

## MEMORANDUM 2023-47

### **New Topics and Priorities**

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Annually, the Commission reviews its current program of work, determines its priorities for the next year, and decides whether to request changes to the topics on its legislatively-enacted Calendar of Topics Authorized for Study (“Calendar of Topics”).<sup>1</sup>

To assist the Commission in that process, the staff prepares a *New Topics and Priorities* memorandum.

Consistent with the new structure for the *New Topics* memorandum introduced in Memorandum 2022-42,<sup>2</sup> this memorandum is divided into four main parts:

- (1) **Active Studies.** These are studies that the Commission worked on in the preceding year.
- (2) **New Legislative Assignments.** These are new assignments that were just enacted by the Legislature.
- (3) **Suspended Studies.** These are studies that the Commission has worked on recently but set aside prior to completion. Studies in this category may eventually be moved to the inactive studies list (see Exhibit 2), which serves to memorialize a topic that (1) may eventually be reactivated, but (2) is unlikely to be reactivated in the near future.
- (4) **Proposed New Studies.** This part of the memorandum is reserved for discussion of new study topics that the Commission received in the preceding year (if any).

The memorandum then presents a summary of the Commission’s expected workload in 2023, along with any staff recommendations for changes to the Commission’s study authority.

The memorandum concludes with a discussion of whether any studies should be elevated or demoted in priority or dropped entirely.

In addition, the following items are attached as Exhibits to this memorandum:

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<sup>1</sup> The current Calendar of Topics is in 2021 Cal. Stat. res. ch. 108 (ACR 24 (Chau)).

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

<sup>2</sup> See Minutes (Sept. 2022), p. 3 (noting Commission approval of the new structure for the memorandum).

<i>Exhibits</i>	<i>Exhibit page(s)</i>
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## ACTIVE STUDIES

### Fish and Game Law

In 2023, the Commission completed its work on revision of the Fish and Game Code, finalizing a recommendation in February 2023.<sup>3</sup> Legislation to implement that recommendation was enacted in 2023.<sup>4</sup>

**With that, the Commission’s work on this topic should be considered complete. The staff recommends that the Commission retain authority to work on Fish and Game Law for now, in case a need for follow-up work arises.**

### Stock Cooperatives and Revocable Transfer on Death Deeds

In 2022, the Commission completed a recommendation on this topic.<sup>5</sup> That year, the Commission also began considering, but discontinued work on two minor issues that arose from the study.<sup>6</sup>

Legislation to implement the Commission’s recommendation was enacted in 2023. At this time, the staff is not aware of any further work required on this topic. **Given that, the staff recommends that the Commission consider work on this topic complete.**

The work on this topic was undertaken under the Commission’s general authority to work on Probate Code matters (from the Commission’s resolution of authority). **The staff recommends that this authority be retained, given the Commission’s extensive work on Probate Code issues.**

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<sup>3</sup> See *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 3)*, 48 Cal. L. Revision Comm’n Reports \_\_ (2023).

<sup>4</sup> 2023 Cal. Stat. ch. 132 (AB 1760 (Committee on Water, Parks, and Wildlife)); see also 2023 Cal. Stat. ch. 876 (SB 500 (McGuire)); First Supplement to Memorandum 2023-42.

<sup>5</sup> See *Stock Cooperatives and Revocable Transfer on Death Deeds*, 48 Cal. L. Revision Comm’n Reports \_\_ (2022).

<sup>6</sup> See Minutes (Aug. 2022), p. 3. The Commission is responsible for conducting another follow-up study on revocable transfer on death deeds, due on January 1, 2031. This is memorialized in the attached Inactive Studies list. See Exhibit 2.

## **State and Local Agency Access to Customer Information from Communication Service Providers**

In 2022, the Commission completed a recommendation on a narrow reform within this larger study (addressing the use of administrative subpoenas to search electronic communication records).<sup>7</sup> Legislation to implement that recommendation was introduced in 2023<sup>8</sup> and is currently pending. The Commission decided in October to reactivate study work on this topic to take an expedited look at specific concerns that were raised during the legislative process. **Work on this topic is ongoing and will proceed into early 2024. As indicated in Memorandum 2023-42, the staff intends to prioritize this work to resolve these matters quickly and allow for any additional Commission-recommended changes to be considered in this legislative session.**

In 2020, the Commission considered a separate issue within this study (minimizing interception of privileged information when conducting a search of electronic communication records).<sup>9</sup> Since that separate issue is distinct from the Commission’s other ongoing work in this study, that issue is presented with the suspended studies later in this memorandum.

## **Statutes Made Obsolete by Trial Court Restructuring**

In 2023, the Commission made further progress in its years-long study of statutes made obsolete by “trial court restructuring” (or “TCR,” which includes, broadly, elimination of the municipal and justice courts, state funding of the trial courts, state employment of court personnel, and state responsibility for court facilities). Legislation to implement two TCR recommendations from 2022 was enacted.<sup>10</sup>

Also, in 2023, the Commission circulated a tentative recommendation on another TCR issue: the repeal of Penal Code Section 1463.5.<sup>11</sup> No comment was received on that proposal. The staff will present a final recommendation on that topic for the Commission’s approval in early 2024. If the timing permits, the staff will seek to get the proposed reform included in omnibus legislation this session (along with a Commission-recommended

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<sup>7</sup> See *State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena*, 48 Cal. L. Revision Comm’n Reports \_\_ (2022).

<sup>8</sup> AB 522 (Kalra).

<sup>9</sup> See *infra* notes 27 and 28 and associated text.

<sup>10</sup> 2023 Cal. Stat. ch. 131 (AB 1754 (Committee on Judiciary)). This bill implemented proposed legislation from *Statutes Made Obsolete by Trial Court Restructuring: Part 8*, 48 Cal. L. Revision Comm’n Reports \_\_ (2022) and *Statutes Made Obsolete by Trial Court Restructuring (Part 9): Jurisdictional Classification of a Drug Asset Forfeiture Proceeding*, 48 Cal. L. Revision Comm’n Reports \_\_ (2022).

<sup>11</sup> *Tentative Recommendation on Repeal of Penal Code Section 1463.5* (May 2023).

change that was omitted from the 2023 legislation<sup>12</sup>).

**Aside from these issues, the staff recommends that this topic be moved to the inactive studies list for now.**

### **Antitrust Law**

In 2022, the Commission received a new assignment on Antitrust Law.<sup>13</sup> In late 2022, the Commission decided to treat this topic as a high priority.

In 2023, the Commission heard from several invited speakers about different aspects of antitrust law, the European Union Competition Law, and the New York State Antitrust Reform Legislation. Several expert panels were formed and are in the process of preparing reports, which the Commission will receive in early 2024, about different aspects of antitrust law.

Notably, this study was not given a due date. **However, the Commission should treat this as a high priority and make as much progress as it can in 2024, consistent with other demands on its resources.**

### **Equal Rights Amendment**

In 2022, the Commission received a new assignment on the Equal Rights Amendment and sex equality.<sup>14</sup> In late 2022, the Commission decided to treat this topic as a high priority.

In 2023, the Commission heard from several invited speakers about different aspects of equal protection and anti-discrimination law and considered several lengthy memoranda and attached reports providing legal background about different constitutional doctrines and statutory laws that are relevant to the Equal Rights Amendment and issues of sex equality generally.

This study was also not given a due date. **However, the Commission should continue to treat this as a high priority and make as much progress as it can in 2024, consistent with other demands on its resources.**

### **Landlord-Tenant Terminology**

In 2022, the Commission received a new assignment related to landlord-tenant

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<sup>12</sup> See First Supplement to Memorandum 2023-42, p. 1 (discussing proposed amendment to Penal Code Section 2620 from *Statutes Made Obsolete by Trial Court Restructuring: Part 8*, 48 Cal. L. Revision Comm'n Reports \_\_ (2022)).

<sup>13</sup> 2022 Cal. Stat. res. ch. 147 (ACR 95 (Cunningham & Wicks)).

<sup>14</sup> 2022 Cal. Stat. res. ch. 150 (SCR 92 (Leyva)).

terminology.<sup>15</sup> That study assignment included a deadline of December 31, 2024, for the work.

As indicated when the Commission considered New Topics in 2022,<sup>16</sup> staff work on this topic was deferred initially. The first memorandum on this topic will be presented at the Commission's December meeting.

**To ensure that the Commission completes its work by the end-of-year deadline, this study will be a high priority in 2024.**

## NEW LEGISLATIVE ASSIGNMENTS

The Commission received no new legislative assignments in 2023.

## SUSPENDED STUDIES

As a general matter, the staff anticipates that the active studies will consume much of the Commission's staff resources in the coming year. As resources permit, the staff recommends prioritizing work on suspended studies that are closer to completion or that were more recently active (as indicated below).

### Discovery in Civil Cases

Some time ago, the Commission undertook a study of civil discovery, with the benefit of a 2001 background study prepared by Prof. Gregory Weber of McGeorge School of Law. A number of reforms were enacted, including the Commission's recommendation on *Deposition in Out-of-State Litigation*,<sup>17</sup> which was enacted in 2008.<sup>18</sup>

While it was actively working on civil discovery, the Commission received numerous suggestions from interested persons, which the staff has kept on hand. The Commission also identified other discovery topics it might address.

In 2017, the Commission directed the staff to examine a discovery topic suggested by then-Commissioner Capozzola (related to depositions) and to prepare a list of other discovery topics suggested for study.<sup>19</sup> The Commission later suspended that work in light of a pending discovery-related bill (AB 383 (Chau)).<sup>20</sup> After AB 383 was enacted into law with a sunset date of January 1, 2023,<sup>21</sup> the Commission decided to suspend its work on

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<sup>15</sup> 2022 Cal. Stat. ch. 462 (AB 2503 (Cristina Garcia)).

<sup>16</sup> Minutes (Sept. 2022), p. 3.

<sup>17</sup> 37 Cal. L. Revision Comm'n Reports 99 (2007).

