

## Memorandum 93-46

**Subject: F-1001— Family Code Cleanup (Revised Comments)**

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Attached to this memorandum is a draft of Commission comments to sections affected by Assembly Bill 1500, the Family Code cleanup bill, which was enacted on Commission recommendation. This material is submitted for Commission approval so that it can be forwarded to legal publishers in October, as is our practice. We also plan to prepare a publication containing the Family Code comments that would serve as an update to last year's Family Code report (22 Cal. L. Revision Comm'n Reports 1 (1992)). The Commission may be interested to know that only 13 copies remain out of over 400 copies bound in soft cover.

There are no substantive issues concerning the attached comments, but they will need to be thoroughly cite-checked before they are sent to the publishers. The staff had planned to have this detailed work finished by this time, but with the loss of legal staff and competing demands on staff resources, this has not been possible. Accordingly, the staff is asking for authority to make technical corrections in the comments following the September meeting. Delaying approval of the comments until the November meeting would mean that publishers could not get the comments into their upcoming Family Code publications. This would be extremely undesirable in the inaugural year of the Family Code.

Some later technical adjustments to the comments will have to be made to reflect the Governor's action on other Family Code legislation. Of course, the Commission does not comment on legislation it has not recommended for enactment, but if a section added by AB 1500 is substantially amended by other legislation in the 1993 session, the relevant comment may need to be revised to avoid confusion. For example, another bill may add a new subdivision to a section in AB 1500, rendering references in the comment erroneous and confusing. Given the great deal of legislation in the family law arena, it will not be too long before many comments become obsolete, but to the extent we can help avoid confusion in 1994, the staff believes the effort should be made.

Although time is short, the staff encourages interested persons on the family law mailing list to bring to the staff's attention any technical errors in the comments so that they can be corrected before the comments are sent to the legal publishers. To assist in this effort, the attached comment draft includes temporary "Interim Comments" and bracketed cross-references to 1992 legislation — this material will be omitted before the official Commission comments are submitted to the legal publishers.

Respectfully submitted,

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Assistant Executive Secretary

# AB 1500 COMMENTS

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## AB 1500 COMMENTS

**Staff Note.** This document contains the draft comments to AB 1500, as enacted, 1993 Cal. Stat. ch. 219. Technical revisions will need to be made depending on action on related bills.

This document contains both "Comments" and "Interim Comments."

- *Comments* explain the law in relation to the operative law that will be replaced on January 1, 1994, mainly the Family Law Act (Civ. Code § 4000 *et seq.*). After approval by the Commission, the Comments will be official legislative history and will be published in the annotated codes.

- *Interim Comments* are staff comments indicating changes between versions of the Family Code legislation enacted in 1992 and 1993. These comments are temporary. They will not be published by the Commission and should not be printed in the annotated codes. They are provided for the guidance of persons doing detailed work involving the 1992 and 1993 bills.

### BUSINESS AND PROFESSIONS CODE

**Bus. & Prof. Code § 4996.21 (technical amendment). Certification of adoption service provider**

**Comment.** Section 4996.21 [as added by 1992 Cal. Stat. ch. 1353, § 1, operative Jan. 1, 1994] is amended to substitute a reference to the Family Code provision that replaced the relevant part of former Civil Code Section 220.20.

### CIVIL CODE

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

**Comment.** Part 1 (commencing with Section 25) of Division 1 is replaced by a new Part 1 (commencing with Civil Code Section 38) (persons of unsound mind), by Civil Code Section 43.1 (child conceived but not yet born), by Code of Civil Procedure Section 340.4 (statute of limitations on pre-birth injury), and by Division 11 (commencing with Section 6500) of the Family Code (minors).

**Interim Comment.** Former Section 25.9 [as amended by 1992 Cal. Stat. ch. 252, § 1] is continued without substantive change in Family Code Section 6924. This part is repealed because the repeal in 1992 Cal. Stat. ch. 163, § 160, was ineffective due to the amendment of Civil Code Section 25.9 by 1992 Cal. Stat. ch. 252, § 1.

**Civ. Code § 64 (repealed). Declaration of emancipation**

**Comment.** Former Section 64 [as amended by 1992 Cal. Stat. ch. 821, § 1] is continued without substantive change in Family Code Sections 7120-7123, and 7140. See Comments to these sections.

**Civ. Code § 65 (repealed). Rescission of declaration of emancipation**

**Comment.** Former Section 65 [as amended by 1992 Cal. Stat. ch. 821, § 2] is continued without substantive change in Family Code Sections 7130-7135, and 7143. See Comments to these sections.

**Civ. Code § 196.5 (repealed). Duration of duty of child support**

**Comment.** Former Section 196.5 [as amended by 1992 Cal. Stat. ch. 718, § 1] is continued without substantive change in Family Code Sections 3901 and 4000. See Fam. Code §§ 3901, 4000, & Comments.

**Civ. Code § 220.15 (repealed). Purpose of adoption**

**Comment.** Former Section 220.15 [as added by 1992 Cal. Stat. ch. 1353, § 1.5, operative Jan. 1, 1994] is continued without change in Family Code Section 8620.

**Civ. Code § 220.20 (repealed). Definitions**

**Comment.** Except as otherwise noted, the definitions in former Section 220.20 [as amended by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994] are continued without substantive change in Family Code Sections 8500-8548. The substance of subdivision (a) of the former provision pertaining to the duties of the adoption service provider is omitted as surplus. This is not a substantive change. See Family Code Sections 8801.5 (duties of adoption service provider) and 8801.7 (duties of adoption service provider). The definition of "personal knowledge" in subdivision (n) of former law is continued in Family Code Section 8801 (b) without substantive change.

**Civ. Code § 221.05 (repealed). Regulations**

**Comment.** Former Section 221.05 [as added by 1992 Cal. Stat. ch. 1353, § 3, operative Jan. 1, 1994] is continued without change in Family Code Section 8621.

**Civ. Code § 221.07 (repealed). Notice of service limitations**

**Comment.** Former Section 221.07 [as added by 1992 Cal. Stat. ch. 1353, § 4, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8622.

**Civ. Code § 222.10 (repealed). Relinquishment of child for adoption**

**Comment.** Former Section 222.10 [as amended by 1992 Cal. Stat. ch. 667, § 1] is continued in Family Code Section 8700 without substantive change.

**Civ. Code § 222.71 (repealed). Venue where child freed for adoption under Welfare and Institutions Code Section 300**

**Comment.** Former Section 222.71 [as added by 1992 Cal. Stat. ch. 455, § 1] is continued without substantive change in Family Code Section 8714(a).

**Civ. Code § 224.21 (repealed). Conditions for placement for adoption**

**Comment.** Former Section 224.21 [as added by 1992 Cal. Stat. ch. 1353, § 5, operative Jan. 1, 1994] is continued in Family Code Section 8801.3 without substantive change.

**Civ. Code § 224.24 (repealed). Duties of adoption service provider**

**Comment.** Former Section 224.24 [as added by 1992 Cal. Stat. ch. 1353, § 6, operative Jan. 1, 1994] is continued in Family Code Section 8801.5 without substantive change.

**Civ. Code § 224.26 (repealed). Duties of adoption service provider**

**Comment.** Former Section 224.26 [as added by 1992 Cal. Stat. ch. 1353, § 7, operative Jan. 1, 1994] is continued in Family Code Section 8801.7 without substantive change.

**Civ. Code § 224.30 (repealed). Adoption petition**

**Comment.** Former Section 224.30 [as amended by 1992 Cal. Stat. ch. 1353, § 8, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8802.

**Civ. Code § 224.36 (repealed). Withdrawal of adoption petition**

**Comment.** Former Section 224.36 [as amended by 1992 Cal. Stat. ch. 1353, § 9, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8804.



**Civ. Code § 224.44 (repealed). Interview of petitioner**

**Comment.** Former Section 224.44 [as added by 1992 Cal. Stat. ch. 1353, § 10, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8808.

**Civ. Code § 224.62 (repealed). Consent of birth parents**

**Comment.** Former Section 224.62 [as added by 1992 Cal. Stat. ch. 1353, § 11, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8814.

**Civ. Code § 224.63 (repealed). Revocation and waiver**

**Comment.** Former Section 224.63 [as added by 1992 Cal. Stat. ch. 1353, § 12, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8814.5.

**Civ. Code § 224.64 (repealed). Consent irrevocable; rights in interim**

**Comment.** Former Section 224.64 [as added by 1992 Cal. Stat. ch. 1353, § 13, operative Jan. 1, 1994] is continued in Family Code Section 8815 without substantive change.

**Civ. Code § 226.23 (repealed). Intercountry adoptions finalized in foreign country**

**Comment.** Former Section 226.23 [as amended by 1992 Cal. Stat. ch. 435, § 1] is continued in Family Code Section 8904 without substantive change.

**Civ. Code § 226.69 (repealed). Readoption**

**Comment.** Former Section 226.69 [as added by 1992 Cal. Stat. ch. 435, § 2] is continued in Family Code Section 8919 without substantive change.

**Civ. Code § 227.20 (repealed). Investigation**

**Comment.** Former Section 227.20 [as amended by 1992 Cal. Stat. ch. 472, § 2] is continued without substantive change in Family Code Section 9001.

**Civ. Code § 227.30 (repealed). Cost of investigation**

**Comment.** Former Section 227.30 [as amended by 1992 Cal. Stat. ch. 472, § 3] is continued without substantive change in Family Code Section 9002.

**Civ. Code § 227.40 (repealed). Consent of birth parents**

**Comment.** Former Section 227.40 [as amended by 1992 Cal. Stat. ch. 472, § 4] is continued without substantive change in Family Code Section 9003.

**Civ. Code § 227.46 (repealed). Withdrawal of consent**

**Comment.** Former Section 227.46 [as amended by 1992 Cal. Stat. ch. 472, § 5] is continued without substantive change in Family Code Section 9005.

**Civ. Code § 227.50 (repealed). Withdrawal of petition**

**Comment.** Former Section 227.50 [as amended by 1992 Cal. Stat. ch. 472, § 6] is continued without substantive change in Family Code Section 9006.

**Civ. Code § 233 (repealed). Petition to free child from parental custody and control**

**Comment.** Former Section 233 [as amended by 1992 Cal. Stat. ch. 472, § 7] is continued without substantive change in Family Code Sections 7806, 7841, 7845, 7850-7852. See the Comments to these sections.

**Civ. Code § 1799.98 (amended). Title not waiver of specified provisions**

**Comment.** Section 1799.98 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Interim Comment.** Section 1799.98 is amended to delete a cross-reference. Family Code Section 2035(c) is repealed and consolidated with similar provisions applicable to unmarried parties in Family Code Section 6321. The omission of this cross-reference from this section is not a substantive change, since the substance of the omitted reference is included in Family Code Section 753 (excluding one spouse from other's dwelling), which is included in the references in Section 1799.98(a)(2).

**Civ. Code § 4100 (repealed). Marriage relation**

**Comment.** Former Section 4100 [as amended by 1992 Cal. Stat. ch. 318, § 1] is continued without substantive change in Family Code Section 300.

**Civ. Code § 4200 (repealed). Procedural requirements; effect of noncompliance**

**Comment.** Former Section 4200 [as amended by 1992 Cal. Stat. ch. 318, § 2] is continued without substantive change in Family Code Section 306.

**Civ. Code § 4202 (repealed). Preparation and filing of certificate of registry**

**Comment.** Former Section 4202 [as amended by 1992 Cal. Stat. ch. 318, § 3] is restated without substantive change in Family Code Section 359.

**Civ. Code § 4203 (repealed). Replacement of lost certificate of registry**

**Comment.** Former Section 4203 [as amended by 1992 Cal. Stat. ch. 318, § 4] is restated without substantive change in Family Code Section 360.

**Civ. Code § 4204 (repealed). Expiration of license; duties of county clerk and county recorder**

**Comment.** Former Section 4204 [as amended by 1992 Cal. Stat. ch. 318, § 5] is restated without substantive change in Family Code Sections 356-357.

**Civ. Code § 4206 (repealed). Essential element of solemnization**

**Comment.** Former Section 4206 [as amended by 1992 Cal. Stat. ch. 318, § 6] is continued without substantive change in Family Code Section 420(a).

**Civ. Code § 4208 (repealed). Statement of person solemnizing marriage**

**Comment.** Former Section 4208 [as amended by 1992 Cal. Stat. ch. 318, § 7] is continued without substantive change in Family Code Sections 422-423.

**Civ. Code § 4210 (repealed). Unrecorded marriage**

**Comment.** Former Section 4210 [as amended by 1992 Cal. Stat. ch. 318, § 8] is continued without substantive change in Family Code Section 425.

**Civ. Code § 4213 (repealed). Confidential marriage license**

**Comment.** Former Section 4213 [as amended by 1992 Cal. Stat. ch. 318, § 9] is restated without substantive change in Family Code Sections 500-536. See Fam. Code §§ 500-536 Comments.

**Civ. Code § 4216 (repealed). Application to certain religious marriages**

**Comment.** Former Section 4216 [as amended by 1992 Cal. Stat. ch. 318, § 10] is continued without substantive change in Family Code Section 307.

**Civ. Code § 4357.5 (repealed). Expedited support order**

**Comment.** Former Section 4357.5 [as amended by 1992 Cal. Stat. ch. 848, § 1] is continued without substantive change in Family Code Sections 3620-3634 and related sections.

**Civ. Code § 4359 (repealed). Ex parte protective orders;**

**Comment.** Former Section 4359 [as amended by 1992 Cal. Stat. ch. 1136, § 1] is continued without substantive change in Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

**Civ. Code § 4370.5 (repealed). Attorney's fees**

**Comment.** Former Section 4370.5 [as amended by 1992 Cal. Stat. ch. 356, § 1] is continued in Family Code Section 2032 without substantive change.

**Civ. Code § 4372 (repealed). Encumbrance to pay family law attorney's fees**

**Comment.** Former Section 4372 [as added by 1992 Cal. Stat. ch. 356, § 2] is continued in Family Code Section 2033 without substantive change.

**Civ. Code § 4373 (repealed). Objection to real property attorney's fee lien**

**Comment.** Former Section 4373 [as added by 1992 Cal. Stat. ch. 356, § 3] is continued in Family Code Section 2034 without substantive change.

**Civ. Code § 4384.5 (repealed). Exception from renewal requirement**

**Comment.** Former Section 4384.5 [as added by 1992 Cal. Stat. ch. 718, § 3] is continued in Family Code Section 4502 without substantive change.

**Civ. Code § 4390 (repealed). Definitions**

**Comment.** Former Section 4390 [as amended by 1992 Cal. Stat. ch. 848, § 2] is continued without substantive change in Family Code Sections 5200-5220 and related sections.

**Civ. Code § 4390.3 (repealed). Wage assignment order**

**Comment.** Former Section 4390.3 [as amended by 1992 Cal. Stat. ch. 848, § 3] is continued without substantive change in Family Code Sections 5208, 5230-5231, and 5260.

**Civ. Code § 4395 (repealed). Software used to determine support**

**Comment.** Former Chapter 6 (commencing with Section 4395) of Title 1.5 of Part 5 of Division 4 of the Civil Code [as added by 1992 Cal. Stat. ch. 1157, § 1] is continued without substantive change in Chapter 9 (commencing with Section 3830) of Part 1 of Division 9 of the Family Code.

**Civ. Code § 4602 (repealed). Custody investigation**

**Comment.** Former Section 4602 [as amended by 1992 Cal. Stat. ch. 427, § 14] is continued without substantive change in Chapter 6 (commencing with Section 3110) of Part 2 of Division 8 of the Family Code.

**Civ. Code § 4612 (repealed). Custody and visitation orders consistent with domestic violence orders**

**Comment.** Former Civil Code Section 4612 [as added by 1992 Cal. Stat. ch. 1136, § 2] is continued in Family Code Section 3031 without substantive change.

**Civ. Code § 4700.11 (repealed). Child support delinquency**

**Comment.** Former Section 4700.11 [as amended by 1992 Cal. Stat. ch. 50, § 2] is continued without substantive change in Family Code Sections 4720-4733.

**Civ. Code § 4702 (repealed). Payments to county officer**

**Comment.** Former Section 4702 [as amended by 1992 Cal. Stat. ch. 848, § 4] is continued without substantive change in Family Code Sections 4200-4203.

**Civ. Code § 4720 (repealed). Legislative intent; Judicial Council review**

**Comment.** Former Section 4720 [as amended by 1992 Cal. Stat. ch. 848, § 5] is continued without substantive change in Family Code Sections 4050-4054.

**Civ. Code § 4721 (repealed). Child support guideline**

**Comment.** Former Section 4721 [as amended by 1992 Cal. Stat. ch. 848, § 6] is continued without substantive change in Family Code Sections 4055-4069.

**Civ. Code § 4722 (repealed). Hardship exemptions**

**Comment.** Former Section 4722 [as amended by 1992 Cal. Stat. ch. 848, § 7] is continued without substantive change in Family Code Sections 4070-4073.

**Civ. Code §§ 4760-4793 (repealed). Family Law Pilot Projects**

**Comment.** Former Civil Code Sections 4760-4793 [as added by 1992 Cal. Stat. ch. 411, § 2] are continued without substantive change in Family Code Sections 20000-20043. Former references to this "title" have been changed to this "part" to reflect the structure of the Family Code. Other minor changes have been made to conform to the style of the Family Code.

The following table indicates the disposition of each former Civil Code section in the Family Code:

<i>Civil Code</i>	<i>Family Code</i>	<i>Civil Code</i>	<i>Family Code</i>
4760 .....	20000	4778 .....	20025
4761 .....	20001	4778.5 .....	20026
4762 .....	20002	4779 .....	20030
4763 .....	20010	4780 .....	20002
4764 .....	20011	4781 .....	20031
4765 .....	20012	4782 .....	20032
4766 .....	20013	4783 .....	20033
4767 .....	20014	4784 .....	20034
4768 .....	20015	4785 .....	20035
4769 .....	20016	4786 .....	20036
4770 .....	20017	4787 .....	20037
4771 .....	20018	4788 .....	20038
4772 .....	20019	4789 .....	20039
4773 .....	20020	4790 .....	20040
4774 .....	20021	4791 .....	20041
4775 .....	20022	4792 .....	20042
4776 .....	20023	4793 .....	20043
4777 .....	20024		

**Civ. Code § 4800.6 (repealed). Notices in petition and judgment**

**Comment.** Former Section 4800.6 [as amended by 1992 Cal. Stat. ch. 159, § 1] is continued in Family Code Section 2628 without substantive change.

**Civ. Code § 4800.8 (repealed). Division of retirement plan benefits**

**Comment.** Former Section 4800.8 [as amended by 1992 Cal. Stat. ch. 431, § 1] is continued in Family Code Section 2610 without substantive change. See Fam. Code § 2610 Comment.

**Civ. Code § 4800.10 (repealed). Disclosure of assets and liabilities**

**Comment.** Former Section 4800.10 [as amended by 1992 Cal. Stat. ch. 356, § 4] is continued in Family Code Sections 2100-2109 without substantive change.

**Civ. Code § 4800.11 (repealed). Relief from judgment**

**Comment.** Former Section 4800.11 [as amended by 1992 Cal. Stat. ch. 356, § 5] is continued in Family Code Sections 2120-2129 without substantive change.

**Civ. Code § 4801 (repealed). Spousal support**

**Comment.** Former Section 4801 [as amended by 1992 Cal. Stat. ch. 427, § 15] is continued without substantive change in Family Code Sections 4330-4339 and related provisions.

**Civ. Code § 5110.740 (repealed). Estate planning documents**

**Comment.** Former Section 5110.740 [as amended by 1992 Cal. Stat. ch. 51, § 1] is continued without substantive change in Family Code Section 853.

**Civ. Code § 5127 (repealed). Management and control of community real property**

**Comment.** Former Section 5127 [as amended by 1992 Cal. Stat. ch. 356, § 6] is continued in Family Code Section 1102 without substantive change.

**Civ. Code § 5152 (repealed). UCCJA jurisdictional requirements**

**Comment.** Former Section 5152 [as amended by 1992 Cal. Stat. ch. 392, § 1] is continued in Family Code Section 3403 without substantive change.

**Civ. Code § 5157 (repealed). Jurisdiction declined by reason of conduct**

**Comment.** Former Section 5157 [as amended by 1992 Cal. Stat. ch. 392, § 2] is continued in Family Code Section 3408 without substantive change.

**Civ. Code § 5158 (repealed). Information to be provided to court**

**Comment.** Former Section 5158 [as amended by 1992 Cal. Stat. ch. 392, § 3] is continued in Family Code Section 3409 without substantive change.

**Civ. Code § 7004 (repealed). Presumption of paternity**

**Comment.** Former Section 7004 [as amended by 1992 Cal. Stat. ch. 849, § 1.5] is continued in Family Code Sections 7611, 7611.5, and 7612 without substantive change.

**Civ. Code § 7009 (repealed). Custody and visitation orders consistent with domestic violence orders**

**Comment.** Former Civil Code Section 7009 [as added by 1992 Cal. Stat. ch. 1136, § 2] is continued in Family Code Section 3031 without substantive change. Section 3031 is applicable to custody and visitation determined in an action pursuant to the Uniform Parentage Act. See Sections 3021 (application of Part 2 of custody division), 7604 (pendente lite relief of custody or grant of visitation rights).

**Civ. Code § 7020 (repealed). Ex parte protective orders**

**Comment.** Former Section 7020 [as amended by 1992 Cal. Stat. ch. 1136, § 4] is continued without substantive change in Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

## CODE OF CIVIL PROCEDURE

### **Code Civ. Proc. § 128 (amended). Powers and duties of courts**

**Comment.** Subdivision (e) of Section 128 [as amended by 1992 Cal. Stat. ch. 697, § 2] is amended to substitute a reference to the Family Code provision defining "domestic violence." See Fam. Code § 6211 ("domestic violence" defined) & Comment.

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

**Comment.** A new subdivision (f) is added to Section 527.6 that continues the substance of former Civil Code Section 4351.6 (domestic violence support persons) insofar as it applied to a proceeding under Section 527.6. Subdivision designations have been adjusted for the insertion of the new subdivision (f).

Subdivision (k) is amended to replace the former Civil Code and Code of Civil Procedure references with a reference to the Family Code.

**Interim Comment.** The reference to Part 4 (commencing with Section 240) of Division 2 is replaced by a reference to Division 10 (Domestic Violence Prevention Act). This is not a substantive change, since the cross-reference is intended to refer to a proceeding related to domestic violence under the Family Code and these provisions are now consolidated in Division 10. The language changes in subdivision (d) are by Legislative Counsel.

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

**Comment.** Subdivision (b) of Section 529 is amended to refer to the Family Code provisions that replaced the Code of Civil Procedure and Civil Code provisions. The reference to "applicant" has been substituted for the former reference to "plaintiff." This is not a substantive change.

**Interim Comment.** The reference to Part 4 (commencing with Section 240) of Division 2 is replaced by a reference to Division 10 (Domestic Violence Prevention Act). This is not a substantive change, since the cross-reference is intended to refer to a proceeding related to domestic violence under the Family Code and these provisions are now consolidated in Division 10. The language changes in subdivision (a) are by Legislative Counsel.

### **Code Civ. Proc. § 545.5 (repealed). Conditions of issuance of mutual restraining order**

**Comment.** Former Section 545.5 [as amended by 1992 Cal. Stat. ch. 1136, § 5] is continued in Family Code Section 6305 without substantive change.

### **Code Civ. Proc. § 547.7 (repealed). Custody and visitation orders consistent with restraining or protective orders**

**Comment.** Former Section 547.7 [as added by 1992 Cal. Stat. ch. 1136, § 6] is continued without substantive change in Family Code Section 3031. Section 3031 is applicable to custody and visitation determined in a proceeding brought pursuant to the Domestic Violence Prevention Act. See Sections 3021 (application of Part 2 of custody division), 6223 (matters to be considered when custody or visitation order issued pursuant to Domestic Violence Prevention Act).

### **Code Civ. Proc. § 548 (repealed). Duration of domestic violence restraining order**

**Comment.** Former Section 548 [as amended by 1992 Cal. Stat. ch. 149, § 1] is continued in Family Code Section 6345 without substantive change. See Fam. Code § 6345 Comment.

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

**Comment.** Section 583.161 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions and to conform it to Family Code Section 3601.

**Interim Comment.** Section 583.161 is amended to omit the reference to Family Code Section 4101, which continued a former section that was subject to repeal, on January 1, 1993, by a sunset clause. No action has been taken by the Legislature to prevent the sunset from taking effect and, therefore, Section 4101 has been repealed.

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

**Comment.** Subdivision (b) of Section 683.130 [as amended by 1992 Cal. Stat. ch. 718, § 4] is amended to delete a cross-reference to subdivision (d). This corrects an error made in Section 4 of Chapter 718 of the Statutes of 1992, which deleted subdivision (d).

Subdivision (c) is amended to substitute a cross-reference to the substantive rule in Family Code Section 4502. This is not a substantive change. Subdivision (c) is also amended to make clear that it applies to family support judgments. See Fam. Code § 4501 (enforcement of family support).

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

**Comment.** Subdivision (c) of Section 699.560 [as amended by 1992 Cal. Stat. ch. 283, § 4] is amended to substitute a reference to the Family Code section that replaced the former Civil Code section.

**Interim Comment.** Subdivision (c) of Section 699.560 is amended to restore a change that was chaptered out.

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

**Comment.** Section 704.114 [as amended by 1992 Cal. Stat. ch. 851, § 2] is amended to conform to the terminology of the Family Code. See Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). The section has also been divided into subdivisions and revised for clarity. See Section 706.011 ("earnings assignment order for support" defined).

**Code Civ. Proc. § 704.160 (technical amendment). Worker's compensation**

**Comment.** Section 704.160 [as amended by 1992 Cal. Stat. ch. 848, § 10] is amended to substitute references to "earnings assignment order for support" and the Family Code section defining the term. These are not substantive changes.

**Code Civ. Proc. § 917.7 (technical amendment). Appeal does not stay custody or exclusion from dwelling order**

**Comment.** Section 917.7 is amended to substitute a reference to the Family Code for the reference to former Civil Code Section 4359. A general reference to "a dwelling" has been substituted for the former reference to specific dwellings. This allows the Family Code provisions relating to exclusion from a dwelling to control the details of this type of order. This is not a substantive change, but prevents a conflict from arising in the future where one statute is amended without making a similar revision to the other. For provisions of the Family Code relating to the exclusion of a party from a dwelling, see, e.g., Fam. Code §§ 6321 (ex parte order), 6340 (order after notice and hearing), 6360 (order included in judgment).

**Code Civ. Proc. § 1219 (amended). Contempt**

**Comment.** Subdivision (d)(2) of Section 1219 is amended to substitute a reference to the Family Code provision defining "domestic violence." The Family Code definition is the same as the definition formerly included in this provision, except that the Family Code provision applies to children. See Fam. Code § 6211 ("domestic violence" defined) & Comment. For the special provisions applicable to child witnesses, see Code Civ. Proc. 1219.5 (referral to probation officer where minor in contempt); Penal Code §§ 1346-1348.5 (examination of child victims of abuse).

**Code Civ. Proc. § 1699 (repealed). Effect of registration of foreign support or assignment order**

**Comment.** Former Section 1699 [as amended by 1992 Cal. Stat. ch. 848, § 11] is continued in Family Code Section 4853 without substantive change.

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

**Comment.** Subdivision (b) of Section 2032 [as amended by 1992 Cal. Stat. ch. 615, § 6] is amended to substitute the new reference to the Uniform Act on Blood Tests To Determine Paternity in the Family Code.

**Interim Comment.** Section 2032 is amended to restore conforming revisions in AB 2641 (1992 Cal. Stat. ch. 163, § 65) that were chaptered-out by SB 1804 (1992 Cal. Stat. ch. 615, § 6).

## EDUCATION CODE

**Educ. Code § 22253 (technical amendment). Election of disability and death benefit coverage under STRS**

**Comment.** Subdivision (c)(3) of Section 22253 [as added by 1992 Cal. Stat. ch. 1166, § 7] is amended to substitute a reference to the Family Code provisions regarding marriage settlement agreements. The provisions formerly referred to in Section 22253 (Civ. Code § 5133 *et seq.*) were repealed in 1985 and replaced by Civil Code Section 5200 *et seq.* See 1985 Cal. Stat. ch. 1315, §§ 2-3. Civil Code Section 5200 *et seq.* have been repealed and replaced by Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See Fam. Code §§ 1500-1620 (marital agreements) & Comments.

**Educ. Code § 22253.5 (technical amendment). Action to enforce signature or waiver**

**Comment.** Section 22253.5 [as added by 1992 Cal. Stat. ch. 1166, § 7] is amended to substitute a reference to the Family Code section that replaced former Civil Code Section 5125.1.

**Educ. Code § 22401.6 (technical amendment). Election of disability and death benefit coverage under STRS**

**Comment.** Subdivision (a)(3) of Section 22401.6 [as added by 1992 Cal. Stat. ch. 1166, § 8.4] is amended to substitute a reference to the Family Code provisions regarding marriage settlement agreements. The provisions formerly referred to in Section 22401.6 (Civ. Code § 5133 *et seq.*) were repealed in 1985 and replaced by Civil Code Section 5200 *et seq.* See 1985 Cal. Stat. ch. 1315, §§ 2-3. Civil Code Section 5200 *et seq.* have been repealed and replaced by Part 5 (commencing with Section 1500) of Division 4 of the Family Code. See Fam. Code §§ 1500-1620 (marital agreements) & Comments.

**Interim Comment.** This section is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 67) that was chaptered-out by SB 1420 (1992 Cal. Stat. ch. 1166, §§ 8 & 8.4).

**Educ. Code § 22401.7 (technical amendment). Action to enforce signature or waiver**

**Comment.** Section 22401.7 [as added by 1992 Cal. Stat. ch. 1166, § 8.5] is amended to substitute a reference to the Family Code section that replaced former Civil Code Section 5125.1.

## EVIDENCE CODE

**Evid. Code § 621.1 (repealed). Pilot project on paternity**

**Comment.** Former Section 621.1 [as added by 1992 Cal. Stat. ch. 849, § 2] is continued in Family Code Sections 20100-20104 (paternity pilot projects) without substantive change.



**Evid. Code § 895.5 (repealed). Paternity index**

**Comment.** Former Section 895.5 [as amended by 1992 Cal. Stat. ch. 851, § 3] is continued without change in Family Code Section 7555.

**Evid. Code § 1037.7 (repealed). Definitions**

**Comment.** Former Section 1037.7 is superseded by a new Section 1037.7.

**Evid. Code § 1037.7 (added). Definitions**

**Comment.** Section 1037.7 substitutes a reference to the Family Code provision defining "domestic violence" for the definitions of "abuse," "domestic violence," and "family or household member" in the former section. This is not a substantive change, since the Family Code definition of "domestic violence" continues the substance of the omitted definitions. See Fam. Code § 6211 ("domestic violence" defined) & Comment. See also Fam. Code §§ 6203 ("abuse" defined), 6209 ("cohabitant" and "former cohabitant" defined).

