

#F-1170, F-1180

1/26/93

First Supplement to Memorandum 93-6

Subject: F-1170, F-1180 — Family Code Generally (Miscellaneous Revisions)

Attached to this memorandum are additional technical revisions that should have been included in Exhibit 32 (SB 1148 — child support guideline), attached to Memorandum 93-6. (The page and exhibit numbers are set to fit with the material attached to the main memorandum.)

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

#F-1170

1/25/93

EXHIBIT 32a

SB 1614 (Child Support Guideline)

Staff Note. This exhibit includes additional material supplementing Exhibit 32 attached to Memorandum 93-6.

Fam. Code § 3621 (technical amendment). Ex parte order for child support during pendency of action

SEC. _____. Section 3621 of the Family Code is amended to read:

3621. In an action for child support that has been filed and served, the court may, without a hearing, make an order requiring a parent or parents to pay for the support of their minor child or children during the pendency of that action, pursuant to this chapter, the amount required by Section ~~4053~~ 4055 or, if the income of the obligated parent or parents is unknown to the applicant, then the minimum amount of support as provided in Section 11452 of the Welfare and Institutions Code.

Comment. Section 3621 continues the first sentence of former Civil Code Section 4357.5(a) [as amended by 1992 Cal. Stat. ch. 848, § 1] without substantive change. A reference to Section 4055 has been substituted for the broader reference to former Civil Code Section 4721 [as added by 1990 Cal. Stat. ch. 1493, § 14 and repealed by 1992 Cal. Stat. ch. 46, § 8]. This is not a substantive change, since the relevant part of the former section is continued in Section 4055. A reference to maintenance and education of the child has been omitted as surplus. See Section 150 (when used in reference to a child, “support” includes maintenance and education).

Interim Comment. Section 3621 is amended to substitute a reference to Section 4055 which will supersede Section 4053.

Staff Note. Would a cross-reference to all of Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 be better than the reference only to Section 4055?

Fam. Code § 3622 (technical amendment). Application for order

SEC. _____. Section 3622 of the Family Code is amended to read:

3622. The court shall make an expedited support order upon the filing of all of the following:

(a) An application for an expedited child support order, setting forth the minimum amount the obligated parent or parents are required to pay pursuant to Section ~~4053~~ 4055 of this code or pursuant to Section 11452 of the Welfare and Institutions Code.

(b) An income and expense declaration for both parents, completed by the applicant.

(c) A worksheet setting forth the basis of the amount of support requested.

(d) A proposed expedited child support order.

Comment. Section 3622 continues the first sentence of former Civil Code Section 4357.5(b) [as amended by 1992 Cal. Stat. ch. 848, § 1] without substantive change. A reference to Section 4055 has been substituted for the broader reference to former Civil Code Section 4721 (as added by 1990 Cal. Stat. ch. 1493, § 14, and repealed by 1992 Cal. Stat. ch. 46, § 8). This is not a substantive change, since the relevant part of the former section is continued in Section 4055. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 95 (“income and expense declaration” defined).

Interim Comment. Subdivision (a) of Section 3622 is amended to substitute a reference to Section 4055 which will supersede Section 4053.

Staff Note. *Would a cross-reference to all of Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 be better than the reference to Section 4055? Can the applicant for an expedited child support order fill out an income and expense declaration for the other party? Is this what subdivision (b) intends?*

Fam. Code §§ 4050-4075 (added). Statewide Uniform Guideline

SEC. _____. Article 2 (commencing with Section 4050) is added to Chapter 2 of Part 2 of Division 9 of the Family Code, to read:

Article 2. Statewide Uniform Guideline

§ 4050. Legislative intent

4050. In adopting the statewide uniform guideline provided in this article, it is the intention of the Legislature to ensure that this state remains in compliance with federal regulations for child support guidelines.

Comment. Section 4050 continues without substantive change the first sentence and the first part of the second sentence of former Civil Code Section 4720(a)(1) [as amended by 1992 Cal. Stat. ch. 848, § 5]. The reference to this article has been substituted for the narrower reference to former Civil Code Section 4721. This is not a substantive change, since the former section is continued in this article.