<sup>18</sup> 2008 Cal. Stat. ch. 231.

<sup>19</sup> See Minutes (Dec. 2016), p. 3.

<sup>20</sup> See Minutes (Aug. 2017), p. 7; Memorandum 2017-26, pp. 22-24.

<sup>21</sup> 2017 Cal. Stat. ch. 189.

discovery-related issues until after the sunset of AB 383.<sup>22</sup>

At this time, the staff does not recommend re-activating this topic. Instead, the staff suggests retaining this topic on the suspended studies list, for possible future re-activation after the Commission completes some of its ongoing studies and suspended studies that are closer to completion.

### **Emergency-Related Reforms**

In 2022, the Commission decided to prepare an informational report on emergency laws, with information about approaches taken in other jurisdictions.<sup>23</sup> This would provide useful information to the Legislature and Governor, without any interference in current reform efforts.

This work was put on hold when the Commission began its work on new legislative assignments at the end of 2022 (Antitrust and Equal Rights Amendment). Since then, the Uniform Law Commission has completed its work on the Model Public-Health Emergency Authority Act.<sup>24</sup>

**The Commission should reactivate this work when resources permit in 2024.** Upon reactivation, the Commission may want to consider the Model Act and whether emergency law continues to be an active area for legislative attention in California.

### **Recodification of Toxic Substance Statutes**

In 2021, the Commission approved a recommendation to recodify Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, relating to hazardous substances.<sup>25</sup> Two bills were enacted in 2022 to implement that recommendation and the associated conforming revisions.<sup>26</sup>

The Commission briefly recommenced work on this topic in 2023, but it was put on hold to begin work on a legislative assignment with 2024 deadline (landlord-tenant terminology). **The Commission should reactivate this work when resources permit in 2024.**

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<sup>22</sup> Minutes (Dec. 2018), p. 3. It does not appear that the sunset date has been extended.

<sup>23</sup> See Minutes (March 2022), p. 4.

<sup>24</sup> See <https://www.uniformlaws.org/committees/community-home?CommunityKey=7a88c160-5910-4e41-9dff-018a850ef3b2>.

<sup>25</sup> *Hazardous Substance Account Recodification Act*, 48 Cal. L. Revision Comm'n Reports \_\_ (2021); see also *Hazardous Substance Account Recodification Act: Conforming Revisions*, 48 Cal. L. Revision Comm'n Reports \_\_ (2021).

<sup>26</sup> 2022 Cal. Stat. ch. 257, 258 (AB 2293 and 2327 (Committee on Environmental Safety and Toxic Materials)).

## **State and Local Agency Access to Customer Information from Communication Service Providers**

In 2020, the Commission considered the possibility of developing a statutory procedure to minimize the interception of privileged information when searching electronic records (such as email).<sup>27</sup> It decided to work on that topic.<sup>28</sup>

That work has not yet started. **Compared to the other active and pending studies, this topic is not particularly urgent. The staff recommends against starting work on this topic in 2024.** It should remain on the suspended study list for now.

### **PROPOSED NEW STUDIES**

The Commission has received five new study suggestions that are addressed in this memorandum. The suggestions are discussed or noted below. The suggestions that would fall within the Commission’s current study authority are discussed first (under headings identifying the applicable authorized topic or topics<sup>29</sup>), followed by discussion of the suggestions that the Commission does not appear to have current authority to study.

#### **Probate Code, Property, and Family Law**

The Commission received one new topic suggestion that involves several topics (Probate Code, real and personal property, and family law) that the Commission is currently authorized to study.

Attorney Rachel Buller wrote to Commission staff raising concerns about the disposition of property held in joint tenancy when one spouse dies during divorce proceedings. In particular, Ms. Buller describes a situation where spouses “intend to sever a joint tenancy and are actively engaged in dissolution proceedings, but because of [one spouse’s] sudden and unexpected death, the property passes to the survivor by right of survivorship, *regardless of intent of the parties or testamentary wishes of the decedent.*”<sup>30</sup> Further, Ms. Buller indicates that the outcome (based on application of different property presumptions) depends on the timing of the death during the pendency of a divorce proceeding (i.e., after filing but before judgment vs. after judgment but before it is final).<sup>31</sup>

This topic sits at the intersection of several related, but distinct areas of law, including

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<sup>27</sup> Memorandum 2020-54 and its First Supplement.

<sup>28</sup> Minutes (Oct. 2020), p. 4.

<sup>29</sup> See Exhibit, pp. 1-3.

<sup>30</sup> Exhibit, p. 7 (emphasis in original).

<sup>31</sup> *Id.*

restrictions on property transfer while dissolution of marriage is pending,<sup>32</sup> different presumptions about property ownership,<sup>33</sup> and rules about disposition and control of spousal property upon the death of a spouse.<sup>34</sup>

As a general matter, a party is restrained from transferring property during a dissolution proceeding but is not restrained from eliminating a right of survivorship (as in joint tenancy).<sup>35</sup> Family Code Section 2040(c) requires the following language be included in the summons for dissolution proceeding:

WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.

Ms. Buller’s comment specifically refers to a situation where the death is “sudden and unexpected.”<sup>36</sup> In that case, it seems possible, even likely, that the party would not, even with the warning, have taken affirmative action to eliminate a right of survivorship, as property issues would presumably be resolved by the (ongoing) dissolution proceeding. Given the significance of the underlying issue (i.e., disposition of real property, which is often the most significant and valuable asset people own), it may be that this default rule could be refined to better align with parties’ intentions.

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<sup>32</sup> Fam. Code § 2040(a)(2)(A), (b)(3) (in a proceeding for dissolution of marriage (see Fam. Code § 2000), the summons shall contain a temporary restraining order that restrains “both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of, any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life...,” but does not restrain “[e]limination of a right of survivorship to property, provided that notice of the change is filed and served on the other party before the change takes effect”); see also *id.* § 2581(c) (“For the purpose of division of property on dissolution of marriage or legal separation of the parties, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, or tenancy by the entirety, or as community property, is presumed to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted...”).

<sup>33</sup> Evid. Code § 662 (“The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.”); Fam. Code § 760 (“Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.”).

See also, e.g., *In re Brace* (2020) 9 Cal.5th 903. In that opinion, the Court noted that the case required the Court to “untangle a ’snarl of conflicting presumptions’ in the evolution of California’s treatment of joint tenancies alongside the development of our community property system.” *Id.* at 911-12 (citation omitted).

<sup>34</sup> Prob. Code §§ 100(a) (“Upon the death of a person who is married or in a registered domestic partnership, one-half of the community property belongs to the surviving spouse and the other one-half belongs to the decedent.”); 6101 (identifying property that can be disposed of by will); 6400-6414 (rules on intestate succession).

<sup>35</sup> See *supra* note 32.

<sup>36</sup> Exhibit, p. 8.



In the past, the Commission has undertaken several projects involving issues related to marital property, joint tenancy, disposition of property at death, or some combination of these topics.<sup>37</sup> Given that, this issue would seem to be one that the Commission is well suited to address. However, given the Commission’s ongoing and suspended workload, the Commission does not appear to have resources to devote to this topic in the coming year. **The staff recommends that this topic be added to the list of carryover items for possible future consideration when the Commission’s priority workload eases.**

## Family Law

The Commission received one new topic suggestion that would fall within the Commission’s existing authority to study Family Law issues.

Rajesh Sinha has written numerous emails to the Commission staff raising concerns about how California’s child support obligations are calculated.<sup>38</sup> In particular, Rajesh Sinha raises concerns about California’s compliance with a federal rule requiring a low income adjustment, such as a self-support reserve.<sup>39</sup> In addition, Rajesh Sinha notes that the overall cumulative amount of child support arrears in California is large and growing<sup>40</sup> and points to the significant consequences faced by individuals who are behind on their child support obligations.<sup>41</sup>

The staff recognizes that these issues are critically important to affected children and families. Child support payments are crucial to protecting the well-being of children.<sup>42</sup> For

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<sup>37</sup> E.g., *Estate Planning During Marital Dissolution*, 30 Cal. L. Revision Comm’n Reports 603 (2000); *Effect of Dissolution of Marriage on Nonprobate Transfers*, 28 Cal. L. Revision Comm’n Reports 599 (1998); *Effect of Joint Tenancy Title on Marital Property*, 23 Cal. L. Revision Comm’n Reports 1013 (1993); *1994 Family Code*, 23 Cal. L. Revision Comm’n Reports 1 (1993); *Nonprobate Transfers of Community Property*, 21 Cal. L. Revision Comm’n Reports 163 (1991); *Recommendation Relating to Right of Surviving Spouse to Dispose of Community Property*, 20 Cal. L. Revision Comm’n Reports 2769 (1990).

<sup>38</sup> See Exhibit, pp. 12-22, reproducing emails from Rajesh Sinha to Commission staff dated Nov. 14, 2022; Nov. 15, 2022; Oct. 6, 2023; Oct. 10, 2023; Oct. 11, 2023; Oct. 13, 2023; Oct. 18, 2023; and Nov. 10, 2023.

Rajesh Sinha also raised several administrative and process related suggestions. See emails from Rajesh Sinha to Commission staff dated Nov. 16, 2022, and Nov. 17, 2022 (on file with Commission staff). In addition, Rajesh Sinha copied Commission staff on an email inquiry to another agency. See email from Rajesh Sinha dated Feb. 4, 2023 (on file with Commission staff).

<sup>39</sup> See, e.g., Exhibit, pp. 14-17 (emails from Rajesh Sinha to Commission staff dated Oct. 6, 2023, and Oct. 10, 2023).

<sup>40</sup> See, e.g., email from Rajesh Sinha to Commission staff dated Feb. 4, 2023 (indicating approximately \$19 billion in pending child support arrears and increases in arrears of approximately \$4 million per day and \$1.4 billion annually) (on file with Commission staff).

