

SECOND SUPPLEMENT TO MEMORANDUM 2023-47
New Topics and Priorities (Additional Comments)

The Commission¹ received two additional comments related to the New Topics memorandum:

- (1) Email from Rachel Buller relating to the suggested topic, discussed on pages 7-9 of the main memorandum, related to joint tenancy property and dissolution of marriage.
- (2) Email from Rajesh Sinha relating to the suggested topic, discussed on pages 9-12 of the main memorandum, related to California child support laws.

Both of those comments are attached.

Respectfully submitted,

Kristin Burford
Chief Deputy Director

1. 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). 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.

EMAIL FROM RACHEL BULLER
(12/19/23)

Hi Kristin.

Thank you for your email. I appreciate your keeping me informed of the status of the Law Review Commission's upcoming meeting. Unfortunately I have other commitments on Thursday and will not be present to provide comments at the meeting.

However, I would like to add an additional written comment to supplement Brian Herbert's submission.

Case law references the inequity of the situation referenced. See *Estate of Mitchell* 76 Cal App 4th 1386:

"This presents what has been called "the 'Hilke/Allen/Blair' conundrum" (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 1999) ¶ 8:51, p. 8-13 to 8-14 (rev. #1 1998).) Ordinarily, holding community property in joint tenancy form is mutually advantageous, during marriage as well as after dissolution. Once a dissolution proceeding is pending, however, "it is illogical that [the] parties ... would envision or desire the operation of survivorship. An untimely death results in a windfall to the surviving spouse, a result neither party presumably intends or anticipates." (Estate of Blair, supra, 199 Cal.App.3d at p. 169, fn. omitted.) Continuing to hold property in joint tenancy in effect forces each spouse to make the "macabre gamble" that the other will die during the dissolution. (Id., at p. 169, fn. 3.)

In 1994, the Legislature amended Family Code section 2040 so as to add a requirement that the summons must also contain a form warning about "the 'Hilke/Allen/Blair' conundrum." (See Fam. Code, § 2040, subd. (b), Stats. 1994, ch. 1269, § 13.)"

Despite the "form warning", confusion remains among family law and estate practitioners. Further clarification is needed to address a sudden and unexpected death in the midst of a divorce.

In at least one other CA case, the Court has recommended the legislature address this topic to clarify the law. Because this scenario intersects several areas of law, there is a need for the Commission to address this as soon as the schedule allows.

Sincerely,
Rachel Buller
Attorney at Law

**EMAIL FROM RAJESH SINHA
(12/18/23)**

Hello Ms Kristen,

Kindly include the following as well. I forgot to add.

This is the summary of child support due, collected and cases with arrears of last five years. Its been end of 2023 and the 2023 annual report which was due in Oct 31st is still awaited.

SOURCE: DCSS LEGISLATIVE REPORTS: https://dcss.ca.gov/reports/?_cf_chl_tk=J3WtcPW8dU0R8rkPfuBQSAsgqLP_z9Atq1I5CctluA8-1701643010-0-gaNycGzNDns

	Current Support Due(\$)	Current Support Distributed(\$)	Current Arrears(\$)	Cases	Cases with support order established	Cases with Arrears Due	%age Cases NCPs unable to pay CS
Fed Fiscal year 2018	\$ 2,417,534,377.00	\$ 1,607,598,982.00	\$ 809,935,395.00	1,163,115	1,064,924	858, 669	80.63%
Fed Fiscal year 2019	\$ 2,480,813,902.00	\$ 1,652,301,961.00	\$ 828,511,941.00	1,130,263	1,040,506	846,287	81.33%
Fed Fiscal year 2020	\$ 2,522,228,062.00	\$ 1,676,894,984.00	\$ 845,333,078.00	1,088,672	1,002,777	826,613	82.43%
Fed Fiscal year 2021	\$ 2,511,906,257.00	\$ 1,670,792,328.00	\$ 841,113,929.00	1,043,847	968,217	797,487	82.37%
Fed Fiscal year 2022	\$ 2,527,225,325.00	\$ 1,593,993,789.00	\$ 933,231,536.00	1,046,265	948,467	774,526	81.66%

You may see above that the %age of cases of child support cases are unchanged despite last two quadrennial review by JCC and its contractual review of child support policy. Things have not changed. DCSS does not provide years before 2018 otherwise you would have found similar data in 2012, 2013 or 2016 when Final Rule was published.

