
Memorandum 94-22**Family Code Cleanup (1994): AB 2208**

The Commission completed its active legislative program relating to the Family Code project last year with the passage of the Family Code cleanup bill. The Family Code became operative on January 1, 1994, and, from reports reaching the Commission office, has been well-received.

At the end of the 1993 legislative session, there was a flurry of activity on family law bills, some of which conflicted with the Family Code as enacted in 1992 or with the 1993 cleanup bill recommended by the Commission. This is a fact of legislative life, particularly in an active area such as family law and is to be expected when the fundamental statutes in an area have been completely reorganized.

The Commission staff attempted to resolve conflicts during the last few weeks of the 1993 session. These efforts were largely successful, but some technical conflicts resulted nevertheless. The leftover technical corrections were forwarded to the Assembly Judiciary Committee for inclusion in the Committee's omnibus family law technical bill which has been pending as a two-year bill (AB 2208). This approach was adopted because of the technical nature of the amendments remaining from the 1993 session and because it avoids having to prepare a bill draft and find an author for a nonsubstantive bill.

The consultant's analysis of AB 2208 identifies several of the sections in the Committee's omnibus bill as deriving from the Commission. Hence, it is appropriate for the Commission to approve official comments to these sections to provide legislative history, assuming the eventual enactment of AB 2208. In some cases, the comments repeat what the Commission has already approved in the course of preparing the Family Code and conforming revisions.

The staff has prepared a report with the relevant sections and proposed comments for Commission consideration. (See attached draft.) If approved by the Commission, these comments will be included in a bill report printed as an appendix to the Annual Report for 1994 and forwarded to legal publishers in the normal course of events. If the Commission does not wish to prepare a report,

the staff will notify the Assembly Judiciary Committee consultant and leave the matter where it lies.

We assume that the technical changes will stay in the bill regardless of whether the Commission decides to approve comments. They are unobjectionable and need to be made to resolve inconsistencies arising from conflicting bills in the 1993 session.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

Exhibit

STAFF DRAFT REPORT ON AB 2208

Staff Note. This exhibit set out the sections from AB 2208 that derive from the Commission's work on the Family Code during 1993. Sections with bill section numbers are currently in AB 2208; those without numbers will probably be added to the bill when it is next amended. Any report that is published will have to be conformed to the content of the bill when it is finally enacted.

With regard to some lengthy sections, only the part subject to change is set out below. The report on AB 2208 to be included as an appendix to the next Annual Report will omit all statutory language, setting forth only the Commission's comments.

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER ____ OF THE STATUTES OF 1994 (ASSEMBLY BILL 2208)

Chapter ____ of the Statutes of 1994 was introduced as Assembly Bill 2208 by the Assembly Committee on Judiciary and included [34] technical amendments recommended by the California Law Revision Commission. Comments to the sections in Chapter ____ recommended by the Commission are set out below.

Civ. Code § 4722.5 (repealed). Computation of child support where AFDC payments being made

SECTION. 1. Section 4722.5 of the Civil Code is repealed.

~~4722.5. For purposes of computing the minimum level of child support under subdivision (a), no hardship shall be deemed to exist and no deduction from income shall be granted if aid payments are being made pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code on behalf of a child or children of the parent seeking the deduction, even if the payments are being received by the other parent.~~

Comment. Former Section 4722.5 is continued in Family Code Section 4071 without substantive change. This is a technical, nonsubstantive change reflecting the fact that the Family Code supersedes the former Family Law Act (former Section 4000 *et seq.*).

Code Civ. Proc. § 372 (technical amendment). Minor's waiver under Juvenile Court Law

SEC. _____. Section 372 of the Code of Civil Procedure is amended to read:

372. Nothing in this section or in any other provision of this code, the Probate Code, *the Family Code*, or the Civil Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of his constitutional rights in any proceedings under the Juvenile Court Law, Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

Comment. This amendment adds a reference to the Family Code to reflect the fact that provisions concerning the capacity of minors have been moved from the Civil Code to the Family Code. This is a technical, nonsubstantive change.