<sup>41</sup> See, e.g., Exhibit, p. 13 (email from Rajesh Sinha to Commission staff dated Nov. 15, 2022; noting enforcement of child support can include confiscation of property, suspension of commercial licenses, referrals to suspend passports, contempt orders, and jail time).

<sup>42</sup> <https://childsupport.ca.gov/faq/> (“Child support is the ongoing contribution of money to help pay for the living and medical expenses of a child or children until they are adults. ... The goal is to have children share in the

low-income custodial families, child support is a key source of financial help.<sup>43</sup> For parents obligated to pay child support, ensuring that the child support is set at a level commensurate with the parent’s ability to pay is a key concern.<sup>44</sup> Where a parent obligated to pay child support does not, the consequences can be serious.<sup>45</sup>

California’s statewide child support guideline is codified at Sections 4050 to 4077 of the Family Code. Section 4054(a) directs the Judicial Council to “periodically review the statewide uniform guideline to recommend to the Legislature appropriate revisions.”<sup>46</sup> The Judicial Council has conducted several reviews of the guideline.<sup>47</sup>

In 2016, the federal requirements for state child support guidelines were significantly amended by the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule.<sup>48</sup> Many of the 2016 changes “aim to better address the issues of low-income families.”<sup>49</sup> The adjusted requirements include:

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standard of living of both parents, so the court may order either or both parents to pay child support.”); <https://selfhelp.courts.ca.gov/child-support> (“Parents must share the financial responsibility for raising their children. ... Child support is the amount of money that a court tells a parent to pay every month. This money is to help pay for the children’s living expenses.”).

<sup>43</sup> See Office of Child Support Enforcement, U.S. Dep’t of Health & Human Services, *The Story Behind the Numbers: The Child Support Program is a Good Investment 6-7* (Dec. 2016), available at [https://www.acf.hhs.gov/sites/default/files/documents/ocse/sbtn\\_csp\\_is\\_a\\_good\\_investment.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/sbtn_csp_is_a_good_investment.pdf) (“In 2013, child support represented, on average, 41 percent of poor custodial families’ income if they received it, up from 29 percent in 1997 .... The benefit was even more pronounced among deeply poor custodial families (those who live below 50 percent of the federal poverty level) if they received it. For these families, the average percentage of family income from child support was 65 percent, up from 38 percent in 1997.”).

<sup>44</sup> See Office of Child Support Enforcement, *Guidelines Factsheet: Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*, available at [https://www.acf.hhs.gov/sites/default/files/documents/ocse/fem\\_final\\_rule\\_guidelines.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/fem_final_rule_guidelines.pdf) (“The goal of these revisions is to increase reliable child support for children by setting child support orders based on the noncustodial parent’s earnings, income, or other evidence of ability to pay. Orders set beyond a parent’s ability to pay can lead to unintended consequences, such as unmanageable debt, reduced employment, participation in the underground economy, and increased criminal activities. It is counterproductive and not in children’s best interests to have their parents engage in a cycle of nonpayment, illegal income generation, and incarceration. Support orders based on the noncustodial parent’s ability to pay should result in less conflict between parents, fewer requests for hearings, and less time and resources spent on enforcement.” (footnote omitted)).

<sup>45</sup> <https://childsupport.ca.gov/faq/#general> (“The State of California takes refusal to pay child support very seriously. Enforcement actions on those not paying support can include: Suspension of driving license; Suspension of passport; Suspension of professional licenses; Intercepting tax refunds; Intercepting insurance payments[.]” (format of list is adjusted from source)); <https://selfhelp.courts.ca.gov/child-support/collect> (“If the court finds that a parent has the ability to pay support but is willfully not paying it, it can find the parent in contempt of court. This could mean jail time for that parent. This is rarely done but can happen in cases when all other legal efforts to collect have failed.”).

<sup>46</sup> See also 45 C.F.R. § 302.56(e) (“The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. ...”).

<sup>47</sup> See <https://www.courts.ca.gov/48697.htm> (with links to 1993, 1998, 2001, 2005, 2010, 2017, and 2021 reviews).

<sup>48</sup> 81 Fed. Reg. 93492 (Dec. 20, 2016); see also <https://www.acf.hhs.gov/css/policy-guidance/final-rule-flexibility-efficiency-and-modernization-child-support-enforcement>.

<sup>49</sup> Judicial Council of California, *Review of the Statewide Uniform Child Support Guideline 2021*, p. 2 (May

- “At a minimum, a guideline must consider other evidence of ability to pay in addition to a parent’s earnings and income.
- A guideline must consider the basic subsistence needs of the noncustodial parent who has a limited ability to pay.
- If imputation of income is authorized, a guideline must also consider, to the extent known, the specific circumstances of the obligor, such as the specific factors identified in the federal rule.
- A guideline may not treat incarceration as voluntary unemployment in establishing or modifying support orders.”<sup>50</sup>

California has until September 2024 to bring its law into full compliance with these requirements.<sup>51</sup>

In the Judicial Council’s 2021 review, the cover letter indicates that the report makes recommendations as to how to bring California into compliance with the federal regulations by the 2024 deadline.<sup>52</sup> In particular, the 2021 review discusses California’s low-income adjustment (noting that consideration of the obligor’s subsistence needs through a low-income adjustment is required by federal regulation) and rules for assessing income available for child support (and the federal regulation regarding the definition of income).<sup>53</sup>

The Legislature is also working on ensuring that California’s child support guidelines meet federal requirements. In 2023, Senate Bill 343 (Skinner) was enacted.<sup>54</sup> According to one of the bill analyses, this bill “will bring California into compliance with the [2016 federal] Final Rule by addressing the shortcomings identified in the [2021] Judicial Council review. ... The changes recommended by the Judicial Council, and included in this bill, will not only increase the ability of non-custodial parents to pay their child support orders, but they will also meet federal requirements and secure continued federal funding to the state.”<sup>55</sup>

Given that the Judicial Council has an ongoing statutory responsibility to review California’s child support guidelines and recommend appropriate revisions to achieve compliance with the federal rule, this topic is clearly within the jurisdiction of another state agency. This topic has also recently been considered by the Legislature. **For these reasons,**

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16, 2022) (hereafter, “2021 Review”), available at <https://www.courts.ca.gov/documents/Review-of-Uniform-Child-Support-Guideline-2021.pdf>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 3 (citations and footnotes omitted).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 6-9, 73-126, 127-175.

<sup>54</sup> 2023 Cal. Stat. ch. 213.

<sup>55</sup> Analysis of SB 343 by Assembly Judiciary Committee (Jun. 13, 2023).

**the staff recommends against undertaking work on this topic, absent a specific request or directive from the Legislature.**

### **Real and Personal Property**

The Commission received a suggestion related to common interest developments, which would fall under the Commission's general authority to study real and personal property. Linda Brown left a voice message raising concerns about a CID resident's liability for temporary relocation costs during repair and authority to call emergency meetings of the CID Board to address urgent issues.

The Commission has done significant work on CID law in the past, including most recently a pandemic-related recommendation adjusting the rules to permit CID board meetings by teleconference.

Over the years, the Commission has received a number of suggested related to CIDs. As has been the practice for CID-related suggestions, the staff has not individually analyzed each of these suggestions but has retained them and documented them on a list of suggested CID study topics. The staff will add Ms. Brown's suggestion to that list. If the Commission undertakes work on these issues, the suggested CID topics could be considered and evaluated holistically.

**Given the Commission's current study commitments, the staff recommends that the Commission's work on CID issues remain dormant for the time being.**

### **Suggested Topics Requiring Additional Authority**

The Commission received two suggestions for new study topics that do not appear to fall under the Commission's existing study authority. Those suggestions are discussed below.

#### *Hearings and Tentative Rulings*

Attorney J.D. Stewart wrote to Commission staff requesting additional research on whether judges are complying with the requirement to allow oral argument in situations where tentative rulings have been issued.<sup>56</sup> In particular, Mr. Stewart raises concerns about situations in which judges have an extremely high rate of adopting tentative rulings.<sup>57</sup>

Mr. Stewart points to a 2005 Commission tentative recommendation related to this issue. That tentative recommendation presents a proposed statutory reform to clarify the

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<sup>56</sup> Exhibit, p. 23.

<sup>57</sup> *Id.*

circumstances in which a party has the right to present oral argument.<sup>58</sup> Mr. Stewart points specifically to a discussion of recent developments in the tentative recommendation that notes “[t]here is no evidence that noncompliance with [California Rule of Court 324, governing tentative rulings,] remains a problem.”<sup>59</sup> Mr. Stewart questions whether that conclusion holds today and recommends undertaking a review on whether noncompliance is a problem currently.

To the extent that additional research or review on the use of tentative rulings is needed to assess whether noncompliance might be an existing problem, the Commission does not appear to be in the best position to conduct such research. This work would appear to require significant data collection and analysis, for which the Commission would need to rely on other agencies or outside experts. Further, the Commission has no current authority to take on this work on this topic.

**For those reasons, unless the Commission directs otherwise, the staff intends to bring this issue to the attention of the Judicial Council and the Commission on Judicial Performance.**

*Investigatory Records and Disclosure Exemptions under California Public Records Act*

Sarah Porter wrote to the Commission with concerns about the ability of victims to access old investigatory records under the California Public Records Act (“CPRA”). In particular, Ms. Porter notes “there is no process in the CPRA to allow release of decades old closed case files.”<sup>60</sup> Ms. Porter has been seeking investigatory records regarding her parents’ deaths, which occurred in late 2000. She notes that, for victims’ families, such records can help provide “closure or at least provide some additional understanding to the situation.”<sup>61</sup> Ms. Porter cites to a 1993 California Supreme Court case, *Williams v. Superior Court*, in which the Court considered the CPRA’s exemption for law enforcement

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<sup>58</sup> See proposed Code of Civil Procedure Section 1044 in *Tentative Recommendation on Oral Argument in Civil Procedure* (June 2005).