**Evid. Code § 1107 (amended). Admissibility of battered women's syndrome evidence**

**Comment.** Subdivision (c) of Section 1107 is amended to substitute references to the provisions of the Family Code that replaced the relevant provisions of former Code of Civil Procedure Section 542.

**Evid. Code § 1152.5 (technical amendment). Restrictions on admissibility of statements made during mediation**

**Comment.** Subdivision (d) of Section 1152.5 is amended to substitute references to the Family Code provisions that replaced the former provisions of the Civil Code and Code of Civil Procedure.

## FAMILY CODE

**Fam. Code § 2 (amended). Continuation of existing law**

**Comment.** The first part of Section 2 is comparable to Civil Code Section 5 and is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Prob. Code § 2(a); Veh. Code § 2. See also Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision). The last clause makes clear that a statutory reference to a new Family Code provision includes a reference to the former law from which it is drawn. Cf. Gov't Code § 9604 (reference to previously existing provision deemed reference to restatement or continuation).

A number of terms and phrases are used in the Comments to the sections of the Family Code to indicate the sources of the sections and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision "continues" a former provision "without change" if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where punctuation is changed without a change in meaning. Some Comments may describe the relationship by simply stating that the Family Code provision "continues" or is "the same as" a former provision, or is "the same as" a provision of a uniform act.

(2) *Continues without substantive change.* A new provision "continues" a former provision "without substantive change" if the substantive law remains the same, but the language differs to an insignificant degree.

(3) *Restates without substantive change.* A new provision "restates" a former provision "without substantive change" if the substantive law remains the same but the language differs to a

significant degree. Some Comments may describe the new provision as being the "same in substance."

(4) *Exceptions, additions, omissions.* If part of a former provision is "continued" or "restated," the Comment may say that the former provision is continued or restated, but also note the specific differences as "exceptions to," "additions to," or "omissions from" the former provision.

(5) *Generalizes, broadens, restates in general terms.* A new provision may be described as "generalizing," "broadening," or "restating in general terms" a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(6) *Supersedes, replaces.* A provision "supersedes" or "replaces" a former provision if the new provision deals with the same subject as the former provision, but treats it in a significantly different manner.

(7) *New.* A provision is described as "new" where it has no direct source in prior statutes.

(8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be "drawn from" a uniform act, model code, or the statutes of another state. In these cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(9) *Codifies.* A Comment may state that a new provision "codifies" a case-law rule that has not previously been enacted into statutory law.

(10) *Makes clear, clarifies.* A new provision may be described as "making clear" a particular rule or "clarifying" a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

(11) *Statement in Comment that section is "comparable" to another section.* A Comment may state that a provision is "comparable" to another provision. If the Comment to a section notes that another section is "comparable," that does not mean that the other section is the same or substantially the same. The statement is included in the Comment so that the statute user is alerted to the other section and can review the cases under that section for possible use in interpreting the section containing the statement in the Comment.

**Interim Comment.** The last clause is added to Section 2 to make clear that a statutory reference to a new Family Code provision includes a reference to the former law from which it is drawn.

**Fam. Code § 55 (repealed). "Abuse"**

**Interim Comment.** Former Section 55 is continued in Section 6203 without substantive change. This section is being moved into Division 10 (Prevention of Domestic Violence), since the term is used primarily in that division. However, the section is still applicable to the whole code. See Section 6201 (application of part).

**Fam. Code § 57 (repealed). "Affinity"**

**Interim Comment.** Former Section 57 is continued in Section 6205 without substantive change. This section is being moved into Division 10 (Prevention of Domestic Violence), since the term is used primarily in that division. However, the section is still applicable to the whole code. See Section 6201 (application of part).

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

**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 who is not self-supporting. 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 § 60 (repealed). "Cohabitant"**

**Interim Comment.** Former Section 60 is continued in Section 6209 without substantive change. This section is being moved into Division 10 (Prevention of Domestic Violence), since the term is used primarily in that division. However, the section is still applicable to the whole code. See Section 6201 (application of part).

**Fam. Code § 63 (added). "Community estate"**

**Comment.** Section 63 generalizes definitions in former Civil Code Sections 4800(a) (property division) and 5120.020 (liability for debts). Former Civil Code Section 5120.020 provided a special definition of community *property*, whereas this section defines community *estate*. This is not a substantive change. Generalization of the definition of community estate to apply to the entire code is not intended to make any substantive changes. Thus, while generalization of this definition makes it newly applicable to Section 1101 (remedies for breach of fiduciary duty between spouses), no substantive change results, because the fiduciary duties between spouses to which the remedies apply are provided in Sections 1100 and 1102.

The language in former Civil Code Section 4800(a) concerning assets and liabilities is omitted as surplus. This is not a substantive change. See, e.g., Sections 2551 (characterization of liabilities), 2552 (valuation date), 2556 (continuing jurisdiction).

This section omits the language found in former Civil Code Section 5120.020(a) stating that community property includes real property situated in another state that would be community property if situated in this state. This language is no longer necessary, since Section 760 provides that community property includes real property, wherever situated, acquired by a married person during marriage while domiciled in this state. See Section 760 Comment. When enacted in 1984 (as former Civil Code Section 5120.020), the inclusion of quasi-community property within the formerly used term "community property" was intended to help implement the policy of Section 912 that quasi-community property is treated as community property rather than separate property for purposes of liability. For background on former Civil Code Section 5120.020, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

See also Sections 65 ("community property" defined in Section 760 *et seq.*), 125 ("quasi-community property" defined), 700 (real property includes leasehold interests in real property), 912 (liability of quasi-community property).

**Fam. Code § 70 (repealed). "Domestic violence"**

**Interim Comment.** Former Section 70 is continued in Section 6211 without substantive change. This section is being moved into Division 10 (Prevention of Domestic Violence), since the term is used primarily in that division. However, the section is still applicable to the whole code. See Section 6201 (application of part).

**Fam. Code § 75 (repealed). "Domestic violence prevention order"**

**Interim Comment.** Former Section 75 is not continued in the Family Code. This term was created in the original Family Code legislation and was provided for drafting convenience. However, the substance of this section is now contained in the term "protective order," defined by Section 6218.

**Fam. Code § 105 (added). "Person"**

**Comment.** Section 105 is new and is drawn from Evidence Code Section 175 and Government Code Section 17.

**Fam. Code § 110 (added). "Proceeding"**

**Comment.** Section 110 is a new provision added for drafting convenience. One purpose of this section is to make clear that where "proceeding" is used in this code, there is no intention to exclude an "action." This section rejects hypertechnical arguments that the application of a

particular rule depends on the fortuity of whether a particular matter is termed an action or a proceeding. Thus, for example, Section 200 concerning the jurisdiction of the superior court in "proceedings" under this code, applies with equal force to any matter referred to as an "action."

**Fam. Code § 150 (technical amendment). "Support"**

**Comment.** The first and second sentences of Section 150 continue without change and generalize former Civil Code Section 4390(h). The third sentence of Section 150 is a new provision that makes clear that "support" includes maintenance and education of a minor child or an unmarried child described in Section 3901. As used in a particular provision, this all-inclusive definition does not apply if the provision or context otherwise requires. See Section 50.

**Interim 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 described in Section 3901.

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

**Comment.** Subdivision (a) of Section 213 continues former Civil Code Section 4355.6 without substantive change.

Subdivision (b) is new and has been added to state the application of this section. The application of former Civil Code Section 4355.6 was unclear, because the section did not include any language specifying the proceedings to which it applied.

For provisions concerning situations in which a child may be supported, see Sections 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated child), 4000 (civil action to enforce parent's duty to support), 4001 (order for child support).

**Interim 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 (technical amendment). Notice prerequisite to validity of order**

**Comment.** Section 215 continues former Civil Code Section 4809 without substantive change and adds "visitation" to the introductory clause. The reference to a "minor" child has been omitted to recognize that the proceeding may have been for support of an adult child. See Sections 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated child), 4000 (civil action to enforce parent's duty to support), 4001 (order for child support). The word "support" has been substituted for "support, maintenance, or education," since "support" includes maintenance and education when used in reference to a minor child or a child described by Section 3901. See Section 150. References to "decree" have been omitted as surplus. See Section 100 ("judgment" and "order" include decree, as appropriate).

**Interim 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 § 231 (technical amendment). Application of part**

**Comment.** Section 231 is new. This part collects general provisions applicable to any restraining order contained in a summons in the proceedings referred to in this section.

**Interim Comment.** Section 231 is amended to correct a cross-reference.

**Fam. Code § 240 (repealed). Application of part**

**Interim Comment.** Former Section 240 is generalized in new Section 240. This section applied only to specified restraining orders. New Section 240 is expanded to apply to all ex parte restraining orders issued under this code, except for orders issued in a summons pursuant to Part 3

(commencing with Section 231) of this division. See, e.g., Sections 2045 (ex parte protective and restraining orders in dissolution, nullity, or legal separation), 4620 (ex parte restraining order in proceeding to secure deposit of assets), 6320-6325 (ex parte protective and restraining orders in proceeding under Domestic Violence Prevention Act), 7710 (ex parte protective and restraining orders in Uniform Parentage Act action).

**Fam. Code § 240 (added). Application of part**

**Comment.** Section 240 continues without substantive change the fourth sentence of former Code of Civil Procedure Section 545 and parts of former Civil Code Sections 4359(a), 4701.1(d), and 7020. The former sections required that ex parte restraining orders be obtained in the manner provided in Code of Civil Procedure Section 527. The provisions of Part 4 (commencing with Section 240) of Division 2 of the Family Code are drawn from and supersede the provisions of Code of Civil Procedure Section 527, insofar as that section formerly applied to these ex parte restraining orders. See also Section 210 (general rules of practice and procedure); Code Civ. Proc. §§ 527(b) (section not applicable to this part), 529 (exemption from undertaking requirement).

**Fam. Code § 241 (technical amendment). Granting temporary order without notice**

**Comment.** Section 241 is a new provision drawn from a part of the first sentence of the last paragraph of Code of Civil Procedure Section 527(a). The introductory clause has been added to Section 241 to recognize that Section 6300 provides for the issuance of an order under Division 10 (Prevention of Domestic Violence) on an affidavit showing reasonable proof of a past act of abuse. The reference to a "verified" application has been omitted as surplus. See Section 212 (pleadings to be verified).

**Interim Comment.** Section 241 is revised to correct a cross-reference and to make language improvements.

**Fam. Code § 242 (repealed). Order to show cause**

**Interim Comment.** Former Section 242 is restated in new Sections 242 and 243(e). The former section was intended to continue existing, inconsistent rules. The 15- or 20-day rule was drawn from Code of Civil Procedure 527, which provides the rule for civil actions generally. However, existing law made exceptions for ex parte orders in proceedings for dissolution, nullity, and legal separation, for ex parte orders pursuant to the Domestic Violence Prevention Act, and for ex parte orders in proceedings under the Uniform Parentage Act. For each of these the 20- or 25-day rule applied. In addition, orders shortening time were expressly allowed for orders under the Domestic Violence Prevention Act and the Uniform Parentage Act, but not for orders in proceedings for dissolution, nullity, or legal separation. This approach has been simplified by applying a single set of rules.

**Fam. Code § 242 (added). Order to show cause**

**Comment.** Subdivision (a) of Section 242 continues without substantive change the third sentence of the last paragraph of former Code of Civil Procedure Section 527(a), the second sentence of former Code of Civil Procedure Section 546(a), and the second sentence of former Civil Code Section 7020(a).

Subdivision (b) is new. Under subdivision (b), if a hearing is not held within the time provided in subdivision (a), the court may hear the order to show cause as though it were a notice of motion, and may hear the application for a long term order. This changes the result in *McDonald v. Superior Court*, 18 Cal. App. 2d 652, 64 P.2d 738 (1937). A temporary restraining order issued without notice that is not heard within the time prescribed by subdivision (a) and not reissued is unenforceable. This is consistent with *Agricultural Prorate Commission v. Superior Court*, 30 Cal. App. 2d 154, 85 P.2d 898 (1938).

**Interim Comment.** Section 242 is amended to do the following:

(1) Delete from subdivision (b) the provision for shortening time. This provision is continued in Section 243 without substantive change.

(2) Add a sentence permitting the court to hear an order to show cause not served within the statutory time, and provided that a temporary restraining order issued without notice is unenforceable unless reissued.

**Fam. Code § 243 (amended). Readiness for hearing**

**Comment.** Section 243 is a new provision. Subdivisions (a)-(d) and (f) are drawn from the fourth, fifth, and sixth sentences of the last paragraph of Code of Civil Procedure Section 527(a). Section 243 is amended to require that the order to show cause be served within two days of the hearing, and to further broaden the service requirements to include "any other supporting papers filed with the court." This would include an income and expense declaration, if filed.

Subdivision (e) continues without substantive change and generalizes the third sentences of former Code of Civil Procedure Section 546(a) and former Civil Code Section 7020(a). The reference to "applicant" has been substituted for the former reference to "plaintiff." This is not a substantive change.

If an order to show cause is issued without an accompanying ex parte temporary restraining order, the provisions of this part are not applicable. See Section 240 (application of provisions of this part). The order to show cause is subject to the time requirements of a noticed motion. See Fam. Code § 210 (general rules of practice and procedure); Code Civ. Proc. §§ 1003, 1005(b).

**Interim Comment.** Section 243 is amended to require that the order to show cause be served within two days of the hearing, and to further broaden the service requirements to include "any other supporting papers filed with the court." This would include an income and expense declaration, if filed, consistent with existing practice. See 2 California Civil Procedure Before Trial *Injunctions* §§ 39.39, 39.43, 39.88 (Cal. Cont. Ed. Bar 1992). Section 243 is also amended to add subdivision (e) which replaces the same requirement formerly in Section 242.

**Fam. Code §§ 270-275 (repealed). Provisions for attorney's fees and costs**

**Interim Comment.** Former Part 5 (commencing with Section 270) of Division 2 is repealed and continued in substance in the following sections:

<i>Repealed</i>	<i>Added</i>	<i>Repealed</i>	<i>Added</i>
270 .....	2030	273 .....	3557
271 .....	2031	274 .....	271
272 .....	2032(a)-(c)	275 .....	272

**Fam. Code §§ 270-272 (added). Provisions for attorney's fees and costs**

**§ 270. Ability to pay attorney's fees or costs**

**Comment.** Section 270 is new and generalizes provisions in former Civil Code Sections 224.10(d), 4370(a), and 4700(b). See also former Civ. Code §§ 237.5(c) (party "unable to afford counsel"), 237.7 (appellant "unable to afford counsel"), 4606(g) (party "financially unable to pay"), 4763(a) ("extreme hardship"). Section 270 is consistent with existing practice. See 2 Markey, California Family Law Practice and Procedure § 25.12[1]. See also *Rosenthal v. Rosenthal*, 197 Cal. App. 2d 289, 297-98, 17 Cal. Rptr. 186 (1961) (order to pay attorney's fees not precluded even though party's expenses exceed income); Section 271 (sanction may not put "unreasonable financial burden" on sanctioned party).

**Interim Comment.** Section 270 is new and generalizes provisions in former Family Code Sections 270, 3028, and 8800(f). See also Sections 3153 (party "financially unable to pay"), 7863 (party "unable to afford counsel"), 7895 (appointment of counsel on appeal for party "unable to afford counsel"), 20003 ("extreme hardship").

**§ 271. Award of attorney's fees and costs based on conduct of party or attorney**

**Comment.** Section 271 continues former Civil Code Section 4370.6 without substantive change, except that Section 271 is broadened to apply to all proceedings under the Family Code. See also Section 65 ("community property" defined in Section 760 *et seq.*).

**Interim Comment.** Section 271 continues former Family Code Section 274 without substantive change.

**§ 272. Order for direct payment to attorney**

**Comment.** Section 272 restates former Civil Code Section 4371 without substantive change.

**Interim Comment.** Section 272 continues former Family Code Section 275 without change.

**Fam. Code § 300 (technical amendment). Marriage relation**

**Comment.** Section 300 continues former Civil Code Section 4100 [as amended by 1992 Cal. Stat. ch. 318, § 1] without substantive change. In the last sentence of Section 300, "this division" has been substituted for the broader reference to "this code," formerly meaning the Civil Code. This is not a substantive change, since all sections dealing with issuance of a license and solemnization formerly in the Civil Code are continued in this division of the Family Code.

**Fam. Code § 306 (technical amendment). Procedural requirements; effect of noncompliance**

**Comment.** Section 306 continues former Civil Code Section 4200 [as amended by 1992 Cal. Stat. ch. 318, § 2] without substantive change. The introductory clause has been added to recognize the exception provided in Section 307. The word "nonparty" has been substituted for "others than a party."

**Interim Comment.** The minor wording changes made in Section 306 track similar changes in Civil Code Section 4200, as amended by 1992 Cal. Stat. ch. 318, § 2.

**Fam. Code § 307 (technical amendment). Application to certain religious marriages**

**Comment.** Section 307 continues former Civil Code Section 4216 [as amended by 1992 Cal. Stat. ch. 318, § 10] without substantive change. In the introductory part of this section, a reference to this division has been substituted for the narrower reference to "this article" in former law. This is not a substantive change, since the former article contained the sections relating to solemnization that are continued in this division.

**Interim Comment.** Subdivision (b) of Section 307 is amended to conform to amendments to Civil Code 4216(b) made by 1992 Cal. Stat. ch. 318, § 10. The phrase "of the county" has been added for clarity, and is consistent with the language of Section 357(c).

**Fam. Code § 357 (technical amendment). Duties of county clerk and county recorder**

**Comment.** Section 357 restates without substantive change the second paragraph of former Civil Code Section 4204 [as amended by 1992 Cal. Stat. ch. 318, § 5]. In subdivision (c), the phrase "person solemnizing their marriage" has been substituted for "person marrying them" to conform with other sections in this division. See, e.g., Section 420.

**Interim Comment.** Section 357 is amended to conform to Civil Code Section 4204, as amended by 1992 Cal. Stat. ch. 318, § 5.

**Fam. Code § 359 (technical amendment). Certificate of registry**

**Comment.** Section 359 restates former Civil Code Section 4202 [as amended by 1992 Cal. Stat. ch. 318, § 3] without substantive change. The phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" throughout this section for consistency with other sections in this division. See, e.g., Section 420.

**Interim Comment.** Subdivision (e) of Section 359 is amended and subdivision (f) is added to conform to changes made in Civil Code Section 4202 [as amended by 1992 Cal. Stat. ch. 318, § 3].

**Fam. Code § 360 (technical amendment). Replacement of lost certificate of registry**

**Comment.** Section 360 restates former Civil Code Section 4203 [as amended by 1992 Cal. Stat. ch. 318, § 4] without substantive change.

**Interim Comment.** Section 360 is amended to conform to amendments to Civil Code Section 4203 by 1992 Cal. Stat. ch. 318, § 4.

**Fam. Code § 420 (technical amendment). Essential element of solemnization**

**Comment.** Subdivision (a) of Section 420 continues former Civil Code Section 4206 [as amended by 1992 Cal. Stat. ch. 318, § 6] without substantive change. Subdivision (b) continues former Civil Code Section 4206.5 without substantive change.

**Interim Comment.** Subdivision (a) of Section 420 is amended to conform to amendments to Civil Code Section 4206 by 1992 Cal. Stat. ch. 318, § 6.

**Fam. Code § 422 (technical amendment). Statement of person solemnizing marriage**

**Comment.** Section 422 continues former Civil Code Section 4208(a) [as amended by 1992 Cal. Stat. ch. 318, § 7] without substantive change. The reference to "rabbi" has been added to subdivision (c) for consistency with Section 400 (persons authorized to solemnize).

**Interim Comment.** Subdivision (a) of Section 422 is amended to conform to amendments to Civil Code Section 4208(a)(1) by 1992 Cal. Stat. ch. 318, § 7.

**Fam. Code § 423 (technical amendment). Return of license and statement to local registrar**

**Comment.** Section 423 continues former Civil Code Section 4208(b) [as amended by 1992 Cal. Stat. ch. 318, § 7] without substantive change.

**Interim Comment.** Section 423 is amended to conform to amendments to Civil Code Section 4208(b) by 1992 Cal. Stat. ch. 318, § 7.

**Fam. Code § 425 (technical amendment). Unrecorded marriage**

**Comment.** Section 425 continues former Civil Code Section 4210 [as amended by 1992 Cal. Stat. ch. 318, § 8] without substantive change. In the last sentence of this section, the phrase "returned to the county recorder of the county in which the license was issued" has been substituted for "returned in the manner specified in subdivision (b) of Section 4216." Section 307(b) (continuing former Civil Code Section 4216(b)) requires the filing within thirty days after the ceremony. This requirement is not relevant to a "previously contracted" marriage under Section 425.

**Interim Comment.** Section 425 is amended to conform to amendments to Civil Code Section 4210 made by 1992 Cal. Stat. ch. 318, § 8.

**Fam. Code § 506 (technical amendment). Preparation and filing of marriage certificate**

**Comment.** Section 506 continues the fourth, fifth, and sixth sentences of former Civil Code Section 4213(a) [as amended by 1992 Cal. Stat. ch. 318, § 9] without substantive change. The phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" throughout this section for consistency with other sections in this division. See, e.g., Section 420. The reference to "performance" of the ceremony has been omitted from subdivision (c) for consistency with Section 423 (return of license and statement to local registrar).

**Interim Comment.** Subdivision (c) of Section 506 is amended to conform to amendments to Civil Code Section 4213(a) made by 1992 Cal. Stat. ch. 318, § 9.

**Fam. Code § 510 (technical amendment). Replacement of lost certificate**

**Comment.** Section 510 continues former Civil Code Section 4213(h) [as amended by 1992 Cal. Stat. ch. 318, § 9] without substantive change. The phrase "confidential marriage certificate" has been substituted for "certificate furnished pursuant to this section." This is not a substantive



change, since the certificates furnished pursuant to former Civil Code Section 4213 are confidential marriage certificates.

**Interim Comment.** Section 510 is amended to conform to amendments to Civil Code Section 4213(h) made by 1992 Cal. Stat. ch. 318, § 9.

**Fam. Code § 753 (amended). Excluding spouse from other's dwelling**

**Comment.** Section 753 restates the second part of former Civil Code Section 5102(a) without substantive change.

**Interim Comment.** Section 753 is amended to correct cross-references.

**Fam. Code § 853 (amended). Estate planning documents**

**Comment.** Section 853 continues former Civil Code Section 5110.740 [as amended by 1992 Cal. Stat. ch. 51, § 1] without substantive change. When enacted in 1984 (as former Civil Code Section 5110.740), subdivision (a) of this provision reversed the case-law rule that a declaration made in a will as to the character of property may be an effective transmutation of the property before the death of the declarant. See, e.g., *In re Marriage of Lotz*, 120 Cal. App. 3d 379, 174 Cal. Rptr. 618 (1981); *Estate of Wilson*, 64 Cal. App. 3d 786, 134 Cal. Rptr. 749 (1976). Section 853 is consistent with the general concepts that a will is ambulatory and subject to subsequent revocation or modification and does not speak until the testator's death.

For background on former Civil Code Section 5110.740, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); *Nonprobate Transfers of Community Property*, 21 Cal. L. Revision Comm'n Reports 163 (1991).

**Interim Comment.** Subdivisions (b) and (c) are added to Section 853 to implement the amendment made to Civil Code Section 5110.740 by the Commission's nonprobate transfer recommendation. A section reference has been adjusted for conformity with the Family Code.

**Fam. Code § 901 (repealed). "Community estate"**

**Interim Comment.** This section is generalized in Section 63 ("community estate" defined).

**Fam. Code § 914 (technical amendment). Liability for necessities**

**Comment.** Section 914 continues former Civil Code Section 5120.140 without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 63 ("community estate" defined) & Comment.

Section 914 is an exception to the rule of Section 913 that the separate property of a spouse is not liable for a debt of the other spouse incurred during marriage. The separate property of a spouse may not be subjected to process by necessities creditors of the other spouse unless the spouse is made a party for the purpose of enforcing the liability. See, e.g., *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Credit Bureau of Santa Monica Bay Dist. v. Terranova*, 15 Cal. App. 3d 854, 93 Cal. Rptr. 538 (1971).

Subdivision (a)(1) is consistent with Section 4301 (use of separate property for support while living together), but does not require exhaustion of community estate property before separate property of a nondebtor spouse can be reached. But see subdivision (b) (reimbursement). For general provisions governing reimbursement, see Section 920.

Subdivision (a)(2) applies where the spouses are living separate not by agreement, as where one spouse leaves without an agreement between the spouses to live separate and apart. Compare Section 4302, which abrogates the obligation of support between spouses living separate by agreement, unless support is stipulated in the agreement. Nothing in subdivision (a)(2) should be deemed to limit the obligation of a spouse for support pursuant to a court order pendente lite or in a judgment of legal separation of the spouses. A spouse who desires to limit the liability pursuant to subdivision (a)(2), or a spouse who desires a greater support obligation than provided in subdivision (a)(2), may seek a support order, which supersedes liability under subdivision (a)(2).

When enacted in 1984 (as former Civil Code Section 5120.140), subdivision (a)(2) abolished the "station in life" test in determining what is a necessary of life. See, e.g., *Wisnom v. McCarthy*, 48 Cal. App. 697, 192 P. 337 (1920) (maid necessary because of economic and social position of spouses). The separate property of the nondebtor spouse is liable only for debts for the "common" necessities of life of the other spouse while living separate and apart. Cf. *Ratzlaff v. Portillo*, 14 Cal. App. 3d 1013, 92 Cal. Rptr. 722 (1971) ("common" necessary is that required to sustain life).

For background on former Civil Code Section 5120.140, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 58-59 (1986).

**Interim Comment.** Subdivision (b) of Section 914 is amended to change "community estate property" to "property in the community estate." This amendment is nonsubstantive, and is for clarity.

#### **Fam. Code § 915 (technical amendment). Liability for support obligation**

**Comment.** Section 915 continues former Civil Code Section 5120.150 without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 63 ("community estate" defined) & Comment.

Subdivision (a) makes clear that a support obligation that arises before the marriage is a prenuptial debt for purposes of liability of marital property. As a result, the general rule is that the separate property of the obligor spouse and the community estate of the marriage is liable for the support obligation, other than the earnings of the non-obligor spouse. See Sections 910 (liability of community estate), 911 (liability of married person's earnings for premarital debt of spouse), 913 (liability of separate property). Subdivision (a) also applies to an extramarital support obligation of a spouse that arises during the marriage.

When enacted in 1984 (as former Civil Code Section 5120.150), subdivision (b) codified the rule of *Weinberg v. Weinberg*, 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967), that the community is entitled to reimbursement, but prescribed a fixed measure for the community reimbursement based on the separate income of the obligor spouse. See also *Bare v. Bare*, 256 Cal. App. 2d 684, 64 Cal. Rptr. 335 (1967); *In re Marriage of Smaltz*, 82 Cal. App. 3d 568, 147 Cal. Rptr. 154 (1978).

Subdivision (c) makes clear that, despite the general rule that earnings of the non-obligor spouse are not liable for the support obligation, the earnings of the spouses of both parties may be taken into account by the court in setting the amount of the support obligation. When enacted in 1984 (as former Civil Code Section 5120.150), subdivision (c) codified prior case law. See, e.g., *In re Marriage of Havens*, 125 Cal. App. 3d 1012, 178 Cal. Rptr. 477 (1981).

For background on former Civil Code Section 5120.150, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 59 (1986).

**Interim Comment.** Subdivision (b) of Section 915 is amended to change "community estate property" to "property in the community estate."

#### **Fam. Code § 930 (technical amendment). Enforcement of debts**

**Comment.** Section 930 continues without substantive change former Civil Code Section 5120.320 and former Civil Code Section 5120.310 (operative date). The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 63 ("community estate" defined) & Comment.

Section 930 states the general rule that this part applies to all debts enforced on or after January 1, 1985, regardless of the time they were incurred. For an exception to the general rule, see Section 931 (reimbursement rights).

For background on former Civil Code Sections 5120.310 and 5120.320, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

**Interim Comment.** Section 930 is amended to add "property" after "separate" to make clear this language does not refer to separate estate property, an undefined term.

**Fam. Code § 1000 (technical amendment). Liability for death or injury**

**Comment.** Section 1000 continues former Civil Code Section 5122 without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change, since former Civil Code Section 5120.020 (which formerly applied to this section) defined community property to include quasi-community property. See Section 63 ("community estate" defined) & Comment.

Subdivision (c) limits the order of satisfaction requirement to liabilities not covered by insurance. Subdivision (c) also imposes a seven-year limitation period on any reimbursement right implied by the order of satisfaction requirement. Cf. *In re Marriage of Stitt*, 147 Cal. App. 3d 579, 195 Cal. Rptr. 172 (1983).

See also Section 2627 (assignment of tort liability upon division of property).

For background on former Civil Code Section 5122, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 61 (1986).

**Interim Comment.** Section 1000 is amended to change "community estate property" to "community estate," since "community estate" is a defined term. See Section 63 ("community estate" defined).

**Fam. Code § 1100 (amended). Fiduciary duty in management and control of community personal property**

**Comment.** Section 1100 continues former Civil Code Section 5125 without change, except that section references have been adjusted. In subdivision (e), references to community "property" have been replaced by more specific references to community "assets and liabilities." These changes are technical and nonsubstantive. See also Section 700 (personal property does not include a leasehold interest in real property); Prob. Code §§ 3057 (protection of rights of spouse who lacks legal capacity), 5100-5407 (multiple-party account held by financial institution).

For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**Fam. Code § 1102 (technical amendment). Management and control of community real property**

**Comment.** Section 1102 continues former Civil Code Section 5127 [as amended by 1992 Cal. Stat. ch. 356, § 6] without substantive change. The section has been divided into subdivisions and some minor, nonsubstantive wording changes have been made, such as changing "situate" to "situated" in subdivision (d). In subdivision (e), the phrase "proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties" has been substituted for "action under this part," which referred to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

**Fam. Code § 1816 (technical amendment). Continuing instruction programs**

**Comment.** Section 1816 continues former Code of Civil Procedure Section 1745.5 without substantive change. See also Sections 6201 (application of definitions), 6203 ("abuse" defined), 6211 ("domestic violence" defined).

**Fam. Code § 1839 (technical amendment). Temporary orders; reconciliation agreement**

**Comment.** Section 1839 continues former Code of Civil Procedure Section 1769 without substantive change. References to "termination" have been substituted for the former references to "revocation."

**Interim Comment.** "Revoke" is changed to "terminate" for consistency with the language of the rest of the section.

**Fam. Code § 1850 (amended). Judicial Council duties**

**Comment.** Subdivisions (a)-(d) of Section 1850 continue former Civil Code Section 5181 without substantive change. The application of subdivision (a) has been expanded to cover all mediation and conciliation proceedings under this code. The former section applied only to implementation of former Civil Code Sections 4351.5 and 4607. See Sections 3160-3186 (mediation of custody and visitation issues).