§ 4051. Operative date of article

4051. This article takes effect on July 1, 1992.

Comment. Section 4051 continues without substantive change the last part of the second sentence of former Civil Code Section 4720(a)(1) [as amended by 1992 Cal. Stat. ch. 848, § 5]. See also Section 4 (transitional provision for amendments, additions, and repeals).

§ 4052. Mandatory adherence to guideline

4052. The court shall adhere to the statewide uniform guideline and may depart from the guideline only in the special circumstances set forth in this article.

Comment. Section 4052 restates former Civil Code Section 4720(a)(2) [as amended by 1992 Cal. Stat. ch. 848, § 5] without substantive change, but states a positive rule rather than a legislative intent. The reference to this article has been substituted for the narrower reference to former Civil Code Section 4721. This is not a substantive change, since the former section is continued in this article.

§ 4053. Mandatory adherence to principles

4053. In implementing the statewide uniform guideline, the courts shall adhere to the following principles:

(a) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.

(b) Both parents are mutually responsible for the support of their children.

(c) The guideline takes into account each parent's actual income and level of responsibility for the children.

(d) Each parent should pay for the support of the children according to his or her ability.

(e) The guideline seeks to place the interests of children as the state's top priority.

(f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.

(g) Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.

(h) The financial needs of the children should be met through private financial resources as much as possible.

(i) It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children.

(j) The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.

(k) The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula.

(l) Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.

Comment. Section 4053 continues former Civil Code Section 4720(a)(3) [as amended by 1992 Cal. Stat. ch. 848, § 5] without substantive change.

§ 4054. Periodic review by Judicial Council

4054. (a) The Judicial Council shall periodically review the statewide uniform guideline to recommend to the Legislature appropriate revisions.

(b) The review shall include economic data on the cost of raising children and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date. The review shall also include analysis of guidelines and studies from other states, and other research and studies available to or undertaken by the Judicial Council.

(c) Any recommendations for revisions to the guideline shall be made to ensure that the guideline results in appropriate child support orders, to limit deviations from the guideline, or otherwise to help ensure that the guideline is in compliance with federal law.

(d) The Judicial Council may also review and report on other matters, including, but not limited to, all of the following:

- (1) The treatment of the income of a subsequent spouse or nonmarital partner.
- (2) The treatment of children from prior or subsequent relationships.
- (3) The application of the guideline in a case where a payor parent has extraordinarily low or extraordinarily high income, or where each parent has primary physical custody of one or more of the children of the marriage.
- (4) The benefits and limitations of a uniform statewide spousal support guideline and the interrelationship of that guideline with the state child support guideline.
- (5) Whether the use of gross or net income in the guideline is preferable.
- (6) Whether the guideline affects child custody litigation or the efficiency of the judicial process.
- (7) Whether the various assumptions used in computer software used by some courts to calculate child support comport with state law and should be made available to parties and counsel.

(e) The initial review by the Judicial Council shall be submitted to the Legislature and to the State Department of Social Services on or before December 31, 1993, and subsequent reviews shall occur at least every four years thereafter unless federal law requires a different interval.

(f) In developing its recommendations, the Judicial Council shall consult with a broad cross-section of groups involved in child support issues, including, but not limited to, all of the following:

- (1) Custodial and noncustodial parents.
- (2) Representatives of established women's rights and fathers' rights groups.
- (3) Representatives of established organizations that advocate for the economic well-being of children.
- (4) Members of the judiciary, district attorney's offices, the Attorney General's office, and the State Department of Social Services.
- (5) Certified family law specialists.
- (6) Academicians specializing in family law.
- (7) Persons representing low-income parents.
- (8) Persons representing recipients of assistance under the Aid to Families with Dependent Children (AFDC) program seeking child support services.

(g) In developing its recommendations, the Judicial Council shall seek public comment and shall be guided by the legislative intent that children share in the standard of living of both of their parents.

Comment. Section 4054 continues former Civil Code Section 4720(b)-(d) [as amended by 1992 Cal. Stat. ch. 848, § 5] without substantive change. In subdivisions (a) and (c), the

references to “the statewide uniform guideline” and “the” guideline have been substituted for the former references to the “guideline established in [former Civil Code] Section 4721.” These are not substantive changes.

