

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

REPORT

1994 Family Code
with Official Comments

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November 1993

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

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This report will appear in Volume 23 of the Commission's *Reports, Recommendations, and Studies*.

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NOTE

This report includes an explanatory Comment to each section of the legislation enacted on Commission recommendation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1 (1993).

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

1994 Family Code

November 1993

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Cite this recommendation as *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1, 5 (1993).

STATE OF CALIFORNIA

PETE WILSON, Governor

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November 1, 1993

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation contains the new Family Code enacted on recommendation of the Commission.

In 1989, the Commission was directed to review the statutes relating to child and family civil proceedings and prepare a recommendation regarding the establishment of a Family Code. Legislation was introduced at the 1992 legislative session by Assemblywoman Jackie Speier to effectuate the Commission's recommendation. The Family Code was created with a one-year deferred operative date to provide time for further study and to afford an opportunity for people who will be using the new code to become familiar with it.

As a result of its ongoing review, the Commission recommended additional changes in the Family Code before its operative date to improve organization of child custody and domestic violence provisions. Legislation was introduced at the 1993 legislative session by Assemblywoman Jackie Speier to accomplish these revisions, to make a number of technical revisions, and to incorporate other 1992 family law legislation into the new code. Additional Commission-recommended amendments were included in a bill authored by Senator Cathie Wright.

This report contains the complete Family Code, as amended in 1993, with Official Comments to sections enacted or amended on Commission recommendation.

The Family Code recommendations were prepared pursuant to Resolution Chapter 70 of the Statutes of 1989, continued in Resolution Chapter 72 of the Statutes of 1992.

Respectfully submitted,

Sanford M. Skaggs
Chairperson

1994 FAMILY CODE

The new Family Code is operative on January 1, 1994. This report contains the text of the new code, along with Official Comments to sections enacted or amended on Commission recommendation.¹

Background

In 1989, the Legislature directed the Law Revision Commission to review statutes relating to the adjudication of child and family civil proceedings and make recommendations to the Legislature regarding the establishment of a Family Code.² The major concern addressed by the legislative resolution was the dispersion of family law in several codes, including the Civil Code, Code of Civil Procedure, Evidence Code, Probate Code, and Welfare and Institutions Code. A result of this dispersion and piecemeal legislation over the

1. The Family Code was enacted on Commission recommendation in 1992. See 1992 Cal. Stat. ch. 162 (AB 2650). Conforming revisions related to the new code were also enacted in 1992. See 1992 Cal. Stat. ch. 163 (AB 2641). Background on the 1992 legislation is in an earlier report, *Family Code*, 22 Cal. L. Revision Comm'n Reports 1 (1992). The present report supersedes the earlier report and incorporates 1993 Family Code legislation recommended by the Commission. See 1993 Cal. Stat. ch. 219 (AB 1500); 1993 Cal. Stat. ch. 876, §§ 15.2, 15.4, 27.1-27.8, 28.5, 30.5 (SB 1068). The 1993 legislation recommended by the Commission included provisions necessary to coordinate over 40 bills enacted in 1992 with the Family Code and to restore technical amendments superseded by 1992 legislation by operation of the subordination provision in the 1992 conforming revision bill (AB 2641). See 1992 Cal. Stat. ch. 163, § 160. Technical information concerning the differences between the Family Code as enacted in 1992 and as revised in Commission-sponsored legislation in 1993 may be found in Memorandum 93-46 (Sept. 11, 1993) (on file at Commission office). The Family Code set out in this report reflects the cumulative result of the 1992 and 1993 revisions and Official Comments are drafted to describe the disposition of the statutes operative on December 31, 1993. Thus, transitional materials between versions of Family Code sections are not considered relevant.

In order to provide a complete code, as it will exist on January 1, 1994, amendments and additions made by 17 other bills enacted in the 1993 legislative session are incorporated into this report. For a list of these bills, see *infra* p. 33. The Commission does not generally provide Comments for 1993 enactments that were not a part of legislation submitted by the Commission in 1993.

2. 1989 Cal. Stat. res. ch. 70.

years has been a multiplication of procedures and inconsistent and overlapping substantive rules and procedures. This state of affairs makes the law difficult to determine and to understand. Individuals are confused as to their rights, and attorneys and judges must spend time inefficiently searching the law.

The Family Code reorganizes the major family law statutes in a new code and resolves many procedural and technical inconsistencies in existing law. Consistent with its legislative directive, the Commission did not attempt to make major substantive revisions in the law. Moreover, the Commission has sought through its review process and the participation of interested persons and organizations to detect any inadvertent substantive changes and resolve them.³

Preparation of Family Code

In 1990, as the first step in carrying out the legislative directive, the Commission distributed a questionnaire to approximately 4000 individuals, mostly lawyers and judges, but also social workers involved in family law matters. The questionnaire asked whether a new Family Code (or act) was desirable and, if so, what subjects it should cover. More than 660 responses were received. The great majority (83%) of respondents favored preparation of a new code or act. Only 17% of respondents wanted neither a new code nor act.

In preparing the new Family Code, the Commission has sought to find a consensus of opinion among interested persons and groups. Drafts were widely distributed for review beginning in early 1991 and continuing through mid-1993. A number of workshop sessions were held to consider drafts of

3. Several correspondents have expressed the concern that the Family Code project is part of a plan to establish a new family court system. The Legislature has not requested the Commission to consider this issue and the Commission has not done so. The Commission takes no position on the matter and has prepared the Family Code independent of any considerations relative to such a proposal.

the code and work through the comments of interested persons.

Following enactment of the code in 1992, the Commission continued to work with interested persons and groups in the second stage of the study to improve the organization and clarity of the child custody⁴ and domestic violence prevention provisions⁵ and to make a number of other technical revisions before the operative date of the new code.

Organization of Family Code

The Family Code reorganizes the major relevant statutes⁶ in a more logical and consistent structure. The bulk of the new code continues the substance of the first portion of the Civil Code, including the statutes on minors,⁷ parent and child,⁸ freedom from parental custody and control,⁹ and adoption,¹⁰ and the last portion of the Civil Code, including the Family Law Act¹¹ (marriage, dissolution, custody, support, property division, property rights during marriage, marital agreements) and the Uniform Parentage Act.¹² The new code also includes the Code of Civil Procedure provisions on prevention of domestic violence,¹³ conciliation courts,¹⁴ and the Revised

4. Additional background on child custody is included *infra*. See *Family Code: Child Custody*, 23 Cal. L. Revision Comm'n Reports 15 (1993).

5. Additional background on domestic violence is included *infra*. See *Family Code: Reorganization of Domestic Violence Provisions*, 23 Cal. L. Revision Comm'n Reports 23 (1993).

6. The Juvenile Court Law (Welf. & Inst. Code § 200 *et seq.*) and the provisions governing enforcement of support by district attorneys (Welf. & Inst. Code § 11475 *et seq.*) have not been included in the Family Code.

7. Civ. Code §§ 25-42, 60-70.

8. Civ. Code §§ 193-213.

9. Civ. Code §§ 232-239.

10. Civ. Code §§ 220.10-230.20.

11. Civ. Code §§ 4000-5317.

12. Civ. Code §§ 7000-7021.

13. Code Civ. Proc. §§ 537-553.

14. Code Civ. Proc. §§ 1730-1772.

Uniform Reciprocal Enforcement of Support Act.¹⁵ The new code includes the Uniform Act on Blood Tests to Determine Paternity from the Evidence Code.¹⁶ Penal Code provisions, such as those pertaining to criminal penalties for abandonment and neglect of children,¹⁷ have not been included in the new code.

The Family Code organizes the law into a number of subject-matter divisions: (1) preliminary provisions and definitions, (2) general provisions, (3) marriage, (4) rights and obligations during marriage, (5) conciliation proceedings, (6) nullity, dissolution, and legal separation, (7) division of property, (8) custody of children, (9) support, (10) prevention of domestic violence, (11) minors, (12) parent and child relationship, and (13) adoption.¹⁸

The Family Code generalizes definitions and procedural rules to the extent practicable, and uses consistent terminology where feasible. As conflicting rules were discovered, a reconciliation was attempted in the new code, but where that was not possible, the rule judged the better has been adopted. Some obsolete provisions have been omitted.¹⁹ Some minor substantive changes have inevitably been made in the course of resolving inconsistencies, but these are very few.²⁰ A

15. Code Civ. Proc. §§ 1650-1699.4.

16. Evid. Code. §§ 890-897.

17. See Penal Code §§ 270-273.7.

18. Division 20 has been placed at the end of the new code for pilot projects.

19. E.g., Civ. Code §§ 5114-5115 (provisions for a spouse to record an acknowledged inventory of separate property, with the effect of notice and prima facie evidence of title).

20. See, e.g., the following Family Code sections and Comments, set out *infra*: §§ 352 (“imbecile” and “idiot” language modernized as to issuance of marriage license), 760 (community property defined to include out-of-state real property), 4300 (“when in need” standard concerning duty to support spouse omitted as surplus), 4560 (court-ordered child support security deposit rule expanded to cover any proceeding in which court orders payment of child support, not only proceedings to establish paternity or for dissolution), 5208 (“earnings assignment order” substituted for “wage assignment” throughout law),

recurring difficulty in preparing the new code involved the disposition of references to the Family Law Act.²¹ The divisional structure of the Family Code makes reference to the subject matter of the Family Law Act cumbersome and artificial. Accordingly, the new code generally substitutes a reference to dissolution, nullity, or legal separation proceedings for Family Law Act references, unless the context requires a broader or narrower reference.²²

Acknowledgments

Many individuals and organizations²³ have assisted the Commission in the course of the Family Code study, both in the first stage of preparing the new code and in the second stage of reviewing the code for further improvements. The Commission greatly appreciates the assistance it has received and recognizes the public service performed by these individuals and organizations.

7500 (right of parent to custody, services, and earnings of “unemancipated,” instead of “unmarried” minor child).

21. Civ. Code §§ 4000-5317.

22. The Comments to the affected sections of the Family Code indicate where this substitution was made.

23. For a partial list of persons and organizations who assisted the Commission, see the original report, *Family Code*, 22 Cal. L. Revision Comm’n Reports 1, 13-16 (1992).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Family Code: Child Custody

January 1993

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Cite this recommendation as *Family Code: Child Custody*, 23 Cal. L. Revision Comm'n Reports 1, 15 (1993).

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COLIN W. WIED

January 28, 1993

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation would make technical and minor substantive changes in three areas of child custody law:

(1) The scope of the main child custody statute would be clarified and expanded to apply to determinations of custody and visitation under the Uniform Parentage Act and the Domestic Violence Prevention Act.

(2) The provisions governing custody investigations would be revised to continue parts of Code of Civil Procedure Section 263 superseded in the 1992 Family Code legislation.

(3) The mediation provisions would be consolidated to eliminate inconsistencies between mediation of stepparent and grandparent visitation and mediation of contested issues of custody and visitation.

This recommendation was prepared pursuant to Resolution Chapter 70 of the Statutes of 1989, continued in Resolution Chapter 72 of the Statutes of 1992.

Respectfully submitted,

Arthur K. Marshall
Chairperson

CHILD CUSTODY

Introduction

The Family Code was enacted during the 1992 legislative session on recommendation of the Law Revision Commission.¹ The code is subject to a delayed operative date of January 1, 1994.² The new code consolidates provisions relating to family law dispersed in several existing codes, including the Civil Code, Code of Civil Procedure, Evidence Code, Probate Code, and Welfare and Institutions Code.³ This recommendation is the result of further study of the Family Code provisions dealing with child custody. The proposed legislation⁴ makes technical and minor substantive changes in three areas of child custody law.

Scope of Child Custody Provisions

A number of sections in the existing Family Law Act⁵ apply to a “proceeding under this part,” meaning a proceeding under the act.⁶ Since the Family Law Act has been integrated into the Family Code and is not continued as a distinct unit, substitutions for these references are required. The general approach of the 1992 Family Code legislation was to substitute a reference to “proceedings for dissolution of marriage, nullity of marriage, or legal separation of the parties” for

1. 1992 Cal. Stat. ch. 162, § 10.

2. 1992 Cal. Stat. ch. 162, § 13.

3. *Family Code*, 22 Cal. L. Revision Comm’n Reports 1, 7 (1992).

4. This recommendation was enacted as part of the 1993 Family Code omnibus bill. See 1993 Cal. Stat. ch. 219 (AB 1500). The sections implementing this recommendation are included in the Family Code set out *infra*.

5. Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.

6. See, e.g., Civ. Code §§ 4602 (custody investigation), 4606 (appointment of counsel for child), 4608.1 (counseling), 4609 (family reunification services not available), 4700(b) (compensation for failure to assume caretaker responsibility or for thwarting other parent’s custody or visitation rights).

these references, since those proceedings are the primary proceedings provided by the Family Law Act. In the custody provisions,⁷ the general approach was followed for the majority of the references and application of the sections was limited to proceedings for dissolution, nullity, or legal separation.⁸ In a few instances, the references to “this part” were generalized to apply to any proceeding in the Family Code.⁹

There are two problems with these substitutions in the custody provisions. First, limiting application of a custody provision to dissolution, nullity, or legal separation is too narrow, since the Family Law Act references to “this part” include actions for exclusive custody.¹⁰ Second, generalizing provisions primarily intended for determining custody or visitation between parents so that they apply to any proceeding under the Family Code may not be appropriate. For example, some custody provisions are inappropriate in adoption proceedings.

This recommendation proposes a new section governing the scope of the custody provisions.¹¹ The new section makes clear that the provisions apply to actions for exclusive custody as well as to proceedings for dissolution, nullity, and legal separation. The sections that had been made applicable

7. For the main child custody provisions in the Family Law Act, see Civ. Code §§ 4600-4611; in the Family Code, see Fam. Code §§ 3000-3192.

8. See Fam. Code §§ 3110 (custody investigation and report), 3150 (appointment of private counsel to represent child in custody or visitation proceeding), 3190 (order requiring counseling); see also Fam. Code §§ 3022 (factors considered in determining best interest of child), 3060 (petition for temporary custody order), 3101 (visitation rights of stepparent or grandparent).

9. See Fam. Code §§ 3026 (family reunification services), 3027 (monetary sanction for false accusation of child abuse or neglect), 3028 (compensation for failure to assume caretaker responsibility or for thwarting other parent’s custody or visitation rights).

10. Civ. Code § 4603.

11. See Fam. Code § 3021 (application of part) *infra*.

to any proceeding under the Family Code are revised to apply only in the proceedings listed in the new section.¹²

The new section also expands application of the custody provisions to determinations of custody and visitation in proceedings under the Uniform Parentage Act and the Domestic Violence Prevention Act. Under existing law, these acts provide an incomplete set of rules regarding the determination of custody and visitation. Both acts provide a limited set of rules to determine temporary custody or visitation,¹³ but neither act states which rules govern permanent custody or visitation orders. Expanding application of the main custody provisions to these acts will fill this gap and be consistent with existing practice.

Reorganization of Custody Investigation Provisions

The Code of Civil Procedure provides rules applicable to “domestic relations case investigators.”¹⁴ This provision was added in 1951 and has not been amended since, despite the addition of a similar provision in the Family Law Act¹⁵ in 1969 and many subsequent amendments to the Family Law Act provision. The Code of Civil Procedure provision was therefore not continued in the Family Code.¹⁶ However, it appears that several parts of the Code of Civil Procedure provision should be continued. The proposed legislation restores them to the Family Code.¹⁷ In addition, “court-appointed

12. See Fam. Code §§ 3026 (family reunification services), 3027 (monetary sanction for false accusation of child abuse or neglect), 3028 (compensation for failure to assume caretaker responsibility or for thwarting other parent’s custody or visitation rights) *infra*.

13. For rules applicable to temporary custody or visitation pursuant to the Uniform Parentage Act, see Civ. Code §§ 7004.5, 7009, 7017.6. For rules applicable to temporary custody or visitation pursuant to the Domestic Violence Prevention Act, see Code Civ. Proc. §§ 547.5, 547.7.

14. Code Civ. Proc. § 263.

15. Civ. Code § 4602.

16. 1992 Cal. Stat. ch. 163, § 15.

17. See Fam. Code §§ 3114-3116 *infra*.

investigator” is defined so that duplicative language can be eliminated,¹⁸ and the provisions are reorganized to improve the clarity of the chapter.

Reorganization of Mediation Provisions

The mediation chapter of the Family Code¹⁹ continues existing statutes providing for mediation where a stepparent or grandparent requests visitation²⁰ and where issues of custody or visitation are contested.²¹ The 1992 Family Code legislation consolidated the parts of these two provisions that were duplicative and generalized other parts. However, some differences between the rules governing the two types of mediation were continued.

Further study of these statutes reveals that the mediation rules can be fully consolidated and the remaining differences eliminated.²² This is particularly appropriate, since the Judicial Council has drafted uniform standards of practice for mediators²³ pursuant to Legislative directive.

18. See Fam. Code § 3110 (“court-appointed investigator” defined) *infra*. Use of the new term also reconciles inconsistencies between the Code of Civil Procedure Section 263 (referring only to “domestic relations case investigator”) and Civil Code Section 4602 (referring to “probation officer, domestic relations investigator, or court appointed evaluator”).

19. See Fam. Code §§ 3160-3186 *infra*.

20. Civ. Code § 4351.5.

21. Civ. Code § 4607.

22. For provisions that are generalized, see Fam. Code §§ 3173 (mediation of dispute concerning existing order), 3175 (mediation to be set before or concurrent with hearing), 3176 (notice of mediation or hearing), 3180(b) (mediator to effect settlement in best interest of child), 3181 (separate mediation where case involves domestic violence), 3184 (recommendation that counsel be appointed for child), 3185 (hearing on issues not settled by mediation), *infra*.

23. See Cal. R. Ct. App., Div. I, § 26 (Jan. 1, 1991).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Family Code: Reorganization of
Domestic Violence Provisions

January 1993

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Cite this recommendation as *Family Code: Reorganization of Domestic Violence Provisions*, 23 Cal. L. Revision Comm'n Reports 1, 23 (1993).

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January 28, 1993

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation contains proposed legislation to consolidate and reorganize the Family Code provisions dealing with the prevention of domestic violence. The proposed law reconciles inconsistencies among separate bodies of law and makes the following minor substantive changes:

(1) The definition of “domestic violence” in the Family Code is revised to restore a reference to violence against children. In codes other than the Family Code, a reference to the Family Code definition of “domestic violence” is substituted for a substantially similar definition in the other code.

(2) Procedural rules applicable to ex parte restraining orders are clarified. Ex parte restraining orders are required to be returned within 20-25 days. The rules regarding service of the order to show cause and related papers is clarified. Where a matter is not heard within the statutory time period, the court is authorized to hear the matter, but the temporary restraining order is void unless reissued.

(3) The authority to include orders intended to prevent domestic violence in a judgment is broadened.

(4) The authority to issue ex parte visitation orders is made available whether or not the parents are married.

(5) The application of child custody provisions to custody orders issued pursuant to the Domestic Violence Prevention Act is expanded.

This recommendation was prepared pursuant to Resolution Chapter 70 of the Statutes of 1989, continued in Resolution Chapter 72 of the Statutes of 1992.

Respectfully submitted,

Arthur K. Marshall
Chairperson

REORGANIZATION OF DOMESTIC VIOLENCE PROVISIONS

Introduction

The Family Code was enacted in 1992 on recommendation of the Law Revision Commission.¹ The code is subject to a delayed operative date of January 1, 1994.² The new code consolidates provisions relating to family law dispersed in several existing codes, including the Civil Code, Code of Civil Procedure, Evidence Code, and Probate Code.³

The proposed legislation⁴ is the result of further study of the Family Code provisions dealing with prevention of domestic violence. Under existing law, substantially similar provisions for restraining orders intended to prevent domestic violence are included in three separate bodies of law in two codes: the Family Law Act,⁵ the Uniform Parentage Act,⁶ and the Domestic Violence Prevention Act.⁷ The 1992 Family Code continues the provisions for obtaining these orders in Division 6 (nullity, dissolution, and legal separation), Division 10 (prevention of domestic violence), and Part 3 of Division 12 (Uniform Parentage Act). The proposed legislation

1. 1992 Cal. Stat. ch. 162, § 10.

2. 1992 Cal. Stat. ch. 162, § 13.

3. *Family Code*, 22 Cal. L. Revision Comm'n Reports 1, 7 (1992).

4. See 1993 Cal. Stat. ch. 219 (AB 1500). The sections implementing this recommendation are included in the Family Code set out *infra*. Some revisions recommended by the Commission were deleted from the bill before final passage. These items are indicated in notes *infra*.

5. Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.

6. Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

7. Chapter 4 (commencing with Section 540) of Part 2 of Title 7 of the Code of Civil Procedure.

consolidates these provisions in Division 10 and resolves minor discrepancies among them.⁸

Revisions Following Approach of Judicial Council Forms

The Judicial Council is required to draft forms for use in proceedings relating to domestic violence restraining orders.⁹ The forms drafted by the Judicial Council are used to obtain domestic violence related orders pursuant to the Family Law Act, the Uniform Parentage Act, and the Domestic Violence Prevention Act. In many instances, the forms reconcile discrepancies in the three bodies of law. The proposed legislation reconciles discrepancies, where appropriate, by following the approach taken in the applicable Judicial Council form.¹⁰

Restoring Children to the Definition of “Domestic Violence”

The Uniform Parentage Act provides for orders restraining abuse of a child who is the subject of a proceeding under the act.¹¹ The definition of domestic violence in the Domestic Violence Prevention Act, however, does not include abuse against children.¹² Before being amended in 1990, children were expressly included in the act’s definition of domestic violence.¹³ The legislative history of the 1990 amendment supports the conclusion that elimination of the reference to children was probably inadvertent.¹⁴ Arguably, children are

8. The recommendation would make technical revisions, and would renumber the domestic violence division starting at § 6200 to make room for expansion in the preceding division.

9. Code Civ. Proc. § 543.

10. See Fam. Code §§ 2040, 6224, 6240, 6250, 6302, 6323, 6324, 6340, 7720, *infra*.

11. Civ. Code § 7020.

12. Code Civ. Proc. § 542(b).

13. 1984 Cal. Stat. ch. 1163, §§ 2-3.

14. The Commission is informed by both an Assembly Judiciary Committee consultant and the sponsor of the bill that the bill’s intent was to *broaden* the scope of this definition, not to narrow it. A previous consultant’s analysis of the bill similarly shows an intent to expand, not narrow, the scope of the definition, and does not mention omitting children from the definition. See First Supplement to Memorandum 92-56 (Aug. 31,

included in the definition of “cohabitant,” which is not restricted to adults.¹⁵ The proposed legislation revises the definition of domestic violence to include abuse against children. This continues existing law under the Uniform Parentage Act and restores the former statutory law as to children who are not the subject of a proceeding under the Uniform Parentage Act.

Additionally, the proposed legislation would revise a number of provisions from other codes, including the Code of Civil Procedure,¹⁶ Evidence Code,¹⁷ Penal Code,¹⁸ and Welfare and Institutions Code,¹⁹ that contain duplicative definitions of terms included in Division 10 of the Family Code. This will eliminate the confusion resulting from the inconsis-

1992) (on file at Commission office); Legislative Counsel’s Digest of 1990 Cal. Stat. ch. 752.

15. See Code Civ. Proc. § 542(c) (now Fam. Code § 6209).

16. See Code Civ. Proc. §§ 128 (contempt powers of court), 1219 (penalties for contempt).

17. See Evid. Code § 1037.7 (victim-counselor privilege). For another provision in the Evidence Code referring to these Family Code definitions, see Evid. Code § 1107 (admissibility of expert witness testimony regarding battered women’s syndrome).

18. Recommended revisions concerning criminal statutes in the Penal Code were eliminated from AB 1500 by amendments in the Assembly, April 28, 1993. See Penal Code §§ 136.2, 273.83, 277, 977, 653m, 853.6, 1000.6, 12028.5, 13700. The amendments of Penal Code sections containing cross-references to civil domestic violence provisions remained in the bill to substitute the appropriate Family Code reference. See, e.g., Penal Code §§ 273.5, 273.6, 977, 1377, 14152.

For existing provisions applicable to children, see Penal Code §§ 136.2 (penalty for intimidation of witness), 273.6 (penalty for violation of domestic violence prevention order), 273.7 (penalty for disclosing location of domestic violence shelter), 277 (penalty for child abduction), 653m (penalty for annoying telephone calls), 853.6 (citation and release for misdemeanors), 12028.5 (confiscating weapons at scene of domestic violence), 13700 (definitions for purposes of law enforcement response to domestic violence). For existing provisions not applicable to children, see Penal Code §§ 273.83 (individuals subject to prosecution by district attorney’s “spousal abuser” unit), 1000.6 (diversion of misdemeanant spousal abuser).

19. The recommended revision concerning the definition of domestic violence in Welfare and Institutions Code Section 18291 was eliminated from AB 1500 by an amendment in the Assembly, April 28, 1993. See Welf. & Inst. Code § 18291 (“domestic violence” defined for purposes of the Domestic Violence Centers Act).

tent definitions. In some cases, this change will make the provision applicable to cases involving violence against children.

Procedural Rules for Ex Parte Restraining Orders

Maximum time for return on an order to show cause. As a general rule, an ex parte restraining order is to be made returnable in 15 days, absent a showing of good cause.²⁰ The Family Code continues the general 15-day rule and makes it subject to exceptions for the Family Code orders that apply a 20-day rule.²¹ This approach is confusing and a single 20-day rule should be applied throughout the Family Code.²²

Service of order to show cause and supporting papers. The Family Code rules regarding service of an order to show cause, temporary restraining order, and related papers²³ are drawn from the rules applicable to civil actions generally.²⁴ These rules are confusing. No minimum time for service is provided, but there is a provision for issuance of an order shortening the time for service. There is no requirement for service of the order to show cause or temporary restraining order, but there is a requirement that the “complaint” be served. The proposed legislation clarifies these matters by requiring the service of the order to show cause and all supporting documents be made within two days of the hearing.²⁵

Hearing on order to show cause despite void temporary restraining order. If a temporary restraining order is served but not brought to hearing within the statutory time, the tem-

20. Code Civ. Proc. § 527.

21. Code Civ. Proc. §§ 527 (applying 20-day rule to Civ. Code § 4359), 546(a); Civ. Code §§ 4701.1(d), 7020(a).

22. See Fam. Code § 242 (order to show cause) *infra*.

23. See Fam. Code § 240 *et seq.*

24. Code Civ. Proc. § 527.

25. See Fam. Code § 243 *infra*.

porary restraining order is void.²⁶ If the temporary restraining order is accompanied by an order to show cause and not brought to hearing within the statutory period, both the temporary restraining order and the order to show cause are void.²⁷ If the order to show cause is void, the court lacks jurisdiction to hear the matter. The proposed legislation changes this rule by providing that if a hearing is not held within the statutory time period, the court would be allowed to hear the matter, but the temporary restraining order would be unenforceable unless reissued.²⁸

Authority To Include Orders in Judgment

Under existing law a court may include orders to prevent domestic violence in a judgment for dissolution, nullity, or legal separation,²⁹ and under the Uniform Parentage Act.³⁰ The proposed legislation generalizes this rule. The practical effect of this change is small, since dissolution, nullity, legal separation, and Uniform Parentage Act proceedings will comprise the bulk of those to which the rule will apply. However, where these orders are obtained in a different proceeding, it is reasonable and efficient to allow these orders to be included in the judgment.

Broadened Authority To Issue Ex Parte Visitation Orders

The Family Law Act³¹ and the Uniform Parentage Act³² provide for issuance of an ex parte visitation order as part of an order intended to prevent domestic violence. The Domestic

26. See Fam. Code § 242 *infra*; Agricultural Prorate Commission v. Superior Court, 30 Cal. App. 2d 154, 85 P.2d 898 (1938).

27. McDonald v. Superior Court, 18 Cal. App. 2d 652, 64 P.2d 738 (1937).

28. See Fam. Code § 242(b) *infra*.

29. Civ. Code §§ 4458, 4516.

30. Civ. Code § 7021.

31. Civ. Code § 4359(a)(4).

32. Civ. Code § 7020(a)(4).

Violence Prevention Act,³³ authorizes *ex parte* visitation orders only where the parties are married. The Judicial Council form for use in proceedings pursuant to the Domestic Violence Prevention Act and the Uniform Parentage Act³⁴ adopts the approach of the Domestic Violence Prevention Act.

The proposed legislation generalizes the approach of the Family Law Act and the Uniform Parentage Act, providing that an *ex parte* visitation order may be issued whether or not the parties are married.³⁵ Since issuance of the order is discretionary, there is no reason to prevent a court from issuing an *ex parte* visitation order in domestic violence cases, where appropriate, solely because a child's parents are not married.

Expanded Application of Custody Provisions

The Domestic Violence Prevention Act authorizes the court to issue custody and visitation orders,³⁶ but does not provide a full set of rules for determining these matters.³⁷ The proposed legislation provides that the main custody provisions of Division 8 apply in the determination of custody or visitation pursuant to the Domestic Violence Prevention Act.³⁸

33. Code Civ. Proc. 546(a).

34. See Cal. R. Ct. 1296.10 (rev. Jan. 1, 1991) (order to show cause and temporary restraining order). See also Cal. R. Ct. 1285.05 (rev. July 1, 1991) (temporary restraining order for use in proceeding for dissolution, nullity, or legal separation).

35. See Fam. Code § 6323 (determining temporary custody and visitation). This feature of the recommendation was removed from AB 1500 by an amendment in the Assembly, April 28, 1993.

36. Code Civ. Proc. §§ 546(a)-(b), 547(b).

37. Code Civ. Proc. §§ 547.5, 547.7.

38. See Fam. Code § 6222 (matters to be considered when custody or visitation order issued pursuant to Domestic Violence Prevention Act) *infra*.

FAMILY CODE

Note. The following part of this report sets out the Family Code as operative on January 1, 1994. The code was enacted in 1992, and substantially amended in 1993, on recommendation of the Law Revision Commission. See 1992 Cal. Stat. ch. 162; 1993 Cal. Stat. ch. 219; 1993 Cal. Stat. ch. 876, §§ 15.2, 15.4, 27.1-27.6.

Family Code revisions were also made in a number of other bills enacted in the 1993 legislative session:

Ch. 148 (AB 1331)	Ch. 832 (SB 306)
Ch. 176 (AB 877)	Ch. 876 (SB 1068)
Ch. 266 (SB 970)	Ch. 935 (SB 145)
Ch. 301 (AB 197)	Ch. 1101 (AB 1469)
Ch. 450 (SB 255)	Ch. 1156 (SB 541)
Ch. 494 (AB 1430)	Ch. 1158 (SB 1152)
Ch. 583 (AB 284)	Ch. 1229 (AB 224)
Ch. 745 (SB 788)	Ch. 1240 (AB 1277)
Ch. 758 (SB 792)	

These revisions are included in the following material so that the code will be complete in the form operative on January 1, 1994. However, the Commission issues Official Comments only on provisions that were enacted on Commission recommendation. A “Note” follows sections for which there is no Commission comment and to indicate parts of sections affected by non-Commission bills.

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FAMILY CODE

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

PART 1. PRELIMINARY PROVISIONS

§ 1. Title of code

1. This code shall be known as the Family Code.

Comment. Section 1 is a standard type of provision found in many other codes. See, e.g., Bus. & Prof. Code § 1; Evid. Code § 1; Prob. Code § 1; Veh. Code § 1; see also Civ. Code §§ 1, 21. The operative date of this code is January 1, 1994. See 1992 Cal. Stat. ch. 162, § 13.

§ 2. Continuation of existing law

2. A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment, and a reference in a statute to the provision of this code shall be deemed to include a reference to the previously existing provision unless a contrary intent appears.

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

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

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

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

(3) *Restates without substantive change.* A new provision “restates” a former provision “without substantive change” if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the “same in substance.”

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

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

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

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

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

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

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

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

§ 3. Construction of provision drawn from uniform act

3. A provision of this code, insofar as it is the same in substance as a provision of a uniform act, shall be construed to effectuate the general purpose to make uniform the law in those states which enact that provision.

Comment. Section 3 generalizes former Civil Code Sections 5003, 5150(1)(i), and 5301, Code of Civil Procedure Section 1651, and Evidence Code Section 891. This section expands the uniform construction rule to the Uniform Parentage Act, which formerly lacked a uniform construction provision. Provisions of the Family Code drawn from uniform acts include:

Uniform Premarital Agreement Act (§§ 1600-1617)
Uniform Divorce Recognition Act (§§ 2090-2093)
Uniform Child Custody Jurisdiction Act (§§ 3400-3425)
Uniform Reciprocal Enforcement of Support Act (§§ 4800-4854)
Uniform Act on Blood Tests to Determine Paternity (§§ 7550-7557)
Uniform Parentage Act (§§ 7600-7730)

See also Sections 7900-7910 (Interstate Compact on Placement of Children).

The former Uniform Civil Liability for Support Act has not been continued as a uniform act. For the disposition of the former sections, see the Comments to Sections 3550-3551, 3554, 3651, 3900, 3910(a), 4000, 4002, 4300, 4303, 4320, 4400, 4402-4405.

§ 4. Transitional provision for amendments, additions, and repeals

4. (a) As used in this section:

(1) “New law” means either of the following, as the case may be:

(A) The act that enacted this code.

(B) The act that makes a change in this code, whether effectuated by amendment, addition, or repeal of a provision of this code.

(2) “Old law” means the applicable law in effect before the operative date of the new law.

(3) “Operative date” means the operative date of the new law.

(b) This section governs the application of the new law except to the extent otherwise expressly provided in the new law.

(c) Subject to the limitations provided in this section, the new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date, including, but not limited to, commencement of a proceeding, making of an order, or taking of an action.

(d) If a document or paper is filed before the operative date, the contents, execution, and notice thereof are governed by the old law and not by the new law; but subsequent proceedings taken after the operative date concerning the document or paper, including an objection or response, a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law.

(e) If an order is made before the operative date, or an action on an order is taken before the operative date, the validity of the order or action is governed by the old law and not by the new law. Nothing in this subdivision precludes proceedings after the operative date to modify an order made, or alter a course of action commenced, before the operative date to the extent proceedings for modification of an order or alteration of a course of action of that type are otherwise provided in the new law.

(f) No person is liable for an action taken before the operative date that was proper at the time the action was

taken, even though the action would be improper if taken on or after the operative date, and the person has no duty, as a result of the enactment of the new law, to take any step to alter the course of action or its consequences.

(g) If the new law does not apply to a matter that occurred before the operative date, the old law continues to govern the matter notwithstanding its repeal or amendment by the new law.

(h) If a party shows, and the court determines, that application of a particular provision of the new law or of the old law in the manner required by this section or by the new law would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons in connection with an event that occurred or circumstance that existed before the operative date, the court may, notwithstanding this section or the new law, apply either the new law or the old law to the extent reasonably necessary to mitigate the substantial interference.

Comment. Section 4 is comparable to Probate Code Section 3. This section provides general transitional rules applicable to the Family Code. This section applies both to the act that enacted the Family Code and to any later act that changes the code, whether the change is effectuated by amendment, addition, or repeal of a provision of the code.

The rules stated in this section are general provisions that apply absent a special rule stated in a new law. Special rules may defer or accelerate application of a new law despite the general rules stated in this section. See subdivision (b).

The general rule prescribed in subdivision (c) is that a new law applies immediately on its operative date to all matters, including pending proceedings. The general rule is qualified by the exceptions listed in subdivision (d) (contents, execution, and notice of papers and documents are governed by the law applicable when the paper or document was filed), subdivision (e) (orders are governed by the law applicable when the order was made, subject to any applicable modification procedures), and subdivision (f) (acts are governed by the law applicable when the act was done).

Where a new law fails to address a matter that occurred before its operative date, subdivision (g) makes clear that old law continues to govern the matter.

Because it is impractical to attempt to deal with all the possible transitional problems that may arise in the application of a new law to various circumstances, subdivision (h) provides a safety valve that permits the court to vary the application of the new law where there would otherwise be a substantial impairment of procedure or justice. This provision is intended to apply only in the extreme and unusual case, and is not intended to excuse compliance with the basic transitional provisions simply because of minor inconveniences or minor impacts on expectations or other interests.

In addition to governing other substantive provisions, Section 4 also governs itself. It therefore becomes operative on the date the Family Code becomes operative and applies to provisions enacted and operative before, on, or after that date.

§ 5. Effect of headings in code

5. Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of this code.

Comment. Section 5 is comparable to Probate Code Section 4. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 9; Corp. Code § 6; Evid. Code § 5; Gov't Code § 6; Veh. Code § 7.

§ 6. Construction of code

6. Unless the provision or context otherwise requires, the general provisions and rules of construction in this part govern the construction of this code.

Comment. Section 6 is comparable to Probate Code Section 6. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 8; Corp. Code § 5; Evid. Code § 4; Lab. Code § 5; Veh. Code § 6. See also Section 2 Comment.

§ 7. Reference to statute includes amendments and additions

7. Whenever a reference is made to a portion of this code or to another law, the reference applies to all amendments and additions regardless of when made.

Comment. Section 7 is comparable to Probate Code Section 7. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 12; Corp. Code § 9; Evid. Code § 6; Gov't Code § 9; Veh. Code § 10. See also Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision).

§ 8. Reference to division, part, chapter, article, section, or part of section

8. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

(h) "Subparagraph" means a subparagraph of the paragraph in which that term occurs.

Comment. Section 8 is comparable to Civil Code Section 14(6). This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 15; Corp. Code § 10; Veh. Code § 11. More recent codes have expanded the section to include additional definitions found in Section 8. See, e.g., Evid. Code § 7; Prob. Code § 8.

§ 9. Construction of tenses

9. The present tense includes the past and future tenses, and the future, the present.

Comment. Section 9 is comparable to part of Civil Code Section 14. This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 14; Food & Agric. Code § 19; Lab. Code § 11; Prob. Code § 9; Veh. Code § 12.