Previously, the Commission’s resolution of authority included the following topic: “[a] comprehensive review of the Code of Civil Procedure and applicable case law in order to clarify the circumstances in which parties are entitled to oral argument, and related matters.” See 2006 Cal. Stat. res. ch. 1. The Commission’s current resolution of authority does not include such a topic.

At the end of that study, the Commission adopted a final recommendation that did not include any proposed statutory change. The recommendation concluded “[t]he Law Revision Commission is satisfied that there is not a sufficient problem to warrant disruption of the current system of significant court discretion. That system appears to work reasonably well and is reasonably efficient. The Commission recommends against codification in the present circumstances.” *Oral Argument in Civil Procedure*, 35 Cal. L. Revision Comm’n Reports 181, 217-18 (2006).

<sup>59</sup> *Tentative Recommendation on Oral Argument in Civil Procedure 2* (June 2005); see also *Oral Argument in Civil Procedure*, 35 Cal. L. Revision Comm’n Reports 181, 189 (2006).

<sup>60</sup> Exhibit, p. 9.

<sup>61</sup> *Id.*

investigatory files and whether it extended beyond the conclusion of the investigation. In a footnote, the Court indicated:

In our view, the matter does appear to deserve legislative attention. Although there are good reasons for maintaining the confidentiality of investigatory records even after an investigation has ended, those reasons lose force with the passage of time. Public policy does not demand that stale records be kept secret when their disclosure can harm no one, and the public good would seem to require a procedure by which a court may declare that the exemption for such records has expired.<sup>62</sup>

Ms. Porter also provides language for proposed legislative changes to the CPRA to address this issue.<sup>63</sup>

In 2019, the Commission completed work on recommendations to recodify the CPRA,<sup>64</sup> but the Commission’s work was a “strictly nonsubstantive clean-up” of the CPRA.<sup>65</sup> Further, the Commission was expressly directed not to expand or contract the scope of existing exemptions.<sup>66</sup> And, the Commission’s CPRA authority has since been removed from its resolution of authority (after the Commission completed its CPRA-related recommendations). Thus, the Commission would need to seek new authority to work on this topic.

Ms. Porter cites to a provision of the current, recodified law, Government Code Section 7923.605, that provides an exception to a general exemption (in Section 7923.600) from disclosure for law enforcement records. The Commission’s 2019 recommendation indicates that these rules were formerly contained in a subdivision (Section 6254(f)) that the recommendation describes as “a long and complicated exemption pertaining to law enforcement records, with multiple caveats, qualifications, exceptions, and exceptions to the exceptions.”<sup>67</sup> The recommendation also notes that:

[t]he Commission was especially cautious with [now former] Section 6254(f).... Although that provision is particularly complex and difficult to understand, the Commission refrained from attempting to rephrase it more clearly. Instead, to avoid generating concerns about a substantive change, the proposed legislation would

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<sup>62</sup> *Williams v. Superior Court* (1993) 5 Cal.4th 337, 361 n. 13 (citation omitted).

<sup>63</sup> Exhibit, pp. 9-11.

<sup>64</sup> *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019); *California Public Records Act Clean-Up: Conforming Revisions*, 46 Cal. L. Revision Comm’n Reports 563 (2019); see also 2021 Cal. Stat. ch. 614, 615 (AB 473, 474 (Chau)) (bills implementing the proposed CPRA recodification and associated conforming revisions).

<sup>65</sup> *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207, 221 (2019).

<sup>66</sup> 2016 Cal. Stat. res. ch. 150 (in its work on the CPRA, the Commission was directed to “[n]either expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act”).

<sup>67</sup> *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207, 224 (2019).

relocate the substance of Section 6254(f) in a new article almost verbatim.<sup>68</sup>

This characterization does suggest that this provision could use additional attention and clarification, although making improvements would likely require broader authority to make substantive changes.

Given the high degree of concern around the scope of the existing exemptions (as indicated in the Commission’s earlier resolution of authority) and the underlying fundamental interests at issue,<sup>69</sup> this topic seems to be particularly sensitive. **If the Commission would like, this topic could be added to the list of carryover topics for possible future consideration if the Commission has available resources to devote to new work.**

## WORK PRIORITIES FOR 2024

**The Commission should continue work on projects that are actively in process or need to be completed on a specified timeline.** That would include:

- Undertaking an expedited, narrow study of issues discussed in Memorandum 2023-42, related to SB 522 (Kalra), which would implement the Commission’s recommendation on *State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena*, 48 Cal. L. Revision Commission Reports \_\_ (2022).
- Continuing work on the Commission’s ongoing study of Antitrust Law.
- Continuing work on the Commission’s ongoing study related to the Equal Rights Amendment.
- Continuing work on the Commission’s recently-commenced study of landlord-tenant terminology (due by December 31, 2024).
- Complete work on the narrow trial court restructuring reform previously presented in a tentative recommendation.

These topics will consume much of the Commission’s staff resources in 2024. As resources permit, the Commission should also:

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<sup>68</sup> *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207, 213 (2019).

<sup>69</sup> See Cal. League of Cities, *The People’s Business: A Guide to the California Public Records Act 7* (Rev. Sept. 2022), available at [https://www.calcities.org/docs/default-source/city-attorneys/the-people's-business.pdf?sfvrsn=f827f33f\\_3](https://www.calcities.org/docs/default-source/city-attorneys/the-people's-business.pdf?sfvrsn=f827f33f_3) (“The exemptions from disclosure contained in the PRA and other laws reflect two recurring interests. Many exemptions are intended to protect privacy rights. Many other exemptions are based on the recognition that, in addition to the need for the public to know what its government is doing, there is a need for the government to perform its assigned functions in a reasonably efficient and effective manner, and to operate on a reasonably level playing field in dealing with private interests. . . . The Legislature in enacting the PRA struck a balance among competing, yet fundamental interests: government transparency, privacy rights, and government effectiveness.”).

- Reactivate the work on recodification of hazardous material statutes.
- Reactivate the work on emergency law.

In addition to the study work described above, the staff will have some legislative work. In 2024, the staff will be providing assistance with the pending legislation to implement the Commission recommendation on use of an administrative subpoena, as well as seeking reintroduction of Commission-recommended changes that were either omitted from earlier legislation or where the recommended reform did not take effect due to chaptering issues. The staff will also seek introduction of the Commission’s resolution of authority.

**Does the Commission approve the work priorities outlined above for 2024?**

### CHANGES TO STUDY AUTHORITY

At this time, the staff proposes no changes to the Commission’s existing authority.

Respectfully submitted,

Kristin Burford  
Chief Deputy Director



## EXHIBIT 1. COMMISSION STUDY AUTHORITY

There are two sources of Commission study authority: (1) the “Calendar of Topics Authorized for Study” that is enacted as a concurrent resolution, at least once per two-year legislative session, and (2) any statute or other concurrent resolution that authorizes or directs the Commission to study a particular topic.<sup>1</sup> The current authority conferred by each of those sources is listed below.

### Calendar of Topics Authorized for Study

The most recent version of the Calendar of Topics was enacted in 2021.<sup>2</sup> It grants authority to study 14 topics:

- (1) **Creditors Remedies.** Whether the law should be revised that relates to creditors’ remedies, including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters.
- (2) **Probate Code.** Whether the Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code, and related matters.
- (3) **Real and Personal Property.** Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, common interest developments, powers of termination, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant on assignment, subletting, termination, or abandonment of a lease, and related matters.
- (4) **Family Law.** Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.
- (5) **Civil Discovery.** Whether the law relating to discovery in civil cases should be revised.

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<sup>1</sup> See Gov’t Code § 8293.

<sup>2</sup> ACR 24 (Chau); 2021 Cal. Stat. Res. ch. 108.

- (6) **Evidence Code.** Whether the Evidence Code should be revised.
- (7) **Alternative Dispute Resolution.** Whether the law relating to arbitration, mediation, and other alternative dispute resolution techniques should be revised.
- (8) **Administrative Law.** Whether there should be changes to administrative law.
- (9) **Trial Court Unification.** Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.
- (10) **Contracts.** Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.
- (11) **Place of Trial in a Civil Case.** Whether the law governing the place of trial in a civil case should be revised.
- (12) **Fish and Game Code.** Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.
- (13) **Hazardous Materials.** The Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation to revise Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and related provisions, to improve the organization and expression of the law. Such revisions may include, but are not limited to, grouping similar provisions together, reducing the length and complexity of sections, eliminating obsolete or redundant provisions, and correcting technical errors. The recommended revisions shall not make any substantive changes to the law. The commission's report shall also include a list of substantive issues that the commission identifies in the course of its work, for possible future study; and be it further
- (14) **Emergency Response.** Whether the law should be revised to provide special rules that would apply to an area affected by a state of disaster or emergency declared by the federal government, a state of emergency proclaimed by the Governor under Section 8625 of the Government Code, or a local emergency proclaimed by a local governing body or official under Section 8630 of the Government Code.

### **Authority Conferred by Statute or Other Concurrent Resolution**

The Commission is authorized to work on the following topics by statute or other concurrent resolution (listed in reverse chronological order of enactment):

- **Landlord-Tenant Terminology.**<sup>3</sup>
  - **Equal Rights Amendment.**<sup>4</sup>
  - **Antitrust Law.**<sup>5</sup>
  - **Revocable Transfer on Death Deeds.**<sup>6</sup>
  - **California Public Records Act.**<sup>7</sup>
  - **State and Local Agency Access to Customer Information from Communication Service Providers.**<sup>8</sup>
  - **Deadly Weapons.**<sup>9</sup>
  - **Trial Court Restructuring.**<sup>10</sup>
  - **Enforcement of Judgments.**<sup>11</sup>
  - **Technical and Minor Substantive Matters.**<sup>12</sup>
  - **Statutes Repealed by Implication or Held Unconstitutional.**<sup>13</sup>
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<sup>3</sup> AB 2503 (Garcia); 2022 Cal. Stat. ch. 462.

<sup>4</sup> SCR 92 (Leyva); 2022 Cal. Stat. res. ch. 150.