In subdivision (b), the phrase "relating to proceedings brought for dissolution of marriage, for nullity of marriage, or for legal separation of the parties" has been substituted for "relating to actions brought pursuant to this part." The former reference to "this part" referred to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

In subdivision (d), a reference to Part 2 (commencing with Section 3020) of Division 8 has been substituted for a narrower reference to specific sections continued in Part 2. This is not a substantive change.

Subdivision (e) is new to this section, but continues authority implied under the last part of former Civil Code Section 5180. Addition of this subdivision is not intended to mandate any new duties or require the Judicial Council to undertake any research that was not ongoing under former law.

**Fam. Code § 2010 (technical amendment). Authority of court**

**Comment.** Section 2010 continues the first part of former Civil Code Section 4351 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The phrase "proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties" has been substituted for "proceedings under this part," which referred to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). In subdivision (c), a reference to "children for whom support may be ordered" has been substituted for the former reference to "minor" children and children for whom support may be ordered pursuant to former Civil Code Section 206. This is not a substantive change. See Section 58 ("children for whom support may be ordered" defined). See also Section 2556 (continuing jurisdiction to award community estate property or adjudicate debts).

**Interim Comment.** Section 2010 is amended to do the following:

(1) To revise subdivision (b) to make clear that 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 7505 (when parental authority ceases).

(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.

The language changes in subdivision (a) are by Legislative Counsel.

**Fam. Code § 2023 (technical amendment). Payment of obligation directly to creditor**

**Comment.** Section 2023 continues former Civil Code Section 4358 without substantive change. The reference to any proceeding under "this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings). A reference to a "child for whom support may be ordered" has been substituted for

the former reference to a "minor" child. This is not a substantive change, but rather recognizes that support may be ordered for children who are not minors. See Section 58 ("child for whom support may be ordered" defined).

**Interim 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 § 2024 (amended). Notice concerning effect of petition and judgment on will, insurance, and other matters**

**Comment.** Section 2024 continues without substantive change former Civil Code Sections 4352 and 4800.6 [as amended by 1992 Cal. Stat. ch. 159, § 1]. A reference to the possible effect of dissolution or annulment on a will has been added to subdivision (a) for consistency with subdivision (b). See also Prob. Code § 6122 & Comment (provisions in will revoked by dissolution or annulment of testator's marriage). For background on former Civil Code Section 4352, see *Tentative Recommendation Relating to Wills and Intestate Succession*, 16 Cal. L. Revision Comm'n Reports 2301, 2485 (1982).

**Interim Comment.** Subdivision (a) is added to Section 2024 and subdivision (b) is revised to conform to Civil Code Section 4800.6, as amended by 1992 Cal. Stat. ch. 159, § 1.

**Fam. Code §§ 2030-2045 (repealed). Restraining and protective orders**

**Interim Comment.** The law formerly in Article 2 of Chapter 4 of Division 6 of the Family Code is repealed to allow for consolidation and reorganization of the provisions in Division 10 (Prevention of Domestic Violence). The substance of the statutes is continued without substantive change in new Division 10. A new Article 2 has been added to Chapter 4 of Division 6 that contains a cross-reference to the relevant parts of Division 10.

The following table indicates the disposition of each of the former sections in new Division 10:

<i>Repealed</i>	<i>Added</i>	<i>Repealed</i>	<i>Added</i>
2035(a) . . . . .	2045(a), 6325	2038 . . . . .	6380
2035(b)-(f) . . . . .	6320-6324	2039 . . . . .	6382
2036 . . . . .	6305	2040 . . . . .	6381
2036.5 . . . . .	6340(b)	2041 . . . . .	6383
2037(a)-(b) . . . . .	6224	2042 . . . . .	6388
2037(c) . . . . .	6302	2043 . . . . .	6226

**Fam. Code §§ 2030-2034 (added). Attorney's fees and costs**

**§ 2030. Attorney's fees and costs during pendency of proceeding**

**Comment.** Section 2030 continues former Civil Code Section 4370(a) without substantive change. The phrase "proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties" replaces the former reference to "proceeding under this part." The phrase "proceeding under this part" as used in former Civil Code Section 4370(a) referred to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

Section 2032 requires that the award of attorney's fees and costs under Section 2030 be just and reasonable under relevant circumstances of the parties. See, e.g., *In re Marriage of Hublou*, 231 Cal. App. 3d 956, 282 Cal. Rptr. 695 (1991).

Special provisions may govern attorney's fees and costs in particular circumstances. See, e.g., Sections 916 (attorney's fees in enforcing right to reimbursement after division of community property), 1101(g) (breach of fiduciary duty), 2255 (attorney's fees and costs in proceeding for judgment of nullity of marriage), 2334 (order for attorney's fees during period of continuance for reconciliation), 3027 (attorney's fees in proceeding to recover monetary sanction for false accusation of child abuse or neglect), 3028 (attorney's fees in proceeding to recover compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights), 3114, 3150-3153, 3184 (appointment of counsel to represent child in custody or visitation proceeding), 3407 (attorney's fees where custody or visitation proceeding commenced in clearly inappropriate forum), 3408 (attorney's fees where jurisdiction declined by reason of conduct), 3416 (attorney's fees for enforcement of sister state custody order), 3557 (attorney's fees for enforcing support order or civil penalty), 3652 (attorney's fees in proceeding to modify or terminate child support order), 4002 (attorney's fees for county enforcement of child support), 4303 (attorney's fees for county enforcement of spousal support), 4403 (attorney's fees for county enforcement of parent's right to support), 4803 (limitation on recovery of attorney's fees in proceeding under Uniform Reciprocal Enforcement of Support Act), 5283(d) (earnings assignment order), 6344, 6386 (attorney's fees in proceeding under Domestic Violence Prevention Act), 6602 (contract for attorney's fees for services in litigation for minor), 7640 (counsel fees and costs under Uniform Parentage Act), 7827, 7860-7864, 7895 (appointment of counsel in proceeding to declare child free from parental custody and control), 8800 (independent adoption).

**Interim Comment.** Section 2030 continues former Section 270 without change. Concerning the meaning of a "proceeding related" to one for dissolution, nullity, or legal separation, see *In re Marriage of Seaman*, 1 Cal. App. 4th 1489, 2 Cal. Rptr. 2d 690 (1991).

#### § 2031. Notice of application for order

**Comment.** Section 2031 continues former Civil Code Section 4370(b) without substantive change. The phrase "proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties" replaces the former reference to "proceeding under this part." The phrase "proceeding under this part" as used in former Civil Code Section 4370(b) referred to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

**Interim Comment.** Section 2031 continues former Section 271 without change.

#### § 2032. Award to be just and reasonable

**Comment.** Section 2032 continues former Civil Code Section 4370.5 without substantive change. In subdivision (b), a reference to Section 4320 has been substituted for the broader reference to former Civil Code Section 4801(a). Section 4320 continues the relevant part of former Civil Code Section 4801(a). See also Sections 65 ("community property" defined in Section 760 *et seq.*), 125 ("quasi-community property" defined), 130 ("separate property" defined in Section 760 *et seq.*).

Subdivision (a) of Section 2032 states the general standard for an award of costs and attorney's fees in family law proceedings. Subdivision (b) lists two important factors the court should consider in making such an award. The factors listed in subdivision (b) are not exclusive, and the court may consider any other proper factors, including the likelihood of collection, tax considerations, and other factors announced in the cases. See, e.g., *In re Marriage of Lopez*, 38 Cal. App. 3d 93, 113 Cal. Rptr. 58 (1974). Subdivision (c) expressly authorizes the court to order payment from any source that appears proper, including the community and separate estates of the parties. When enacted in 1985 (as former Civil Code Section 4370.5), this provision overruled language in the cases holding, for example, that the court could not require a wife to impair the capital of her separate estate in order to defray her litigation expenses. See, e.g., *In re Marriage of Jafeman*, 29 Cal. App. 3d 244, 105 Cal. Rptr. 483 (1972); *In re Marriage of Hopkins*, 74 Cal. App. 3d 591, 141 Cal. Rptr. 597 (1977).

For background on former Civil Code Section 4370.5, see *Recommendation Relating to Litigation Expenses in Family Law Proceedings*, 18 Cal. L. Revision Comm'n Reports 351 (1986).

**Interim Comment.** Section 2032(a)-(c) continues former Section 272 without substantive change. Subdivision (d) continues subdivision (d) of former Civil Code Section 4370.5 [as amended by 1992 Cal. Stat. ch. 356, § 1] without substantive change.

**§ 2033. Family law attorney's real property lien**

**Comment.** Section 2033 continues without substantive change former Civil Code Section 4372 relating to the Family Law Attorney's Real Property Lien (FLARPL). In subdivision (a), the reference to a "proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties" replaces the reference in former Section 4372 to an "action under this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

**Interim Comment.** Section 2033 continues former Civil Code Section 4372 [as added by 1992 Cal. Stat. ch. 356, § 2].

**§ 2034. Objection to family law attorney's real property lien**

**Comment.** Section 2034 continues former Civil Code Section 4373 [as added by 1992 Cal. Stat. ch. 356, § 3] without substantive change.

**Fam. Code §§ 2040-2049 (added). Protective and restraining orders**

**§ 2040. Temporary restraining order in summons**

**Comment.** The introductory part of Section 2040 restates the first sentence of former Code of Civil Procedure Section 412.21(a) without substantive change. Subdivisions (a), (b), and (c) continue former Code of Civil Procedure Section 412.21(a)(1)-(3) without substantive change. The former limitation to proceedings commenced on or after July 1, 1990, has been omitted as obsolete. The former language limiting application of the former section to dissolution, nullity, or legal separation proceedings has been omitted as surplus. See Section 2000 (application of part). In subdivision (c), a reference to a "child for whom support may be ordered" has been substituted for the former reference to a "minor" child. This is not a substantive change, but rather recognizes that support may be ordered for children who are not minors. See Section 58 ("child for whom support may be ordered" defined).

For general provisions on temporary restraining orders in summons, see Part 3 (commencing with Section 231) of Division 2.

**Interim Comment.** Section 2040 continues former Section 2030 without substantive change. Subdivision (c) 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).

**§ 2041. Rights, title, and interest of purchaser for value**

**Comment.** Section 2041 is new.

**Interim Comment.** Section 2041 continues former Section 2031 without substantive change.

**§ 2045. Ex parte protective and restraining orders**

**Comment.** The introductory clause of Section 2045 restates without substantive change the introductory clause of former Civil Code Section 4359(a). A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

Subdivision (a) continues without substantive change former Civil Code Section 4359(a)(1).

Subdivision (b) is new and has been added to provide a reference to the provisions in Division 10 (Domestic Violence Prevention Act) for the issuance of ex parte restraining orders intended to prevent domestic violence. See also Section 6221 (application of division) & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Sections 2000 (application of part), 6303 (support person for victim of domestic violence).

**§ 2047. Orders issuable after notice and hearing**

**Comment.** Section 2047 is new. The former Family Law Act, applicable to dissolution, nullity, and legal separation proceedings, did not contain a general provision for the issuance, after notice and hearing, of restraining orders intended to prevent domestic violence, despite a provision for issuance of an order excluding a party from a dwelling after notice and hearing. The addition of this general provision is not a substantive change. See Cal. R. Ct. 1296.29 (new July 1, 1991) (restraining order after hearing).

This section is added to provide a reference to the provisions in Division 10 (Domestic Violence Prevention Act) for the issuance, after notice and hearing, of restraining orders intended to prevent domestic violence. See also Sections 2000 (application of part), 6221 (application of division), 6303 (support person for victim of domestic violence).

**§ 2049. Orders included in judgment**

**Comment.** Section 2049 is new and is added to provide a reference to the provisions in Division 10 (Domestic Violence Prevention Act) that authorizing restraining orders intended to prevent domestic violence to be included in a judgment. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence). See also Sections 2000 (application of part), 6221 (application of division), 6303 (support person for victim of domestic violence).

**Fam. Code §§ 2100-2109 (added). Disclosure of assets and liabilities**

**§ 2100. Legislative intent**

**Comment.** Section 2100 continues former Civil Code Section 4800.10(a) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. References to legal separation have been added in subdivisions (a) and (b) for consistency with the rules governing division of property. See, e.g., Section 2550 (equal division of community estate). See also Section 63 ("community estate" defined).

**§ 2101. Definitions**

**Comment.** Section 2101 continues former Civil Code Section 4800.10(b) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

**§ 2102. Fiduciary duties**

**Comment.** Section 2102 continues former Civil Code Section 4800.10(b) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

**§ 2103. Disclosure declarations required**

**Comment.** Section 2103 continues the first paragraph of former Civil Code Section 4800.10(c) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. A reference to legal separation has been added for consistency with the rules governing division of property. See, e.g., Section 2550 (equal division of community estate). Cross-references have been added for clarity. These are not substantive changes.



**§ 2104. Preliminary disclosure declaration; income and expense declaration**

**Comment.** Section 2104 continues former Civil Code Section 4800.10(c)(1) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. A reference to legal separation has been added in subdivision (a) for consistency with the rules governing division of property. See, e.g., Section 2550 (equal division of community estate). In subdivision (a), the reference to penalties for perjury has been revised to eliminate the reference to "existing" law. This is not a substantive change.

**§ 2105. Final disclosure declaration; income and expense declaration**

**Comment.** Section 2105 continues former Civil Code Section 4800.10(c)(2) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. In subdivision (a), the reference to penalties for perjury has been revised to eliminate the reference to "existing" law. This is not a substantive change. The provision concerning the filing of an income and expense declaration in subdivision (d) has been revised for consistency with the income and expense declaration provided with the preliminary declaration of disclosure.

**§ 2106. Declaration as prerequisite to judgment**

**Comment.** Section 2106 continues former Civil Code Section 4800.10(d) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

**§ 2107. Remedies for noncompliance**

**Comment.** Section 2107 continues former Civil Code Section 4800.10(e)-(f) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. In subdivision (a), the word "exchange" has been omitted as surplus and the cross-references added for clarity. These are not substantive changes. Subdivision (a) has also been revised to make clear that the complying party "may" (rather than "shall") request the declaration or particularity, since the complying party is not compelled to seek compliance by the other party. However, as subdivision (b) makes clear, the request is a prerequisite to seeking a court order compelling a response from the noncomplying party.

**§ 2108. Court authority to liquidate assets**

**Comment.** Section 2108 continues former Civil Code Section 4800.10(g) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. See also Section 63 ("community estate" defined).

**§ 2109. Application of chapter**

**Comment.** Section 2109 continues former Civil Code Section 4800.10(i) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

**Fam. Code §§ 2120-2129 (added). Relief from judgment**

**§ 2120. Legislative intent**

**Comment.** Section 2120 continues former Civil Code Section 4800.11(a) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change. In subdivision (a), a reference to Division 7 (commencing with Section 2500) has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change.

**§ 2121. Relief from adjudication of support or property division**

**Comment.** Section 2121 continues former Civil Code Section 4800.11(b)-(c) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change. In subdivision (a), the phrase "proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties" has been substituted for the reference to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). This is not a substantive change.

**§ 2122. Grounds for relief from adjudication of support or division**

**Comment.** Section 2122 continues former Civil Code Section 4800.11(d) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

**§ 2123. Grounds for relief from adjudication of support or division**

**Comment.** Section 2123 continues former Civil Code Section 4800.11(e) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

**§ 2124. Negligence of attorney**

**Comment.** Section 2124 continues former Civil Code Section 4800.11(f) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

**§ 2125. Scope of relief**

**Comment.** Section 2125 continues former Civil Code Section 4800.11(g) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

**§ 2126. Date of valuation**

**Comment.** Section 2126 continues former Civil Code Section 4800.11(h) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

**§ 2127. Statement of decision**

**Comment.** Section 2127 continues former Civil Code Section 4800.11(i) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

**§ 2128. Effect on other law**

**Comment.** Section 2128 continues former Civil Code Section 4800.11(j)-(n) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

**§ 2129. Application of chapter**

**Comment.** Section 2129 continues former Civil Code Section 4800.11(o) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

**Fam. Code § 2255 (technical amendment). Attorney's fees and costs**

**Comment.** Section 2255 continues former Civil Code Section 4456 without substantive change. A reference to Chapter 3.5 (commencing with Section 2030) of Part 1 has been substituted for the narrower reference to former Civil Code Section 4370. This is not a substantive change. See also Sections 270-272 (attorney's fees and costs generally).

**Interim Comment.** Section 2255 is amended to revise a cross-reference.

**Fam. Code § 2334 (technical amendment). Continuance for reconciliation**

**Comment.** Section 2334 continues the last three sentences of former Civil Code Section 4508(a) without substantive change. In subdivision (b), the former reference to "maintenance and education" of children has been omitted as surplus. See Section 150 ("support" when used as to minor child or child described in Section 3901 includes maintenance and education). A reference to "the support of children for whom support may be ordered" has been substituted for the former reference to support of "minor" children, since in some cases support may be ordered for adult children. See Section 58 ("child for whom support may be ordered" defined). In subdivision (c), "termination of the period of the continuance" has been substituted for "termination of such 30-day period" to conform with other language in this section.

**Interim 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 § 2335 (technical amendment). Evidence of specific acts of misconduct**

**Comment.** Section 2335 restates the central rule of former Civil Code Section 4509 without substantive change. The phrase "under this part," meaning under the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. The former exception for child custody matters is superseded by the introductory clause, which recognizes any statutory exceptions. See, e.g. Sections 3011 (history of abuse of child or other parent must be considered in determining best interest of child for purposes of custody), 6305 (presentation of evidence of abuse or domestic violence required for mutual restraining order)

**Interim Comment.** Existing Civil Code Section 4509 mentions only child custody matters. Family Code Section 2335 added the material in subdivision (b), in strike-out here. Some commentators have suggested that there may be other situations where evidence of specific acts of misconduct may be admissible, and that this section is incomplete. Rather than attempting to find these instances and characterize them in an adequate way in this section, it is better to refer in general terms to exceptions. This also avoids the potential that this section would become inconsistent with other enactments in the future.

**Fam. Code § 2400 (technical amendment). Conditions necessary at commencement of proceeding**

**Comment.** Section 2400 continues former Civil Code Section 4550 without substantive change. In subdivision (a)(8), "executed" has been substituted for "duly executed," since the word "duly" is surplus. In subdivision (a)(10), "judgment of dissolution of marriage pursuant to Section 2403" has been substituted for "final judgment" to recognize that the judgment can be set aside pursuant to Section 2405. This substitution has been made throughout this chapter.

**Interim Comment.** Subdivision (b) is amended to provide the appropriate base year for the \$4000 amount in subdivision (a)(6).

**Fam. Code § 2501 (repealed). "Community estate"**

**Interim Comment.** The part of this section concerning inclusion of community and quasi-community property in the term "community estate" is generalized in Section 63. The part concerning assets and liabilities is not continued, since it is surplus. See, e.g., Sections 2551 (characterization of liabilities), 2552 (valuation date), 2556 (continuing jurisdiction).

**Fam. Code § 2556 (technical amendment). Continuing jurisdiction to award community estate assets or liabilities**

**Comment.** Section 2556 continues former Civil Code Section 4353 without substantive change. In the introductory clause, "proceeding" has been substituted for "action." The term "community estate" has been substituted for "community" to conform with the language of Section 2550 regarding property subject to division. See Section 63 ("community estate" defined). See also *In re Marriage of Craig*, 219 Cal. App. 3d 683, 686, 268 Cal. Rptr 396 (1990) ("California's marital property laws are designed to provide for uniform treatment of quasi-community and community property when the parties have changed their domicile to this state and seek to legally alter their marital status in a California court. This intent is apparent from statutes such as [former Civil Code Section] 4800 (equal division of 'community estate' consisting of community and quasi-community property) and [former Civil Code Section] 4800.5 (power to order conveyance of out-of-state property)."). The terms "asset" and "liability" are used in place of "property" and "debt" for consistency with other sections. See, e.g., Sections 1100 (fiduciary duty in management and control of community personal property), 2033 (family law attorney's real property lien), 2100 *et seq.* (disclosure of assets and liabilities), 2120 *et seq.* (relief from judgment).

**Fam. Code § 2580 (repealed). Community property presumption for property held in joint form**

**Interim Comment.** Section 2580 is repealed and restated in Section 2581.

**Fam. Code § 2580 (added). Legislative intent**

**Comment.** Section 2580 continues former Civil Code Section 4800.1(a) without substantive change. *Cf.* Marriage of Hilke, 4 Cal. 4th 215, 841 P.2d 891, 14 Cal. Rptr. 2d 371 (1992). The references to the former Civil Code provisions (Sections 4800.1 and 4800.2, repealed by 1992 Cal. Stat. ch. 162, § 3, operative Jan. 1, 1994) and their Family Code successors is consistent with Section 2 ("A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.")

Under Section 2581, all property held in joint form by the spouses is presumed to be community property, absent a written agreement otherwise. Under Section 2640, all community property is divided subject to a right of reimbursement for separate property contributions, absent an express agreement otherwise. When enacted in 1983 (as former Civil Code Sections 4800.1 and 4800.2), these provisions were intended to remedy the injustice in former law resulting from the following factors:

(1) The Supreme Court's interpretation of former law in the *Lucas* case of the community property presumption for a joint tenancy single-family residence to find a gift of separate funds used to acquire a community asset absent an express agreement otherwise. See *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980). The *Lucas* decision was widely considered to cause injustice to persons who contributed their separate funds for use by the community and then lost the funds entirely to the community at dissolution of marriage. Often the parties were unaware that taking title in joint tenancy had the effect of making a gift of the separate property to the community.

(2) The rule that a spouse could disprove the community property presumption for a joint tenancy single-family residence under former law by evidence of an oral agreement that the residence is separate property. This rule promoted actions characterized by conflicting and inconsistent testimony, with each side offering different explanations for the effect of a joint tenancy deed. Often the intent of the parties who long before filed a joint tenancy deed could be confused by faded memories or altered to self-serving testimony. The requirement of a writing provides a reliable test by which to determine the understanding of the parties. It seeks to prevent the abuses and unpredictability that have resulted from the oral agreement standard. See discussion in *In re Marriage of Martinez*, 156 Cal. App. 3d 20, 29, 202 Cal. Rptr. 646 (1984), disapproved in *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985).

**Fam. Code § 2581 (added). Community property presumption for property held in joint form**

**Comment.** Section 2581 continues former Civil Code Section 4800.1(b) without substantive change. Section 2581 applies to all property acquired during marriage in joint form regardless of the date of acquisition. Section 2580 (legislative finding and declaration); Marriage of Hilke, 4 Cal. 4th 215, 841 P.2d 891, 14 Cal. Rptr. 2d 371 (1992). See also Section 2251 (division of property in nullity proceeding).

The community property presumptions created by Section 2581 are applicable only in dissolution and legal separation proceedings. The presumptions govern both real and personal property, whether situated in California or another jurisdiction, and include property acquired during marriage while domiciled in another jurisdiction. The presumptions also govern property initially acquired before marriage, the title to which is taken in joint form or as community property by the spouses during marriage. The measure of the separate property contribution under Section 2640 in such a case is the value of the property at the time of its conversion to joint or community property form.

Section 2581 requires a writing to rebut the community property presumption. Permitting oral statements to defeat the community property presumption for purposes of dissolution of marriage would frustrate the strong public policy favoring community ownership of property acquired during marriage. The requirement of a writing is important to help ensure that a party waives community property rights only on mature consideration.

Section 2581 does not affect the validity of an oral agreement for any purpose other than division of property at dissolution of marriage. For purposes of division, Section 2581, together with Section 2640, recognizes and reimburses separate property contributions. This treatment of an oral agreement for purposes of division is fair because an oral agreement, whatever other purpose it might have (management and control, disposition at death, etc.), is not ordinarily intended to affect rights at dissolution or to make a present gift for that purpose. Casual statements made during marriage generally are not made with full knowledge of their consequences or with the intention that they change the rights of the parties if the marriage is dissolved.

For background on former Civil Code Section 4800.1, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

**Interim Comment.** Section 2581 continues former Section 2580, except that the limitations to property acquired on or after January 1, 1984, and on or after January 1, 1987, are deleted. The section is intended to apply to property regardless of the date of acquisition. Section 2580 (legislative finding and declaration); *Marriage of Hilke*, 4 Cal. 4th 215, 841 P.2d 891, 14 Cal. Rptr. 2d 371 (1992).

**Fam. Code § 2610 (technical amendment). Division of retirement plan benefits**

**Comment.** Section 2610 continues former Civil Code Section 4800.8 [as amended by 1992 Cal. Stat. ch. 431, § 1] without change. In subdivision (a), a reference to "this division" has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change. In subdivision (a)(3), the reference to Article 2.5 (commencing with Section 75050) restores an amendment made by Section 1 of Chapter 176 of the Statutes of 1992, but inadvertently chaptered out by Section 1 of Chapter 431 of the Statutes of 1992.

**Interim Comment.** Section 2610 is amended to conform to Civil Code Section 4800.8, as amended by 1992 Cal. Stat. ch. 431, § 1. Note that this legislation chaptered-out the amendment to Civil Code Section 4800.8 by SB 1129 (1992 Cal. Stat. ch. 176).

**Fam. Code § 2623 (technical amendment). Debts after separation but before judgment**

**Comment.** Section 2623 continues former Civil Code Section ~~4800(c)(3)~~ without substantive change. References to children "for whom support may be ordered" have been substituted for former references to "minor" children, since in some cases support may be ordered for adult children. See Section 58 ("child for whom support may be ordered" defined).

**Interim 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 § 2628 (repealed). Notice in petition and judgment**

**Interim Comment.** Former Section 2628 continued former Civil Code Section 4800.6, which was amended by 1992 Cal. Stat. ch. 159, § 1. This section is repealed and continued in Section 2024.

**Fam. Code § 2640 (amended). Separate property contributions to property acquisition**

**Comment.** Section 2640 continues former Civil Code Section 4800.2 without substantive change. Section 2640 is intended to apply to all community estate property regardless of the date of acquisition. See Section 2580 (legislative findings and declarations).

In subdivision (b), "community estate" has been substituted for "community property" to codify case law holding that this provision applies to quasi-community property as well as to community property. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990). See also Sections 63 ("community estate" defined), 2502 ("separate property" defined). A reference to division of property "under this division" has been substituted for the former reference to division "under this part," meaning under the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). See also Section 2251 (division of property in nullity proceeding).

When enacted in 1983 (as former Civil Code Section 4800.2), Section 2640 reversed the rule of *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980), and cases following it, which precluded recognition of the separate property contribution of one of the parties to the acquisition of community property, unless the party could show an agreement between the spouses to the effect that the contribution was not intended to be a gift. Under Section 2640, in case of dissolution of the marriage, a party making a separate property contribution to the acquisition of the property is not presumed to have made a gift, unless it is shown that the parties agreed in writing that it was a gift, but is entitled to reimbursement for the separate property contribution at dissolution of marriage. The separate property contribution is measured by the value of the contribution at the time the contribution is made. Under this rule, if the property has since appreciated in value, the community is entitled to the appreciation. If the property has since depreciated in value, reimbursement may not exceed the value of the property; if both parties are entitled to reimbursement and the property has insufficient value to permit full reimbursement of both, reimbursement should be on a proportionate basis.

For background on former Civil Code Section 4800.2, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

**Interim Comment.** Section 2640 is amended to delete the limitation to property acquired on or after January 1, 1984. The section is intended to apply to property regardless of the date of acquisition. Section 2580 (legislative finding and declaration). In subdivision (b), "property in the community estate" is substituted for "community estate property." This is a nonsubstantive change, and is for clarity.

**Fam. Code §§ 3010-3018 (repealed). General child custody provisions**

**Interim Comment.** This chapter is repealed, with the custody rules reenacted in a new Chapter 2 in Division 8, and the other rules concerning the residence, earnings, and services of minors moved to Division 12 concerning the parent and child relationship. The following table indicates the disposition of each of the existing sections:

<i>Repealed</i>	<i>Added</i>	<i>Repealed</i>	<i>Added</i>
3010 (custody) . . . . .	3010	3014 . . . . .	7504
3010 (rights) . . . . .	7500	3015 . . . . .	7505
3011 . . . . .	7501	3016 . . . . .	7506
3012 . . . . .	7502	3017 . . . . .	3029
3013 . . . . .	7503	3018 . . . . .	7507

**Fam. Code §§ 3010-3011 (added). General child custody provisions**

**§ 3010. Right of parent to custody of unemancipated minor child**

**Comment.** Section 3010 restates the general right to custody in former Civil Code Section 197 without substantive change. The word "unemancipated" has been substituted for "unmarried." This is not a substantive change, but resolves a conflict with the rules governing emancipation of minors. See Section 7002 (conditions of emancipation).

The abandonment standard in former Civil Code Section 197, which referred to abandonment of the family, has been revised in subdivision (b) to refer to abandonment of the child. This is not a substantive change, but recognizes that where child custody is the issue, abandonment of the child is the relevant consideration. This change is also made for general consistency with judicial standards stated elsewhere concerning parental rights and child custody. See Sections 3011 (factors considered in determining best interest of child), 3040 (preference in ordering custody), 7822 (proceeding to declare child free from parental custody and control on ground of abandonment); see also *In re Guardianship of Schwartz*, 171 Cal. 633, 635, 154 P. 304 (1915); *Guardianship of Case*, 57 Cal. App. 2d 844, 848, 135 P.2d 681 (1943).

For additional rights dependent on the right to custody, see Part 1 (commencing with Section 7500) of Division 12.

**Interim Comment.** Section 3010 continues old Section 3010 without substantive change, insofar as it relates to custody. In subdivision (b), the reference to abandonment of the "child" is substituted for the reference in the old section to abandonment of the "family." This is not a substantive change, as is explained in the Comment above.

The part of old Section 3010 that is not continued in this new section is continued in new Section 7500 in Part 1 of Division 12. See Section 7500 (right of parent to services and earnings of unemancipated minor).

**§ 3011. Factors considered in determining best interest of child**

**Comment.** Section 3011 continues former Civil Code Section 4608 without substantive change. The reference to "a proceeding described in Section 3021" has been substituted for the former reference to a "proceeding under this title," which referred to the custody title of the former Family Law Act (former Title 4 (commencing with former Civil Code Section 4600) of Part 5 of Division 4 of the Civil Code). See Section 3021 (application of custody provisions) & Comment.

For provisions adopting this section by reference, see Sections 3020 (legislative findings and declarations), 3040 (order of preference in ordering custody), 3080 (presumption for joint custody where parents agree to joint custody), 3081 (joint custody order absent agreement of parents).

For provisions in this division referring to the best interest of the child, see Sections 3031 (custody order not to be inconsistent with civil or criminal protective orders), 3041 (additional requirements of custody award to nonparent), 3082 (statement by court of reasons for grant or denial of joint custody request), 3087 (modification or termination of joint custody order), 3100 (visitation rights of a parent), 3101 (visitation rights of stepparent), 3102 (visitation rights of grandparent and other relatives where parent of unmarried minor child is deceased), 3103 (visitation rights of grandparent in proceeding described in Section 3021), 3114 (recommendation for appointment of counsel for minor child), 3120 (independent action for exclusive custody), 3133 (temporary custody order upon request of district attorney), 3150 (appointment of private counsel to represent child in custody or visitation proceeding), 3161 (purpose of mediation), 3162 (uniform standards of practice for mediation), 3184 (recommendations that counsel be appointed for minor child), 3190 (order requiring counseling), 3191 (purpose of counseling), 3403 (jurisdictional requirements).