1	2	3	4	5	6	7	8	9	10	11	12
SR NO	NCP (Gross)	NCP (Net)	CP (Gross)	CP (Net)	TN	H (0%) Visitation	H Multiplier	K (Current)	CS (Current) D CSS Calc	K (SB 343)	CS (SB 343)
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	\$370-\$435	0.2255	\$392.78
7	\$1,500	\$1,346	\$1,450	\$1,820	\$3,166	0.00	1.00	0.25	\$220-\$336	0.2061	\$277.43
8	\$1,300	\$1,197	\$1,260	\$1,652	\$2,849	0.00	1.00	0.25	\$174-\$299	0.1994	\$238.66

1	2	3	4	5	6	7	8	9	19	11	12
SR NO	NCP (Gross)	NCP (Net)	CP (Gross)	CP (Net)	TN	H (20%) Visitation	H Multiplier	K (Current)	CS (Current) D CSS Calc	K (SB 343)	CS (SB 343)
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	\$241-\$284	0.2706	\$255.85
15	\$1,500	\$1,346	\$1,450	\$1,820	\$3,166	0.20	1.20	0.30	\$140-\$214	0.2473	\$176.30
16	\$1,300	\$1,197	\$1,260	\$1,652	\$2,849	0.20	1.20	0.30	\$110-\$188	0.2393	\$150.06

Above is the chart with few sample income of NCPs and CPs to calculate child support as of today(column 10) and child support when SB343 becomes a law (column 12). Do you really see much difference in the child support amount. Rows 4,5, 6,7,8 etc have to pay child support even with this kind of earnings. Self support reserve is not being implemented. Row 1 shows that NCPs will pay even more child support and thus DCSS collection will go up confirming the success of SB 343 in years to come.

Bill SB-352(2023): Author: Hon Sen Padilla: California Workforce Development Board: minimum wage and housing: **As Amends the Law Today**

SECTION 1.

Section 14018 is added to the Unemployment Insurance Code, to read:

14018.

(a) The Legislature finds and declares all of the following:

(1) Currently, a household with at least one full-time minimum wage earner would have to work **more than two full-time jobs** to afford a one-bedroom apartment in most major markets in California.

(2) Nearly all households with at least one full-time minimum wage earner fall below the poverty line and that number of low-wagers earners is growing.

Point to be noted: The analysis of Bill SB352 by “**Senate committee on labor, public employment and retirement**” dated **April 12 2023 states the following:** “According to a University of California Berkeley, Labor Center report which provides an analysis of living wages in California, “Based on the MIT living wage calculator¹, which measures income adequacy by accounting for both family composition and geography, the 2022 self-sufficiency wage in California for

- A single adult is \$21.24
- A family with two working adults and two children is \$30.06
- A family with one working adult and one child is \$43.33”

Bill SB 352 uses the latest technology of MIT(endorsed by Berkeley University) to define it’s needs as indicated by President’s Executive order 13563. Bill SB343 still continues to follow 1992 default formula to enforce child support requirements.

Interestingly, Hon Sen Nancy Skinner voted AYES to SB352 and

Hon Sen Padilla voted AYES to SB343

Glasmeier, Amy K. Living Wage Calculator. 2023. Massachusetts Institute of Technology. [Livingwage.mit.edu](https://livingwage.mit.edu) has defined different “self sufficiency wage” for different counties of California based on demographics and economics. \$21.24 is an average of all. Professor Glasmeier has also mentioned that “Self-sufficiency wage” does not include several things which an American need. (<https://livingwage.mit.edu/resources/Living-Wage-Users-Guide-Technical-Documentation-2023-02-01.pdf>) page-3

“The living wage model is a 'step up' from poverty as measured by the poverty thresholds but it is a small 'step up', one that accounts for only the basic needs of a family. The living wage model does not allow for what many consider the basic necessities enjoyed by many Americans. It does not budget funds for pre-prepared meals or those eaten in restaurants. It does not include money for unpaid vacations or holidays. Nor does it provide money income to cover unexpected expenses

such as a sudden illness, a major car repair, or the purchase of a household appliance such as a refrigerator. Lastly, it does not provide a financial means for planning for the future through savings and investment or for the purchase of capital assets (e.g. provisions for retirement or home purchases). The living wage is the *basic* income standard that, if met, draws a very fine line between the financial independence of the working poor and the need to seek out public assistance or suffer consistent and severe housing and food insecurity. In light of this fact, the living wage is perhaps better defined as a minimum subsistence wage for persons living in the United States.” Bill SB 343 could have used the same theory of MIT to define “Self Support Reserve/ Low income adjustment.

Two full time jobs at a rate of \$15/hr = \$5280/mo (approx). **This reflects discrimination towards low-income earner non-custodial parents for decades and will still continue.**

These are the irregularities because of which CLRC need to pickup this topic for study.

Regards

Rajesh Sinha.