

## Memorandum 92-44

Subject: Study F-1000.2 - Family Code (Priorities for 1993 Legislative Session)

The Family Code bills have passed the Legislature and been sent to the Governor. This memorandum discusses the priorities for work on the Family Code for the rest of this year and during the 1993 legislative session. In general, the staff proposes to continue working on the technical aspects of the statute as we have up to this point, presenting a draft of proposed legislation when we have a substantial number of technical amendments. As for the minor substantive issues and some complicated technical issues, if the Commission approves the proposals outlined below, the staff will seek comments from interested persons and bar groups before presenting the draft to the Commission. This procedure is based on the assumption that the 1993 amendments will make only minor, if any, substantive changes.

Attached to this memorandum as Exhibit 1 is a letter from Lawrence M. Gassner, liaison with the State Bar Family Law Section Executive Committee (FLEXCOM), which forwarded three standing committee reports on the Family Code bill. These reports follow Mr. Gassner's letter, as well as another FLEXCOM report we received through Assemblywoman Jackie Speier's office. These FLEXCOM reports, and any additional ones we receive, will be considered as we work on the clean-up legislation for 1993.

Minor Substantive and Complicated Technical Issues

1. Additional statutes to be incorporated into the Family Code

Two large bodies of statutory law should be considered for inclusion in the Family Code:

(a) Juvenile dependency statute. The juvenile dependency provisions (Welf. & Inst. Code §§ 300-399) form part of the Juvenile Court Law (Welf. & Inst. Code § 200 *et seq.*).

(b) Enforcement of child support by district attorneys. Special provisions governing enforcement of child support by district attorneys are set forth in Welfare and Institutions Code Sections 11350 *et seq.* and 11475 *et seq.*

We have been aware of the possibility of including these statutes in the Family Code from early in the project, but time did not permit the staff to include them in the 1992 bills. Moreover, it would have been an even greater burden on interested persons who have been working with the Commission in reviewing materials to have had these substantial additions to the Family Code.

The staff plans to prepare preliminary draft statutes of these two areas ready for distribution to interested persons in the near future. Assemblywoman Jackie Speier has suggested the need to add the district attorney support enforcement provisions to the Family Code, as have others, including representatives of the District Attorneys' Family Support Council. The juvenile dependency statutes are a more complicated issue because of the need to disentangle them from the juvenile delinquency statutes in the Juvenile Court Law. There is support in Sacramento for doing this, both from legislative staff and from social services staff. This support is sufficient, we think, to justify proceeding on the project, but final judgment should be reserved until the interested parties can see a preliminary draft which will expose any technical and substantive difficulties in moving dependency statutes to the Family Code.

As to both of these statutes, the staff does not think an expenditure of Commission time is justified until we can present a draft that has been first reviewed by interested persons. It bears repeating that the guiding principle of preparing these preliminary drafts is to make no substantive changes.

## 2. Minor substantive revisions

There are a number of areas where workshop discussions and correspondence, as well as further staff review, have indicated a need to consider making minor revisions that may touch on the substantive. Of course, different individuals can come to different conclusions on what is a substantive change versus a technical change -- one person's technical change is another's substantive change. These problem areas are cases where existing law is inconsistent or conflicting. We have carried the existing problem forward in the new code because of our guiding principle of avoiding substantive change. However, the staff believes that some effort to remedy these defects should be made, assuming that we can get agreement of interested persons.

(a) Domestic violence prevention statutes. The Family Code takes the step of pulling the law from the Civil Code and the Code of Civil Procedure into one code (leaving the Penal Code provisions where they are), but the law remains fragmented between the dissolution, nullity, and legal separation statutes, the Domestic Violence Prevention Act, and the Uniform Parentage Act. We think these statutes can be better coordinated and some additional inconsistencies eliminated.

(b) Temporary restraining orders in general. There are numerous technical issues and unanswered questions in existing law that are carried forward, and perhaps compounded in some cases, in the structure of the Family Code general provisions on temporary restraining orders. Further work needs to be done to make the law clear, consistent, and relatively complete.

(c) Attorney fee provisions. Bar commentators have suggested on several occasions that we review attorney's fees provisions on a comprehensive basis. (See, e.g., letter from Frieda Gordon Daugherty, on behalf of the Association of Certified Family Law Specialists, attached as Exhibit 2 to the First Supplement to Memorandum 92-32, considered at the last meeting.)

(d) Property definitions. The usage of "community property," "community estate," "separate property," and "quasi-community property," and related terms needs to be comprehensively reviewed for consistency and possible simplifications considered.

(e) Child support. Implementation of the new child support guideline (SB 370, operative July 1, 1992) in the Family Code. This will take some analysis because all the needed conforming changes have not been made in existing law and parts of the earlier Agnos Act continue to be troublesome.

(f) Family support issues. Existing law is not entirely clear on how family support is to be treated. The Family Code has made an effort to make the rules clearer, but the whole matter needs to be considered in a unified manner and in consultation the bar.

(g) Support of adult children. The law in this area is unclear. The intense legislative activity in recent years concerning child support has focused on support of minor children, as would be expected. Short of a major substantive review of this area, which would be appropriate, some clean-up and clarification should be done.

(h) Child custody. The extent to which child custody provisions apply to custody determinations outside of dissolution, nullity, and legal separation proceedings.

(i) Freedom from parental custody and control. The scope of the procedure for freeing a child from parental custody and control (existing Civ. Code § 232) is confused and should be clarified if possible.

This is not a complete list of the matters that could or should be dealt with in the 1993 bill. More topics will come to light as the staff continues reviewing the Family Code and as interested persons submit their comments.

### Technical Issues

#### 1. Incorporation of 1992 family law legislation in the Family Code

Many bills are before the Legislature this year that concern the Family Law Act, adoption, Uniform Parentage Act, Domestic Violence Prevention Act, and other statutes that would be repealed or amended by the Commission's Family Code bills, AB 2641 and AB 2650. Both bills contain subordination clauses so that they do not "chapter out" any other legislation. This means, for example, that any legislation chaptered before or after the Family Code, and that amends or adds a new provision to the Family Law Act in the Civil Code, will prevail over the repeal of the Family Law Act by AB 2650. The effect is that on January 1, 1994, when the Family Code becomes operative, there would still be bits and pieces of the repealed Family Law Act remaining in Part 5 of Division 4 of the Civil Code.

As part of the technical clean-up bill in 1993, we will merge all 1992 family law bills into the Family Code and repeal the corresponding Civil Code provisions.

#### 2. Sunset tracking

There are quite a few statutes subject to sunset clauses that must be cleaned up. As outlined in the First Supplement to Memorandum 92-12 (considered at the March 1992 meeting), when the session is over and all bills have been disposed of, the staff will review the disposition and operation of all relevant sunset provisions and prepare amendments for the 1993 clean-up bill to make the necessary adjustments.