§ 10. Construction of singular and plural

10. The singular number includes the plural, and the plural, the singular.

Comment. Section 10 is comparable to part of Civil Code Section 14. This section is a standard provision found in many other codes. See, e.g., Corp. Code § 13; Food & Agric. Code § 21; Lab. Code § 13; Prob. Code § 10; Veh. Code § 14.

§ 11. Reference to married person includes formerly married person

11. A reference to “husband” and “wife,” “spouses,” or “married persons,” or a comparable term, includes persons who are lawfully married to each other and persons who were previously lawfully married to each other, as is appropriate under the circumstances of the particular case.

Comment. Section 11 restates without substantive change and generalizes former Civil Code Section 4350.5. The terms “spouses” and “married persons,” and the reference to a “comparable term,” have been added. The former provision applied only to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), whereas Section 11 applies to the entire Family Code. The rule stated in Section 11 applies unless the provision or context otherwise requires. See Section 6.

§ 12. Meaning of shall, may, shall not, and may not

12. “Shall” is mandatory and “may” is permissive. “Shall not” and “may not” are prohibitory.

Comment. The first sentence of Section 12 is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 19; Corp. Code § 15; Lab. Code § 15; Prob. Code § 12; Veh. Code § 15. The first sentence also generalizes former Code of Civil Procedure Section 1732, which applied only to conciliation proceedings (former Title 11.5 (commencing with former Section 1730) of the Code of Civil Procedure, now Division 5 (commencing with Section 1800) of the Family Code).

The second sentence is a new provision making clear that “shall not” and “may not” are equivalent prohibitory expressions. This is not a substantive change.

§ 13. Severability of provisions

13. If a provision or clause of this code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

Comment. Section 13 generalizes former Civil Code Section 7018 and former Code of Civil Procedure Section 1656. The scope of the former provisions has been expanded to apply to the entire Family Code. The former provisions applied only to the uniform acts of which they were a part, i.e., the Uniform Parentage Act (former Part 7 (commencing with former Section 7000) of Division 4 of the Civil Code, now Part 3 (commencing with Section 7600) of Division 12 of the Family Code), and the Revised Uniform Reciprocal Enforcement of Support Act of 1968 (former Title 10a (commencing with former Section 1650) of Part 3 of the Code of Civil Procedure, now Chapter 6 (commencing with 4800) of Part 5 of Division 9 of the Family Code). This section is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 24; Corp. Code § 19; Food & Agric. Code § 17; Lab. Code § 24; Prob. Code § 11.

PART 2 . DEFINITIONS

§ 50. Application of definitions

50. Unless the provision or context otherwise requires, the definitions and rules of construction in this part govern the construction of this code.

Comment. Section 50 is comparable to Probate Code Section 20. This section is a standard provision found in many other codes. See, e.g., Corp. Code § 5; Evid. Code § 100; Food & Agric. Code § 25; Veh. Code § 100. See also Sections 11 (reference to married person includes formerly married person), 12 (meaning of “shall,” “may,” “shall not,” and “may not”). For comparable provisions, see Sections 6, 900, 2500, 3000, 3500, 3760, 4802, 5200, 6900, 8500.

§ 58. “Child for whom support may be ordered”

58. “Child for whom support may be ordered” means a minor child and a child for whom support is authorized under Section 3587, 3901, or 3910.

Comment. Section 58 is added for convenience in drafting. For provisions concerning situations in which a child may be supported, see Sections 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated child), 4000 (civil action to enforce parent’s duty to support), 4001 (order for child support).

§ 63. “Community estate”

63. “Community estate” includes both community property and quasi-community property.

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

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

This section omits the language found in former Civil Code Section 5120.020(a) stating that community property includes real property situated in another state that would be community property if situated in this state. This language is no longer necessary, since Section 760 provides that community property includes real and personal property, wherever situated, acquired by a married person during marriage while domiciled in this state. See Section 760 Comment. When enacted in 1984 (as former Civil Code Section 5120.020), the inclusion of quasi-community property within the formerly-used term “community property” was intended to help implement the policy of Section 912 that quasi-community property is treated as community property rather than separate property for purposes of liability. For background on former

Civ. Code § 5120.020, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

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

§ 65. “Community property”

65. “Community property” is property that is community property under Part 2 (commencing with Section 760) of Division 4.

Comment. Section 65 is a new provision included for drafting convenience. See also Section 751 (respective interests of spouses in community property during marriage).

§ 67. “County”

67. “County” includes city and county.

Comment. Section 67 is a new provision drawn from part of Civil Code Section 14.

§ 80. “Employee pension benefit plan”

80. “Employee pension benefit plan” includes public and private retirement, pension, profit sharing, stock bonus, thrift, and similar plans of deferred compensation, whether of the defined contribution or defined benefit type.

Comment. Section 80 continues without change and generalizes former Civil Code Section 4363.3. The former provision applied only to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), whereas Section 80 applies to the entire Family Code. For a special definition of “employee benefit plan,” see Section 755.

§ 92. “Family support”

92. “Family support” means an agreement between the parents, or an order or judgment, that combines child support and spousal support without designating the amount to be

paid for child support and the amount to be paid for spousal support.

Comment. Section 92 continues parts of the first and second sentences of former Civil Code Section 4811(d) without substantive change and adds language that expands the definition to include family support orders and judgments.

§ 95. “Income and expense declaration”

95. “Income and expense declaration” means the form for an income and expense declaration in family law matters adopted by the Judicial Council.

Comment. Section 95 continues without change and generalizes the last paragraph of former Civil Code Section 4357.5(a). Former Section 4357.5 applied only to expedited support orders, whereas Section 95 applies to the entire Family Code. See Cal. R. Ct. 1243 (rev. July 1, 1985) (financial declarations), 1285.50 (income and expense declaration form); Sections 115 (property declaration), 211 (Judicial Council rules of practice and procedure).

§ 100. “Judgment” and “order”

100. “Judgment” and “order” include a decree, as appropriate under the circumstances.

Comment. Section 100 is a new provision. Throughout this code references to “decree” have been eliminated as surplus. See, e.g., Sections 155, 215, 233, 290-291, 310, 772, 781, 2310, 2313, 2330.5, 2336, 2340, 2346, 3120, 3131, 4338, 4414, 4500, 4506, 5100-5103, 7611-7612, 7642, 8503, 8604, 9100-9102. This section recognizes that the term “decree” will still be used in certain instances. See, e.g., Sections 3400-3425 (Uniform Child Custody Jurisdiction Act), 4800-4854 (Uniform Reciprocal Enforcement of Support Act).

§ 105. “Person”

105. “Person” includes a natural person, firm, association, organization, partnership, business trust, corporation, or public entity.

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

§ 110. “Proceeding”

110. “Proceeding” includes an action.

Comment. Section 110 is a new provision added for drafting convenience. One purpose of this section is to make clear that where “proceeding” is used in this code, there is no intention to exclude an “action.” This section rejects hypertechnical arguments that the application of a particular rule depends on the fortuity of whether a particular matter is termed an action or a proceeding. Thus, for example, Section 200 concerning the jurisdiction of the superior court in “proceedings” under this code, applies with equal force to any matter referred to as an “action.”

§ 115. “Property declaration”

115. “Property declaration” means the form for a property declaration in family law matters adopted by the Judicial Council.

Comment. Section 115 is a new provision designed to permit easy reference to the property declaration form adopted by the Judicial Council. See Cal. R. Ct. 1243 (rev. July 1, 1985) (financial declarations), 1285.55 (property declaration form); Sections 95 (income and expense declaration), 211 (Judicial Council rules of practice and procedure).

§ 125. “Quasi-community property”

125. “Quasi-community property” means all real or personal property, wherever situated, acquired before or after the operative date of this code in any of the following ways:

(a) By either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition.

(b) In exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

Comment. Section 125 continues without substantive change and generalizes former Civil Code Section 4803. The former provision applied only to the former Family Law Act (former Part 5 (commencing

with former Section 4000) of Division 4 of the Civil Code), whereas Section 125 applies to the entire Family Code.

By defining “quasi-community property” to include all property, wherever situated, that would have been treated as community property had the acquiring spouse been domiciled in California at the time of acquisition, Section 125 ensures that the division of marital property on dissolution of marriage, nullity of marriage, or legal separation of the parties will not be controlled by the fortuity of when or where the property was initially acquired. Section 125 makes clear that property of the type described in Sections 771, 772, and 781 is not quasi-community property. For background on former Civ. Code § 4803, see *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm’n Reports 113 (1969).

§ 127. “Respondent”

127. “Respondent” includes defendant, where appropriate.

Comment. Section 127 is a new provision included for drafting convenience.

§ 130. “Separate property”

130. “Separate property” is property that is separate property under Part 2 (commencing with Section 760) of Division 4.

Comment. Section 130 is a new provision included for drafting convenience. See also Sections 2502 (defining “separate property” for purposes of division of community estate), 3515 (defining “separate property” for purposes of support).

§ 142. “Spousal support”

142. “Spousal support” means support of the spouse of the obligor.

Comment. Section 142 is a new provision included for drafting convenience. As used in this section, “spouse” refers to persons who are lawfully married to each other and to persons who were previously lawfully married to each other. See Section 11. As used in a particular provision, this definition does not apply if the provision or context otherwise requires. See Section 50.

§ 145. “State”

145. “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

Comment. Section 145 is a new provision drawn from Code of Civil Procedure Section 676.1(12). For special definitions of “state” applicable to specific acts, see Sections 3402(j) (Uniform Child Custody Jurisdiction Act), 4802(j) (Uniform Reciprocal Enforcement of Support Act).

§ 150. “Support”

150. “Support” refers to a support obligation owing on behalf of a child, spouse, or family, or an amount owing pursuant to Section 11350 of the Welfare and Institutions Code. It also includes past due support or arrearage when it exists. “Support,” when used with reference to a minor child or a child described in Section 3901, includes maintenance and education.

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

§ 155. “Support order”

155. “Support order” means a judgment or order of support in favor of an obligee, whether temporary or final, or subject to modification, termination, or remission, regardless of the kind of action or proceeding in which it is entered.

Comment. Section 155 provides a general definition of “support order” that is drawn from the definition of “support order” in the Uniform Reciprocal Enforcement of Support Act, continued in Section 4802(k), except that the definition provided by Section 155 does not include the word “decree.” See Section 100 (“judgment” and “order” include decree, as appropriate). The word “termination” is used in place

of “revocation.” This is not a substantive change. As used in a particular provision, this all-inclusive definition does not apply if the provision or context otherwise requires. See Section 50.

DIVISION 2. GENERAL PROVISIONS

PART 1 . JUR ISDIC TION

§ 200. Jurisdiction in superior court

200. The superior court has jurisdiction in proceedings under this code.

Comment. Section 200 generalizes provisions found throughout former law. See, e.g., former Civ. Code §§ 36.1, 36.2, 65, 197.5, 206.5, 221.60, 221.72, 222.20, 222.70, 222.72, 224.30, 222.90, 224.45, 224.47, 224.64, 224.66, 224.80, 224.93, 226.64, 227.10, 227.40, 227.46, 228.10, 229.30, 230.20, 233, 233.5, 233.6, 245, 4101, 4102, 4212, 4213, 4306, 4351, 4351.5, 4357, 4359, 4365, 4450, 4503, 4551, 4703, 7007, 7017, 7020; former Code Civ. Proc. §§ 1672.5, 1771; former Prob. Code § 3301. Each of the former sections is continued in the Family Code, but the reference to the “superior” court has been omitted as surplus.

PART 2 . GEN ERAL PR OC EDUR AL PR OVISIONS

§ 210. General rules of practice and procedure

210. Except to the extent that any other statute or rules adopted by the Judicial Council provide applicable rules, the rules of practice and procedure applicable to civil actions generally apply to, and constitute the rules of practice and procedure in, proceedings under this code.

Comment. Section 210 is a new provision drawn from Probate Code Section 1000. Section 210 is consistent with prior practice. See Cal. R. Ct. 1206, 1207 (1970).

Section 210 provides a default rule that applies in circumstances where there is not a special statutory or court rule applicable to proceedings under this code. The general rule stated in this section is subject to many special provisions in this code and other statutes governing practice and procedure, and also is subject to the rulemaking power of the Judicial Council. See Section 211 (Judicial Council rules of practice and procedure).

This code does not include a general rule regarding appeals. Therefore, the rule applicable to civil actions generally applies except to the extent that another statute or a rule adopted by the Judicial Council provides otherwise. See Code of Civ. Proc. §§ 904.1 (when appeal may be taken from superior court judgment or order). For provisions of this code dealing with rights of appeal, see Sections 2025 (appeal of bifurcated issue), 2400, 2404 (waiver of appeal in summary dissolution proceeding), 2554 (court valuation of property for purposes of arbitration not appealable), 2555 (disposition of property subject to revision on appeal), 3554 (support order or judgment appealable as in other civil actions), 4847 (appeal by Attorney General from support order under URESA), 7669 (appeal from order as to father's consent for adoption), 7894 (appeal from order or judgment freeing child from parental custody and control), 7895 (appeal by indigent appellant from judgment freeing child from parental custody and control), 8815 (appeal from order as to withdrawal of consent in independent adoption), 8820 (appeal from department or agency disapproval of independent adoption), 9005 (appeal from order as to consent to adoption in stepparent adoption).

For other provisions of this code dealing with appeals, see Section 2341 (effect of appeal from judgment of dissolution), 2346 (entry of judgment nunc pro tunc where no appeal taken), 4853 (stay of enforcement of registered foreign support order under URESA where appeal pending), 7805 (persons entitled to inspect court papers in appeal from proceeding to declare freedom from parental custody and control). See also Code Civ. Proc. § 917.7 (special rules regarding stay on appeal of provisions regarding child custody and exclusion from dwelling.)

§ 211. Judicial Council rules of practice and procedure

211. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this code.

Comment. Section 211 continues without change and generalizes former Civil Code Section 4001. The former provision applied only to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act), whereas Section 211 applies to the entire Family Code.

For other provisions relating to Judicial Council rules, see, e.g., Sections 2021 (joinder of interested person), 2025 (appeal of bifurcated issue), 2070 (joinder), 2321 (notice of amendment), 3830 (standards for software to determine support).

For provisions relating to Judicial Council forms, see, e.g., Sections 95 ("income and expense declaration"), 115 ("property declaration"), 2062

(notice of appearance), 2104 (preliminary declaration of disclosure), 2105 (final declaration of disclosure), 2250 (petition for judgment of nullity), 2331 (petition and summons), 2401 (joint petition), 2402 (revocation of joint petition), 3417 (affidavit), 3634 (expedited child support order), 3668 (discovery before modification or termination of support order), 3694 (simplified modification of support order), 3772 (health insurance coverage assignment), 4068 (child support worksheets and forms), 4506 (abstract of judgment), 4732 (civil penalty for child support delinquency), 5295 (earnings assignment order for support), 6222 (in forma pauperis), 6226 (orders intended to prevent domestic violence), 7110 (court declaration of emancipation of minor).

For provisions relating to other Judicial Council matters, see, e.g., Sections 1816 (development of training program), 1850-1852 (duties in connection with statewide coordination of family mediation and conciliation services), 2400 (adjustment of dollar amounts to reflect California Consumer Price Index), 2406 (summary dissolution brochure), 3153 (guidelines for determining eligibility for county payment of counsel), 3162 (uniform standards of practice for mediation), 3686 (age increase factor), 4054 (periodic review of statewide uniform guideline), 4067 (continuing review of statewide uniform guideline), 4071 (maximum hardship deduction table), 4552 (duties regarding procedure for deposit of money to secure future child support payments, including development of rules and forms).

§ 212. Verification of pleadings

212. A petition, response, application, opposition, or other pleading filed with the court under this code shall be verified.

Comment. Section 212 generalizes provisions found throughout former law. See, e.g., former Civ. Code §§ 64, 206.5, 230.20, 232.9, 4102, 4710. Each of the former sections is continued in the Family Code, but the reference to a “verified” pleading has been omitted as surplus, since Section 212 applies to the entire Family Code. Section 212 codifies existing family law practice. See, e.g., Cal. R. Ct. 1281 (rev. Jan. 1, 1993) (petition), 1282 (response), 1285.20 (application for order and supporting declaration). See also Code Civ. Proc. § 446 (verification of pleadings).

§ 213. Respondent’s request for affirmative alternative relief

213. (a) In a hearing on an order to show cause, or on a modification thereof, or in a hearing on a motion, other than for contempt, the responding party may seek affirmative relief alternative to that requested by the moving party, on the same

issues raised by the moving party, by filing a responsive declaration within the time set by statute or rules of court.

(b) This section applies in any of the following proceedings:

(1) A proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

(2) A proceeding relating to a protective order described in Section 6218.

(3) Any other proceeding in which there is at issue the visitation, custody, or support of a child.

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

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

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

§ 214. Private trial

214. Except as otherwise provided in this code or by court rule, the court may, when it considers it necessary in the interests of justice and the persons involved, direct the trial of any issue of fact joined in a proceeding under this code to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

Comment. Section 214 continues without change and generalizes former Civil Code Section 4360. The former provision applied only to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act), whereas Section 214 applies to the entire Family Code. Section 214 is also made subject to exceptions provided in this code or by court rule. Section 214 provides an exception to the general rule stated by Code of Civil Procedure Section 124 (court proceedings to be public).

Special provisions of the Family Code may provide more restrictive rules that prevail over the rule stated in Section 214. See, e.g., Sections 1818 (mandatory exclusion from conciliation proceedings), 7884

(mandatory exclusion from proceeding to declare child free from parental custody and control), 8611 (mandatory exclusion from adoption proceeding). Particular statutes may provide special rules concerning exclusion of the public from hearings that also prevail over the general rule of Section 214. See, e.g., Sections 591(e) (confidentiality of proceeding for waiver of premarital examinations prior to issuance of marriage license), 7643 (confidentiality of Uniform Parentage Act hearings and records).

§ 215. Notice prerequisite to validity of order

215. After entry of a judgment of dissolution of marriage, nullity of marriage, or legal separation of the parties, or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior notice otherwise required to be given to a party to the proceeding is served, in the same manner as the notice is otherwise permitted by law to be served, upon the party. For the purposes of this section, service upon the attorney of record is not sufficient.

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

PART 3 . TEMPORARY RESTRAINING ORDER IN SUMMONS

§ 231. Application of part

231. This part applies to a temporary restraining order in a summons issued under any of the following provisions:

(a) Section 2040 (proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties).

(b) Section 7700 (proceeding under Uniform Parentage Act).

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

§ 232. Statement in summons concerning enforcement of order

232. The summons shall state on its face that the order is enforceable in any place in this state by any law enforcement agency that has received mailed notice of the order or has otherwise received a copy of the order and any officer who has been shown a copy of the order.

Comment. Section 232 continues without substantive change the first sentence of the sixth paragraph of subdivision (a) and the first sentence of the third paragraph of subdivision (b) of former Code of Civil Procedure Section 412.21.

§ 233. Enforcement of order

233. (a) Upon filing the petition and issuance of the summons and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, the temporary restraining order under this part shall be in effect against the parties until the final judgment is entered or the petition is dismissed, or until further order of the court.

(b) The temporary restraining order is enforceable in any place in this state, but is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement

agency has received mailed notice of the order or has otherwise received a copy of the order or the officer enforcing the order has been shown a copy of the order.

(c) A willful and knowing violation of the order included in the summons by removing a child from the state without the written consent of the other party or an order of the court is punishable as provided in Section 278.5 of the Penal Code. A willful and knowing violation of any of the other orders included in the summons is punishable as provided in Section 273.6 of the Penal Code.

Comment. Subdivision (a) of Section 233 continues without substantive change the first part of the second sentences of subdivisions (a) and (b) former Code of Civil Procedure Section 412.21. The word “judgment” has been substituted for “decree.” This is not a substantive change. See Section 100 (“judgment” includes decree, as appropriate).

Subdivision (b) continues without substantive change the fifth paragraph of subdivision (a) and the second paragraph of subdivision (b) of former Code of Civil Procedure Section 412.21.

Subdivision (c) continues without substantive change the second and third sentences of the sixth paragraph of subdivision (a) and the second and third sentences of the third paragraph of subdivision (b) of former Code of Civil Procedure Section 412.21.

§ 234. Order not evidence of proscribed conduct

234. The automatic granting of the ex parte temporary restraining order under this part is not a court determination or competent evidence in any proceeding of any prior history of the conduct so proscribed occurring between the parties.

Comment. Section 234 continues without substantive change the last paragraphs of subdivisions (a) and (b) of former Code of Civil Procedure Section 412.21. The phrase “ex parte temporary restraining order under this part” has been substituted for the former references to “these ex parte orders.” This is not a substantive change, since “these ex parte orders” referred to temporary restraining orders in summons and these orders are the subject of this part.

§ 235. Modification or revocation of order; other orders

235. Nothing in this part precludes either party from applying to the court for modification or revocation of the temporary restraining order provided for in this part or for further temporary orders or an expanded temporary ex parte order.

Comment. Section 235 continues without substantive change the next to last paragraphs of subdivisions (a) and (b) of former Code of Civil Procedure Section 412.21. The phrase “this part” has been substituted for the former reference to “this subdivision” and “temporary restraining order provided for in this part” has been substituted for the former reference to “the order.” These are not substantive changes, since the former phrases referred to temporary restraining orders in summons and these orders are the subject of this part.

PART 4 . EX PARTE TEMPORARY RESTRAINING ORDERS

§ 240. Application of part

240. This part applies where a temporary restraining order, including a protective order as defined in Section 6218, is issued under any of the following provisions:

(a) Article 2 (commencing with Section 2045) of Chapter 4 of Part 1 of Division 6 (dissolution of marriage, nullity of marriage, or legal separation of the parties).

(b) Article 3 (commencing with Section 4620) of Chapter 3 of Part 5 of Division 9 (deposit of assets to secure future child support payments).

(c) Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 (Domestic Violence Prevention Act).

(d) Article 2 (commencing with Section 7710) of Chapter 6 of Part 3 of Division 12 (Uniform Parentage Act).

Comment. Section 240 continues without substantive change the fourth sentence of former Code of Civil Procedure Section 545 and parts of former Civil Code Sections 4359(a), 4701.1(d), and 7020. The former sections required that ex parte restraining orders be obtained in the

manner provided in Code of Civil Procedure Section 527. The provisions of Part 4 (commencing with Section 240) of Division 2 of the Family Code are drawn from and supersede the provisions of Code of Civil Procedure Section 527, insofar as that section formerly applied to these ex parte restraining orders. See also Section 210 (general rules of practice and procedure); Code Civ. Proc. §§ 527(b) (section not applicable to this part), 529 (exemption from undertaking requirement).

§ 241. Granting temporary order without notice

241. Except as provided in Section 6300, an order described in Section 240 may not be granted without notice to the respondent unless it appears from facts shown by the affidavit in support of the application for the order, or in the application for the order, that great or irreparable injury would result to the applicant before the matter can be heard on notice.

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

§ 242. Order to show cause

242. (a) Except as provided in subdivision (b), if an order described in Section 240 is issued, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of the order.

(b) If a hearing is not held within the time provided in subdivision (a), the court may nonetheless hear the matter, but the order is unenforceable unless reissued under Section 245.

Comment. Subdivision (a) of Section 242 continues without substantive change the third sentence of the last paragraph of former

Code of Civil Procedure Section 527(a), the second sentence of former Code of Civil Procedure Section 546(a), and the second sentence of former Civil Code Section 7020(a).

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

§ 243. Readiness for hearing

243. (a) When the matter first comes up for hearing, the applicant must be ready to proceed.

(b) If an order described in Section 240 has been issued without notice pending the hearing, the applicant must have served on the respondent, at least two days before the hearing, a copy of each of the following:

(1) The order to show cause.

(2) The application and the affidavits and points and authorities in support of the application.

(3) Any other supporting papers filed with the court.

(c) If the applicant fails to comply with subdivisions (a) and (b), the court shall dissolve the order.

(d) If service is made under subdivision (b), the respondent is entitled, as of course, to one continuance for a reasonable period, to respond to the application for the order.

(e) On motion of the applicant or on its own motion, the court may shorten the time provided in this section for service on the respondent.

(f) The respondent may, in response to the order to show cause, present affidavits relating to the granting of the order, and if the affidavits are served on the applicant at least two days before the hearing, the applicant is not entitled to a continuance on account of the affidavits.

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

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

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

§ 244. Precedence for hearing and trial

244. (a) On the day upon which the order is made returnable, the hearing shall take precedence over all other matters on the calendar of the day, except older matters of the same character, and matters to which special precedence may be given by law.

(b) When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence over all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

Comment. Section 244 is a new provision drawn from the last two sentences of the last paragraph of Code of Civil Procedure Section 527(a). See also Section 240 (application of provisions of this part).

§ 245. Reissuance of restraining order

245. (a) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent.

(b) The reissued order shall state on its face the date of expiration of the order.

(c) No fee shall be charged for the reissuance of the order unless the order had been dissolved three times previously.

Comment. Section 245 continues former Code of Civil Procedure Section 527(b) without substantive change and expands the scope of the former provision to apply to all orders listed in Section 240. Former Code of Civil Procedure Section 527(b) applied only to a temporary restraining order issued pursuant to former Code of Civil Procedure Section 546, now Article 1 (commencing with Section 6320) of Part 4 of Division 10 (ex parte protective and restraining orders issued under Domestic Violence Prevention Act).

§ 246. Time limits on issuance or denial of restraining order

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

Note. This section was added by 1993 Cal. Stat. ch. 148, § 1 (AB 1331).

PART 5. ATTORNEY'S FEES AND COSTS

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

270. If a court orders a party to pay attorney's fees or costs under this code, the court shall first determine that the party has or is reasonably likely to have the ability to pay.

Comment. Section 270 is new and generalizes provisions in former Civil Code Sections 224.10(d), 4370(a), and 4700(b). See also former Civ. Code §§ 237.5(c) (party "unable to afford counsel"), 237.7 (appellant "unable to afford counsel"), 4606(g) (party "financially unable to pay"), 4763(a) ("extreme hardship"). Section 270 is consistent with existing practice. See 1 S. Adams & N. Sevitch, *California Family Law Practice* §A.18 *et seq.* (8th ed. rev. Feb. 1991); 2 C. Markey, *California*

Family Law Practice and Procedure § 25.12[1]. See also *Rosenthal v. Rosenthal*, 197 Cal. App. 2d 289, 297-98, 17 Cal. Rptr. 186 (1961) (order to pay attorney's fees not precluded even though party's expenses exceed income); Section 271 (sanction may not put "unreasonable financial burden" on sanctioned party).

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

271. (a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.

(b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.

(c) An award of attorney's fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property.

Comment. Section 271 continues former Civil Code Section 4370.6 without substantive change, except that Section 271 is broadened to

apply to all proceedings under the Family Code. See also Section 65 (“community property” defined in Section 760 *et seq.*).

§ 272. Order for direct payment to attorney

272. (a) Where the court orders one of the parties to pay attorney’s fees and costs for the benefit of the other party, the fees and costs may, in the discretion of the court, be made payable in whole or in part to the attorney entitled thereto.

(b) Subject to subdivision (c), the order providing for payment of the attorney’s fees and costs may be enforced directly by the attorney in the attorney’s own name or by the party in whose behalf the order was made.

(c) If the attorney has ceased to be the attorney for the party in whose behalf the order was made, the attorney may enforce the order only if it appears of record that the attorney has given to the former client or successor counsel 10 days’ written notice of the application for enforcement of the order. During the 10-day period, the client may file in the proceeding a motion directed to the former attorney for partial or total reallocation of fees and costs to cover the services and cost of successor counsel. On the filing of the motion, the enforcement of the order by the former attorney shall be stayed until the court has resolved the motion.

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

**PART 6 . ENFORCEMENT OF JUDGMENTS
AND ORDERS**

§ 290. Methods of enforcement

290. A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by such other order as the court in its discretion determines from time to time to be necessary.

Comment. Section 290 continues former Civil Code Section 4380 without substantive change and expands the scope of the former provision to apply to the entire Family Code. The former provision applied only to a judgment or order made or entered “pursuant to this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). The phrase “or decree of the court” has been omitted as surplus. See Section 100 (“judgment” and “order” include decree, as appropriate). “Order” has been substituted for “order or orders.” See Section 10 (singular includes plural).

The authority granted by Section 290 is subject to the general provisions governing enforcement of judgments and orders and to any special provisions applicable to enforcement of a judgment or order made or entered pursuant to this code. For provisions governing enforcement of support orders, see Part 5 (commencing with former Section 4500) of Division 9. For provisions permitting enforcement by writ of execution without prior court approval, see Sections 5100-5101. See also Code Civ. Proc. §§ 683.130 (renewal of judgment), 1209-1222 (contempt of court).

For background on former Civ. Code § 4380, see *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm’n Reports 701, 747 (1973).

§ 291. Effect of lack of diligence in seeking enforcement

291. The lack of diligence for more than the period specified in Chapter 7 (commencing with Section 5100) of Part 5 of Division 9 in seeking enforcement of a judgment or order made, entered, or enforceable pursuant to this code that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment or order under Section 290.

Comment. Section 291 continues the first sentence of former Civil Code Section 4384 without substantive change and expands the scope of the former provision to apply to the entire Family Code. The former provision applied only to a judgment or order made or entered “pursuant to this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). The phrase “or decree of the court” has been omitted as surplus. See Section 100 (“judgment” and “order” include decree, as appropriate). The reference to Chapter 7 (commencing with Section 5100) of Part 5 of Division 9 has been substituted for the reference to former Civil Code

Section 4383. This is not a substantive change, since Chapter 7 continues former Civil Code Section 4383.

Nothing in Section 291 precludes the court from permitting enforcement after the period specified in Chapter 7 (commencing with Section 5100) of Part 5 of Division 9, even though diligence is not shown, if the court, in its discretion, determines that enforcement would be equitable in light of all the circumstances of the particular case.

For provisions governing enforcement of support orders, see Part 5 (commencing with Section 4500) of Division 9. For provisions permitting enforcement by writ of execution without prior court approval, see Sections 5100-5101. See also Code Civ. Proc. § 683.130 (renewal of judgment).

For background on former Civ. Code § 4384, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2617 (1980).

PART 7 . TRIBAL MARRIAGES AND DIVORCES

§ 295. Tribal marriages and divorces

295. (a) For the purpose of application of the laws of succession set forth in the Probate Code to a decedent, and for the purpose of determining the validity of a marriage under the laws of this state, an alliance entered into before 1958, which, by custom of the Indian tribe, band, or group of which the parties to the alliance, or either of them, are members, is commonly recognized in the tribe, band, or group as marriage, is deemed a valid marriage under the laws of this state.

(b) In the case of these marriages and for the purposes described in subdivision (a), a separation, which, by custom of the Indian tribe, band, or group of which the separating parties, or either of them, are members, is commonly recognized in the tribe, band, or group as a dissolution of marriage, is deemed a valid divorce under the laws of this state.

Comment. Section 295 continues former Civil Code Section 5138 without substantive change.

DIVISION 3. MARRIAGE

PART 1. VALIDITY OF MARRIAGE

§ 300. Marriage relation

300. Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division, except as provided by Section 425 and Part 4 (commencing with Section 500).

Comment. Section 300 continues former Civil Code Section 4100 without substantive change. In the last sentence of Section 300, “this division” has been substituted for the broader reference to “this code,” formerly meaning the Civil Code. This is not a substantive change, since all sections dealing with issuance of a license and solemnization formerly in the Civil Code are continued in this division of the Family Code.

§ 301. Capacity of adult to consent to and consummate marriage

301. An unmarried male of the age of 18 years or older, and an unmarried female of the age of 18 years or older, and not otherwise disqualified, are capable of consenting to and consummating marriage.

Comment. Section 301 continues former Civil Code Section 4101(a) without substantive change.

§ 302. Capacity of minor to consent to and consummate marriage

302. An unmarried male or female under the age of 18 years is capable of consenting to and consummating marriage if each of the following documents is filed with the county clerk issuing the marriage license:

(a) The written consent of the parents of each underage person, or of one of the parents or the guardian of each underage person.

(b) A court order granting permission to the underage person to marry, obtained on the showing the court requires.

Comment. Section 302 continues former Civil Code Section 4101(b) without substantive change. In the introductory clause, the cross reference to former Civil Code Section 4201 has been omitted and the word “county” has been added. This is not a substantive change, since former Civil Code Section 4201 required filing with the “county” clerk. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 303 (consent of court where minor has no parent), 353 (requirements for underage applicant for marriage license).

§ 303. Consent of court where minor has no parent

303. If it appears to the satisfaction of the court by application of a minor that the minor requires a written consent to marry and that the minor has no parent or has no parent capable of consenting, the court may make an order consenting to the issuance of a marriage license and granting permission to the minor to marry. The order shall be filed with the county clerk at the time the license is issued.

Comment. Section 303 continues former Civil Code Section 4102 without substantive change. The references to the “superior” court and to a “verified” application have been omitted as surplus. See Sections 200 (jurisdiction in superior court), 212 (pleadings to be verified).

§ 304. Premarital counseling

304. As part of the court order granting permission to marry under Section 302 or 303, the court shall require the parties to the prospective marriage of a minor to participate in premarital counseling concerning social, economic, and personal responsibilities incident to marriage, if the court considers the counseling to be necessary. The parties shall not be required, without their consent, to confer with counselors provided by religious organizations of any denomination. In determining whether to order the parties to participate in the premarital counseling, the court shall consider, among other factors, the ability of the parties to pay for the counseling.

The court may impose a reasonable fee to cover the cost of any premarital counseling provided by the county. The fees shall be used exclusively to cover the cost of the counseling services authorized by this section.

Comment. Section 304 continues former Civil Code Section 4101(c) without substantive change. The word “minor” has been substituted for “person under the age of 18 years.” See Section 6500 (minor).

§ 305. Proof of consent and solemnization

305. Consent to and solemnization of marriage may be proved under the same general rules of evidence as facts are proved in other cases.

Comment. Section 305 continues former Civil Code Section 4103 without substantive change.

§ 306. Procedural requirements; effect of noncompliance

306. Except as provided in Section 307, a marriage shall be licensed, solemnized, and authenticated, and the certificate of registry of marriage shall be returned as provided in this part. Noncompliance with this part by a nonparty to the marriage does not invalidate the marriage.

Comment. Section 306 continues former Civil Code Section 4200 without substantive change. The introductory clause has been added to recognize the exception provided in Section 307. The word “nonparty” has been substituted for “others than a party.”

§ 307. Application to certain religious marriages

307. This division, so far as it relates to the solemnizing of marriage, is not applicable to members of a particular religious society or denomination not having clergy for the purpose of solemnizing marriage or entering the marriage relation, if all of the following requirements are met:

(a) The parties to the marriage make, sign, and endorse on or attach to the license a statement, in the form prescribed by the State Department of Health Services, showing all of the following:

(1) The fact, time, and place of entering into the marriage.

(2) The signatures and places of residence of two witnesses to the ceremony.

(3) The religious society or denomination of the parties to the marriage, and that the marriage was entered into in accordance with the rules and customs of that religious society or denomination. The statement of the parties to the marriage that the marriage was entered into in accordance with the rules and customs of the religious society or denomination is conclusively presumed to be true.

(b) The License and Certificate of Declaration of Marriage, endorsed pursuant to subdivision (a), is returned to the county recorder of the county in which the license was issued within 30 days after the ceremony.

Comment. Section 307 continues former Civil Code Section 4216 without substantive change. In the introductory part of this section, a reference to this division has been substituted for the narrower reference to “this article” in former law. This is not a substantive change, since the former article contained the sections relating to solemnization that are continued in this division.

§ 308. Validity of foreign marriages

308. A marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state.

Comment. Section 308 continues former Civil Code Section 4104 without substantive change.

§ 309. Action to have validity of marriage determined

309. If either party to a marriage denies the marriage, or refuses to join in a declaration of the marriage, the other party may proceed, by action, to have the validity of the marriage determined and declared.

Comment. Section 309 continues former Civil Code Section 4212 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

See also Prob. Code § 1901 (determination of conservatee's capacity to marry).

§ 310. Methods of dissolution

310. Marriage is dissolved only by one of the following:

- (a) The death of one of the parties.
- (b) A judgment of dissolution of marriage.
- (c) A judgment of nullity of marriage.

Comment. Section 310 continues former Civil Code Section 4350 without substantive change. In subdivision (b), the phrase "of a court of competent jurisdiction" has been omitted as surplus. The reference to "decree" has been omitted as surplus. See Section 100 ("judgment" includes decree, as appropriate). See also Section 2344 (effect of death of either party after entry of judgment of dissolution).

**PART 2 . MARRIAGE LICENSE AND
CERTIFICATE OF REGISTRY**

§ 350. Marriage license required

350. Before entering a marriage, or declaring a marriage pursuant to Section 425, the parties shall first obtain a marriage license from a county clerk.

Comment. Section 350 continues the first part of former Civil Code Section 4201(a) without substantive change.

§ 351. Contents of license

351. The marriage license shall show all of the following:

- (a) The identity of the parties to the marriage.
- (b) The parties' real and full names, and places of residence.
- (c) The parties' ages.

Comment. Section 351 continues the last part of former Civil Code Section 4201(a) without substantive change.

§ 352. Denial of license

352. No marriage license shall be granted if either of the applicants lacks the capacity to enter into a valid marriage or

is, at the time of making the application for the license, under the influence of an intoxicating liquor or narcotic drug.

Comment. Section 352 continues the first sentence of former Civil Code Section 4201(b) without substantive change. The phrase “lacks the capacity to enter into a valid marriage” has been substituted for “is an imbecile, is insane.” This revision is consistent with Probate Code Section 1901 (determination of conservatee’s capacity to marry).