<sup>5</sup> ACR 95 (Cunningham & Wicks); 2022 Cal. Stat. res. ch. 147.

<sup>6</sup> Prob. Code § 5605. See also Exhibit 2.

<sup>7</sup> 2016 Cal. Stat. res. ch. 150.

<sup>8</sup> 2013 Cal. Stat. res. ch. 115.

<sup>9</sup> 2010 Cal. Stat. ch. 711, § 7.

<sup>10</sup> Gov't Code § 71674.

<sup>11</sup> Code Civ. Proc. § 681.035.

<sup>12</sup> Gov't Code § 8298.

<sup>13</sup> Gov't Code § 8290.

## EXHIBIT 2. INACTIVE STUDY LIST

This Exhibit serves to memorialize mandatory studies with remote due dates and to list topics that the Commission has expressed interest in starting or returning to, but are unlikely to be activated any time soon.

### Remote Deadline Studies

*Due: January 1, 2031 – Revocable Transfer on Death Deed Follow-Up Study*

The Commission is required to conduct a second follow-up study of the revocable transfer on death deed statute, with a deadline of January 1, 2031.<sup>14</sup> Work on that study should probably begin in 2029.

### Topics that the Commission Might Eventually Start or Restart

The topics below are listed in reverse chronological order, by reference to the date that work was suspended or the Commission expressed interest in the possibility of studying the topic. The relevant date is shown in parentheses in the headings.

Commissioners should always feel free to suggest that a topic listed below be dropped from this list, if it seems likely that the topic will never have sufficiently high priority to be started or restarted. From time to time, the staff may do so as well.

*Discovery in Civil Cases (2017/2009)*

Some time ago, the Commission undertook a study of civil discovery, with the benefit of a 2001 background study prepared by Prof. Gregory Weber of McGeorge School of Law. A number of reforms were enacted, including the Commission's recommendation on *Deposition in Out-of-State Litigation*, which was enacted in 2008.<sup>15</sup>

While it was actively working on civil discovery, the Commission received numerous suggestions from interested persons, which the staff has kept on hand. The Commission also identified other discovery topics it might address.

In 2017, the Commission directed the staff to examine a discovery topic suggested by then-Commissioner Capozzola (related to depositions) and to prepare a list of other discovery topics suggested for study.<sup>16</sup> The Commission later suspended that work in light of a pending discovery-related bill (AB 383 (Chau)).<sup>17</sup> After AB 383 was enacted into law

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<sup>14</sup> See Prob. Code § 5605.

<sup>15</sup> 37 Cal. L. Revision Comm'n Reports 99 (2007); see 2008 Cal. Stat. ch. 231.

<sup>16</sup> See Minutes (Dec. 2016), p. 3.

<sup>17</sup> See Minutes (Aug. 2017), p. 7; Memorandum 2017-26, pp. 22-24.

with a sunset date of January 1, 2023,<sup>18</sup> the Commission decided to suspend its work on discovery-related issues until after the sunset of AB 383.<sup>19</sup>

*Venue in Civil Case (2007)*

In 2007, the Calendar of Topics was revised at the Commission’s request, to add a study of “(w)hether the law governing the place of trial in a civil case should be revised.”<sup>20</sup> That request was prompted by an unpublished decision in which the Second District Court of Appeal noted that Code of Civil Procedure Section 394, a venue statute, was a “mass of cumbersome phraseology,” and that there was a “need for revision and clarification of the venue statutes.”<sup>21</sup> The court of appeal was sufficiently concerned about this matter to direct its clerk to send a copy of its opinion to the Office of Legislative Counsel, which in turn alerted the Commission.

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<sup>18</sup> 2017 Cal. Stat. ch. 189.

<sup>19</sup> Minutes (Dec. 2018), p. 3. It does not appear that the sunset date has been extended.

<sup>20</sup> 2007 Cal. Stat. res. ch. 100.

<sup>21</sup> See Memorandum 2005-29, Exhibit p. 59.

### **EXHIBIT 3. CARRYOVER SUGGESTIONS FROM PREVIOUS YEARS**

Currently, the Commission has no carryover items from previous years.<sup>22</sup>

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<sup>22</sup> See Minutes (Sept. 2022), p. 3; Memorandum 2022-42, EX pp. 8-14.

**EXHIBIT 4. EMAILS FROM ATTORNEY RACHEL BULLER  
(4/15/23, 4/17/23)**

**April 15, 2023**

Dr Mr.Hebert,

I have come across an issue in my estate practice, which is against public policy. The issue has arisen because of a Civil Code law, which when strictly construed, results in one party receiving a windfall under the Probate Code because of the death of the other party - but the result is completely contrary to what the parties had intended. The Courts have seen this scenario arise multiple times on the Appellate level (and presumably many more in the lower courts) and have specifically noted that statutory law should change to address this situation that neither party presumably intended or anticipated.

I would like to discuss the details with you or a member of your committee.

**April 17, 2023**

Hi Brian,

Here is the issue:

When parties intend to sever a joint tenancy and are actively engaged in dissolution proceedings, but because of one of the parties sudden and unexpected death, the property passes to the survivor by right of survivorship, *regardless of intent of the parties or testamentary wishes of the decedent. **With regard to a death occurring during divorce proceedings, the community property presumption for jointly titled assets should include the time frame starting at the point where a party files for the dissolution of marriage.***

Under intestacy laws, when a spouse dies during divorce proceedings, the decedent's share of property goes to the surviving spouse. However, when there is a Will, the terms of the Will override the intestacy rules. Title presumptions must also be rebutted.

\* The timing of the party's death is the issue here.

(1) If one of the parties dies after filing for divorce but before the judgment for dissolution, the community property presumption **does not apply** and the property passes to the surviving joint tenant (without regard to the intent of the parties or decedent's Will/Trust).

(2) If one of the parties dies after the judgment for dissolution but before it is final, the community property presumption **applies** and the decedent's interest is distributed according to his Will/Trust.

There is case law that specifically states that the result is unfair (see for example Estate of Mitchell, 76 Cal.App.4th 1378, at pg 1386) and other case law suggests the legislation should

review this area of the law.

Here are facts specific to the case I worked on, but I have seen a pattern in my research:

- Husband and Wife owned real estate as Joint Tenants. They were involved in lengthy divorce proceedings, which included discussions related to the division of the jointly-titled real estate. Husband died suddenly and unexpectedly before the dissolution was finalized.

- At the time of Husband's death, he had a Trust that bequeathed his interest in real estate to his biological children. He excluded his Wife from inheriting any individually owned property or his half of jointly owned property- specifically the jointly titled real property. Since the title presumption takes priority, upon Husband's death, dissolution proceedings were dismissed and Wife was presumptively entitled to the entire interest in real estate as the surviving joint tenant, *irrespective of Husband's wishes in his estate documents*.

- Both Husband and Wife intended to sever the joint tenancy.

- Civil Code 683.2(c) allows for unilateral severance but requires recordation.

- Because of active dissolution proceedings, no recordation occurred

Please let me know if you would like case law that references this.



**EXHIBIT 5. EMAILS FROM SARAH PORTER  
(ATTACHMENTS ON FILE WITH COMMISSION STAFF)  
(5/31/23, 12/1/23)**

**May 31, 2023**

Hello,

I was wondering if there is a process for public input to The California Law Revision Commission. I have recently become aware of an unfortunate short fall in the CPRA to the detriment of victims and victims families.

I have been trying to obtain the investigatory records regarding the death of my parents on 11/29/2000. Unfortunately I have been denied multiple times because there is no process in the CPRA to allow release of decades old closed case files. After a lot of research I have come to realize that I am not the only member of the public that has faced this issue. It is unfortunate because there are often times information in the files that can help victims families find closure or at least provide some additional understanding to the situation.

Williams v. Superior Court (1993) 5 Cal. 4th 337. Opinion even states the need for review to include a process for expemtion expiration for investigatory records.

I feel it is especially important for cases that do not go to trial since those families will not obtain any information that a family would typically be able to obtain during the trial process.

I have attached more information about my specific situation and I am happy to discuss with anyone that would like more detail or information to determine if this section of the law needs additional review.

Thank you for your time.

Have a great day,

Sarah Porter

**December 1, 2023**

Kristin,

Thank you, any movement with it is better than nothing. Also, I am happy to volunteer my time in anyway I can researching, putting together suggested language or in any other way possible. I fully understand staffing issues. There is a lot of good info in the attachments anyway you can include the following information:

BILL NUMBER: XXXX

INTRODUCED BY:

CALIFORNIA LEGISLATURE—2024

An act to amend Section 7923.605 and add Section 7923.606 of the Government Code, relating to public records.

WHEREAS on November 4, 2008, the people of the State of California approved Proposition 9, the Victims' Bill of Rights Act known as Marsy's Law. This measure amended the California Constitution to include a Bill of Rights for crime victims in California and shows the public interest in affirming and upholding victims rights.

WHEREAS the [California Supreme Court] in *Williams v. Superior Court* (1993) 5 Cal.4th 337 expressed the need for a process to declare that the exemption of an investigatory record has expired in FN13. "In our view, the matter does appear to deserve legislative attention. Although there are good reasons for maintaining the confidentiality of investigatory records even after an investigation has ended (ante, p. 355), those reasons lose force with the passage of time. Public policy does not demand that stale records be kept secret when their disclosure can harm no one, and the public good would seem to require a procedure by which a court may declare that the exemption for such records has expired."

WHEREAS the California legislature has already taken steps to limit exemptions of previously exempt records and create greater transparency within the CPRA with the implementation of AB 748, SB 1421, and SB 16.

SECTION 1. Section 7923.605 of the Government Code is amended to read:

7923.605. (a)(1) For the purposes of this section, a "victim" shall have the same meaning as defined in Cal. Const., art. I, § 28(e). A "victim" is defined as a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

(a)(2) Notwithstanding Section 7923.600, a state or local law enforcement agency shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation or the successful completion of the investigation or a related investigation.