#### 3. Miscellaneous technical matters

Any number of minor, technical matters will continue to come to light as we work on the Family Code. Many issues have been memorialized on "The List," even though they are technical matters of a noncontroversial nature. Additional amendments will be brought to the

Commission's attention as interested groups, such as the Association of Certified Law Practitioners, the State Bar Family Law Section, and the Los Angeles County Bar Association Family Law Section, continue their detailed review of the statute. (Copies of State Bar FLEXCOM reports received to date are attached in Exhibit 1, exhibit pages 2-20; the staff will respond to these points in detail when draft bills for the 1993 session are presented to the Commission.) We also expect other interested persons to write the Commission once the Code is in print and is widely distributed, and we have already received and distributed other letters that will be considered when a particular topic is presented.

"The List"

At several past meetings, the staff has mentioned a list of Family Code issues that we have been compiling. The purpose of the List is to preserve the many points raised in letters we have received, in the workshops held in February, and during the staff's review of the bills. (Excerpts from the List are attached as Exhibit 2, exhibit pages 21-30.) We propose to distribute a complete edition of the List to interested persons, after further refinement and editing, with the suggestion that they review it for matters that should be considered by the Commission. The staff will then prepare a memorandum on possible topics for future consideration. Some issues might be simple and noncontroversial so that they could be considered for purposes of the 1993 legislative session. The Commission could then decide whether to study any additional, self-contained family law matters with a view toward preparing legislation for the 1994 and later sessions.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

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Law Revision Commission  
RECEIVED

JUN 15 1992

June 10, 1992

File: \_\_\_\_\_  
Key: \_\_\_\_\_

Nathaniel Sterling  
Law Revision Commission  
4000 Middlefield Road, #D-2  
Palo Alto, CA 94303-4739

Re: Law Revision Commission

Dear Mr. Sterling:

I forward three sets of comments on portions of the Family Law Code.

These sets will be forwarded also to the legislature.

They cover Sections:

- 2300-2660
- 3900-4414
- 5270-7050

These comments were presented to our committee on June 6, 1992, and were approved for presentation.

Our comments on the Community Property/Joint Tenancy report have been delayed because our standing committees were unable to meet in early May. Hopefully we will get these comments to you after our July meeting. We understand that you have received the Probate Section's comments and they are not indicating any direct interest in the issue as it relates to dissolution of marriage matters.

We have no ready suggestions to deal with the problem created by the multitude of supplements that have already proposed modifications to the Code. If we suggest changes that you have already incorporated, we can only apologize for the duplication.

June 10, 1992  
Nathaniel Sterling  
Page 2

It appears that we will have time, after the next full publication of the bill, to give it a final review.

Very truly yours,

GASSNER & GASSNER

  
Lawrence M. Gassner

LMG:drj

Enclosures

cc: John Rothchild, Esq. w/out encl.  
Stephen Wagner, Esq. w/out encl.  
Melissa Toben, Esq. w/out encl.  
Donald Breer, Esq. w/out encl.

**MEMORANDUM**

TO: FlexCom Members  
FROM: Sharon F. Mah  
RE: Review of AB 2650, Sections 2300 through 2660  
DATE: June 5, 1992

The following are the observations and comments concerning specific, proposed code sections as set forth hereinafter:

1. Section 2300

It reads: "The effect of a Judgment of Dissolution of Marriage when it becomes final is to restore the parties to the state of unmarried persons."

Comment

I suggest that the word "state" be changed to the word "status." The word "status" is used throughout AB 2650 and ties in more closely with the existing Judicial Council forms. For example, on the Judicial Council Judgment form, reference is made to "marital status" and the "status of unmarried persons" (see Attachment "A").

2. Section 2330(b)

It reads: "In a proceeding for a dissolution of marriage or for a legal separation, the Petition shall set forth among other matters, as nearly as can be ascertained, the following facts: (1) The state or country in which the parties were married...."

Comment

If this provision is going to be part of the Code, there needs to be a revised Judicial Council Petition form. The present Petition form does not require a party to list the state or country in which the parties were married (see Attachment "B").

3. AB 2337 - Conditions Re: Bifurcation

This section pertains to conditions regarding an order for bifurcation. It reads in relevant part at Section (6):



"...and if the party has a private pension plan covered by ERISA, then the party shall cause ~~either~~ a qualified domestic relations order as defined in Section 1056 of Title 29 of the United States Code to be served upon the party's pension plan."

Comment

Many judges are routinely ordering all of the statutory conditions for bifurcation regardless of whether or not they are practical or necessary. At the time a party seeks a bifurcation, the division of community has not been accomplished for any number of reasons. To have a qualified domestic relations order in place might be premature and limit the property division options available to the parties at a later date. A clause which requires the party requesting a bifurcation who is a participant in an ERISA plan to give notice on behalf of the other party that an interest is claimed could, in some instances, be a satisfactory alternative to the entry of a qualified domestic relations order. I recommend amending the above clause to include the following additional language which is underlined:

"(6)...and if the party has a private pension plan covered by ERISA, then the party shall cause either a qualified domestic relations order, as defined in Section 1056 of Title 29 of the United States Code or a notice pursuant to Section 755 in Chapter 3 of this Family Code to be served upon the party's pension plan."

Section 755 of the Family Code is the equivalent of Civil Code Section 5106 which provides written notice to a pension plan that a party claims entitlement to a payment or refund or some part of an ERISA retirement plan such that liability could attach to the plan if payment were subsequently made adverse to that party's claim.

4. Section 2552(b)

This section relates to an alternate valuation date for a community asset or liability. It reads as follows:

"Upon 30 days' notice by the moving party to the other party, the court may value all or any portion of the assets and liabilities at a date after separation and before trial to accomplish an equal division of the community estate of the parties in an equitable manner."

### Comment

The request for an alternate valuation date is most commonly raised in the form of a noticed motion before trial to eliminate the need to present evidence as to multiple valuation dates at trial. However, I have seen the issue raised by counsel in pre-trial statements and other pleadings filed with the court and served on the other party at least 30 days prior to trial with the intention that the determination be made at trial. Perhaps the statute should be revised to read as follows:

"Upon 30 days' notice by the moving party to the other party, either by noticed motion or other pleading filed with the court, the court may value all or any portion of the assets and liabilities at a date after separate and before trial to accomplish an equal division of the community estate of the parties in an equitable manner."

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):  	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
<b>MARRIAGE OF</b> PETITIONER:  RESPONDENT:		
<p style="text-align: center;"><b>JUDGMENT</b></p> <input type="checkbox"/> Dissolution <input type="checkbox"/> Legal separation <input type="checkbox"/> Nullity <input type="checkbox"/> Status only <input type="checkbox"/> Reserving jurisdiction over termination of marital status Date marital status ends:		CASE NUMBER:

1. This proceeding was heard as follows:  default or uncontested  by declaration under Civil Code, § 4511  contested
  - a. Date: \_\_\_\_\_ Dept.: \_\_\_\_\_ Rm.: \_\_\_\_\_
  - b. Judge (name): \_\_\_\_\_  Temporary judge
  - c.  Petitioner present in court                       Attorney present in court (name): \_\_\_\_\_
  - d.  Respondent present in court                       Attorney present in court (name): \_\_\_\_\_
  - e.  Claimant present in court (name): \_\_\_\_\_  Attorney present in court (name): \_\_\_\_\_
2. The court acquired jurisdiction of the respondent on (date):  
 Respondent was served with process     Respondent appeared
3. THE COURT ORDERS, GOOD CAUSE APPEARING:
  - a.  Judgment of dissolution be entered. Marital status is terminated and the parties are restored to the status of unmarried persons
    - (1)  on the following date (specify): \_\_\_\_\_
    - (2)  on a date to be determined on noticed motion of either party or on stipulation.
  - b.  Judgment of legal separation be entered.
  - c.  Judgment of nullity be entered and the parties are declared to be unmarried persons on the ground of (specify): \_\_\_\_\_
4. THE COURT FURTHER ORDERS:
  - a. Jurisdiction is reserved to make other and further orders necessary to carry out this judgment.
  - b.  Wife's former name be restored (specify): \_\_\_\_\_
  - c.  This judgment shall be entered nunc pro tunc as of (date): \_\_\_\_\_
  - d.  Jurisdiction is reserved over all other issues and all present orders remain in effect except as provided below.
  - e. Any payment for spousal or family support contained in this judgment shall terminate upon the death of the payee unless otherwise provided.
  - f.  Other (specify): \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENT "A"

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

5. Number of pages attached: \_\_\_\_\_

Signature follows last attachment

— NOTICE —

1. Please review your will, insurance policies, retirement benefit plans, and other matters you may want to change in view of the dissolution or annulment of your marriage. Ending your marriage may automatically change a disposition made by your will to your former spouse.
2. A debt or obligation may be assigned to one party as part of the division of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.
3. If you fail to pay any court-ordered child support, an assignment of your wages will be obtained without further notice to you.



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
MARRIAGE OF PETITIONER:		
RESPONDENT:		
<b>PETITION FOR</b> <input type="checkbox"/> Dissolution of Marriage <input type="checkbox"/> And Declaration Under Uniform <input type="checkbox"/> Legal Separation                     Child Custody Jurisdiction Act <input type="checkbox"/> Nullity of Marriage		CASE NUMBER:

1. RESIDENCE (Dissolution only)  Petitioner  Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this Petition for Dissolution of Marriage.

2. STATISTICAL FACTS

- |   |                                      |
|---|--------------------------------------|
| a. Date of marriage:                      | b. Date of separation:               |
| c. Period between marriage and separation | d. Petitioner's Social Security No.: |
| Years:                     Months:        | e. Respondent's Social Security No.: |

3. DECLARATION REGARDING MINOR CHILDREN OF THIS MARRIAGE

- |  |   |
|--|---|
| a. <input type="checkbox"/> There are no minor children. | b. <input type="checkbox"/> The minor children are: |
| <u>Child's name</u>                                      | <u>Birthdate</u> <u>Age</u> <u>Sex</u>              |

c. IF THERE ARE MINOR CHILDREN, COMPLETE EITHER (1) OR (2)

(1)  Each child named in 3b is presently living with  petitioner  respondent at (address):

and during the last five years has lived in no state other than California and with no person other than petitioner or respondent or both. Petitioner has not participated in any capacity in any litigation or proceeding in any state concerning custody of any minor child of this marriage. Petitioner has no information of any pending custody proceeding or of any person not a party to this proceeding who has physical custody or claims to have custody or visitation rights concerning any minor child of this marriage.

(2)  A completed Declaration Under Uniform Child Custody Jurisdiction Act is attached.

4.  Petitioner requests confirmation as separate assets and obligations the items listed  in Attachment 4  below:  
Item

Confirm to

ATTACHMENT "B"  
(Continued on reverse)

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND OBLIGATIONS AS PRESENTLY KNOWN

- a. [ ] There are no such assets or obligations subject to disposition by the court in this proceeding.
b. [ ] All such assets and obligations have been disposed of by written agreement.
c. [ ] All such assets and obligations are listed [ ] in Attachment 5 [ ] below (specify):

6. Petitioner requests

- a. [ ] Dissolution of the marriage based on (1) [ ] irreconcilable differences. CC 4506(1) (2) [ ] incurable insanity. CC 4506(2)
b. [ ] Legal separation of the parties based on (1) [ ] irreconcilable differences. CC 4506(1) (2) [ ] incurable insanity. CC 4506(2)
c. [ ] Nullity of void marriage based on (1) [ ] incestuous marriage. CC 4400 (2) [ ] bigamous marriage. CC 4401
d. [ ] Nullity of voidable marriage based on (1) [ ] petitioner's age at time of marriage. CC 4425(a) (2) [ ] prior existing marriage. CC 4425(b) (3) [ ] unsound mind. CC 4425(c) (4) [ ] fraud. CC 4425(d) (5) [ ] force. CC 4425(e) (6) [ ] physical incapacity. CC 4425(f)

7. Petitioner requests the court grant the above relief and make injunctive (including restraining) and other orders as follows:

Table with 5 columns: Request, Petitioner, Respondent, Joint, Other. Rows include: a. Legal custody of children to, b. Physical custody of children to, c. Child visitation be granted to, d. Spousal support payable by, e. Attorney fees and costs payable by, f. Terminate the court's jurisdiction (ability) to award spousal support to respondent, g. Property rights be determined, h. Wife's former name be restored, i. Other.

8. If there are minor children of this marriage, the court may order you, without further notice, to pay child support in accord with the California Child Support Guideline. A wage assignment will be issued.

9. I have read the restraining orders on the back of the Summons, and I understand that they apply to me when this petition is filed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

[Signature line] (SIGNATURE OF PETITIONER)

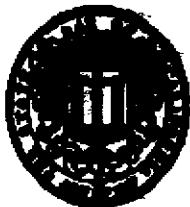
TYPE OR PRINT NAME OF ATTORNEY

[Signature line] (SIGNATURE OF ATTORNEY FOR PETITIONER)

FAMILY LAW SECTION  
THE STATE BAR OF CALIFORNIA  
RECEIVED

MAY 27 1992

Ass'd.....



446 FRANKLIN STREET  
SAN FRANCISCO, CA 94102  
(415) 861-8300  
Fax: (415) 861-8300

MEMORANDUM

**TO: LARRY DOYLE, DIRECTOR, OFFICE OF GOVERNMENTAL AFFAIRS**

**FROM: JENNIFER GORDON**

**SUBJECT: A.B. 2650, Speter, amended 3/23/92  
DIVISION 8: CUSTODY OF CHILDREN**

**DATE: May 14, 1992**

**SECTION POSITION: SUPPORT IF AMENDED**

**DATE POSITION RECOMMENDED: 5/9/92**

**SECTION VOTE: AYES: 9 NOES: 0**

=====

**ANALYSIS:**

(1) *Description of provisions*

a. Generally

This bill would cull sections from the Civil Code, Code of Civil Procedure, Evidence and Probate Codes that concern family law, repeal those provisions as they appear in those codes, and enact them as one body of law under the Family Law Act.

b. Division 8 specifically

This Division culls provisions from the various codes and from disparate sections of the Civil Code into one division concerning children.

**(2) ~~Summary of Report~~**

There are obvious advantages to family lawyers of having all provisions related to the family presented in one Family Code. Bringing together all aspects of family law provides a broader and better-informed perspective, not to mention ease of locating formerly obscure sections.