**Interim Comment.** Section 3011 continues old Section 3022 without substantive change. A reference to "a proceeding described in Section 3021" is substituted for the reference in the old section to a "proceeding under this division."

**Fam. Code § 3020 (technical amendment). Legislative findings and declarations**

**Comment.** Section 3020 continues the first paragraph of former Civil Code Section 4600(a) without substantive change. See also Sections 2253 (determining custody in nullity proceeding), 3021 (application of part).

**Interim Comment.** Section 3020 is amended to correct a cross-reference. The phrase "as provided in" is substituted for "as set forth in" for consistency with other sections. See Sections 3040 (order of preference in ordering custody), 3180 (assessment of needs and interests of child). This is not a substantive change.

**Fam. Code § 3021 (added). Application of part**

**Comment.** Section 3021 is a new provision that generalizes the parts of former Civil Code Sections 4351.5, 4600.1, 4600.5, 4602, 4606, 4608.1, 4609, and 4611 stating the scope of application of the former sections. The former provisions applied to proceedings under the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), which included proceedings for dissolution of marriage, nullity of marriage, and legal separation of the parties, and actions for exclusive custody.

This section expands the application of this part to proceedings in which custody or visitation is determined in an action pursuant to the Domestic Violence Prevention Act or the Uniform Parentage Act. Application of this part to these acts provides a complete set of rules where custody or visitation is determined in proceedings pursuant to these acts, as well as providing for related matters such as investigations, appointment of counsel to represent the child, mediation, and counseling.

See also Prob. Code § 1514 (Fam. Code §§ 3040-3043 applicable in proceeding to establish guardianship of person). For provisions excluding application of this part, see Section 7807 (specific provisions not applicable in proceeding to terminate parental rights pursuant to Uniform Parentage Act); Welf. & Inst. Code § 366.26 (specific provisions not applicable to dependency proceedings).

**Interim Comment.** Section 3021 clarifies the application of this part. Some of the old sections in Part 2 contain language stating the scope of the section and others do not. In addition, the application of old sections in Part 2 to an action for exclusive custody is unclear. Finally, the rules to be applied when custody or visitation is determined pursuant to the Domestic Violence Prevention Act or the Uniform Parentage Act are incomplete.

**Fam. Code § 3022 (amended and renumbered). Authority of court to make custody order**

**Comment.** Section 3022 continues without substantive change the first sentence of the second paragraph of former Civil Code Section 4600(a). The former reference to "any proceeding where there is at issue the custody of a minor child" has been omitted. See Section 3021 (application of part). As to the court's jurisdiction, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act). See also Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**Interim Comment.** Section 3022 continues old Section 3021 without substantive change. The old section is amended to omit the reference to "any proceeding where there is at issue the custody of a minor child" to conform the section to Section 3021 (application of part).

**Fam. Code § 3022 (repealed). Factors to be considered in determining best interest of child**

**Interim Comment.** Section 3022 is continued in Section 3011 without substantive change. [Note. The reference to Penal Code Section 11165.5 is incorrect, the reference should be 11165.6. The incorrect reference appears in the chaptered version of this section. However, this is corrected in Family Code Section 3011.]



**Fam. Code § 3023 (amended). Preference for trial on issue of custody**

**Comment.** Section 3023 continues former Civil Code Section 4600.6 without substantive change. The former reference to a "contested issue" of custody has been omitted as surplus. See Section 3021 (application of part).

See also Sections 3041 (excluding public from hearing on award of custody to nonparent), 4003 (separate trial on issue of child support).

**Interim Comment.** Section 3023 is amended to conform the section to Section 3021 (application of part).

**Fam. Code § 3026 (amended). Family reunification services**

**Comment.** Section 3026 restates former Civil Code Section 4609 without substantive change. The reference to a custody or visitation rights proceeding "brought under this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as unnecessary. See Section 3021 (application of part).

**Interim Comment.** Section 3026 narrows the scope of the section's application. Old Section 3026 applies to the whole Family Code, whereas Civil Code Section 4609 applied only to proceedings brought under the Family Law Act. Section 3026 applies to the proceedings set forth in Section 3021, which includes Family Law Act proceedings (i.e. dissolution, nullity, legal separation, and the action for exclusive custody) and proceedings to determine custody and visitation pursuant to the Domestic Violence Prevention Act or the Uniform Parentage Act.

**Fam. Code § 3027 (amended). Monetary sanction for false accusation of child abuse or neglect**

**Comment.** Section 3027 continues former Civil Code Section 4611 without substantive change. The former reference to a "proceeding under this title," meaning the custody title of the former Family Law Act (former Title 4 (commencing with former Civil Code Section 4600) of Part 5 of Division 4 of the Civil Code), has been omitted as unnecessary. See Section 3021 (application of part).

**Interim Comment.** Section 3027 narrows the scope of the section's application. Old Section 3027 applies to the whole Family Code, whereas Civil Code Section 4611 applied only to proceedings brought under the Family Law Act. Section 3027 applies to the proceedings set forth in Section 3021, which includes Family Law Act proceedings (i.e. dissolution, nullity, legal separation, and the action for exclusive custody) and proceedings to determine custody and visitation pursuant to the Domestic Violence Prevention Act or the Uniform Parentage Act.

**Fam. Code § 3028 (amended). Compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights**

**Comment.** Section 3028 continues former Civil Code Section 4700(b) without substantive change. In subdivision (a), the former reference to an order "entered pursuant to this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as unnecessary. See Section 3021 (application of part).

See also Sections 3003 ("joint legal custody" defined), 3004 ("joint physical custody" defined), 3556 (custodial parent's failure to implement noncustodial parent's custody or visitation rights does not affect noncustodial parent's duty of support).

**Interim Comment.** Section 3028 narrows the scope of the section's application. Old Section 3028 applies to the whole Family Code, whereas Civil Code Section 4700(b) applied only to proceedings brought under the Family Law Act. Section 3028 applies to the proceedings set forth in Section 3021, which includes Family Law Act proceedings (i.e. dissolution, nullity, legal separation, and the action for exclusive custody) and proceedings to determine custody and visitation pursuant to the Domestic Violence Prevention Act or the Uniform Parentage Act.

**Fam. Code § 3029 (added). Order for support where custodial parent receiving public assistance**

**Comment.** Section 3029 continues former Civil Code Section 4600.2 without substantive change. A reference to sections in the Family Code has been substituted for the narrower references in former Civil Code Section 4600.2. This is not a substantive change. This is not a substantive change. See also Section 4200-4203 (payment of child support to court-designated county officer).

**Interim Comment.** Section 3029 continues old Section 3017 without substantive change.

**Fam. Code § 3030 (added). Parent convicted under Penal Code provisions**

**Comment.** Section 3030 continues former Civil Code Section 4610 without substantive change. See also Sections 3100(b) (visitation limited to situations where third party present in case involving domestic violence), 3101(b) and 3103(c) (limitation on stepparent or grandparent visitation in case involving domestic violence).

**Interim Comment.** Section 3030 continues old Section 3044 without change, but moves it to the general provisions chapter. The section is moved because it deals with both custody and visitation.

**Fam. Code § 3031 (added). Custody order not to be inconsistent with civil or criminal protective orders**

**Comment.** Section 3031 continues without substantive change former Civil Code Sections 4612 and 7009 [as added by 1992 Cal. Stat. ch. 1136, §§ 2-3] and former Code of Civil Procedure Section 547.7 [as added by 1992 Cal. Stat. ch. 1136, § 6]. The former reference to "a proceeding concerning the custody of, or visitation with, a minor" has been omitted. This section applies to a determination of custody or visitation in a proceeding for dissolution, nullity, or legal separation, and in proceedings pursuant to the Domestic Violence Prevention Act and the Uniform Parentage Act. See Section 3021 (application of part). See also Section 3011 (factors in determining best interest of child).

**Fam. Code §§ 3040-3044 (repealed). Matters to be considered in awarding custody**

**Interim Comment.** This chapter is repealed and reenacted with amendments to correct cross-references and to make nonsubstantive technical changes in terminology. For example, references to "best interests" of the child have been changed to "best interest," since the defined term is singular; references to an "award" of custody or visitation have been revised to refer to an "order" of custody or visitation.

**Fam. Code §§ 3040-3043 (added). Matters to be considered in granting custody**

**§ 3040. Order of preference in ordering custody**

**Comment.** Section 3040 continues former Civil Code Section 4600(b) and (d) without substantive change. The reference to "children" has been omitted as surplus. See Section 10 (singular includes plural). See also Sections 2253 (determination of custody in nullity proceeding), 3003 ("joint legal custody" defined), 3004 ("joint physical custody" defined), 3021 (application of part), 3131 (action by district attorney where child taken or detained in violation of custody order).

**Interim Comment.** Section 3040 is revised to correct cross-references. The phrase "as provided in" is substituted for "pursuant to" for consistency with other sections. See new Sections 3020 (legislative findings and declarations), 3180 (assessment of needs and interests of child). This is not a substantive change.

**§ 3041. Additional requirements for custody granted to nonparent**

**Comment.** Section 3041 continues former Civil Code Section 4600(c) without substantive change. See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** This section is revised to substitute "order" for "award."

**§ 3042. Wishes of child**

**Comment.** Section 3042 continues without substantive change the second sentence of the second paragraph of former Civil Code Section 4600(a).

**Interim Comment.** This section is revised to substitute "order" for "award."

**§ 3043. Nomination of guardian by parent**

**Comment.** Section 3043 continues without substantive change the last sentence of the second paragraph of former Civil Code Section 4600(a). Section 3043 makes clear that a nomination under the Probate Code provisions is to be considered and given due weight, regardless of the nature of the custody proceeding. For background on former Civil Code Section 4600, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

**Interim Comment.** This section is revised to substitute "granted" for "awarded."

**Fam. Code § 3060 (amended). Petition for temporary custody order**

**Comment.** Section 3060 continues former Civil Code Section 4600.1(a) without substantive change. The language making this section applicable to proceedings for dissolution, nullity, legal separation, and exclusive custody has been omitted as unnecessary. See Section 3021 (application of part) & Comment. See also Sections 3131 (action by district attorney where child taken or detained in violation of custody order), 3133 (temporary custody order at request of district attorney). As to the court's jurisdiction, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act).

**Interim Comment.** Section 3060 is amended to omit the reference to specific proceedings, conforming the section to Section 3021 (application of part).

**Fam. Code § 3061 (technical amendment). Order for temporary custody in accordance with agreement or understanding of parties**

**Comment.** Section 3061 continues former Civil Code Section 4600.1(b) without substantive change.

**Interim Comment.** Section 3061 is amended to substitute "granting" for "awarding."

**Fam. Code § 3080 (amended). Presumption for joint custody where parents agree to joint custody**

**Comment.** Section 3080 continues former Civil Code Section 4600.5(a) without substantive change. The former reference to a child "of the marriage" has been omitted as unnecessary. See Section 3021 (application of part). The reference to "an award of" joint custody is omitted as surplus.

See also Sections 3002 ("joint custody" defined), 3131 (action by district attorney where child taken or detained in violation of custody order).

**Interim Comment.** Section 3080 is amended to correct a cross-reference. The limitation in the old section to children "of the marriage" is omitted to conform with new Section 3021 (application of part).

**Fam. Code § 3081 (technical amendment). Grant of joint custody absent agreement of parents**

**Comment.** Section 3081 continues former Civil Code Section 4600.5(b) without substantive change. The reference to "an award of" joint custody is omitted as surplus. See Section 3002 ("joint custody" defined); see also Section 3131 (action by district attorney where child taken or detained in violation of custody order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**Interim Comment.** Section 3081 is amended to correct a cross-reference. The reference to cases "other than those described in Section 3080" is added to make the reference specific. This is not a substantive change.

**Fam. Code § 3085 (technical amendment). Grant of joint legal custody without joint physical custody**

**Comment.** Section 3085 continues former Civil Code Section 4600.5(g) without substantive change. See also Sections 3003 ("joint legal custody" defined), 3004 ("joint physical custody" defined).

**Interim Comment.** This section is amended to substitute references to "grant" for references to "award."

**Fam. Code § 3088 (amended). Modification to make custody order a joint custody order**

**Comment.** Section 3088 continues former Civil Code Section 4600.5(j) without substantive change. The former reference to a child "of the marriage" has been omitted as unnecessary. See Section 3021 (application of part). See also Section 3002 ("joint custody" defined).

**Interim Comment.** Section 3088 is amended to omit language limiting the section to children "of a marriage." This revision conforms the section to Section 3021 (application of part).

**Fam. Code § 3100 (amended). Visitation rights of a parent**

**Comment.** Subdivision (a) of Section 3100 continues former Civil Code Section 4601 without substantive change.

Subdivision (b) continues former Civil Code Section 4601.5 without substantive change. The introductory clause has been omitted as surplus. The term "protective order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6218 defines "protective order" to include these orders.

See also Sections 3011 (factors to be considered in determining best interest of child), 3030 (parent convicted under certain Penal Code provisions not allowed unsupervised visitation with child), 3131 (action by district attorney where child taken or detained in violation of visitation order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**Interim Comment.** Section 3100 is amended to omit the reference to Chapter 11 (commencing with Section 3155) (mediation). Former Civil Code Section 4601 does not contain a reference to the mediation sections. The reference had been added for purposes of clarity and emphasis and was not a substantive change. Omitting the reference also is not a substantive change.

**Fam. Code § 3101 (repealed). Visitation rights of stepparent or grandparent**

**Interim Comment.** This section is continued without substantive change in Sections 3101 (visitation rights of stepparent) and 3103 (visitation rights of a grandparent).

**Fam. Code § 3101 (added). Visitation rights of stepparent**

**Comment.** Subdivision (a) of Section 3101 restates former Civil Code Section 4351.5(a) without substantive change. The section is revised to use the term "stepparent." This is not a substantive change, since subdivision (d)(1), defining "stepparent," is drawn from the language of former Civil Code Section 4351.5(a). References to the "superior" court have been omitted as surplus. See Section 200 (jurisdiction in superior court). The language making this section applicable to proceedings for dissolution, nullity, or legal separation has been omitted as unnecessary. See Section 3021 (application of part) & Comment.

Subdivision (b) continues former Civil Code Section 4351.5(f) without substantive change insofar as it applied to stepparents. The term "protective order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6218 defines "protective order" to include these orders.

Subdivision (c) continues former Civil Code Section 4351.5(j) without substantive change insofar as it applied to stepparents. The reference to "birth parent" has been substituted for the former reference to "a natural or adoptive parent." This is not a substantive change, since subdivision (d)(2) defines "birth parent" to include a biological or adoptive parent. This amendment is intended to improve clarity by using a defined term.

Subdivision (d) is new. Paragraph (1) is drawn from former Civil Code Section 4351.5(a).

See also Sections 3011 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of custody order), 3133 (temporary custody order at request of district attorney); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal). As to the court's jurisdiction, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act).

**Interim Comment.** Subdivision (a) of old Section 3101 is revised to omit the references to specific proceedings. These revisions conform the section to new Section 3021 (application of part). References to an "award" of visitation are omitted. The parts of old Section 3101 that applied to grandparents are continued in new Section 3103.

**Fam. Code § 3102 (amended). Visitation rights of grandparent and other relatives where parent of unemancipated minor child is deceased**

**Comment.** Section 3102 continues former Civil Code Section 197.5 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (a), the word "unemancipated" has been substituted for "unmarried." This is not a substantive change. See Section 7002 (conditions of emancipation). See also Section 3011 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**Interim Comment.** The language of this section is amended to make minor nonsubstantive changes such as the substitution of "parent" for "the father or mother."

**Fam. Code § 3103 (added). Visitation rights of grandparent in proceeding described in Section 3021**

**Comment.** Subdivision (a) of Section 3103 restates former Civil Code Section 4351.5(b) without substantive change. The reference to former Civil Code Section 4601 has been omitted as surplus. References to the "superior" court have been omitted as surplus. See Section 200 (jurisdiction in superior court). The reference to proceedings "described in Section 3021" has been substituted for the former language making this section applicable to proceedings for dissolution, nullity, or legal separation. Other language has been revised to make clear that this section is applicable to situations in which the parents of the child are not married, such as where visitation is determined in a proceeding pursuant to the Domestic Violence Prevention Act or the Uniform Parentage Act. See Section 3021. (application of part) & Comment.

Subdivision (b) continues former Civil Code Section 4351.5(k) without substantive change. The subdivision has been revised to make it clear that it is applicable to situations in which the parents of the child are not married, such as where visitation is determined in a proceeding pursuant to the Domestic Violence Prevention Act or the Uniform Parentage Act.

Subdivision (c) continues former Civil Code Section 4351.5(l) without substantive change, insofar as it applied to grandparents. The term "protective order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6218 defines "protective order" to include these orders.

Subdivision (d) continues former Civil Code Section 4351.5(j) without substantive change. A reference to "birth parent" has been substituted for the former reference to "a natural or adoptive parent." This is not a substantive change, since subdivision (e) defines "birth parent" to include a biological or adoptive parent. This amendment is intended to improve clarity by using a defined term.

Subdivision (e) is new.

See also Sections 3011 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of custody order), 3133 (temporary custody order at request of district attorney); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal). As to the court's jurisdiction, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act).

**Interim Comment.** Section 3103 is new and continues the parts of old Section 3101 that applied to grandparent visitation.

**Fam. Code §§ 3110-3113 (repealed). Custody investigation and report**

**Interim Comment.** This chapter is repealed and reenacted without substantive change in a new Chapter 6 (commencing with Section 3110) in Part 2 of Division 8. New sections have been added to the chapter that restore parts of Code of Civil Procedure Section 263, which was repealed in the original Family Code legislation and not continued in the new code. The following table shows the disposition of each of the former Family Code sections:

<i>Repealed</i>	<i>Added</i>	<i>Repealed</i>	<i>Added</i>
3110 .....	3111	3112 .....	3112
3111 .....	3113	3113 .....	3114

**Fam. Code §§ 3110-3116 (added). Custody investigation and report**

**§ 3110. "Court-appointed investigator" defined**

**Comment.** Section 3110 is a new section added to facilitate drafting by avoiding repetition of the list of persons referred to throughout this chapter.

**§ 3111. Filing, service, and use of report**

**Comment.** Section 3111 restates without substantive change the first paragraph of former Civil Code Section 4602 and the first three paragraphs of former Code of Civil Procedure Section 263. The former reference to a proceeding "brought under this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as unnecessary. See Section 3021 (application of part). The reference to "court-appointed investigator" has been substituted for the former list of officers. This is not a substantive change. See Section 3110 ("court-appointed investigator" defined).

See also Section 3081 (investigation concerning whether joint custody appropriate).

**Interim Comment.** Section 3111 continues old Section 3110 without substantive change. The new section restores parts of former Code of Civil Procedure Section 263 repealed by Section 15 of Chapter 163 of the Statutes of 1992. The reference to "court-appointed investigator" is substituted for the former list of persons. This is not a substantive change. See Section 3110 ("court-appointed investigator" defined). The reference to specific proceedings is omitted, conforming the section to Section 3021 (application of part).

**§ 3112. Inquiry into ability of parent to repay county expenses**

**Comment.** Section 3112 continues the third paragraph of former Civil Code Section 4602 without substantive change. The reference to "court-appointed investigator" has been substituted for the former list of officers. This is not a substantive change. See Section 3110 ("court-appointed investigator" defined). The reference to "maintenance" of a minor child has been omitted as surplus. See Section 150 ("support" when used with reference to minor child includes maintenance and education).

**Interim Comment.** Section 3112 continues old Section 3112 without substantive change. The section has been subdivided and the language revised for clarity. The reference to "court-appointed investigator" has been substituted for the former list of persons. This is not a substantive change. See Section 3110 ("court-appointed investigator" defined).

**§ 3113. Separate meetings where domestic violence**

**Comment.** Section 3113 continues the second paragraph of former Civil Code Section 4602 without substantive change. The reference to "court-appointed investigator" has been substituted for the former list of officers. This is not a substantive change. See Section 3110 ("court-appointed investigator" defined). Unlike the former section, this section does not contain a reference to the section defining "domestic violence." This is not a substantive change. See Section 6211 ("domestic violence" defined). The term "protective order" has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6218 defines "protective order" to include these orders.

**Interim Comment.** Section 3113 continues old Section 3111 without substantive change. The reference to "court-appointed investigator" has been substituted for the former list of persons. This is not a substantive change. See Section 3110 ("court-appointed investigator" defined).

**§ 3114. Recommendation for appointment of counsel for minor child**

**Comment.** Section 3114 continues the last paragraph of former Civil Code Section 4602 without substantive change. The reference to "court-appointed investigator" has been substituted for the former list of officers. This is not a substantive change. See Section 3110 ("court-appointed investigator" defined). The reference to "children" has been omitted as surplus. See Section 10 (singular includes plural). See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Section 3114 continues old Section 3113. The reference to "court-appointed investigator" is substituted for the former list of persons. This is not a substantive change. See Section 3110 ("court-appointed investigator" defined).

**§ 3115. Testimony of investigator**

**Comment.** Section 3115 continues without substantive change and generalizes the fourth paragraph of former Code of Civil Procedure Section 263. The reference to "court-appointed investigator" has been added to conform to other sections in this chapter. See Section 3110 ("court-appointed investigator" defined). The former reference to a "divorce" action has been omitted as unnecessary. See Section 3021 (application of part).

**Interim Comment.** Section 3115 is new and restores a part of former Code of Civil Procedure Section 263 that was repealed by Section 15 of Chapter 163 of the Statutes of 1992. The reference to "court-appointed investigator" is added. See Section 3110 ("court-appointed investigator" defined).

**§ 3116. Chapter not limitation on investigator's duty to assist court**

**Comment.** Section 3116 continues without substantive change and generalizes the last paragraph of former Code of Civil Procedure Section 263. The reference to "court-appointed investigator" has been added to conform to other sections in this chapter. See Section 3110 ("court-appointed investigator" defined) & Comment. The former reference to a "divorce" action has been omitted as unnecessary. See Section 3021 (application of part). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

**Interim Comment.** Section 3116 is new and restores a part of former Code of Civil Procedure Section 263 that was repealed by Section 15 of Chapter 163 of the Statutes of 1992. The reference to "court-appointed investigator" is added. See Section 3110 ("court-appointed investigator" defined).

**Fam. Code § 3150 (amended). Appointment of private counsel to represent child in custody or visitation proceeding**

**Comment.** Section 3150 continues former Civil Code Section 4606(a)-(b) without substantive change. The former reference to a proceeding "brought under this part," meaning the former

Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as unnecessary. See Section 3021 (application of part). See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Section 3150 is amended to omit the reference to specific proceedings, conforming the section to Section 3021 (application of part).

**Fam. Code §§ 3155-3183 (repealed). Mediation of visitation or custody issues**

**Interim Comment.** The existing sections in this chapter are repealed to allow for consolidation of provisions concerning mediation of visitation requested by a stepparent or grandparent (former Civil Code Section 4351.5) and provisions concerning mediation of contested custody or visitation (former Civil Code Sections 4607-4607.2). Where appropriate, rules applying to only one type of mediation are generalized. See Section 3160 Comment.

The following table indicates the disposition of each of the existing sections in Chapter 11 (commencing with Section 3160):

<i>Repealed</i>	<i>Added</i>	<i>Repealed</i>	<i>Added</i>
3155 (1st & 3d snt.) . . .	3160	3173 . . . . .	3172
3155 (2d & last snt.) . . .	3164	3174 . . . . .	3184
3156 . . . . .	3177	3175(a) . . . . .	3178(a)
3157 . . . . .	3180(a)	3175(b) . . . . .	3179
3158 . . . . .	3182(a)	3176 . . . . .	3181
3159 . . . . .	3183	3177 . . . . .	3181
3160 . . . . .	3186	3180(a)(1st snt.) . . .	3171(a)
3161 . . . . .	3162	3180(a)(last snt.) . . .	3161(c)
3162 . . . . .	3163	3180(b) . . . . .	3171(b)
3170 (1st part) . . . . .	3170	3181(a) . . . . .	3178(b)
3170 (last part) . . . . .	3175	3181(b) . . . . .	3179
3171 . . . . .	3173	3182 . . . . .	3185
3172 (1st snt.) . . .	3161(a)-(b)	3183 . . . . .	3176
3172 (2d snt.) . . . .	3180(b)		

**Fam. Code §§ 3160-3186 (added). Mediation of custody and visitation issues**

**§ 3160. Superior courts to provide mediation services**

**Comment.** Section 3160 continues without substantive change and generalizes the first and third sentences of former Civil Code Section 4607(b). Generalizing this provision means that it is also applicable to mediation involving a stepparent or grandparent.

This chapter continues the rules in former Civil Code Section 4351.5 (mediation of stepparent or grandparent visitation) and former Civil Code Sections 4607-4607.2 (mediation of contested custody or visitation). Where one of the former sections provided a rule, but the other did not, the chapter generalizes the rule to apply to both types of mediation. See Sections 3160 (superior courts to provide mediation services), 3162 (uniform standards of practice for mediation), 3163 (local court rules), 3164 (qualifications of mediator), 3172 (mediation available where paternity is at issue), 3173 (mediation of dispute concerning existing order), 3175 (mediation to be set before or concurrent with hearing), 3176 (notice of mediation or hearing), 3180(b) (requirement that mediator effect settlement in best interest of child), 3181 (separate mediation where domestic violence), 3183 (recommendations to court), 3184 (recommendations that counsel be appointed for minor child), 3185 (hearing on issues not settled by mediation).

**Interim Comment.** Section 3160 continues the first and third sentences of old Section 3155 without substantive change. The sentences are rewritten for clarity.



**§ 3161. Purpose of mediation proceeding**

**Comment.** Section 3161 continues without substantive change the third sentence of former Civil Code Section 4607(a) and the second sentence of former Civil Code Section 4351.5(c). The reference to "children" has been omitted as surplus. See Section 10 (singular includes plural). See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Section 3161 restates the first sentence of old Section 3172 and the last sentence of old Section 3180(a) without substantive change.

**§ 3162. Uniform standards of practice for mediation**

**Comment.** Section 3162 continues without substantive change and generalizes former Civil Code Section 4607.1. The part of the former section that directed the Judicial Council to adopt uniform standards of practice by Jan. 1, 1991, has been omitted as surplus. See Cal. R. Ct. App. Div. I § 26 (1992) (Judicial Council Uniform Standards of Practice for Court-Connected Mediation of Child Custody and Visitation Disputes). See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues).

See also Sections 1819 (destruction of records of child custody or visitation mediation), 1850 (statewide coordination of family mediation and conciliation services), 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Section 3162 continues old Section 3161 without change.

**§ 3163. Local court rules**

**Comment.** Section 3163 continues without substantive change and generalizes former Civil Code Section 4607(g). See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues).

**Interim Comment.** Section 3163 continues old Section 3162 without change.

**§ 3164. Qualifications of mediator**

**Comment.** Subdivision (a) of Section 3164 continues without substantive change and generalizes the second sentence of former Civil Code Section 4607(b). Subdivision (b) continues without substantive change the last sentence of former Civil Code Section 4607(b) and the last sentence of former Civil Code Section 4351.5(c). See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues). See also Section 1816 (continuing instruction programs in domestic violence).

**Interim Comment.** Section 3164 continues the second and last sentences of old Section 3155 without substantive change.

**§ 3170. Mediation required where custody or visitation contested**

**Comment.** Section 3170 restates the first part of the first sentence of former Civil Code Section 4607(a) without substantive change. The reference to "to obtain or modify a temporary or permanent custody or visitation order" has been substituted for "as provided in Section 4600, 4600.1, or 4601." This is not a substantive change. The reference to "children" has been omitted as surplus. See Section 10 (singular includes plural). See also Section 3175 (mediation to be set before or concurrent with hearing).

**Interim Comment.** Section 3170 restates the first part of old Section 3170 without substantive change. The section is rewritten for clarity. Section 3175 continues and generalizes the last part of old Section 3170.

**§ 3171. Mediation where visitation order requested by stepparent or grandparent**

**Comment.** Subdivision (a) of Section 3171 continues the first sentence of former Civil Code Section 4351.5(c) without substantive change. Subdivision (b) continues former Civil Code Section 4351.5(g) without substantive change.

In subdivision (a), a reference to Chapter 5 (commencing with Section 3100) has been substituted for the narrower reference to stepparent and grandparent visitation pursuant to former Civil Code Section 4351.5. This makes mediation available in the situations described in Family Code Section 3102 (former Civil Code Section 197.5) — cases where grandparents and other relatives seek visitation of a minor child whose parent or parents are deceased. The former reference to a request for an order of “reasonable” visitation rights has been omitted. This is not a substantive change, since the sections in Chapter 5 (commencing with Section 3100) control the type of visitation order that may be issued and these sections require that visitation rights must be in the best interest of the child.

See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Section 3171 continues the first sentence of subdivision (a) and all of subdivision (b) of old Section 3180 without substantive change. In subdivision (a), the reference to “a visitation order” has been substituted for a reference to “order of reasonable visitation rights.” This is not a substantive change for the reason stated in the Comment.

#### **§ 3172. Mediation available where paternity is at issue**

**Comment.** Section 3172 continues without substantive change and generalizes the last sentence of former Civil Code Section 4607(a). See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues).

**Interim Comment.** Section 3172 continues old Section 3173 without substantive change.

#### **§ 3173. Mediation of dispute concerning existing order**

**Comment.** Section 3173 continues without substantive change and generalizes the second sentence of former Civil Code Section 4607(a). See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues). In subdivision (a), the reference to “or both” has been added. This is not a substantive change.

**Interim Comment.** Section 3173 continues old Section 3171 without substantive change. In subdivision (a), the reference to “or both” is added. This is not a substantive change.

#### **§ 3175. Mediation to be set before or concurrent with hearing**

**Comment.** Section 3175 restates without substantive change and generalizes the last part of the first sentence of former Civil Code Section 4607(a). See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues).

**Interim Comment.** Section 3175 generalizes the last part of old Section 3170 without substantive change. Section 3170 continues the first part of old Section 3170.

#### **§ 3176. Notice of mediation or hearing**

**Comment.** Section 3176 restates without substantive change and generalizes former Civil Code Section 4351.5(i). The former reference to proceedings for dissolution of marriage, for nullity of marriage, or for legal separation of the parties has been omitted as unnecessary. See Section 3021 (application of part) & Comment. See also Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues).

**Interim Comment.** Section 3176 restates and generalizes old Section 3183 without substantive change. The section omits references to specific proceedings, conforming the section to Section 3021 (application of part).