§ 353. Underage applicant

353. If an applicant for a marriage license is under the age of 18 years, the license may be granted only if both parties are capable of consenting to and consummating marriage as provided for in Section 302, and the consent or court order required by Section 303 are filed with the county clerk.

Comment. Section 353 restates the second sentence of former Civil Code Section 4201(b) without substantive change. The reference to “consents” has been omitted as surplus. See Section 10 (singular includes plural). Section 353 requires filing with (rather than “by”) the clerk to conform with Section 303 (consent of court where minor has no parent). A reference to Section 302 has been substituted for the broader reference to former Civil Code Section 4101. This is not a substantive change, since the relevant part of the former section is continued in Section 302.

§ 354. Requiring proof of facts

354. (a) Each applicant for a marriage license may be required to present authentic identification as to name.

(b) For the purpose of ascertaining the facts mentioned or required in this part, if the clerk deems it necessary, the clerk may examine the applicants for a marriage license on oath at the time of the application. The clerk shall reduce the examination to writing and the applicants shall sign it.

(c) If necessary, the clerk may request additional documentary proof as to the accuracy of the facts stated.

(d) Applicants for a marriage license shall not be required to state, for any purpose, their race or color.

Comment. Section 354 restates without substantive change the third, fourth, and fifth sentences of former Civil Code Section 4201(b). In

subdivision (b), the phrase “the applicants shall sign it” has been substituted for “subscribed by them.”

§ 355. Forms

355. (a) The forms for the application for a marriage license and the marriage license shall be prescribed by the State Department of Health Services, and shall be adapted to set forth the facts required in this part.

(b) The form for the application for a marriage license shall include an affidavit on the back, which the applicants shall sign, affirming that they have received the brochure provided for in Section 358.

(c) The affidavit required by subdivision (b) shall state:

AFFIDAVIT

I acknowledge that I have received the brochure titled

Signature of Bride

Date

Signature of Groom

Date

Comment. Section 355 continues former Civil Code Section 4201(c)-(d) without substantive change. In subdivision (b), “applicants” has been substituted for “bride and groom” for consistency with other sections in this part. See, e.g., Sections 352, 354.

§ 356. Expiration of license

356. A marriage license issued pursuant to this part expires 90 days after its issuance. The calendar date of expiration shall be clearly noted on the face of the license.

Comment. Section 356 continues the first sentence of former Civil Code Section 4204 without substantive change.

§ 357. Duties of county clerk and county recorder

357. (a) The county clerk shall number each marriage license issued and shall transmit at periodic intervals to the county recorder a list or copies of the licenses issued.

(b) Not later than 60 days after the date of issuance, the county recorder shall notify licenseholders whose certificate of registry has not been returned of that fact and that the marriage license will automatically expire on the date shown on its face.

(c) The county recorder shall notify the licenseholders of the obligation of the person solemnizing their marriage to return the certificate of registry and endorsed license to the recorder's office within 30 days after the ceremony.

Comment. Section 357 restates without substantive change the second paragraph of former Civil Code Section 4204. In subdivision (c), the phrase "person solemnizing their marriage" has been substituted for "person marrying them" to conform with other sections in this division. See, e.g., Section 420.

§ 358. Informational brochure

358. (a) The State Department of Health Services shall prepare and publish a brochure which shall contain the following:

(1) Information concerning the possibilities of genetic defects and diseases and a listing of centers available for the testing and treatment of genetic defects and diseases.

(2) Information concerning acquired immune deficiency syndrome (AIDS) and the availability of testing for antibodies to the probable causative agent of AIDS.

(b) The State Department of Health Services shall make the brochures available to county clerks who shall distribute a copy of the brochure to each applicant for a marriage license, including applicants for a confidential marriage license and notary publics receiving a confidential marriage license pursuant to Section 503.

(c) Each notary public authorizing a confidential marriage under Section 503 shall distribute a copy of the brochure to the applicants for a confidential marriage license.

(d) To the extent possible, the State Department of Health Services shall seek to combine in a single brochure all statutorily required information for marriage license applicants.

Comment. Section 358 continues former Civil Code Section 4201.5 without substantive change. In subdivision (c), a reference to Section 503 has been substituted for the broader reference to former Civil Code Section 4213. This is not a substantive change, since the relevant part of the former section is continued in Section 503.

§ 359. Certificate of registry

359. (a) Applicants for a marriage license shall obtain from the county clerk issuing the license, a certificate of registry of marriage.

(b) The contents of the certificate of registry are as provided in Division 9 (commencing with Section 10000) of the Health and Safety Code.

(c) The certificate of registry shall be filled out by the applicants, in the presence of the county clerk issuing the marriage license, and shall be presented to the person solemnizing the marriage.

(d) The person solemnizing the marriage shall complete the certificate of registry and shall cause to be entered on the certificate of registry the signature and address of one witness to the marriage ceremony.

(e) The certificate of registry shall be returned by the person solemnizing the marriage to the county recorder of the county in which the license was issued within 30 days after the ceremony.

(f) As used in this division, “returned” means presented to the appropriate person in person, or postmarked, before the expiration of the specified time period.

Comment. Section 359 restates former Civil Code Section 4202 without substantive change. The phrase “person solemnizing the marriage” has been substituted for “person performing the ceremony” throughout this section for consistency with other sections in this division. See, e.g., Section 420.

§ 360. Replacement of lost certificate of registry

360. (a) If a certificate of registry of marriage is lost or destroyed after the marriage ceremony but before it is returned to the county recorder, the person solemnizing the marriage, in order to comply with Section 359, shall obtain a duplicate certificate of registry by filing an affidavit setting forth the facts with the county clerk of the county in which the license was issued.

(b) The duplicate certificate of registry may not be issued later than one year after issuance of the original license and shall be returned by the person solemnizing the marriage to the county recorder within 30 days after issuance.

(c) The fee for issuing the duplicate marriage license and certificate of registry is five dollars (\$5).

Comment. Section 360 restates former Civil Code Section 4203 without substantive change.

PART 3 . SOLEMNIZATION OF MARRIAGE

**CHAPTER 1. PERSONS AUTHORIZED
TO SOLEMNIZE MARRIAGE**

§ 400. Persons authorized to solemnize

400. Marriage may be solemnized by any of the following who is of the age of 18 years or older:

(a) A priest, minister, or rabbi of any religious denomination.

(b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages,

commissioner or retired commissioner, or assistant commissioner of a court of record or justice court in this state.

(c) A judge or magistrate who has resigned from office.

(d) Any of the following judges or magistrates of the United States:

(1) A justice or retired justice of the United States Supreme Court.

(2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior.

(3) A judge or retired judge of a bankruptcy court or a tax court.

(4) A United States magistrate or retired magistrate.

Comment. Section 400 restates former Civil Code Section 4205 without substantive change. See also Section 402 (official of nonprofit religious institution licensed by county to solemnize marriages).

§ 401. Commissioner of civil marriages; deputies

401. (a) For each county, the county clerk is designated as a commissioner of civil marriages.

(b) The commissioner of civil marriages may appoint deputy commissioners of civil marriages who may solemnize marriages under the direction of the commissioner of civil marriages and shall perform other duties directed by the commissioner.

Comment. Section 401 continues former Civil Code Section 4205.1 without substantive change.

§ 402. Officials of nonprofit religious institutions

402. In addition to the persons permitted to solemnize marriages under Section 400, a county may license officials of a nonprofit religious institution, whose articles of incorporation are registered with the Secretary of State, to solemnize the marriages of persons who are affiliated with or are members of the religious institution. The licensee shall

possess the degree of doctor of philosophy and must perform religious services or rites for the institution on a regular basis. The marriages shall be performed without fee to the parties.

Comment. Section 402 continues former Civil Code Section 4205.5 without substantive change.

CHAPTER 2. SOLEMNIZATION OF MARRIAGE

§ 420. Essential element of solemnization

420. (a) No particular form for the ceremony of marriage is required for solemnization of the marriage, but the parties shall declare, in the presence of the person solemnizing the marriage and necessary witnesses, that they take each other as husband and wife.

(b) No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

Comment. Subdivision (a) of Section 420 continues former Civil Code Section 4206 without substantive change. Subdivision (b) continues former Civil Code Section 4206.5 without substantive change.

§ 421. Determining correctness of facts stated in license

421. Before solemnizing a marriage, the person solemnizing the marriage shall require the presentation of the marriage license. If the person solemnizing the marriage has reason to doubt the correctness of the statement of facts in the marriage license, the person must be satisfied as to the correctness of the statement of facts before solemnizing the marriage. For this purpose, the person may administer oaths and examine the parties and witnesses in the same manner as the county clerk does before issuing the license.

Comment. Section 421 restates former Civil Code Section 4207 without substantive change.

§ 422. Statement of person solemnizing marriage

422. The person solemnizing a marriage shall make, sign, and endorse upon or attach to the marriage license a statement, in the form prescribed by the State Department of Health Services, showing all of the following:

(a) The fact, date (month, day, year), and place (city and county) of solemnization.

(b) The names and places of residence of one or more witnesses to the ceremony.

(c) The official position of the person solemnizing the marriage, or of the denomination of which that person is a priest, minister, rabbi, or member of the clergy.

(d) The person solemnizing the marriage shall also type or print the person's name and address.

Comment. Section 422 continues former Civil Code Section 4208(a) without substantive change. The reference to "rabbi" has been added to subdivision (c) for consistency with Section 400 (persons authorized to solemnize).

§ 423. Return of license and statement to local registrar

423. The person solemnizing the marriage shall return the marriage license, endorsed as required in Section 422, to the county recorder of the county in which the license was issued within 30 days after the ceremony.

Comment. Section 423 continues former Civil Code Section 4208(b) without substantive change.

§ 424. Issuance of marriage certificate

424. At the request of, and for, either party to a marriage, the person solemnizing the marriage shall issue a marriage certificate showing the facts specified in Section 422.

Comment. Section 424 continues former Civil Code Section 4209 without substantive change.

§ 425. Unrecorded marriage

425. If no record of the solemnization of a marriage previously contracted is known to exist, the parties may purchase a License and Certificate of Declaration of Marriage from the county clerk in the parties' county of residence. The license and certificate shall be returned to the county recorder of the county in which the license was issued.

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

PART 4 . C O N F I D E N T I A L M A R R I A G E**CHAPTER 1. GENERAL PROVISIONS****§ 500. Requirements for confidential marriage generally**

500. When an unmarried man and an unmarried woman, not minors, have been living together as husband and wife, they may be married pursuant to this chapter by a person authorized to solemnize a marriage under Chapter 1 (commencing with Section 400) of Part 3, without the necessity of first obtaining health certificates.

Comment. Section 500 continues the first sentence of former Civil Code Section 4213(a) without substantive change.

§ 501. Application by parties for and issuance of confidential marriage license

501. Except as provided in Section 502, a confidential marriage license shall be issued by the county clerk upon the personal appearance of the parties to be married and their payment of the fees required by Sections 26840.1 and

26840.8 of the Government Code and any fee imposed pursuant to the authorization of Section 26840.3 of the Government Code.

Comment. Section 501 continues the second sentence of former Civil Code Section 4213(a) without substantive change.

§ 502. Issuance of license where party unable to personally appear

502. If, for any reason, either or both of the parties to be married is physically unable to appear in person before the county clerk, a confidential marriage license shall be issued by the county clerk to the person solemnizing the marriage upon that person's presenting an affidavit to the county clerk, signed by the person and the parties to be married, explaining the reason for the inability to appear.

Comment. Section 502 continues former Civil Code Section 4213.1 without substantive change. The phrase "person solemnizing the marriage" has been substituted for "person performing the ceremony" for consistency with other sections in this division. See, e.g., Section 420.

§ 503. Issuance of license on request of approved notary public

503. The county clerk shall issue a confidential marriage license upon the request of a notary public approved by the county clerk to authorize confidential marriages pursuant to Chapter 2 (commencing with Section 530) and upon payment by the notary public of the fees specified in Sections 26840.1 and 26840.8 of the Government Code. The parties shall reimburse a notary public who authorizes a confidential marriage for the amount of the fees.

Comment. Section 503 continues the first two sentences of former Civil Code Section 4213(b) without substantive change.

§ 504. Duration of license; restriction on use

504. A confidential marriage license is valid only for a period of 90 days after its issuance by the county clerk and may only be used in the county in which it was issued.

Comment. Section 504 continues without substantive change the third sentence of subdivision (a) and the last sentence of former Civil Code Section 4213(b).

§ 505. Form of confidential marriage license; form to include certificate of marriage and affidavit

505. (a) The form of the confidential marriage license shall be prescribed by the State Registrar of Vital Statistics.

(b) The form shall be designed to require that the parties to be married declare or affirm that they meet all of the requirements of this chapter.

(c) The form shall include a certificate of marriage, which shall be filled out by the parties upon performance of the marriage and be authenticated by the person solemnizing the marriage.

(d) The form shall include an affidavit on the back, which the husband and wife shall sign, affirming that they have received the brochure provided for in Section 358.

(e) The affidavit required by subdivision (d) shall state:

AFFIDAVIT

I acknowledge that I have received the brochure titled

Signature of Wife

Date

Signature of Husband

Date

Comment. Section 505 continues without substantive change the last paragraph of subdivision (a) and all of subdivision (i) of former Civil Code Section 4213. In subdivision (c), the phrase “person solemnizing the marriage” has been substituted for “person performing the ceremony” for consistency with other sections in this division. See, e.g., Section 420.

§ 506. Preparation and filing of marriage certificate

506. (a) The confidential marriage license shall be presented to the person solemnizing the marriage.

(b) Upon performance of the ceremony, the confidential marriage certificate shall be filled out by the parties to the marriage and authenticated by the person solemnizing the marriage.

(c) The certificate shall be returned by the person solemnizing the marriage to the office of the county clerk in the county in which the license was issued within 30 days after the ceremony.

Comment. Section 506 continues the fourth, fifth, and sixth sentences of former Civil Code Section 4213(a) without substantive change. The phrase “person solemnizing the marriage” has been substituted for “person performing the ceremony” throughout this section for consistency with other sections in this division. See, e.g., Section 420. The reference to “performance” of the ceremony has been omitted from subdivision (c) for consistency with Section 423 (return of license and statement to local registrar).

§ 507. Delivery of copy of certificate to parties

507. Upon performance of the ceremony, the person solemnizing the marriage shall give a copy of the confidential marriage certificate to the parties who were married.

Comment. Section 507 continues without substantive change the first sentence of the second paragraph of former Civil Code Section 4213(a). The phrase “person solemnizing the marriage” has been substituted for “person performing the ceremony” for consistency with other sections in this division. See, e.g., Section 420.

§ 508. Application for certified copy of certificate

508. The person solemnizing the marriage shall provide the parties who were married with an application for a certified copy of the confidential marriage certificate which shall be filled out by the parties and sent by the person solemnizing the marriage to the county clerk.

Comment. Section 508 continues without substantive change the last sentence of the second paragraph of former Civil Code Section 4213(a). The phrase “person solemnizing the marriage” has been substituted for “person performing the ceremony” for consistency with other sections in this division. See, e.g., Section 420.

§ 509. Issuance of certified copy of certificate

509. (a) A party to a confidential marriage may obtain a certified copy of the confidential marriage certificate from the county clerk of the county in which the certificate is filed in any of the following ways:

(1) By submitting the application for a certified copy of the confidential marriage certificate provided to the parties at the time of the marriage pursuant to Section 508.

(2) By personally appearing before a notary public or at the county clerk’s office in the party’s county of residence, producing proper identification, obtaining a certificate attesting to the party’s identity from the notary public or county clerk, and transmitting that certificate, together with a request for the certified copy of the confidential marriage certificate, to the county clerk of the county with which the certificate is filed.

(3) By personally appearing at the county clerk’s office where the certificate is filed and producing proper identification.

(b) Copies of a confidential marriage certificate may be issued to the parties to the marriage upon the payment of a fee equivalent to that charged for copies of a certificate of marriage.

Comment. Section 509 continues former Civil Code Section 4213(g) without substantive change.

§ 510. Replacement of lost certificate

510. (a) If a confidential marriage certificate is lost, damaged, or destroyed after the performance of the marriage

and before it is returned, the county clerk may issue a replacement upon the payment of a fee of five dollars (\$5).

(b) The duplicate license may not be issued later than one year after issuance of the original license and shall be returned by the person solemnizing the marriage to the county clerk within 30 days after issuance.

Comment. Section 510 continues former Civil Code Section 4213(h) without substantive change. The phrase “confidential marriage certificate” has been substituted for “certificate furnished pursuant to this section.” This is not a substantive change, since the certificates furnished pursuant to former Civil Code Section 4213 are confidential marriage certificates.

§ 511. Record of confidential marriage; disclosing information concerning confidential marriage

511. (a) Except as provided in subdivision (b), the county clerk shall maintain confidential marriage certificates filed pursuant to Section 506 as permanent records which shall not be open to public inspection except upon order of the court issued upon a showing of good cause.

(b) The county clerk shall keep all original certificates of confidential marriages for one year from the date of filing. After one year, the clerk may microfilm the certificates and dispose of the original certificates. The county clerk shall promptly seal and store at least one original negative of each microphotographic film made in a manner and place as reasonable to ensure its preservation indefinitely against loss, theft, defacement, or destruction. The microphotograph shall be made in a manner and on paper that complies with the minimum standards of quality approved by the National Bureau of Standards. Every reproduction shall be deemed and considered an original. A certified copy of any reproduction shall be deemed and considered a certified copy of the original.

(c) The county clerk may conduct a search for a confidential marriage certificate for the purpose of confirming the

existence of a marriage, but the date of the marriage and any other information contained in the certificate shall not be disclosed except upon order of the court.

(d) The county clerk shall, not less than quarterly, transmit copies of all confidential marriage certificates to the State Registrar of Vital Statistics. The registrar may destroy the copies so transmitted after they have been indexed. The registrar may respond to an inquiry as to the existence of a marriage performed pursuant to this chapter, but shall not disclose the date of the marriage.

Comment. Subdivision (a) of Section 511 continues without substantive change the last sentence of the first paragraph of former Civil Code Section 4213(a). The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

Subdivision (b) continues former Civil Code Section 4213.2 without substantive change.

Subdivision (c) continues former Civil Code Section 4213(f) without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

Subdivision (d) continues former Civil Code Section 4213(e) without substantive change. The reference to filings after January 1, 1982, has been omitted as obsolete.

CHAPTER 2. APPROVAL OF NOTARIES TO AUTHORIZE CONFIDENTIAL MARRIAGES

§ 530. Notary qualified to authorize confidential marriage

530. (a) No notary public shall authorize a confidential marriage pursuant to this part unless the notary public is approved by the county clerk to authorize confidential marriages pursuant to this chapter.

(b) A violation of subdivision (a) is a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or six months in jail.

Comment. Section 530 continues former Civil Code Section 4213(c)(1) and (d) without substantive change.

§ 531. Notary's application for approval to authorize confidential marriages

531. (a) An application for approval to authorize confidential marriages pursuant to this part shall be submitted to the county clerk in the county in which the notary public who is applying for the approval resides.

(b) The application shall include all of the following:

(1) The full name of the applicant.

(2) The date of birth of the applicant.

(3) The applicant's current residential address and telephone number.

(4) The address and telephone number of the place where the applicant will issue authorizations for the performance of a marriage.

(5) The full name of the applicant's employer if the applicant is employed by another person.

(6) Whether or not the applicant has engaged in any of the acts specified in Section 8214.1 of the Government Code.

(c) The application shall be accompanied by the fee provided for in Section 536.

Comment. Subdivisions (a) and (b) of Section 531 continue former Civil Code Section 4213(c)(2) without substantive change. Subdivision (c) continues part of the first sentence of former Civil Code Section 4213(c)(3).

§ 532. Required course of instruction before approval

532. No approval shall be granted pursuant to this chapter unless the notary public shows evidence of successful completion of a course of instruction concerning the authorization of confidential marriages that shall be conducted by the county clerk. The course of instruction shall not exceed two hours in duration.

Comment. Section 532 continues former Civil Code Section 4213(c)(5) without substantive change.

§ 533. Approval valid one year; renewal

533. An approval to authorize confidential marriages pursuant to this chapter is valid for one year. The approval may be renewed for additional one-year periods upon payment of the renewal fee provided for in Section 536.

Comment. The first sentence of Section 533 continues the second sentence of former Civil Code Section 4213(c)(3) without substantive change. The second sentence is new and is drawn from the third sentence of former Civil Code Section 4213(c)(3).

§ 534. List of notaries approved to authorize confidential marriages

534. (a) The county clerk shall maintain a list of the notaries public who are approved to authorize confidential marriages. The list shall be available for inspection by the public.

(b) It is the responsibility of a notary public approved to authorize confidential marriages pursuant to this chapter to keep current the information required in paragraphs (1), (3), (4), and (5) of subdivision (b) of Section 531. This information shall be used by the county clerk to update the list required to be maintained by this section.

Comment. Section 534 continues former Civil Code Section 4213(c)(6) without substantive change.

§ 535. Suspending or revoking approval of notary

535. (a) If, after an approval to authorize confidential marriages is granted pursuant to this chapter, it is discovered that the notary public has engaged in any of the actions specified in Section 8214.1 of the Government Code, the approval shall be revoked, and any fees paid by the notary public may be retained by the county clerk.

(b) If a notary public who is approved to authorize confidential marriages pursuant to this chapter is alleged to have violated a provision of this division, the county clerk shall conduct a hearing to determine if the approval of the notary public should be suspended or revoked. The notary public may present such evidence as is necessary in the notary

public's defense. If the county clerk determines that the notary public has violated a provision of this division, the county clerk may place the notary public on probation or suspend or revoke the notary public's registration, and any fees paid by the notary public may be retained by the county clerk. The county clerk shall report the findings of the hearing to the Secretary of State for whatever action the Secretary of State deems appropriate.

Comment. Section 535 continues former Civil Code Section 4213(c)(4) and (c)(7) without substantive change. In subdivision (b), a reference to this division has been substituted for the narrower reference to "this article." This is not a substantive change, since the sections in the former article are continued in this division and the other sections in this division do not impose any new obligations on notaries. In the third sentence of subdivision (b), the provision for retaining fees is new and is drawn from the last sentence of former Civil Code Section 4213(c)(3), now Family Code Section 536(c).

§ 536. Fees; use of money received

536. (a) The fee for an application for approval to authorize confidential marriages pursuant to this chapter is one hundred seventy-five dollars (\$175).

(b) The fee for a renewal of an approval is one hundred seventy-five dollars (\$175).

(c) Fees received pursuant to this chapter shall be deposited in a trust fund established by the county clerk. The money in the trust fund shall be used exclusively for the administration of the program described in this chapter.

Comment. Section 536 continues without substantive change part of the first sentence and the last two sentences of former Civil Code Section 4213(c)(3).

PART 5 . P R E M A R I T A L E X A M I N A T I O N

§ 580. Physician's certificate required as prerequisite to obtaining marriage license

580. Before a person authorized to issue marriage licenses issues a license, each applicant for the license shall file with the person a certificate from a licensed physician and surgeon that satisfies the requirements of this part.

Comment. Section 580 continues without substantive change the first part of the first sentence of former Civil Code Section 4300(a). The phrase "licensed physician and surgeon" has been substituted for "duly licensed physician" for consistency with Business and Professions Code Section 2050. See also Sections 500, 591 (when health certificate not required).

§ 581. Statement in certificate concerning standard serological test

581. The certificate shall contain a statement that the applicant has been given the examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than 30 days before the date of issuance of the license, and that, in the opinion of the physician and surgeon, the person either is not infected with syphilis, or if so infected, is not in a stage of that disease which is or may become communicable to the marital partner.

Comment. Section 581 continues without substantive change the last part of the first sentence of former Civil Code Section 4300(a). The phrase "physician and surgeon" has been substituted for "physician. See Section 580 Comment. See also Section 589 (standard serological test).

§ 582. Statement concerning rubella

582. (a) Except as provided in subdivision (b), the certificate shall contain a statement whether the female applicant has laboratory evidence of immunological response to rubella (German measles).

(b) The certificate shall not contain evidence of response to rubella where the female applicant (1) is over 50 years of age, or (2) has had a surgical sterilization, or (3) presents

laboratory evidence of a prior test declaring her immunity to rubella.

Comment. Section 582 continues former Civil Code Section 4300(b) without substantive change.

§ 583. Statement that HIV test was offered

583. (a) The certificate shall indicate that an HIV test, as defined in Section 26 of the Health and Safety Code, including any appropriate confirmatory tests for positive reactors, was offered. It is the intention of the Legislature that the results of the tests shall be transmitted to the marriage license applicant, and that followup counseling by a knowledgeable and experienced person shall be made available.

(b) Disclosure of the results of any test performed in accordance with subdivision (a) shall not be made except as provided in Chapter 1.11 (commencing with Section 199.20) of Part 1 of Division 1 of the Health and Safety Code.

Comment. Section 583 continues former Civil Code Section 4300(c)-(d) without substantive change.

§ 584. Capacity to consent to examinations and tests

584. A person who by law is validly able to obtain a marriage license in this state is validly able to give consent to any examinations and tests required by this part.

Comment. Section 584 continues the first sentence of former Civil Code Section 4300(e) without substantive change.

§ 585. Information to be provided to laboratory

585. In submitting the blood specimen to the laboratory the physician and surgeon shall designate that this is a premarital test.

Comment. Section 585 continues the last sentence of former Civil Code Section 4300(e) without substantive change. The phrase “physician and surgeon” has been substituted for “physician. See Section 580 Comment.

§ 586. Laboratory statement

586. The certificate shall be accompanied by a statement from the person in charge of the laboratory making the test, or from some other person authorized to make the report, setting forth all of the following:

- (a) The name of the test.
- (b) The date the test was made.
- (c) The name and address of the physician and surgeon to whom the test was sent.
- (d) The name and address of the person whose blood was tested.

Comment. Section 586 continues former Civil Code Section 4301 without substantive change. The phrase “physician and surgeon” has been substituted for “physician. See Section 580 Comment.

§ 587. Certificate forms from other states

587. (a) Certificate forms provided by other states having comparable laws will be accepted for persons who have been examined and who have received serological tests for syphilis outside this state if the examinations and tests were performed not more than 30 days before the issuance of the marriage license.

(b) Certificate forms provided by other states not having comparable laws will be accepted for persons who have been examined by a physician and surgeon licensed in that state and who have received serological tests for syphilis performed by the official state public health laboratory in that state if the certificate states that the examination and tests were performed not more than 30 days before issuance of the marriage license.

Comment. Subdivision (a) of Section 587 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 4303. Subdivision (b) continues the last paragraph of former Civil Code Section 4303 without substantive change.

§ 588. Certificate forms from armed forces

588. Certificates provided by the armed forces of the United States will be accepted for military personnel if the certificate is signed by a medical officer commissioned in the armed forces and the certificate states the examinations and serological tests for syphilis were performed not more than 30 days before the issuance of the marriage license.

Comment. Section 588 continues without substantive change the last sentence of the first paragraph of former Civil Code Section 4303.

§ 589. Standard serological test

589. (a) For the purpose of this part, a standard serological test is a test for syphilis approved by the State Department of Health Services made by an approved laboratory.

(b) An approved laboratory is any of the following:

(1) The laboratory of the State Department of Health Services.

(2) A laboratory approved by the State Department of Health Services.

(3) Any other laboratory the director of which is licensed by the State Department of Health Services according to law.

(c) In case of question concerning accuracy of tests prescribed in this part, the State Department of Health Services shall accept specimens for checking purposes from any place in the state.

Comment. Section 589 continues former Civil Code Section 4304 without substantive change. In subdivision (a), the phrase “made by an approved laboratory” has been added for clarity. In subdivision (c), the phrase “any place in the state” has been substituted for “any district in the state.”

§ 590. Laboratory reports or records

590. The laboratory shall submit such laboratory reports or records to the State Department of Health Services as are required by regulation. The health officer may destroy copies

of reports that have been retained pursuant to this section for a period of two years.

Comment. Section 590 continues former Civil Code Section 4305 without substantive change.

§ 591. Court waiver of examination and test requirements

591. (a) The judge of the superior court in the county in which the marriage license is to be issued, on joint application by both parties to the marriage, may waive the requirements as to medical examinations, laboratory tests, and certificates, and may order the licensing authority to issue the license applied for, if (1) all other requirements of the marriage laws have been complied with and (2) the judge is satisfied by affidavit or other proof that an emergency or other sufficient cause for making the order exists and that the public health and welfare will not be injuriously affected by making the order.

(b) If the examinations and tests have been made and a certificate has been refused because one or both of the applicants have been found to be infected with syphilis, the judge of the superior court in the county in which the marriage license is to be issued nevertheless may, on application of both parties to the marriage, order the licensing authority to issue the license if (1) all other requirements of the marriage laws have been complied with and (2) the judge is satisfied by affidavit or other proof that an emergency or other sufficient cause for making the order exists and that the public health and welfare will not be injuriously affected by making the order.

(c) The court order shall be filed by the licensing authority in lieu of the certificate form.

(d) The court clerk shall transmit to the State Department of Health Services a transcript of the record and the order for such followup by the department as is required by law or

deemed necessary by the department for the protection of the public health.

(e) The court when it is deemed necessary may, to the extent authorized by law or rules of court, order all proceedings instituted under this part to be confidential and private. There shall be no fee for these court proceedings.

Comment. Section 591 restates former Civil Code Section 4306 without substantive change. In subdivision (b), the word “certificate” has been substituted for “certificate or certificates.” This is not a substantive change. See Section 10 (singular includes plural). The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 500 (health certificate not required for confidential marriage).

§ 592. Filing, preservation, and destruction of certificate forms and court orders

592. The certificate forms and the court orders under this part shall be filed in the office of the county clerk. They shall be preserved for one year from the date of filing after which date they may be destroyed.

Comment. Section 592 continues former Civil Code Section 4307 without substantive change.

§ 593. Prohibited acts and criminal penalty

593. (a) An applicant for a marriage license, physician and surgeon, or representative of a laboratory, who misrepresents his or her identity or a fact called for by the certificate form prescribed by this part is guilty of a misdemeanor.

(b) A licensing officer who issues a marriage license without having received the certificate form or an order from the court, or who has reason to believe that a fact on the certificate form has been misrepresented but nevertheless issues a marriage license, is guilty of a misdemeanor.

(c) A person who otherwise fails to comply with this part is guilty of a misdemeanor.

Comment. Section 593 continues former Civil Code Section 4308 without substantive change. The phrase “physician and surgeon” has been substituted for “physician.” See Section 580 Comment.

§ 594. Confidential documents; criminal penalty for unlawful disclosure

594. (a) Certificates, laboratory statements or reports, applications, and court orders, referred to in this part, and the information therein contained, is confidential and shall not be divulged to or be open to inspection by any person other than state or local health officers or their authorized representatives.

(b) A person who opens to inspection the certificates, laboratory statements or reports, applications, or court orders referred to in this part, or divulges any information therein contained, without authority, to a person not by law entitled to the same is guilty of a misdemeanor.

Comment. Section 594 continues former Civil Code Section 4309 without substantive change. In subdivision (a), the word “duly” has been omitted as surplus. The language of subdivision (b) has been revised to conform with subdivision (a).

DIVISION 4. RIGHTS AND OBLIGATIONS DURING MARRIAGE

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

§ 700. Leasehold interest in real property defined

700. For the purposes of this division, a leasehold interest in real property is real property, not personal property.

Comment. Section 700 restates the last sentence of former Civil Code Section 5110 without substantive change, and expands the coverage of the definition to apply to the entire division. The former provision applied only to former Civil Code Section 5110.

CHAPTER 2. RELATION OF HUSBAND AND WIFE

§ 720. Mutual obligations

720. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

Comment. Section 720 continues former Civil Code Section 5100 without change.

§ 721. Transactions with each other and third parties; fiduciary relationship of husband and wife

721. (a) Subject to subdivision (b), either husband or wife may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried.

(b) Except as provided in Sections 143, 144, 146, and 16040 of the Probate Code, in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good

faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 15019, 15020, 15021, and 15022 of the Corporations Code, including the following:

(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.

(2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.

(3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property.

Comment. Section 721 continues former Civil Code Section 5103 without change, except that “one spouse” has been substituted for “him or her” in subdivision (b)(3) for clarity. See also Section 1101 (claims and remedies for breach of fiduciary duty); Code Civ. Proc. §§ 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse’s right).

CHAPTER 3. PROPERTY RIGHTS DURING MARRIAGE

§ 750. Methods of holding property

750. A husband and wife may hold property as joint tenants or tenants in common, or as community property.

Comment. Section 750 continues former Civil Code Section 5104 without substantive change. See also Section 65 (“community property” defined in Section 760 *et seq.*); Code Civ. Proc. §§ 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse’s right).

§ 751. Interests of spouses in community property

751. The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing, and equal interests.

Comment. Section 751 continues the first sentence of former Civil Code Section 5105 without change. The last sentence of former Civil Code Section 5105 has been omitted as surplus. See also Section 65 (“community property” defined in Section 760 *et seq.*); Code Civ. Proc. §§ 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse’s right).

§ 752. Interest of spouses in separate property

752. Except as otherwise provided by statute, neither husband nor wife has any interest in the separate property of the other.

Comment. Section 752 continues the first part of former Civil Code Section 5102(a) without substantive change. “Except as otherwise provided by statute” has been substituted for “[e]xcept as provided in this section.” See also Sections 130 (“separate property” defined in Section 760 *et seq.*), 754 (limitation on disposition of separate property residence if notice of pendency of proceeding recorded); Code Civ. Proc. §§ 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse’s right).

§ 753. Excluding spouse from other’s dwelling

753. Notwithstanding Section 752 and except as provided in Article 2 (commencing with Section 2045), Article 3 (commencing with Section 2047), or Article 4 (commencing with Section 2049) of Chapter 4 of Part 1 of Division 6, neither spouse may be excluded from the other’s dwelling.

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

§ 754. Limitation on disposition of separate property residence if notice of pendency of proceeding recorded

754. If notice of the pendency of a proceeding for dissolution of the marriage, for nullity of the marriage, or for legal separation of the parties is recorded in any county in

which the husband or wife resides on real property that is the separate property of the other, the real property shall not for a period of three months thereafter be transferred, encumbered, or otherwise disposed of voluntarily or involuntarily without the joinder of both spouses, unless the court otherwise orders.

Comment. Section 754 continues former Civil Code Section 5102(b) without substantive change. See also Section 700 (real property includes leasehold interests in real property).

Section 754 provides a means of restraining transfer or encumbrance of a separate property dwelling for a three-month period during the pendency of separation, annulment, or dissolution proceedings. The restraint applies to voluntary dispositions of the dwelling, as well as involuntary dispositions, such as pursuant to a writ of execution. As to the authority of the court to restrain transfer during pendency of these proceedings, see Section 2045. See also Section 2030 (temporary restraining order in summons). A community property dwelling may not be transferred or encumbered without joinder or consent of both spouses. See Sections 1100(c) (disposition or encumbrance of personal property family dwelling), 1102 (lease, transfer, or encumbrance of real property).

For background on former Civ. Code § 5102, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2630 (1980).

§ 755. Payment or refund from employee retirement, death, benefit, or savings plan; discharge from adverse claims

755. (a) The terms “participant,” “beneficiary,” “employee benefit plan,” “employer,” “fiduciary,” and “administrator,” as used in subdivision (b), have the same meaning as provided in Section 3 of the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended.

(b) Notwithstanding Sections 751 and 1100, if payment or refund is made to a participant or the participant’s beneficiary or estate pursuant to a written employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended, the payment or refund fully discharges the employer and the administrator, fiduciary, or insurance company making the payment or refund from all adverse claims thereto unless, before the

payment or refund is made, the administrator of the plan has received at its principal place of business within this state, written notice by or on behalf of some other person that the other person claims to be entitled to the payment or refund or some part thereof. Nothing in this subdivision affects a claim or right to the payment or refund or part thereof as between persons other than the employer and the fiduciary or insurance company making the payment or refund.

(c) Notwithstanding Sections 751 and 1100, if payment or refund is made to an employee, former employee, or the beneficiary or estate of the employee or former employee pursuant to a written retirement, death, or other employee benefit plan or savings plan, other than a plan governed by the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended, the payment or refund fully discharges the employer and the trustee or insurance company making the payment or refund from all adverse claims thereto unless, before the payment or refund is made, the employer or former employer has received at its principal place of business within this state, written notice by or on behalf of some other person that the other person claims to be entitled to the payment or refund or some part thereof. Nothing in this subdivision affects a claim or right to the payment or refund or part thereof as between persons other than the employer and the trustee or insurance company making the payment or refund.

Comment. Section 755 continues former Civil Code Section 5106 without substantive change. In the last sentences of subdivisions (a) and (b), the phrase “all persons” has been shortened to “persons,” since the word “all” was surplus.

PART 2. CHARACTERIZATION OF MARITAL PROPERTY

CHAPTER 1. COMMUNITY PROPERTY

§ 760. Community property

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.

Comment. Section 760 restates the first part of former Civil Code Section 5110, and extends the definition of community property to include real property situated outside California. The phrase “[e]xcept as otherwise provided by statute” has been substituted for the narrower reference to specific statutory provisions in the former section. The former reference to property held in trust has been eliminated as surplus. See Section 761 (property in certain revocable trusts as community property).

The effect of defining community property to include out-of-state real property is that California courts will treat it as community property for all purposes, including management and control. Under former law, such property was treated as community property for the purpose of liability for debts and for purposes of division at dissolution of marriage or legal separation. See former Civ. Code § 5120.020 (liability for debts). See also Section 63 (“community estate” defined) & Comment. As to division at dissolution, see, e.g., *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Ford v. Ford*, 276 Cal. App. 2d 9, 80 Cal. Rptr. 435 (1969). The treatment given such property by the courts of the state in which the property is located may depend on the applicable choice of law rules of the state. See also Section 2660 & Comment (division where community estate includes real property located in another state).