Code Civ. Proc. § 397.5 (technical amendment). Transfer of proceedings for dissolution, nullity, or legal separation

SEC. _____. Section 397.5 of the Code of Civil Procedure is amended to read:

397.5 In any proceeding *for dissolution of marriage, for nullity of marriage, or for legal separation of the parties* under the Family Law Act, ~~Part 5 (commencing with Section 4000) of Division 4 of the Civil Code~~, ~~when~~ *where* it appears that both petitioner and respondent have moved from the county rendering the decree *order*, the court may, when the ends of justice and the convenience of the parties would be promoted by the change, order that the proceedings be transferred to the county of residence of either party.

Comment. Section 397.5 is amended to correct a reference to the former Family Law Act (former Civ. Code § 4000 *et seq.*) and to conform to Family Code terminology. This is a technical, nonsubstantive change.

Educ. Code § 22454 (technical amendment). Suit to enforce signature

SEC. 4. Section 22454 of the Education Code is amended to read:

22454. If a spouse refuses to sign an application, as set forth in Section 22453, the member or retirant may bring an action in court to enforce the spousal signature requirement or to waive the spousal signature requirement. Either party may bring an action pursuant to Section ~~44404~~ *1101* of the Family Code to determine the rights of the party.

Comment. Section 22454 is amended to correct a typographical error made in 1993 Cal. Stat. ch. 893 [AB 1796]. This is a technical, nonsubstantive change.

Educ. Code § 22655 (technical amendment). Determination of community property rights in retirement allowance

SEC. 5. Section 22655 of the Education Code is amended to read:

22655. Upon the legal separation or dissolution of marriage of a retirant, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance of the retirant consistent with this section. Upon election under *paragraph (4) of subdivision (d)* ~~(d)~~ *(a)* of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the benefits of a retirant shall be consistent with this section.

....

Comment. Section 22655 is amended to correct a cross-reference to Family Code Section 2610. This is a technical, nonsubstantive change.

Educ. Code § 22662 (technical amendment). Determination of community property rights in retirement allowance

SEC. 6. Section 22662 of the Education Code is amended to read:

22662. Upon the legal separation or dissolution of marriage of a retirant, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance of the retirant consistent with this section. Upon election under *paragraph (4) of subdivision (d) (a) of Section 2610 of the Family Code, or paragraph (4) of subdivision (a) of Section 4800.8 of the Civil Code, whichever is in effect*, the court order awarding the nonmember spouse a community property share in the benefits of a retirant shall be consistent with this section.

....

Comment. Section 22662 is amended to correct a cross-reference to Family Code Section 2610 and omit a reference to former Civil Code § 4800.8. This is a technical, nonsubstantive change.

Educ. Code § 41053 (technical amendment). Adults and minors defined

SEC. _____. Section 41053 of the Education Code is amended to read:

41053. (a) ~~Whenever~~ *Where* a reference is made to “adults” in this division in the context of apportionments to school districts or county superintendents of schools, ~~such~~ *the* reference shall be deemed to refer to persons 21 years of age or over, notwithstanding any other provision of law.

(b) ~~Whenever~~ *Where* a reference is made to “minors” in this division in the context of apportionments to school districts or county superintendents of schools, ~~such~~ *the* reference shall be deemed to refer to persons under 21 years of age, notwithstanding Section 25 6500 of the ~~Civil~~ *Family* Code or any other provision of law.

Comment. Section 41053 is amended to correct a cross-reference to former Civil Code Section 25 which was repealed by 1993 Cal. Stat. ch. 219 [AB 1500] and to make other technical, nonsubstantive revisions.

Evid. Code § 703.5 (technical amendment). Competency of judicial officer to testify

SEC. 7. Section 703.5 of the Evidence Code is amended to read:

703.5. No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify in any subsequent civil proceeding as to any statement, conduct, decision, or ruling occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section shall not apply to a mediator with regard to any mediation under Chapter

11 (commencing with Section 3155 3160) of Part 2 of Division 8 of the Family Code.