Staff Note. Is subdivision (g) intended to be a generally applicable statement of legislative intent? If so, should this be made clear in Section 4050? Or should the reference to “legislative intent” be replaced with a reference to “principle stated in subdivision (f) of Section 4053”?

§ 4055. Formula for statewide uniform guideline for determining child support

4055. (a) The statewide uniform guideline for determining child support orders is as follows: $CS = K [HN - (H\%) (TN)]$.

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner’s net monthly disposable income.

(D) H% = approximate percentage of time that high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

<i>Total Net Disposable Income Per Month</i>	<i>K</i>
\$0–80020 + TN/16,000
\$801–7,00025
\$7,001–10,00020 + 350/TN
\$10,001–20,00016 + 400/TN
Over \$20,00012 + 800/TN

For example, if H% equals 20% and the total monthly net disposable income of the parents is \$1,000, $K = (1 + .20) \times .25$, or .30. If H% equals 80% and the total monthly net disposable income of the parents is \$1,000, $K = (2 - .80) \times .25$, or .30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5

6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) If the children who are the subject of the child support order are receiving assistance under the Aid to Families with Dependent Children (AFDC) program, H% shall be set at zero in the formula.

(7) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases where there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

Comment. Section 4055 continues former Civil Code Section 4721(a)-(b) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. In subdivision (b)(6), the reference to the acronym for the Aid to Families with Dependent Children program has been added for clarity and for consistency with Section 4054(f)(8).

Staff Note. In subdivision (b)(2) the substitution of the cross-reference to Section 4059 (formerly Civil Code Section 4721(g)) continues the cross-reference in the former subdivision. However, it appears that the cross-reference is meant to be to the “monthly net disposable income,” which is set forth in Section 4060 (formerly Civil Code Section 4721(h)). Should the cross-reference be changed?

§ 4056. Information to be in writing or on record

4056. At the request of any party, the court shall state, in writing or on the record, the following information used in determining the statewide uniform guideline amount:

- (a) The net monthly disposable income of each parent.

(b) The actual federal income tax filing status of each parent (for example, single, married, married filing separately, or head of household and number of exemptions).

(c) Deductions from gross income for each parent.

(d) The approximate percentage of time pursuant to paragraph (1) of subdivision (b) of Section 4055 that each parent has primary physical responsibility for the children compared to the other parent.

(e) The amount of support that would be received under the formula.

(f) Any rebuttal factors found under subdivision (b) of Section 4057.

(g) A finding that the revised amount is in the best interests of the children.

(h) Any other findings required by federal law.

Comment. Section 4056 continues former Civil Code Section 4721(c) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. The reference to the “statewide uniform guideline amount” has been substituted for the “guideline amount under this chapter.” This is not a substantive change.

§ 4057. Presumption that child support established by guideline is correct; rebuttal of presumption

4057. (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.

(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court finds, in writing or on the record, that application of the formula would be unjust or inappropriate in the particular case and that the revised amount is in the best interests of the children:

(1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

(2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowner’s insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(3) A parent’s subsequent spouse or nonmarital partner has income that helps meet that parent’s basic living expenses, thus increasing the parent’s disposable income available to spend on the children.

(4) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

(5) A party is not contributing to the needs of the children at a level commensurate with that party’s custodial time.

(6) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, all of the following:

(A) Cases in which the parents have different time-sharing arrangements for different children.

(B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

(C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

Comment. Section 4057 continues former Civil Code Section 4721(d)-(e) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. The language in subdivisions (a) and (b) has been revised to conform with the language of the Evidence Code sections dealing with presumptions. See, e.g., Evid. Code §§ 660-669.5 (presumptions affecting the burden of proof). This is not a substantive change. In subdivision (b), the reference to Section 4053 has been substituted for the broader reference to former Civil Code Section 4720. This is not a substantive change, since Section 4053 continues the relevant part of former Civil Code Section 4720 without substantive change.

§ 4058. Annual gross income

4058. (a) The annual gross income of each parent means income from whatever source derived, except as specified in subdivision (c) and including, but not limited to, all of the following:

(1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article.

(2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(3) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children.

(c) Annual gross income does not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.