**§ 3177. Confidentiality of mediation proceeding**

**Comment.** Section 3177 continues former Civil Code Sections 4351.5(d) and 4607(c) without substantive change. See also Section 1819 (destruction of records of child custody or visitation mediation).

**Interim Comment.** Section 3177 continues old Section 3156 without substantive change.

**§ 3178. Issues that may be resolved by agreement as result of mediation**

**Comment.** Section 3178 restates without substantive change the fifth sentence of former Civil Code Section 4351.5(f) and the fifth sentence of former Civil Code Section 4607(e). See also Section 3185 (hearing on issues not settled by mediation).

**Interim Comment.** Section 3178 continues old Sections 3175(a) and 3181(a) without substantive change.

**§ 3179. Modification of agreement resulting from mediation**

**Comment.** Section 3179 restates the last sentences of former Civil Code Sections 4351.5(f) and 4607(e) without substantive change. Broader references to Family Code sections have been substituted for the references to former Civil Code Sections 4600, 4600.5, and 4601. These are not substantive changes.

**Interim Comment.** Section 3179 continues old Sections 3175(b) and 3181(b) without substantive change.

**§ 3180. Assessment of needs and interest of child**

**Comment.** Subdivision (a) of Section 3180 continues without substantive change the second sentence of former Civil Code Section 4351.5(e) and the second sentence of former Civil Code Section 4607(d). The reference to "children" has been omitted as surplus. See Section 10 (singular includes plural).

Subdivision (b) continues without substantive change and generalizes the fourth sentence of former Civil Code Section 4607(a). See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues). The phrase "as provided in" has been substituted for "consistent with the considerations required by" for consistency with other sections. See, e.g., Sections 3020 (legislative findings and declarations), 3040 (order of preference in ordering custody). This is not a substantive change.

**Interim Comment.** Section 3180 continues old Section 3157 and the last sentence of old Section 3172 without substantive change.

**§ 3181. Separate mediation where domestic violence**

**Comment.** Section 3181 restates without substantive change and generalizes former Civil Code Section 4607.2. See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues). In subdivision (a), the requirement that the allegation of domestic violence be made in a written declaration under penalty of perjury has been added for consistency with subdivision (b). The "notwithstanding" clause in the former section has been omitted as surplus.

Unlike the former section, this section does not contain a reference to the section defining "domestic violence." This is not a substantive change. See Sections 6201 (application of definitions), 6211 ("domestic violence" defined). The term "protective order" has been substituted for the former references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6218 defines "protective order" to include these orders.

This section supersedes the last sentence of former Civil Code Section 4607(d) which provided that mediators have the authority to meet with parties separately under the circumstances described in this section. The authority to hold the meetings is inherent in the requirement that the mediator do so.

**Interim Comment.** Section 3181 restates old Sections 3176 and 3177 without substantive change. Old Section 3176, authorizing the mediator to hold separate meetings, is superseded. The authority to hold the meetings is inherent in the requirement that the mediator do so.

**§ 3182. Exclusion of counsel from mediation proceeding**

**Comment.** Subdivision (a) of Section 3182 restates without substantive change the first sentence of former Civil Code Section 4351.5(e) and the first sentence of former Civil Code Section 4607(d).

Subdivision (b) is new and is added to provide a reference to the rule regarding exclusion of a domestic violence support person. This is not a substantive change.

**Interim Comment.** Subdivision (a) of Section 3182 restates old Section 3158 without substantive change. Subdivision (b) is added to provide a reference to the section in the Domestic Violence Prevention Act that provides for exclusion of a domestic violence support person from mediation proceedings.

**§ 3183. Recommendations to court**

**Comment.** Section 3183 continues without substantive change the first three sentences of former Civil Code Section 4351.5(f) and the first three sentences of former Civil Code Section 4607(e). The word "submit" has been substituted for "render." This is not a substantive change. The word "child" has been substituted for "children." This is not a substantive change. See Section 10 (singular includes plural).

The provisions in subdivision (b) that the mediator may recommend to the court that the investigation be conducted "pursuant to Chapter 6 (commencing with Section 3110)" and that "other action be taken" to assist the parties to effect a resolution of the controversy have been generalized. The provision in subdivision (c) that restraining orders (rather than "mutual" restraining orders) may be issued has been generalized. Each of these provisions formerly applied only to mediation in contested custody or visitation proceedings pursuant to former Civil Code Section 4607. See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues).

**Interim Comment.** Section 3183 continues without substantive change old Section 3159, but generalizes the second sentence in old subdivision (b) stating that an investigation conducted during mediation of contested issues is conducted pursuant to the investigation chapter in this division.

**§ 3184. Recommendation that counsel be appointed for minor child**

**Comment.** Section 3184 continues without substantive change and generalizes former Civil Code Section 4607(f). The reference to "children" has been omitted as surplus. See Section 10 (singular includes plural). See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues). See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Section 3184 continues old Section 3174 without change.

**§ 3185. Hearing on issues not settled by mediation**

**Comment.** Subdivision (a) of Section 3185 restates without substantive change and generalizes the first sentence of former Civil Code Section 4351.5(h). Subdivision (b) restates the last sentence of former Civil Code Section 4351.5 (h) without substantive change. See Section 3160 Comment (generalization of provisions to apply both to mediation of stepparent or grandparent visitation and to mediation of contested issues).

**Interim Comment.** Section 3185 generalizes old Section 3182 without substantive change. Old Section 3182 applies only to mediation of stepparent or grandparent visitation, whereas Section 3185 applies to mediation of contested issues of custody or visitation as well.

**§ 3186. Confirmation of agreement reached by parties as result of mediation**

**Comment.** Section 3186 continues without substantive change the fourth, sixth, and seventh sentences of former Civil Code Section 4351.5(f) and the fourth, sixth, and seventh sentences of former Civil Code Section 4607(e). In subdivision (b), a reference to "may not" has been substituted for the former reference to "[n]o agreement shall." This is not a substantive change. See Section 12 (shall not and may not are prohibitory). See also Section 1819 (destruction of records of child custody or visitation mediation).

**Interim Comment.** Section 3186 continues old Section 3160 without substantive change.

**Fam. Code § 3190 (amended). Order requiring counseling**

**Comment.** Section 3190 continues the first paragraph of former Civil Code Section 4608.1(a) without substantive change. In subdivision (a), the reference to proceedings "under this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as unnecessary. See Section 3021 (application of part) & Comment. In subdivision (b), the requirement that the court find that the financial burden of the order will jeopardize a party's other financial obligations is added. This is not a substantive change, since subdivision (c) implies the duty to make the finding. See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Section 3190 is amended to omit the reference to specific proceedings, conforming the section to Section 3021 (application of part).

**Fam. Code § 3191 (technical amendment). Purpose of counseling**

**Comment.** Section 3191 continues the last paragraph of former Civil Code Section 4608.1(a) without substantive change. See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Section 3191 is amended to substituted "custody or visitation" for "visitation or custody" for purposes of consistency with other sections.

**Fam. Code § 3192 (technical amendment). Separate counseling where protective order against domestic violence**

**Comment.** Section 3192 continues former Civil Code Section 4608.1(b) without substantive change. Unlike the former section, this section does not contain a reference to the section defining "domestic violence." This is not a substantive change. See Sections 6201 (application of definitions), 6211 ("domestic violence" defined). The phrase "protective order" has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6218 defines "protective order" to include these orders.

**Fam. Code § 3403 (technical amendment). Jurisdictional requirements**

**Comment.** Section 3403 continues former Civil Code Section 5152 [as amended by 1992 Cal. Stat. ch. 392, § 1] without substantive change. See also Section 3011 (factors to be considered in determining best interest of child).

**Interim Comment.** Subdivisions (a) and (b) of Section 3403 are amended to conform to Civil Code Section 5152, as amended by 1992 Cal. Stat. ch. 392, § 1. The structure of subdivisions (a)(3)-(4) has been revised for clarity and style.

**Fam. Code § 3408 (technical amendment). Jurisdiction declined by reason of conduct**

**Comment.** Section 3408 continues former Civil Code Section 5157 [as amended by 1992 Cal. Stat. ch. 392, § 2] without substantive change.

**Interim Comment.** Subdivision (f) is added to Section 3408 to conform to Civil Code Section 5157, as amended by 1992 Cal. Stat. ch. 392, § 2.

**Fam. Code § 3409 (technical amendment). Information to be provided to court**

**Comment.** Section 3409 continues former Civil Code Section 5158 [as amended by 1992 Cal. Stat. ch. 392, § 3] without substantive change. See also Sections 3060 (temporary custody order), 6201 (application of definitions), 6211 ("domestic violence" defined).

**Interim Comment.** The second sentence is added to subdivision (a) of Section 3409 to conform to Civil Code Section 5158, as amended by 1992 Cal. Stat. ch. 392, § 3.

**Fam. Code § 3555 (technical amendment). Forwarding support paid through county**

**Comment.** Section 3555 continues former Civil Code Section 4390.18 without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

The application of the former section was ambiguous, since it was written in broad terms, but located in an earnings assignment order chapter. This section makes clear that it applies to any support paid to a designated county officer, whether or not paid pursuant to an earnings assignment order. See also Sections 3752 (providing district attorney designated as assigned payee with information concerning health insurance coverage for child), 4200-4203 (designation of county officer to be paid child support payments), 4350-4352 (designation of county officer to be paid spousal support payments), 4573 (payment where support paid through district attorney for child not receiving public assistance), 5237(b) (providing designated county officer notice of change of address under earnings assignment order for support).

**Interim 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 § 3557 (added). Attorney's fees and costs**

**Comment.** Section 3557 continues former Civil Code Section 4370(c)-(d) without substantive change. Subdivision (a)(2) continues language that was added in 1991, but chaptered out by a later-enacted bill. See 1991 Cal. Stat. ch. 110, § 4, chaptered out by 1991 Cal. Stat. ch. 500, § 1. See also Section 3652 (attorney's fees in order modifying or terminating child support order).

**Interim Comment.** Section 3557 continues old Section 273 without change.

**Fam. Code § 3601 (technical amendment). Child support order continues in effect until terminated by court or by operation of law**

**Comment.** Section 3601 continues the first sentence of former Civil Code Section 4357(b) without substantive change. In subdivision (a), the references to specific Family Code sections are narrower than the former references to former Civil Code sections. This is not a substantive change, since the relevant parts of the former sections are continued in the Family Code sections. In subdivision (a)(1), a reference to "terminated" has been substituted for "revoked." This is not a substantive change.

**Interim Comment.** This section is amended to omit the reference to Family Code Section 4101, which continued a former section that was subject to repeal, on January 1, 1993, by a sunset clause. No action was taken to prevent the sunset from taking effect and, therefore, Section 4101 has been repealed.

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

**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 supersedes Section 4053.

**Fam. Code § 3622 (technical amendment). Application for 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 supersedes Section 4053.

**Fam. Code § 3623 (technical amendment). Jurisdiction of court**

**Comment.** Section 3623 continues former Civil Code Section 4357.5(f) without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim 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 § 3650 (technical amendment). "Support order" defined**

**Comment.** Section 3650 is a new provision designed to facilitate drafting. Throughout this chapter this definition of "support order" applies, in addition to the general definition of this term. See Section 155 ("support order" defined).

**Interim Comment.** The introductory phrase is added, making this section consistent with other definitions in this code. This is not a substantive change. For provisions dealing with the application of definitions and that contain this phrase, see Sections 50, 900, 2500, 3000, 3500, 3760, 5200, 6900, 8500.

**Fam. Code § 3680 (technical amendment). Purpose of article**

**Comment.** Section 3680 continues former Civil Code Sections 4700.1(a) and 4801.9(a) without substantive change.

**Interim Comment.** This section is amended to omit the reference to "family" support. This reference was added in the Family Code and removing it is not a substantive change, but conforms the Family Code section to the language of the existing law.

**Fam. Code § 3684 (technical amendment). Objection and request for hearing**

**Comment.** Subdivision (a) of Section 3684 continues without substantive change the last three sentences of the last paragraph of former Civil Code Section 4700.1(b) and the last three sentences of the last paragraph of former Civil Code Section 4801.9(b). See also Section 3690 (manner of service of notice).

Subdivision (b) continues former Civil Code Section 4700.1(k) without substantive change.

**Interim Comment.** This section is amended to correct a cross-reference.

**Fam. Code § 3687 (technical amendment). Modification without showing of changed circumstances**

**Comment.** Subdivision (a) of Section 3687 continues without substantive change the first sentence of the second paragraph of former Section 4700.1(d). Subdivision (b) continues without substantive change the first sentence of the second paragraph of former Section 4801.9(d). Subdivision (c) continues without substantive change the last sentence of the second paragraph of former Sections 4700.1(d) and 4801.9(d). In subdivision (c), a reference to failure to file a response has been substituted for the former reference to a default. This is not a substantive change.

**Interim Comment.** The language "necessary and" is added in subdivision (b) because it appears in Civil Code Section 4700.1(d) and may have been unintentionally omitted.

**Fam. Code § 3688 (technical amendment). Modification based on significant decrease in income**

**Comment.** Subdivisions (a) and (b) of Section 3688 continue without substantive change the first three sentences of the third paragraph of former Civil Code Sections 4700.1(d) and 4801.9(d).

Subdivision (c) continues without substantive change the last two sentences of the third paragraph of former Civil Code Section 4801.9(d).

Subdivision (d) supersedes the last two sentences of the third paragraph of former Civil Code Section 4700.1(d). This subdivision recognizes that the use of local guidelines for child support is obsolete in light of the adoption of the statewide uniform guideline. See Section 4050 *et seq.* (statewide uniform guideline for child support).

**Interim Comment.** The revisions of this section are made to harmonize existing Family Code provisions drawn from the predecessor of SB 370 (1992) with the new statewide uniform guideline.

**Fam. Code § 3691 (amended). Notice to district attorney**

**Comment.** Subdivision (a) of Section 3691 continues former Civil Code Section 4700.1(g) without substantive change. Subdivision (b) continues former Civil Code Section 4801.9(f) without substantive change. This section requires that the duplicate copy of the notice be mailed to the district attorney. The former sections required "filing" with the district attorney. This is not a substantive change.

**Interim Comment.** This section is amended to omit the reference to "family" support. This reference was added to the Family Code and removing it is not a substantive change, but conforms the Family Code section to the language of the existing law.

**Fam. Code § 3761 (technical amendment). Application and order for health insurance coverage assignment; notice of intent to seek order**

**Comment.** Subdivision (a) of Section 3761 continues the first sentence of former Civil Code Section 4726.1(a)(1) without substantive change. Subdivision (b) continues former Civil Code Section 4726.1(c) without substantive change. A reference to "wages" has been omitted as surplus. This is not a substantive change. See also Sections 2050-2053 (notice to insurance carriers in dissolution, nullity, or legal separation proceeding), 5206 ("earnings" defined).

**Fam. Code § 3805 (repealed). Deferred sale of home order as additional child support**

**Interim Comment.** Former Section 3805 continued the last sentence of former Civil Code Section 4700.10(c), which cross-referenced former Civil Code Section 4728.5. Section 17 of Chapter 46 of the Statutes of 1992 repealed former Civil Code Section 4728.5. Further, the new statewide uniform guideline scheme does not treat a deferred sale of home order as additional



child support. See Fam. Code § 4057(b)(2) (deferred sale of home order as factor in rebuttal of presumption that support amount established by guideline formula is correct).

**Fam. Code § 3830 (added). Software used to determine support**

**§ 3830. Software used to determine support**

**Comment.** Section 3830 continues former Civil Code Section 4395 [as added by 1992 Cal. Stat. ch. 1157, § 1] without substantive change.

**Fam. Code § 3901 (technical amendment). Duration of child support duty**

**Comment.** Section 3901 continues without substantive change the first and last sentences of former Civil Code Section 196.5 [as amended by 1992 Cal. Stat. ch. 718, § 1] and the first and last sentences of former Civil Code Section 4704.5. The transitional provisions found in the former sections — that the section does not apply to support agreements made or judgments entered before March 4, 1972 — have been omitted as obsolete.

This duty may be enforced in the manner described in Section 4000 (civil action against parent to enforce duty of support). For provisions relating to enforcement of support orders, see Part 5 (commencing with Section 4500). See also Sections 3580-3587 (child support agreements), 3600-3604 (child support during pendency of proceeding), 3620-3634 (expedited child support order).

**Fam. Code § 3902 (technical amendment). Support from child's property**

**Comment.** Section 3902 continues former Civil Code Section 201 without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support). A reference to the duty to provide for education has been omitted as surplus. See Section 150 ("support" includes maintenance and education when used in reference to child).

**Interim 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 (technical amendment). Support of grandchild**

**Comment.** Section 3930 continues former Civil Code Section 208.5 without substantive change. References to support of a "minor" child have been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim 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 (technical amendment). Preference for trial on issue of support**

**Comment.** Section 4003 continues former Civil Code Section 4707 without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement

for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

For general provisions relating to support, see Part 1 (commencing with Section 3500). For provisions relating to enforcement of support orders, see Part 5 (commencing with Section 4500).

**Interim 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, 3910.

**Fam. Code § 4004 (technical amendment). Child receiving public assistance**

**Comment.** Section 4004 continues former Civil Code Section 4700.5 without substantive change. See also Section 3029 (support order required where parent receiving public assistance). The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim 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, 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 (repealed). Factors in determining amount of child support**

**Interim Comment.** Section 4005 continued Civil Code Section 246, insofar as that section applied to child support, but Section 246 has been repealed. See 1992 Cal. Stat. ch. 46, § 1.

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

**Comment.** Section 4010 continues former Civil Code Section 4700.1(f) without substantive change. For provisions relating to modification or termination of support orders, see Chapter 6 (commencing with Section 3650). The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim 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 §§ 4050-4068 (repealed). Child support guidelines**

**Interim Comment.** Former Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code continued former Civil Code Sections 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12) and 4720.2 (as amended by 1991 Cal. Stat. ch. 542, § 4.5), which have been repealed. Former Civil Code Sections 4720.1 and 4720.2 were repealed by 1992 Cal. Stat. ch. 46, §§ 6-7.

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

**§ 4050. Legislative intent**

**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]. A 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**

**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**

**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. A 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**

**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**

**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.

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

**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).

**§ 4056. Information to be in writing or on record**

**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. See also Section 3011 (factors in determining best interest of child).

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

**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. See also Section 3011 (factors in determining best interest of child).

**§ 4058. Annual gross 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 (a)(1), "the proceeding to establish a child support order under this article" has been substituted for "this order." This is not

a substantive change. In subdivision (c), "does not" has been substituted for "shall not." This is not a substantive change. See also Section 3011 (factors in determining best interest of child).

**§ 4059. Annual net disposal income**

**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**

**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 has been revised to conform with the first sentence Section 4059.

**§ 4061. Additional child support**

**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**

**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**

**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**

**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**

**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. See also Section 3011 (factors in determining best interest of child).

**§ 4066. Order or stipulation designating family support**

**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**

**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.

**§ 4068. Judicial Council worksheets and forms**

**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.

**§ 4069. Establishment of guideline as change of circumstances**

**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.

**§ 4070. Financial hardship deductions**

**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**

**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**

**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 plural).

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

**§ 4074. Application to family support awards**

**Comment.** Section 4074 continues former Civil Code Section 4731 [as added by 1984 Cal. Stat. ch. 1605, § 4] without substantive change.

**§ 4075. Treatment of spousal support payments by IRS**

**Comment.** Section 4075 continues former Civil Code Section 4732 [as added by 1984 Cal. Stat. ch. 1605, § 4] without substantive change.

**Fam. Code §§ 4100-4105 (repealed). Recovery for cost of support provided before filing proceeding**

**Interim Comment.** Former Article 2 (commencing with Section 4100) of Chapter 2 of Part 2 of Division 9 continued former provisions that were subject to repeal by a sunset clause on January 1, 1993. No action was taken by the Legislature to prevent the sunset clause from taking effect and, therefore, the Family Code sections continuing these provisions are repealed.

**Fam. Code § 4200 (technical amendment). Child support payable to parent receiving welfare**

**Comment.** Section 4200 continues former Civil Code Section 4702(a) without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement

for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support). The reference in former law to Civil Code Section 4701 has been omitted as obsolete, since Section 4701 was repealed by its own terms on January 1, 1991. See 1989 Cal. Stat. ch. 1359, § 3.5.

See also Sections 3029 (order for support required when custodial parent receiving public assistance), 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). For a comparable procedure for spousal support payments, see Chapter 4 (commencing with Section 4350) of Part 2.

**Interim 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 (technical amendment). Child support payable to person having custody of minor child**

**Comment.** Section 4201 continues former Civil Code Section 4702(b) [as amended by 1992 Cal. Stat. ch. 848, § 4] without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support). The limitation to children "of the marriage" has been omitted, since 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 (b), the reference to "proceeding" has been substituted for "action." This is a nonsubstantive change that conforms with Section 4200(b).

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.

**Fam. Code § 4321 (technical amendment). Denial of support from separate property of other party**

**Comment.** Section 4321 restates the first sentence of former Civil Code Section 4806 without substantive change. In the introductory clause, the reference to a "judgment of dissolution of marriage or legal separation of the parties" has been substituted for the former reference to a "proceeding under this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). The reference to the court's authority to "deny support" has been substituted for the former reference to withholding an allowance. This is not a substantive change. A reference to the defined term "separate property" has been substituted for the former reference to the undefined term "separate estate." This is not a substantive change.

See also Sections 65 ("community property" defined in Section 760 *et seq.*), 125 ("quasi-community property" defined), 130 ("separate property" defined in Section 760 *et seq.*), 2254 (support of putative spouse), 3515 ("separate property" defined).

**Interim Comment.** Subdivision (a) of Section 4321 is amended to change "separate estate" to "separate property." "Separate estate" is not defined, while "separate property" is defined. See Section 130.

**Fam. Code § 4502 (repealed). Renewal of judgment for support**

**Interim Comment.** This section is superseded by a new Section 4502.

**Fam. Code § 4502 (added). Exception from renewal requirement**

**Comment.** Section 4502 continues former Civil Code Section 4384.5 [as added by 1992 Cal. Stat. ch. 718, § 3] without substantive change. The reference to "family" support is new and is consistent with Section 4501. As to lack of diligence in seeking enforcement of a support order, see Section 291. See also Code Civ. Proc. § 683.310 (except as provided in Family Code Section 4502, Code of Civil Procedure sections on enforcement and renewal of judgments are inapplicable to judgment made or entered under Family Code).

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

**Comment.** Section 4573 continues the third sentence of former Civil Code Section 4710(f) without substantive change. References to support of a "minor" child have been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support). See also Section 3555 (forwarding support paid through designated county officer).

**Interim 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 (technical amendment). Order for deposit of assets**

**Comment.** Section 4610 continues the first two sentences of former Civil Code Section 4701.1(a)(1) without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim 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 (technical amendment). Determination by court of assets subject to order**

**Comment.** Section 4614 continues the first two sentences of former Civil Code Section 4701.1(c) without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim 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 (technical amendment). Use or sale of assets**

**Comment.** Section 4630 continues former Civil Code Section 4701.1(a)(2)-(3) without substantive change. In subdivision (a), the reference to the maintenance and education of the minor child has been omitted a surplus. See Section 150 ("support" includes maintenance and

education when used in reference to minor child). See also Section 4011 (priority of child support payments). The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim Comment.** Subdivision (a) of Section 4630 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 § 4729 (technical amendment). Utilization of penalties by district attorney**

**Comment.** Section 4729 continues former Civil Code Section 4700.11(l) [as amended by 1992 Cal. Stat. ch. 50, § 2] without substantive change.

**Interim Comment.** Section 4729 is amended to conform to amendments to Civil Code Section 4700.11(l) by 1992 Cal. Stat. ch. 50, § 2.

**Fam. Code § 4730 (technical amendment). Penalties not considered in setting or modifying support**

**Comment.** Section 4730 continues former Civil Code Section 4700.11(f) without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim Comment.** Section 4730 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 § 4733 (added). Payment of penalties to custodian**

**Comment.** Section 4733 continues former Civil Code Section 4700.11(n) [as amended by 1992 Cal. Stat. ch. 50, § 2] without substantive change. The former reference to "children" is omitted as surplus. See Section 10 (singular includes plural). The former reference to a decree is omitted as surplus. See Section 100 ("judgment" includes decree, as appropriate).

**Interim Comment.** Section 4733 is added to conform to amendments to Civil Code Section 4700.11(n) by 1992 Cal. Stat. ch. 50, § 2.

**Fam. Code § 4849 (technical amendment). Registration of foreign support order**

**Comment.** Section 4849 continues former Code of Civil Procedure Section 1698 without substantive change. The reference to a "foreign order for the assignment of wages" has been omitted as surplus. See Section 4802(p) ("foreign support order" defined).

**Fam. Code § 4853 (technical amendment). Effect of registration of foreign support or assignment order; enforcement of registered order**

**Comment.** Section 4853 continues former Code of Civil Procedure Section 1699 [as amended by 1992 Cal. Stat. ch. 848, § 11] without substantive change.

**Interim Comment.** Section 4853 is amended to conform to amendments to Code of Civil Procedure Section 1699 by 1992 Cal. Stat. ch. 848, § 11.

**Fam. Code § 5206 (technical amendment). "Earnings"**

**Comment.** Section 5206 continues former Civil Code Section 4390(c) [as amended by 1992 Cal. Stat. ch. 848, § 2] without substantive change. In subdivision (c), the reference to payments



"or" credits was substituted for consistency with subdivision (e). In subdivision (d), the reference to "[a]ny" payments is omitted as surplus. This is not a substantive change.

**Interim Comment.** Section 5206 is amended to conform to amendments to Civil Code Section 4390(c) by 1992 Cal. Stat. ch. 848, § 2. In subdivision (d) the reference to "[a]ny" payment is omitted as surplus.

**Fam. Code § 5245 (technical amendment). Use of other remedies not limited**

**Comment.** Section 5245 continues former Civil Code Section 4390.19 without substantive change. The former reference to any "and all" enforcement remedies has been omitted. This is not a substantive change, since "all" is surplus. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

**Interim Comment.** Section 5245 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 § 5260 (technical amendment). Finding of good cause required to stay order**

**Comment.** Section 5260 continues former Civil Code Section 4390.3(c) [as amended by 1992 Cal. Stat. ch. 848 § 3] without substantive change.

**Interim Comment.** Section 5260 is amended to conform to amendments to Civil Code Section 4390.3(c) by 1992 Cal. Stat. ch. 848, § 3.

**Fam. Code §§ 5500-5807 (repealed). Prevention of domestic violence**

**Interim Comment.** Division 10 of the Family Code is repealed to allow for renumbering and reorganization of the provisions and to allow for expansion of Division 9 (support). The substance of the statutes is continued without substantive change in new Division 10. Sections 5501 and 5505 are omitted. Section 5501 refers to additional definitions applicable to Division 10 and is obsolete, since those definitions are added to new Division 10.

The following table indicates the disposition of each section of old Division 10 in new Division 10:

<i>Repealed</i>	<i>Added</i>	<i>Repealed</i>	<i>Added</i>
5500 .....	6201	5550 .....	6320-6325
5501 .....	omitted	5551 .....	6302
5505 .....	6218	5552 .....	6321
5510 .....	6200	5600 .....	omitted
5511 .....	6220	5601 .....	6241
5512 .....	6222	5602 .....	6270
5513 .....	6223	5603 .....	6256
5514 .....	6305	5604 .....	6273
5515 .....	6224	5605 .....	6271
5516 .....	6304	5606 .....	6272
5517 .....	6225	5650(a) .....	6250(a)
5518 .....	6227	5650(b) .....	6252(a)-(b)
5519 .....	6303	5650(c) .....	6255
5520 .....	6226	5651 .....	6251, 6254
5530 .....	6300	5652 .....	6253
5531 .....	6301	5700(a) .....	6250(b)

5700(b) . . . . .	6252(c)	5755 . . . . .	6344
5700(c) . . . . .	6255	5756 . . . . .	6345
5701 . . . . .	6251, 6254	5800 . . . . .	6380
5702 . . . . .	6253	5801 . . . . .	6382
5703 . . . . .	6257	5802 . . . . .	6383
5750 . . . . .	6340(a)	5803 . . . . .	6384
5751 . . . . .	6340(b)	5804 . . . . .	6385
5752 . . . . .	6341	5805 . . . . .	6386
5753 . . . . .	6342	5806 . . . . .	6387
5754 . . . . .	6343	5807 . . . . .	6388

**Fam. Code §§ 6200-6273 (added). Prevention of domestic violence**

**§ 6200. Short title**

**Comment.** Section 6200 continues former Code of Civil Procedure Section 541 without substantive change.

This division collects the substantive provisions for issuance of restraining orders intended to prevent domestic violence. Formerly these substantive provisions were duplicated in substantial part in the former Family Law Act, the Domestic Violence Prevention Act, and the Uniform Parentage Act. Now that these bodies of law have been consolidated in the Family Code, these duplicative provisions have been consolidated and continued in this division.

The orders that may be issued under this division may be issued in a proceeding brought pursuant to this division. These orders may also be issued in a proceeding for dissolution, nullity, or legal separation, and in an action brought pursuant to the Uniform Parentage Act. See Section 6221 (application of this division). See also Sections 2045, 2047, 2049 (restraining orders in dissolution, nullity, or legal separation proceeding), 7710, 7720, 7730 (restraining orders in Uniform Parentage Act proceeding).

See also Welf. & Inst. Code § 213.5 (protective orders during pendency of proceeding to declare minor dependent).

**Interim Comment.** Section 6200 continues Section 5510 without substantive change. The reference to this division as the Domestic Violence Prevention "Act" has been substituted for the reference to the Domestic Violence Prevention "Law." This change conforms this section to other sections in this code and existing Code of Civil Procedure Section 541.

**§ 6201. Application of definitions**

**Comment.** Section 6201 continues without substantive change and generalizes the introductory clause of former Code of Civil Procedure Section 542. The introductory clause of this section has been added for conformity with other sections in this code. See Section 50 & Comment.

For provisions outside this division that use the definitions in this division, see Sections 213 (responding party's request for affirmative relief alternative to moving party's requested relief), 3064 (limitation on ex parte order granting or modifying custody order), 3100 (visitation rights of a parent), 3101 (visitation rights of stepparent), 3103 (visitation rights of grandparent), 3113 (separate meetings with court appointed investigator), 3181 (separate meetings with mediator), 3192 (separate meetings with counselor appointed in custody proceeding).

**Interim Comment.** Section 6201 continues Section 5500 and is amended to add the introductory phrase. This is a standard phrase used in sections of this type and is not a substantive change.

**§ 6203. "Abuse"**

**Comment.** Section 6203 continues former Code of Civil Procedure Section 542(a) without substantive change. For provisions adopting this definition by reference, see Section 3011

(determining best interest of child in custody proceeding); Evid. Code § 1107 (admissibility of expert witness testimony regarding battered women's syndrome).

**Interim Comment.** Section 6203 continues Section 55. This section is moved to Division 10 for convenience; however, it is still applicable to the whole code. See Section 6201 (application of definitions).