Comment. Section 703.5 is amended to correct the cross-reference to former Family Code Section 3155 to reflect the reorganization of those sections in 1993 Cal. Stat. ch. 219. This is a technical, nonsubstantive change.

Evid. Code § 1014.5 (technical amendment). Psychotherapist-patient privilege with regard to minor

SEC. _____. Section 1014.5 of the Evidence Code is amended to read:

1014.5. Notwithstanding any other provision of law, with respect to situations in which a minor has requested and been given mental health treatment or counseling pursuant to Section 25.9 6924 of the Civil Family Code, the professional person rendering such mental health treatment or counseling has the psychotherapist-patient privilege.

Comment. Section 1014.5 is amended to correct a cross-reference to former Civil Code Section 25 which was repealed by 1993 Cal. Stat. ch. 219 [AB 1500]. This is a technical, nonsubstantive change.

Evid. Code § 1152.5 (technical amendment). Communications with regard to mediation

SEC. 8. Section 1152.5 of the Evidence Code is amended to read:

1152.5. (a) When persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute in whole or in part:

....

(b) This section does not apply where the admissibility of the evidence is governed by Section 1818 or 3156 3177 of the Family Code.

....

Comment. Subdivision (b) of Section 703.5 is amended to correct the cross-reference to Family Code Section 3155 which was renumbered in 1993 Cal. Stat. ch. 219. This is a technical, nonsubstantive change.

Fam. Code § 246 (repealed). Time limits on issuance of denial of restraining order

SEC. 11. Section 246 of the Family Code is repealed.

~~246. An ex parte temporary restraining order described in Section 240 shall be issued or denied on the same day that the application is submitted to the court, unless the application is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.~~

Comment. Section 246 is repealed because it is surplus in light of Section 6326. This is a technical, nonsubstantive change.

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

SEC. 25. Section 2610 of the Family Code is amended to read:

2610. (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private,

including all survivor and death benefits, including, but not limited to, any of the following:

....

(4) Order the division of community property rights in accounts with the State Teachers' Retirement System pursuant to Chapter 7.5 12 (commencing with Section 22650) of Part 13 of the Education Code.

....

Comment. Subdivision (a)(4) of Section 2610 is amended to reflect the reorganization of the State Teachers' Retirement System statutes. See 1993 Cal. Stat. ch. 893, § 2 [AB 1796]. This is a technical, nonsubstantive change.

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

SEC. 30. Section 3190 of the Family Code is amended to read:

3190. (a) The court may require parents involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, for not more than one year, provided that the program selected has counseling available for the designated period of time, if the court finds both of the following:

(1) The dispute between the parents or between a parent and the child poses a substantial danger to the best interest of the child.

(2) The counseling is in the best interest of the child.

~~(b) Where there has been a history of abuse by either parent against the child or by one parent against the other parent, and a protective order is in effect, the court may order the parties to participate in counseling separately and at separate times. Each party shall bear the cost of his or her own counseling separately, unless good cause is shown for a different apportionment. The costs associated with a minor child participating in counseling shall be apportioned in accordance with Section 4062.~~

(b) Subject to Section 3192, if the court finds that the financial burden created by the order for counseling does not otherwise jeopardize a party's other financial obligations, the court shall fix the cost and shall order the entire cost of the services to be borne by the parties in the proportions the court deems reasonable.

(c) The court, in its finding, shall set forth reasons why it has found both of the following:

(1) The dispute poses a substantial danger to the best interest of the child and the counseling is in the best interest of the child.

(2) The financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.

(d) The court shall not order the parties to return to court upon the completion of counseling. Either party may file a new order to show cause or motion after

counseling has been completed, and the court may again order counseling consistent with this chapter.

Comment. Subdivision (b) of Section 3190 is amended for consistency with Section 3192 as amended. See Section 3192 Comment.