(a)(3) Notwithstanding any other provision of this act, at the close of an investigation, the victim, as defined in 7923.605. (a)(1), shall have the right to obtain their investigatory file, subject to any privacy exemptions, without waiving the exemption for members of the public who do not meet the definition of a victim as defined in subdivision 7923.605. (a)(1) under this article. The victim's right to obtain the investigatory file shall be subject to reasonable restrictions to protect the safety of witnesses, or the integrity of the criminal justice process

7923.605(b) is hereby repealed.

SECTION 2. PROCESS FOR DETERMINING EXPIRATION OF THE EXEMPTION OF INVESTIGATORY RECORDS

A new section is added to the California Public Records Act to read:

7923.606. Determination of Expiration of Exemption for Investigatory Records.

(a) Notwithstanding any other provision of law, a court may, upon a motion by a party or on its own motion, determine that an investigatory record is no longer exempt from disclosure under this Act. In making this determination, the court shall consider the circumstances of the case, including any ongoing threat to the victim or other relevant factors and the passage of time.

(b) The court's determination shall take into account the rights of victims, the public interest and privacy rights.

(c) Nothing in this subdivision shall preclude a law enforcement agency from reactivating an investigation or seeking an extension of the exemption through the court if circumstances warrant.

SECTION 2. This act shall become effective January 1 of the year following passage.

**EXHIBIT 6. EMAILS FROM RAJESH SINHA  
(FORMATTING AND CONTACT INFORMATION REDACTED;  
ATTACHMENTS ON FILE WITH COMMISSION STAFF)  
(VARIOUS DATES)  
PRESENTED BELOW IN CHRONOLOGICAL ORDER**

**November 14, 2022**

Hello Ms Kristin,

FAM CODE 4055 is long overdue. It should be done as an emergency bill. The state is following a wrong formula since 1993. It has generated

Pls call me or respond, and I will send you details. In the meantime pls review the attached document.

Fam Code 4053 needs modification as well. Its not 1993 anymore.

Pls do read SB 1055. It has been approved by the governor on 2nd of Oct this year.

Lets save lives of Californians so that they are allowed to work to their full potential and help increase the GDP of the state. About a million Californians are affected and about two million kids.

Pls take this up on an urgent basis.

Regards

Rajesh

**November 15, 2022**

Hello All,

As per the judicial council report of 1993(attached) we know that the Agnus formula adopted then by the governor was never vetted. It was never replaced in last 30 yrs to set things right. As a result currently we have about

1. \$20B of pending child support arrears
2. As per budget committee-3 report and 2007 HHS report about 80+% of it is non collectable
3. We brought in DCSS in the year2000 to do several things including uplifting NCPs (non-custodial parents) so that they could pay their child support but those have not happened. They kept their focus on enforcement.
4. DCSS has a software division which modifies back end data each year to update the same wrong calculator. Ms Anna Maves of JC signs off on it without testing it each Feb of the year and DCSS starts using it.
5. A company in Colorado reviews the Uniform Child support guideline as per FAM CODE 4054 every four years but they do not input any new ideas. Federal guidelines are several of them but they narrow it down to just five or six of them. After indicating some views this year they review did change but they are not willing to accept any alternative

proposals. However. Ms Anna had been considerate to add my proposal at the end of the report. Interestingly, self and one other organization added their comment. To prove that the Agnus formula is correct the writers of this document has used the words "assume/assuming/presuming" about a zillion times. Well, if there are so many assumptions then no wonder the formula is not working and has generated pending arrears of about \$20B and pushed a million NCPs to poverty, etc. Life does not work in linear progression. Is it so hard to understand. The document has been posted on 15<sup>th</sup> of May 2022 and no one has commented till date.

6. Each year we have 110,000 divorces in California which leads to about half a million individuals get affected with this calculator.
7. DCSS only enforces laws (FAMCODE 4050-4076 and other suspension laws) but they do not correctly use these laws. As a result NCPs are pushed to poverty, suicides, mental issues, strained relationship with their kids, loss of career and normal livelihood.
8. Superior courts of the majority of the counties do not bother to look in to the laws in detail and they wrap up the case based on what the LCSA lawyer presents.
9. An electronic calculator is basically supposed to be used as guidance, but all courts strictly use it to decide child support amount ([childsupport.ca.gov](http://childsupport.ca.gov)).
10. DCSS has 1100 employees and each year the governor invests \$1.1B. [DCSSLEGALSERVICESMAILBOX@DCSS.CA.GOV](mailto:DCSSLEGALSERVICESMAILBOX@DCSS.CA.GOV) rarely responds to intricate questions. Their website has policies as old as 1997. Phone numbers and names of contacts do not work (needs HHS attention).
11. Interestingly, if you file for a State hearing against LCSA/DCSS its shot down before it hits the state hearing court. So NCPs cannot even address their issues in State hearing.
12. OCSE guideline "THE FINAL RULE" was sent to DCSS to implement in March 2016. DCSS has not implemented it as of today. All compliance dates have already been missed by DCSS. (attached). Several reliefs would have come to NCPs in the last several years if it was implemented by 2017 deadline.
13. Currently 9-14 NCPs commit suicide every month and 80-90 go to mental rehab every month.
14. There are about a million NCPs who are supposed to pay child support. About 800,000 of them are earning below \$50,000 and cannot sustain themselves. FINAL RULE talks about that too.
15. State median income \$90,100; Metro Median Income \$90,600; Non Metro \$69,700
16. Law states that DCSS should enforce on NCPs who deliberately do not pay child support, but they enforce on everyone. Therefore arrears snowball.
17. DCSS confiscates property, suspends commercial licenses, reports OCSE to suspend passports so no exports business possible, file contempt in court and sends them to jail. Thus, ruining their career, pushing them to poverty, commit suicide or go to mental rehabs. NCPs loose their relationship with their kids. (Not in the best interest of the child)
18. DCSS/LCSA says governor's directive is zero tolerance on child support. Interestingly Visitation %age is not mandatory as per the governor's directives. So custodial parents' lawyers fight to bring down visitation %age to get more child support for CPs. Its no more family or best interest related thing. Its business. DCSS knows it but they are incapable to make any policy changes.
19. DCSS has its own legislative team, but they do not bring any bill to the floor.

20. SB 1055 has indicated that such enforcements have not helped at all. This approved bill gives some respite across regular driver's licenses but again expects the NCPs to rush to 53 courts in this state to ask for more relief after 150 days . Question: whose income increases every six months in this country that an NCP who was unable to pay child support earlier will start paying child support in five to six months. There are about 800,000+ such NCPs. Can 53 courts handle such number every month

I have researched almost all the issues. I have prepared documents and guideline modifications. Pls let me know if you would like to look at them. It may help you to revise these laws asap. People are committing suicides. DCSS mentions " can't be found".

Food for thought: Our EU allies have statewide "one" child support amount. 170-220 EURO/mo. Its calculated on basic needs of a child up till 18yrs of age. They do not get into how much parents are earning. Its based on basic necessity and the market costs of the items like milk, grocery, etc. If for any reason a NCP is not able to pay certain months, then the CP fills out a form and presents it to the state dept to get that amount till NCP starts paying it again. NCP needs to file income statements every six months with proof of income. State maintains a Family Fund Pool (FFP) of several million dollars so that children get immediate attention due to nonpayment by NCP for some reason. 170-220 Euro is based on the fact that CP will also contribute the same. Thus, its about 340-440euro per month for one kid and that's quite normal an amount. Afterall when the kids grow up at the expense of their parents' money, they will pay sales, state and federal taxes for several decades to come. We do not think in this way in California. We are spending more on enforcement than on the child. If NCP does not pay, the CP is left high and dry on that amount. We should fix an amount for each county based on its median income where the child resides or where the NCP lives. It will drastically reduce enforcements, court cases, court case expenses, more time for judges to address other vital issues, less work for DMV, less work for DCSS & LCSA, etc. The expenses thus reduced can be used to create a Family Fund Pool to address shortcoming due to NCP missing payments. Pls see attached. This calculator business is no good.

Regards  
Rajesh Sinha

**October 6, 2023**

Sir/Madam,

Pursuant to resolution Chapter 108 of the Statutes of 2021, under topic "Family Law". I have found serious irregularities in SB 343 (2023). The bill was floored to bring California in compliance with the federal guideline of The Final Rule.

The rule states the following:" Child support guidelines must take into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay by incorporating low-income adjustment, such as a self-support reserve, or some other method determined by the state." [https://www.acf.hhs.gov/sites/default/files/documents/ocse/fem\\_final\\_rule\\_guidelines.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/fem_final_rule_guidelines.pdf)

Upon communicating with OCSE(Office of Child Support Enforcement) they shared the definition of "Self Support Reserve

"A self-support reserve is an amount of money. determined by the state. that a parent needs to support themselves before establishing their child support obligation. Each state determines its self-support reserve. It is usually a certain percentage of the federal poverty guidelines. The self-support reserve recognizes that parents at the lowest income levels need a basic amount of money

to live on before being able to pay child support". Attached is my communication with OCSE.

This is something which the federal govt has been indicating for the last two decades. However, California was never in compliance with it. The Final rule has put emphasis on this requirement. SB 343 still does not have any dollar amount set as "Self-Support Reserve". Forty-five states have already defined their "their self support reserve".

This is something which the federal govt has been indicating for the last two decades. However, California was never in compliance with it. The Final rule has put emphasis on this requirement. SB 343 still does not have any dollar amount set as "Self-Support Reserve". Forty-five states have already defined their "their self-support reserve".

California Dissomaster calculator spits out child support amount even when NCP's income is \$300 or less. It never had a set "self-support reserve" amount ever. SB 343 also does not have such an amount.