Section 760 states the basic rule that all property acquired during marriage is community property unless it comes within a specified exception. The major exceptions to the basic community property rule are those relating to separate property. See, e.g., Sections 130 (“separate property” defined in Section 760 *et seq.*), 770 (separate property of married person), 771 (earnings and accumulations while living separate and apart), 772 (earnings and accumulations after judgment of legal separation), 781 (cases where damages for personal injury are separate property).

Section 760 is not an exclusive statement of property classified as community. See, e.g., Sections 761 (property in certain revocable trusts as community property), 780 (damages for personal injury to married person as community property).

See also Sections 65 (“community property” defined in Section 760 *et seq.*), 802-803 (presumptions concerning nature of property), 850-853 (transmutation of property), 1500-1620 (marital property agreements).

§ 761. Property in certain revocable trusts as community property

761. (a) Unless the trust instrument or the instrument of transfer expressly provides otherwise, community property that is transferred in trust remains community property during the marriage, regardless of the identity of the trustee, if the trust, originally or as amended before or after the transfer, provides that the trust is revocable as to that property during the marriage and the power, if any, to modify the trust as to the rights and interests in that property during the marriage may be exercised only with the joinder or consent of both spouses.

(b) Unless the trust instrument expressly provides otherwise, a power to revoke as to community property may be exercised by either spouse acting alone. Community property, including any income or appreciation, that is distributed or withdrawn from a trust by revocation, power of withdrawal, or otherwise, remains community property unless there is a valid transmutation of the property at the time of distribution or withdrawal.

(c) The trustee may convey and otherwise manage and control the trust property in accordance with the provisions of the trust without the joinder or consent of the husband or wife unless the trust expressly requires the joinder or consent of one or both spouses.

(d) This section applies to a transfer made before, on, or after July 1, 1987.

(e) Nothing in this section affects the community character of property that is transferred before, on, or after July 1, 1987,

in any manner or to a trust other than described in this section.

Comment. Section 761 continues former Civil Code Section 5110.150 without change. It should be noted that a transfer in trust by a married person is not exempt from the general limitations on transfers and transmutations by married persons acting alone. See Sections 850-853 (limitations on transmutations), 1100, 1102 (limitations on transfers).

Subdivision (a) is intended to be consistent with Revenue Ruling 66-283 in order to obtain community property income tax treatment for the trust property under Internal Revenue Code Section 1014(b)(6), but whether the terms of a particular trust are sufficient to obtain such treatment is ultimately a matter of federal law.

One consequence of retention of its community character is that the trust property is subject to claims of creditors and to division at dissolution to the same extent as any other community property. See Sections 910-916 (general rules of liability); Prob. Code § 18200 (creditors' rights against revocable trust during settlor's lifetime). Likewise, the interest of the decedent in the community property is subject to testamentary disposition at death, unless a contrary method of disposition is provided in the trust instrument, as is typically the case. Prob. Code § 104. In this situation, the spouses' traditional community property right of testamentary disposition is substantially preserved by the unilateral power of revocation. See subdivision (b). Where the trust requires joint action for revocation, the trust could preserve the power of testamentary disposition by granting the first spouse to die a testamentary power of modification, appointment, or disposition as to the spouse's share of the community property.

Subdivision (b) establishes the presumption that either spouse acting alone may revoke the trust as to the community property. The statute makes clear, however, that a unilateral revocation does not change the community property character of property received by the revoking spouse.

Subdivision (c) makes clear that the trustee may manage the trust community property in the same manner as other trust assets, free from the general limitations on disposition of community property imposed on spouses, unless the trust expressly provides such limitations.

Section 761 is not restrictive and does not provide the exclusive means by which community property may be held in trust without loss of its community character. See subdivision (e).

CHAPTER 2. SEPARATE PROPERTY

§ 770. Separate property of married person

770. (a) Separate property of a married person includes all of the following:

(1) All property owned by the person before marriage.

(2) All property acquired by the person after marriage by gift, bequest, devise, or descent.

(3) The rents, issues, and profits of the property described in this section.

(b) A married person may, without the consent of the person's spouse, convey the person's separate property.

Comment. Section 770 restates former Civil Code Sections 5107 and 5108 without substantive change. The two former sections (which separately stated the same rule, one in relation to a wife and the other to a husband) have been combined and made gender-neutral. For special definitions of separate property in other contexts, see Sections 2502 (division of property), 3515 (support). See also Cal. Const. Art. I, § 21 (separate property).

§ 771. Earnings and accumulations while living separate and apart

771. The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse.

Comment. Section 771 continues former Civil Code Section 5118 without change.

§ 772. Earnings and accumulations after judgment of legal separation

772. After entry of a judgment of legal separation of the parties, the earnings or accumulations of each party are the separate property of the party acquiring the earnings or accumulations.

Comment. Section 772 continues former Civil Code Section 5119 without substantive change. The phrase "entry of a judgment of legal separation" has been substituted for "the rendition of a judgment

decreasing legal separation.” This is not a substantive change. See Section 100 (“judgment” includes decree, as appropriate).

CHAPTER 3. DAMAGES FOR INJURIES TO MARRIED PERSON

§ 780. Damages for personal injury to married person as community property

780. Except as provided in Section 781 and subject to the rules of allocation set forth in Section 2603, money and other property received or to be received by a married person in satisfaction of a judgment for damages for personal injuries, or pursuant to an agreement for the settlement or compromise of a claim for such damages, is community property if the cause of action for the damages arose during the marriage.

Comment. Section 780 is new and is drawn from the last sentence of former Civil Code Section 4800(b)(4). This section continues existing law. See, e.g., *In re Marriage of Devlin*, 138 Cal. App. 3d 804, 807, 189 Cal. Rptr. 1 (1982). See also Code Civ. Proc. § 370 (right of married person to sue without spouse being joined as a party).

§ 781. Cases where damages for personal injury are separate property

781. (a) Money or other property received or to be received by a married person in satisfaction of a judgment for damages for personal injuries, or pursuant to an agreement for the settlement or compromise of a claim for those damages, is the separate property of the injured person if the cause of action for the damages arose as follows:

(1) After the entry of a judgment of dissolution of a marriage or legal separation of the parties.

(2) While either spouse, if he or she is the injured person, is living separate from the other spouse.

(b) Notwithstanding subdivision (a), if the spouse of the injured person has paid expenses by reason of the personal injuries from separate property or from the community

property, the spouse is entitled to reimbursement of the separate property or the community property for those expenses from the separate property received by the injured person under subdivision (a).

(c) Notwithstanding subdivision (a), if one spouse has a cause of action against the other spouse which arose during the marriage of the parties, money or property paid or to be paid by or on behalf of a party to the party's spouse of that marriage in satisfaction of a judgment for damages for personal injuries to that spouse, or pursuant to an agreement for the settlement or compromise of a claim for the damages, is the separate property of the injured spouse.

Comment. Section 781 continues former Civil Code Section 5126 without substantive change. In subdivision (a)(1), the phrase "entry of a judgment of legal separation" has been substituted for "rendition of a decree of legal separation." This is not a substantive change. See Section 100 ("judgment" includes decree, as appropriate). The last paragraph of former Civil Code Section 5126(a), which dealt with retroactive application of the former section, has been omitted as temporary and obsolete.

§ 782. Injuries to married person by spouse

782. (a) Where an injury to a married person is caused in whole or in part by the negligent or wrongful act or omission of the person's spouse, the community property may not be used to discharge the liability of the tortfeasor spouse to the injured spouse or the liability to make contribution to a joint tortfeasor until the separate property of the tortfeasor spouse, not exempt from enforcement of a money judgment, is exhausted.

(b) This section does not prevent the use of community property to discharge a liability referred to in subdivision (a) if the injured spouse gives written consent thereto after the occurrence of the injury.

(c) This section does not affect the right to indemnity provided by an insurance or other contract to discharge the

tortfeasor spouse's liability, whether or not the consideration given for the contract consisted of community property.

Comment. Section 782 continues former Civil Code Section 5113 without substantive change. The phrase "not exempt from enforcement of a money judgment" has been substituted for "not exempt from execution," in order to conform to the terminology of the Enforcement of Judgments Law. See, e.g., Code Civ. Proc. § 703.010.

§ 783. Injuries to married person by third party; extent concurring negligence of spouse allowable as defense

783. If a married person is injured by the negligent or wrongful act or omission of a person other than the married person's spouse, the fact that the negligent or wrongful act or omission of the spouse of the injured person was a concurring cause of the injury is not a defense in an action brought by the injured person to recover damages for the injury except in cases where the concurring negligent or wrongful act or omission would be a defense if the marriage did not exist.

Comment. Section 783 continues former Civil Code Section 5112 without substantive change. See also Code Civ. Proc. § 370 (right of married person to sue without spouse being joined as a party).

CHAPTER 4. PRESUMPTIONS CONCERNING
NATURE OF PROPERTY

§ 802. Presumption not applicable where marriage terminated by dissolution more than four years before death

802. The presumption that property acquired during marriage is community property does not apply to any property to which legal or equitable title is held by a person at the time of the person's death if the marriage during which the property was acquired was terminated by dissolution of marriage more than four years before the death.

Comment. Section 802 continues former Civil Code Section 5111 without substantive change.

§ 803. Property acquired by married woman before January 1, 1975

803. Notwithstanding any other provision of this part, whenever any real or personal property, or any interest therein or encumbrance thereon, was acquired before January 1, 1975, by a married woman by an instrument in writing, the following presumptions apply, and are conclusive in favor of any person dealing in good faith and for a valuable consideration with the married woman or her legal representatives or successors in interest, regardless of any change in her marital status after acquisition of the property:

(a) If acquired by the married woman, the presumption is that the property is the married woman's separate property.

(b) If acquired by the married woman and any other person, the presumption is that the married woman takes the part acquired by her as tenant in common, unless a different intention is expressed in the instrument.

(c) If acquired by husband and wife by an instrument in which they are described as husband and wife, the presumption is that the property is the community property of the husband and wife, unless a different intention is expressed in the instrument.

Comment. Section 803 restates without substantive change the last part of the first paragraph of former Civil Code Section 5110. The second paragraph of former Civil Code Section 5110 has been omitted as obsolete.

CHAPTER 5. TRANSMUTATION OF PROPERTY**§ 850. Transmutation of property by agreement or transfer**

850. Subject to Sections 851 to 853, inclusive, married persons may by agreement or transfer, with or without consideration, do any of the following:

(a) Transmute community property to separate property of either spouse.

(b) Transmute separate property of either spouse to community property.

(c) Transmute separate property of one spouse to separate property of the other spouse.

Comment. Section 850 continues former Civil Code Section 5110.710 without substantive change. When enacted in 1984 (as former Civil Code Section 5110.710), this provision codified the basic rule that spouses may transmute the character of community or separate property. See, e.g., Reppy, *Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage*, 18 San Diego L. Rev. 143 (1981).

In addition to the limitations on transmutation provided in Sections 851-853, the spouses are subject to the general rules governing the validity of agreements and transfers, as well as the special rules that control the actions of persons occupying confidential relations with each other. See Section 721. The characterization of community and separate property may be affected by a general marital property agreement, prenuptial or otherwise, as well as by a transmutation of specific property.

For background on former Civ. Code § 5110.710, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 67 (1986).

§ 851. Fraudulent transfers laws apply

851. A transmutation is subject to the laws governing fraudulent transfers.

Comment. Section 851 continues former Civil Code Section 5110.720 without change. When enacted in 1984 (as former Civil Code Section 5110.720), this provision codified case law. *Cf.* *Bailey v. Leeper*, 142 Cal. App. 2d 460, 298 P.2d 684 (1956) (transfer of property from husband to wife); *Frankel v. Boyd*, 106 Cal. 608, 614, 39 P. 939, 941 (1895) (dictum); *Wikes v. Smith*, 465 F.2d 1142 (1972) (bankruptcy). See also Civ. Code § 3439 *et seq.* (general law regarding fraudulent transfers).

For background on former Civ. Code § 5110.720, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 68 (1986).

§ 852. Form of transmutation

852. (a) A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

(b) A transmutation of real property is not effective as to third parties without notice thereof unless recorded.

(c) This section does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage.

(d) Nothing in this section affects the law governing characterization of property in which separate property and community property are commingled or otherwise combined.

(e) This section does not apply to or affect a transmutation of property made before January 1, 1985, and the law that would otherwise be applicable to that transmutation shall continue to apply.

Comment. Section 852 continues former Civil Code Section 5110.730 without change. See also Section 700 (real property includes leasehold interests in real property).

Section 852 imposes formalities on interspousal transmutations for the purpose of increasing certainty in the determination whether a transmutation has in fact occurred. Section 852 makes clear that the ordinary rules and formalities applicable to real property transfers apply also to transmutations of real property between the spouses. See Civ. Code §§ 1091, 1624 (statute of frauds), 1213-1217 (effect of recording). When enacted in 1984 (as former Civil Code Section 5110.730), this provision overruled case law. See, e.g., *Woods v. Security First Nat'l Bank*, 46 Cal. 2d 697, 701, 299 P.2d 657, 659 (1956). It also overruled prior law that permitted oral transmutation of personal property; however, transmutation by gift of certain personal property was recognized.

For background on former Civ. Code § 5110.730, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17

Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 68 (1986).

§ 853. Estate planning documents

853. (a) A statement in a will of the character of property is not admissible as evidence of a transmutation of the property in a proceeding commenced before the death of the person who made the will.

(b) A waiver of a right to a joint and survivor annuity or survivor's benefits under the federal Retirement Equity Act of 1984 (Public Law 98-397) is not a transmutation of the community property rights of the person executing the waiver.

(c) A written joinder or written consent to a nonprobate transfer of community property on death that satisfies Section 852 is a transmutation and is governed by the law applicable to transmutations and not by Chapter 2 (commencing with Section 5010) of Part 1 of Division 5 of the Probate Code.

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

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

PART 3 . LIABILITY OF MARITAL PROPERTY

CHAPTER 1. DEFINITIONS

§ 900. Application of definitions

900. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 900 continues former Civil Code Section 5120.010 without substantive change. For background on former Civ. Code § 5120.010, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

§ 902. “Debt”

902. “Debt” means an obligation incurred by a married person before or during marriage, whether based on contract, tort, or otherwise.

Comment. Section 902 continues former Civil Code Section 5120.030 without change. For background on former Civ. Code § 5120.030, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

§ 903. Time debt “incurred”

903. A debt is “incurred” at the following time:

- (a) In the case of a contract, at the time the contract is made.
- (b) In the case of a tort, at the time the tort occurs.
- (c) In other cases, at the time the obligation arises.

Comment. Section 903 continues former Civil Code Section 5120.040 without change. For background on former Civ. Code § 5120.040, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

CHAPTER 2. GENERAL RULES OF LIABILITY

§ 910. Community estate liable for debt of either spouse

910. (a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either

spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) “During marriage” for purposes of this section does not include the period during which the spouses are living separate and apart before a judgment of dissolution of marriage or legal separation of the parties.

Comment. Section 910 continues former Civil Code Section 5120.110(a) and (c) without substantive change. The term “community estate” has been substituted for “community property.” This is not a substantive change. See Section 63 (“community estate” defined) & Comment. In subdivision (b), the definition of “during marriage” has been limited in application to this section. This is not a substantive change. See Section 911 Comment.

Section 910 makes clear that the community estate is liable for the prenuptial contracts of the spouses. But see Section 911 (liability of earnings of the nondebtor spouse). The nondebtor spouse need not be made a party for the purpose of enforcing a judgment out of the community estate. However, special procedural provisions may apply. See, e.g., Code Civ. Proc. § 706.109 (issuance of earnings withholding order against spouse of judgment debtor). For rules governing liability after division of the community estate, see Section 916. See also Code Civ. Proc. § 371 (right of married person to defend suit for spouse’s right).

The introductory and concluding clauses of subdivision (a) make clear that the community estate is liable for all debts of either spouse absent an express statutory exception. Thus, community property under the management and control of one spouse pursuant to Section 1100(d) (spouse operating or managing business), Financial Code Section 851 (one-spouse bank account), or Probate Code Section 3051 (conservatorship) remains liable for the debts of the other spouse. For an express statutory exception from liability of a community estate, see Section 911 (liability of earnings of nondebtor spouse). See also Welf. & Inst. Code §§ 14006.1-14006.6 (eligibility for Medi-Cal).

Section 915 provides that a child or spousal support obligation that does not arise out of the marriage is to be treated as a debt incurred before marriage. Hence, such an obligation is governed by the provisions of Sections 910 and 911. If property sought to be applied to the satisfaction of a judgment for child support is liable for the payment of the judgment but is shown to be exempt, in determining under Code of Civil Procedure Section 703.070 the extent to which the exempt property

nevertheless shall be applied to the satisfaction of the support judgment, the court shall take into account, among other relevant circumstances, all of the other property of the spouses, including the separate property of each and the earnings that are not liable for child support under Sections 910 and 911. Although Code of Civil Procedure Section 703.070 requires the court to take into account property that is not liable under Section 911, Section 703.070 does not make the property described in Section 911 liable for payment of the support judgment. Nothing in Section 911 limits or affects the payment under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of the Code of Civil Procedure of a claim based on a judgment for child support, whether the money to be applied to the claim is owed to the judgment debtor alone or to the judgment debtor and the spouse of the judgment debtor. This is clear because the protection for earnings after payment extends only to earnings deposited in a deposit account that meets the requirements of Section 911.

For background on former Civ. Code § 5120.110, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 56-57 (1986).

§ 911. Liability of married person's earnings for premarital debt of spouse

911. (a) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other property in the community estate, except property insignificant in amount.

(b) As used in this section:

(1) "Deposit account" has the meaning prescribed in Section 9105 of the Commercial Code.

(2) "Earnings" means compensation for personal services performed, whether as an employee or otherwise.

Comment. Section 911 continues former Civil Code Section 5120.110(b) without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 63 ("community estate" defined) & Comment. The definition of "during marriage" in former Civil Code Section 5120.110(c)

is not continued in this section because it was not intended to apply to the rule in this section. See also Section 910 Comment.

When enacted in 1984 (as former Civil Code Section 5120.110), the second sentence of subdivision (a) codified the rule that, for purposes of liability, earnings may not be traced through changes in form. See, e.g., *Pfunder v. Goodwin*, 83 Cal. App. 551, 257 P. 119 (1927).

The second sentence of subdivision (a) also makes clear the extent to which paid earnings remain not liable. The effect of the sentence is to protect a deposit account only where the nonobligor spouse has an account into which only his or her earnings and separate property or property of a third person are deposited (unless the amount of other community estate property deposited in the account is insignificant). In such a situation, it is clear that the nonobligor spouse has carefully set aside his or her earnings and separate property and it is appropriate to continue the protection given the earnings. Where the account is commingled with any significant amount of other property in the community estate (such as the earnings of the other spouse or income from other property in the community estate), the intent to segregate the earnings and separate property is not clear, and hence the protection is not continued. The same reasoning justifies not protecting the account where the obligor spouse has a right to withdraw funds from the account.

For background on former Civ. Code § 5120.110, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 56-57 (1986).

§ 912. Liability of quasi-community property

912. For the purposes of this part, quasi-community property is liable to the same extent, and shall be treated the same in all other respects, as community property.

Comment. Section 912 continues former Civil Code Section 5120.120 without substantive change.

When enacted in 1984 (as former Civil Code Section 5120.120), this provision reversed existing law which treated quasi-community property as separate property rather than community property for purposes of liability for debts. This change in the law was necessary to effectuate the public policy of the state to achieve sharing of marital assets and liabilities, to promote equal access to credit for both spouses, to treat all residents of the state equally, and to protect the interests of California creditors.

For background on former Civ. Code § 5120.120, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

§ 913. Liability of separate property

913. (a) The separate property of a married person is liable for a debt incurred by the person before or during marriage.

(b) Except as otherwise provided by statute:

(1) The separate property of a married person is not liable for a debt incurred by the person's spouse before or during marriage.

(2) The joinder or consent of a married person to an encumbrance of community estate property to secure payment of a debt incurred by the person's spouse does not subject the person's separate property to liability for the debt unless the person also incurred the debt.

Comment. Section 913 continues former Civil Code Section 5120.130 without substantive change. The term "community estate" has been substituted for "community property." This is not a substantive change. See Section 63 ("community estate" defined) & Comment. For an exception to the rule of subdivision (b), see Section 914 (liability for necessities).

For background on former Civ. Code § 5120.130, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 57 (1986).

§ 914. Liability for necessities

914. (a) Notwithstanding Section 913, a married person is personally liable for the following debts incurred by the person's spouse during marriage:

(1) A debt incurred for necessities of life of the person's spouse while the spouses are living together.

(2) Except as provided in Section 4302, a debt incurred for common necessities of life of the person's spouse while the spouses are living separately.

(b) The separate property of a married person may be applied to the satisfaction of a debt for which the person is

personally liable pursuant to this section. If separate property is so applied at a time when nonexempt property in the community estate or separate property of the person's spouse is available but is not applied to the satisfaction of the debt, the married person is entitled to reimbursement to the extent such property was available.

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

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

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

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

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

App. 3d 1013, 92 Cal. Rptr. 722 (1971) (“common” necessary is that required to sustain life).

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

§ 915. Liability for support obligation

915. (a) For the purpose of this part, a child or spousal support obligation of a married person that does not arise out of the marriage shall be treated as a debt incurred before marriage, regardless of whether a court order for support is made or modified before or during marriage and regardless of whether any installment payment on the obligation accrues before or during marriage.

(b) If property in the community estate is applied to the satisfaction of a child or spousal support obligation of a married person that does not arise out of the marriage, at a time when nonexempt separate income of the person is available but is not applied to the satisfaction of the obligation, the community estate is entitled to reimbursement from the person in the amount of the separate income, not exceeding the property in the community estate so applied.

(c) Nothing in this section limits the matters a court may take into consideration in determining or modifying the amount of a support order, including, but not limited to, the earnings of the spouses of the parties.

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

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

property). Subdivision (a) also applies to an extramarital support obligation of a spouse that arises during the marriage.

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

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

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

§ 916. Liability after property division

916. (a) Notwithstanding any other provision of this chapter, after division of community and quasi-community property pursuant to Division 7 (commencing with Section 2500):

(1) The separate property owned by a married person at the time of the division and the property received by the person in the division is liable for a debt incurred by the person before or during marriage and the person is personally liable for the debt, whether or not the debt was assigned for payment by the person's spouse in the division.

(2) The separate property owned by a married person at the time of the division and the property received by the person in the division is not liable for a debt incurred by the person's spouse before or during marriage, and the person is not personally liable for the debt, unless the debt was assigned for payment by the person in the division of the property.

Nothing in this paragraph affects the liability of property for the satisfaction of a lien on the property.

(3) The separate property owned by a married person at the time of the division and the property received by the person in the division is liable for a debt incurred by the person's spouse before or during marriage, and the person is personally liable for the debt, if the debt was assigned for payment by the person in the division of the property. If a money judgment for the debt is entered after the division, the property is not subject to enforcement of the judgment and the judgment may not be enforced against the married person, unless the person is made a party to the judgment for the purpose of this paragraph.

(b) If property of a married person is applied to the satisfaction of a money judgment pursuant to subdivision (a) for a debt incurred by the person that is assigned for payment by the person's spouse, the person has a right of reimbursement from the person's spouse to the extent of the property applied, with interest at the legal rate, and may recover reasonable attorney's fees incurred in enforcing the right of reimbursement.

Comment. Section 916 continues former Civil Code Section 5120.160 without substantive change. In subdivision (a), a reference to Division 7 has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change, since all of the former section is included in Division 7. See also Sections 2620-2627 (division of debts and liabilities).

Section 916 prescribes rules of liability of former community, quasi-community, or community estate property and former separate property following a division of the property pursuant to a court judgment of separation, dissolution, or later division.

Subdivision (a)(1) states the rule that the rights of a creditor against the property of a debtor are not affected by assignment of the debt to the other spouse for payment pursuant to a property division. A creditor who is not paid may seek to satisfy the debt out of property of the debtor. The debtor in such a case will have a right of reimbursement against the former spouse pursuant to subdivision (b).

When enacted in 1984 (as former Civil Code Section 5120.160), subdivisions (a)(2)-(3) reversed the former case law rule that a creditor may seek enforcement of a money judgment against the former community property in the hands of a nondebtor spouse after dissolution of the marriage. See, e.g., *Bank of America N.T. & S.A. v. Mantz*, 4 Cal. 2d 322, 49 P.2d 279 (1935).

Subdivision (a)(2) makes clear that former community estate property received by the nondebtor spouse at division is liable only if the nondebtor spouse is assigned the debt in division. In the case of a judgment entered after the division of property, the nondebtor spouse must be made a party for due process reasons. If the property division calls for the one spouse to pay the debt and the creditor satisfies the judgment out of property of the other spouse, the other spouse will have a right of reimbursement pursuant to subdivision (b). Subdivision (a)(2) does not affect enforceability of liens on the property. See, e.g., *Kinney v. Vallentyne*, 15 Cal. 3d 475, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

Subdivision (b) states the rule as to reimbursement where a debt is satisfied out of the property of a spouse other than the spouse to whom the debt was assigned pursuant to a property division. For general provisions governing reimbursement, see Section 920. This subdivision is not intended to authorize reimbursement if reimbursement is precluded under Title 11 of the United States Code (Bankruptcy) by discharge of the debt in a case concerning the married person's spouse. *Cf. In re Marriage of Clements*, 134 Cal. App. 3d 737, 184 Cal. Rptr. 756 (1982).

For background on former Civ. Code § 5120.160, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 59-60 (1986).

CHAPTER 3. REIMBURSEMENT

§ 920. General provisions

920. A right of reimbursement provided by this part is subject to the following provisions:

(a) The right arises regardless of which spouse applies the property to the satisfaction of the debt, regardless of whether the property is applied to the satisfaction of the debt voluntarily or involuntarily, and regardless of whether the debt to which the property is applied is satisfied in whole or

in part. The right is subject to an express written waiver of the right by the spouse in whose favor the right arises.

(b) The measure of reimbursement is the value of the property or interest in property at the time the right arises.

(c) The right shall be exercised not later than the earlier of the following times:

(1) Within three years after the spouse in whose favor the right arises has actual knowledge of the application of the property to the satisfaction of the debt.

(2) In proceedings for division of community and quasi-community property pursuant to Division 7 (commencing with Section 2500) or in proceedings upon the death of a spouse.

Comment. Section 920 continues former Civil Code Section 5120.210 without substantive change. In subdivision (a), a reference to Division 7 has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change, since all of the former section is included in Division 7.

Section 920 limits reimbursement rights to a three-year enforceability period after discovery of the application of the property to the satisfaction of the debt, or less if a dissolution occurs before the end of the three-year period. Contrast *Weinberg v. Weinberg*, 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967) (community property applied to support payments entitled to reimbursement at dissolution); *In re Marriage of Walter*, 57 Cal. App. 3d 802, 129 Cal. Rptr. 351 (1976) (community property applied to separate tax and mortgage debts entitled to reimbursement at dissolution). Under Section 920, the reimbursement right applies even though the spouse seeking reimbursement may have satisfied or consented to satisfaction of the debt out of a particular type of property, unless the spouse expressly waived in writing the reimbursement right. Contrast *In re Marriage of Smaltz*, 82 Cal. App. 3d 568, 147 Cal. Rptr. 154 (1978) (no reimbursement where community property applied to support payments and no separate property available to make payments).

For background on former Civ. Code § 5120.210, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 60-61 (1986).

CHAPTER 4. TRANSITIONAL PROVISIONS

§ 930. Enforcement of debts

930. Except as otherwise provided by statute, this part governs the liability of separate property and property in the community estate and the personal liability of a married person for a debt enforced on or after January 1, 1985, regardless of whether the debt was incurred before, on, or after that date.

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

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

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

§ 931. Reimbursement rights

931. The provisions of this part that govern reimbursement apply to all debts, regardless of whether satisfied before, on, or after January 1, 1985.

Comment. Section 931 continues without substantive change former Civil Code Section 5120.330(a) and former Civil Code Section 5120.310 (operative date). Section 931 makes clear that reimbursement rights provided in this part apply to debts satisfied before as well as after January 1, 1985.

Former Civil Code Section 5120.330(b), which dealt with retroactive application of the former section, has been omitted as obsolete. For background on former Civ. Code § 5120.330, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm’n Reports 1 (1984).

CHAPTER 5. LIABILITY FOR DEATH OR INJURY

§ 1000. Liability for death or injury

1000. (a) A married person is not liable for any injury or damage caused by the other spouse except in cases where the married person would be liable therefor if the marriage did not exist.

(b) The liability of a married person for death or injury to person or property shall be satisfied as follows:

(1) If the liability of the married person is based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the community estate and second from the separate property of the married person.

(2) If the liability of the married person is not based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the separate property of the married person and second from the community estate.

(c) This section does not apply to the extent the liability is satisfied out of proceeds of insurance for the liability, whether the proceeds are from property in the community estate or from separate property. Notwithstanding Section 920, no right of reimbursement under this section shall be exercised more than seven years after the spouse in whose favor the right arises has actual knowledge of the application of the property to the satisfaction of the debt.

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

Subdivision (c) limits the order of satisfaction requirement to liabilities not covered by insurance. Subdivision (c) also imposes a seven-year limitation period on any reimbursement right implied by the order of

satisfaction requirement. *Cf. In re Marriage of Stitt*, 147 Cal. App. 3d 579, 195 Cal. Rptr. 172 (1983).

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

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

PART 4 . M A N A G E M E N T A N D C O N T R O L O F M A R I T A L P R O P E R T Y

§ 1100. Fiduciary duty in management and control of community personal property

1100. (a) Except as provided in subdivisions (b), (c), and (d) and Sections 761 and 1103, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property, or dispose of community personal property for less than fair and reasonable value, without the written consent of the other spouse. This subdivision does not apply to gifts mutually given by both spouses to third parties and to gifts given by one spouse to the other spouse.

(c) A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(d) Except as provided in subdivisions (b) and (c), and in Section 1102, a spouse who is operating or managing a business or an interest in a business that is all or substantially all community personal property has the primary management

and control of the business or interest. Primary management and control means that the managing spouse may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease, exchange, encumbrance, or other disposition of all or substantially all of the personal property used in the operation of the business (including personal property used for agricultural purposes), whether or not title to that property is held in the name of only one spouse. Written notice is not, however, required when prohibited by the law otherwise applicable to the transaction.

Remedies for the failure by a managing spouse to give prior written notice as required by this subdivision are only as specified in Section 1101. A failure to give prior written notice shall not adversely affect the validity of a transaction nor of any interest transferred.

(e) Each spouse shall act with respect to the other spouse in the management and control of the community assets and liabilities in accordance with the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request.

Comment. Section 1100 continues former Civil Code Section 5125 without change, except that section references have been adjusted. In subdivision (e), references to community “property” have been replaced by more specific references to community “assets and liabilities.” These changes are technical and nonsubstantive. See also Section 700 (personal

property does not include a leasehold interest in real property); Prob. Code §§ 3057 (protection of rights of spouse who lacks legal capacity), 5100-5407 (multiple-party account held by financial institution).

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

§ 1101. Remedies for breach of fiduciary duty between spouses

1101. (a) A spouse has a claim against the other spouse for a breach of the fiduciary duty imposed by Section 1100 or 1102 that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate.

(b) A court may order an accounting of the property and obligations of the parties to a marriage and may determine the rights of ownership in, the beneficial enjoyment of, or access to, community property, and the classification of all property of the parties to a marriage.

(c) A court may order that the name of a spouse shall be added to community property held in the name of the other spouse alone or that the title of community property held in some other title form shall be reformed to reflect its community character, except with respect to any of the following:

(1) A partnership interest held by the other spouse as a general partner.

(2) An interest in a professional corporation or professional association.

(3) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.

(4) Any other property, if the revision would adversely affect the rights of a third person.

(d)(1) Except as provided in paragraph (2), any action under subdivision (a) shall be commenced within three years of the date a petitioning spouse had actual knowledge that the transaction or event for which the remedy is being sought occurred.

(2) An action may be commenced under this section upon the death of a spouse or in conjunction with an action for legal separation, dissolution of marriage, or nullity without regard to the time limitations set forth in paragraph (1).

(3) The defense of laches may be raised in any action brought under this section.

(4) Except as to actions authorized by paragraph (2), remedies under subdivision (a) apply only to transactions or events occurring on or after July 1, 1987.

(e) In any transaction affecting community property in which the consent of both spouses is required, the court may, upon the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:

(1) The proposed transaction is in the best interest of the community.

(2) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.

(f) Any action may be brought under this section without filing an action for dissolution of marriage, legal separation, or nullity, or may be brought in conjunction with the action or upon the death of a spouse.

(g) Remedies for breach of the fiduciary duty by one spouse as set out in Section 721 shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. However, in no event shall interest be assessed on the managing spouse.

(h) Remedies for the breach of the fiduciary duty by one spouse when the breach falls within the ambit of Section 3294 of the Civil Code shall include, but not be limited to, an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.

Comment. Section 1101 continues former Civil Code Section 5125.1 without change, except that (1) section references have been adjusted and (2) "community estate" has been substituted for "community interest" in subdivision (a) for internal consistency. These are technical, nonsubstantive changes. See Section 63 ("community estate" defined) & Comment. See also Prob. Code §§ 3057 (protection of rights of spouse who lacks legal capacity), 3101 (proceeding for court order to authorize particular transaction).

§ 1102. Management and control of community real property

1102. (a) Except as provided in Sections 761 and 1103, either spouse has the management and control of the community real property, whether acquired prior to or on or after January 1, 1975, but both spouses, either personally or by a duly authorized agent, must join in executing any instrument by which that community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.

(b) Nothing in this section shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between husband and wife.

(c) Notwithstanding subdivision (b):

(1) The sole lease, contract, mortgage, or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975.

(2) The sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975.

(d) No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of that instrument in the recorder's office in the county in which the land is situated.

(e) Nothing in this section precludes either spouse from encumbering his or her interest in community real property, as provided in Section 2033, to pay reasonable attorney's fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

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

§ 1103. Management and control where spouse has conservator or lacks legal capacity

1103. (a) Where one or both of the spouses either has a conservator of the estate or lacks legal capacity to manage

and control community property, the procedure for management and control (which includes disposition) of the community property is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

(b) Where one or both spouses either has a conservator of the estate or lacks legal capacity to give consent to a gift of community personal property or a disposition of community personal property without a valuable consideration as required by Section 1100 or to a sale, conveyance, or encumbrance of community personal property for which a consent is required by Section 1100, the procedure for that gift, disposition, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

(c) Where one or both spouses either has a conservator of the estate or lacks legal capacity to join in executing a lease, sale, conveyance, or encumbrance of community real property or any interest therein as required by Section 1102, the procedure for that lease, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

Comment. Section 1103 continues former Civil Code Section 5128 without change, except that section references have been adjusted and “that” has been substituted for “such” in subdivisions (b) and (c).

This section makes provisions of the Probate Code applicable in two situations:

(1) Where one or both spouses have a conservator of the estate or lack legal capacity to manage and control community property (which includes the disposition of community property). See, e.g., Prob. Code § 3051.

(2) Where one or both spouses have a conservator of the estate or lack legal capacity for a transaction requiring joinder or consent under Section 1100(b)-(c) or 1102. See, e.g., Prob. Code §§ 3012 (legal capacity), 3071 (substitute for joinder or consent).

PART 5 . M A R I T A L A G R E E M E N T S

CHAPTER 1. GENERAL PROVISIONS

§ 1500. Effect of premarital and other marital property agreements

1500. The property rights of husband and wife prescribed by statute may be altered by a premarital agreement or other marital property agreement.

Comment. Section 1500 continues former Civil Code Section 5200 without change. See also Sections 1600-1617 (premarital agreements); Prob. Code §§ 140-147 (surviving spouse's waiver of rights).

§ 1501. Agreements by minors

1501. A minor may make a valid premarital agreement or other marital property agreement if the minor is emancipated or is otherwise capable of contracting marriage.

Comment. Section 1501 continues former Civil Code Section 5201 without change.

§ 1502. Recording of agreements

1502. (a) A premarital agreement or other marital property agreement that is executed and acknowledged or proved in the manner that a grant of real property is required to be executed and acknowledged or proved may be recorded in the office of the recorder of each county in which real property affected by the agreement is situated.

(b) Recording or nonrecording of a premarital agreement or other marital property agreement has the same effect as recording or nonrecording of a grant of real property.

Comment. Section 1502 continues former Civil Code Section 5202 without change. See also Section 700 (real property includes leasehold interests in real property).

§ 1503. Law applicable to premarital agreements made before January 1, 1986

1503. Nothing in this chapter affects the validity or effect of premarital agreements made before January 1, 1986, and the validity and effect of those agreements shall continue to be determined by the law applicable to the agreements before January 1, 1986.

Comment. Section 1503 continues former Civil Code Section 5203 without substantive change.

CHAPTER 2. UNIFORM PREMARITAL AGREEMENT ACT

Article 1. Preliminary Provisions

§ 1600. Short title

1600. This chapter may be cited as the Uniform Premarital Agreement Act.

Comment. Section 1600 continues former Civil Code Section 5300 without substantive change. Section 1600 is the same as Section 10 of the Uniform Premarital Agreement Act (1983). See also Sections 3 (construction of provision drawn from uniform act), 14 (severability of provisions).

§ 1601. Application of chapter

1601. This chapter is effective on and after January 1, 1986, and applies to any premarital agreement executed on or after that date.

Comment. Section 1601 continues former Civil Code Section 5302 without change. Section 1601 is the same as Section 12 of the Uniform Premarital Agreement Act (1983). See also Section 1503 (law applicable to premarital agreements made before January 1, 1986).