**§ 6205. "Affinity"**

**Comment.** Section 6205 is a new provision drawn from Code of Civil Procedure Section 17(9).

**Interim Comment.** Section 6205 continues Section 57. This section is moved to Division 10 for convenience; however, it is still applicable to the whole code. See Section 6201 (application of definitions).

**§ 6209. "Cohabitant"**

**Comment.** Section 6209 continues former Code of Civil Procedure Section 542(c) without change.

**Interim Comment.** Section 6209 continues Section 60. This section is moved to Division 10 for convenience; however, it is still applicable to the whole code. See Section 6201 (application of definitions).

**§ 6211. "Domestic violence"**

**Comment.** Subdivisions (a)-(d) and (f) of Section 6211 continue without substantive change and broaden former Code of Civil Procedure Section 542(b). In subdivision (c), the reference to an ongoing dating or engagement relationship has been added. This is drawn from the definition of domestic violence in Penal Code Section 13700 [as amended by Section 9 of Chapter 1136 of the Statutes of 1992]. In subdivision (f), the reference to any "adult" person related by consanguinity or affinity has been omitted. This is consistent with the addition of children in subdivision (e).

Subdivision (e) is drawn from former Civil Code Section 7020 and eliminates any implication that children are not covered by this statute. Former Civil Code Section 7020 authorized restraining orders to protect children who are the subject of a proceeding pursuant to the Uniform Parentage Act. The former Domestic Violence Protection Act protected "cohabitants" but did not specifically mention children. See former Code Civ. Proc. § 542(b)-(c). Subdivision (e) continues the protection explicit in the former Uniform Parentage Act and extends it explicitly to include a child of a party to the proceeding in which the orders are sought. See Section 6221 (application of division).

Where a child has been declared a dependent of the juvenile court, that court may issue orders to protect the child from violence pursuant to the Welfare and Institutions Code. See e.g., Welf. & Inst. Code §§ 213.5 (ex parte orders during pendency of proceeding to declare child a dependent), 304 (juvenile court authority to issue protective orders sua sponte). See also Section 6221(b) (nothing in this division affects the jurisdiction of the juvenile court).

See Sections 6320 (ex parte order enjoining harassment, threats, and violence), 6321 (ex parte order excluding party from dwelling), 6340 (orders that may be issued after notice and hearing); see also Sections 6203 ("abuse" defined), 6205 ("affinity" defined), 6209 ("cohabitant" and "former cohabitant" defined); Welf. & Inst. Code § 213.5 (issuance of restraining order during pendency of proceeding to determine minor dependent).

For provisions adopting this definition by reference, see Sections 3064 (limitation on ex parte order granting or modifying custody order), 3113 (separate meetings with court appointed investigator), 3181 (separate meetings with mediator), 3192 (separate meetings with counselor appointed in custody proceeding); Code Civ. Proc. §§ 128 (contempt powers of court), 1219 (punishment for contempt); Evid. Code §§ 1037.7 (victim-counselor privilege), 1107 (admissibility of expert witness testimony regarding battered women's syndrome); Penal Code §§ 273.6 (penalty for violation of protective order), 977 (appearance in misdemeanors), 1377 (compromise of misdemeanors).

For other domestic violence provisions, see, e.g., Penal Code §§ 136.2 (penalty for intimidation of witness), 273.83 (individuals subject to prosecution by district attorney's "spousal abuser" unit), 277 (penalty for child abduction), 653m (penalty for annoying telephone calls), 853.6 (citation and release not automatically available for misdemeanor violation of order to prevent domestic violence), 1000.6 (diversion of misdemeanant to counseling), 12028.5 (confiscating weapons at scene of domestic violence), 13700 (law enforcement response to domestic violence); Welf. & Inst. Code § 18291 ("domestic violence" defined for purposes of the Domestic Violence Centers Act).

**Interim Comment.** Section 6211 continues Section 70. This section is moved to Division 10 for convenience; however, it is still applicable to the whole code. See Section 6201 (application of definitions).

#### **§ 6215. "Emergency protective order"**

**Comment.** Section 6215 is a new provision included for drafting convenience.

**Interim Comment.** Section 6215 is a new provision included for drafting convenience.

#### **§ 6218. "Protective order"**

**Comment.** Section 6218 restates former Code of Civil Procedure Section 542(d) and expands the definition to include orders described in Sections 6321 and 6322. As revised, this term describes the three orders that most directly protect a victim of domestic violence from abuse. These are the orders to prevent specific acts of abuse, such as contacting, molesting, and striking, to exclude a party from a dwelling, and to enjoin other specified behaviors necessary to effectuate the first two orders. See Sections 6320 (enjoining harassment, threats, and violence), 6321 (exclusion from dwelling), 6322 (enjoining additional specified behaviors).

In this division, the term "protective order" is used in Sections 6252 (orders included in emergency protective order), 6303 (support person for victim of domestic violence), 6304 (court to provide information to parties concerning terms and effect of order), 6343 (participation in counseling), 6360 (orders included in judgment), 6385 (notice to Department of Justice), 6386 (appointment of counsel and payment of fees and costs to enforce order), 6388 (criminal penalty for violation of order).

For provisions adopting this definition by reference, see Sections 213 (responding party's request for affirmative relief alternative to moving party's requested relief), 2045, 2047, 2049 (restraining orders in proceeding for dissolution, nullity, and legal separation), 3100 (visitation rights of a parent), 3101 (visitation rights of stepparent), 3113 (separate meetings with court appointed investigator), 3103 (visitation rights of grandparent), 3181 (separate meetings with mediator), 3192 (separate meetings with counselor appointed in custody proceeding), 7710, 7720, 7730 (restraining orders in action pursuant to the Uniform Parentage Act); Gov't Code § 26841 (fees for protective order); Penal Code §§ 273.6 (willful violation of court order), 12021 (firearms), 14152 (referrals by district attorney to community conflict resolution program); Welf. & Inst. Code §§ 304 (custody of dependent children of the court), 362.4 (juvenile court order concerning custody or visitation).

**Interim Comment.** Section 6218 is continues without substantive change and generalizes former Section 5505. The term "protective order" replaces the former term "domestic violence prevention order," which seemed too broad to serve as a means of referring to a subset of all of the orders that may be issued pursuant to the Domestic Violence Prevention Act.

#### **§ 6220. Purposes of division**

**Comment.** Section 6220 continues former Code of Civil Procedure Section 540 without substantive change. The list of persons in the former section has been omitted. This is not a substantive change, since the list is duplicated in the definition of domestic violence that applies to this section. See Section 6211 ("domestic violence" defined).

**Interim Comment.** Section 6220 continues former Section 5511 without substantive change. The phrase "and sexual abuse" is added, restoring the language of former Code of Civil Procedure Section 540.

**§ 6221. Application of division**

**Comment.** Subdivision (a) of Section 6221 is new and is added to make clear that the provisions of this division are applicable not only to proceedings brought pursuant to this division, but also in proceedings for dissolution, nullity, and legal separation and in actions brought pursuant to the Uniform Parentage Act.

Subdivision (b) is new is added to help to ensure that conflicts of jurisdiction between the family court and the juvenile court do not arise.

**Interim Comment.** Section 6221 is new and is added for the reasons stated in the Comment.

**§ 6222. Fees**

**Comment.** Section 6222 restates former Code of Civil Procedure Section 546.5 without substantive change. In subdivisions (b) and (d), references to "an order issued under this division" have been substituted for the former reference to "an order obtained under this section." The former reference was unclear, since former Code of Civil Procedure Section 546.5 did not provide for the issuance of orders. The reference has been corrected to include any of the orders that may be issued under the Domestic Violence Prevention Act — this division of the Family Code.

**Interim Comment.** Section 6222 continues former Section 5512 without substantive change.

**§ 6223. Matters to be considered where custody or visitation order issued pursuant to Domestic Violence Prevention Act**

**Comment.** Section 6223 is a new provision that provides a cross-reference to the main custody statute in Division 8. This section makes clear that, where a custody or visitation order is issued in a proceeding brought pursuant to the Domestic Violence Prevention Act, the court is to apply the same substantive and procedural rules as would be applied in any other proceeding in which these issues may be determined.

For sections of particular importance in situations involving domestic violence, see Sections 3030 (custody and unsupervised visitation prohibited where parent convicted under certain Penal Code provisions), 3031 (custody or visitation should not be inconsistent with restraining orders), 3100(b) (limiting visitation to situation where third party present), 3131 (action by district attorney where child taken or detained in violation of visitation order).

**Interim Comment.** Section 6223 restates former Section 5513 without substantive change. The section is rewritten to expand application of the section to all orders, rather than temporary orders only. The reference to Part 2 of Division 8 is added.

**§ 6224. Required statements in order**

**Comment.** Section 6224 continues without substantive change former Code of Civil Procedure Section 552, the first sentence of former Civil Code Section 4359(c), and former Civil Code Section 7020(c). This section generalizes the requirements of the former sections to apply to all orders issued pursuant to this division. This is not a substantive change. See Cal. R. Ct. 1285.05 (rev. July 1, 1987) (temporary restraining order in dissolution, nullity, or legal separation proceeding), 1296.10 (rev. Jan. 1, 1991) (order to show cause and temporary restraining order in proceeding pursuant to Domestic Violence Prevention Act or Uniform Parentage Act), 1296.29 (new July 1, 1991) (restraining order after hearing in dissolution, nullity, or legal separation or in proceedings under Domestic Violence Prevention Act or Uniform Parentage Act).

**Interim Comment.** Section 6224 supersedes former Sections 2037(a)-(b), 5515, and 7730.

**§ 6225. Explicit statement of address not required**

**Comment.** Section 6225 generalizes and continues the last sentence of former Code of Civil Procedure Section 545 without substantive change. This section has been expanded to apply to orders contained in a judgment. The references to "petitioner" have been substituted for the former references to "applicant." This is not a substantive change.

**Interim Comment.** Section 6225 continues former Section 5517 without substantive change. References to "petitioner" are substituted for "applicant."

**§ 6226. Judicial council forms and instructions**

**Comment.** Section 6226 continues without substantive change former Code of Civil Procedure Section 543, the first sentence of the third paragraph of subdivision (b) and the first sentence of the fourth paragraph of subdivision (c) of former Code of Civil Procedure Section 546, and the last paragraph of former Civil Code Section 4359(a).

**Interim Comment.** Section 6226 continues former Sections 2043 and 5520 without substantive change.

**§ 6227. Remedies cumulative**

**Comment.** Section 6227 continues former Code of Civil Procedure Section 549 without substantive change. The word "petitioner" has been substituted for "plaintiff" to conform to revisions made in former law. See 1990 Cal. Stat. ch. 752.

**Interim Comment.** Section 6227 continues former Section 5518 without substantive change.

**§ 6240. Definitions**

**Comment.** Section 6240 is a new section that defines terms for the purposes of this part relating exclusively to emergency protective orders. The terms "judicial officer" and "law enforcement officer" are consistent with the Judicial Council form for the emergency protective order. See Cal. R. Ct. 1295.90 (rev. Jan. 1, 1992). See also Section 6215 ("emergency protective order" defined).

In this part, provisions concerning emergency protective orders relating to domestic violence from former Code of Civil Procedure Section 546(b) and provisions concerning emergency protective orders relating to child abuse from former Code of Civil Procedure Section 546(c) have been unified to the extent practicable. This approach is consistent with the unified Judicial Council form for the emergency protective order.

**Interim Comment.** Section 6240 is new and is added for the reasons stated in the Comment.

**§ 6241. Designation of judicial officer to orally issue ex parte emergency protective orders**

**Comment.** Section 6241 continues without substantive change the first sentence of the first paragraph of former Code of Civil Procedure Section 546(b). See Section 6240(a) ("judicial officer" defined by reference to this section). See also Section 6215 ("emergency protective order" defined).

**Interim Comment.** Section 6241 continues former Section 5601 without substantive change.

**§ 6250. Grounds for ex parte emergency protective order**

**Comment.** Section 6250 continues without substantive change the second sentence of the first paragraph of subdivision (b) and the first sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546. In subdivision (a), the phrase "by the person against whom the order is sought" has been added. This is not a substantive change. See Sections 6203 ("abuse" defined), 6211 ("domestic violence" defined).

With regard to orders issued under subdivision (b), the effect of the definition of "law enforcement officer" in Section 6240(b) is to provide authority for park police to seek orders in child abuse situations. This is consistent with the Judicial Council form for the emergency protective order. See Cal. R. Ct. 1295.90 (rev. Jan. 1, 1992).

See also Sections 6215 ("emergency protective order" defined), 6240(a) ("judicial officer" defined).

**Interim Comment.** Subdivision (a) of Section 6250 continues former Section 5650(a) without substantive change. Subdivision (b) continues former Section 5700(a) without substantive change.

**§ 6251. Finding required to issue order**

**Comment.** Section 6251 continues without substantive change the first sentence of the second paragraph of subdivision (b) and the first sentence of the second paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6203 ("abuse" defined), 6211 ("domestic violence" defined), 6215 ("emergency protective order" defined), 6240(a) ("judicial officer" defined).

**Interim Comment.** Section 6251 continues the first sentence of former Sections 5651 and 5701 without substantive change.

**§ 6252. Orders included in emergency protective order**

**Comment.** The introductory clause and subdivisions (a) and (b) of Section 6252 continue without substantive change the third sentence of the first paragraph of former Code of Civil Procedure Section 546(b). A reference to "child" has been substituted for "children." This is not a substantive change. See Section 10 (singular includes plural).

The introductory clause and subdivision (c) continue without substantive change the second sentence of the first paragraph of former Code of Civil Procedure Section 546(c). The reference to the "legal" guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined).

See also Sections 6203 ("abuse" defined), 6211 ("domestic violence" defined), 6215 ("emergency protective order" defined).

**Interim Comment.** Section 6252 continues former Sections 5650(b) and 5700(b) without substantive change.

**§ 6253. Contents of order**

**Comment.** Section 6253 continues without substantive change the parts of the second paragraphs of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 that enumerated the contents of an emergency protective order, and the last sentence of the third paragraph of subdivision (b) and the last sentence of the fourth paragraph of subdivision (c) of former Code of Civil Procedure Section 546. The language concerning attorney advice in subdivision (e) has been conformed to the language of subdivision (d)(1). See also Section 6215 ("emergency protective order" defined).

**Interim Comment.** Section 6253 continues former Sections 5652 and 5702 without substantive change.

**§ 6254. Availability of emergency protective order**

**Comment.** Section 6254 continues without substantive change the seventh paragraph of subdivision (b) and the seventh paragraph of subdivision (c) of former Code of Civil Procedure Section 546. The endangered person may be an adult or a child. See also Section 6203 ("abuse" defined), 6215 ("emergency protective order" defined).

**Interim Comment.** Section 6254 continues the last sentence of former Sections 5651 and 5701 without substantive change.

**§ 6255. Issuance of ex parte emergency protective order**

**Comment.** Section 6255 continues without substantive change the last sentence of the first paragraph of subdivision (b) and the last sentence of the first paragraph of subdivision (c) of

former Code of Civil Procedure Section 546. See also Section 6215 ("emergency protective order" defined).

**Interim Comment.** Section 6255 continues former Sections 5650(c) and 5700(c) without substantive change.

**§ 6256. Expiration of order**

**Comment.** Section 6256 continues without substantive change the sixth paragraph of subdivision (b) and the third sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Section 6215 ("emergency protective order" defined).

**Interim Comment.** Section 6256 continues former Section 5603 without substantive change.

**§ 6257. Application for more permanent restraining order**

**Comment.** Section 6257 continues the third paragraph of former Code of Civil Procedure Section 546(c) without substantive change. For provisions relating to orders concerning endangered children, see Section 6250(b), 6251(a), 6252(b)-(c). See also Section 6215 ("emergency protective order" defined). The reference to the "legal" guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined).

**Interim Comment.** Section 6257 continues former Section 5703 without substantive change.

**§ 6270. Reducing order to writing and signing order**

**Comment.** Section 6270 continues without substantive change the second sentence of the second paragraph of subdivision (b) and the second sentence of the second paragraph of subdivision (c) of former Code of Civil Procedure Section 546. The requirement of this section is satisfied by use of the Judicial Council form. See Cal. R. Ct. 1295.90 (rev. Jan. 1, 1992). See also Sections 6215 ("emergency protective order" defined), 6240(b) ("law enforcement officer" defined).

**Interim Comment.** Section 6270 continues former Section 5602 without substantive change.

**§ 6271. Service, filing, and delivery of order**

**Comment.** Section 6271 continues without substantive change the fifth paragraph of subdivision (b) and the sixth paragraph of subdivision (c) of former Code of Civil Procedure Section 546. References to the "legal" guardian have been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined).

See Section 6252 (b)-(c) (orders concerning endangered child); see also Sections 6215 ("emergency protective order" defined), 6240(b) ("law enforcement officer" defined).

**Interim Comment.** Section 6271 continues former Section 5605 without substantive change.

**§ 6272. Means of enforcement; protection of officer from liability**

**Comment.** Section 6272 restates without substantive change the last paragraph of subdivision (b) and the last paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6215 ("emergency protective order" defined), 6240(b) ("law enforcement officer" defined).

**Interim Comment.** Section 6272 continues former Section 5606 without substantive change.

**§ 6273. Officer to carry copies of order**

**Comment.** Section 6273 continues without substantive change the fourth paragraph of subdivision (b) and the fifth paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6215 ("emergency protective order" defined), 6240(b) ("law enforcement officer" defined).



**Interim Comment.** Section 6273 continues former Section 5604 without substantive change. The phrase "while on duty" is added, restoring the language of former Code of Civil Procedure Section 546.

**§ 6300. Issuance on affidavit showing reasonable proof of past act or acts of abuse**

**Comment.** Section 6300 continues without substantive change and generalizes the first sentence of former Code of Civil Procedure Section 545. A reference to an order issued under "this part" has been substituted for the former reference to a "temporary" restraining order. This is not a substantive change. See also Sections 6203 ("abuse" defined), 6211 ("domestic violence" defined).

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

**Interim Comment.** Section 6300 restates former Section 5530 without substantive change.

**§ 6301. Persons who may be granted restraining order**

**Comment.** Section 6301 continues the second and third sentences of former Code of Civil Procedure Section 545 without substantive change. A reference to Section 6211 has been substituted for the reference to former Code of Civil Procedure Section 542. This is not a substantive change, since the relevant part of the former section is continued in Section 6211. The former reference to a "temporary" restraining order has been omitted, for consistency with other sections in this part. This is not a substantive change. See also Section 6203 ("abuse" defined).

**Interim Comment.** Section 6301 continues former Section 5531 without substantive change.

**§ 6302. Notice in order**

**Comment.** Section 6302 continues without substantive change the second paragraph of Code of Civil Procedure Section 546(a) and former Civil Code Sections 4359(d) and 7020(d). A reference to "restrained person" has been substituted for references to "defendant" in former Code of Civil Procedure Section 546(a) and former Civil Code Section 7020(d) and to "Petitioner/Respondent" in former Civil Code Section 4359(d). These are not substantive changes. See Cal. R. Ct. 1296.10 (rev. Jan. 1, 1991) (order to show cause and restraining order).

**Interim Comment.** Section 6302 continues former Sections 2037(c), 5551, and 7731 without substantive change.

**§ 6303. Support person for victim of domestic violence**

**Comment.** Section 6303 continues without substantive change and generalizes former Civil Code Section 4351.6. Subdivision (a) has been revised to refer to the function of a support person, rather than the legislative intent regarding that function. This is not a substantive change. Duplicative references to "the person who alleges he or she is a victim of domestic violence" have been omitted and references to "the person" substituted. In subdivisions (b) and (c), the term "protective order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. Section 6218 defines "protective order" to include the orders formerly listed, except as to orders under Code of Civil Procedure Section 527.6, which provides for similar orders in situations not covered by this division. This is not a substantive change, since, insofar as former Civil Code Section 4351.6 applied to Code of Civil Procedure Section 527.6, the former section is continued in new subdivision (f) of Code of Civil Procedure Section 527.6. See Code Civ. Proc. § 527.6 (civil harassment orders) & Comment. See also Section 6211 ("domestic violence" defined).

In subdivision (c), a reference to a "proceeding described in Section 3021" has been substituted for the narrower reference to an "action or proceeding under this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). See Section 3021 Comment.

Former Civil Code Section 4351.6(e) has been omitted. This is not a substantive change, since the former subdivision duplicated a provision that is continued in Section 6303(a).

**Interim Comment.** Section 6303 continues former Section 5519 without substantive change.

**§ 6304. Information to parties concerning terms and effect of order**

**Comment.** Section 6304 continues former Code of Civil Procedure Section 550(f) without substantive change. The reference to "protective order" has been substituted for the reference to an order "predicated on" what are now Sections 6320-6322. This is not a substantive change, since "protective order" has been defined to include the same orders. See Section 6218 ("protective order" defined). See also Penal Code § 12021 (penalty for violation of firearm prohibition in restraining order).

**Interim Comment.** Section 6304 continues former Section 5516 without substantive change.

**§ 6305. Conditions for issuance of mutual order**

**Comment.** Section 6305 continues without substantive change former Code of Civil Procedure Section 545.5, the second paragraph of former Civil Code Section 4359(a), and former Civil Code Section 7020(f) [as respectively amended by 1992 Cal. Stat. ch. 1136, §§ 1, 4, 5.]. The references in the former sections to the definition of domestic violence have been omitted. This is not a substantive change, since the definition applicable to this section is the same. See Section 6211 ("domestic violence" defined); see also Section 6302 ("abuse" defined). A reference to Section 6320 has been substituted for a specific list of acts. This is not a substantive change, since Section 6320 duplicates the omitted list.

**Interim Comment.** Section 6305 continues former Sections 2036, 5514, and 7711 without substantive change.

**§ 6320. Enjoining harassment, threats, and violence**

**Comment.** Section 6320 restates part of the first sentence of former Code of Civil Procedure Section 546(a) without substantive change, and continues former Civil Code Sections 4359(a)(2) and 7020(a)(1) without substantive change. A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

The language preventing "contacting repeatedly by mail with the intent to harass" has been added. This language is drawn from a 1992 amendment to Penal Code Section 273.6. See 1992 Cal. Stat. ch. 1209, §§ 1-2.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Section 6305 (conditions for issuance of mutual restraining order).

**Interim Comment.** Section 6320 continues without substantive change former Sections 2035, 5550, and 7710 insofar as each applied to an ex parte order to prevent the specified acts of abuse listed in this section.

**§ 6321. Exclusion from dwelling**

**Comment.** Section 6321 restates without substantive change part of the first sentence of Code of Civil Procedure Section 546(a), and continues without substantive change the last paragraph of former Code of Civil Procedure Section 546(a) and former Civil Code Sections 4359(a)(3) and 7020(a)(2). This section supersedes the third part of former Civil Code Section 5102(a). The reference to "the common dwelling of both parties" is drawn from former Civil Code Section 7020(b). This is not a substantive change, but rather is added to clarify application of the section to unmarried persons. A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

**Interim Comment.** Section 6321 continues without substantive change former Sections 2035, 5550, and 7710 (insofar as each applied to an ex parte order to exclude a party from a dwelling), and 5552.

**§ 6322. Enjoining additional specified behaviors**

**Comment.** Section 6322 restates without substantive change part of the first sentence of former Code of Civil Procedure Section 546(a), and continues without substantive change former Civil Code Sections 4359(a)(6) and 7020(a)(3). A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

**Interim Comment.** Section 6322 continues without substantive change former Sections 2035, 5550, and 7710 insofar as each applied to an ex parte order to enjoin addition specified behaviors.

**§ 6323. Determining temporary custody and visitation**

**Comment.** Section 6323 restates without substantive change part of the first sentence of Code of Civil Procedure Section 546(a), and continues without substantive change former Civil Code Sections 4359(a)(4) and 7020(a)(4). The intention of this section is to continue the prior law and practice. The reference to Section 3064 has been added. To the extent that the court's authority to issue custody orders ex parte is limited by Section 3064, this limitation also applies to visitation. A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

Section 6223 requires that procedural and substantive rules contained in Part 2 (commencing with Section 3020) of Division 8 of this code be applied where a court determines custody or visitation in a proceeding brought pursuant to the Domestic Violence Prevention Act. For sections of particular importance in situations involving domestic violence, see Sections 3030 (custody and unsupervised visitation prohibited where parent convicted under certain Penal Code provisions), 3031 (custody or visitation should not be inconsistent with restraining orders), 3100(b) (limiting visitation to situation where third party present), 3131 (action by district attorney where child taken or detained in violation of visitation order). See also Cal. R. Ct. 1285.05 (rev. July 1, 1991) (temporary restraining order), 1296.10 (rev. Jan. 1, 1991) (order to show cause and temporary restraining order).

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Section 3021 (Part 2 of Division 8 applicable to proceeding for dissolution, nullity, and legal separation and to action pursuant to the Uniform Parentage Act).

**Interim Comment.** Section 6323 continues without substantive change and generalizes former Sections 2035, 5550, and 7710 insofar as each applied to ex parte orders of custody and visitation. This section was revised in AB 1500 as amended in the Assembly on April 28, 1993, to meet objections from the California Alliance Against Domestic Violence. The intention is to continue the existing law and practice, with whatever defects it may have, until the interested legislative players can work out the problems.

**§ 6324. Determining temporary use of property and payment of debts**

**Comment.** Section 6324 restates part of the first sentence of Code of Civil Procedure Section 546(a) without substantive change, and continues part of former Civil Code Section 4359(a)(5) without substantive change. Former Code of Civil Procedure Section 546(a) did not provide for issuance of an ex parte order determining temporary the use of property and the payment of debts for unmarried parties. This section has been generalized to allow issuance of the order in cases where the parties are not married, both in a proceeding brought pursuant to the Domestic Violence Prevention Act and in an action brought pursuant to the Uniform Parentage Act.

Authorizing the court to issue an order determining the use of the property of unmarried parties is not a substantive change, since the Judicial Council form allows this order. See Cal. R. Ct. 1296.10 (rev. Jan. 1, 1991) (order to show cause and temporary restraining order). A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

**Interim Comment.** Section 6324 continues without substantive change and generalizes former Sections 2035, 5550, and 7710 insofar as each applied to an ex parte order determining the use and control of property.

**§ 6325. Restraints on community, quasi-community, and separate property of married persons**

**Comment.** Section 6325 restates part of the first sentence of Code of Civil Procedure Section 546(a) without substantive change.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Section 11 (reference to married person includes formerly married person).

**Interim Comment.** Section 6325 is new and continues the approach of the former law by providing a cross-reference to the substantive rule regarding restraints on community, quasi-community, and separate property of married persons.

**§ 6326. Application of general rules**

**Comment.** Section 6326 makes clear that the general rules concerning issuance of temporary restraining orders apply to this article.

**§ 6340. Orders that may be issued ex parte may also be issued after notice and hearing**

**Comment.** Section 6340 generalizes and continues without substantive change former Code of Civil Procedure Section 547(a), the last part of former Civil Code Section 5102(a), and the first two sentences of former Civil Code Section 7020(b). In subdivision (b), the phrase "if the court finds" has been substituted for inconsistent references in the former sections to a "showing" by the petitioner and a "finding" by the court.

This section generalizes the former sections as follows:

(1) The former Family Law Act, applicable to proceedings for dissolution, nullity, and legal separation, did not contain a provision for orders after hearing, except in the case of former Civil Code Section 5102 which provided for orders excluding a party from a dwelling. This section makes it clear that any of the orders described in Section 6320 may be issued after notice and hearing in a proceeding for dissolution, nullity, or legal separation. This is not a substantive change. See Cal. R. Ct. 1296.29 (new July 1, 1991) (restraining order after hearing).

(2) Former Civil Code Section 7020(b) did not provide for orders determining the temporary use of property or payment of debts in a proceeding under the Uniform Parentage Act. This section generalizes former Code of Civil Procedure Section 547(a) which provided for these orders as between unmarried parties in a proceeding under the Domestic Violence Prevention Act. This is not a substantive change. See Cal. R. Ct. 1296.31E (new Jan. 1, 1992) (domestic violence miscellaneous orders attachment).

**Interim Comment.** Subdivision (a) continues former Sections 5750 and 7720(a) without substantive change, except that references to issuance of custody or visitation orders after notice and hearing are omitted. Authorization for ex parte custody or visitation orders is generalized. See Section 6323 (determination of custody and visitation). Subdivision (b) continues former Sections 2036.5, 5751, and 7721 without substantive change.

**§ 6341. Payment of child support by presumed father**

**Comment.** Section 6341 continues former Code of Civil Procedure Section 547(b) without substantive change. The short title of the uniform act has been added before the citation. This is not a substantive change.

**Interim Comment.** Section 6341 continues former Section 5752 without substantive change.

**§ 6342. Payment of restitution for loss of earnings and out-of-pocket expenses**

**Comment.** Section 6342 continues former Code of Civil Procedure Section 547(c) and the last two sentences of former Civil Code Section 7020(b) without substantive change. References to "petitioner" have been substituted for the former references to "family or household member" in the former Code of Civil Procedure section. References to "petitioner" have been substituted for references to "plaintiff" in the former Civil Code section. These are not substantive changes. See also Section 6203 ("abuse" defined).

**Interim Comment.** Section 6342 continues former Sections 5753 and 7720(b) without substantive change. The section is amended to substitute "petitioner" for "family or household member."

**§ 6343. Participation in counseling**

**Comment.** Section 6343 continues former Code of Civil Procedure Section 547(d) without substantive change. The requirements for meeting separately with the counselor have been revised to provide that either a history of violence or the existence of a protective order is sufficient. This is not a substantive change and is consistent with other sections in the code. See Sections 3113 (separate meetings with court appointed investigator), 3181 (separate meetings with mediator), 3192 (separate meetings with counselor appointed in custody proceeding). See also Sections 6211 ("domestic violence" defined), 6218 ("protective order" defined).

**Interim Comment.** Section 6343 continues former Section 5754 without substantive change. Subdivision (b) is amended for consistence with similar sections.

**§ 6344. Payment of attorney's fees and costs**

**Comment.** Section 6344 continues former Code of Civil Procedure Section 547(e) without substantive change. See also Sections 270-272 (general provisions for attorney's fees and costs).

**Interim Comment.** Section 6344 continues former Section 5755 without substantive change.

**§ 6345. Duration of restraining order granted after notice and hearing**

**Comment.** Section 6345 continues without substantive change and generalizes former Code of Civil Procedure Section 548 and the third sentence of former Civil Code Section 7020(b). In subdivision (a), the requirement that the stipulation be written has been generalized. Former Civil Code Section 7020(b) did not contain a writing requirement, but rather allowed stipulation by "mutual consent." In subdivision (c), the reference to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code) has been omitted. This expands application of this subdivision to all orders that may be issued after notice and a hearing under this article, whether issued in a proceeding for dissolution, nullity, or legal separation, in an action brought pursuant to the Uniform Parentage Act, or in a proceeding brought pursuant to the Domestic Violence Prevention Act.