Fam. Code § 3192 (amended). Separate counseling where protective order against domestic violence

SEC. 31. Section 3192 of the Family Code is amended to read:

3192. In a proceeding in which counseling is ordered pursuant to this chapter, where there has been a history of domestic violence between the parties or where abuse by either parent against the child or by one parent against the other parent and a protective order as defined in Section 6218 is in effect, at the request of a party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the mental health professional, or attend other community programs or services, *the court may order the parties to participate in counseling separately and at separate times. Each party shall bear the cost of his or her own counseling separately, unless good cause is shown for a different apportionment. The costs associated with a minor child participating in counseling shall be apportioned in accordance with Section 4062.*

Comment. Section 3192 is amended to conform to the substance of 1993 Cal. Stat. ch. 301, § 1 [AB 197], which was unintentionally chaptered out by 1993 Cal. Stat. ch. 876, § 15.4 [SB 1068].

Fam. Code § 3686 (repealed). Consideration of age increase factor in modification of child support order

SEC. 32. Section 3686 of the Family Code is repealed.

3686. ~~In making a modification based on a request to increase the amount of child support payments pursuant to this article, the court shall take into consideration the age increase factor developed by the Judicial Council pursuant to paragraph (8) of subdivision (a) of Section 4005.~~

Comment. Section 3686 is repealed as obsolete since the section referred to (former Section 4005) has been repealed. See 1993 Cal. Stat. ch. 219, § 135.

Fam. Code § 4005 (added). Findings

SEC. 47. Section 4005 is added to the Family Code, to read:

4005. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for support of a child is based.

Comment. Section 4005 is added to restore a provision in the second sentence of former Civil Code Section 4700(a) which had been carried forward in Family Code Section 4005(b) as enacted in 1992 and erroneously repealed.

Fam. Code § 4071 (technical amendment). Circumstances evidencing hardship

SEC. 48. Section 4071 of the Family Code is amended to read:

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

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

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

(b) The maximum hardship deduction under paragraph (2) of subdivision (a) for each child who resides with the parent may be equal to, but shall not exceed, the support allocated each child subject to the order. For purposes of calculating this deduction, the amount of support per child established by the statewide uniform guideline shall be the total amount ordered divided by the number of children and not the amount established under paragraph (8) (7) of subdivision (b) of Section 4055.

(c) For purposes of computing the minimum level of child support under this section, no hardship shall be deemed to exist and no deduction from income shall be granted if aid payments are being made pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code on behalf of a child or children of the parent seeking the deduction, even if the payments are being received by the other parent.

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

Comment. Subdivision (c) of Section 4071 is amended to continue the wording of former Civil Code Section 4722.5, as added by 1993 Cal. Stat. ch. 69, § 1 [SB 35], except that the reference to former Civil Code Section 4722 is changed to refer to "this section."

Subdivision (b) is amended to conform to amendments made to Section 4055 by 1993 Cal. Stat. ch. 1156, § 1 [SB 541]. This is a technical, nonsubstantive change.

Fam. Code § 4853 (technical amendment). Effect of registration of foreign support or assignment order; enforcement of registered order

SEC. 49. Section 4853 of the Family Code, as amended by Section 20.5 of Chapter 876 of the Statutes of 1993, is amended to read:

4853. (a) Except as specified in this section, upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

....

(e) After registration, a foreign order for the assignment of wages or other earnings for support shall be treated for all purposes in the same manner as an order for assignment of earnings entered pursuant to ~~Chapter 5 (commencing with~~

~~Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code or, on and after January 1, 1994, this article. The registered foreign order for assignment of wages shall be served upon the obligor's employer and the obligor shall be sent, by first-class mail, a copy of the foreign assignment order at the same time that the employer is served with the notice. The obligor may move to quash the assignment in accordance with Section 4390.9 of the Civil Code or, on and after January 1, 1994, Section 5270.~~

Comment. Subdivision (e) of Section 4853 is amended to delete material that became obsolete on Jan. 1, 1994.