As a result, California and its citizens are facing the following: --

1. California has \$18B of pending child support arrears
2. 84% of cases (total 1.043M cases ) have arrears
3. 550,000 cases have only one month of paid support in 2022
4. About 600,000 cases have zero visitation.
5. 1000s of NCPs are pushed to poverty each year due to rampant enforcements. Pls read SB 1055 (2022; now a law)
6. About 600,000 cases have zero visitation.

I think we need to have a study on this issue.

REFERENCED: 1) <https://dcss.ca.gov/reports/> (DCSS LEGISLATIVE REPORTS)  
2) Review of Uniform Child support policy 2022

Regards

Rajesh Sinha

## **October 10, 2023**

Hello Ms. Kristen,

Fam Code: 4053 (e) The guideline seeks to place the interests of children as the state's top priority.

Child support payment is something which is needed now. When the child needs milk today in the breakfast, then it must be available. The child does not care about living standard at that time when he/she needs milk. A complete family also pays attention to basic necessity of the child and not about living standards when money is short. We are treating a child as an automobile and child support payment (which is allowed to have arrear with no fall-back option) as car loan payment (EMI-Equated monthly instalment). Arrear payments get completed in 10-15-20 yrs. By then the child has become an adult and has decided his/her course already w/o the basic subsistence available during his/her upbringing. He/she now has become a drug dealer, fueling the underground economy, a good person or a hater of kids who have the milk at the right time in their lives. It's been happening for decades. Enforcements cannot help resolving this issue (SB 1055 already clarified it).

Politely speaking, we have no time to wait for another year. Custodial parents who are mostly women and the kids have no time to wait.

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY  
CHILD SUPPORT PROGRAM STATISTICS

DEPARTMENT OF CHILD SUPPORT SERVICES  
FEDERAL FISCAL YEAR 2022

**TABLE D  
PERCENT OF COLLECTIONS ON CURRENT SUPPORT  
FEDERAL FISCAL YEAR 2022**

	Current Support Due	Current Support Distributed	Percent of Collections on Current Support
STATEWIDE	\$2,527,225,325	\$1,593,993,789	63.1%

Current Support Due in the state-- \$2.527B

Current Support Distributed-- \$1.59Bn

Subtract one from the other-- \$930M (arrear for the year 2022)

This is the situation of all previous years. You may check the legislative reports.

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY  
CHILD SUPPORT PROGRAM STATISTICS

DEPARTMENT OF CHILD SUPPORT SERVICES  
FEDERAL FISCAL YEAR 2022

**TABLE C  
PERCENT OF CASES WITH A SUPPORT ORDER ESTABLISHED  
FEDERAL FISCAL YEAR 2022**

	Cases	Cases with Support Orders Established	Percent of Cases with Support Orders Established
STATEWIDE	1,046,265	948,467	90.7%

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY  
CHILD SUPPORT PROGRAM STATISTICS

DEPARTMENT OF CHILD SUPPORT SERVICES  
FEDERAL FISCAL YEAR 2022

**TABLE E  
PERCENT OF CASES WITH COLLECTIONS ON ARREARS  
FEDERAL FISCAL YEAR 2022**

	Cases with Arrears Due	Cases Paying Toward Arrears	Percent of Cases with Collections on Arrears
STATEWIDE	774,326	520,957	67.3%

Out of 1,046,265 cases court established cases are 948,467. Out of 948467 children 774326 children (84%) are not getting milk on time at their breakfast. Their basic necessities are not being met on time. It's happening every day including today. Are we not pushing them to commit petty crimes and setting the tone for their future.



**DCSS PROVIDED CALCULATION AS OF JUNE 8TH 2023**

SR NO	<u>NCP (Gross)</u>	<u>NCP (Net)</u>	<u>CP (Gross)</u>	<u>CP (Net)</u>	<u>TN</u>	<u>H (0%)</u>	<u>H Multiplier</u>	<u>K (Current)</u>	<u>CS (Current) DCSS Calc</u>	<u>K (SB 343)</u>	<u>CS (SB 343)</u>
1	\$4,933	\$3,921	\$4,930	\$4,310	\$8,231	0.00	1.00	0.22	\$868.00	0.2500	\$980.25
2	\$3,500	\$2,880	\$3,400	\$3,179	\$6,059	0.00	1.00	0.25	\$720.00	0.2500	\$720.00
3	\$2,900	\$2,427	\$2,800	\$2,793	\$5,220	0.00	1.00	0.25	\$607.00	0.2500	\$606.75
4	\$2,740	\$2,306	\$2,600	\$2,662	\$4,968	0.00	1.00	0.25	\$576.00	0.2489	\$573.89
5	\$2,500	\$2,125	\$2,450	\$2,565	\$4,690	0.00	1.00	0.25	\$531.00	0.2423	\$514.83
6	\$2,000	\$1,742	\$1,950	\$2,240	\$3,982	0.00	1.00	0.25	\$435.00	0.2255	\$392.78
7	\$1,500	\$1,346	\$1,450	\$1,820	\$3,166	0.00	1.00	0.25	\$336.00	0.2061	\$277.43
8	\$1,300	\$1,197	\$1,260	\$1,652	\$2,849	0.00	1.00	0.25	\$299.00	0.1994	\$238.66

  

SR NO	<u>NCP (Gross)</u>	<u>NCP (Net)</u>	<u>CP (Gross)</u>	<u>CP (Net)</u>	<u>TN</u>	<u>H (20%)</u>	<u>H Multiplier</u>	<u>K (Current)</u>	<u>CS (Current) DCSS Calc</u>	<u>K (SB 343)</u>	<u>CS (SB 343)</u>
9	\$4,933	\$3,921	\$4,930	\$4,310	\$8,231	0.20	1.20	0.27	\$605.00	0.3000	\$682.44
10	\$3,500	\$2,880	\$3,400	\$3,179	\$6,059	0.20	1.20	0.30	\$500.00	0.3000	\$500.46
11	\$2,900	\$2,427	\$2,800	\$2,793	\$5,220	0.20	1.20	0.30	\$415.00	0.3000	\$414.90
12	\$2,740	\$2,306	\$2,600	\$2,662	\$4,968	0.20	1.20	0.30	\$394.00	0.2986	\$391.94
13	\$2,500	\$2,125	\$2,450	\$2,565	\$4,690	0.20	1.20	0.30	\$356.00	0.2907	\$345.09
14	\$2,000	\$1,742	\$1,950	\$2,240	\$3,982	0.20	1.20	0.30	\$284.00	0.2706	\$255.85
15	\$1,500	\$1,346	\$1,450	\$1,820	\$3,166	0.20	1.20	0.30	\$214.00	0.2473	\$176.30
16	\$1,300	\$1,197	\$1,260	\$1,652	\$2,849	0.20	1.20	0.30	\$188.00	0.2393	\$150.06

The last three columns indicate that SB343 implementation will not do any miracle. There is hardly any difference in the amount of child support as of today and when SB 343 will become a law. We got this data from DCSS after sending our calculation to them and they corrected it by sending theirs.

Do you see SSR (Self-support reserve) anywhere. No.

Federal Guideline: "A self-support reserve is an amount of money, determined by the state, that a parent needs to support themselves before establishing their child support obligation."

We have a chart showing why the formula of FAMCODE-4055 which has been used for the last 30 yrs, is "wrong"

We have built a solution for all this. Ms. Kristen. I have spoken to the Department of Finance director and his team about the solution and sponsor of SB343.

It can reduce your review time by half for sure and let the 84% of children have milk on time. I can present it if you may allow.

The rest is in your hands to decide your priorities between topics which are affecting a million kids each day or something else.

Pls let me know.

Regards

Rajesh Sinha

**October 11, 2023**

Hello Ms. Kristen

Thanks for presenting my concerns to the commission. I really appreciate this sensitive gesture.

Pls do not get me wrong about the urgency on this issue which my email shows. It's an untold truth and it's an incredibly old issue. Since only about 50,000+ non-custodial parents are women, and the rest are all men, this has never been highlighted. Whether men or women they all are in financial crunch to make their child support current. Even though the state claims that child welfare

is its top priority. Our solution may not be more than "food for thought" for the commission. It is based on a study of calculators of Minnesota, Arizona, NY, some of the NATO countries and our own observations of several poverty reports, research reports of Aspen and national report of OCSE/ACF. My solution is not based on any specific state or national policy.

I followed SB 1055, SB 343 and SB 618 very closely and was in interaction with legislative members/directors in both senate and assembly. About 99.99% of them did not know that there is an arrear of \$18B (Attached Q&A-5) which is snow balling. None of the analysts of the bill ever highlighted the child support issues including the \$18B pending arrear. Including HHS committees. None had read the reports. They were all busy with 1000+ bills on the floor. One of the legislative directors said that it is really a good finding but needs a closer look. Seems like a poverty-generating machine and that leads to several unwanted activities within the state.

I completely understand that commission finding, and recommended reforms will ultimately follow the legislative process. It's worth going through that process. Things which have not happened in 30 yrs. will now happen. It will be in the best interest of the children.

Additional findings:

The four yearly review report has been provided by only one company of Colorado for the last three reviews (2010, 2017 & 2022). Every time only one bid was called by JCC for the last three times (against the policy of JCC bids and proposal). 2022 review was a guided review and was not a full review. Federal and state laws for review were not completely followed including the federal register and president's executive order 13563. Public participation was missing. FAM CODE 4077 was hurriedly created, and the rest was followed by using an emergency statue to create a bill. Why. It's because continued federal funding of \$650M will be stopped if the state is not in conformity with the federal guidelines of the FINAL RULE of 2016. Even after eight years of extension, ppl are in a rush to pass through the legislative process. The state's top priority guideline for children's welfare is not being followed. Just because these million plus kids are from divorced families, are means to get \$650M for the survival and functioning of DCSS. DCSS was created in 2000 so that all data is centralized and it will come up with latest ways to improve child support policy of California. Other than the data, recommendation for improvement never happened. 2022 review report states that DCSS would like to remain with the old formula because (page 23) " The major weakness surrounds implementation issues, such as developing business rules, modifications to automated guideline calculators, and training." Life of DCSS/LCSA is more important than one million kids' upbringing in years to come.