Specifically, provisions concerning children have been notoriously scattered. The committee applauds the Family Code drafters' efforts to bring all provisions about children together in Division 8.

The Family Code's new structure is exceedingly well organized, and provides the family lawyer with a usable, valuable tool.

**(3) Proposed Amendments**

**Generally:**

Remember when the work on the Code is completed to go back and renumber the sections, unless you are reserving certain numbers for some reason. There are several missing sections (e.g.: 3008, 3009, etc.)

**~~3000-3006:~~**

Generally speaking, the committee was in favor of leading off the division on custody with definitions. These appear to have been lifted intact from former section 4600.5

However, we question whether the definitions should be moved to Part 2. "Custody" seems to have a different meaning when applied to Part 1. This is so in that Part 1 involves a much different concept of "custody", mainly "control", mainly financial.

In the Definitions, the general term "joint custody" is defined as including physical and legal custody, which are each in turn defined, but the general term "custody" is not defined.

Nowhere in part 1 are any of the terms in the current Definition sections used at all. Only the simple word "custody" is used, which has a different meaning in the context of controlling the child's property, etc. And as is pointed out below, most of Part 1 is really financial.

Perhaps the Definitions section should precede or preface *both* Part 1 and Part 2, with an added definition of the word "custody", standing alone, as it is used in Part 1.

*[Note for future modification: should there not be a definition for "children of the marriage"?)*

**3007-3010:**

The change from "unmarried" (former section 197) to "unemancipated" is definitely a substantive change. *Unemancipated* is probably what the original drafters probably meant; but the word they *did* use - "unmarried" - is narrower in scope than the word *unemancipated*, which the Family Code drafters are now using.

**3012-3014:**

~~Are't these really property or support? Is the rationale behind having these sections in Division 8 rather than in other Divisions that the issue of control of the child is related to custody of a child which is in turn related to these financial issues?~~

*[Note for future modification: There is a conflict inherent in 3012, 3013, 3010 and 3014, which has nothing to do with its introduction into this section of the Family Code. When it is said that a parent has no control over the property of the child, then the Code goes on to say the parent has control over the earnings of the child, what does this mean? Does it mean that a child's father cannot touch her \$20 inheritance from her grandfather, but that he can spend the \$1,000,000 a year she earns as a television star? Do a child's earnings become property when they are deposited in a bank account?]*

**3020**

Adding former section 4608 to former 4600 makes great sense.

However, after this the organization gets muddy. The first part of former 4600 - the seminal "custody" statute - leads off the Chapter 1 ["General Provisions"]. However, the tail end of former 4600 is lopped off and moves to Chapter 2. What is left of it is then followed by sections on trial preference, reunification, and District Attorney compensation provisions.

One now must wait until Chapter 2 to find out how custody is determined. The general custody pronouncements and the methodology and policy in determining custody were formerly all subsections of original 4600. Now they are split in two, separated by technical procedural provisions.

Query: if you are going to bring other sections *into* former 4600, why would you then tear 4600 into other parts separated by notification about addresses, reunification, and the like? Why not keep it ALL together and just separate it into smaller sections?



*[Note for future legislation: Noting that this is not the fault of the drafters of the Family Code, the committee points out that this section is hopelessly garbled. It very much relates, however, to the very hot relocation issue, and ought to be cleaned up. The group feels that if someone is that bent on relocating, he or she could give the other more notice; and that the statute should read A MINIMUM OF [say, 90 days]. The problem with this statute, as with all of them, is that the 30 days and the 45 days are taken as gospel. The group feels that this section has not been given enough press, and that parents are still "sneaking" out of state with their children without giving notice to the other parent, and without giving it a second thought.]*

#### Chapter 4: Joint Custody

There has been horrendous confusion over this even when it was just one section with many subparts. The importance of having it be just one section with many subparts is that all of the subparts **ONLY** apply when making an order of **JOINT** custody, which, by definition, is **JOINT LEGAL AND PHYSICAL CUSTODY**.

Attorneys have tried to trick the Court and other attorneys by lifting provisions out of this section to allege that there is a preference for joint custody, that the conciliation court may be consulted even where the parties are not seeking joint custody, etc.

Therefore, because titles do not generally infer that what follows is necessarily limited to what the title states, we are allowing even more latitude for this, and actually making a substantive change in the law.

If the Family Code drafters insist on this chapter, with the former joint custody statute broken into several independent sections, then **EVERY** section within Chapter 4 **MUST** begin by the words: "When making an order for joint custody", or "relating to joint custody of a minor child", or similar language.

#### Chapter 5: Visitation Rights

##### **3100:**

The committee points out that the drafters are taking great liberties in referring to section 3155, in that former section 4601 does not make such a reference. The committee is not opposed, in that parties *are indeed* required to mediate prior to litigating custody issues, but suggest that the drafters carefully review this section to insure that they are not creating new law.

However, this is a broad reference, and could possibly have dangerous repercussions.

*[Note for future legislation: The committee is concerned at 3100 (b) about spurious accusations re: domestic violence. The committee suggests a change of "shall" to "may".]*

**3101:**

The proposed structure of this chapter may be a substantive change in the law, as there is a major rearrangement of former 4351.5. Former 4351.5 (d) through (l) have now been moved to the mediation section. While this feels organizationally correct, it is frustrating that all sections pertaining to step parents and grandparents are not in one place, and the result might be that special provisions about mediation in these situations may be ignored.

The committee recommends a reference in 3101 to Chapter 11, Article 3.

**3176:**

*[Note for future legislation: There was concern that the mediator had authority to meet separately with the parties only in cases of domestic violence. Most mediators feel they have the authority to meet with the parties separately when the mediator or the parties and the mediator deem that procedure appropriate.]*

### **Part 3: UNIFORM CHILD CUSTODY JURISDICTION ACT**

It is critical that this remain absolutely intact and in the same order and structure for it to conform with the UCCJA provisions of other states. The committee notes that all the numbers have changed to letters and vice versa, which probably accounts for a *major omission* as pointed out below.

To avoid this, I would propose using a scanner or some other device, to check that the entire section is reproduced absolutely and word for word intact. There is really no tinkering with this.

**3401 (8)**, which would have been former 5150 (f)

Former (i) or current (9) is left out: "To make up the law of those states which enact it". This is important and necessary <sup>which</sup> should not be omitted. If it is hiding somewhere else in part 3, it should be moved to the "head of the class". If anything, it should be

cc: John David Rothschild  
Melissa Toben  
Robert O'Hair  
Don Breer, State Bar  
Director of Research; State Bar

COMMENTS ON FAMILY LAW CODE SECTIONS 3900 TO 4414

1. Section 4005 incorporates old Civil Code section 246 in setting forth the circumstances to be considered in setting support. The problem is is that section 246 was part of the Uniform Civil Liability for Support Act which included general language for support owing to a spouse, a child, or a parent. This new section 4005 specifies these duties for child support. A review of them will show they are very similar to the standards that we also use for spousal support.

I question whether in the light of this era of guidelines, this general language is consistent with the standards for child support alone - especially note situations such as age and health and standard of living. Unless they are ultimately incorporated in as hardships or reasons to deter from guideline support why they are appropriate.