Fam. Code § 5260 (technical amendment). Finding of good cause required to stay order

SEC. _____. Section 5260 of the Family Code is amended to read:

5260. (a) The court may order that service of the assignment order be stayed only if the court makes a finding of good cause or if an alternative arrangement exists for payment in accordance with paragraph (2) of subdivision (b). Notwithstanding any other provision of law, service of wage assignments issued for foreign orders for support, and service of foreign orders for the assignment of wages registered pursuant to Article 3 (commencing with Section 4820) of Chapter 6 shall not be stayed pursuant to this subdivision.

....

(2) An alternative arrangement for staying a wage assignment order shall require a written agreement between the parties that provides for payment of the support obligation as ordered other than through the immediate service of a wage assignment. Any agreement between the parties which includes the staying of a service of a wage assignment shall include the concurrence of the district attorney in any case in which support is ordered to be paid through a county officer designated for that purpose. The execution of an agreement pursuant to this paragraph shall not preclude a party from thereafter seeking a wage assignment in accordance with the procedures specified in Section 4390.4 5261 upon violation of the agreement.

Comment. Subdivision (b)(2) is amended to correct an erroneous cross-reference made in 1993 Cal. Stat. ch. 876, § 27 [SB 1068]. This is a technical, nonsubstantive change.

Fam. Code § 7808 (technical amendment). Child adjudged to be dependent child after January 1, 1989

SEC. _____. Section 7808 of the Family Code is amended to read:

7808. This part does not apply to a minor adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360 of the Welfare and Institutions Code on and after January 1, 1989, during the period in which the minor is a dependent child of the court. For those minors, the exclusive means for the termination of parental rights are provided in the following statutes:

(a) Section 366.26 of the Welfare and Institutions Code.

(b) Sections 8604 to 8606, inclusive, and 8700 of this code.

(c) Chapter 5 (commencing with Section 7660) of Part 3 of *Division 12* of this code.

Comment. Subdivision (c) of Section 7808 is amended to correct an incomplete cross-reference. This is a technical, nonsubstantive change.

Gov't Code § 21365.6 (technical amendment).

SEC. _____. Section 21365.6 of the Government Code is amended to read:

21365.6. The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to receive an allowance pursuant to Section 21365.5, shall instead receive an allowance which is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21336. The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to receive a special death benefit in lieu of an allowance under Section 21365.5, may elect to instead receive an allowance which is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21336.

The allowance shall be payable as long as the surviving spouse lives or until remarriage. Upon the death or remarriage of the surviving spouse, the benefit shall be continued to minor children, as defined in Section 25 6500 of the *Civil Family Code*, or a lump sum shall be paid as provided under circumstances specified in Section 21365.5 or in Sections 21364 and 21366, as the case may be.

....

Comment. The second paragraph of Section 21365.6 is amended to correct a cross-reference to former Civil Code Section 25 which was superseded by Family Code Section 6500. This is a technical, nonsubstantive change.

Health & Safety Code § 1522 (technical amendment). Fingerprinting licensees

SEC. Section 1522 of the Health and Safety Code is amended to read:

1522. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

....

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the state department or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of, or arrested for, a crime other than a minor traffic violation. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or

the state department for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 222.40 8712 of the *Civil Family Code* may be used by the department or other approving agency.

....

Comment. Subdivision (d) of Section 1522 is amended to correct a cross-reference to former Civil Code Section 222.40 which was superseded by Family Code Section 8712. This is a technical, nonsubstantive change.

Labor Code § 1308.5 (technical amendment). Limitation on minor's employment

SEC. _____. Section 1308.5 of the Labor Code is amended to read:

1308.5. (a) This section, with the exception of paragraph (4) of this subdivision, shall apply to all minors under the age of 16 years. The written consent of the Labor Commissioner is required for any minor, not otherwise exempted by this chapter, for any of the following:

....

(8) The employment or appearance of any minor pursuant to a contract approved by the superior court under ~~the provisions of Section 36 of the Civil Chapter 3 (commencing with Section 6750) of Part 3 of Division 11 of Family Code.~~

....