Article 2. Premarital Agreements

§ 1610. Definitions

1610. As used in this chapter:

(a) “Premarital agreement” means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(b) “Property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

Comment. Section 1610 continues former Civil Code Section 5310 without change. Section 1610 is the same as Section 1 of the Uniform Premarital Agreement Act (1983).

§ 1611. Formalities; consideration

1611. A premarital agreement shall be in writing and signed by both parties. It is enforceable without consideration.

Comment. Section 1611 continues former Civil Code Section 5311 without change. Section 1611 is the same as Section 2 of the Uniform Premarital Agreement Act (1983). See also Sections 1501 (agreements by minors), 1502 (recording of agreements).

§ 1612. Subject matter of premarital agreement

1612. (a) Parties to a premarital agreement may contract with respect to all of the following:

(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.

(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.

(3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event.

(4) The making of a will, trust, or other arrangement to carry out the provisions of the agreement.

(5) The ownership rights in and disposition of the death benefit from a life insurance policy.

(6) The choice of law governing the construction of the agreement.

(7) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

Comment. Section 1612 continues former Civil Code Section 5312 without change. Section 1612 is the same as Section 3 of the Uniform Premarital Agreement Act (1983), except that Section 1612 omits the provision of the uniform act providing that the parties to a premarital agreement may contract with respect to “the modification or elimination of spousal support.” See also Prob. Code §§ 140-147 (surviving spouse’s waiver of rights), 150 (contracts concerning will or succession).

§ 1613. Agreement becomes effective upon marriage

1613. A premarital agreement becomes effective upon marriage.

Comment. Section 1613 continues former Civil Code Section 5313 without change. Section 1613 is the same as Section 4 of the Uniform Premarital Agreement Act (1983).

§ 1614. Amendment; revocation

1614. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

Comment. Section 1614 continues former Civil Code Section 5314 without change. Section 1614 is the same as Section 5 of the Uniform Premarital Agreement Act (1983).

§ 1615. Enforcement

1615. (a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following:

(1) That party did not execute the agreement voluntarily.

(2) The agreement was unconscionable when it was executed and, before execution of the agreement, all of the following applied to that party:

(A) That party was not provided a fair and reasonable disclosure of the property or financial obligations of the other party.

(B) That party did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

(C) That party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

Comment. Section 1615 continues former Civil Code Section 5315 without substantive change. Section 1615 is the same as Section 6(a) and (c) of the Uniform Premarital Agreement Act (1983). Section 6(b) of the uniform act was omitted since it applies to a premarital agreement that modifies or eliminates spousal support. The uniform provision allowing for modification or elimination of spousal support by premarital agreement was also omitted. See Section 912 Comment. See also Prob. Code §§ 140-147 (surviving spouse's waiver of rights).

§ 1616. Effect of void marriage

1616. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Comment. Section 1616 continues former Civil Code Section 5316 without change. Section 1616 is the same as Section 7 of the Uniform Premarital Agreement Act (1983).

§ 1617. Limitation of actions

1617. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for

enforcement, including laches and estoppel, are available to either party.

Comment. Section 1617 continues former Civil Code Section 5317 without change. Section 1617 is the same as Section 8 of the Uniform Premarital Agreement Act (1983).

CHAPTER 3. AGREEMENTS BETWEEN HUSBAND AND WIFE

§ 1620. Restrictions on contract altering spouses' legal relations

1620. Except as otherwise provided by law, a husband and wife cannot, by a contract with each other, alter their legal relations, except as to property.

Comment. Section 1620 continues the first part of former Civil Code Section 4802 without substantive change. The phrase “[e]xcept as otherwise provided by law” has been substituted for specific references to former Civil Code Sections 4801(b) and 4811, since the former specific references were no longer a complete listing of exceptions to this rule. Section 1620 does not purport to limit the statutory and case-law exceptions to the rule stated in this section. A more extensive list of exceptions to this rule includes, for example, Sections 2550 (agreement concerning division of community estate), 2641 (agreement concerning community contributions and loans for education or training of spouse), 3580-3592 (support agreements), 3651 (modification or termination of support order if agreement between parties on support), 4302 (spouse living separate by agreement), 4323 (agreement regarding effect of cohabitation on spousal support), 4337 (unless otherwise agreed by parties in writing, support obligation terminates upon death of either party or remarriage of supported party).

See also Prob. Code §§ 140-147 (requirements for waiver, agreement, or property settlement affecting certain rights of surviving spouse on death of other spouse). See also Section 11 (reference to married person includes formerly married person).

DIVISION 5. CONCILIATION PROCEEDINGS

PART 1. FAMILY CONCILIATION COURT LAW

CHAPTER 1. GENERAL PROVISIONS

§ 1800. Short title

1800. This part may be cited as the Family Conciliation Court Law.

Comment. Section 1800 continues former Code of Civil Procedure Section 1731 without change.

§ 1801. Purposes of part

1801. The purposes of this part are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

Comment. Section 1801 continues former Code of Civil Procedure Section 1730 without substantive change.

§ 1802. Applicability of part

1802. (a) This part applies only in counties in which the superior court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures provided in this part necessary to the full and proper consideration of those cases and the effectuation of the purposes of this part.

(b) The determination under subdivision (a) shall be made annually in the month of January by:

(1) The judge of the superior court in counties having only one superior court judge.

(2) A majority of the judges of the superior court in counties having more than one superior court judge.

Comment. Section 1802 continues former Code of Civil Procedure Section 1733 without substantive change.

CHAPTER 2. FAMILY CONCILIATION COURTS

§ 1810. Jurisdiction; court to be known as “family conciliation court”

1810. Each superior court shall exercise the jurisdiction conferred by this part. While sitting in the exercise of this jurisdiction, the court shall be known and referred to as the “family conciliation court.”

Comment. Section 1810 continues former Code of Civil Procedure Section 1740 without substantive change.

§ 1811. Assignment of judges; number of sessions

1811. In counties having more than one judge of the superior court, the presiding judge of the superior court shall annually, in the month of January, designate at least one judge to hear all cases under this part. The judge or judges so designated shall hold as many sessions of the family conciliation court in each week as are necessary for the prompt disposition of the business before the court.

Comment. Section 1811 continues former Code of Civil Procedure Section 1741 without substantive change.

§ 1812. Transfer of cases

1812. (a) The judge of the family conciliation court may transfer any case before the family conciliation court pursuant to this part to the department of the presiding judge of the superior court for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the family conciliation court the transfer is necessary to expedite the business of the family conciliation court or to ensure the prompt consideration of the case.

(b) When a case is transferred pursuant to subdivision (a), the judge to whom it is transferred shall act as the judge of the family conciliation court in the matter.

Comment. Section 1812 continues former Code of Civil Procedure Section 1742 without substantive change.

§ 1813. Substitute judge

1813. (a) The presiding judge of the superior court may appoint a judge of the superior court other than the judge of the family conciliation court to act as judge of the family conciliation court during any period when the judge of the family conciliation court is on vacation, absent, or for any reason unable to perform the duties as judge of the family conciliation court.

(b) The judge appointed under subdivision (a) has all of the powers and authority of a judge of the family conciliation court in cases under this part.

Comment. Section 1813 continues former Code of Civil Procedure Section 1743 without substantive change.

§ 1814. Appointment of supervising counselor, secretary, and other assistants

1814. (a) In each county in which a family conciliation court is established, the superior court may appoint one supervising counselor of conciliation and one secretary to assist the family conciliation court in disposing of its business and carrying out its functions. In counties which have by contract established joint family conciliation court services, the superior courts in contracting counties jointly may make the appointments under this subdivision.

(b) The supervising counselor of conciliation has the power to do all of the following:

(1) Hold conciliation conferences with parties to, and hearings in, proceedings under this part, and make

recommendations concerning the proceedings to the judge of the family conciliation court.

(2) Provide supervision in connection with the exercise of the counselor's jurisdiction as the judge of the family conciliation court may direct.

(3) Cause reports to be made, statistics to be compiled, and records to be kept as the judge of the family conciliation court may direct.

(4) Hold hearings in all family conciliation court cases as may be required by the judge of the family conciliation court, and make investigations as may be required by the court to carry out the intent of this part.

(5) Make recommendations relating to marriages where one or both parties are underage.

(6) Make investigations, reports, and recommendations as provided in Section 281 of the Welfare and Institutions Code under the authority provided the probation officer in that code.

(7) Act as domestic relations cases investigator.

(8) Conduct mediation of child custody and visitation disputes.

(c) The superior court, or contracting superior courts, may also appoint, with the consent of the board of supervisors, associate counselors of conciliation and other office assistants as may be necessary to assist the family conciliation court in disposing of its business. The associate counselors shall carry out their duties under the supervision of the supervising counselor of conciliation and have the powers of the supervising counselor of conciliation. Office assistants shall work under the supervision and direction of the supervising counselor of conciliation.

(d) The classification and salaries of persons appointed under this section shall be determined by:

(1) The board of supervisors of the county in which a noncontracting family conciliation court operates.

(2) The board of supervisors of the county which by contract has the responsibility to administer funds of the joint family conciliation court service.

Comment. Section 1814 restates former Code of Civil Procedure Section 1744 without substantive change. In subdivision (b)(5), the phrase “relating to marriages where one or both parties are underage” has been substituted for “relating to preage marriages,” to conform to language used in other sections of this code. See, e.g., Sections 302, 353 (underage applicants for marriage license).

§ 1815. Qualifications of supervising and associate counselors

1815. (a) A person employed as a supervising counselor of conciliation or as an associate counselor of conciliation shall have all of the following minimum qualifications:

(1) A master’s degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships.

(2) At least two years of experience in counseling or psychotherapy, or both, preferably in a setting related to the areas of responsibility of the family conciliation court and with the ethnic population to be served.

(3) Knowledge of the court system of California and the procedures used in family law cases.

(4) Knowledge of other resources in the community to which clients can be referred for assistance.

(5) Knowledge of adult psychopathology and the psychology of families.

(6) Knowledge of child development, child abuse, clinical issues relating to children, the effects of divorce on children, the effects of domestic violence on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.

(b) The family conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required under subdivision (a).

(c) This section does not apply to any supervising counselor of conciliation who was in office on March 27, 1980.

Comment. Section 1815 continues former Code of Civil Procedure Section 1745 without substantive change. In subdivision (c), the specific effective date of the former section has been substituted for the former general reference. See 1980 Cal Stat. ch. 48, § 9. The first sentence of former Code of Civil Procedure Section 1745(c), which required counselors of conciliation to meet provisions of the section by January 1, 1984, has been omitted as obsolete.

§ 1816. Continuing instruction programs

1816. (a) Supervising and associate counselors and mediators described in Section 3164 shall participate in programs of continuing instruction in domestic violence, including child abuse, as may be arranged and provided to them. This training may utilize domestic violence training programs conducted by nonprofit community organizations with an expertise in domestic violence issues.

(b) Areas of instruction shall include, but are not limited to, the following:

- (1) The effects of domestic violence on children.
- (2) The nature and extent of domestic violence.
- (3) The social and family dynamics of domestic violence.
- (4) Techniques for identifying and assisting families affected by domestic violence.
- (5) Interviewing, documentation of, and appropriate recommendations for families affected by domestic violence.
- (6) The legal rights of, and remedies available to, victims.
- (7) Availability of community and legal domestic violence resources.

(c) The Judicial Council shall solicit the assistance of community organizations concerned with domestic violence

and shall seek to develop a training program that will maximize coordination between conciliation courts and local agencies concerned with domestic violence.

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

§ 1817. Probation officers; duties

1817. The probation officer in every county shall do all of the following:

(a) Give assistance to the family conciliation court that the court may request to carry out the purposes of this part, and to that end shall, upon request, make investigations and reports as requested.

(b) In cases pursuant to this part, exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

Comment. Section 1817 continues former Code of Civil Procedure Section 1746 without substantive change.

§ 1818. Confidentiality of hearings, conferences, and papers

1818. (a) All superior court hearings or conferences in proceedings under this part shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and the party’s counsel separately and in the discretion of the judge, commissioner, or counselor conducting the conference or hearing, counsel for one party may be excluded when the adverse party is present. All communications, verbal or written, from parties to the judge, commissioner, or counselor in a proceeding under this part shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(b) The files of the family conciliation court shall be closed. The petition, supporting affidavit, conciliation agreement, and

any court order made in the matter may be opened to inspection by a party or the party's counsel upon the written authority of the judge of the family conciliation court.

Comment. Section 1818 continues former Code of Civil Procedure Section 1747 without substantive change. The introductory phrase “[n]otwithstanding the provisions of Section 124” in former Code of Civil Procedure Section 1747 has been omitted as unnecessary. See Section 214 Comment; Code of Civ. Proc. § 124 (court proceedings to be public).

§ 1819. Destruction of records

1819. (a) Except as provided in subdivision (b), upon order of the judge of the family conciliation court, the supervising counselor of conciliation may destroy any record, paper, or document filed or kept in the office of the supervising counselor of conciliation which is more than two years old.

(b) Records described in subdivision (a) of child custody or visitation mediation may be destroyed when the minor or minors involved are 18 years of age.

(c) In the judge's discretion, the judge of the family conciliation court may order the microfilming of any record, paper, or document described in subdivision (a) or (b).

Comment. Section 1819 restates former Code of Civil Procedure Section 1748 without substantive change.

§ 1820. Agreement between counties for joint family conciliation court services

1820. (a) A county may contract with any other county or counties to provide joint family conciliation court services.

(b) An agreement between two or more counties for the operation of a joint family conciliation court service may provide that the treasurer of one participating county shall be the custodian of moneys made available for the purposes of the joint services, and that the treasurer may make payments from the moneys upon audit of the appropriate auditing officer or body of the county of that treasurer.

(c) An agreement between two or more counties for the operation of a joint family conciliation court service may also provide:

(1) For the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract for the other participating counties.

(2) For appointments of members of the staff of the family conciliation court including the supervising counselor.

(3) That, for specified purposes, the members of the staff of the family conciliation court including the supervising counselor, but excluding the judges of the family conciliation court and other court personnel, shall be considered to be employees of one participating county.

(4) For other matters that are necessary or proper to effectuate the purposes of the Family Conciliation Court Law.

(d) The provisions of this part relating to family conciliation court services provided by a single county shall be equally applicable to counties which contract, pursuant to this section, to provide joint family conciliation court services.

Comment. Section 1820 continues former Code of Civil Procedure Section 1749 without substantive change.

CHAPTER 3. PROCEEDINGS FOR CONCILIATION

§ 1830. Jurisdiction of family conciliation court

1830. (a) When a controversy exists between spouses, or when a controversy relating to child custody or visitation exists between parents regardless of their marital status, and the controversy may, unless a reconciliation is achieved, result in dissolution of the marriage, nullity of the marriage, or legal separation of the parties, or in the disruption of the household, and there is a minor child of the spouses or parents or of either of them whose welfare might be affected thereby, the family conciliation court has jurisdiction as provided in

this part over the controversy and over the parties to the controversy and over all persons having any relation to the controversy.

(b) The family conciliation court also has jurisdiction over the controversy, whether or not there is a minor child of the parties or either of them, where the controversy involves domestic violence.

Comment. Section 1830 restates former Code of Civil Procedure Section 1760 without substantive change. The reference to legal separation has been added to conform with other sections. See, e.g., Sections 1831, 1840, 1841. See also Sections 1842 (conciliation court may accept other cases where no minor children involved), 3160-3186 (mediation of custody and visitation issues), 3190-3192 (counseling of parents and child), 6201 (application of definitions), 6211 (“domestic violence” defined).

§ 1831. Purpose of petition

1831. Before the filing of a proceeding for determination of custody or visitation rights, for dissolution of marriage, for nullity of a voidable marriage, or for legal separation of the parties, either spouse or parent, or both, may file in the family conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses or parents, so as to avoid further litigation over the issue involved.

Comment. Section 1831 continues former Code of Civil Procedure Section 1761 without substantive change. See also Sections 3160-3186 (mediation of custody and visitation issues), 3190-3192 (counseling of parents and child).

§ 1832. Caption of petition

1832. The petition shall be captioned substantially as follows:

In the Superior Court of the State of California
in and for the County of _____

Upon the petition of)	
_____))	Petition for
(Petitioner)))	Conciliation
And concerning))	(Under the Family
_____ and))	Conciliation
_____))	Court Law)
_____, Respondents))	

To the Family Conciliation Court:

Comment. Section 1832 continues former Code of Civil Procedure Section 1762 without change.

§ 1833. Contents of petition

1833. The petition shall:

(a) Allege that a controversy exists between the spouses or parents and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse or parent only, the name of the other spouse or parent as a respondent, and state the address of that spouse or parent.

(e) Name as a respondent any other person who has any relation to the controversy, and state the address of the person if known to the petitioner.

(f) If the petition arises out of an instance of domestic violence, so state generally and without specific allegations as to the incident.

(g) State any other information the court by rule requires.

Comment. Section 1833 continues former Code of Civil Procedure Section 1763 without substantive change. See also Sections 6201 (application of definitions), 6211 (“domestic violence” defined).

§ 1834. Assistance in preparing and presenting petition; coextensive jurisdiction in cases of domestic violence

1834. (a) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this part.

(b) The probation officers of the county and the attachés and employees of the family conciliation court shall assist a person in the preparation and presentation of a petition under this part if the person requests assistance.

(c) All public officers in each county shall refer to the family conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the family conciliation court.

(d) The jurisdiction of the family conciliation court in respect to controversies arising out of an instance of domestic violence is not exclusive but is coextensive with any other remedies either civil or criminal in nature that may be available.

Comment. Section 1834 continues former Code of Civil Procedure Section 1764 without substantive change. See also Sections 6201 (application of definitions), 6211 (“domestic violence” defined).

§ 1835. Fees

1835. No fee shall be charged by any officer for filing the petition.

Comment. Section 1835 continues former Code of Civil Procedure Section 1765 without change.

§ 1836. Notice of hearing; citation

1836. (a) The court shall fix a reasonable time and place for hearing on the petition. The court shall cause notice to be

given to the respondents of the filing of the petition and of the time and place of the hearing that the court deems necessary.

(b) The court may, when it deems it necessary, issue a citation to a respondent requiring the respondent to appear at the time and place stated in the citation. The court may require the attendance of witnesses as in other civil cases.

Comment. Section 1836 continues former Code of Civil Procedure Section 1766 without substantive change.

§ 1837. Time and place of hearings

1837. (a) Except as provided in subdivision (b), for the purpose of conducting hearings pursuant to this part, the family conciliation court may be convened at any time and place within the county, and the hearing may be had in chambers or otherwise.

(b) The time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, before the hearing, objects to any different time or place.

Comment. Section 1837 continues former Code of Civil Procedure Section 1767 without substantive change.

§ 1838. Informal hearings; aid of experts

1838. (a) The hearing shall be conducted informally as a conference or a series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues in controversy.

(b) To facilitate and promote the purposes of this part, the court may, with the consent of both parties to the proceeding, recommend or invoke the aid of medical or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Aid under this subdivision shall not be at the expense of the court or of the county unless the board of supervisors of the county specifically provides and authorizes the aid.

Comment. Section 1838 continues former Code of Civil Procedure Section 1768 without substantive change.

§ 1839. Temporary orders; reconciliation agreement

1839. (a) At or after the hearing, the court may make orders in respect to the conduct of the spouses or parents and the subject matter of the controversy that the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses. No such order shall be effective for more than 30 days from the hearing of the petition unless the parties mutually consent to a continuation of the time the order remains effective.

(b) A reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully with the agreement.

(c) During the pendency of a proceeding under this part, the superior court may order the husband or wife, or father or mother, as the case may be, to pay an amount necessary for the support and maintenance of the wife or husband and for the support, maintenance, and education of the minor children, as the case may be. In determining the amount, the superior court may take into consideration the recommendations of a financial referee if one is available to the court. An order made pursuant to this subdivision shall not prejudice the rights of the parties or children with respect to any subsequent order which may be made. An order made pursuant to this subdivision may be modified or terminated at any time except as to an amount that accrued before the date of filing of the notice of motion or order to show cause to modify or terminate.

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

§ 1840. Stay of right to file other proceeding; effect of pendency of other proceeding

1840. (a) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file a petition for dissolution of marriage, for nullity of a voidable marriage, or for legal separation of the parties.

(b) After the expiration of the period under subdivision (a), if the controversy between the spouses, or the parents, has not been terminated, either spouse may institute a proceeding for dissolution of marriage, for nullity of a voidable marriage, or for legal separation of the parties, or a proceeding to determine custody or visitation of the minor child or children.

(c) The pendency of a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, or a proceeding to determine custody or visitation of the minor child or children, does not operate as a bar to the instituting of proceedings for conciliation under this part.

Comment. Section 1840 continues former Code of Civil Procedure Section 1770 without substantive change. See also Sections 3160-3186 (mediation of custody and visitation issues), 3190-3192 (counseling of parents and child).

§ 1841. Transfer of other pending proceeding involving minor child

1841. If a petition for dissolution of marriage, for nullity of marriage, or for legal separation of the parties is filed, the case may be transferred at any time during the pendency of the proceeding to the family conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy in accordance with this part if both of the following appear to the court:

(a) There is a minor child of the spouses, or of either of them, whose welfare may be adversely affected by the dissolution of the marriage or the disruption of the household or a controversy involving child custody.

(b) There is some reasonable possibility of a reconciliation being effected.

Comment. Section 1841 restates former Code of Civil Procedure Section 1771 without substantive change. In the introductory paragraph of this section, the phrase “nullity of marriage” has been substituted for “declaration of nullity of a voidable marriage.” The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

§ 1842. Transfer where no minor child involved in other proceedings

1842. (a) If an application is made to the family conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested proceeding for dissolution of marriage, for nullity of a voidable marriage, or for legal separation of the parties, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of.

(b) If the court accepts the case under subdivision (a), the court has the same jurisdiction over the controversy and the parties to the controversy and those having a relation to the controversy that it has under this part in similar cases involving the welfare of children.

Comment. Section 1842 continues former Code of Civil Procedure Section 1772 without substantive change.

PART 2 . STATEWIDE COORDINATION
OF FAMILY MEDIATION AND
CONCILIATION SERVICES

§ 1850. Judicial Council duties

1850. The Judicial Council shall do all of the following:

(a) Assist counties in implementing mediation and conciliation proceedings under this code.

(b) Establish and implement a uniform statistical reporting system relating to proceedings brought for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, including, but not limited to, a custody disposition survey.

(c) Administer a program of grants to public and private agencies submitting proposals for research, study, and demonstration projects in the area of family law, including, but not limited to, all of the following:

(1) The development of conciliation and mediation and other newer dispute resolution techniques, particularly as they relate to child custody and to avoidance of litigation.

(2) The establishment of criteria to ensure that a child support order is adequate.

(3) The development of methods to ensure that a child support order is paid.

(4) The study of the feasibility and desirability of guidelines to assist judges in making custody decisions.

(d) Administer a program for the training of court personnel involved in family law proceedings, which shall be available to the court personnel and which shall be totally funded from funds specified in Section 1852. The training shall include, but not be limited to, the order of preference for custody of minor children and the meaning of the custody arrangements under Part 2 (commencing with Section 3020) of Division 8.

(e) Conduct research on the effectiveness of current family law for the purpose of shaping future public policy.

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

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

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

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

§ 1851. Advisory committee

1851. The Judicial Council shall establish an advisory committee of persons representing a broad spectrum of interest in and knowledge about family law. The committee shall recommend criteria for determining grant recipients pursuant to subdivision (c) of Section 1850, which shall include proposal evaluation guidelines and procedures for submission of the results to the Legislature, the Governor, and family law courts. In accordance with established criteria, the committee shall receive grant proposals and shall recommend the priority of submitted proposals.

Comment. Section 1851 continues former Civil Code Section 5182 without substantive change.

§ 1852. Funds

1852. Funds collected by the state pursuant to subdivision (c) of Section 10605 of the Health and Safety Code, subdivision (a) of Section 26832 of the Government Code, and grants, gifts, or devises made to the state from private sources to be used for the purposes of this part shall be deposited into the General Fund and shall only be used for the purposes of this part. No funds other than those so deposited shall be used for those purposes. That money shall be appropriated to the Judicial Council for the support of the programs authorized by this part as provided by the Legislature in the annual Budget Act. The Judicial Council may utilize funds to provide staffing as may be necessary to carry out the purposes of this part. In order to defray the costs of collection of these funds, the local registrar, county clerk, or county recorder may retain a percentage of the funds collected, not to exceed 10 percent of the fee payable to the state pursuant to subdivision (c) of Section 10605 of the Health and Safety Code.

Comment. Section 1852 continues former Civil Code Section 5183 without substantive change. The word “devises” has been substituted for “bequests” to conform with the Probate Code. See Prob. Code § 32 (“devise” defined).

DIVISION 6. NULLITY, DISSOLUTION, AND LEGAL SEPARATION

PART 1. GENERAL PROVISIONS

CHAPTER 1. APPLICATION OF PART

§ 2000. Application to dissolution, nullity, and legal separation proceedings

2000. This part applies to a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

Comment. Section 2000 is new and is drawn from Rule 1201(c) (“proceeding” defined) of the California Rules of Court (Family Law Rules). A proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties includes not only a determination of marital status, but also determinations of property rights, support, and custody matters. See Section 2010 (authority of court). See also Cal. R. Ct. 1206 (1970) (general law applicable), 1207 (1970) (other proceedings); Division 1 (commencing with Section 1) (preliminary provisions and definitions), Division 2 (commencing with Section 200) (general provisions).

CHAPTER 2. JURISDICTION

§ 2010. Authority of court

2010. In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgment and make orders that are appropriate concerning the following:

- (a) The status of the marriage.
- (b) The custody of minor children of the marriage.
- (c) The support of children for whom support may be ordered.
- (d) The support of either party.
- (e) The settlement of the property rights of the parties.

(f) The award of attorney's fees and costs.

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

§ 2011. Jurisdiction over property of spouse served by publication

2011. When service of summons on a spouse is made pursuant to Section 415.50 of the Code of Civil Procedure, the court, without the aid of attachment or the appointment of a receiver, shall have and may exercise the same jurisdiction over:

(a) The community real property of the spouse so served situated in this state as it has or may exercise over the community real property of a spouse who is personally served with process within this state.

(b) The quasi-community real property of the spouse so served situated in this state as it has or may exercise over the quasi-community real property of a spouse who is personally served with process within this state.

Comment. Section 2011 continues former Civil Code Section 4813 without substantive change. The references to proceedings under "this part," meaning proceedings under the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), have been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings). See also Sections 65 ("community property" defined in Section 760 *et seq.*), 125 ("quasi-community property" defined).

§ 2012. Special appearance in opposition to order made during pendency of objection to jurisdiction

2012. (a) During the time a motion pursuant to Section 418.10 of the Code of Civil Procedure is pending, the respondent may appear in opposition to an order made during the pendency of the proceeding and the appearance shall not be deemed a general appearance by the respondent.

(b) As used in this section, a motion pursuant to Section 418.10 of the Code of Civil Procedure is pending from the time notice of motion is served and filed until the time within which to petition for a writ of mandate has expired or, if a petition is made, until the time final judgment in the mandate proceeding is entered.

Comment. Section 2012 continues former Civil Code Section 4356 without substantive change. The reference to proceedings under “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

Section 2012 enables the respondent to contest preliminary orders in family law proceedings without prejudicing the respondent’s right to litigate the personal jurisdiction of the court by special appearance pursuant to Code of Civil Procedure Section 418.10. For background on former Civ. Code § 4356, see *Recommendation Relating to Special Appearance in Family Law Proceedings*, 17 Cal. L. Revision Comm’n Reports 243 (1984).

CHAPTER 3. PROCEDURAL PROVISIONS

§ 2020. Responsive pleading

2020. A responsive pleading, if any, shall be filed and served on the petitioner within 30 days of the date of the service on the respondent of a copy of the petition and summons.

Comment. Section 2020 continues former Civil Code Section 4355 without substantive change. The reference to proceedings under “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been

omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2021. Joinder of interested person and employee pension benefit plan as parties

2021. (a) Subject to subdivision (b), the court may order that a person who claims an interest in the proceeding be joined as a party to the proceeding in accordance with rules adopted by the Judicial Council pursuant to Section 211.

(b) An employee pension benefit plan may be joined as a party only in accordance with Chapter 6 (commencing with Section 2060).

Comment. Section 2021 continues former Civil Code Section 4363 without substantive change. The references to proceedings under “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), have been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings). See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims).

§ 2022. Evidence collected by eavesdropping

2022. (a) Evidence collected by eavesdropping in violation of Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1 of the Penal Code is inadmissible.

(b) If it appears that a violation described in subdivision (a) exists, the court may refer the matter to the proper authority for investigation and prosecution.

Comment. Section 2022 continues former Civil Code Section 4361 without substantive change. Language in the former section limiting its application to proceedings for dissolution, nullity, or legal separation has been omitted as surplus. See Section 2000 (application of part).

§ 2023. Payment of obligation directly to creditor

2023. (a) On a determination that payment of an obligation of a party would benefit either party or a child for whom support may be ordered, the court may order one of the

parties to pay the obligation, or a portion thereof, directly to the creditor.

(b) The creditor has no right to enforce the order made under this section, nor are the creditor's rights affected by the determination made under this section.

Comment. Section 2023 continues former Civil Code Section 4358 without substantive change. The reference to any proceeding under "this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings). A reference to a "child for whom support may be ordered" has been substituted for the former reference to a "minor" child. This is not a substantive change, but rather recognizes that support may be ordered for children who are not minors. See Section 58 ("child for whom support may be ordered" defined).

§ 2024. Notice concerning effect of petition and judgment on will, insurance, and other matters

2024. (a) A petition for dissolution of marriage, nullity of marriage, or legal separation of the parties, or a joint petition for summary dissolution of marriage, shall contain the following notice:

"Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters that you may want to change in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Part 3 (commencing with Section 231) of Division 2 of the Family Code). Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse."

(b) A judgment for dissolution of marriage, for nullity of marriage, or for legal separation of the parties shall contain the following notice:

“Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters that you may want to change in view of the dissolution or annulment of your marriage, or your legal separation. Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse.”

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

§ 2025. Appeal of bifurcated issue

2025. Notwithstanding any other provision of law, if the court has ordered an issue or issues bifurcated for separate trial or hearing in advance of the disposition of the entire case, a court of appeal may order an issue or issues transferred to it for hearing and decision when the court that heard the issue or issues certifies that the appeal is appropriate. Certification by the court shall be in accordance with rules promulgated by the Judicial Council.

Comment. Section 2025 continues former Civil Code Section 4365(a) without substantive change. References to the “superior” court have been omitted as surplus. See Section 200 (jurisdiction in superior court). The reference to any proceeding under “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

Former Civil Code Section 4365(b), which required the Judicial Council to establish rules for certification of appeals of bifurcated issues by July 1, 1989, has been omitted as obsolete. See Cal. R. Ct. 1269.5 (July 1, 1989) (certification of appeals of bifurcated issues other than marital status). See also Section 211 (Judicial Council rules of practice and procedure).

§ 2026. Effect of reconciliation of parties

2026. The reconciliation of the parties, whether conditional or unconditional, is an ameliorating factor to be considered by the court in considering a contempt of an existing court order.

Comment. Section 2026 continues former Civil Code Section 4381 without substantive change. The reference to a court order under “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

CHAPTER 3.5. ATTORNEY’S FEES AND COSTS**§ 2030. Attorney’s fees and costs during pendency of proceeding**

2030. (a) During the pendency of a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court may, upon (1) determining an ability to pay and (2) consideration of the respective incomes and needs of the parties in order to ensure that each party has access to legal representation to preserve all of the party’s rights, order any party, except a governmental entity, to pay the amount reasonably necessary for attorney’s fees and for the cost of maintaining or defending the proceeding. From time to time and before entry of judgment, the court may augment or modify the original award for attorney’s fees and costs as may be reasonably necessary for the prosecution or defense of the proceeding or any proceeding related thereto, including after any appeal has been concluded.

(b) Attorney’s fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(c) For services rendered or costs incurred after entry of judgment, the court may award the attorney’s fees and costs reasonably necessary to maintain or defend any subsequent proceeding, and may augment or modify an award so made, including after an appeal has been concluded.

(d) Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney's fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.

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

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

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

7864, 7895 (appointment of counsel in proceeding to declare child free from parental custody and control), 8800 (independent adoption).

§ 2031. Notice of application for order

2031. (a) Except as provided in subdivision (b), during the pendency of a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, an application for a temporary order making, augmenting, or modifying an award of attorney's fees or costs or both shall be made by motion on notice or by an order to show cause.

(b) An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure.

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

§ 2032. Award to be just and reasonable

2032. (a) The court may make an award of attorney's fees and costs under Section 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.

(b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the

party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.

(c) The court may order payment of an award of attorney's fees and costs from any type of property, whether community or separate, principal or income.

(d) Either party may, at any time before the hearing of the cause on the merits, on noticed motion, request the court to make a finding that the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. Upon that finding, the court may in its discretion direct the implementation of a case management plan for the purpose of allocating attorney's fees, court costs, expert fees, and consultant fees equitably between the parties. The case management plan shall focus on specific, designated issues. The plan may provide for the allocation of separate or community assets, security against these assets, and for payments from income or anticipated income of either party for the purpose described in this subdivision and for the benefit of one or both parties. Payments shall be authorized only on agreement of the parties or, in the absence thereof, by court order. The court may order that a referee be appointed pursuant to Section 639 of the Code of Civil Procedure to oversee the case management plan.

Comment. Section 2032 continues former Civil Code Section 4370.5 without substantive change. In subdivision (b), a reference to Section 4320 has been substituted for the broader reference to former Civil Code Section 4801(a). Section 4320 continues the relevant part of former Civil

Code Section 4801(a). See also Sections 65 (“community property” defined in Section 760 *et seq.*), 125 (“quasi-community property” defined), 130 (“separate property” defined in Section 760 *et seq.*).

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

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

§ 2033. Family law attorney’s real property lien

2033. (a) Either party may encumber his or her interest in community real property to pay reasonable attorney’s fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. This encumbrance shall be known as a “family law attorney’s real property lien” and attaches only to the encumbering party’s interest in the community real property.

(b) Notice of a family law attorney’s real property lien shall be served either personally or on the other party’s attorney of record at least 15 days before the encumbrance is recorded. This notice shall contain a declaration signed under penalty of perjury containing all of the following:

- (1) A full description of the real property.

(2) The party's belief as to the fair market value of the property and documentation supporting that belief.

(3) Encumbrances on the property as of the date of the declaration.

(4) A list of community assets and liabilities and their estimated values as of the date of the declaration.

(5) The amount of the family law attorney's real property lien.

(c) The nonencumbering party may file an ex parte objection to the family law attorney's real property lien. The objection shall include a request to stay the recordation until further notice of the court and shall contain a copy of the notice received. The objection shall also include a declaration signed under penalty of perjury as to all of the following:

(1) Specific objections to the family law attorney's real property lien and to the specific items in the notice.

(2) The objector's belief as to the appropriate items or value and any documentation supporting that belief.

(3) A declaration specifically stating why recordation of the encumbrance at this time would likely result in an unequal division of property or would otherwise be unjust under the circumstances of the case.

(d) Except as otherwise provided by this section, general procedural rules regarding ex parte motions apply.

(e) An attorney for whom a family law attorney's real property lien is obtained shall comply with Rule 3-300 of the Rules of Professional Conduct of the State Bar of California.

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

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

2034. (a) On application of either party, the court may deny the family law attorney's real property lien described in Section 2033 based on a finding that the encumbrance would likely result in an unequal division of property because it would impair the encumbering party's ability to meet his or her fair share of the community obligations or would otherwise be unjust under the circumstances of the case. The court may also for good cause limit the amount of the family law attorney's real property lien. A limitation by the court is not to be construed as a determination of reasonable attorney's fees.

(b) On receiving an objection to the establishment of a family law attorney's real property lien, the court may on its own motion determine whether the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. If the court finds that the case involves one or more of these complex or substantial issues, the court may direct the implementation of a case management plan as provided in subdivision (d) of Section 2032.

(c) The court has jurisdiction to resolve any dispute arising from the existence of a family law attorney's real property lien.

Comment. Section 2034 continues former Civil Code Section 4373 without substantive change.

CHAPTER 4. PROTECTIVE AND RESTRAINING ORDERS**Article 1. Orders in Summons****§ 2040. Temporary restraining order in summons**

2040. In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(a) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(b) Restraining 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 and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party. However, nothing in the restraining order shall preclude the parties from using community property to pay reasonable attorney's fees in order to retain legal counsel in the proceeding.

(c) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability held for the benefit of the parties and their child or children for whom support may be ordered.

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

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

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

2041. Nothing in Section 2040 adversely affects the rights, title, and interest of a purchaser for value, encumbrancer for value, or lessee for value who is without actual knowledge of the restraining order.

Comment. Section 2041 is new.

Article 2. Ex Parte Orders

§ 2045. Ex parte protective and restraining orders

2045. During the pendency of the proceeding, on application of a party in the manner provided by Part 4 (commencing with Section 240) of Division 2, the court may issue ex parte any of the following orders:

(a) An order restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring that party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures.

(b) A protective order, as defined in Section 6218, and any other order as provided in Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10.

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

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

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

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

Article 3. Orders After Notice and Hearing

§ 2047. Orders issuable after notice and hearing

2047. After notice and a hearing, the court may issue a protective order, as defined in Section 6218, and any other restraining order as provided in Article 2 (commencing with Section 6340) of Chapter 2 of Part 4 of Division 10.

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

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

Article 4. Orders Included in Judgment

§ 2049. Orders included in judgment

2049. A judgment may include a protective order, as defined in Section 6218, and any other restraining order as provided in Article 3 (commencing with Section 6360) of Chapter 2 of Part 4 of Division 10.