Only other explanation is they may apply only to child support for adult children.

2. Section 4012 sets forth the old language concerning reasonable security for payment of child support - should this refer to section 4600, et seq., where it has the detailed provisions concerning security for child support payments.

3. I am skipping sections 4050 through 4068 in that is deals with guidelines which are being changed.

4. Section 4320 sets forth the old section 4801 circumstances which must be considered by a court in paying spousal support. (See comment 7)

However, section 4801 had the introductory paragraph in subparagraph (a) which stated "...the court may order a party to pay for support of the other party any amount, and for any period of time, as the court may deem just and reasonable, based on the standard of living established during the marriage. In making the award, the court shall consider all of the following circumstances of the respective parties:...". It then goes on to set forth the circumstances

Section 4320 simply states in ordering spousal support, the court shall consider all the following circumstances. Therefore, there is deletion of language based upon the standard of living, and deletion of the references to any amount and any duration of time. It is my opinion this other old language should be put back in.

5. Section 4321 tries to incorporate some of the language of section 4806. However, it is somewhat awkward when

the words "...the court may deny support to a party out of the separate property of the other party in any of the following circumstances:...".

6. Section 4323 incorporates the intent of the old cohabitation language in old section 4801.5. However, in 4323 in both sub (a) and sub (c), it talks about modification or termination of spousal support. There is no reference to termination in old section 4801.5. Obviously, the court could terminate under old law, but this specific reference in conjunction with cohabitation could infer a substantive change.

7. See previous reference to language missing from section 4320. It is now included in section 4330. Should it be included after 4320 with the circumstances to be considered as it was in the old section.

8. Section 4336 is the old language concerning long term marriage and retention of jurisdiction from section 4801. In my opinion this has never been clear language. Would a clarification be a substantive change - if so, how should we clarify it.

In my opinion the ambiguity lies in the fact that it says except upon written agreement of the parties to the contrary or court order determining spousal support. This says very little in that even in a short term marriage if the court is ordering support, but does not make a termination date either by agreement or by order, there would still be continued jurisdiction. I believe what the legislature was really trying to say was there is a presumption that there should not be a termination date ordered in a long term marriage. What is everybody else's thoughts?

TO: STATE BAR FLEXCOM MEMBER  
FROM: MABLEAN EPHRIAM PAXTON, ESQ.  
DATE: JUNE 4, 1992  
RE: COMMENTS REGARDING FAMILY LAW CODE - AB2650  
(PAGES 240-270)

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Section 5270: Deletes CC 4390.9, Section (d); and makes it a new Section 5272.

Section 5271: No change.

Section 5272: 5270-72 combines Sections CC Sections 4390.9 and 4390.11. No substantive changes.

Section 5280: No change. (~~Divides~~ Section 4390.6 in subparts.)

Section 5281: No change. ~~Section~~ 4390.7 (a) a separate section

Section 5282: Change makes CC 4390.7(b) a separate ~~section~~ CC4390.7 - Section (c) is now Section 5231.

Section 5283: No changes.

This is now Section 5234. Deletes CC4390.16(c).  
Now Section 5236.

Section 5290: No changes.

Section 5295: No changes.

Section 5500: No changes.

Section 5501: No changes.

Section 5505: No changes.

Section 5510: Changes word "Act" to "Law". No substantive charge.

Section 5511: No changes.

Section 5512: (a) - (d): No change

Section 5513: No changes.

Section 5514: Makes one change to include "telephoning". This change conforms to Judicial Council Form Language though currently deleted from CC 545.5. I recommend that it should remain.

Section 5515: No change.

Section 5516: No change.

Section 5517: No change.

Section 5518: No change.

Section 5519: ~~Adds new law for a "support person" for the victim. I recommend that we support the proposed change.~~ *No change*

Section 5520: No change.

Section 5530: No change.

Section 5531: No change.

Section 5550: No change.

Section 5551: No change.

Section 5600: No change.

Section 5601: No change.

Section 5602: No change.

Section 5603: No change.

Section 5604: No change.

Section 5605: No change.

Section 5606: No change.

Section 5650: No change.

Section 5651: No change.

Section 5652: (a-c) No change; section (d) - adds language to require notice in English and Spanish. I recommend that we support the change.

Section 5700: No change.

Section 5701: No change.

Section 5702: (a-c) No change. (d) Requires notice in Spanish also. I recommend support.

Section 5703: No change.

Section 5750: No change.

Section 5751: No change.

Section 5752: No change.

Section 5753: No change.

Section 5754: No change.

Section 5755: No change.

Section 5756: No change.

Section 5800: No change.

Section 5801: No change.

Section 5802: No change.

Section 5803: No change.

Section 5804: No change.

Section 5801: No change.

Section 5805: No change.

Section 5806: No change.

Section 5807: No change.

Section 6500: No change.

Section 6501: No substantive change. Clearly states age for adults of 18 years.

Section 6502: No change.

Section 6600: No change.

Section 6601: No change.  
Section 6602: No change.  
Section 6700: No change.  
Section 6701: No change.  
Section 6710: No change.  
Section 6711: No change.  
Section 6712: No change.  
Section 6713: No change.  
Section 6750: No change.  
Section 6751: No change.  
Section 6752: No change.  
Section 6753: No change.  
Section 6900: No change.  
Section 6901: No change.  
Section 6902: No change.  
Section 6910: No change.  
Section 6911: No change.  
Section 6920: No change.  
Section 6921: No change.  
Section 6922: No change.  
Section 6924: No change.  
Section 6925: No change.  
Section 6926: No change.  
Section 6927: No change.  
Section 6928: No change.



Section 6929: No change.

Section 6950: No change.

Section 7000: Change in word from "Act" to "Law". No substantive impact.

Section 7001: Deletes legislative findings-inconsequential.

Section 7002: No change.

Section 7050: No change.

## EXHIBIT 2

*Selected Family Code Issues  
Arranged by Subject*

## DOMESTIC VIOLENCE PREVENTION

2	CCP § 527	<p><i>Injunctions and temporary restraining orders</i></p> <p>Are civil harassment orders under § 527.6 covered by § 527(b)? They do not appear to be, but if there are (or should be), then repealed subdivision (b) needs to be reinstated for § 527.6 orders. [Lemon 3/18/92]</p>
2	Code	<p><i>Orders to prevent domestic violence</i></p> <p>In existing law there are a number of statutes providing authority for issuance of orders intended to prevent domestic violence. These statutes contain a number of discrepancies, e.g., under CCP § 546 (FC § 5551), an ex parte temporary order excluding a party from a dwelling requires a showing of right under color of law to possession of the premises, whereas CC § 4359 (FC § 2035), which also provides for orders excluding a party from a dwelling, does not contain this requirement. These statutes have a lot of other similar discrepancies. The Family Code has continued the existing situation for the most part. Study consolidating and reconciling these various statutes. (Note: Similar attention needs to be paid to obtaining these same orders after notice and hearing and in a judgment.)</p>
3	Code	<p><i>Temporary restraining orders</i></p> <p>The provisions providing for these orders, including the specific orders to prevent domestic violence, are repeated with slight variations throughout existing law and now throughout the code. Consider collecting these provisions in one place and reconciling inconsistencies.</p>
2	§ 70	<p><i>Definition of domestic violence</i></p> <p>In subdivision (a), the reference to "...or a person with whom the respondent has had a dating or engagement relationship" implies that the relationship has to be over. Look at this to see if this should be changed to "has or has had" as used in Penal Code.</p>
2	§ 70	<p><i>"Domestic violence"</i></p> <p>Before the most recent amendments to the source statute in the DVPA, violence toward children was included in the definition, but now it seems not to be. Study to see if this was intended. This probably is an existing law problem. (Note: This issue is related to the issue of eliminating "family or household member.")</p>