Comment. Subdivision (a)(8) of Section 1308.5 is amended to correct a cross-reference to former Civil Code Section 36 which was superseded by Family Code Section 6750 *et seq.* This is a technical, nonsubstantive change.

Penal Code § 836 (technical amendment). Arrest

SEC. 60. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or

her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c)(1) When a peace officer is responding to a call alleging a violation of a protective order issued under ~~Section 2035, 2045, 5530, 5550, 5650, 7710, 7720, or 7750~~ *Division 10 (commencing with Section 6200)* of the Family Code or Section 136.2 of this code, and the peace officer has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities that a true copy of the protective order has been filed, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under ~~Section 2035, 2045, 5530, 5550, 5650, 7710, 7720, or 7750~~ *Division 10 (commencing with Section 6200)* of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

Comment. Subdivision (c) is amended to correct cross-references to the domestic violence provisions in the Family Code. These are technical, nonsubstantive changes.

Penal Code § 1105.3 (technical amendment). Access to criminal records

SEC. 61. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other provision of law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the

information to the requesting employer and shall also send a copy of the information to the applicant.

....

(c) Nothing in this section ~~shall supersede~~ *supersedes* any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision ~~shall apply~~ *applies* to, but *is not be* limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and ~~Section 226.55 of the Civil Sections 8712, 8811, and 8908 of the Family Code.~~

....

Comment. Subdivision (c) of Section 11105.3 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. This is a technical, nonsubstantive change.

Penal Code § 12028.5 (technical amendment).

SEC. _____. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

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

(2) "Family violence" has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any abuse perpetrated against a family or household member.

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

The presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (Part 7 3 (commencing with Section 7000 7600) of Division 4- 12 of the Civil *Family* Code).

(4) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

....

Comment. Subdivision (a) of Section 12028.5 is amended to correct a cross-reference to the Uniform Parentage Act. This is a technical, nonsubstantive change.

Penal Code § 13823.11 (technical amendment). Standards for examination of victims

SEC. Section 13823.11 of the Penal Code is amended to read:

13823.11. The minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child molestation and the collection and preservation of evidence therefrom include all of the following:

....

(4) Pursuant to ~~Section 34.9 of the Civil Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code~~, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian.

....

Comment. Subdivision (c) of Section 13823.11 is amended to correct a cross-reference to former Civil Code Section 34.9 which was superseded by Family Code Section 6920 *et seq.* This is a technical, nonsubstantive change.

Prob. Code § 13504 (technical amendment). Community property in revocable trust

SEC. Section 13504 of the Probate Code is amended to read:

13504. Notwithstanding the provisions of this part, community property held in a revocable trust described in Section ~~5110.150~~ 761 of the ~~Civil Family~~ Code is governed by the provisions, if any, in the trust for disposition in the event of death.

Comment. Section 13504 is amended to correct a cross-reference to former Civil Code Section 5110.150 which was superseded by Family Code Section 761. This is a technical, nonsubstantive change.

Veh. Code § 23143 (technical amendment). Parental liability for fees

SEC. _____. Section 23143 of the Vehicle Code is amended to read:

23143. Notwithstanding Section ~~34.10~~ 6929 of the ~~Civil Family~~ Code, if the court finds it just and reasonable, the court may order the parent or parents of a minor who is ordered to participate in an alcohol education program or a community service program which provides an alcohol education component pursuant to this article, to pay the required fees for the program.

Comment. Section 23143 is amended to correct a cross-reference to former Civil Code Section 34.10 which was superseded by Family Code Section 6929. This is a technical, nonsubstantive change.

Welf. & Inst. Code § 903 (technical amendment).

SEC. 62. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) A parent of a minor, the estate of a parent, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of

supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

....