Comment. Section 4058 continues former Civil Code Section 4721(f) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. In subdivision (c), "does not" has been substituted for "shall not." This is not a substantive change. In subdivision (a)(1), "the proceeding to establish a child support order under this article" has been substituted for "this order" for clarity. This is not a substantive change.

§ 4059. Annual net disposal income

4059. The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable to the following items or other items permitted under this article:

(a) The state and federal income tax liability resulting from the parties' taxable income. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents. State and federal income taxes shall be those actually payable (not necessarily current withholding) after considering appropriate filing status, all available exclusions, deductions, and credits. Unless the parties stipulate otherwise, the tax effects of spousal support shall not be considered in determining the net disposable income of the parties for determining child support, but shall be considered in determining spousal support consistent with Chapter 3 (commencing with Section 4330) of Part 3.

(b) Deductions attributed to the employee's contribution or the self-employed worker's contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided that the deducted amount is used to secure retirement or disability benefits for the parent.

(c) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of employment.

(d) Deductions for health insurance or health plan premiums for the parent and for any children the parent has an obligation to support and deductions for state disability insurance premiums.

(e) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the guideline, for natural or adopted children of the parent not residing in that parent's home, who are not the subject of the order to be established by the court, and of whom the parent has a duty of support. Unless the parent proves payment of the support, no deduction shall be allowed under this subdivision.

(f) Job-related expenses, if allowed by the court after consideration of whether the expenses are necessary, the benefit to the employee, and any other relevant facts.

(g) A deduction for hardship, as defined by Section 4070 and applicable published appellate court decisions. The amount of the hardship shall not be deducted from the amount of child support, but shall be deducted from the income of the party to whom it applies. In applying any hardship under subdivision (b) of Section 4071, the court shall seek to provide equity between competing child support orders.

Comment. Section 4059 continues former Civil Code Section 4721(g) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. In subdivision (g), the reference to Section 4070 has been substituted for the broader reference to former Civil Code Section 4722. This is not a substantive change, since Section 4070 continues the relevant part of the former section without substantive change.

§ 4060. Monthly net disposable income

4060. The monthly net disposable income shall be computed by dividing the annual net disposable income by 12. If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately.

Comment. Section 4060 continues former Civil Code Section 4721(h) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. The first sentence of this section has been revised to conform with the first sentence Section 4059.

§ 4061. Additional child support

4061. The amounts in Section 4062 if ordered to be paid, shall be considered additional support for the children and shall be computed in accordance with the following:

(a) If there needs to be an apportionment of expenses pursuant to Section 4062, the expenses shall be divided one-half to each parent, unless either parent requests a different apportionment pursuant to subdivision (b) and presents documentation which demonstrates that a different apportionment would be more appropriate.

(b) If requested by either parent, and the court determines it is appropriate to apportion expenses under Section 4062 other than one-half to each parent, the apportionment shall be as follows:

(1) The basic child support obligation shall first be computed using the formula set forth in subdivision (a) of Section 4055, as adjusted for any appropriate rebuttal factors in subdivision (b) of Section 4057.

(2) Any additional child support required for expenses pursuant to Section 4062 shall thereafter be ordered to be paid by the parents in proportion to their net disposable incomes as adjusted pursuant to subdivisions (c) and (d).

(c) In cases where spousal support is or has been ordered to be paid by one parent to the other, for purposes of allocating additional expenses pursuant to Section 4062, the gross income of the parent paying spousal support shall be decreased by the amount of the spousal support paid and the gross income of the parent receiving the spousal support shall be increased by the amount of the spousal support received for so long as the spousal support order is in effect and is paid.

(d) For purposes of computing the adjusted net disposable income of the parent paying child support for allocating any additional expenses pursuant to Section 4062, the net disposable income of the parent paying child support shall be

reduced by the amount of any basic child support ordered to be paid under subdivision (a) of Section 4055. However, the net disposable income of the parent receiving child support shall not be increased by any amount of child support received.

Comment. Section 4061 continues former Civil Code Section 4721(i) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change.

§ 4062. Allocation of additional child support; adjusted net disposable income

4062. (a) The court shall order the following as additional child support:

(1) Child care costs related to employment or to reasonably necessary education or training for employment skills.