3 § 233	<p><i>Enforcement of temporary restraining orders in summons</i>                  In subdivision (c), note that Penal Code § 273.6 makes criminal only violation of three specific orders (the ones listed under the definition of “domestic violence prevention orders”), but the final sentence of subdivision (c) seems to state that violation of property restraints are punishable under Penal Code § 273.6. This is an existing law problem.</p>
2 § 241	<p><i>Granting temporary order without notice</i>                  Is the standard in § 5530 (reasonable proof of past act or acts of abuse) really an exception to the great or irreparable harm standard of CCP § 527? Or are the standards read together? On one hand, a reasonable proof of a single incident of abuse that happened a long time ago is not sufficient to establish great or irreparable harm. On the other hand, if a reasonable showing of a long-term pattern of relatively recent abuse is shown, it will then be presumed that this establishes great or irreparable harm.</p>
2 § 2037	<p><i>Required statements in order</i>                  Language has been added to the introductory clause limiting certain of these required statements to orders containing § 2035 (b), (c), or (d) orders. This should be carefully considered. Adding this limitation seems to be based on the assumption that only the orders set out in § 2035 (b), (c), or (d) would require transmittal to law enforcement and the subsequent duty by police to enforce the orders. This may be correct, but it should be confirmed. (See also §§ 2038 and 2039 where similar language has been added. If this change is going to be made in §§ 2037, 2038, and 2039, shouldn't the same change be made in § 2040?)</p>
3 § 2037	<p><i>Required statements in order</i>                  The notice set out in subdivision (c) is limited in CC § 4359 to orders enjoining molesting, etc., (§ 2035(b)), and the Judicial Council forms for the OSC and TRO do not include this statement. See, e.g., CRC 1285, 1285.05. We should also check the comparable sections in the UPA and DVPA. See, e.g., CRC 1296.10. This is an existing law problem.</p>
2 § 2040	<p><i>Enforcement of order</i>                  This statute is very confusing. The introductory part of subdivision (a) seems to state that, notwithstanding the rule in § 2038, the rule in § 2038 applies? This is an existing law problem.</p>
2 § 2045	<p><i>Protective orders included in judgment</i>                  Orders excluding a party from a dwelling were added to this section, presumably based on the cross-reference in existing law to the order under CC § 4359(a)(6) (enjoining a party from specified behavior which the court determines is necessary to effectuate orders restraining contacting, molesting, etc., and excluding a party from a dwelling). This revision to § 2045 would conform it to § 7750 (CC § 7021), which includes all three of these orders. But, check with to see if this conforms to existing practice, and, if not, whether this would be a consensus change.</p>
2 § 5501	<p><i>Additional definitions</i>                  Is it worthwhile to amend this section to include “cohabitant” and “former cohabitant,” since each of these definitions are also taken from the Domestic Violence Prevention Act and generalized in this code?</p>

2 § 5505	<p><i>"Protective order" defined</i> Should the cross-reference to Section 70 be replaced by the phrase "persons protected by the order"? This would avoid the need to make the jump to Section 70. [Yavenditti letter.]</p>
2 § 5505	<p><i>"Protective order" defined</i> The order defined in this section is the same as the order at FC § 2035(b), i.e., enjoining contacting, molesting, etc. We have also added the term "domestic violence prevention order" which includes the order in FC § 2035(b) and also those in §§ 2035(c) (exclusion from dwelling) and 2035(d) (specified behavior to effectuate the orders authorized by subdivisions (b) and (c)). One area of confusion is at Part 4 (commencing with § 5600), "emergency protective orders." These orders are called "protective orders" and § 5505 is cited in some of the Comments, but these emergency "protective orders" actually include the orders under FC §§ 2035(c) and 2035(d) also and § 75 lists these emergency protective orders within the definition of "domestic violence prevention orders." Study to see if § 5505 could be found to have been superseded by the new "domestic violence prevention order" term set out in § 75. Study language used in code to describe these orders and make consistent with § 75 if possible.</p>
1 § 5515	<p><i>Required statement and notice in order</i> The notice is not consistent with the notice in § 2037. Judicial Council form is the same, so the broader notice is being given. Consider amending § 5515 to conform or cross-refer to § 2037. [Lemon 3/18/92]</p>
2 § 5519(e)	<p><i>Support person for victim of domestic violence</i> The reference to "section" is existing law, but consider whether it should be "division." Commentator says that support person policy applies to all domestic violence orders which are now incorporated in Family Code. [Yavenditti letter.]</p>
2 § 5531(b)	<p><i>Persons who may be granted temporary restraining order</i> What is effect of this section if there is petition for dissolution, nullity, or legal separation already filed in the county? San Diego county requires filing in pending proceedings, rather than separate filing. [Yavenditti letter.]</p>
2 § 5551	<p><i>Requirement for issuance of order excluding party from residence or dwelling</i> The differences between the language in this section and in Section 2035(b), as to the standard for issuing an order excluding a person from a dwelling, should be studied. It is suggested that the differences are confusing. [Yavenditti letter.]</p>
2 § 5600 et seq.	<p><i>Emergency protective orders</i> There are two types of emergency protective orders provided for, one to protect spouses and one to protect children. The source statute (CCP § 546) duplicates the specific provisions for each of these types of orders with minor discrepancies between the two. Some distinctions may have been intended, but others appear unintended. (E.g., Dept. of Parks and Recreation peace officers can obtain an order to protect a spouse but not one to protect a child. This specific example is already on the List for FC §§ 5650 &amp; 5700.) Study these statutes and see if further consolidation and elimination of inconsistency is possible.</p>