(4) For those placements of a minor subject to this section in which an AFDC-FC grant is made, the district attorney shall seek an order pursuant to Section 11350 and the statewide child support *guidelines guideline* in effect in ~~Chapter 2 (commencing with Section 4720) of Title 5 of Part 5 of the Civil or Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code~~. For purposes of determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in ~~subdivision (d) of Section 4721 of the Civil Code or Section 4057 of the Family Code shall be~~ *is* applicable

Comment. Section 903 is amended to omit a references to former Civil Code sections. This is a technical, nonsubstantive change.

Welf. & Inst. Code § 11478.5 (technical amendment). Parent Locator Service

SEC. 64. Section 11478.5 of the Welfare and Institutions Code is amended to read:

11478.5. (a) There is in the Department of Justice the California Parent Locator Service and Central Registry which shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

....

(b) To effectuate the purposes of this section, the California Parent Locator Service and Central Registry shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data which will enable the Department of Justice and public agencies to carry out their powers and duties to locate the parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to enforce liability for child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any district attorney in fulfilling the duties prescribed in Section 270 of the Penal Code, and in ~~Sections 4604 and 4605 of the Civil Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of the Family Code~~, relating to abducted, concealed, or detained children. The State Department of Social Services' Statewide Automated Child Support System shall be entitled to the same cooperation and information as the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

....

~~(j) This section shall be operative January 1, 1994.~~

Comment. Subdivision (b) of Section 11478.5 is amended to substitute a cross-reference to the Family Code sections that replaced the former Civil Code Sections 4604 and 4605. Subdivision (j) is deleted as obsolete. These are technical, nonsubstantive changes.

Welf. & Inst. Code § 11479 (technical amendment). Referral to district attorney

SEC. Section 11479 of the Welfare and Institutions Code is amended to read:

11479. In all cases in which the paternity of the child has not been established to the satisfaction of the county department, the county department shall refer the applicant to the district attorney at the time the application is signed. Upon the advice of a county department that a child is being considered for adoption, and regardless of whether or not the whereabouts of the parent is known, the district attorney shall delay his investigation and other action with respect to the case until advised that the adoption is no longer under consideration. The district attorney shall conduct such investigation as he considers necessary, and where he deems it appropriate, he may bring an action under ~~Section 231 of the Civil~~ *Chapter 4 (commencing with Section 7630) of Part 3 of Division 12 of the Family Code*. When the cause is at issue, it shall be set for trial at the earliest possible date and shall take precedence over all other cases except older matters of the same character and matters to which precedence may be given by law.

Comment. Section 11479 is amended to correct a cross-reference to former Civil Code Section 231 which was repealed in 1975 and superseded by Civil Code Sections 7006 and 7015. These sections, in turn, have been superseded by the Family Code sections. These are technical, nonsubstantive changes.

Welf. & Inst. Code § 12300 (technical amendment). Supportive services for aged, blind, and disabled persons

SEC. 65. Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

- (1) Assistance with ambulation.
- (2) Bathing, oral hygiene, and grooming.
- (3) Dressing.

- (4) Care and assistance with prosthetic devices.
- (5) Bowel, bladder, and menstrual care.
- (6) Repositioning, skin care, range of motion exercises, and transfers.
- (7) Feeding and assurance of adequate fluid intake.
- (8) Respiration.
- (9) Assistance with self-administration of medications.

(d) Where supportive services are provided by a person having the legal duty pursuant to the *Civil Family Code* to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care. These providers shall be paid only for the following:

....

Comment. Subdivision (d) of Section 12300 is amended to substitute a reference to the Family Code for the former reference to the Civil Code. The provisions of the Civil Code relating to support have been replaced by provisions in the Family Code. See, e.g., Fam. Code §§ 3900-4414. This is a technical, nonsubstantive change.

Welf. & Inst. Code § 16501.1 (technical amendment). Child welfare services case plan

SEC. _____. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and proper case management, and that services are provided to the parents or other caretakers as appropriate. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of the least restrictive or most familylike setting, selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 275 7950 of the *Civil Family Code*.

....

Comment. Subdivision (c) of Section 16501.1 is amended to correct a cross-reference to former Civil Code Section 275 which is superseded by Family Code Section 7950. This is a technical, nonsubstantive change.