Comment. Section 2049 is new and is added to provide a reference to the provisions in Division 10 (Domestic Violence Prevention Act) that

authorizing restraining orders intended to prevent domestic violence to be included in a judgment. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence). See also Sections 2000 (application of part), 6221 (application of division), 6303 (support person for victim of domestic violence).

CHAPTER 5. NOTICE TO INSURANCE CARRIERS

§ 2050. Notice of pending proceeding

2050. Upon filing of the petition, or at any time during the proceeding, a party may transmit to, or the court may order transmittal to, a health, life, or disability insurance carrier or plan the following notice in substantially the following form:

“YOU ARE HEREBY NOTIFIED, PURSUANT TO A PENDING PROCEEDING, IN RE MARRIAGE OF _____, CASE NUMBER _____, FILED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____, THAT OWNERSHIP OF, OR BENEFITS PAYABLE UNDER, A POLICY OF HEALTH, LIFE, OR DISABILITY INSURANCE WHICH YOU HAVE ISSUED TO ONE OF THE PARTIES TO THIS PROCEEDING, POLICY NO. _____, IS AT ISSUE OR MAY BE AT ISSUE IN THE PROCEEDING.

YOU ARE HEREBY INSTRUCTED TO MAINTAIN THE NAMED BENEFICIARIES OR COVERED DEPENDENTS UNDER THE POLICY, UNLESS THE TERMS OF THE POLICY OR OTHER PROVISIONS OF LAW REQUIRE OTHERWISE, OR UNTIL RECEIPT OF A COURT ORDER, JUDGMENT, OR STIPULATION BETWEEN THE PARTIES PROVIDING OTHER INSTRUCTIONS.

YOU ARE FURTHER INSTRUCTED TO SEND NOTICE TO THE NAMED BENEFICIARIES, COVERED DEPENDENTS, OR OTHER SPECIFIED PERSONS UPON CANCELLATION, LAPSE, OR CHANGE OF THE COVERAGE, OR CHANGE OF DESIGNATED BENEFICIARIES UNDER THE POLICY.”

Comment. Section 2050 continues former Civil Code Section 4366(a) without substantive change. The language limiting the application of the former section to dissolution, nullity, or legal separation proceedings has been omitted as surplus. See Section 2000 (application of part).

§ 2051. Notice of entry and requirements of judgment

2051. Upon the entry of an order or judgment in the proceeding requiring a party to maintain existing health, life, or disability insurance coverage for a spouse or children or after an order or judgment in the proceeding requiring a party to purchase life or disability insurance and name the spouse or children as beneficiaries and upon receipt of the name, title, and address of the insurer, or the name of the plan's trustee, administrator, or agent for service of process, a party may transmit to, or the court may order transmittal to, the insurer or plan a copy of the order or judgment endorsed by the court, together with the following notice in substantially the following form:

“PURSUANT TO A PROCEEDING, IN RE MARRIAGE OF _____, CASE NUMBER _____, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____, YOUR INSURED, _____, HAS BEEN ORDERED TO MAINTAIN THE EXISTING (HEALTH) (LIFE) (DISABILITY) INSURANCE COVERAGE, POLICY NO. _____, IN FORCE FOR THE NAMED BENEFICIARIES OR COVERED DEPENDENTS AS SPECIFIED IN THE ATTACHED ORDER OR JUDGMENT.

THE ATTACHED ORDER OR JUDGMENT REQUIRES YOU TO MAINTAIN THE NAMED BENEFICIARIES UNDER THE POLICY AS IRREVOCABLE BENEFICIARIES OR COVERED DEPENDENTS OF THE POLICY AND YOU MUST ADMINISTER THE COVERAGE ACCORDINGLY, UNTIL THE DATE SPECIFIED, IF ANY, IN THE ORDER OR JUDGMENT, OR UNTIL THE RECEIPT OF A COURT

ORDER, JUDGMENT, OR STIPULATION PROVIDING OTHER INSTRUCTIONS.

YOU ARE FURTHER INSTRUCTED TO SEND NOTICE TO THE NAMED BENEFICIARIES, COVERED DEPENDENTS, OR OTHER SPECIFIED PERSONS UPON ANY CANCELLATION, LAPSE, OR CHANGE OF COVERAGE, OR CHANGE OF DESIGNATED BENEFICIARIES UNDER THIS POLICY.”

Comment. Section 2051 continues former Civil Code Section 4366(b) without substantive change. The language limiting the application of the former section to dissolution, nullity, or legal separation proceedings has been omitted as surplus. See Section 2000 (application of part).

§ 2052. Manner of giving notice

2052. Notice pursuant to this chapter may be sent by first class mail, postage prepaid, to the last known address of the covered dependents, named beneficiaries, or other specified persons who have requested receipt of notification.

Comment. Section 2052 continues former Civil Code Section 4366(c) without substantive change. A reference to “first class” mail has been substituted for the former reference to “regular” mail to conform to similar sections that allow service of similar notices by mail. See, e.g., Section 5252 (service of notice of intent to seek earnings assignment order for support).

§ 2053. Policyholder to furnish other party with name and address of insurer

2053. The insured or policyholder who is a party to the proceeding shall furnish to the other party the name, title, and address of the insurer or the insurer’s agent for service of process.

Comment. Section 2053 continues former Civil Code Section 4366(d) without change.

CHAPTER 6. EMPLOYEE PENSION BENEFIT PLAN AS PARTY

Article 1. Joinder of Plan

§ 2060. Application and order for joinder of plan

2060. (a) Upon written application by a party, the clerk shall enter an order joining as a party to the proceeding any employee pension benefit plan in which either party to the proceeding claims an interest that is or may be subject to disposition by the court.

(b) An order or judgment in the proceeding is not enforceable against an employee pension benefit plan unless the plan has been joined as a party to the proceeding.

Comment. Subdivision (a) of Section 2060 continues the first sentence of former Civil Code Section 4363.1(a) without substantive change. The reference to a proceeding under “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

Subdivision (b) continues the last part of former Civil Code Section 4351 without substantive change. For an exception to this general rule, see Section 5103 (support order enforceable against employee pension benefit plan regardless of whether joined as party). See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims).

§ 2061. Pleading of party requesting joinder

2061. Upon entry of the order under Section 2060, the party requesting joinder shall file an appropriate pleading setting forth the party’s claim against the plan and the nature of the relief sought.

Comment. Section 2061 continues the second sentence of former Civil Code Section 4363.1(a) without substantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2062. Service upon trustee, administrator, or agent of plan

2062. (a) The party requesting joinder shall serve all of the following upon the employee pension benefit plan:

- (1) A copy of the pleading of the party requesting joinder.
- (2) A copy of the joinder request.
- (3) A copy of the summons.

(4) A blank copy of a Notice of Appearance in form and content approved by the Judicial Council.

(b) Service shall be made in the same manner as service of papers generally. Service of the summons upon a trustee or administrator of the plan in its capacity as trustee or administrator, or upon an agent designated by the plan for service of process in its capacity as agent, constitutes service upon the plan.

(c) To facilitate service, the employee spouse shall furnish to the nonemployee spouse within 30 days after written request the name, title, and address of the plan's trustee, administrator, or agent for service of process. If necessary, the employee shall obtain the information from the plan.

Comment. Section 2062 restates the last four sentences of former Civil Code Section 4363.1(a) without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2063. Notice of appearance and responsive pleading by plan

2063. (a) The employee pension benefit plan shall file and serve a copy of a notice of appearance upon the party requesting joinder within 30 days of the date of the service upon the plan of a copy of the joinder request and summons.

(b) The employee pension benefit plan may, but need not, file an appropriate responsive pleading with its notice of appearance. If the plan does not file a responsive pleading, all statements of fact and requests for relief contained in any

pleading served on the plan are deemed to be controverted by the plan's notice of appearance.

Comment. Subdivision (a) of Section 2063 continues the first sentence of former Civil Code Section 4363.1(b) without substantive change. Subdivision (b) continues former Civil Code Section 4363.2(b) without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2064. Plan need not pay filing fees

2064. Notwithstanding any contrary provision of law, the employee pension benefit plan is not required to pay any fee to the clerk of the court as a condition to filing the notice of appearance or any subsequent paper in the proceeding.

Comment. Section 2064 continues the last sentence of former Civil Code Section 4363.1(b) without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2065. Entry of default of plan

2065. If the employee pension benefit plan has been served and no notice of appearance, notice of motion to quash service of summons pursuant to Section 418.10 of the Code of Civil Procedure, or notice of the filing of a petition for writ of mandate as provided in that section, has been filed with the clerk of the court within the time specified in the summons or such further time as may be allowed, the clerk, upon written application of the party requesting joinder, shall enter the default of the employee pension benefit plan in accordance with Chapter 2 (commencing with Section 585) of Title 8 of Part 2 of the Code of Civil Procedure.

Comment. Section 2065 continues former Civil Code Section 4363.1(c) without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

Article 2. Proceedings After Joinder

§ 2070. Provisions governing proceeding in which plan has been joined

2070. (a) This article governs a proceeding in which an employee pension benefit plan has been joined as a party.

(b) To the extent not in conflict with this article and except as otherwise provided by rules adopted by the Judicial Council pursuant to Section 211, all provisions of law applicable to civil actions generally apply, regardless of nomenclature, to the portion of the proceeding as to which an employee pension benefit plan has been joined as a party if those provisions would otherwise apply to the proceeding without reference to this article.

Comment. Section 2070 continues former Civil Code Section 4363.2(a) without substantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2071. Notice to plan of proposed property settlement; response by plan

2071. Either party or their representatives may notify the employee pension benefit plan of any proposed property settlement as it concerns the plan before any hearing at which the proposed property settlement will be a matter before the court. If so notified, the plan may stipulate to the proposed settlement or advise the representative that it will contest the proposed settlement.

Comment. Section 2071 continues former Civil Code Section 4363.2(c) without substantive change. The phrase “before any hearing at which the proposed property settlement will be a matter before the court” has been substituted for “prior to the interlocutory hearing.” This is a technical, nonsubstantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2072. Appearance by plan at hearing

2072. The employee pension benefit plan is not required to, but may, appear at any hearing in the proceeding. For purposes of the Code of Civil Procedure, the plan shall be considered a party appearing at the trial with respect to any hearing at which the interest of the parties in the plan is an issue before the court.

Comment. Section 2072 continues without substantive change the first two sentences of the first paragraph of former Civil Code Section 4363.2(d). See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2073. Order affecting plan made at hearing not attended by plan

2073. (a) Subject to subdivisions (b) and (c), the provisions of an order entered at or as a result of a hearing not attended by the employee pension benefit plan (whether or not the plan received notice of the hearing) which affect the plan or which affect any interest either the petitioner or respondent may have or claim under the plan, do not become effective until 30 days after the order has been served upon the plan.

(b) The plan may waive all or any portion of the 30-day period under subdivision (a).

(c) If within the 30-day period, the plan files in the proceeding a motion to set aside or modify those provisions of the order affecting it, those provisions do not become effective until the court has resolved the motion.

Comment. Section 2073 continues without substantive change the last two sentences of the first paragraph of former Civil Code Section 4363.2(d). See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2074. Motion to set aside or modify order

2074. (a) At any hearing on a motion to set aside or modify an order pursuant to Section 2073, any party may present

further evidence on any issue relating to the rights of the parties under the employee pension benefit plan or the extent of the parties' community or quasi-community property interest in the plan.

(b) Any statement of decision issued by the court with respect to the order which is the subject of the motion shall take account of the evidence referred to in subdivision (a).

(c) If the provisions of the order affecting the employee pension benefit plan are modified or set aside, the court, on motion by either party, may set aside or modify other provisions of the order related to or affected by the provisions affecting the plan.

Comment. Subdivisions (a) and (b) of Section 2074 continue former Civil Code Section 4363.2(e) without substantive change. Subdivision (c) continues the last paragraph of former Civil Code Section 4363.2(d) without substantive change. In subdivision (a), a reference to Section 2073 has been substituted for the broader reference to former Civil Code Section 4363.2(d). This is not a substantive change, since the relevant part of the former subdivision is continued in Section 2073.

See also Sections 65 ("community property" defined in Section 760 *et seq.*), 80 ("employee pension benefit plan" defined), 125 ("quasi-community property" defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

CHAPTER 7. RESTORATION OF WIFE'S FORMER NAME

§ 2080. Restoration of wife's former name

2080. In a proceeding for dissolution of marriage or for nullity of marriage, but not in a proceeding for legal separation of the parties, the court, upon the request of the wife, shall restore the birth name or former name of the wife, regardless of whether or not a request for restoration of the name was included in the petition.

Comment. Section 2080 continues former Civil Code Sections 4362(a) and 4457(a) without substantive change. This section retains the

application of the former sections to proceedings for dissolution and nullity, but not to proceedings for legal separation.

Former Civil Code Sections 4362(d) and 4457(d), which prohibited certain actions by businesses based on a woman's use of her birth name or former name, are continued in Code of Civil Procedure Section 1279.6 without substantive change.

§ 2081. Restoration not to be denied for any reason other than fraud

2081. The restoration of a former name or birth name requested under Section 2080 shall not be denied (a) on the basis that the wife has custody of a minor child who bears a different name or (b) for any other reason other than fraud.

Comment. Section 2081 continues former Civil Code Sections 4362(c) and 4457(c) without substantive change.

§ 2082. Common law right to change name not limited

2082. Nothing in this code shall be construed to abrogate the common law right of any person to change one's name.

Comment. Section 2082 continues without change and generalizes former Civil Code Sections 4362(b) and 4457(b). This section applies to the entire Family Code; the broader of the two former sections, former Civil Code Section 4362(b), applied only to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

CHAPTER 8. UNIFORM DIVORCE RECOGNITION ACT

§ 2090. Short title

2090. This chapter may be cited as the Uniform Divorce Recognition Act.

Comment. Section 2090 continues former Civil Code Section 5000 without substantive change. See also Sections 3 (construction of provisions drawn from uniform act), 13 (severability of provisions).

§ 2091. Effect of foreign divorce of parties domiciled in this state

2091. A divorce obtained in another jurisdiction shall be of no force or effect in this state if both parties to the marriage

were domiciled in this state at the time the proceeding for the divorce was commenced.

Comment. Section 2091 continues former Civil Code Section 5001 without change.

§ 2092. Prima facie evidence of domicile

2092. Proof that a person hereafter obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within 12 months before the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of the person's departure therefrom, or (b) at all times after the person's departure from this state and until the person's return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

Comment. Section 2092 continues former Civil Code Section 5002 without substantive change. The word "hereafter" used in Section 2092 is to be construed as of the time former Civil Code Section 5002 was enacted. See 1969 Cal. Stat. ch. 1608 (former Civ. Code § 5002, enacted Sept. 6, 1969); Section 2 (provision to be construed as restatement and continuation and not as new enactment).

§ 2093. Full faith and credit limitation

2093. The application of this chapter is limited by the requirement of the Constitution of the United States that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.

Comment. Section 2093 continues former Civil Code Section 5004 without substantive change. See also Section 13 (severability of provisions).

CHAPTER 9. DISCLOSURE OF ASSETS AND LIABILITIES

§ 2100. Legislative intent

2100. The Legislature finds and declares the following:

(a) It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties as provided under California law.

(b) Sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.

(c) In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have as full and complete knowledge of the relevant underlying facts as is reasonably possible under the circumstances of the case.

Comment. Section 2100 continues former Civil Code Section 4800.10(a) without substantive change. References to legal separation have been added in subdivisions (a) and (b) for consistency with the rules governing division of property. See, e.g., Section 2550 (equal division of community estate). See also Section 63 (“community estate” defined).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 3 (AB 1469).

§ 2101. Definitions

2101. Unless the provision or context otherwise requires, the following definitions apply to this chapter:

(a) “Asset” includes, but is not limited to, any real or personal property of any nature, whether tangible or intangible, and whether currently existing or contingent.

(b) “Default judgment” does not include a stipulated judgment or any judgment pursuant to a marital settlement agreement.

(c) “Earnings and accumulations” includes income from whatever source derived, as provided in Section 4058.

(d) “Expenses” includes, but is not limited to, all personal living expenses, but does not include business related expenses.

(e) “Liability” includes, but is not limited to, any debt or obligation, whether currently existing or contingent.

Comment. Section 2101 continues former Civil Code Section 4800.10(l) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 4 (AB 1469).

§ 2102. Fiduciary duties

2102. From the date of separation to the date of the distribution of the community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the property and support rights of the other party, including, but not limited to, the following activities:

(a) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses.

(b) The accurate and complete written disclosure of any investment opportunity that presents itself after the date of separation, but that results from any investment of either

spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity. In the event of nondisclosure of such an investment opportunity, the division of any gain resulting from that investment opportunity is governed by the standard provided in Section 2556.

(c) The operation or management of a business or an interest in a business in which the community may have an interest.

Comment. Section 2102 continues former Civil Code Section 4800.10(b) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 5 (AB 1469).

§ 2103. Disclosure declarations required

2103. In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the other party a preliminary declaration of disclosure under Section 2104 and a final declaration of disclosure under Section 2105.

Comment. Section 2103 continues the first paragraph of former Civil Code Section 4800.10(c) without substantive change. A reference to legal separation has been added for consistency with the rules governing division of property. See, e.g., Section 2550 (equal division of community estate). Cross-references have been added for clarity. These are not substantive changes.

§ 2104. Preliminary disclosure declaration; income and expense declaration

2104. (a) Within 60 days of service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party shall serve on the other party a preliminary

declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury. The parties may agree to accelerate or delay the time within which to exchange preliminary declarations of disclosure by written stipulation or by oral stipulation made in open court.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, which a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

(2) The declarant's percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court.

(e) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

Comment. Section 2104 continues former Civil Code Section 4800.10(c)(1) without substantive change. A reference to legal separation has been added in subdivision (a) for consistency with the rules

governing division of property. See, e.g., Section 2550 (equal division of community estate). In subdivision (a), the reference to penalties for perjury has been revised to eliminate the reference to “existing” law. This is not a substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 6 (AB 1469).

§ 2105. Final disclosure declaration; income and expense declaration

2105. (a) Before or at the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, in the event the case goes to trial, no later than 45 days before the first assigned trial date, each party shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(c) Along with the final declaration of disclosure, each party shall serve an updated income and expense declaration unless a current income and expense declaration is on file.

Comment. Section 2105 continues former Civil Code Section 4800.10(c)(2) without substantive change. In subdivision (a), the reference to penalties for perjury has been revised to eliminate the reference to “existing” law. This is not a substantive change. The provision concerning the filing of an income and expense declaration in subdivision (c) has been revised for consistency with the income and expense declaration provided with the preliminary declaration of disclosure.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 7 (AB 1469).

§ 2106. Declaration as prerequisite to judgment

2106. Absent good cause, no judgment shall be entered with respect to the parties’ property rights without each party having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party.

Comment. Section 2106 continues former Civil Code Section 4800.10(d) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 8 (AB 1469).

§ 2107. Remedies for noncompliance

2107. (a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party

has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do either or both of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, order the noncomplying party to pay to the complying party any reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust

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

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 9 (AB 1469).

§ 2108. Court authority to liquidate assets

2108. At any time during the proceeding, the court has the authority, on application of a party and for good cause, to order the liquidation of community or quasi-community assets so as to avoid unreasonable market or investment risks,

given the relative nature, scope, and extent of the community estate. However, in no event shall the court grant the application unless, as provided in this chapter, the appropriate declaration of disclosure has been served by the moving party.

Comment. Section 2108 continues former Civil Code Section 4800.10(g) without substantive change. See also Section 63 (“community estate” defined).

§ 2109. Application of chapter to summary dissolution

2109. The provisions of this chapter requiring a final declaration of disclosure do not apply to a summary dissolution of marriage, but a preliminary declaration of disclosure is required.

Comment. Section 2109 continues former Civil Code Section 4800.10(h) without substantive change.

Note. This section was added by 1993 Cal. Stat. ch. 1101, § 11 (AB 1469).

§ 2110. Application of chapter where default judgment

2110. In the case of a default judgment, the petitioner may waive the final disclosure requirements provided in this chapter, but a preliminary declaration of disclosure by the petitioner is required.

Comment. Section 2110 continues former Civil Code Section 4800.10(i) without substantive change.

Note. This section was added by 1993 Cal. Stat. ch. 1101, § 12 (AB 1469).

§ 2111. Effect of disclosure

2111. A disclosure required by this chapter does not abrogate the attorney work product privilege or impede the power of the court to issue protective orders.

Comment. Section 2111 continues former Civil Code Section 4800.10(j) without substantive change.

Note. This section was added by 1993 Cal. Stat. ch. 1101, § 13 (AB 1469).

§ 2112. Judicial Council forms

2112. The Judicial Council shall adopt appropriate forms and modify existing forms to effectuate the purposes of this chapter.

Comment. Section 2112 continues former Civil Code Section 4800.10(k) without substantive change.

Note. This section was added by 1993 Cal. Stat. ch. 1101, § 14 (AB 1469).

§ 2113. Application of chapter

2113. This chapter applies to any proceeding commenced on or after January 1, 1993.

Comment. Section 2113 continues former Civil Code Section 4800.10(m) without substantive change.

Note. This section was renumbered from Section 2109 by 1993 Cal. Stat. ch. 1101, § 10 (AB 1469).

CHAPTER 10. RELIEF FROM JUDGMENT

§ 2120. Legislative intent

2120. The Legislature finds and declares the following:

(a) The State of California has a strong policy of ensuring the division of community and quasi-community property in the dissolution of a marriage as set forth in Division 7 (commencing with Section 2500), and of providing for fair and sufficient child and spousal support awards. These policy goals can only be implemented with full disclosure of community, quasi-community, and separate assets, liabilities, income, and expenses, as provided in Chapter 9 (commencing with Section 2100), and decisions freely and knowingly made.

(b) It occasionally happens that the division of property or the award of support, whether made as a result of agreement or trial, is inequitable when made due to the nondisclosure or other misconduct of one of the parties.

(c) The public policy of assuring finality of judgments must be balanced against the public interest in ensuring proper division of marital property, in ensuring sufficient support awards, and in deterring misconduct.

(d) The law governing the circumstances under which a judgment can be set aside, after the time for relief under Section 473 of the Code of Civil Procedure has passed, has been the subject of considerable confusion which has led to increased litigation and unpredictable and inconsistent decisions at the trial and appellate levels.

Comment. Section 2120 continues former Civil Code Section 4800.11(a) without substantive change. In subdivision (a), a reference to Division 7 (commencing with Section 2500) has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change.

§ 2121. Relief from adjudication of support or property division

2121. (a) In proceedings for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court may, on any terms that may be just, relieve a spouse from a judgment, or any part or parts thereof, adjudicating support or division of property, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits, provided in this chapter.

(b) In all proceedings under this chapter, before granting relief, the court shall find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief.

Comment. Section 2121 continues former Civil Code Section 4800.11(b)-(c) without substantive change. In subdivision (a), the phrase

“proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties” has been substituted for the reference to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). This is not a substantive change.

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

2122. The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following:

(a) Actual fraud, where the defrauded party was kept in ignorance or in some other manner, other than his or her own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the fraud.

(b) Perjury. An action or motion based on perjury in the preliminary or final declaration of disclosure or in the current income and expense statement shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury.

(c) Duress. An action or motion based upon duress shall be brought within two years after the date of entry of judgment.

(d) Mental incapacity. An action or motion based on mental incapacity shall be brought within two years after the date of entry of judgment.

(e) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. An action or motion based on mistake shall be brought within one year after the date of entry of judgment.

Comment. Section 2122 continues former Civil Code Section 4800.11(d) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 15 (AB 1469).

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

2123. Notwithstanding any other provision of this chapter, or any other law, a judgment may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the division of assets or liabilities to become inequitable, or the support to become inadequate.

Comment. Section 2123 continues former Civil Code Section 4800.11(e) without substantive change.

§ 2124. Negligence of attorney

2124. The negligence of an attorney shall not be imputed to a client to bar an order setting aside a judgment, unless the court finds that the client knew, or should have known, of the attorney's negligence and unreasonably failed to protect himself or herself.

Comment. Section 2124 continues former Civil Code Section 4800.11(f) without substantive change.

§ 2125. Scope of relief

2125. When ruling on an action or motion to set aside a judgment, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief. However, the court has discretion to set aside the entire judgment, if necessary, for equitable considerations.

Comment. Section 2125 continues former Civil Code Section 4800.11(g) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 16 (AB 1469).

§ 2126. Date of valuation

2126. As to assets or liabilities for which a judgment or part of a judgment is set aside, the date of valuation shall be subject to equitable considerations. The court shall equally

divide the asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division.

Comment. Section 2126 continues former Civil Code Section 4800.11(h) without substantive change.

§ 2127. Statement of decision

2127. As to actions or motions filed under this chapter, if a timely request is made, the court shall render a statement of decision where the court has resolved controverted factual evidence.

Comment. Section 2127 continues former Civil Code Section 4800.11(i) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1101, § 17 (AB 1469).

§ 2128. Effect on other law

2128. (a) Nothing in this chapter prohibits a party from seeking relief under Section 2556.

(b) Nothing in this chapter changes existing law with respect to contract remedies where the contract has not been merged or incorporated into a judgment.

(c) Nothing in this chapter is intended to restrict a family law court from acting as a court of equity.

(d) Nothing in this chapter is intended to limit existing law with respect to the modification or enforcement of support orders.

(e) Nothing in this chapter affects the rights of a bona fide lessee, purchaser, or encumbrancer for value of real property.

Comment. Section 2128 continues former Civil Code Section 4800.11(j)-(n) without substantive change.

§ 2129. Application of chapter

2129. This chapter applies to judgments entered on or after January 1, 1993.

Comment. Section 2129 continues former Civil Code Section 4800.11(o) without substantive change.

PART 2. JUDICIAL DETERMINATION OF VOID OR VOIDABLE MARRIAGE

CHAPTER 1. VOID MARRIAGE

§ 2200. Incestuous marriages

2200. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

Comment. Section 2200 continues former Civil Code Section 4400 without change.

§ 2201. Bigamous and polygamous marriages

2201. (a) A subsequent marriage contracted by a person during the life of a former husband or wife of the person, with a person other than the former husband or wife, is illegal and void from the beginning, unless:

(1) The former marriage has been dissolved or adjudged a nullity before the date of the subsequent marriage.

(2) The former husband or wife (i) is absent, and not known to the person to be living for the period of five successive years immediately preceding the subsequent marriage, or (ii) is generally reputed or believed by the person to be dead at the time the subsequent marriage was contracted.

(b) In either of the cases described in paragraph (2) of subdivision (a), the subsequent marriage is valid until its nullity is adjudged pursuant to subdivision (b) of Section 2210.

Comment. Section 2201 continues former Civil Code Section 4401 without substantive change.

CHAPTER 2. VOIDABLE MARRIAGE

§ 2210. Grounds for nullity

2210. A marriage is voidable and may be adjudged a nullity if any of the following conditions existed at the time of the marriage:

(a) The party who commences the proceeding or on whose behalf the proceeding is commenced was without the capability of consenting to the marriage as provided in Section 301 or 302, unless, after attaining the age of consent, the party for any time freely cohabited with the other as husband and wife.

(b) The husband or wife of either party was living and the marriage with that husband or wife was then in force and that husband or wife (1) was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage for which the judgment of nullity is sought or (2) was generally reputed or believed by the party commencing the proceeding to be dead at the time the subsequent marriage was contracted.

(c) Either party was of unsound mind, unless the party of unsound mind, after coming to reason, freely cohabited with the other as husband and wife.

(d) The consent of either party was obtained by fraud, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

(e) The consent of either party was obtained by force, unless the party whose consent was obtained by force afterwards freely cohabited with the other as husband or wife.

(f) Either party was, at the time of marriage, physically incapable of entering into the marriage state, and that incapacity continues, and appears to be incurable.

Comment. Section 2210 continues former Civil Code Section 4425 without substantive change.

§ 2211. Limitations on obtaining judgment of nullity

2211. A proceeding to obtain a judgment of nullity of marriage, for causes set forth in Section 2210, must be commenced within the periods and by the parties, as follows:

(a) For causes mentioned in subdivision (a) of Section 2210, by any of the following:

(1) The party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent.

(2) A parent, guardian, conservator, or other person having charge of the underaged male or female, at any time before the married minor has arrived at the age of legal consent.

(b) For causes mentioned in subdivision (b) of Section 2210, by either of the following:

(1) Either party during the life of the other.

(2) The former husband or wife.

(c) For causes mentioned in subdivision (c) of Section 2210, by the party injured, or by a relative or conservator of the party of unsound mind, at any time before the death of either party.

(d) For causes mentioned in subdivision (d) of Section 2210, by the party whose consent was obtained by fraud, within four years after the discovery of the facts constituting the fraud.

(e) For causes mentioned in subdivision (e) of Section 2210, by the party whose consent was obtained by force, within four years after the marriage.

(f) For causes mentioned in subdivision (f) of Section 2210, by the injured party, within four years after the marriage.

Comment. Section 2211 continues former Civil Code Section 4426 without substantive change. In subdivision (a)(2), “underage” has been substituted for “nonaged” to conform to language used in other sections of this code. See, e.g., Sections 302, 353 (underage applicants for marriage license), 1814(b)(5) (conciliation counselor recommendations on marriage where party underage). In subdivisions (d) and (e), specific descriptions of the party have been substituted for the general reference to the injured party. For background on former Civ. Code § 4426, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm’n Reports 501 (1978).

§ 2212. Effect of judgment of nullity of marriage

2212. (a) The effect of a judgment of nullity of marriage is to restore the parties to the status of unmarried persons.

(b) A judgment of nullity of marriage is conclusive only as to the parties to the proceeding and those claiming under them.

Comment. Subdivision (a) of Section 2212 continues former Civil Code Section 4429 without substantive change. Subdivision (b) continues former Civil Code Section 4451 without substantive change.

CHAPTER 3. PROCEDURAL PROVISIONS

§ 2250. Petition for judgment of nullity

2250. (a) A proceeding based on void or voidable marriage is commenced by filing a petition entitled “In re the marriage of _____ and _____” which shall state that it is a petition for a judgment of nullity of the marriage.

(b) A copy of the petition together with a copy of a summons in form and content approved by the Judicial Council shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

Comment. Section 2250 continues former Civil Code Section 4450 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 2080-2082 (restoration of wife’s former name).

§ 2251. Status of putative spouse; division of quasi-marital property

2251. (a) If a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall:

(1) Declare the party or parties to have the status of a putative spouse.

(2) If the division of property is in issue, divide, in accordance with Division 7 (commencing with Section 2500), that property acquired during the union which would have been community property or quasi-community property if the union had not been void or voidable. This property is known as “quasi-marital property.”

(b) If the court expressly reserves jurisdiction, it may make the property division at a time after the judgment.

Comment. Section 2251 continues the first three sentences of former Civil Code Section 4452 without substantive change. A reference to the division governing property division has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change.

§ 2252. Liability of quasi-marital property for debts

2252. The property divided pursuant to Section 2251 is liable for debts of the parties to the same extent as if the property had been community property or quasi-community property.

Comment. Section 2252 continues the last sentence of former Civil Code Section 4452 without substantive change. Under Section 2252, quasi-marital property is treated the same as community and quasi-community property for purposes of creditors' remedies. See Section 916 (liability of property after division). For background on former Civ. Code § 4452, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

§ 2253. Custody of children

2253. In a proceeding under this part, custody of the children shall be determined according to Division 8 (commencing with Section 3000).

Comment. Section 2253 continues former Civil Code Section 4454 without substantive change. A reference to the division governing custody has been substituted for the narrower reference to former Civil Code Section 4600. This is not a substantive change.

§ 2254. Support of putative spouse

2254. The court may, during the pendency of a proceeding for nullity of marriage or upon judgment of nullity of marriage, order a party to pay for the support of the other party in the same manner as if the marriage had not been void or voidable if the party for whose benefit the order is made is found to be a putative spouse.

Comment. Section 2254 continues former Civil Code Section 4455 without substantive change.

§ 2255. Attorney's fees and costs

2255. The court may grant attorney's fees and costs in accordance with Chapter 3.5 (commencing with Section 2030) of Part 1 in proceedings to have the marriage adjudged void and in those proceedings based upon voidable marriage in which the party applying for attorney's fees and costs is found to be innocent of fraud or wrongdoing in inducing or entering into the marriage, and free from knowledge of the then existence of any prior marriage or other impediment to the contracting of the marriage for which a judgment of nullity is sought.

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

PART 3 . DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

CHAPTER 1. EFFECT OF DISSOLUTION

§ 2300. Effect of dissolution

2300. 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. Section 2300 continues former Civil Code Section 4501 without substantive change. The words “when it becomes final” have been added to recognize that there is a waiting period before the judgment of dissolution becomes final. See Section 2339 (waiting period before dissolution judgment becomes final). See also Sections 2340-2344 (date of termination).

CHAPTER 2. GROUNDS FOR DISSOLUTION OR LEGAL SEPARATION

§ 2310. Grounds for dissolution or legal separation

2310. Dissolution of the marriage or legal separation of the parties may be based on either of the following grounds, which shall be pleaded generally:

(a) Irreconcilable differences, which have caused the irremediable breakdown of the marriage.

(b) Incurable insanity.

Comment. Section 2310 continues former Civil Code Section 4506 without substantive change. The reference to the court decree has been omitted as surplus. See Section 100 (“judgment” and “order” include decree, as appropriate).

§ 2311. Irreconcilable differences

2311. Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

Comment. Section 2311 continues former Civil Code Section 4507 without change.

§ 2312. Proof required for dissolution on grounds of incurable insanity

2312. A marriage may be dissolved on the grounds of incurable insanity only upon proof, including competent medical or psychiatric testimony, that the insane spouse was at the time the petition was filed, and remains, incurably insane.

Comment. Section 2312 continues former Civil Code Section 4510(a) without change. For background on former Civ. Code § 4510, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501, 930 (1978).

§ 2313. Duty of support not affected by dissolution on grounds of insanity

2313. No dissolution of marriage granted on the ground of incurable insanity relieves a spouse from any obligation imposed by law as a result of the marriage for the support of the spouse who is incurably insane, and the court may make such order for support, or require a bond therefor, as the circumstances require.

Comment. Section 2313 continues former Civil Code Section 4510(b) without substantive change. The former reference to "decree" has been omitted as surplus. See Section 100 ("judgment" and "order" include decree, as appropriate). For background on former Civ. Code § 4510, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501, 930 (1978).

CHAPTER 3. RESIDENCE REQUIREMENTS

§ 2320. Residence requirement for dissolution judgment

2320. A judgment of dissolution of marriage may not be entered unless one of the parties to the marriage has been a resident of this state for six months and of the county in

which the proceeding is filed for three months next preceding the filing of the petition.

Comment. Section 2320 continues former Civil Code Section 4530(a) without substantive change. See also Code Civ. Proc. § 395 (venue for marriage dissolution proceeding).

§ 2321. Conversion of separation proceeding to dissolution proceeding

2321. (a) In a proceeding for legal separation of the parties in which neither party, at the time the proceeding was commenced, has complied with the residence requirements of Section 2320, either party may, upon complying with the residence requirements, amend the party's petition or responsive pleading in the proceeding to request that a judgment of dissolution of the marriage be entered. The date of the filing of the amended petition or pleading shall be deemed to be the date of commencement of the proceeding for the dissolution of the marriage for the purposes only of the residence requirements of Section 2320.

(b) If the other party has appeared in the proceeding, notice of the amendment shall be given to the other party in the manner provided by rules adopted by the Judicial Council. If no appearance has been made by the other party in the proceeding, notice of the amendment may be given to the other party by mail to the last known address of the other party, or by personal service, if the intent of the party to so amend upon satisfaction of the residence requirements of Section 2320 is set forth in the initial petition or pleading in the manner provided by rules adopted by the Judicial Council.

Comment. Section 2321 continues former Civil Code Section 4530(b) without substantive change.

§ 2322. Separate domicile or residence

2322. For the purpose of a proceeding for dissolution of marriage, the husband and wife each may have a separate

domicile or residence depending upon proof of the fact and not upon legal presumptions.

Comment. Section 2322 continues former Civil Code Section 4531 without substantive change.

CHAPTER 4. GENERAL PROCEDURAL PROVISIONS

§ 2330. Petition for dissolution or legal separation

2330. (a) A proceeding for dissolution of marriage or for legal separation of the parties is commenced by filing a petition entitled “In re the marriage of _____ and _____” which shall state whether it is a petition for dissolution of the marriage or for legal separation of the parties.

(b) In a proceeding for dissolution of marriage or for legal separation of the parties, 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.
- (2) The date of marriage.
- (3) The date of separation.
- (4) The number of years from marriage to separation.
- (5) The number of children of the marriage, if any, and if none a statement of that fact.
- (6) The age and birth date of each minor child of the marriage.
- (7) The social security numbers of the husband and wife, if available, and if not available, a statement to that effect.

Comment. Subdivision (a) of Section 2330 continues the first sentence of former Civil Code Section 4503 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

Subdivision (b) continues former Code of Civil Procedure Section 429.10 without substantive change. The reference to legal separation has been added. This is not a substantive change, since the mandatory Judicial Council form for a petition for legal separation includes this information. See Cal. R. Ct. 1281 (rev. Jan. 1, 1993) .

§ 2330.5. Financial declarations not required in certain default cases

2330.5. Notwithstanding any other provision of law, if no demand for money, property, costs, or attorney's fees is contained in the petition and the judgment of dissolution of marriage is entered by default, the filing of income and expense declarations and property declarations in connection therewith shall not be required.

Comment. Section 2330.5 continues former Civil Code Section 4364 without substantive change. The word "judgment" has been substituted for "decree." This is not a substantive change. See Section 100 ("judgment" includes decree, as appropriate). The phrase "income and expense declarations and property declarations" has been substituted for "a financial declaration" to conform with the language of California Rule of Court 1243. See also Sections 95 ("income and expense declaration" defined), 115 ("property declaration" defined).