The above information makes it even more important and urgent for this commission to carry out an unbiased study. Certain checks and balance are required of state agencies. It will also carry much weight because the commission is designed to study such sensitive matters. I will be more than happy to help/ contribute in whichever shape and form you might need.

Regards

Rajesh Sinha

**October 13, 2023**

Hello Ms. Kristin,

The Library of Congress defines Universities and Academy as one of the pillars of democracy. We need your help.

FYI

Total number of cases closed in 2022 due to balance payoff: 88,477. 84% of the cases had arrears.

This is how it got paid off. This is the latest info from DCSS based on a Q&A(this is not in DCSS legislative reports). You may now wonder how these children were brought up w/o child support being paid for more than a decade. Most of them never got their milk at breakfast ever.

# of cases	# years old from time of first opening	Amount Collected in 2022
31,837	>16 years old	\$50,796,122.74
19,079	11-15 years old	\$22,675,719.62
16,563	6-10 years old	\$19,496,215.83
20,998	0-5 years old	\$24,795,243.09

Collection of arrears only satisfies the federal and state legal requirements but it's hardly satisfying the needs of child upbringing in majority of the cases.

Each year a similar number of cases close and about the same number gets added. (DCSS legislative reports)

Therefore, if you look at last five years the total number of cases will always remain around the same.

(1+Million) and every year the number of cases with pending arrears will also remain around 850,000.

Regards  
Rajesh Sinha

**October 18, 2023**

Hi Ms. Kristin,  
Appreciate it.

Here are some additional data.

This is the report <https://aspe.hhs.gov/sites/default/files/private/pdf/75136/report.pdf> of the year 2006

DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION OFFICE OF HUMAN SERVICES POLICY AND OFFICE OF CHILD SUPPORT ENFORCEMENT CONTRACT NUMBER 233-02-0092

Page 9: Excerpts:

"The purpose of this report is to provide information about the underlying characteristics of child support arrears in the nation and in nine large states to help OCSE and state child support programs (also known as IV-D programs) improve their ability to manage arrears."

"In September 2006, the federal Office of Child Support Enforcement (OCSE) reported that the total amount of child support arrears that had accumulated nationwide since the program began in 1975 had reached \$105.4 billion."

"The nine study states are: Arizona, Florida, Illinois, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas."

Page-22: "Collectively, these states held a total of \$38.5 billion in arrears at the time the data

were extracted for this study, which represented about 40 percent of the nation's total arrears at that time."

Here is the report which Ms. Johnson of OCSE sent me [https://www.acf.hhs.gov/sites/default/files/documents/ocse/fy\\_2021\\_preliminary\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/fy_2021_preliminary_report.pdf) OF 2021 ( national report)

Page 91: "Table P-85 Total Amount of Arrearages Due for All Fiscal Years for Five Consecutive Fiscal Years"

Let us talk about year 2021

Nationwide total arrearage :\$113,471,723,919 (\$113.5 Billion). Earlier years are even higher. Yr. 2020, 2021 were lower because federal financial aid provided to NCPs due to COVID had deductions for child support right at the source. Thus, collection of child support in all states was more in comparison to previous years.

For the nine states Arizona, Florida, Illinois, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas.

Arrearage: \$48,168,479,063(\$48.2Billion)

Things have not changed for the better since 2006 to 2016(when The Final Rule was brought in by OCSE) till date. SB 343 will also not make things better because it is using al most everything what was being followed since last several decades.

A few recommendations made in the 2006 report by ASPN were logical. For example, charging interest on arrears are only making things harder for NCPs to pay and continues to increase the arrears.

Pls bear in mind that the pending arrears of interstate and international cases are not included in the annual data of pending arrears. However, arrear collected from interstate and international cases are included in the arrearage collection data in all these reports.

I have requested DCSS of California to provide those pending arrears. That will increase the pending arrear beyond \$930M in the legislative report of 2022.

Regards

Rajesh Sinha

## **November 10, 2023**

Hello Ms. Kristin,

How have you been.

I forgot to mention that there were few Public Laws and US codes brought in during President Clinton's regime on child support.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Public Law 104–193: Sec370: The primary objectives of Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was to put more people to work, reduce federal funding to support people and increase child support collection. It also focused on increased visitation to develop a better bonding between kids and the parents.<https://aspe.hhs.gov/reports/personal-responsibility-work-opportunity-reconciliation-act-1996>

42 USC 600 TO 699 all talk about how the state and federal agencies will communicate and the enforcements. For example, DENIAL OF PASSPORTS, etc.

What is missing: 18 USC 228 : Public Law 105–187 of 1998: This part is never referred which is the key:

**“§ 228. Failure to pay legal child support obligations**

“(a) OFFENSE.—Any person who—

“(1) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 1 year, or is greater than \$5,000;

“(2) travels in interstate or foreign commerce with the intent to evade a support obligation, if such obligation has remained unpaid for a period longer than 1 year, or is greater than \$5,000; or

“(3) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years, or is greater than \$10,000;

In our child support policy, there is no mention of the federal law. We are more on enforcement. We do not care whether it's "Willfully" or not. DCSS computer system reports to OCSE for Passport Denial if an NCP cross \$2500. The change from \$5000 to \$ 2500 happened when a nine-state report was published in 2006 by HHS. However, there is no mention of 18 USC 228 anywhere.

Ms Kristen, you will be surprised to know that in 2006 493k cases were reported for Passport denial and that reflected \$16.8B child support arrears. Whereas even today, after 18 yrs., it's almost the same situation (we have \$18.4B child support arrears. <https://www.acf.hhs.gov/css/policy-guidance/implementation-new-passport-denial-threshold-effective-oct-1-2006>

**Projected Change in the Number of Cases Certified at Department of State for Passport Denial**

**As of March 7, 2006**

	CURRENTLY	IF \$2500 THRESHOLD	CHANGE
# of active cases at DoS	3,676,997	4,153,599	Up 476,602
# of obligors with a case at DoS	3,526,231	3,971,554	Up 445,323
Total arrearage of cases at DoS	\$77,363,500,765	\$79,099,850,150	Up \$1,736,349,124

STATE	# OF CASES NOW AT DOS	ARREARAGE	# OF CASES IF \$2500 LIMIT	ARREARAGE	INCREASE IN CASES	INCREASE IN ARREARAGE
AK	16,101	\$478,602,206	17,953	\$485,223,185	1,852	\$6,620,979
AL	78,265	\$2,067,340,602	86,176	\$2,095,912,291	7,911	\$28,571,689
AR	36,771	\$464,988,566	42,378	\$484,973,823	5,607	\$19,985,257
AZ	68,866	\$1,835,439,257	75,742	\$1,862,192,341	6,876	\$26,753,084
CA	493,530	\$16,672,441,887	550,851	\$16,880,978,379	57,321	\$208,536,492

On top of this California DCSS reports to 15 other state agencies to suspend commercial licenses. As if we are in a hurry to punish people.

Our focus has always been "enforcement and enforcement" only. The judiciary missed on 18

USC 228. No one tries to establish whether it's "Willful " or not OR whether the NCP is taking a foreign commerce trip to evade child support obligation or not.

Coming back to Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Public Law 104-193: Sec370; the purposes (of putting people to work, reduce federal expense in supporting people and increase visitation) are defeated.

Lastly, I request you to find some time to read some of the work of Ms. Nancy Julia Chodorow. A psychoanalyst and a student of Sigmund Freud. The inexpressiveness of a male/ father is well described in her work.

Regards

Rajesh Sinha

**EXHIBIT 7. EMAIL FROM ATTORNEY J.D. STEWART  
(8/7/23)**

Good Afternoon:

In recent research I came upon study J-103 (<http://www.clrc.ca.gov/J103.html#Final%20Recommendation>) and would like to inquire about specific further research or otherwise suggest that specific further research be conducted.

The June 2005 Tentative Recommendation at p. 2, lines 8 - 29, discusses Cal. Rules of Court, Rule 324, governing tentative rulings and the requirement to allow oral argument, a report that several judges in San Diego and Orange Counties continued to use the tentative ruling process to deny oral argument, the courts' presiding judges gave written assurances that noncomplying judges would cease the prohibited activities. The passage concludes that "there is no evidence that noncompliance with Rule 324 remains a problem."

As we are here some 18 years later, I would disagree with that conclusion as applied to present day. I am first curious whether, in these past 18 years, Rule 324 compliance has been reviewed again. If so, I would greatly appreciate being pointed in the direction of those reviews. If not, I would suggest looking at judges—particularly judges with ten or more years on the bench—who have an extremely high rate of adopting their tentative rulings. Of those judges, I would strongly recommend looking at judges who enlist the help of law clerks and others to write their tentative rulings. There is no denying that some judges are more "actively engaged" than others—though this is not to suggest or even imply that judges do not read all the parties' papers; admonish the thought! But as the Tentative Recommendation pointed out, "[the commission] thought—incorrect, as it turns out—that the trial courts would simply follow [the commission's] opinion even if they disagree with it. Stare decisis and all that stuff." (p. 1:24-25.) And if I were a betting man, I would put a year's salary on the probability that judges who have an extremely high rate of adopting their tentatives also have a very low rate of writing their own tentatives. And if this is true, then "compliance" with Rule 324 is really just a community theater show, literally just "going through the motions" (and that is a pun that need not be pardoned). I would hope the problem here is apparent—if a judge is filling calendars with motion hearings for oral argument that the judge has no intention of actually considering, the waste of judicial resources, attorney time, and client funds is, well, unardonable.

Cicero said the foundation of justice is good faith. The California Supreme Court says that it's public faith in the judiciary. Your commission quoted a 2001 case in the Tentative Recommendation that "justice unseen is justice undone." The report inspired me to believe that justice might be done and public faith reinforced by bringing this blind spot to the Commission's attention. I come in good faith.

Take care.

Sincerely,

J.D. Stewart, Esq.