(2) The reasonable uninsured health care costs for the children. There is a rebuttable presumption that the costs actually paid for the uninsured health care needs of the children are reasonable.

(b) The court may order the following as additional child support:

(1) Costs related to the educational or other special needs of the children.

(2) Travel expenses for visitation.

Comment. Section 4062 continues former Civil Code Section 4721(j) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change.

§ 4063. Payment to service provider

4063. Unless there is an assignment of rights pursuant to Section 11477 of the Welfare and Institutions Code, any payment ordered pursuant to Section 4062 may be ordered paid directly to a provider of services.

Comment. Section 4063 continues former Civil Code Section 4721(k) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change.

§ 4064. Adjustment for seasonal or fluctuating income

4064. The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent.

Comment. Section 4064 continues former Civil Code Section 4721(l) [as amended by 1992 Cal. Stat. ch. 848, § 6] without change.

§ 4065. Stipulated child support agreement

4065. (a) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement unless the parties declare all of the following:

(1) They are fully informed of their rights concerning child support.

(2) The order is being agreed to without coercion or duress.

(3) The agreement is in the best interests of the children involved.

(4) The needs of the children will be adequately met by the stipulated amount.

(b) A stipulated agreement of child support is not valid unless either of the following occurs:

(1) The parties declare the right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

(2) The district attorney has joined in the stipulation by signing it. The district attorney shall not stipulate to a child support order below the guideline amount if the children are receiving assistance under the Aid to Families with Dependent Children (AFDC) program, if an application for public assistance is pending, or if the parent receiving support has not consented to the order.

(c) If the parties to a stipulated agreement stipulate to a child support order below the amount established by the statewide uniform guideline, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.

Comment. Section 4065 continues former Civil Code Section 4721(m)-(o) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. In subdivision (c), the reference to the amount established “by the statewide uniform guideline” has been substituted for the former reference to the amount established by “this section,” meaning former Civil Code Section 4721. This is not a substantive change.

§ 4066. Order or stipulation designating family support

4066. Orders and stipulations otherwise in compliance with the statewide uniform guideline may designate as “family support” an unallocated total sum for support of the spouse and any children without specifically labeling all or any portion as “child support” so long as the amount is adjusted to reflect the effect of additional deductibility. The amount of the order shall be adjusted to maximize the tax benefits for both parents.

Comment. Section 4066 continues former Civil Code Section 4721(p) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. The reference to the “statewide uniform guideline” has been substituted for the former reference to “this guideline.” This is not a substantive change.

§ 4067. Continuing review by Legislature

4067. It is the intent of the Legislature that the statewide uniform guideline shall be reviewed by the Legislature at least every four years and shall be revised by the Legislature as appropriate to ensure that its application results in the determination of appropriate child support amounts. The review shall include consideration of changes required by applicable federal laws and regulations or recommended from time to time by the Judicial Council pursuant to Section 4054.

Comment. Section 4067 continues former Civil Code Section 4721(q) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. The reference to Section 4054 has been substituted for the narrower reference to former Civil Code Section 4720(b). This is not a substantive change. The reference to the “statewide uniform guideline” has been substituted for the former reference to the “uniform guideline provided by this chapter.” This is not a substantive change.

Staff Note. *Should this section be moved up to the front of the article? It could be added to Section 4050 or become Section 4051.*

§ 4068. Judicial Council worksheets and forms

4068. The Judicial Council may develop the following:

(a) Model worksheets to assist parties in determining the approximate amount of child support due under the formula provided in subdivision (a) of Section 4055 and the approximate percentage of time each parent has primary physical responsibility for the children.

(b) A form to assist the courts in making the findings and orders required by this article.

Comment. Section 4068 continues former Civil Code Section 4721(r) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. The phrase “the following” has been added and the section subdivided. The addition of “the following” makes this section consistent with other sections. See, e.g., Section 4058. These are not substantive changes.

Staff Note. *Should this section be moved up to follow Section 4054 (periodic review by Judicial Council)?*

§ 4069. Establishment of guideline as change of circumstances

4069. The establishment of the statewide uniform guideline constitutes a change of circumstances for the purpose of any modification of child support order entered before the guideline’s operative date.