§ 2331. Service on other spouse

2331. A copy of the petition, together with a copy of a summons, in form and content approved by the Judicial Council shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

Comment. Section 2331 continues the last sentence of former Civil Code Section 4503 without substantive change. See also Section 2332 (service on guardian or conservator of insane spouse where dissolution based on incurable insanity).

§ 2332. Representation of insane spouse by guardian, conservator, or guardian ad litem

2332. (a) If the petition for dissolution of the marriage is based on the ground of incurable insanity and the insane spouse has a guardian or conservator, other than the spouse filing the petition, the petition and summons shall be served upon the insane spouse and the guardian or conservator. The guardian or conservator shall defend and protect the interests of the insane spouse.

(b) If the insane spouse has no guardian or conservator, or if the spouse filing the petition is the guardian or conservator of the insane spouse, the court shall appoint a guardian ad litem, who may be the district attorney or the county counsel, if any, to defend and protect the interests of the insane spouse. If a district attorney or county counsel is appointed guardian ad litem pursuant to this subdivision, the successor in the office of district attorney or county counsel, as the case may be, succeeds as guardian ad litem, without further action by the court or parties.

(c) “Guardian or conservator” as used in this section means:

(1) With respect to the issue of the dissolution of the marriage relationship, the guardian or conservator of the person.

(2) With respect to support and property division issues, the guardian or conservator of the estate.

Comment. Section 2332 continues former Civil Code Section 4510(c)-(d) without substantive change. In subdivisions (a) and (b), “filing the petition” has been substituted for “bringing the action.” For background on former Civ. Code § 4510, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm’n Reports 501, 930 (1978).

§ 2333. Court finding and order where grounds is irreconcilable differences

2333. Subject to Section 2334, if from the evidence at the hearing the court finds that there are irreconcilable differences which have caused the irremediable breakdown of the marriage, the court shall order the dissolution of the marriage or a legal separation of the parties.

Comment. Section 2333 continues the first sentence of former Civil Code Section 4508(a) without substantive change.

§ 2334. Continuance for reconciliation

2334. (a) If it appears that there is a reasonable possibility of reconciliation, the court shall continue the proceeding for

the dissolution of the marriage or for a legal separation of the parties for a period not to exceed 30 days.

(b) During the period of the continuance, the court may make orders for the support and maintenance of the parties, the custody of the minor children of the marriage, the support of children for whom support may be ordered, attorney's fees, and for the preservation of the property of the parties.

(c) At any time after the termination of the period of the continuance, either party may move for the dissolution of the marriage or a legal separation of the parties, and the court may enter a judgment of dissolution of the marriage or legal separation of the parties.

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

§ 2335. Evidence of specific acts of misconduct

2335. Except as otherwise provided by statute, in a pleading or proceeding for dissolution of marriage or legal separation of the parties, including depositions and discovery proceedings, evidence of specific acts of misconduct is improper and inadmissible.

Comment. Section 2335 restates the central rule of former Civil Code Section 4509 without substantive change. The phrase "under this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. The former exception for child custody matters is superseded by the introductory clause, which recognizes all statutory exceptions. See, e.g. Sections 3011 (history of abuse of child or other parent must be

considered in determining best interest of child for purposes of custody), 6305 (presentation of evidence of abuse or domestic violence required for mutual restraining order)

§ 2336. Proof required for default

2336. (a) No judgment of dissolution or of legal separation of the parties may be granted upon the default of one of the parties or upon a statement or finding of fact made by a referee; but the court shall, in addition to the statement or finding of the referee, require proof of the grounds alleged, and the proof, if not taken before the court, shall be by affidavit.

(b) If the proof is by affidavit, the personal appearance of the affiant is required only when it appears to the court that any of the following circumstances exist:

(1) Reconciliation of the parties is reasonably possible.

(2) A proposed child custody order is not in the best interest of the child.

(3) A proposed child support order is less than a noncustodial parent is capable of paying.

(4) A personal appearance of a party or interested person would be in the best interests of justice.

(c) An affidavit submitted pursuant to this section shall contain a stipulation by the affiant that the affiant understands that proof will be by affidavit and that the affiant will not appear before the court unless so ordered by the court.

Comment. Section 2336 continues former Civil Code Section 4511 without substantive change. In subdivision (a), “judgment” has been substituted for “decree.” This is not a substantive change. See Section 100 (“judgment” includes decree, as appropriate). See also Section 3011 (factors in determining best interest of child).

§ 2337. Severance and grant of early trial on issue of dissolution of status of marriage

2337. (a) In a proceeding for dissolution of marriage, the court, upon noticed motion, may sever and grant an early and

separate trial on the issue of the dissolution of the status of the marriage apart from other issues.

(b) The court may impose upon a party any of the following conditions on granting a severance of the issue of the dissolution of the status of the marriage, and in case of that party's death, an order of any of the following conditions continues to be binding upon that party's estate:

(1) The party shall indemnify and hold the other party harmless from any taxes, reassessments, interest, and penalties payable by the other party if the dissolution of the marriage before the division of the parties' community estate results in a taxable event to either of the parties by reason of the ultimate division of their community estate, which taxes would not have been payable if the parties were still married at the time the division was made.

(2) Until judgment has been entered on all remaining issues and has become final, the party shall maintain all existing health and medical insurance coverage for the other party and the minor children as named dependents, so long as the party is legally able to do so. At the time the party is no longer legally eligible to maintain the other party as a named dependent under the existing health and medical policies, the party or the party's estate shall, at the party's sole expense, purchase and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage. If comparable insurance coverage is not obtained, the party or the party's estate is responsible for the health and medical expenses incurred by the other party which would have been covered by the insurance coverage, and shall indemnify and hold the other party harmless from any adverse consequences resulting from the lack of insurance.

(3) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the

other party harmless from any adverse consequences resulting to the other party if the bifurcation results in a termination of the other party's right to a probate homestead in the residence in which the other party resides at the time the severance is granted.

(4) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in the loss of the rights of the other party to a probate family allowance as the surviving spouse of the party.

(5) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in the loss of the other party's rights to pension benefits, elections, or survivors' benefits under the party's pension or retirement plan to the extent that the other party would have been entitled to those benefits or elections as the surviving spouse of the party.

(6) The party shall cause the party's retirement or pension plan to be joined as a party to the proceeding for dissolution, and if the party has a private pension plan covered by ERISA, then the party shall cause 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.

(7) The party shall indemnify and hold the other party harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the other party would have been entitled to those benefits or elections as the surviving spouse of the party.

(8) Any other condition the court determines is just and equitable.

(c) A judgment granting a dissolution of the status of the marriage shall expressly reserve jurisdiction for later determination of all other pending issues.

Comment. Section 2337 continues former Civil Code Section 4515 without substantive change. The phrase “under this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. In subdivision (a), “proceeding” has been substituted for “action.” In subdivision (b)(1), “community estate” has been substituted for “community property” to conform to the language of Division 7 (commencing with Section 2500). See, e.g., Section 2550 (equal division of community estate). See also Section 63 (“community estate” defined). Throughout this section, “any” has been substituted for “any and all,” since “all” is surplus.

§ 2338. Decisions; judgments

2338. (a) In a proceeding for dissolution of the marriage or legal separation of the parties, the court shall file its decision and any statement of decision as in other cases.

(b) If the court determines that no dissolution should be granted, a judgment to that effect only shall be entered.

(c) If the court determines that a dissolution should be granted, a judgment of dissolution of marriage shall be entered. After the entry of the judgment and before it becomes final, neither party has the right to dismiss the proceeding without the consent of the other.

Comment. Section 2338 continues former Civil Code Section 4512 without substantive change. In subdivision (a), “proceeding” has been substituted for “action” and the reference to legal separation has been added. This is not a substantive change. See Section 210 (general rules of practice and procedure); Cal. R. Ct. 1206 (1970) (general law applicable). The effect of subdivision (a) is that the rule regarding filing of decisions and statements applicable to civil actions generally is the rule in proceedings for dissolution or legal separation. See also Code Civ. Proc. § 632 (statement of decision not required unless requested).

In subdivision (b), the phrase “judgment of dissolution shall be entered” has been substituted for “a judgment shall be entered declaring that the parties are entitled to have their marriage dissolved.” This

conforms with the language of Section 2340 and with the mandatory Judicial Council judgment form. See Cal. R. Ct. 1287 (rev. Jan. 1, 1993) .

§ 2339. Waiting period before dissolution judgment becomes final

2339. (a) Subject to subdivision (b) and to Sections 2340 to 2344, inclusive, no judgment of dissolution is final for the purpose of terminating the marriage relationship of the parties until six months have expired from the date of service of a copy of summons and petition or the date of appearance of the respondent, whichever occurs first.

(b) The court may extend the six-month period described in subdivision (a) for good cause shown.

Comment. Section 2339 restates the first sentence of former Civil Code Section 4514(a) without substantive change. In subdivision (a), “judgment of dissolution” has been substituted for “judgment entered pursuant to Section 4512.” This is not a substantive change, since former Civil Code Section 4512 provided for a judgment of dissolution. Subdivision (a) includes new language concerning the effect of the expiration of the waiting period. This is not a substantive change. See Sections 2300 (effect of judgment of dissolution when it becomes final), 2340 (date judgment becomes final for purpose of terminating marriage relationship).

§ 2340. Statement in judgment of date marriage terminates

2340. A judgment of dissolution of marriage shall specify the date on which the judgment becomes finally effective for the purpose of terminating the marriage relationship of the parties.

Comment. Section 2340 continues second sentence of former Civil Code Section 4514(a) without substantive change. The word “judgment” has been substituted for “decree.” This is not a substantive change. See Section 100 (“judgment” includes decree, as appropriate).

§ 2341. Effect of appeal or motion for new trial

2341. (a) Notwithstanding Section 2340, if an appeal is taken from the judgment or a motion for a new trial is made, the dissolution of marriage does not become final until the

motion or appeal has been finally disposed of, nor then, if the motion has been granted or judgment reversed.

(b) Notwithstanding any other provision of law, the filing of an appeal or of a motion for a new trial does not stay the effect of a judgment insofar as it relates to the dissolution of the marriage status and restoring the parties to the status of unmarried persons, unless the appealing or moving party specifies in the notice of appeal or motion for new trial an objection to the termination of the marriage status. No party may make such an objection to the termination of the marriage status unless such an objection was also made at the time of trial.

Comment. Subdivision (a) of Section 2341 continues the last sentence of former Civil Code Section 4514(a) without substantive change. Subdivision (b) continues former Civil Code Section 4514(b) without substantive change.

§ 2342. Calculating date judgment becomes final where joint petition for summary dissolution is revoked

2342. Where a joint petition under Chapter 5 (commencing with Section 2400) is thereafter revoked and either party commences a proceeding pursuant to Section 2330 within 90 days from the date of the filing of the revocation, the date the judgment becomes a final judgment under Section 2339 shall be calculated by deducting the period of time which has elapsed from the date of filing the joint petition to the date of filing the revocation.

Comment. Section 2342 continues former Civil Code Section 4514(c) without substantive change. The phrase “the date the judgment becomes a final judgment under Section 2339” replaces “the permissible date of entry of judgment pursuant to this section.” This is not a substantive change, since the relevant part of the former section is continued in Section 2339.

§ 2343. Retention of jurisdiction over date of termination; order for termination at future specified date

2343. The court may, upon notice and for good cause shown, or on stipulation of the parties, retain jurisdiction over the date of termination of the marital status, or may order that the marital status be terminated at a future specified date. On the date of termination of the marital status, the parties are restored to the status of unmarried persons.

Comment. Section 2343 continues former Civil Code Section 4514(e) without change.

§ 2344. Effect of death of either party after entry of judgment

2344. (a) The death of either party after entry of the judgment does not prevent the judgment from becoming a final judgment under Sections 2339 to 2343, inclusive.

(b) Subdivision (a) does not validate a marriage by either party before the judgment becomes final, nor does it constitute a defense in a criminal prosecution against either party.

Comment. Section 2344 restates former Civil Code Section 4514(d) without substantive change. The language of the former provision has been revised to recognize that the judgment is entered and becomes final when the time runs, without further action by the court. Subdivision (b) has been revised to omit the reference to a marriage having been “contracted,” since this language is surplus. This is not a substantive change and a marriage entered into before the judgment becomes final is not validated by subdivision (a). See also Section 310(a) (death of party dissolves marriage).

§ 2345. Consent of parties to legal separation

2345. The court may not render a judgment of the legal separation of the parties without the consent of both parties unless one party has not made a general appearance and the petition is one for legal separation.

Comment. Section 2345 continues the first sentence of former Civil Code Section 4508(b) without substantive change.

§ 2346. Entry of judgment nunc pro tunc

2346. (a) If the court determines that a judgment of dissolution of the marriage should be granted, but by mistake, negligence, or inadvertence, the judgment has not been signed, filed, and entered, the court may cause the judgment to be signed, dated, filed, and entered in the proceeding as of the date when the judgment could have been signed, dated, filed, and entered originally, if it appears to the satisfaction of the court that no appeal is to be taken in the proceeding or motion made for a new trial, to annul or set aside the judgment, or for relief under Chapter 8 (commencing with Section 469) of Title 6 of Part 2 of the Code of Civil Procedure.

(b) The court may act under subdivision (a) on its own motion or upon the motion of either party to the proceeding. In contested cases, the motion of a party shall be with notice to the other party.

(c) The court may cause the judgment to be entered nunc pro tunc as provided in this section, even though the judgment may have been previously entered, where through mistake, negligence, or inadvertence the judgment was not entered as soon as it could have been entered under the law if applied for.

(d) The court shall not cause a judgment to be entered nunc pro tunc as provided in this section as of a date before trial in the matter, before the date of an uncontested judgment hearing in the matter, or before the date of submission to the court of an application for judgment on affidavit pursuant to Section 2336. Upon the entry of the judgment, the parties have the same rights with regard to the dissolution of marriage becoming final on the date that it would have become final had the judgment been entered upon the date when it could have been originally entered.

Comment. Section 2346 continues former Civil Code Section 4513 without substantive change. In subdivision (a), “judgment of dissolution

of the marriage” has been substituted for “decree of dissolution.” This is not a substantive change. See Section 100 (“judgment” includes decree, as appropriate). Throughout this section “proceeding” has been substituted for “action.”

§ 2347. Legal separation judgment does not bar subsequent dissolution judgment

2347. A judgment of legal separation of the parties does not bar a subsequent judgment of dissolution of the marriage granted pursuant to a petition for dissolution filed by either party.

Comment. Section 2347 continues the last sentence of former Civil Code Section 4508(b) without substantive change.

CHAPTER 5. SUMMARY DISSOLUTION

§ 2400. Conditions necessary at commencement of proceeding

2400. (a) A marriage may be dissolved by the summary dissolution procedure provided in this chapter if all of the following conditions exist at the time the proceeding is commenced:

(1) Either party has met the jurisdictional requirements of Chapter 3 (commencing with Section 2320) with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irremediable breakdown of the marriage and the marriage should be dissolved.

(3) There are no children of the relationship of the parties born before or during the marriage or adopted by the parties during the marriage, and the wife, to her knowledge, is not pregnant.

(4) The marriage is not more than five years in duration at the time the petition is filed.

(5) Neither party has any interest in real property wherever situated, with the exception of the lease of a residence

occupied by either party which satisfies the following requirements:

(A) The lease does not include an option to purchase.

(B) The lease terminates within one year from the date of the filing of the petition.

(6) There are no unpaid obligations in excess of four thousand dollars (\$4,000) incurred by either or both of the parties after the date of their marriage, excluding the amount of any unpaid obligation with respect to an automobile.

(7) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than twenty-five thousand dollars (\$25,000), and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of twenty-five thousand dollars (\$25,000).

(8) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(9) The parties waive any rights to spousal support.

(10) The parties, upon entry of the judgment of dissolution of marriage pursuant to Section 2403, irrevocably waive their respective rights to appeal and their rights to move for a new trial.

(11) The parties have read and understand the summary dissolution brochure provided for in Section 2406.

(12) The parties desire that the court dissolve the marriage.

(b) On January 1, 1985, and on January 1 of each odd-numbered year thereafter, the amounts in paragraph (6) of subdivision (a) shall be adjusted to reflect any change in the value of the dollar. On January 1, 1993, and on January 1 of each odd-numbered year thereafter, the amounts in paragraph

(7) of subdivision (a) shall be adjusted to reflect any change in the value of the dollar. The adjustments shall be made by multiplying the base amounts by the percentage change in the California Consumer Price Index as compiled by the Department of Industrial Relations, with the result rounded to the nearest thousand dollars. The Judicial Council shall compute and publish the amounts.

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

§ 2401. Joint petition

2401. (a) A proceeding for summary dissolution of the marriage shall be commenced by filing a joint petition in the form prescribed by the Judicial Council.

(b) The petition shall be signed under oath by both the husband and the wife, and shall include all of the following:

(1) A statement that as of the date of the filing of the joint petition all of the conditions set forth in Section 2400 have been met.

(2) The mailing address of both the husband and the wife.

(3) A statement whether or not the wife elects to have her maiden or former name restored, and, if so, the name to be restored.

Comment. Section 2401 continues former Civil Code Section 4551 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

§ 2402. Revocation of joint petition and termination of proceeding

2402. (a) At any time before the filing of application for judgment pursuant to Section 2403, either party to the marriage may revoke the joint petition and thereby terminate

the summary dissolution proceeding filed pursuant to this chapter.

(b) The revocation shall be effected by filing with the clerk of the court where the proceeding was commenced a notice of revocation in such form and content as shall be prescribed by the Judicial Council.

(c) The revoking party shall send a copy of the notice of revocation to the other party by first-class mail, postage prepaid, at the other party's last known address.

Comment. Section 2402 continues former Civil Code Section 4552 without substantive change.

§ 2403. Entry of judgment of dissolution

2403. When six months have expired from the date of the filing of the joint petition for summary dissolution, the court may, upon application of either party, enter the judgment dissolving the marriage. The judgment restores to the parties the status of single persons, and either party may marry after the entry of the judgment. The clerk shall send a notice of entry of judgment to each of the parties at the party's last known address.

Comment. Section 2403 continues former Civil Code Section 4553 without substantive change.

§ 2404. Effect of entry of judgment

2404. Entry of the judgment pursuant to Section 2403 constitutes:

(a) A final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights.

(b) A waiver of their respective rights to spousal support, rights to appeal, and rights to move for a new trial.

Comment. Section 2404 continues former Civil Code Section 4554 without substantive change.

§ 2405. Action to set aside judgment

2405. (a) Entry of the judgment pursuant to Section 2403 does not prejudice nor bar the rights of either of the parties to institute an action to set aside the judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to Section 473 of the Code of Civil Procedure.

(b) The court shall set aside a judgment entered pursuant to Section 2403 regarding all matters except the status of the marriage, upon proof that the parties did not meet the requirements of Section 2400 at the time the petition was filed.

Comment. Section 2405 continues former Civil Code Section 4555 without substantive change.

§ 2406. Brochure describing summary dissolution proceedings

2406. (a) Each superior court shall make available a brochure, the contents and form of which shall be prescribed by the Judicial Council, describing the requirements, nature, and effect of proceedings under this chapter. The brochure shall be printed and distributed by the Judicial Council in both English and Spanish.

(b) The brochure shall state, in nontechnical language, all the following:

(1) It is in the best interests of the parties to consult an attorney regarding the dissolution of their marriage. The services of an attorney may be obtained through lawyer referral services, group or prepaid legal services, or legal aid organizations.

(2) The parties should not rely exclusively on this brochure which is not intended as a guide for self-representation in proceedings under this chapter.

(3) A concise summary of the provisions and procedures of this chapter and Sections 2320 and 2322 and Sections 2339 to 2344, inclusive.

(4) The nature of services of the conciliation court, where available.

(5) Neither party to the marriage can in the future obtain spousal support from the other.

(6) A statement in boldface type to the effect that upon entry of the judgment, the rights and obligations of the parties to the marriage with respect to the marriage, including property and spousal support rights, will be permanently adjudicated without right of appeal, except that neither party will be barred from instituting an action to set aside the judgment for fraud, duress, accident, mistake, or other grounds at law or in equity, or to make a motion pursuant to Section 473 of the Code of Civil Procedure.

(7) The parties to the marriage retain the status of married persons and cannot remarry until the judgment dissolving the marriage is entered.

(8) Other matters as the Judicial Council considers appropriate.

Comment. Section 2406 continues former Civil Code Section 4556 without substantive change.

DIVISION 7. DIVISION OF PROPERTY

PART 1 . DEFINITIONS

§ 2500. Application of definitions

2500. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this division.

Comment. Section 2500 is new and is comparable to Section 50.

§ 2502. “Separate property”

2502. “Separate property” does not include quasi-community property.

Comment. Section 2502 continues former Civil Code Section 4804 without substantive change, insofar as it applied to division of property. See also Sections 125 (“quasi-community property” defined), 130 (“separate property” defined in Section 760 *et seq.*). For a comparable definition applicable to support, see Section 3515.

PART 2 . GENERAL PROVISIONS

§ 2550. Equal division of community estate

2550. Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally.

Comment. Section 2550 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 4800(a). The phrase “or as otherwise provided in this division” has been substituted for “or as otherwise provided in this section,” which referred to former

Civil Code Section 4800. For the special rules for division of the community estate, see Sections 2600-2604.

For applicability of this division to a proceeding for nullity of marriage, see Sections 2251 (where court finds putative spouse, “quasi-marital property” divided in accordance with Division 7), 2252 (liability of “quasi-marital property” same as community or quasi-community property). See also Sections 63 (“community estate” defined), 1620 (contract between married persons concerning their property), 2554 (use of arbitration where parties do not voluntarily agree to division), 2650 (division of jointly held separate property), 2660 (real property located in another state), 3592 (obligations of property settlement discharged in bankruptcy).

§ 2551. Characterization of liabilities as separate or community and confirming or assigning them to parties

2551. For the purposes of division and in confirming or assigning the liabilities of the parties for which the community estate is liable, the court shall characterize liabilities as separate or community and confirm or assign them to the parties in accordance with Part 6 (commencing with Section 2620).

Comment. Section 2551 continues the second paragraph of former Civil Code Section 4800(a) without substantive change. A reference to Part 6 has been substituted for the narrower reference to former Civil Code Section 4800(c). This is not a substantive change. See also Sections 63 (“community estate” defined), 2251 (where court finds putative spouse, “quasi-marital property” divided in accordance with Division 7), 2252 (liability of “quasi-marital property” same as community or quasi-community property).

§ 2552. Valuation date for assets and liabilities

2552. (a) For the purpose of division of the community estate upon dissolution of marriage or legal separation of the parties, except as provided in subdivision (b), the court shall value the assets and liabilities as near as practicable to the time of trial.

(b) Upon 30 days’ notice by the moving party to the other party, the court for good cause shown 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. Section 2552 continues without substantive change the last sentence of the first paragraph of former Civil Code Section 4800(a). The reference to the “community estate” in the introductory clause of subdivision (a) replaces the former reference to “community property.” This revision is consistent with the language of subdivision (b). See Section 63 (“community estate” defined). In subdivision (a), the reference to dissolution and legal separation has been added and is drawn from the first sentence of former Civil Code Section 4800(a). See also Sections 2251 (where court finds putative spouse, “quasi-marital property” divided in accordance with Division 7), 2252 (liability of “quasi-marital property” same as community or quasi-community property).

§ 2553. Orders necessary to carry out purposes of this division

2553. The court may make any orders the court considers necessary to carry out the purposes of this division.

Comment. Section 2553 continues former Civil Code Section 4800(f) without substantive change. The phrase “the purposes of this division” has been substituted for “the purposes of this section,” which referred to former Civil Code Section 4800. See also Section 3592 (obligations of property settlement discharged in bankruptcy).

§ 2554. Arbitration where parties do not voluntarily agree to division

2554. (a) Notwithstanding any other provision of this division, in any case in which the parties do not agree in writing to a voluntary division of the community estate of the parties, the issue of the character, the value, and the division of the community estate may be submitted by the court to arbitration for resolution pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, if the total value of the community and quasi-community property in controversy in the opinion of the court does not exceed fifty thousand dollars (\$50,000). The decision of the court regarding the value of the community and quasi-community property for purposes of this section is not appealable.

(b) The court may submit the matter to arbitration at any time it believes the parties are unable to agree upon a division of the property.

Comment. Section 2554 continues former Civil Code Section 4800.9 without substantive change. In the introductory clause of subdivision (a), “this division” has been substituted for the reference to former Civil Code Section 4800. In the part of subdivision (a) that refers to division of property, references to “community estate” have been substituted for references to “community property and quasi-community property.” These are not substantive changes. See Section 63 (“community estate” defined). In the parts of subdivision (a) that refer to valuation of property, references to quasi-community property have been added. This conforms the valuation rule to the division rule.

§ 2555. Revision of property disposition on appeal

2555. The disposition of the community estate, as provided in this division, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

Comment. Section 2555 continues former Civil Code Section 4810 without substantive change. The term “community estate” replaces the former reference to “community and quasi-community property” for consistency with other sections in this part. See, e.g., Section 2550 (equal division of community estate). This is not a substantive change. See Section 63 (“community estate” defined). The phrase “as provided in this division” has been substituted for “as above provided.” This is not a substantive change, since the “above provided” provisions having to do with disposition of property are continued in this division.

§ 2556. Continuing jurisdiction to award community estate assets or liabilities

2556. In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any

community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability.

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

PART 3 . PRESUMPTION CONCERNING PROPERTY HELD IN JOINT FORM

§ 2580. Legislative intent

2580. The Legislature hereby finds and declares as follows:

(a) It is the public policy of this state to provide uniformly and consistently for the standard of proof in establishing the character of property acquired by spouses during marriage in joint title form, and for the allocation of community and separate interests in that property between the spouses.

(b) The methods provided by case and statutory law have not resulted in consistency in the treatment of spouses’

interests in property they hold in joint title, but rather, have created confusion as to which law applies to property at a particular point in time, depending on the form of title, and, as a result, spouses cannot have reliable expectations as to the characterization of their property and the allocation of the interests therein, and attorneys cannot reliably advise their clients regarding applicable law.

(c) Therefore, a compelling state interest exists to provide for uniform treatment of property. Thus, former Sections 4800.1 and 4800.2 of the Civil Code, as operative on January 1, 1987, and as continued in Sections 2581 and 2640 of this code, apply to all property held in joint title regardless of the date of acquisition of the property or the date of any agreement affecting the character of the property, and those sections apply in all proceedings commenced on or after January 1, 1984. However, those sections do not apply to property settlement agreements executed before January 1, 1987, or proceedings in which judgments were rendered before January 1, 1987, regardless of whether those judgments have become final.

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

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

(1) The Supreme Court’s interpretation of former law in the *Lucas* case of the community property presumption for a joint tenancy single-family

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

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

Note. This section includes a technical amendment made by 1993 Cal. Stat. ch. 876, § 15.2 (SB 1068).

§ 2581. Community property presumption for property held in joint form

2581. 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 by either of the following:

(a) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

(b) Proof that the parties have made a written agreement that the property is separate property.

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

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

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

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

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

sion Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

PART 4. SPECIAL RULES FOR DIVISION OF COMMUNITY ESTATE

§ 2600. Special rules for division of community estate

2600. Notwithstanding Sections 2550 to 2552, inclusive, the court may divide the community estate as provided in this part.

Comment. Section 2600 continues the introductory part of former Civil Code Section 4800(b) without substantive change. See also Section 63 (“community estate” defined).

§ 2601. Awarding asset to one party to effect substantially equal division

2601. Where economic circumstances warrant, the court may award an asset of the community estate to one party on such conditions as the court deems proper to effect a substantially equal division of the community estate.

Comment. Section 2601 continues former Civil Code Section 4800(b)(1) without substantive change. References to “community estate” have been added here to conform with language in the remainder of this division. See, e.g. Section 2550 (equal division of community estate). See also Section 63 (“community estate” defined).

§ 2602. Award or offset of amount deliberately misappropriated by party

2602. As an additional award or offset against existing property, the court may award, from a party's share, the amount the court determines to have been deliberately misappropriated by the party to the exclusion of the interest of the other party in the community estate.

Comment. Section 2602 continues former Civil Code Section 4800(b)(2) without substantive change. See also Section 63 (“community estate” defined).

§ 2603. Community estate personal injury damages

2603. (a) “Community estate personal injury damages” as used in this section means all money or other property received or to be received by a person in satisfaction of a judgment for damages for the person’s personal injuries or pursuant to an agreement for the settlement or compromise of a claim for the damages, if the cause of action for the damages arose during the marriage but is not separate property as described in Section 781, unless the money or other property has been commingled with other assets of the community estate.

(b) Community estate personal injury damages shall be assigned to the party who suffered the injuries unless the court, after taking into account the economic condition and needs of each party, the time that has elapsed since the recovery of the damages or the accrual of the cause of action, and all other facts of the case, determines that the interests of justice require another disposition. In such a case, the community estate personal injury damages shall be assigned to the respective parties in such proportions as the court determines to be just, except that at least one-half of the damages shall be assigned to the party who suffered the injuries.

Comment. Section 2603 continues former Civil Code Section 4800(b)(4) without substantive change. In the second sentence of subdivision (b), the former reference to community “property” personal injury damages has been changed to community “estate” personal injury damages for internal consistency. See Section 63 (“community estate” defined). See also Sections 780-783 (damages for injuries to married person).

§ 2604. Award where community estate less than \$5,000 and one party cannot be located

2604. If the net value of the community estate is less than five thousand dollars (\$5,000) and one party cannot be located through the exercise of reasonable diligence, the court

may award all the community estate to the other party on conditions the court deems proper in its judgment of dissolution of marriage or legal separation of the parties.

Comment. Section 2604 continues former Civil Code Section 4800(b)(3) without substantive change. A reference to the “community estate” has been added to conform with language in the remainder of this division. See, e.g., Section 2550 (equal division of community estate). See also Section 63 (“community estate” defined).

PART 5 . RETIREMENT PLAN BENEFITS

§ 2610. Division of retirement plan benefits

2610. (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party’s full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(1) Order the division of any retirement benefits payable upon or after the death of either party in a manner consistent with this division.

(2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

(3) Order the division of accumulated community property contributions and service credit as provided in Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of, or Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of, the Government Code.

(4) Order the division of community property rights in accounts with the State Teachers’ Retirement System

pursuant to Chapter 7.5 (commencing with Section 22650) of Part 13 of the Education Code.

(5) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraphs (3) and (4) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraphs (3) and (4) of subdivision (a).

Comment. Section 2610 continues former Civil Code Section 4800.8 without change. In subdivision (a), a reference to “this division” has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change. In subdivision (a)(3), the reference to Article 2.5 (commencing with Government Code Section 75050) restores an amendment made by Section 1 of Chapter 176 of the Statutes of 1992 that was inadvertently chaptered out by Section 1 of Chapter 431 of the Statutes of 1992.

PART 6 . DEBTS AND LIABILITIES

§ 2620. Confirmation or division of community estate debts

2620. The debts for which the community estate is liable which are unpaid at the time of trial, or for which the community estate becomes liable after trial, shall be confirmed or divided as provided in this part.

Comment. Section 2620 continues the introductory part of former Civil Code Section 4800(c) without substantive change. See also Sections 63 (“community estate” defined), 916 (liability after property

division), 2551 (court characterization of liabilities as separate or community and confirmation or assignment to parties), 2552 (valuation date for liabilities).

§ 2621. Debts incurred before marriage

2621. Debts incurred by either spouse before the date of marriage shall be confirmed without offset to the spouse who incurred the debt.

Comment. Section 2621 continues former Civil Code Section 4800(c)(1) without change.

§ 2622. Debts incurred after marriage but before separation

2622. (a) Except as provided in subdivision (b), debts incurred by either spouse after the date of marriage but before the date of separation shall be divided as set forth in Sections 2550 to 2552, inclusive, and Sections 2601 to 2604, inclusive.

(b) To the extent that community debts exceed total community and quasi-community assets, the excess of debt shall be assigned as the court deems just and equitable, taking into account factors such as the parties' relative ability to pay.

Comment. Section 2622 continues former Civil Code Section 4800(c)(2) without substantive change.

§ 2623. Debts after separation but before judgment

2623. Debts incurred by either spouse after the date of separation but before entry of a judgment of dissolution of marriage or legal separation of the parties shall be confirmed as follows:

(a) Debts incurred by either spouse for the common necessities of life of either spouse or the necessities of life of the children of the marriage for whom support may be ordered, in the absence of a court order or written agreement for support or for the payment of these debts, shall be confirmed to either spouse according to the parties' respective needs and abilities to pay at the time the debt was incurred.

(b) Debts incurred by either spouse for nonnecessaries of that spouse or children of the marriage for whom support may be ordered shall be confirmed without offset to the spouse who incurred the debt.

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

§ 2624. Debts incurred after entry of judgment

2624. Debts incurred by either spouse after entry of a judgment of dissolution of marriage but before termination of the parties’ marital status or after entry of a judgment of legal separation of the parties shall be confirmed without offset to the spouse who incurred the debt.

Comment. Section 2624 continues former Civil Code Section 4800(c)(4) without substantive change.

§ 2625. Separate debts

2625. Notwithstanding Sections 2620 to 2624, inclusive, all separate debts, including those debts incurred by a spouse during marriage and before the date of separation that were not incurred for the benefit of the community, shall be confirmed without offset to the spouse who incurred the debt.

Comment. Section 2625 continues former Civil Code Section 4800(d) without substantive change.

§ 2626. Reimbursement for debts paid after separation but before trial

2626. The court has jurisdiction to order reimbursement in cases it deems appropriate for debts paid after separation but before trial.

Comment. Section 2626 continues former Civil Code Section 4800(e) without substantive change.

§ 2627. Educational loans and tort liability

2627. Notwithstanding Sections 2550 to 2552, inclusive, and Sections 2620 to 2624, inclusive, educational loans shall be assigned pursuant to Section 2641 and liabilities subject to paragraph (2) of subdivision (b) of Section 1000 shall be assigned to the spouse whose act or omission provided the basis for the liability, without offset.

Comment. Section 2627 continues former Civil Code Section 4800(b)(5) without substantive change.

PAR T 7 . R E I M B U R S E M E N T S

§ 2640. Separate property contributions to property acquisition

2640. (a) “Contributions to the acquisition of the property,” as used in this section, include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

(b) In the division of the community estate under this division, unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party’s contributions to the acquisition of the property to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and shall not exceed the net value of the property at the time of the division.

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

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

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

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

§ 2641. Community contributions for education or training

2641. (a) “Community contributions to education or training” as used in this section means payments made with community or quasi-community property for education or training or for the repayment of a loan incurred for education

or training, whether the payments were made while the parties were resident in this state or resident outside this state.

(b) Subject to the limitations provided in this section, upon dissolution of marriage or legal separation of the parties:

(1) The community shall be reimbursed for community contributions to education or training of a party that substantially enhances the earning capacity of the party. The amount reimbursed shall be with interest at the legal rate, accruing from the end of the calendar year in which the contributions were made.

(2) A loan incurred during marriage for the education or training of a party shall not be included among the liabilities of the community for the purpose of division pursuant to this division but shall be assigned for payment by the party.

(c) The reimbursement and assignment required by this section shall be reduced or modified to the extent circumstances render such a disposition unjust, including, but not limited to, any of the following:

(1) The community has substantially benefited from the education, training, or loan incurred for the education or training of the party. There is a rebuttable presumption, affecting the burden of proof, that the community has not substantially benefited from community contributions to the education or training made less than 10 years before the commencement of the proceeding, and that the community has substantially benefited from community contributions to the education or training made more than 10 years before the commencement of the proceeding.

(2) The education or training received by the party is offset by the education or training received by the other party for which community contributions have been made.

(3) The education or training enables the party receiving the education or training to engage in gainful employment that

substantially reduces the need of the party for support that would otherwise be required.

(d) Reimbursement for community contributions and assignment of loans pursuant to this section is the exclusive remedy of the community or a party for the education or training and any resulting enhancement of the earning capacity of a party. However, nothing in this subdivision limits consideration of the effect of the education, training, or enhancement, or the amount reimbursed pursuant to this section, on the circumstances of the parties for the purpose of an order for support pursuant to Section 4320.

(e) This section is subject to an express written agreement of the parties to the contrary.

Comment. Section 2641 continues former Civil Code Section 4800.3 without substantive change. Section 2641 provides authority for reimbursement of educational expenses that have benefited primarily one party to the marriage. Although the education, degree, or license or the resulting enhanced earning capacity is not “property” subject to division, community expenditures for them are properly subject to reimbursement. See subdivision (d).

In subdivision (a), the reference to quasi-community property has been added. Former Civil Code Section 4800.3 referred only to community property. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 686, 268 Cal. Rptr 396 (1990) (“California’s marital property laws are designed to provide for uniform treatment of quasi-community and community property when the parties have changed their domicile to this state and seek to legally alter their marital status in a California court. This intent is apparent from statutes such as [former Civil Code Section] 4800 (equal division of ‘community estate’ consisting of community and quasi-community property) and [former Civil Code Section] 4800.5 (power to order conveyance of out-of-state property).”). Subdivision (a) does not detail the expenditures that might be included within the concept of “community contributions.” These expenditures would at least include the cost of tuition, fees, books and supplies, and transportation.

Subdivision (b)(1) states the basic rule that community contributions must be reimbursed. The reimbursement right is limited to cases where the earning capacity of a party is substantially enhanced. This limitation is intended to restrict litigation by requiring that the education or training must demonstrably enhance earning capacity and to implement the policy of the section to redress economic inequity. However, it is not required

that the party actually work in an occupation to which the enhancement applies; community contributions were made to the enhancement for the benefit of one party, who retains the potential to realize the enhancement in the future. Unless the rebuttable presumption of subdivision (c)(1) is overcome, reimbursement is limited to contributions made during the preceding ten years to minimize proof problems as well as potential inequity. Interest at the legal rate (Code Civ. Proc. § 685.010) accrues only from the end of each year in which expenditures were made, in order to simplify accounting for numerous small expenditures made over the course of the education or training. In subdivision (b)(2), the reference to this division has been substituted for the narrower reference to former Civil Code Section 4800. This is not a substantive change.