**Interim Comment.** Subdivision (a) of Section 6345 continues former Sections 5756 and 7722 without substantive change. Subdivisions (b)-(c) are added to reflect changes made by 1992 Cal. Stat. ch. 149, § 1.

**§ 6360. Orders included in judgment**

**Comment.** Section 6360 continues without substantive change and generalizes the first sentences of former Civil Code Sections 4458, 4516, and 7021. The former sections applied only to judgments pursuant to the former Family Law Act and the Uniform Parentage Act, whereas

this section allows the inclusion of these orders in a judgment in a proceeding brought pursuant to the Domestic Violence Prevention Act. The reference to a "protective order" has been substituted for the former reference to orders that may be issued pursuant to what are now Sections 6320-6322. This is not a substantive change, since "protective order" has been defined to include the same orders. See Section 6218 ("protective order" defined). See also Sections 6380 (transmittal to local law enforcement agency), 6388 (criminal penalty for violation of order).

**Interim Comment.** Section 6360 continues without substantive change and generalizes former Sections 2045(a) and 7750(a).

**§ 6361. Statements required where order included in judgment**

**Comment.** Section 6361 continues without substantive change and generalizes the second sentences of former Civil Code Sections 4458, 4516, and 7021. The former sections applied only to judgments pursuant to the former Family Law Act and the Uniform Parentage Act, whereas this section allows the inclusion of these orders in any judgment under this code. See also Sections 6380 (transmittal to local law enforcement agency), 6388 (criminal penalty for violation of order).

**Interim Comment.** Section 6361 continues without substantive change former Sections 2045(b) and 7750(b).

**§ 6380. Transmittal to local law enforcement agency**

**Comment.** Section 6380 continues without substantive change the first sentence of the first paragraph of former Code of Civil Procedure Section 550(a), the first sentence of the first paragraph of former Civil Code Section 4359(b), the first sentence of former Civil Code Section 7020(e), and the third sentences of former Civil Code Sections 4458, 4516, and 7021. The reference to other locations where the court determines that acts of violence against "any other person protected by the order" are likely to occur has been added. This conforms this section to Section 6320 which allows the court to extend the protection of the order to other named family and household members. See also Section 6211 ("domestic violence" defined).

**Interim Comment.** Section 6380 continues former Sections 2038, 5800, 7740, and 7750(c) without substantive change.

**§ 6381. Enforcement of order**

**Comment.** Section 6381 continues without substantive change and generalizes the last paragraph of former Civil Code Section 4359(b). The former section applied only to the former Family Law Act.

**Interim Comment.** Section 6381 continues without substantive change and generalizes former Section 2040.

**§ 6382. Availability of information concerning order**

**Comment.** Section 6382 continues without substantive change the first sentence of the second paragraph of former Code of Civil Procedure Section 550(a), the last sentence of the first paragraph of former Civil Code Section 4359(b), and the last sentence of former Civil Code Section 7020(e). See also Section 6211 ("domestic violence" defined).

**Interim Comment.** Section 6382 continues former Sections 2039, 5801, and 7741 without substantive change.

**§ 6383. Service of protective order by law enforcement officer**

**Comment.** Section 6383 continues without substantive change and generalizes the last two sentences of the second paragraph of former Code of Civil Procedure Section 550(a), former Code of Civil Procedure Section 550(h), former Civil Code Section 4359(e), and former Civil Code Section 7020(g). See also Section 6211 ("domestic violence" defined).

**Interim Comment.** Section 6383 continues former Sections 5802 and 7742 without substantive change.

**§ 6384. When personal service not required**

**Comment.** Subdivision (a) of Section 6384 continues former Code of Civil Procedure Section 550(e) without substantive change. In subdivision (a), a reference to an order issued under "this part" has been substituted for the former reference to "this section." The former reference was unclear, since former Code of Civil Procedure Section 550 did not provide for the issuance of orders. The reference has been corrected to include any of the orders issued under Part 4 of this division.

Subdivision (b) of Section 6384 continues former Code of Civil Procedure Section 550(g) without substantive change. The former reference to "temporary restraining orders or restraining orders issued after a hearing" has been replaced by a reference to orders issued under "this part." This is not a substantive change.

**Interim Comment.** Section 6384 continues former Section 5803 without substantive change.

**§ 6385. Notice to Department of Justice**

**Comment.** Section 6385 continues former Code of Civil Procedure Section 550(b)-(d) without substantive change. The word "petitioner" has been substituted for "plaintiff" to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. The reference to "protective order" has been substituted for the reference to an order based on what are now Sections 6320-6322. This is not a substantive change, since "protective order" has been defined to include the same orders. See Section 6218 ("protective order" defined). In subdivision (c), a reference to providing information to the "Department of Justice" has been substituted for the reference to "local law enforcement," since the purpose of this section is the provision of information to the Department of Justice. This is not a substantive change.

See also Section 6304 (court to provide information to parties concerning terms and effect of order); Penal Code § 12021 (criminal penalty for acquiring firearm while subject to restraining order against domestic violence).

**Interim Comment.** Section 6385 continues former Section 5804 without substantive change.

**§ 6386. Appointment of counsel and payment of fees and costs to enforce order**

**Comment.** Section 6386 restates former Code of Civil Procedure Section 553 without substantive change. The words "petitioner" and "respondent" have been substituted for "plaintiff" and "defendant" to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. The reference to "protective order" has been substituted for the reference to an order based on what are now Sections 6320-6322. This is not a substantive change, since "protective order" has been defined to include the same orders. See Section 6218 ("protective order" defined). See also Sections 270-272 (general provisions for attorney's fees and costs).

**Interim Comment.** Section 6386 continues former Section 5805 without substantive change.

**§ 6387. Clerk to provide petitioner with copies of order**

**Comment.** Section 6387 continues without substantive change the last sentence of the first paragraph of former Code of Civil Procedure Section 550(a).

**Interim Comment.** Section 6387 continues former Section 5806 without substantive change.

**§ 6388. Criminal penalty for violation of order**

**Comment.** Section 6388 continues without substantive change former Code of Civil Procedure Section 551, the last sentence of former Civil Code Section 4359(c), former Civil Code Section 7020(h), and the last sentences of former Civil Code Section 4458, 4516, and 7021. The reference to "protective order" has been substituted for the reference to an order based on what are now

Sections 6320-6322. This is not a substantive change, since "protective order" has been defined to include the same orders. See Section 6218 ("protective order" defined).

**Interim Comment.** Section 6388 continues former Sections 2042, 5807, 7743, and 7750(d) without substantive change.

**Fam. Code § 6924 (technical amendment). Consent by minor to mental health treatment or counseling or residential shelter services**

**Comment.** Section 6924 restates former Civil Code Section 25.9 [as amended by 1992 Cal. Stat. ch. 252, § 1] without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). References to "parents" have been omitted as surplus. See Section 10 (singular includes plural). The reference to the "legal" guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined). See also Section 6903 ("parent or guardian" defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (minor may consent to medical, dental, or psychiatric care).

**Interim Comment.** Section 6924 is amended to include the new provisions concerning residential shelter services added to Civil Code Section 25.9 by 1992 Cal. Stat. ch. 252, § 1. Subdivision (a)(3) continues former Civil Code Section 25.9(e) without substantive change. Subdivision (b) is amended for consistency with the first sentence of former Civil Code Section 25.9(a). Subdivision (c) is amended to add the new provision concerning notice in the fourth sentence of former Civil Code Section 25.9(a). The remaining subdivisions have been redesignated to accommodate the new subdivision (c).

**Fam. Code § 7120 (technical amendment). Petition for declaration of emancipation**

**Comment.** Section 7120 continues former Civil Code Section 64(a) [as amended by 1992 Cal. Stat. ch. 821, § 1] without substantive change. References to the "legal" guardian have been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined). The requirement that the petition be verified has been omitted as surplus. See Section 212 (pleadings to be verified).

**Fam. Code § 7121 (technical amendment). Notice of petition for declaration of emancipation**

**Comment.** Section 7121 continues without substantive change the first, second, and fourth sentences of subdivision (b)(1) and subdivision (b)(2) of former Civil Code Section 64 [as amended by 1992 Cal. Stat. ch. 821, § 1]. In subdivision (c), a reference to "medical insurance coverage" has been substituted for the former reference to "medical support." This is consistent with the language in Section 7133 and is not a substantive change. A reference to Chapter 2 (commencing with Section 4000) of Part 2 of Division 10 has been substituted for a narrower reference to former Civil Code Section 4700. This is not a substantive change.

**Interim Comment.** The language in subdivision (c) concerning the notice has been revised for nearer consistency with the language in Section 7133. As a result, the reference to "medical support" has been changed to "medical insurance coverage." The amendments to Civil Code Sections 64 and 65 were inconsistent.

**Fam. Code § 7132 (technical amendment). Petition to rescind declaration**

**Comment.** Subdivision (a) of Section 7132 restates former Civil Code Section 65(a) [as amended by 1992 Cal. Stat. ch. 821, § 2] without substantive change, and adds the provision specifying the ground on which the petition is based, drawn from former Civil Code Section 65(c). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The second sentence of Section 7132 also makes clear that a petition filed by the conservator may be filed either in the county where the minor resides or in the county where the conservator resides.

Subdivision (b) continues the second and third sentences of former Civil Code Section 65(c) [as amended by 1992 Cal. Stat. ch. 821, § 2] without substantive change. The references to an "order



of emancipation" have been changed to a "declaration of emancipation" for consistency with other sections. See, e.g., Section 7120 (petition for declaration of emancipation).

**Fam. Code § 7133 (technical amendment). Notice**

**Comment.** Section 7133 continues without substantive change former Civil Code Section 65(b) [as amended by 1992 Cal. Stat. ch. 821, § 2] and part of the last sentence of the last paragraph of former Civil Code Section 69. The reference to voiding the declaration of emancipation in subdivision (b) has been added for consistency with subdivision (c) and with Section 7130 (grounds for voiding or rescinding). In subdivision (b), a reference to Chapter 2 (commencing with Section 4000) of Part 2 of Division 10 has been substituted for a narrower reference to former Civil Code Section 4700. This is not a substantive change.

**Interim Comment.** The language in subdivision (b) concerning the notice has been revised for nearer consistency with the language in Section 7121.

**Fam. Code § 7540 (amended and renumbered). Presumption arising from birth of child during marriage**

**Comment.** Section 7540 continues former Evidence Code Section 621(a) without substantive change.

**Fam. Code § 7500 (added). Right of parent to services and earnings of unemancipated minor child**

**Comment.** Section 7500 restates without substantive change the part of former Civil Code Section 197 relating to services and earnings of a minor. The rule in this section is parallel to the general rule on the right to custody provided in Section 3010. The word "unemancipated" has been substituted for "unmarried." This is not a substantive change. See Section 7002 (conditions of emancipation). See also Sections 7503 (payment of earnings to minor), 7504 (parent may relinquish right of controlling child and receiving child's earnings).

**Interim Comment.** This section continues the part of existing Section 3010 relating to services and earnings. The basic custody rule is retained in Division 8. See Section 3010 (right of parent to custody of unemancipated minor child).

**Fam. Code § 7541 (amended and renumbered). Use of blood tests to determine paternity**

**Comment.** Section 7541 restates former Evidence Code Section 621(b)-(h) without substantive change. The last sentence of former Evidence Code Section 621(f), pertaining to cases pending on September 30, 1980, has been omitted as obsolete.

**Interim Comment.** Section 7541 is amended to correct cross-references.

**Fam. Code § 7501 (added). Right of parent to determine residence of child**

**Comment.** Section 7501 continues former Civil Code Section 213 without substantive change. The reference to the "proper" court is omitted as surplus. See also Section 3063 (order restraining removal of child from state); Prob. Code § 2352 (guardian may fix residence of minor ward).

**Interim Comment.** Section 7501 is the same as existing Section 3011.

**Fam. Code § 7502 (added). Parent cannot control property of child**

**Comment.** Section 7502 continues former Civil Code Section 202 without change. See also Section 3902 (court allowance to parent for support of child from child's property).

**Interim Comment.** Section 7502 is the same as existing Section 3012.

**Fam. Code § 7503 (added). Payment of earnings to minor**

**Comment.** Section 7503 restates former Civil Code Section 212 without substantive change. The word "shall" has been substituted for "may." This is consistent with Probate Code Section 2601(a)(2) (earnings shall be paid to ward unless otherwise ordered by court). The word

"earnings" has been substituted for "wages" to conform with terminology in other sections of this code and to provide consistent treatment of different forms of income. See, e.g., Section 5206 ("earnings" defined). The phrase "employed in service" has been omitted as obsolete. See also Section 7504 (relinquishment by parent of right to receive earnings of child).

**Interim Comment.** Section 7503 is the same as existing Section 3013.

**Fam. Code § 7504 (added). Parent may relinquish control and earnings of child**

**Comment.** Section 7504 continues former Civil Code Section 211 without substantive change.

**Interim Comment.** Section 7504 is the same as existing Section 3014.

**Fam. Code § 7505 (added). When parental authority ceases**

**Comment.** Section 7505 continues former Civil Code Section 204 without substantive change. See also Sections 7050-7052 (effect of emancipation under Emancipation of Minors Law).

**Interim Comment.** Section 7505 is the same as existing Section 3015.

**Fam. Code § 7506 (added). Compensation where adult child continues to serve and be supported by parent**

**Comment.** Section 7506 continues former Civil Code Section 210 without substantive change.

**Interim Comment.** Section 7506 is the same as existing Section 3016.

**Fam. Code § 7507 (added). Remedy for abuse of parental authority**

**Comment.** Section 7507 continues former Civil Code Section 203 without change.

**Interim Comment.** Section 7507 is the same as existing Section 3018.

**Fam. Code § 7550 (technical amendment). Short title**

**Comment.** Section 7550 continues former Evidence Code Section 890 without substantive change. This section is similar to Section 9 of the Uniform Act on Blood Tests To Determine Paternity (1952). See also Sections 3 (construction of provisions drawn from uniform acts), 13 (severability of provisions).

**Interim Comment.** Section 7550 is revised to reflect the reorganization of Part 1 of this division.

**Fam. Code § 7555 (technical amendment). Rebuttable presumption of paternity**

**Comment.** Section 7555 continues former Evidence Code Section 895.5 [as amended by 1992 Cal. Stat. ch. 851, § 3] without change.

**Fam. Code § 7604 (technical amendment). Pendente lite relief of custody or grant of visitation rights**

**Comment.** Section 7604 continues without substantive change the first paragraph of former Civil Code Section 7004.5. The last two paragraphs of former Civil Code Section 7004.5 are superseded. There is no comparable provision in the Uniform Parentage Act (1973).

In the introductory clause, a reference to Part 2 (commencing with Section 3020) of Division 8 has been substituted for narrower references to former Civil Code Sections 4600 and 4601. This is superseded the last two paragraphs of former Civil Code Section 7004.5 and is not a substantive change. The substance of the superseded paragraphs is contained in Section 3100(b) of Part 2 of Division 8, made expressly applicable to a determination of custody or visitation under this section.

See also Sections 200 (jurisdiction in superior court), 3011 (factors in determining best interest of child), 3030 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child), 3131 (action by district attorney where child taken or detained in violation of visitation order), 3160-3186 (mediation of custody or visitation issues); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**Interim Comment.** Section 7604 is amended to correct cross-references.

**Fam. Code § 7611 (technical amendment). Presumption of paternity**

**Comment.** Section 7611 continues former Civil Code Section 7004(a) [as amended by 1992 Cal. Stat. ch. 849, § 1.5] without substantive change. This section is the same in substance as Section 4(a) of the Uniform Parentage Act (1973). In subdivision (a), "judgment" has been substituted for "decree." This is not a substantive change. See Section 100 ("judgment" includes decree, as appropriate). See also Section 7612 (nature of paternity presumptions).

**Interim Comment.** Section 7611 is amended to correct cross-references.

**Fam. Code § 7611.5 (added). Prohibition on presumption of paternity**

**Comment.** Section 7611.5 continues former Civil Code Section 7004(b) [as amended by 1992 Cal. Stat. ch. 849, § 1.5] without substantive change.

**Interim Comment.** This section is a new provision needed to include a new subdivision added to Civil Code Section 7004 by 1992 Cal. Stat. ch. 849, § 1.5.

**Fam. Code § 7612 (technical amendment). Nature of paternity presumptions**

**Comment.** Section 7612 continues former Civil Code Section 7004(c) [as amended by 1992 Cal. Stat. ch. 849, § 1.5] without substantive change. This section is similar to Section 4(b) of the Uniform Parentage Act (1973). In subdivision (c), "judgment" has been substituted for "decree." This is not a substantive change. See Section 100 ("judgment" includes decree, as appropriate).

**Interim Comment.** Section 7612 is amended to correct cross-references.

**Fam. Code § 7631 (technical amendment). Action by man not presumed father to establish paternity**

**Comment.** Section 7631 continues former Civil Code Section 7006(d) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

**Interim Comment.** Section 7631 is amended to correct a cross-references.

**Fam. Code § 7637 (amended). Other provisions of judgment**

**Comment.** Section 7637 continues former Civil Code Section 7010(c) without change. This section is the same as Section 15(c) of the Uniform Parentage Act (1973). See also Section 3011 (factors in determining best interest of child).

**Interim Comment.** Former subdivisions (b)-(c) continued provisions that were repealed on January 1, 1993, by a sunset clause.

**Fam. Code §§ 7700-7750 (repealed). Protective and temporary custody orders**

**Interim Comment.** Former Chapter 6 of Part 3 of Division 12 of the Family Code is repealed to allow for consolidation and reorganization of the provisions in Division 10 (prevention of domestic violence). The substance of the former statutes is continued without substantive change in new Chapter 6 of Division 12 and in new Division 10.

The following table indicates the disposition of each of the former sections in new Division 10:

<i>Repealed</i>	<i>Added</i>	<i>Repealed</i>	<i>Added</i>
7700 .....	7700	7730 .....	6224
7710 .....	6320-6324	7731 .....	6302
7711 .....	6305	7740 .....	6380
7720(a) .....	6340(a)	7741 .....	6382
7720(b) .....	6342	7742 .....	6383
7721 .....	6340(b)	7743 .....	6388
7722 .....	6345	7750(a) .....	6360

7750(b) ..... 6361  
7750(c) ..... 6380

7750(d) ..... 6388

**Fam. Code §§ 7700-7730 (added). Protective and restraining orders**

**§ 7700. Temporary restraining order in summons**

**Comment.** Section 7700 continues without substantive change the first sentence and the last part of the last sentence of the first paragraph of former Code of Civil Procedure Section 412.21(b). The reference to "children" has been omitted as surplus. See Section 10 (singular includes plural). For general provisions governing restraining orders in summons, see Sections 231-235.

**Interim Comment.** This section continues without change existing Section 7700. It is repealed and added to allow for repeal of Chapter 6 in its entirety.

**§ 7710. Ex parte protective and other restraining orders**

**Comment.** Section 7710 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the issuance of ex parte restraining orders. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence).

**§ 7720. Orders issuable after notice and hearing**

**Comment.** Section 7720 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the issuance of restraining orders after notice and hearing. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence).

The former provisions for issuance of orders after notice and hearing in a proceeding under the Uniform Parentage Act did not provide for issuance of the orders described in Sections 6343 (counseling) or 6344 (attorney's fees and costs). However, the Judicial Council form used for orders after hearing applies to proceedings under the Uniform Parentage Act and allows for attorney's fees and costs. See Cal. R. Ct. 1296.31 (rev. Jan. 1, 1992) (findings and order after hearing). Expanding the court's authority to issue a counseling order in an action pursuant to the Uniform Parentage Act resolves an inconsistency, since the counseling order could be obtained by unmarried parties under the Domestic Violence Prevention Act.

**§ 7730. Orders included in judgment**

**Comment.** Section 7730 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the inclusion of restraining orders in a judgment. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence).

**Fam. Code § 7807 (technical amendment). Inapplicability of certain statutory provisions in proceeding under this part**

**Comment.** Section 7807 continues former Civil Code Section 232(d) without substantive change.

**Interim Comment.** This section is amended to correct a cross-reference.

**Fam. Code § 7850 (technical amendment). Investigation of circumstances of child**

**Comment.** Section 7850 continues the third sentence of former Civil Code Section 233(a) [as amended by 1992 Cal. Stat. ch. 472, § 7] without substantive change. References to "child" have been substituted for the former references to "minor." This is not a substantive change. See Section 7802 Comment. Section 7850 does not require the notice and investigation if the petition

is filed under Section 7840 (petition by licensed private or public adoption agency or state or county agency).

**Interim Comment.** Section 7850 is amended to add a reference to the qualified court investigator to conform to amendments made in Civil Code Section 233, as amended by 1992 Cal. Stat. ch. 472, § 7.

**Fam. Code § 7851 (technical amendment). Report and recommendations to court**

**Comment.** Section 7851 continues without substantive change former Civil Code Section 233 [as amended by 1992 Cal. Stat. ch. 472, § 7], from the last sentence of the first paragraph to the end of the former section. In subdivisions (a) and (b)(1), references to "proceeding" have been substituted for the former references to "action." This is not a substantive change. Throughout this section, references to "child" have been substituted for the former references to "minor." This is not a substantive change. See Section 7802 Comment.

**Interim Comment.** Section 7851 is amended to add a reference to the qualified court investigator to conform to amendments made in Civil Code Section 233, as amended by 1992 Cal. Stat. ch. 472, § 7.

**Fam. Code § 7852 (added). "Qualified court investigator" defined**

**Comment.** Section 7852 continues former Civil Code Section 233(b) [as amended by 1992 Cal. Stat. ch. 472, § 7] without substantive change.

**Interim Comment.** Section 7852 is added to continue new subdivision (b) as added to former Civil Code Section 233 by 1992 Cal. Stat. ch. 472, § 7.

**Fam. Code § 7891 (amended). Hearing in chambers to determine wishes of child**

**Comment.** Section 7891 continues without substantive change the second paragraph and subdivisions (a)-(c) of former Civil Code Section 234. Throughout this section, references to "child" have been substituted for the former references to "minor." This is not a substantive change. See Section 7802 Comment. The reference to Section 3042 has been substituted for the broader reference to former Civil Code Section 4600. This is not a substantive change, since Section 3042 continues the relevant part of the former section. See also Section 7954 (minor's right to make statement in connection with priorities for foster care placement).

**Interim Comment.** This section is amended to correct a cross-reference.

**Fam. Code § 8502 (added). "Adoption service provider"**

**Comment.** Section 8502 continues the first part of former Civil Code Section 220.20(a) [as amended by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994] without substantive change. The language relating to certain duties of an adoption service provider has been omitted as surplus. See Sections 8801.5 (duties of adoption service provider), 8801.7 (duties of adoption service provider).

**Fam. Code § 8539 (added). "Place for adoption"**

**Comment.** Section 8539 continues former Civil Code Section 220.20(p) [as amended by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994] without change.

**Fam. Code § 8543 (added). "Qualified court investigator"**

**Comment.** Section 8543 continues without substantive change part of former Civil Code Section 220.20 added by Section 1 of Chapter 472 of the Statutes of 1992, but inadvertently chaptered out by amendments to the same section made by Section 2 of Chapter 1353 of the Statutes of 1992.

**Fam. Code § 8620 (added). Purpose of adoption**

**Comment.** Section 8620 continues former Civil Code Section 220.15 [as added by 1992 Cal. Stat. ch. 1353, § 1.5, operative Jan. 1, 1994] without change.

**Fam. Code § 8621 (added). Regulations**

**Comment.** Section 8621 continues former Civil Code Section 221.05 [as added by 1992 Cal. Stat. ch. 1353, § 3, operative Jan. 1, 1994] without change.

**Fam. Code § 8622 (added). Notice of service limitations**

**Comment.** Section 8622 continues former Civil Code Section 221.07 [as added by 1992 Cal. Stat. ch. 1353, § 4, operative Jan. 1, 1994] without substantive change.

**Fam. Code § 8700 (technical amendment). Relinquishment of child to department or licensed adoption agency**

**Comment.** Section 8700 continues former Civil Code Section 222.10 [as amended by 1992 Cal. Stat. ch. 667, § 1] without substantive change. Throughout this section, "birth parent" has been substituted for "birth father or mother." See Section 8512 ("birth parent" defined). The word "duly," formerly preceding "acknowledged," has been omitted as surplus. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

For related provisions, see Sections 8809, 8814 (consent to independent adoption), 9003 (consent to stepparent adoption).

**Interim Comment.** The section is amended to include the new language added to Civil Code Section 222.10 by 1992 Cal. Stat. ch. 667. The phrase "department or licensed adoption agency" is used only once per subdivision or paragraph; after the first usage, the phrase "department or agency" is used, for consistency with the style of the remainder of the adoption division. Note that the subdivision breakdown of the new statute was anticipated in the drafting of Section 8700.

**Fam. Code § 8714 (technical amendment). Adoption petition and order**

**Comment.** Section 8714 continues former Civil Code Sections 222.70 and 222.71 [as added by 1992 Cal. Stat. ch. 455, § 1] without substantive change. In subdivision (b), the reference to an "action" for adoption has been changed to "proceeding" for consistency with subdivision (d). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

For comparable provisions, see Sections 8802 (petition for independent adoption), 8912 (petition for intercountry adoption), 9000 (petition for stepparent adoption).

**Interim Comment.** Subdivision (a) of Section 8714 is divided so that the alternate venue provision of Civil Code Section 222.71 (as added by 1992 Cal. Stat. ch. 455, § 1) can be added in a logical place. The rest of the subdivisions are redesignated. Minor language changes are made for consistency with the remainder of Section 8714.

**Fam. Code § 8801 (technical amendment). Selection of prospective adoptive parents; personal knowledge**

**Comment.** Subdivision (a) of Section 8801 continues former Civil Code Section 224.20 without substantive change. Subdivision (b) continues former Civil Code Section 220.20(n) [as amended by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994] without substantive change. See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

**Interim Comment.** Subdivision (b) is revised to incorporate changes made in Civil Code Section 220.20(n) by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994. [But see SB 792, as amended May 3, 1993, which would delay Chapter 1353 until Jan. 1, 1995.] This revision is consistent with the approach of the Family Code as enacted. The definition of "personal knowledge" is a specialized term only relevant to this section and thus is not generalized to cover the whole division on adoption.

**Fam. Code § 8801.3 (added). Placement for adoption**

**Comment.** Section 8801.3 continues former Civil Code Section 224.21 [as added by 1992 Cal. Stat. ch. 1353, § 5, operative Jan. 1, 1994] without substantive change.

**Fam. Code § 8801.5 (added). Duties of adoption service provider**

**Comment.** Section 8801.5 continues former Civil Code Section 224.24 [as added by 1992 Cal. Stat. ch. 1353, § 6, operative Jan. 1, 1994] without substantive change. In subdivision (f), the reference to birth "parent" has been added to correct an error. See also Section 8502 ("adoption service provider" defined).

**Fam. Code § 8801.7 (added). Duties of adoption service provider**

**Comment.** Section 8801.7 continues former Civil Code Section 224.26 [as added by 1992 Cal. Stat. ch. 1353, § 7, operative Jan. 1, 1994] without substantive change. See also Section 8502 ("adoption service provider" defined).

**Fam. Code § 8802 (technical amendment). Adoption petition and order**

**Comment.** Section 8802 continues former Civil Code Section 224.30 [as amended by 1992 Cal. Stat. ch. 1353, § 8, operative Jan. 1, 1994] without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (a), the reference to an "action" for adoption has been changed to "proceeding" for consistency with other provisions in this chapter. Language in former Civil Code Section 224.30(a), which dealt with retroactive application of the allegation required by what is now subdivision (b), has been omitted as obsolete. See also Section 8518 ("department" defined).

For comparable provisions, see Sections 8714 (petition for agency adoption), 8912 (petition for intercountry adoption), 9000 (petition for stepparent adoption).

**Interim Comment.** Subdivision (a) is revised to include amendments to Civil Code Section 224.30 by 1992 Cal. Stat. ch. 1353, § 8, operative Jan. 1, 1994. [But see SB 792, as amended May 3, 1993, which would delay Chapter 1353 until Jan. 1, 1995.] It appears that the last sentence added to subdivision (a) may be intended to pick up the definition of "place for adoption" from Civil Code Section 220.20 (proposed Fam. Code § 8539).

**Fam. Code § 8804 (technical amendment). Notice to department of motion to withdraw or dismiss petition**

**Comment.** Section 8804 continues former Civil Code Section 224.36 [as amended by 1992 Cal. Stat. ch. 1353, § 9, operative Jan. 1, 1994] without substantive change. The former reference to the "clerk of the court in which the proceeding is pending" has been shortened to the "court clerk" to eliminate surplus language. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 8916 (notice of withdrawal or dismissal in intercountry adoption), 9006 (notice of withdrawal or dismissal in stepparent adoption).

**Interim Comment.** Subdivisions (b) and (c) are deleted to reflect amendments made to Civil Code Section 224.36 by 1992 Cal. Stat. ch. 1353, § 9. [But see SB 792, as amended May 3, 1993, which would delay Chapter 1353 until Jan. 1, 1995.]

**Fam. Code § 8808 (technical amendment). Interview by department or agency**

**Comment.** Section 8808 continues without substantive change former Civil Code Section 224.44 [as added by 1992 Cal. Stat. ch. 1353, § 10, operative Jan. 1, 1994], except that the time requirement of 45 days has been substituted for the former 10-day requirement to correct an error. See 1992 Cal. Stat. ch. 1353, § 10. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

**Interim Comment.** This section is amended to pick up the language in the new Section 224.44, except that the 45 day rule of the still extant section is used. Thus, it abandons the language of still extant Section 224.44, enacted by 1990 Cal. Stat. ch. 1363, § 3, which was not repealed or amended by 1992 Cal. Stat. ch. 1353, operative Jan. 1, 1994. [But see SB 792, as amended May 3, 1993, which would delay Chapter 1353 until Jan. 1, 1995.] The staff has been informed by the sponsors of this legislation that they had intended to use the 45 day rule. In addition, "California" is replaced by "this state" for consistency with general style. The reference to Section 8814.5 is to the successor of Civil Code Section 224.63; the reference to Section "225.63" in Civil Code Section 224.44 is in error.

**Fam. Code § 8814 (technical amendment). Consent of birth parents to adoption**

**Comment.** Section 8814 continues former Civil Code Section 224.62 [as added by 1992 Cal. Stat. ch. 1353, § 11, operative Jan. 1, 1994] without substantive change. The word "duly" formerly preceding "acknowledged" has been omitted as surplus. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8809 (request to sign consent in presence of court).

For related provisions, see Sections 8700 (consent to agency adoption), 9003 (consent to stepparent adoption).

**Interim Comment.** This section is revised to pick up the language in the new Section 224.62. Thus, it abandons the language of still extant Section 224.62, enacted by 1990 Cal. Stat. ch. 1363, § 3, which was not repealed or amended by 1992 Cal. Stat. ch. 1353, operative Jan. 1, 1994. [But see SB 792, as amended May 3, 1993, which would delay Chapter 1353 until Jan. 1, 1995.]