Comment. Section 4069 continues former Civil Code Section 4721(s) [as amended by 1992 Cal. Stat. ch. 848, § 6] without substantive change. The reference to the “statewide uniform guideline” has been substituted for the former reference to “this guideline.” This is not a substantive change.

Staff Note. *Should this section be moved ? It might be placed toward the beginning of the article , since it deals with the effect of the establishment of the guideline.*

§ 4070. Financial hardship deductions

4070. If a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in Section 4071, on the request of a party, the court may allow the income deductions under Section 4059 that may be necessary to accommodate those circumstances.

Comment. Section 4070 continues the introductory sentence of former Civil Code Section 4722 [as amended by 1992 Cal. Stat. ch. 848, § 7] without substantive change.

§ 4071. Circumstances evidencing hardship

4071. (a) Circumstances evidencing hardship include the following:

(1) Extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.

(2) The minimum basic living expenses of either parent’s natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, on its own motion or on the request of a party, may allow such income deductions as necessary to accommodate these expenses after making the deductions allowable under paragraph (1).

(b) The maximum hardship deduction under paragraph (2) of subdivision (a) for each child who resides with the parent may be equal to, but shall not exceed, the support awarded each child subject to the order. For purposes of calculating this deduction, the amount of support per child established by the statewide uniform guideline shall be the total amount ordered divided by the number of children and not the amount established under paragraph (8) of subdivision (b) of Section 4055.

(c) The Judicial Council may develop tables in accordance with this section to reflect the maximum hardship deduction, taking into consideration the parent's net disposable income before the hardship deduction, the number of children for whom the deduction is being given, and the number of children for whom the support award is being made.

Comment. Section 4071 continues former Civil Code Section 4722(a)-(b) [as amended by 1992 Cal. Stat. ch. 848, § 7] without substantive change.

§ 4072. Statement of reasons for and duration of hardship deductions

4072. (a) If a deduction for hardship expenses is allowed, the court shall do both of the following:

- (1) State the reasons supporting the deduction in writing or on the record.
- (2) Document the amount of the deduction and the underlying facts and circumstances.

(b) Whenever possible, the court shall specify the duration of the deduction.

Comment. Section 4072 continues former Civil Code Section 4722(c) [as amended by 1992 Cal. Stat. ch. 848, § 7] without substantive change. The language of the former section has been revised for clarity. See also Section 10 (singular includes the plural).

§ 4073. Court to consider legislative goals when ordering hardship deduction

4073. The court shall be guided by the goals set forth in this article when considering whether or not to allow a financial hardship deduction, and, if allowed, when determining the amount of the deduction.

Comment. Section 4073 continues former Civil Code Section 4722(d) [as amended by 1992 Cal. Stat. ch. 848, § 7] without substantive change. The language of the former section has been revised for clarity. The reference to this article has been substituted for the narrower reference to former Civil Code Section 4720. This is not a substantive change, since the former section is continued in this article.

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

SEC. _____. Section 4201 of the Family Code is amended to read:

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 ~~minor~~ child for whom support may be ordered, the court may do either or both of the following:

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

(2) (b) 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. Section 4201 continues former Civil Code Section 4702(b) [as amended by 1992 Cal. Stat. ch. 848, § 4] without substantive change. The former limitation to minor children “of the marriage” has been omitted. This section applies to proceedings for support involving unmarried parents. See, e.g., Section 7637(a) (court authorized to order child support in Uniform Parentage Act proceeding). In subdivision (a)(2), the reference to “proceeding” has been substituted for “action.” This is a nonsubstantive change that conforms with Section 4200(b). In subdivision (b), the reference to Welfare and Institutions Code Section 279 has been substituted for the former reference to a repealed section of that code. This is consistent with Section 4351, which provides a similar rule for enforcement by a district attorney of spousal support ordered to be paid to a court-designated officer.

See also Sections 3555 (forwarding of support payments paid through county officer), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments).

Interim 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). Subdivision (b) is repealed to reflect the amendment to former Civil Code Section 4702(b) by 1992 Cal. Stat. ch. 848, § 4.

Staff 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.*