2	§ 5650, 5700	<p><i>Issuance of ex parte emergency protective order where danger of domestic violence or child in danger of abuse</i></p> <p>Consider eliminating these two sections and writing a single section with the same officers listed. The listing of a peace officer of the Department of Parks and Recreation in § 5650 and not in § 5700 makes no sense.</p>
2	§ 5755	<p><i>Order for payment of attorney's fees and costs</i></p> <p>Who is the "prevailing party," for purposes of attorney's fees, particularly where there is a mutual order? [Yavenditti letter.]</p>
1	§ 7720	<p><i>Protective, temporary custody, and restitution orders</i></p> <p>"Plaintiff" and "defendant" were changed to "petitioner" and "respondent" in the Domestic Violence Prevention Act (Division 10). However, this section still uses "plaintiff" and "defendant." In subdivision (b)(3), "opposing party" has been substituted for "defendant." Should this be changed back to "defendant"?</p>
1	§ 7720-7721	<p><i>Orders after notice and hearing under UPA</i></p> <p>FC § 7720(a) authorizes the court, after notice and hearing, to make any of the orders described in FC § 7710 (§ 7710 describes ex-parte orders). Thus, the court may order exclusion from a dwelling after notice and hearing pursuant to § 7720. But, the standard for this order is set out in § 7721. At a minimum, it seems that § 7721 should be cross-referenced in § 7720. Or perhaps § 7721 could be added to § 7720?</p>
1	§ 7730, 7740-7741, 7743	<p><i>Various sections relating to domestic violence prevention orders under the Uniform Parentage Act</i></p> <p>In each of these sections a reference to "this chapter" has been substituted for the former reference to the specific sections providing for ex parte and noticed motion orders to prevent domestic violence. The reference to "this chapter" makes the sections applicable to orders in a summons. As noted in § 7730 Comment, this does not appear to be a substantive change. However, the other sections are not as clear. The reference to "this chapter" was inserted in the August draft, prior to adding the article containing the orders in summons. Thus, consideration should be given to restricting the application to ex parte and noticed motion orders pursuant to Articles 2 and 3.</p>
2	§ 7743	<p><i>Criminal penalty for violation of order</i></p> <p>This statute appears to misstate the scope of Penal Code § 273.6. The Penal Code section only criminalizes the orders pursuant to Family Code § 7710(a)-(c), whereas this section states that violation of any order in this chapter is punishable under Penal Code § 273.6. This is an existing law problem. Should this statute be revised to conform with FC § 2042 and 5807?</p>

TEMPORARY RESTRAINING ORDERS

3	Code	<p><i>Temporary restraining orders</i></p> <p>The provisions providing for these orders, including the specific orders to prevent domestic violence, are repeated with slight variations throughout existing law and now throughout the code. Consider collecting these provisions in one place and reconciling inconsistencies.</p>
2	§ 240	<p><i>Application of provisions of this part (i.e., application of the general provisions re ex parte orders)</i></p> <p>(1) The items listed in this section are generated from the "except" clause in CCP § 527 (third paragraph of subdivision (a)). Thus, the reference in § 240(b) to § 3600 comes from the listing of CC § 4357 in CCP § 527. But this does not make sense, since § 3600 (pendente lite spousal and child support) does not, on its face, provide for getting these orders ex parte. (Query whether ex parte support orders are possible at all. See Markey, at § 4402(3)(a)). Besides, even if one could get ex parte orders pursuant to § 3600, it is clear that one could also get noticed motion or OSC orders pursuant to § 3600 and clearly those orders are not going to be governed by the procedural rules for ex parte orders set out in §§ 240-245. It seems the reference to § 3600 should be omitted.</p> <p>(2) Section 4620 provides for an ex parte order that is not on the § 240 list (and is not within the exception clause of CCP § 527). If § 4620 is added to the list, then corresponding revisions will be required, e.g., § 242. If § 4620 is not put on the list, then the reference to § 240 <i>et seq.</i> in § 4620 needs to be replaced with a reference to CCP § 527. There are two other types of ex parte temporary orders provided for in the code that are not listed here: § 3062 (ex parte pendente lite child custody order) and § 5600 <i>et seq.</i> (emergency protective orders to prevent child and spousal abuse). Of these, § 3062 probably should be added to the list, but not § 5600 <i>et seq.</i> Section 5600 <i>et seq.</i> has its own procedural rules within that part.</p> <p>(3) What is the purpose of § 240? Its only apparent purpose is to preserve the effect of the "except" clause in CCP § 527. But if the "except" clause is defective, requiring deletions (i.e., § 3600) and additions (i.e., § 4620), then it's probably not worth preserving. Consider whether the exception (i.e., dispensing with the requirement of informal notice prior to granting an ex parte order) is effective, because in practice and by local rules notice is usually required anyway. See Markey, at § 44.15(4).</p> <p>(4) The parenthetical descriptions in the text of the statute could be rewritten. First, Article 2 (commencing with § 2035) now contains a provision re order to exclude from dwelling after notice and hearing (see new § 2036.5). Second, (a) and (b) describe the type of order itself whereas (c) and (d) only state the "act" pursuant to which the order would be issued. Maybe the introductory clause should be revised to limit the application to ex parte temporary restraining orders and then the parenthetical references rewritten to be general.</p>

2 § 240 <i>et seq.</i>	<p><i>Temporary restraining orders and support orders issued without notice</i>                  Uniform times should be worked out in consultation with the State Bar section to be set forth at Section 242. Staff and State Bar should work on creating overall uniformity among these provisions. [Minutes 10/91]</p>
2 § 241	<p><i>Granting temporary order without notice</i>                  This "duplicates" a portion of CCP § 527 that referred to a "verified complaint." Arguably, the rule stated in CCP § 527 is that the requisite showing can be made by an affidavit or by a verified pleading. The August 1991 draft substituted "verified application" for "verified complaint." More general terms could used, e.g., "verified pleading," because these orders could also be requested by a petition. Depending on what kinds of orders are on the § 240 list, there could be orders included here that would be requested by a petition.</p>
2 § 242	<p><i>Order to show cause</i>                  Existing law is unclear in this area. (As discussed in § 240 it is not clear why the statute which is now § 3600 having to do with support has been included in CCP § 527, since § 3600 does not even seem to provide for ex parte orders.) However, § 242 arguably compounds the confusion. Section 240 lists four types of orders that will be subject to the rules of this part. Then, § 242 sets out a general rule which then specifically lists three of the four types of orders as an <i>exception</i> to the general rule. The one that the general rule apparently applies to is § 3600 which, as stated, does not appear to provide for ex parte orders. Does this statute, set out a general rule that applies to nothing?</p>
2 § 243	<p><i>Readiness for hearing; continuance; counter-affidavits</i>                  In subdivision (a), and as discussed in relation to § 241, the substitution of "application" for "complaint" may be too narrow. Wouldn't it be better to use "pleading"?</p>

ATTORNEY'S FEES

2 Code	<p><i>Attorney's fees and court costs</i>                  The whole area of attorney's fees needs to be studied with a view toward consolidating and generalizing where possible.</p>
2 § 270, 272, 3652	<p><i>Attorney's fees and costs</i>                  Section 3652 uses the prevailing party standard. Sections 270 and 272 use a different standard. Study these with a view toward reconciling.</p>
2 § 271	<p><i>Attorney's fees in dissolution, nullity, and separation</i>                  This section is not general and perhaps should be moved back to Division 6.</p>
2 § 273	<p><i>Attorney's fees for enforcement of support order or civil penalty for child support delinquency</i>                  (1) This statute is using law that was chaptered out — subdivision (a)(2). Bruce Greenlee thinks that this was chaptered out on purpose and that it should be left out of the new statute.                  (2) Look at this statute to see if it is properly in the general provisions. It is support-specific and should be moved back to the support division.</p>

