently due for the ~~minor child currently-due for whom support may be ordered.~~

(b) Assets deposited pursuant to an order issued under Article 2 (commencing with Section 4610) shall be construed as being assets subject to levy pursuant to Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The sale of assets shall be conducted in accordance with Article 6 (commencing with Section 701.510) and Article 7 (commencing