**Fam. Code § 8814.5 (added). Revocation and waiver**

**Comment.** Section 8814.5 continues former Civil Code Section 224.63 [as added by 1992 Cal. Stat. ch. 1353, § 12, operative Jan. 1, 1994] without substantive change.

**Fam. Code § 8815 (repealed). Motion or petition for withdrawal of consent**

**Interim Comment.** This section is superseded by another section with the same number enacted by 1992 Cal. Stat. ch. 1353, § 13, operative Jan. 1, 1994. [But see SB 792, as amended May 3, 1993, which would delay Chapter 1353 until Jan. 1, 1995.] See Fam. Code § 8815 added below.

**Fam. Code § 8815 (added). Consent irrevocable; rights in interim**

**Comment.** Section 8815 continues former Civil Code Section 224.64 [as added by 1992 Cal. Stat. ch. 1353, § 13, operative Jan. 1, 1994] without substantive change.

See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

**Interim Comment.** This section adds the language in the new Civil Code Section 224.64. Thus, it abandons the language of still extant Section 224.64, enacted by 1990 Cal. Stat. ch. 1363, § 3, which was not repealed or amended by 1992 Cal. Stat. ch. 1353, operative Jan. 1, 1994. [But see SB 792, as amended May 3, 1993, which would delay Chapter 1353 until Jan. 1, 1995.]

**Fam. Code § 8904 (technical amendment). Agency services for adoptions finalized in foreign country**

**Comment.** Section 8904 continues former Civil Code Section 226.23 [as amended by 1992 Cal. Stat. ch. 435, § 1] without substantive change. See also Sections 8527 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined).

**Fam. Code § 8919 (added). Readoption**

**Comment.** Section 8919 continues former Civil Code Section 226.69 [as added by 1992 Cal. Stat. ch. 435, § 2] without substantive change. The references to a "decree" in the former section have been replaced by "order" for consistency with other sections. See, e.g., Section 8912 (adoption order).



**Fam. Code § 9001 (technical amendment). Investigation**

**Comment.** Section 9001 continues former Civil Code Section 227.20 [as amended by 1992 Cal. Stat. ch. 472, § 2] without substantive change. In subdivision (a), the reference to an "action" has been changed to "proceeding" for consistency with other sections. This is not a substantive change. See Section 110 ("proceeding" defined).

See also Sections 8543 ("qualified court investigator" defined), 8548 ("stepparent adoption" defined).

For related provisions, see Sections 8712 (investigation in agency adoption), 8811 (investigation in independent adoption), 8908 (investigation in intercountry adoption). For other related provisions, see Sections 8715 (report of department or agency in agency adoption), 8807 (report of department or agency in independent adoption), 8914 (report of department or agency in intercountry adoption).

**Interim Comment.** Subdivision (a) of Section 9001 is amended to add references to the qualified court investigator to conform to amendments made in Civil Code Section 227.20, as amended by 1992 Cal. Stat. ch. 472, § 2.

**Fam. Code § 9002 (technical amendment). Cost of investigation**

**Comment.** Section 9002 continues former Civil Code Section 227.30 [as amended by 1992 Cal. Stat. ch. 472, § 3] without substantive change. The first part of the first sentence has been revised to use the defined term "stepparent adoption" and to delete the phrase "stepparent adopting a child of his or her spouse." This is not a substantive change. See Section 8548 ("stepparent adoption" defined). Other language changes have been made for consistency with Sections 8716 and 8810. See also Sections 8542 ("prospective adoptive parent" defined), 8543 ("qualified court investigator" defined).

For related provisions, see Sections 8716 (fee for report in agency adoption), 8810 (fee for report in independent adoption).

**Interim Comment.** Section 9002 is amended to add a reference to the qualified court investigator to conform to amendments made in Civil Code Section 227.30, as amended by 1992 Cal. Stat. ch. 472, § 3.

**Fam. Code § 9003 (technical amendment). Consent of birth parents to adoption**

**Comment.** Section 9003 continues former Civil Code Section 227.40 [as amended by 1992 Cal. Stat. ch. 472, § 4] without substantive change. The first sentence of subdivision (a) has been revised to require consent of "birth parents" rather than "parents." This terminology is consistent with subdivision (d). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The word "duly" formerly preceding "acknowledged" has been omitted as surplus. See also Sections 8512 ("birth parent" defined), 8543 ("qualified court investigator" defined), 8548 ("stepparent adoption" defined).

For related provisions, see Sections 8700 (consent to agency adoption), 8809, 8814 (consent to independent adoption).

**Interim Comment.** Subdivisions (a) and (c) of Section 9003 are amended to add references to the qualified court investigator to conform to amendments made in Civil Code Section 227.40, as amended by 1992 Cal. Stat. ch. 472, § 4.

**Fam. Code § 9005 (technical amendment). Motion or petition to withdraw consent**

**Comment.** Section 9005 continues former Civil Code Section 227.46 [as amended by 1992 Cal. Stat. ch. 472, § 5] without substantive change. The introductory phrase "once given" in the former provision has been omitted as surplus. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (b), the phrase "persons to whose adoption of the child the consent was given" has been changed to "prospective adoptive parent." See also Sections 8542 ("prospective adoptive parent" defined), 8543 ("qualified court investigator" defined).

For a comparable provision, see Section 8815 (motion or petition to withdraw consent in independent adoption).

**Interim Comment.** Subdivisions (b) and (c) of Section 9005 are amended to add references to the qualified court investigator to conform to amendments made in Civil Code Section 227.46, as amended by 1992 Cal. Stat. ch. 472, § 5.

**Fam. Code § 9006 (technical amendment). Notice of withdrawal or dismissal; dismissal where consent refused**

**Comment.** Section 9006 continues former Civil Code Section 227.50 [as amended by 1992 Cal. Stat. ch. 472, § 6] without substantive change. In subdivision (a), the former reference to the "clerk of the court in which the proceeding is pending" has been shortened to the "court clerk" to eliminate surplus language. See also Sections 8512 ("birth parent" defined), 8543 ("qualified court investigator" defined).

For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 8804 (notice of withdrawal or dismissal in independent adoption), 8916 (notice of withdrawal or dismissal in intercountry adoption).

**Interim Comment.** Subdivision (a) of Section 9006 is amended to add a reference to the qualified court investigator to conform to amendments made in Civil Code Section 227.50, as amended by 1992 Cal. Stat. ch. 472, § 6.

**Fam. Code §§ 20000-20012 (repealed). Child Support Pilot Projects**

**Interim Comment.** Former Sections 20000-20012 of the Family Code, as enacted by 1992 Cal. Stat. ch. 162, § 10, are superseded by new Sections 20000-20043, as added by 1992 Cal. Stat. ch. 411, § 2.

**Fam. Code §§ 20000-20043 (added). Family Law Pilot Projects**

**§ 20000. Legislative declaration**

**Comment.** Section 20000 continues former Civil Code Section 4760 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20001. Pilot projects in Santa Clara and San Mateo Counties**

**Comment.** Section 20001 continues former Civil Code Section 4761 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20002. Duration of projects**

**Comment.** Section 20002 continues former Civil Code Sections 4762 and 4780 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20010. Application of San Mateo County Pilot Project**

**Comment.** Section 20010 continues former Civil Code Section 4763 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. A reference to motions for temporary support or health insurance in "proceedings under this code" has been substituted for the former reference to proceedings under "this part," (meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code) and references to proceedings under Civil Code Section 7000 *et seq.* (Uniform Parentage Act) and former Code of Civil Procedure Section 540 *et seq.* (Domestic Violence Prevention Act). This is not a substantive change, since all the proceedings formerly referred to are contained in the Family Code.

**§ 20011. Motions for temporary orders**

**Comment.** Section 20011 continues former Civil Code Section 4764 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. The reference to "this chapter" corrects what appears to have been an incorrect reference in the former Civil Code section.

**§ 20012. Family Law Evaluator**

**Comment.** Section 20012 continues former Civil Code Section 4765 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20013. No fee**

**Comment.** Section 20013 continues former Civil Code Section 4766 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20014. Notice of requirement; service**

**Comment.** Section 20014 continues former Civil Code Section 4767 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20015. Adoption of protocol for access to hearing**

**Comment.** Section 20015 continues former Civil Code Section 4768 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20016. Booklet**

**Comment.** Section 20016 continues former Civil Code Section 4769 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20017. Qualifications of family law evaluator**

**Comment.** Section 20017 continues former Civil Code Section 4770 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20018. Compliance with statewide uniform guideline**

**Comment.** Section 20018 continues former Civil Code Section 4771 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. Language has been revised to conform to terminology of the statewide uniform guideline. The reference to "this chapter" corrects what appears to have been an incorrect reference in the former Civil Code section.

**§ 20019. Mediation**

**Comment.** Section 20019 continues former Civil Code Section 4772 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. The reference to "this chapter" corrects what appears to have been an incorrect reference in the former Civil Code section. References to Section 3170 have been substituted for broader references to former Civil Code Section 4607. This is not a substantive change.

**§ 20020. Submission of documents**

**Comment.** Section 20020 continues former Civil Code Section 4773 [as added by 1992 Cal. Stat. ch. 411, § 2] without change. The reference to "this chapter" corrects what appears to have been an incorrect reference in the former Civil Code section.

**§ 20021. Failure to submit documents**

**Comment.** Section 20021 continues former Civil Code Section 4774 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. A reference to Section 20020 has been substituted for the former reference to "this section." This is not a substantive change, since Section 20020 is the section requiring the submission of documents.

**§ 20022. Review and examination of tax return**

**Comment.** Section 20022 continues former Civil Code Section 4775 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. A reference to Section 20020 has been substituted

for the former reference to "this section." This is not a substantive change, since Section 20020 is the section requiring the submission of the tax return.

**§ 20023. Services provided by district attorney**

**Comment.** Section 20023 continues former Civil Code Section 4776 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. In the second sentence of subdivision (c), the reference to "this chapter" corrects what appears to have been an incorrect reference in the former Civil Code section. In the last sentence of subdivision (c), a reference to "this code" has been substituted for the narrower reference to "this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). This is not a substantive change. See also Section 20010 (application of San Mateo County Pilot Project).

**§ 20024. Costs; donations**

**Comment.** Section 20024 continues former Civil Code Section 4777 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. The reference to "proceedings" for dissolution, annulment, and legal separation has been substituted for the former reference to "actions." This is not a substantive change. See Section 110 ("proceedings" defined) & Comment.

**§ 20025. Study and report**

**Comment.** Section 20025 continues former Civil Code Section 4778 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20026. Project estimates**

**Comment.** Section 20026 continues former Civil Code Section 4778.5 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20030. Santa Clara County pilot project**

**Comment.** Section 20030 continues former Civil Code Section 4779 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20031. Application of Santa Clara County Pilot Project**

**Comment.** Section 20031 continues former Civil Code Section 4781 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. A reference to a proceeding for "dissolution of marriage, nullity of marriage, legal separation of the parties, [and] exclusive custody" has been substituted for the former reference to a proceeding under "this part," meaning the former Family Law Act (former Part 5 (commencing with former Civil Code Section 4000) of Division 4). This is not a substantive change.

**§ 20032. Hearing and procedure; tax returns**

**Comment.** Section 20032 continues former Civil Code Section 4782 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. In subdivision (a), a reference to "a proceeding described in Section 20031" has been substituted for the former references to "this part," meaning the former Family Law Act (former Part 5 (commencing with former Civil Code Section 4000) of Division 4) and to former Civil Code Section 7000 *et seq.* (Uniform Parentage Act). This is not a substantive change. See Section 20031 & Comment.

**§ 20033. Local rule**

**Comment.** Section 20033 continues former Civil Code Section 4783 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20034. Attorney-Mediator**

**Comment.** Section 20034 continues former Civil Code Section 4784 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20035. Compliance with statewide uniform guideline**

**Comment.** Section 20035 continues former Civil Code Section 4785 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. Language has been revised to conform to terminology of the statewide uniform guideline. The reference to "this chapter" corrects what appears to have been an incorrect reference in the former Civil Code section.

**§ 20036. Exemption from pilot project**

**Comment.** Section 20036 continues former Civil Code Section 4786 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20037. Services provided by district attorney**

**Comment.** Section 20037 continues former Civil Code Section 4787 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. In subdivision (c), a reference to "this code" has been substituted for the narrower reference to "this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). This is not a substantive change.

**§ 20038. Mediation**

**Comment.** Section 20038 continues former Civil Code Section 4788 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20039. Costs**

**Comment.** Section 20039 continues former Civil Code Section 4789 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. The reference to "proceedings" for dissolution, annulment, and legal separation has been substituted for the former reference to "actions." This is not a substantive change.

**§ 20040. Booklet**

**Comment.** Section 20040 continues former Civil Code Section 4790 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20041. Centralization of programs**

**Comment.** Section 20041 continues former Civil Code Section 4791 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

**§ 20042. Study and report**

**Comment.** Section 20042 continues former Civil Code Section 4792 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**§ 20043. Project estimates**

**Comment.** Section 20043 continues former Civil Code Section 4793 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

**Fam. Code § 20100-20104 (added). Paternity Pilot Projects**

**§ 20100. Pilot projects**

**Comment.** Section 20100 continues former Evidence Code Section 621.1(a)-(b) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change.

**§ 20101. Duties of State Department of Social Services**

**Comment.** Section 20101 continues former Evidence Code Section 621.1(c) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change.

**§ 20102. Presumption of paternity**

**Comment.** Section 20102 continues former Evidence Code Section 621.1(d)-(h) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change.

**Interim Comment.** Section 20102 is amended to correct cross-references.

**§ 20103. Delivery and filing of declaration**

**Comment.** Section 20103 continues former Evidence Code Section 621.1(i)-(k) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change. In subdivision (a), the reference to Section 20102 has been substituted to correct an erroneous reference to former Evidence Code Section 621.1(c).

**§ 20104. Report by State Department of Social Services**

**Comment.** Section 20104 continues former Evidence Code Section 621.1(l) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change.

**GOVERNMENT CODE**

**Gov't Code § 6159 (technical amendment). Acceptance of credit cards by public agencies**

**Comment.** Subdivision (b)(4) of Section 6159 [as amended by 1992 Cal. Stat. ch. 848, § 12] is amended to refer to family support for consistency with the Family Code. See, e.g., Fam. Code § 4501 (enforcement of family support order).

**Gov't Code § 21215 (technical amendment). Dissolution and legal separation; accounts for accumulated contributions and service credits**

**Comment.** Subdivision (b) of Section 21215 [as amended by 1992 Cal. Stat. ch. 751, § 9] is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

**Gov't Code § 26833.5 (amended). No fees for certified copies of specified orders**

**Comment.** Section 26833.5 is amended to substitute references to the Family Code provisions that replaced the former provisions. in the Civil Code and Code of Civil Procedure The references to restraining orders included in a judgment have been added.

**Interim Comment.** In subdivision (a), cross-references to Articles 3 and 4 of Chapter 4 of Part 1 of Division 6 are added. This is not a substantive change. Article 2 (as enacted by 1992 Cal. Stat. ch. 162) provides for orders issued either ex parte or after notice and hearing. New Article 2 includes only ex parte orders and Article 3 includes orders after notice and hearing. Article 4 provides for orders to be included in a judgment. The reference to this article is new and is added to provide a complete set of references to sections that provide for these orders.

In subdivision (c), the reference to Article 4 is added. Article 4 provides for orders to be included in a judgment. The reference to this article is new and is added to provide a complete set of references to sections that provide for these orders.

**Gov't Code § 26840.3 (amended). Fee increase to support family conciliation court and mediation services**

**Comment.** Section 26840.3 [as amended by 1992 Cal. Stat. ch. 696, § 19] is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Gov't Code § 26841 (amended). Increase of filing fees for protective order application or response**

**Comment.** Section 26841 is amended to substitute a reference to "protective order, as defined in Section 6218 of the Family Code" for the references to former provisions in the Civil Code and Code of Civil Procedure. This is not a substantive change.

**Interim Comment.** Section 26841 is amended to correct a cross-reference. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

**Gov't Code § 68085 (amended). Establishment and expenditure of Trial Court Trust Fund**

**Comment.** Section 68085 [as added by 1992 Cal. Stat. ch. 696, § 20.4] is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Gov't Code § 75050 (technical amendment). Judges' retirement benefits**

**Comment.** Subdivision (b) of Section 75050 [as amended by 1992 Cal. Stat. ch. 176, § 4] is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

**Interim Comment.** This section is amended to restore a conforming revision made by AB 2641 (1992 Cal. Stat. ch. 163, § 89) that was chaptered out.

## HEALTH AND SAFETY CODE

**Health & Safety Code § 10605 (technical amendment). Certified copies**

**Comment.** Subdivision (c) of Section 10605 [as amended by 1992 Cal. Stat. ch. 360, § 1] is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5183.

**Interim Comment.** This section is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 97) that was chaptered-out by SB 1420 (1992 Cal. Stat. ch. 360, § 1).

**Health & Safety Code § 11834.11 (amended). Definitions**

**Comment.** Section 11834.11 is amended to correct a cross-reference and to consolidate surplus language. These are not substantive changes.

## PENAL CODE

**Penal Code § 273.5 (technical amendment). Willful injury to spouse or others**

**Comment.** Subdivision (d) of Section 273.5 [as amended by 1992 Cal. Stat. ch. 184, § 3] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 7004.

**Interim Comment.** Subdivision (d) of Section 273.5 is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 104) that was chaptered-out by AB 2439 (1992 Cal. Stat. ch. 184, § 3).

**Penal Code § 273.6 (technical amendment). Willful violation of court order**

**Comment.** Subdivision (a) of Section 273.6 [as amended by Cal. Stat. ch. 1209, § 1] is amended to substitute a reference to the Family Code for the references to the former provisions in the Civil Code and Code of Civil Procedure. The specific description of the orders to which this section is applicable have been omitted. This is not a substantive change, since Section 6218 of the Family Code describes substantially the same orders.

**Interim Comment.** Subdivision (a) of Section 273.6 is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 105) that was chaptered-out by AB 2439 (1992

Cal. Stat. ch. 184, § 4). The amendments in AB 2439 (1992 Cal. Stat. ch. 184, § 4) were chaptered out by AB 2762 (1992 Cal. Stat. ch. 1209, § 1). In addition, 1992 Cal. Stat. ch. 1209 had contingent sections, both amending Penal Code Section 273.6. The amendments made in Section 1 become operative, since the amendments in Section 2 were contingent on another bill that was contingent on SB 25, which was vetoed.

**Penal Code § 360 (technical amendment). Solemnizing marriage without license**

**Comment.** Section 360 [as amended by 1992 Cal. Stat. ch. 318, § 14] is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Interim Comment.** Section 360 is amended to restore conforming changes that were chaptered out.

**Penal Code § 977 (technical amendment). Appearance in misdemeanors**

**Comment.** Section 977 [as amended by 1992 Cal. Stat. ch. 863, § 1.5] is amended to substitute a reference to the Family Code provision that replaced the relevant part of former Code of Civil Procedure Section 542. The Family Code provision is substantively the same as the former Code of Civil Procedure section, but makes explicit the coverage of children of the parties. See Fam. Code § 6211 ("domestic violence" defined).

**Penal Code § 1377 (technical amendment). Compromise of misdemeanors**

**Comment.** Section 1377 [as amended by 1992 Cal. Stat. ch. 475, § 1] is amended to substitute references to the Family Code provision that replaced former Code of Civil Procedure Section 542(b). The Family Code provision is substantively the same as the former Code of Civil Procedure section, but makes explicit the coverage of children of the parties. See Fam. Code § 6211 ("domestic violence" defined).

**Penal Code § 11105.3 (technical amendment). Record of conviction for sex crimes, drug crimes, or crimes of violence**

**Comment.** Subdivision (c) of Section 11105.3 [as amended by 1992 Cal. Stat. ch. 1227, § 1] is amended to substitute a reference to the Family Code provisions relating to fingerprinting and criminal records. This corrects an erroneous cross-reference to former Civil Code Section 226.55. The fingerprinting and criminal record provisions in former Civil Code Section 226.55 (as amended by 1986 Cal. Stat. ch. 1354, § 1) were replaced by former Civil Code Sections 222.40, 224.49, and 226.30, however the cross-reference in Section 11105.3 was not corrected. See 1990 Cal. Stat. ch. 1363, § 2.

**Penal Code § 11167 (technical amendment). Report**

**Comment.** Section 11167 [as amended by 1992 Cal. Stat. ch. 316, § 2] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

**Interim Comment.** Subdivision (d) of Section 11167 is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 112) that was chaptered-out by AB 3491 (1992 Cal. Stat. ch. 316, § 2).

**Penal Code § 11170 (technical amendment). Indexed reports**

**Comment.** Subdivision (b)(3) of Section 11170 [as amended by 1992 Cal. Stat. ch. 1338, § 2] is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Interim Comment.** Subdivision (b)(3) of Section 11170 is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 113) that was chaptered-out by SB 1184 (1992 Cal. Stat. ch. 1338, § 2).



**Penal Code § 12021 (amended). Restrictions on possession of firearms by persons convicted of felonies**

**Comment.** Subdivision (g) of Section 12021 is amended to substitute a reference a "protective order, as defined in Section 6218 of the Family Code" for the references to orders under specific sections of the Civil Code. This is not a substantive change, since Family Code Section 6218 defines "protective order" to include these orders. The reference to former Code of Civil Procedure Section 550(f) is replaced by a reference to Family Code section that replaces it.

**Interim Comment.** Section 12021 is amended to correct a cross-reference. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence. Note that Section 235 of AB 1500 subordinates the amendment of this section to other legislation in the 1993 session.

**Penal Code § 12025.5 (amended). Penalties for use of firearms in commission of felony**

**Comment.** Section 12025.5 is amended to substitute a reference to the Domestic Violence Prevention Act for a list of orders pursuant to specific Civil Code sections. This is not a substantive change, since each of the orders formerly referred to is contained in the cross-reference to the Domestic Violence Prevention Act. See Sections 6221 (applicability of Division 10), 6305 (conditions for issuance of mutual order). The word "mutual" has been substituted for "reciprocal" to conform to the terminology of the Family Code provisions.

**Interim Comment.** Section 12025.5 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

**Penal Code § 12028.5 (technical amendment). Custody of firearm or other deadly weapon**

**Comment.** Subdivision (a) of Section 12028.5 [as amended by 1992 Cal. Stat. ch. 1136, § 8] is amended to correct a cross-reference to the Uniform Parentage Act.

**Interim Comment.** Subdivision (a)(3) of Section 12028.5 is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 116) that was chaptered-out by SB 1541 (1992 Cal. Stat. ch. 1136, § 8). Note that Section 235 of AB 1500 subordinates the amendment of this section to other legislation in the 1993 session.

**Penal Code § 12031 (amended). Restrictions on carrying loaded firearms**

**Comment.** Subdivision (j)(2) of Section 12031 is amended to substitute a reference to the Domestic Violence Prevention Act for a list of orders pursuant to specific Civil Code sections. This is not a substantive change, since each of the orders formerly referred to is contained in the cross-reference to the Domestic Violence Prevention Act. See Sections 6221 (applicability of Division 10), 6305 (conditions for issuance of mutual order).

**Interim Comment.** Section 12031 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence. Note that Section 235 of AB 1500 subordinates the amendment of this section to other legislation in the 1993 session.

**Penal Code § 12070 (technical amendment). Restrictions on sale, lease, or transfer of firearms**

**Comment.** Section 12070 [as amended by 1992 Cal. Stat. ch. 1326, § 4] is amended to substitute a reference to the Family Code section that replaced former Civil Code Section 5110.710. Note that Section 235 of AB 1500 subordinates the amendment of this section to other legislation in the 1993 session.

**Penal Code § 12076 (technical amendment). Registration requirements for purchaser or transferee of firearm**

**Comment.** Paragraphs (5) and (6) of Section 12076(d) [as amended by Cal. Stat. ch. 1326, § 8] are amended to substitute references to the Family Code provisions that replaced former Code of Civil Procedure Section 550(b).

**Interim Comment.** Subdivision (d)(5)-(6) of Section 12076 is amended to restore conforming revisions in AB 2641 (1992 Cal. Stat. ch. 163, § 118) that were chaptered-out by AB 3552 (1992 Cal. Stat. ch. 1326, § 8). Note that Section 235 of AB 1500 subordinates the amendment of this section to other legislation in the 1993 session.

**Penal Code § 12078 (technical amendment). Exceptions to application of article**

**Comment.** Section 12078 [as amended by 1992 Cal. Stat. ch. 1326, § 10] is amended to substitute references to the Family Code section that replaced former Civil Code Section 5110.710. Note that Section 235 of AB 1500 subordinates the amendment of this section to other legislation in the 1993 session.

**Penal Code § 14152 (technical amendment). Referrals by district attorney to community conflict resolution program**

**Comment.** Section 14152 [as added by 1992 Cal. Stat. ch. 696, § 91] is amended to substitute references to the Family Code sections that replaced the former provisions in the Civil Code and Code of Civil Procedure. The reference to a "protective order" has been substituted for references to provisions for specific orders in the Civil Code and Code of Civil Procedure. This is not a substantive change, since "protective order" is defined to include these orders.

## PROBATE CODE

**Prob. Code § 3072 (technical amendment). Joinder or consent by conservator**

**Comment.** Subdivision (b) of Section 3072 is amended to correct a cross-reference.

**Interim Comment.** This amendment is needed to reflect the revision of the statutes concerning fiduciary duties between spouses that occurred when AB 2650 was before the Legislature in 1992.

The change of "such" to "that" in subdivision (b) is by Legislative Counsel.

**Prob. Code § 3073 (technical amendment). Manner of joinder or consent**

**Comment.** Subdivision (a) of Section 3073 is amended to correct cross-references.

**Interim Comment.** This amendment is needed to reflect the revision of the statutes concerning fiduciary duties between spouses that occurred when AB 2650 was before the Legislature in 1992.

**Prob. Code § 5022 (technical amendment). Written consent to nonprobate transfer of community property not transmutation**

**Comment.** Subdivision (b) of Section 5022 [as added by 1992 Cal. Stat. ch. 51, § 6] is amended to substitute the reference to the Family Code section that replaced the former Civil Code section.

**Prob. Code § 5030 (technical amendment). Written consent revocable during marriage**

**Comment.** Subdivision (c) of Section 5030 [as added by 1992 Cal. Stat. ch. 51, § 6] is amended to substitute the reference to the Family Code sections that replaced the former Civil Code section.

**Prob. Code § 5305 (technical amendment). Presumption that married persons hold their funds in deposit account as community property**

**Comment.** Subdivision (b) of Section 5305 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

## REVENUE AND TAXATION CODE

**Rev. & Tax. Code § 19001 (technical amendment). Child support delinquency**

**Comment.** Subdivisions (a), (b)(3)(D), and (g) of Section 19001 [as added by 1992 Cal. Stat. ch. 1223, § 2] are amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

## WELFARE AND INSTITUTIONS CODE

**Welf. & Inst. Code § 304 (technical amendment). Exclusive jurisdiction of juvenile court over custody of dependent child**

**Comment.** Section 304 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. The reference to Family Code Section 6218 is broader than the former reference. Section 6218 includes an order restraining specific acts of abuse, excluding a party from a dwelling, and restraining additional behavior necessary to enforce the first two orders. The former reference did not include the order restraining additional behavior.

**Interim Comment.** Section 304 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

**Welf. & Inst. Code § 361.5 (technical amendment). Child welfare services; reunification of family; adoption assessments**

**Comment.** Subdivision (b)(2) of Section 361.5 [as amended by 1992 Cal. Stat. ch. 455, § 2] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

**Interim Comment.** This amendment restores a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 136) that was chaptered-out by SB 1564 (1992 Cal. Stat. ch. 455, § 2).

**Welf. & Inst. Code § 362.4 (amended). Protective orders on termination of juvenile court jurisdiction**

**Comment.** Section 362.4 is amended to substitute the new reference to the Uniform Parentage Act. The reference to Family Code Section 6218 is broader than the former reference. Section 6218 includes an order restraining specific acts, excluding a party from a dwelling, and restraining additional behavior necessary to enforce the first two orders. The former reference did not include the order restraining additional behavior.

**Interim Comment.** Section 362.4 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

**Welf. & Inst. Code § 366.2 (technical amendment). Status review hearings**

**Comment.** Subdivision (e) of Section 366.2 [as amended by 1992 Cal. Stat. ch. 288, § 2] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

**Welf. & Inst. Code § 903 (technical amendment). Parental responsibility**

**Comment.** Subdivision (b) of Section 903 [as amended by 1992 Cal. Stat. ch. 50, § 3] is amended to substitute a reference to the Family Code provisions concerning the statewide uniform guideline that replaced the former Civil Code provisions.

**Welf. & Inst. Code § 11476.1 (technical amendment). Agreements with noncustodial parents**

**Comment.** Subdivisions (c), (f), and (g) of Section 11476.1 are amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

**Interim Comment.** Section 11476.1 is amended to omit the reference to Article 3 (commencing with Section 4100) of Chapter 2 of Part 2 of Division 9 of the Family Code, which continued former sections that were subject to repeal, on January 1, 1993, by a sunset clause. No action has been taken by the Legislature to prevent the sunset from taking effect and, therefore, those sections have been repealed.

The language change in subdivision (c) is by Legislative Counsel.

**Welf. & Inst. Code § 11478 (technical amendment). Cooperation of agencies**

**Comment.** Section 11478 [as amended by 1992 Cal. Stat. ch. 1192, § 1] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 4604 and 4605 and former Code of Civil Procedure Section 1650. A reference to the Uniform Reciprocal Enforcement of Support Act, now in the Family Code, has been substituted for the reference to former Code of Civil Procedure Section 1650, which 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 (technical amendment). Confidentiality of records**

**Comment.** Subdivision (a) of Section 11478.1 [as amended by 1992 Cal. Stat. ch. 1192, § 2] is amended to substitute references to the provisions of the Family Code that replaced former Section 1650 of the Code of Civil Procedure. A reference to the Uniform Reciprocal Enforcement of Support Act, now in the Family Code, has been substituted for the reference to former Code of Civil Procedure Section 1650, which merely provided the short title for the uniform act. The substituted reference in Section 11478.1 includes the entire uniform act.

**Welf. & Inst. Code § 11478.5 (technical amendment). Parent Locator Service**

**Comment.** Subdivision (b) of Section 11478.5 [as amended by 1992 Cal. Stat. ch. 1192, § 3] to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 4604 and 4605.

**Welf. & Inst. Code § 12300 (technical amendment). Remuneration of persons under duty to provide services; respite care**

**Comment.** Section 12300 [as amended by 1993 Cal. Stat. ch. 5, § 1] 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 replaced by provisions in the Family Code. See, e.g., Fam. Code §§ 3900-4414.

**Welf. & Inst. Code § 16120 (technical amendment). Payment of benefits**

**Comment.** Subdivision (e) of Section 16120 [as amended by 1992 Cal. Stat. ch. 722, § 132] is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.