PROPERTY DEFINITIONS AND USAGE

2 § 65	<p><i>Definition of community property</i>                  This is not really a definition, but rather a cross-reference. Consider whether Section 65 should be revised to cross-reference only § 760. Thus, § 65 could be revised as follows: "Community property is property that is community property under Section 760." Then the comment to § 760 needs to be revised to reflect that there are many exceptions to this general statement and make some kind of listing of these. (But, see note for § 130, definition of separate property.)</p>
2 § 125	<p><i>Definition of quasi-community property</i>                  Consider moving the substantive law back to an appropriate place in the code and revise § 125 to follow the format discussed in relation to Division 1 definitions of community and separate property (§§ 65, 125), i.e., quasi-community property is property that is quasi-community property pursuant to Section XX of this code. (But see note on § 130, definition of separate property.)</p>
2 § 130	<p><i>Definition of separate property</i>                  If the definitions of community and quasi-community property are revised as proposed, this definition should be revised. One purpose of the revisions of the other two definitions was to achieve consistency of treatment. This could involve a revision to cross-reference only § 770. But this raises questions and problems. I.e., § 771 really contains a separate rule which arguably could be included in the list in § 770; § 770 does not begin with "Except as otherwise provided by statute."</p>
2 § 2501	<p><i>Definition of "community estate"</i>                  There is another and slightly different definition of "community estate" in § 901. Consider whether these can be the same.</p>
2 § 2501 et seq.	<p><i>Usage of "community estate" and other terms</i>                  The definition in § 2501 has been generalized to the whole division, but has not been used in all possible places within the division. See, e.g., §§ 2554, 2555, 2641, 2660; see also § 2556 ("community estate property or community estate debts"). Search division and insert defined term where appropriate. The entire division needs to be reviewed carefully to see whether terms are used consistently. E.g., when should "division of property" be used as opposed to "division of community estate"? Are "debt" and "liability" different; should both terms be used as they are now, or should one be exclusively adopted?</p>



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- 2 § 2502, 3515 *Definitions of "separate property"*  
 Consider eliminating these sections. If their only purpose is to allow for application of a marshaling rule for reaching community, quasi-community, and separate property, perhaps a substantive rule would be better. Providing a special, additional definition is confusing. It is also probably unnecessary; see, e.g., § 4301, which makes the marshaling concept clear without relying on a definition like § 3515. Or, if §§ 2502 & 3515 are intended to mean that within the scope of their applicability quasi-community property will be treated like community property, this could be stated directly, or a definition like § 901 (community estate) could be used.
- 
- 2 § 2620-2628 *Debts and liabilities*  
 "Debts" is used predominantly in these sections, but "liabilities" is used in the definition of "community estate" in § 2501. But "liabilities" and "obligation" are also used here. What justifies using variant terms? Should "liabilities" be used throughout (except in notice in § 2628)? Or should we roll back the conforming changes made in §§ 2551-2555?
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- 2 § 3515 *"Separate property" defined*  
 Search for the term "separate property" to see where it is used in the support division and decide whether this definition should remain as a general definition or be more restricted.
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FAMILY SUPPORT

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- 2 CC § 4731 *Application of chapter to family support*  
 Study to see if it can be eliminated and its effect retained by making the whole set of uniform guidelines for child support and the health insurance provisions currently found in this section expressly applicable to family support.
- 
- 2 § 3500 *et seq.*  
 [Support] *Family support*  
 The applicability of specific rules in this division and elsewhere in this code to family support is unclear. An overall review needs to be made in relation to this topic. Some attempt has been made to deal with this by expanding rules in this division to apply to family support. See, e.g., FC § 3552. There are others. But, confusion remains with regard to other sections. For example, the Comment to FC § 3586 formerly cited FC §§ 273 (attorney's fees for enforcement of child and spousal support orders) and 3592 (spousal support obligation arising from agreement discharged in bankruptcy). These cross-references were deleted because it was unclear whether these two sections would apply to family support orders.
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SUPPORT OF ADULT CHILDREN

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2 § 2010

*Authority of court*

Subdivision (b) is confusing.

(1) Does support of "minor" children refer to true minority (i.e., the duty set out in § 3900) or the combined duty of §§ 3900 & 3901? The source statute just says "minor children," but the duty to minor children throughout the code is the duty of §§ 3900 & 3901. Therefore, should we substitute "...support of minor children of the marriage pursuant to Sections 3900 and 3901"? (This problem runs throughout the code.)

(2) The last part of subdivision (b) states "and children for whom support is authorized under Part 2 (commencing with § 3900) of Division." But Part 2 includes all of the law on the duty to support children, including the duty to support minor children pursuant to §§ 3900 & 3901. The source statute said: "and children for whom support is authorized under [Civil Code] Section 206." This should mean the duty to support incapacitated adult children (§ 3910). A reference to § 3910 could be substituted for the final cross-reference to Part 2.

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APPLICATION OF CHILD CUSTODY RULES

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2 § 3110

*Custody investigation and report*

In this section, existing law applies to any proceeding under "this part," meaning the Family Law Act. FC § 3110 is limited to a proceeding for dissolution, legal separation or nullity. Study to see if any proceeding under "this division" is more appropriate. Would it be constitutional to treat children born outside a marriage differently than children of a marriage? There may be other sections in Division 8 which are limited to dissolution, legal separation or nullity proceedings. See, e.g., FC §§ 3150, 3190. Make a search for this and if any are found these could be dealt with at the same time.

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2 § 3120

*Independent action for exclusive custody*

Consider application to unmarried couples. What recourse do unmarried parents have to obtain permanent child support orders? Uniform Parentage Act? What are "natural rights of the parties"?

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2 § 3150

*Appointment of private counsel to represent child in custody or visitation proceeding*

Consider expanding this to apply to all proceedings in which custody is at issue.

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FREEDOM FROM PARENTAL CUSTODY AND CONTROL

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- 3 § 7800 *et seq.* *Freedom from parental custody and control [aka Termination of parental rights]*  
A Matthew Bender attorney suggested that this procedure be revised to require a finding of adoptability as a condition precedent to the termination of parental rights in all cases. The courts of appeal have apparently been divided on this question. [Minutes 10/91]
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- 1 § 7802 *Proceeding to declare minor free from parental custody and control*  
In this section, "minor" child was substituted for "child under the age of 18 years." In the comment to this section, it is stated that "child" is used consistently in this part. Formerly, the word "child" and "minor" were used interchangeably." But in § 7820, taken from the same source statute as § 7802, "child under the age of 18 years" remains. Should this be amended to match § 7802? Also, "minor" is still used in FC §§ 7808 and 7845. Should these be amended to "child" to match remainder of sections in this part?
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- 3 § 7820 *et seq.* *Termination of parental rights*  
What portions of CC § 232 survives the creation in the Welfare and Institutions Code of a procedure to terminate parental rights after a finding in the Juvenile Court that the parents cannot be reunited and their rights should be terminated. Adoption practitioners use parts of this statute, such as the abandonment rule. If it will now only be used by adoption attorneys, is a separate procedure needed? Are all of these procedural protections necessary, especially where the stepparent adoptions are being treated in the summary procedure of § 8604? Bruce Greenlee would create one process with procedural requirements somewhere between FC § 8604 and CC § 232 and would have it apply to all types of adoptions equally. Some attorneys would oppose any change that makes stepparent adoptions more difficult.
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