Subdivision (c) is intended to permit the court to avoid the provisions of this section in an appropriate case. For example, if one party receives a medical education, degree, and license at community expense, but the marriage endures for some time with a high standard of living and substantial accumulation of community assets attributable to the medical training, it may be inappropriate to require reimbursement. Subdivision (c)(1). If both parties receive education or training at community expense, it may be inappropriate to require reimbursement even though the exact amounts expended for each are not equal. Subdivision (c)(2). This limitation is especially important where one party received education or training more than 10 years before the commencement of the dissolution or legal separation proceeding. See subdivision (c)(1). If toward the end of a lengthy marriage one party, who had been a homemaker during the marriage and had never completed an education or developed job skills, receives education or training to enable him or her to be gainfully employed, reimbursement may be improper. Subdivision (c)(3). Absent the education or training, support may be necessary to maintain the party or to permit the party to obtain education or training.

In subdivision (d), a reference to Section 4320 has been substituted for the broader reference to former Civil Code Section 4801. This is not a substantive change, since the relevant part of the former section is continued in Section 4320.

Subdivision (e) recognizes that at the time community contributions are made to the education or training of a spouse, the parties may have an agreement as to the conditions of the contributions. Since such agreements may be subject to litigation, subdivision (e) requires a writing.

For background on former Civ. Code § 4800.3, see *Recommendation Relating to Reimbursement of Educational Expenses*, 17 Cal. L. Revision Comm'n Reports 229 (1984). See also *In re Marriage of Sullivan*, 37 Cal. 3d 762, 691 P.2d 1020, 209 Cal. Rptr. 354 (1984).

PART 8. JOINTLY HELD SEPARATE PROPERTY

§ 2650. Division of jointly held separate property

2650. In a proceeding for division of the community estate, the court has jurisdiction, at the request of either party, to divide the separate property interests of the parties in real and personal property, wherever situated and whenever acquired, held by the parties as joint tenants or tenants in common. The property shall be divided together with, and in accordance with the same procedure for and limitations on, division of community estate.

Comment. Section 2650 continues former Civil Code Section 4800.4(a) without substantive change. The term “community estate” has been substituted for “community property and quasi-community property.” This is not a substantive change. See Sections 63 (“community estate” defined), 2502 (“separate property” defined).

Section 2650 applies regardless of when the separate property was acquired. Former Civil Code Section 4800.4(b), which provided that the “section applies to proceedings commenced on or after January 1, 1986, regardless of whether the property was acquired before, on, or after January 1, 1986” has been omitted as unnecessary in view of Section 4(c).

When enacted in 1985 (as former Civil Code Section 4800.4), Section 2650 reversed the former rule that the court in a dissolution or legal separation proceeding had no jurisdiction over property of the parties other than community or quasi-community property. Section 2650 supplements provisions governing community property held in joint tenancy form by extending the jurisdiction of the court to separate property held in joint tenancy form as well. The section is consistent with the general rule that the court has jurisdiction to settle the property rights of the parties and with the principle that the court has jurisdiction to settle matters submitted to it by the parties. See Section 2010 (authority of court). The section is also consistent with the rule that the court may reserve jurisdiction to divide community property that has become tenancy in common by operation of law upon dissolution or separation. See, e.g., *Marriage of Borges*, 83 Cal. App. 3d 771, 148 Cal. Rptr. 118 (1978); *Comment, Post-Dissolution Suits to Divide Community Property: A Proposal for Legislative Action*, 10 Pac. L.J. 825 (1979).

Section 2650 supplements the other provisions of this division by giving the court express jurisdiction over joint tenancy or tenancy in

common separate property submitted by a party in a proceeding for division of the community estate. Property subject to division includes property acquired by the parties either before or during marriage. It also includes property acquired or situated either in this state or elsewhere. For a special rule governing treatment of real property situated in another state, see Section 2660 (community and quasi-community property). See also Section 2011 (jurisdiction over property of spouse served by publication). The court's jurisdiction extends only to the interests of the spouses, whether equal or unequal, and the court may not affect interests of third parties in the property. The interests of third parties may be subject to partition pursuant to Title 10.5 (commencing with Section 872.010) of Part 2 of the Code of Civil Procedure.

It should be noted that division of property pursuant to this section is subject to the same limitations applicable to division of the community estate. Therefore, an express agreement of the parties precluding partition or other division of the property and providing a mechanism for dispute resolution or otherwise governing their rights in the property prevails over this section. See Section 2550 (equal division of community estate "[e]xcept upon the written agreement of the parties").

For background on former Civ. Code § 4800.4, see *Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution*, 18 Cal. L. Revision Comm'n Reports 147 (1986); 18 Cal. L. Revision Comm'n Reports 365 (1986).

PART 9. REAL PROPERTY LOCATED IN ANOTHER STATE

§ 2660. Division where community estate includes real property located in another state

2660. (a) Except as provided in subdivision (b), if the property subject to division includes real property situated in another state, the court shall, if possible, divide the community property and quasi-community property as provided for in this division in such a manner that it is not necessary to change the nature of the interests held in the real property situated in the other state.

(b) If it is not possible to divide the property in the manner provided for in subdivision (a), the court may do any of the

following in order to effect a division of the property as provided for in this division:

(1) Require the parties to execute conveyances or take other actions with respect to the real property situated in the other state as are necessary.

(2) Award to the party who would have been benefited by the conveyances or other actions the money value of the interest in the property that the party would have received if the conveyances had been executed or other actions taken.

Comment. Section 2660 continues former Civil Code Section 4800.5 without substantive change. References to this division have been substituted for narrower references to former Civil Code Section 4800. Section 2660 specifies the procedure to be followed when the property subject to division includes real property situated in another state.

When real property is acquired in another state with community funds, the property is treated as community property for the purpose of division on dissolution of the marriage or on legal separation. See *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Tomaier v. Tomaier*, 23 Cal. 2d 754, 146 P.2d 905 (1944); *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113, 119 n.12 (1969). Quasi-community property likewise may include real property situated in another state. See Section 125 ("quasi-community property" defined). See also *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969).

Section 2660 recognizes that the judgment of the court dividing the property cannot directly affect real property in another state, even though the court has personal jurisdiction over both spouses, unless the judgment is allowed that effect by the laws of the state in which the property is situated. *Fall v. Eastin*, 215 U.S. 1 (1909); *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Taylor v. Taylor*, 192 Cal. 71, 218 P. 756 (1923). On the other hand, where the court has personal jurisdiction over both parties, it may order one of the parties to execute a deed by acting in personam; if the person so ordered does execute the deed, it effectively conveys the interest transferred, even though executed under threat of contempt proceedings. *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907), *aff'd*, *Fall v. Eastin*, 215 U.S. 1 (1909).

Section 2660 requires that the court first attempt to effect the equal division of the community property and quasi-community property required by this division without making any change in the nature of the interests held in the real property situated in the other state. This will be the result where the value of the other community and quasi-community

property is equal to or exceeds the value of the real property situated in the other state that is subject to division. Where the court determines that the real property situated in another state or an interest in such property must be transferred from one party to the other to effect the equal division of community and quasi-community property required by this division, the court may order the parties to execute the necessary conveyances or to take other actions — such as selling the property and including the proceeds in the property division — that may be necessary to effect an equal division of the community and quasi-community property, and may enforce its order by contempt proceedings. If a party refuses to execute the instrument necessary to effect the transfer or sale of the property or to take some other necessary action, the problem may be dealt with by awarding the money value of the property or interest therein to the other party, which award must be given full faith and credit. *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907), *aff'd*, *Fall v. Eastin*, 215 U.S. 1 (1909).

For background on former Civ. Code § 4800.5, see *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969); *Report of Assembly Committee on Judiciary on Assembly Bill 124*, 10 Cal. L. Revision Comm'n Reports 1042-43 (1971).

DIVISION 8. CUSTODY OF CHILDREN

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

§ 3000. Application of definitions

3000. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

Comment. Section 3000 is new and is comparable to Section 50.

§ 3002. “Joint custody”

3002. “Joint custody” means joint physical custody and joint legal custody.

Comment. Section 3002 continues former Civil Code Section 4600.5(d)(1) without change.

§ 3003. “Joint legal custody”

3003. “Joint legal custody” means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

Comment. Section 3003 continues former Civil Code Section 4600.5(d)(5) without change.

§ 3004. “Joint physical custody”

3004. “Joint physical custody” means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

Comment. Section 3004 continues former Civil Code Section 4600.5(d)(3) without change.

§ 3006. “Sole legal custody”

3006. “Sole legal custody” means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

Comment. Section 3006 continues former Civil Code Section 4600.5(d)(4) without change.

§ 3007. “Sole physical custody”

3007. “Sole physical custody” means that a child shall reside with and under the supervision of one parent, subject to the power of the court to order visitation.

Comment. Section 3007 continues former Civil Code Section 4600.5(d)(2) without change.

CHAPTER 2. GENERAL PROVISIONS

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

3010. (a) The mother of an unemancipated minor child and the father, if presumed to be the father under Section 7611, are equally entitled to the custody of the child.

(b) If one parent is dead, is unable or refuses to take custody, or has abandoned the child, the other parent is entitled to custody of the child.

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

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

171 Cal. 633, 635, 154 P. 304 (1915); Guardianship of Case, 57 Cal. App. 2d 844, 848, 135 P.2d 681 (1943).

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

§ 3011. Factors considered in determining best interest of child

3011. In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

(a) The health, safety, and welfare of the child.

(b) Any history of abuse by one parent against the child or against the other parent. As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, “abuse against the child” means “child abuse” as defined in Section 11165.6 of the Penal Code and “abuse against the other parent” means “abuse” as defined in Section 6203 of this code.

(c) The nature and amount of contact with both parents.

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

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

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

PART 2 . RIGHT TO CUSTODY OF MINOR CHILD

CHAPTER 1. GENERAL PROVISIONS

§ 3020. Legislative findings and declarations

3020. The Legislature finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011.

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

§ 3021. Application of part

3021. This part applies in any of the following:

- (a) A proceeding for dissolution of marriage.
- (b) A proceeding for nullity of marriage.
- (c) A proceeding for legal separation of the parties.
- (d) An action for exclusive custody pursuant to Section 3120.
- (e) A proceeding to determine custody or visitation in a proceeding pursuant to the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)).
- (f) A proceeding to determine custody or visitation in an action pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

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

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

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

§ 3022. Authority of court to make custody order

3022. The court may, during the pendency of a proceeding or at any time thereafter, make an order for the custody of a child during minority that seems necessary or proper.

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

§ 3023. Preference for trial on issue of custody

3023. (a) If custody of a minor child is the sole contested issue, the case shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date and shall be given an early hearing.

(b) If there is more than one contested issue and one of the issues is the custody of a minor child, the court, as to the issue of custody, shall order a separate trial. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date.

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

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

§ 3024. Notice to other parent of change of residence of child

3024. In making an order for custody, if the court does not consider it inappropriate, the court may specify that a parent shall notify the other parent if the parent plans to change the residence of the child for more than 30 days, unless there is prior written agreement to the removal. The notice shall be given before the contemplated move, by mail, return receipt requested, postage prepaid, to the last known address of the parent to be notified. A copy of the notice shall also be sent to that parent’s counsel of record. To the extent feasible, the

notice shall be provided within a minimum of 45 days before the proposed change of residence so as to allow time for mediation of a new agreement concerning custody. This section does not affect orders made before January 1, 1989.

Comment. Section 3024 continues former Civil Code Section 4600.5(m) without substantive change. Although former Civil Code Section 4600.5 related to joint custody, subdivision (m) of that section was not by its terms limited to a joint custody order. Accordingly, Section 3024 applies to any custody order, not only a joint custody order. See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 3025. Parental access to records

3025. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent.

Comment. Section 3025 continues former Civil Code Section 4600.5(l) without substantive change. Although former Civil Code Section 4600.5 related to joint custody, subdivision (l) of that section was not by its terms limited to a joint custody order. Accordingly, Section 3025 applies whether or not custody is pursuant to a joint custody order.

§ 3026. Family reunification services

3026. Family reunification services shall not be ordered as a part of a child custody or visitation rights proceeding. Nothing in this section affects the applicability of Section 16507 of the Welfare and Institutions Code.

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

§ 3027. Monetary sanction for false accusation of child abuse or neglect

3027. (a) If a court determines that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose reasonable money sanctions, not to exceed one thousand dollars (\$1,000) and reasonable attorney's fees incurred in recovering the sanctions, against the person making the accusation. For the purposes of this section, "person" includes a witness, a party, or a party's attorney.

(b) On motion by any person requesting sanctions under this section, the court shall issue its order to show cause why the requested sanctions should not be imposed. The order to show cause shall be served on the person against whom the sanctions are sought and a hearing thereon shall be scheduled by the court to be conducted at least 15 days after the order is served.

(c) The remedy provided by this section is in addition to any other remedy provided by law.

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

§ 3028. Compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights

3028. (a) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility or when a parent has been thwarted by the other parent when attempting to exercise custody or visitation rights contemplated by a custody or visitation order, including, but not limited to, an order for joint physical custody, or by a written or oral agreement between the parents.

(b) The compensation shall be limited to (1) the reasonable expenses incurred for or on behalf of a child, resulting from the other parent's failure to assume caretaker responsibility or (2) the reasonable expenses incurred by a parent for or on behalf of a child, resulting from the other parent's thwarting of the parent's efforts to exercise custody or visitation rights. The expenses may include the value of caretaker services but are not limited to the cost of services provided by a third party during the relevant period.

(c) The compensation may be requested by noticed motion or an order to show cause, which shall allege, under penalty of perjury, (1) a minimum of one hundred dollars (\$100) of expenses incurred or (2) at least three occurrences of failure to exercise custody or visitation rights or (3) at least three occurrences of the thwarting of efforts to exercise custody or visitation rights within the six months before filing of the motion or order.

(d) Attorney's fees shall be awarded to the prevailing party upon a showing of the nonprevailing party's ability to pay as required by Section 270.

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

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

§ 3029. Order for support where custodial parent receiving public assistance

3029. An order granting custody to a parent who is receiving, or in the opinion of the court is likely to receive, assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3

of Division 9 of the Welfare and Institutions Code) for the maintenance of the child shall include an order pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 of this code, directing the noncustodial parent to pay any amount necessary for the support of the child, to the extent of the noncustodial parent's ability to pay.

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

§ 3030. Parent convicted under Penal Code provisions

3030. No parent shall be granted custody of, or unsupervised visitation with, a child if the parent has been convicted under Section 273a, 273d, or 647.6 of the Penal Code unless the court finds that there is no significant risk to the child.

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

§ 3031. Custody order not to be inconsistent with civil or criminal protective orders

3031. Where the court considers the issue of custody or visitation the court is encouraged to make a reasonable effort to ascertain whether or not any civil restraining orders or criminal protective orders are in effect that concern the parties or the minor. The court is encouraged not to make a custody or visitation order that is inconsistent with the civil restraining order or criminal protective order, unless the court makes both of the following findings:

(a) The custody or visitation order cannot be made consistent with the civil restraining order or criminal protective order.

(b) The custody or visitation order is in the best interest of the minor.

Comment. Section 3031 continues without substantive change former Civil Code Sections 4612 and 7009 and former Code of Civil Procedure Section 547.7. The former reference to “a proceeding concerning the custody of, or visitation with, a minor” has been omitted. This section applies to a determination of custody or visitation in a proceeding for dissolution, nullity, or legal separation, and in proceedings pursuant to the Domestic Violence Prevention Act and the Uniform Parentage Act. See Section 3021 (application of part). See also Section 3011 (factors in determining best interest of child).

CHAPTER 2. MATTERS TO BE CONSIDERED IN GRANTING CUSTODY

§ 3040. Order of preference in ordering custody

3040. (a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Section 3011:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, subject to Section 3011, and shall not prefer a parent as custodian because of that parent’s sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

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

§ 3041. Additional requirements for custody granted to nonparent

3041. Before making an order granting custody to a person or persons other than a parent, without the consent of the parents, the court shall make a finding that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

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

§ 3042. Wishes of child

3042. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an order granting or modifying custody.

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

§ 3043. Nomination of guardian by parent

3043. In determining the person or persons to whom custody should be granted under paragraph (2) or (3) of subdivision (a) of Section 3040, the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

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

CHAPTER 3. TEMPORARY CUSTODY ORDER DURING PENDENCY OF PROCEEDING

§ 3060. Petition for temporary custody order

3060. A petition for a temporary custody order, containing the statement required by Section 3409, may be included with the initial filing of the petition or action or may be filed at any time after the initial filing.

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

§ 3061. Order for temporary custody in accordance with agreement or understanding of parties

3061. If the parties have agreed to or reached an understanding on the custody or temporary custody of their children, a copy of the agreement or an affidavit as to their understanding shall be attached to the petition or action. As promptly as possible after this filing, the court shall, except in exceptional circumstances, enter an order granting temporary custody in accordance with the agreement or understanding or in accordance with any stipulation of the parties.

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

§ 3062. Ex parte order and order to show cause

3062. (a) In the absence of an agreement, understanding, or stipulation, the court may, if jurisdiction is appropriate, enter an ex parte temporary custody order, set a hearing date within 20 days, and issue an order to show cause on the responding party. If the responding party does not appear or respond within the time set, the temporary custody order may be extended as necessary, pending the termination of the proceedings.

(b) If, despite good faith efforts, service of the ex parte order and order to show cause has not been effected in a timely fashion and there is reason to believe, based on an affidavit, or other manner of proof made under penalty of perjury, by the petitioner, that the responding party has possession of the minor child and seeks to avoid the jurisdiction of the court or is concealing the whereabouts of the child, then the hearing date may be reset and the ex parte order extended up to an additional 90 days. After service has been effected, either party may request ex parte that the hearing date be advanced or the ex parte order be dissolved or modified.

Comment. Section 3062 continues former Civil Code Section 4600.1(c)-(d) without substantive change. The reference to “children” has been omitted as surplus. See Section 10 (singular includes plural). See also Section 3130 (action by district attorney to locate missing party and child and to procure compliance with order to appear).

§ 3063. Order restraining removal of child from state

3063. In conjunction with any ex parte order seeking or modifying an order of custody, the court shall enter an order restraining the person receiving custody from removing the child from the state pending notice and a hearing on the order seeking or modifying custody.

Comment. Section 3063 continues the first sentence of former Civil Code Section 4600.1(e) without change. See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 3064. Limitation on ex parte order granting or modifying custody order

3064. The court shall refrain from making an order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. “Immediate harm to the child” includes having a parent who has committed acts of domestic violence, where the court determines that the acts of domestic violence are of recent origin or are a part of a demonstrated and continuing pattern of acts of domestic violence.

Comment. Section 3064 continues the last two sentences of former Civil Code Section 4600.1(e) without substantive change. Unlike the former section, this section does not contain a reference to the section defining “domestic violence.” This is not a substantive change. See Sections 6201 (application of definitions), 6211 (“domestic violence” defined).

CHAPTER 4. JOINT CUSTODY

§ 3080. Presumption for joint custody where parents agree to joint custody

3080. There is a presumption, affecting the burden of proof, that joint custody is in the best interest of a minor child, subject to Section 3011, where the parents have agreed to joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child.

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

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

§ 3081. Grant of joint custody absent agreement of parents

3081. On application of either parent, joint custody may be ordered in the discretion of the court in cases other than those described in Section 3080, subject to Section 3011. For the purpose of assisting the court in making a determination whether joint custody is appropriate under this section, the court may direct that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110).

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

§ 3082. Statement by court of reasons for grant or denial of joint custody request

3082. When a request for joint custody is granted or denied, the court, upon the request of any party, shall state in its decision the reasons for granting or denying the request. A

statement that joint physical custody is, or is not, in the best interest of the child is not sufficient to satisfy the requirements of this section.

Comment. Section 3082 continues former Civil Code Section 4600.5(c) without substantive change. See also Sections 3002 (“joint custody” defined), 3004 (“joint physical custody” defined), 3011 (factors to be considered in determining best interest of child).

§ 3083. Content and effect of joint legal custody order

3083. In making an order of joint legal custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child. An order of joint legal custody shall not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court.

Comment. Section 3083 continues former Civil Code Section 4600.5(e) without change. See also Section 3003 (“joint legal custody” defined); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

§ 3084. Content of joint physical custody order

3084. In making an order of joint physical custody, the court shall specify the rights of each parent to physical control of the child in sufficient detail to enable a parent deprived of that control to implement laws for relief of child snatching and kidnapping.

Comment. Section 3084 continues former Civil Code Section 4600.5(f) without change. See also Section 3004 (“joint physical custody” defined).

§ 3085. Grant of joint legal custody without joint physical custody

3085. In making an order for custody with respect to both parents, the court may grant joint legal custody without granting joint physical custody.

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

§ 3086. Order may specify one parent as primary caretaker of child

3086. In making an order of joint physical custody or joint legal custody, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.

Comment. Section 3086 continues former Civil Code Section 4600.5(h) without change. See also Sections 3003 (“joint legal custody” defined), 3004 (“joint physical custody” defined), 3028 (compensation for failure to assume caretaker responsibility).

§ 3087. Modification or termination of joint custody order

3087. An order for joint custody may be modified or terminated upon the petition of one or both parents or on the court’s own motion if it is shown that the best interest of the child requires modification or termination of the order. If either parent opposes the modification or termination order, the court shall state in its decision the reasons for modification or termination of the joint custody order.

Comment. Section 3087 continues former Civil Code Section 4600.5(i) without substantive change. See also Sections 3002 (“joint custody” defined), 3011 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

§ 3088. Modification to make custody order a joint custody order

3088. An order for the custody of a minor child entered by a court in this state or any other state may, subject to the jurisdictional requirements in Sections 3403 and 3414, be

modified at any time to an order for joint custody in accordance with this chapter.

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

§ 3089. Consultation with conciliation court

3089. In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve a controversy which has arisen in the implementation of a plan for custody.

Comment. Section 3089 continues former Civil Code Section 4600.5(k) without change.

CHAPTER 5. VISITATION RIGHTS

§ 3100. Visitation rights of a parent

3100. (a) In making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

(b) If a protective order, as defined in Section 6218, has been directed to a parent, the court shall consider whether the best interest of the child requires that any visitation by that parent shall be limited to situations in which a third person, specified by the court, is present. The court shall include in its deliberations a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order. A parent may submit to the court the

name of a person that the parent deems suitable to be present during visitation.

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

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

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

§ 3101. Visitation rights of stepparent

3101. (a) Notwithstanding any other provision of law, the court may grant reasonable visitation to a stepparent, if visitation by the stepparent is determined to be in the best interest of the minor child.

(b) If a protective order, as defined in Section 6218, has been directed to a stepparent to whom visitation may be granted pursuant to this section, the court shall consider whether the best interest of the child requires that any visitation by the stepparent be denied.

(c) Visitation rights may not be ordered under this section that would conflict with a right of custody or visitation of a birth parent who is not a party to the proceeding.

(d) As used in this section:

(1) “Birth parent” means “birth parent” as defined in Section 8512.

(2) “Stepparent” means a person who is a party to the marriage that is the subject of the proceeding, with respect to a minor child of the other party to the marriage.

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

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

Subdivision (c) continues former Civil Code Section 4351.5(j) without substantive change insofar as it applied to stepparents. The reference to “birth parent” has been substituted for the former reference to “a natural or adoptive parent.” This is not a substantive change, since under subdivision (d)(1), “birth parent” include a biological and adoptive parent. This amendment is intended to improve clarity by using a defined term.

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

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

§ 3102. Visitation rights of grandparent and other relatives where parent of unemancipated minor child is deceased

3102. (a) If either parent of an unemancipated minor child is deceased, the children, parents, and grandparents of the deceased parent may be granted reasonable visitation with the child during the child’s minority upon a finding that the visitation would be in the best interest of the minor child.

(b) In granting visitation pursuant to this section to a person other than a grandparent, the court shall consider the amount of personal contact between the person and the child before the application for the visitation order.

(c) This section does not apply if the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section before the adoption of the child automatically terminate if the child is adopted by a person other than a stepparent or grandparent.

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

§ 3103. Visitation rights of grandparent in proceeding described in Section 3021

3103. (a) Notwithstanding any other provision of law, in a proceeding described in Section 3021, the court may grant reasonable visitation to a grandparent of a minor child of a party to the proceeding if the court determines that visitation by the grandparent is in the best interest of the child.

(b) If a protective order as defined in Section 6218 has been directed to the grandparent during the pendency of the proceeding, the court shall consider whether the best interest of the child requires that visitation by the grandparent be denied.

(c) The petitioner shall give notice of the petition to each of the parents of the child, any stepparent, and any person who has physical custody of the child, by certified mail, return receipt requested, postage prepaid, to the person’s last known address, or to the attorneys of record of the parties to the proceeding.

(d) There is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interest of a minor child if the child’s parents agree that the grandparent should not be granted visitation rights.

(e) Visitation rights may not be ordered under this section if that would conflict with a right of custody or visitation of a birth parent who is not a party to the proceeding.

(f) Visitation ordered pursuant to this section shall not create a basis for or against a change of residence of the child, but shall be one of the factors for the court to consider in ordering a change of residence.

(g) When a court orders grandparental visitation pursuant to this section, the court in its discretion may, based upon the relevant circumstances of the case:

(1) Allocate the percentage of grandparental visitation between the parents for purposes of the calculation of child support pursuant to the statewide uniform guideline (Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9).

(2) Notwithstanding Sections 3930 and 3951, order a parent or grandparent to pay to the other, an amount for the support of the child or grandchild. For purposes of this paragraph, “support means costs related to visitation such as any of the following:

(A) Transportation.

(B) Provision of basic expenses for the child or grandchild, such as medical expenses, day care costs, and other necessities.

(h) As used in this section, “birth parent” means “birth parent” as defined in Section 8512.

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

to the Domestic Violence Prevention Act or the Uniform Parentage Act. See Section 3021 (application of part) & Comment.

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

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

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

Subdivision (h) is new.

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

The provisions in subdivisions (c), (f), and (g) were added by 1993 Cal. Stat. ch. 832, § 1.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 832, § 1 (SB 306). See subdivisions (c), (f), and (g).

§ 3104. Visitation rights of grandparent

3104. (a) On petition to the court by a grandparent of a minor child, the court may grant reasonable visitation rights to the grandparent if the court does both of the following:

(1) Finds that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child.

(2) Balances the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority.

(b) A petition for visitation under this section may not be filed while the natural or adoptive parents are married, unless one or more of the following circumstances exist:

(1) The parents are currently living separately and apart on a permanent or indefinite basis.

(2) One of the parents has been absent for more than one month without the other spouse knowing the whereabouts of the absent spouse.

(3) One of the parents joins in the petition with the grandparents.

(4) The child is not residing with either parent.

At any time that a change of circumstances occurs such that none of these circumstances exist, the parent or parents may move the court to terminate grandparental visitation and the court shall grant the termination.

(c) The petitioner shall give notice of the petition to each of the parents of the child, any stepparent, and any person who has physical custody of the child, by personal service pursuant to Section 415.10 of the Code of Civil Procedure.

(d) If a protective order as defined in Section 6218 has been directed to the grandparent during the pendency of the proceeding, the court shall consider whether the best interest of the child requires that any visitation by that grandparent should be denied.

(e) There is a rebuttable presumption that the visitation of a grandparent is not in the best interest of a minor child if the natural or adoptive parents agree that the grandparent should not be granted visitation rights.

(f) There is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interest of a minor child if the parent who has been awarded

sole legal and physical custody of the child in another proceeding or with whom the child resides if there is currently no operative custody order objects to visitation by the grandparent.

(g) Visitation rights may not be ordered under this section if that would conflict with a right of custody or visitation of a birth parent who is not a party to the proceeding.

(h) Visitation ordered pursuant to this section shall not create a basis for or against a change of residence of the child, but shall be one of the factors for the court to consider in ordering a change of residence.

(i) When a court orders grandparental visitation pursuant to this section, the court in its discretion may, based upon the relevant circumstances of the case:

(1) Allocate the percentage of grandparental visitation between the parents for purposes of the calculation of child support pursuant to the statewide uniform guideline (Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9).

(2) Notwithstanding Sections 3930 and 3951, order a parent or grandparent to pay to the other, an amount for the support of the child or grandchild. For purposes of this paragraph, “support” means costs related to visitation such as any of the following:

(A) Transportation.

(B) Provision of basic expenses for the child or grandchild, such as medical expenses, day care costs, and other necessities.

(j) As used in this section, “birth parent” means “birth parent” as defined in Section 8512.

Note. This section was added by 1993 Cal. Stat. ch. 832, § 2 (SB 306).

CHAPTER 6. CUSTODY INVESTIGATION AND REPORT

§ 3110. “Court-appointed investigator” defined

3110. As used in this chapter, “court-appointed investigator” means a probation officer, domestic relations investigator, or court-appointed evaluator directed by the court to conduct an investigation pursuant to this chapter.

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

§ 3111. Filing, service, and use of report

3111. (a) Where directed by the court, the court-appointed investigator shall conduct a custody investigation and file a written confidential report on it. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys. The report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision (a).

(c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

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

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

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

3112. (a) Where a court-appointed investigator is directed by the court to conduct a custody investigation or to undertake visitation work, including necessary evaluation, supervision, and reporting, the court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of the minor. If the court finds the parent, guardian, or other person able to pay all or part of the expense of the investigation, report, and recommendation, the court may make an order requiring the parent, guardian, or other person to repay the county the amount the court determines proper.

(b) The repayment shall be made to the county officer designated by the board of supervisors, who shall keep suitable accounts of the expenses and repayments and shall deposit the collections in the county treasury.

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

§ 3113. Separate meetings where domestic violence

3113. Where there has been a history of domestic violence between the parties, or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the court-appointed investigator separately and at separate times.

Comment. Section 3113 continues the second paragraph of former Civil Code Section 4602 without substantive change. The reference to “court-appointed investigator” has been substituted for the former list of officers. This is not a substantive change. See Section 3110 (“court-

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

§ 3114. Recommendation for appointment of counsel for minor child

3114. Nothing in this chapter prohibits a court-appointed investigator from recommending to the court that counsel be appointed pursuant to Chapter 10 (commencing with Section 3150) to represent the minor child. In making that recommendation, the court-appointed investigator shall inform the court of the reasons why it would be in the best interest of the child to have counsel appointed.

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

§ 3115. Testimony of investigator

3115. The court-appointed investigator who conducted the investigation pursuant to this chapter shall be present at the trial and may be called to testify by the judge or either party as to any matter investigated. The testimony of the court-appointed investigator is subject to questions, direct and cross, that are proper, and is competent evidence.

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

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

3116. Nothing in this chapter limits the duty of a court-appointed investigator to assist the appointing court in the transaction of the business of the court.

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

CHAPTER 7. ACTION FOR EXCLUSIVE CUSTODY**§ 3120. Independent action for exclusive custody**

3120. Without filing a petition for dissolution of marriage or legal separation of the parties, the husband or wife may bring an action for the exclusive custody of the children of the marriage. The court may, during the pendency of the action, or at the final hearing thereof, or afterwards, make such order regarding the support, care, custody, education, and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interest of the children. The order may be modified or terminated at any time thereafter as the natural rights of the parties and the best interest of the children may require.

Comment. Section 3120 continues former Civil Code Section 4603 without substantive change. The reference to "decree" has been omitted as surplus. See Section 100 ("order" includes decree, as appropriate). The reference to "terminated" has been substituted for the former reference to "revoked." This is not a substantive change. See also Section 3011 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

CHAPTER 8. LOCATION OF MISSING PARTY OR CHILD

§ 3130. Action by district attorney to locate missing party and child and to procure compliance with order to appear

3130. If a petition to determine custody of a child has been filed in a court of competent jurisdiction, or if a temporary order pending determination of custody has been entered in accordance with Chapter 3 (commencing with Section 3060), and the whereabouts of a party in possession of the child are not known, or there is reason to believe that the party may not appear in the proceedings although ordered to appear personally with the child pursuant to Section 3411, the district attorney shall take all actions necessary to locate the party and the child and to procure compliance with the order to appear with the child for purposes of adjudication of custody. The petition to determine custody may be filed by the district attorney.

Comment. Section 3130 continues former Civil Code Section 4604(a) without substantive change.

§ 3131. Action by district attorney where child taken or detained in violation of custody or visitation order

3131. If a custody or visitation order has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the order, the district attorney shall take all actions necessary to locate and return the child and the person who violated the order and to assist in the enforcement of the custody or visitation order or other order of the court by use of an appropriate civil or criminal proceeding.

Comment. Section 3131 continues former Civil Code Section 4604(b) without substantive change. The word “order” has been substituted for “decree.” This is not a substantive change. See Section 100 (“order” includes decree, as appropriate). The phrase “and the child” has been omitted as surplus.

§ 3132. District attorney acts on behalf of court

3132. In performing the functions described in Sections 3130 and 3131, the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings.

Comment. Section 3132 continues first sentence of former Civil Code Section 4604(c) without substantive change.

§ 3133. Temporary custody order upon request of district attorney

3133. If the district attorney represents to the court, by a written declaration under penalty of perjury, that a temporary custody order is needed to recover a child who is being detained or concealed in violation of a court order or a parent's right to custody, the court may issue an order, placing temporary sole physical custody in the parent or person recommended by the district attorney to facilitate the return of the child to the jurisdiction of the court, pending further hearings. If the court determines that it is not in the best interest of the child to place temporary sole physical custody in the parent or person recommended by the district attorney, the court shall appoint a person to take charge of the child and return the child to the jurisdiction of the court.

Comment. Section 3133 continues the last two sentences of former Civil Code Section 4604(c) without substantive change. See also Sections 3007 ("sole physical custody" defined), 3011 (factors to be considered in determining best interest of child).

§ 3134. Payment of district attorney's expenses

3134. (a) When the district attorney incurs expenses pursuant to this chapter, including expenses incurred in a sister state, payment of the expenses may be advanced by the county subject to reimbursement by the state, and shall be audited by the Controller and paid by the State Treasury according to law.

(b) The court in which the custody proceeding is pending or which has continuing jurisdiction shall, if appropriate,

allocate liability for the reimbursement of actual expenses incurred by the district attorney to either or both parties to the proceedings, and that allocation shall constitute a judgment for the state for the funds advanced pursuant to this section. The county shall take reasonable action to enforce that liability and shall transmit all recovered funds to the state.

Comment. Section 3134 continues former Civil Code Section 4605 without substantive change.

CHAPTER 9. CHECK TO DETERMINE WHETHER CHILD IS MISSING PERSON

§ 3140. Submission of child's birth certificate to court if parent has not appeared in proceeding; check to determine if child is missing person

3140. (a) Subject to subdivisions (b) and (c), before granting or modifying a custody order in a case in which one or both parents of the child have not appeared either personally or by counsel, the court shall require the parent, petitioner, or other party appearing in the case to submit a certified copy of the child's birth certificate to the court. The court or its designee shall forward the certified copy of the birth certificate to the local police or sheriff's department which shall check with the National Crime Information Center Missing Person System to ascertain whether the child has been reported missing or is the victim of an abduction and shall report the results of the check to the court.

(b) If the custody matter before the court also involves a petition for the dissolution of marriage or the adjudication of paternity rights or duties, this section applies only to a case in which there is no proof of personal service of the petition on the absent parent.

(c) For good cause shown, the court may waive the requirements of this section.

Comment. Section 3140 continues former Civil Code Section 4604.5 without substantive change. See also Sections 3415 (Section 3140 applies to proceedings pursuant to Uniform Child Custody Jurisdiction Act), 7603 (Section 3140 applies to proceedings pursuant to Uniform Parentage Act); Welf. & Inst. Code § 11478.5 (California Parent Locator Service and Central Registry).

CHAPTER 10. APPOINTMENT OF COUNSEL TO REPRESENT CHILD

§ 3150. Appointment of private counsel to represent child in custody or visitation proceeding

3150. (a) If the court determines that it would be in the best interest of the minor child, the court may appoint private counsel to represent the interests of the child in a custody or visitation proceeding.

(b) Upon entering an appearance on behalf of a child pursuant to this chapter, counsel shall continue to represent that child unless relieved by the court upon the substitution of other counsel by the court or for cause.

Comment. Section 3150 continues former Civil Code Section 4606(a)-(b) without substantive change. The former reference to a proceeding “brought under this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as unnecessary. See Section 3021 (application of part). See also Section 3011 (factors to be considered in determining best interest of child).

§ 3151. Rights and duties of appointed counsel

3151. (a) The child’s counsel appointed under this chapter is charged with the representation of the child’s interests. The counsel’s duties, unless under the circumstances it is inappropriate to exercise the duty, include interviewing the child, reviewing the court files and all accessible relevant records available to both parties, and making any further investigations as the counsel considers necessary to ascertain facts relevant to the custody or visitation hearings. Counsel

may introduce and examine counsel's own witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately.

(b) Counsel shall have the following rights when ordered by the court:

(1) Reasonable access to the child with adequate notice.

(2) Notice of any proceeding, including a request for examinations, affecting the child.

(3) Access to medical and school records for the child.

(4) The right to veto any physical or psychological examination or evaluation, for purposes of the proceeding, which has not been ordered by the court.

(5) The right to assert on behalf of the child any privilege for discovery purposes.

(6) The right to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon application to the court.

Comment. Section 3151 continues former Civil Code Section 4606(c)-(d) without substantive change. The word "any" has been substituted for "any and all," since "all" is surplus.

§ 3152. Release to counsel of reports and files of child protective agency

3152. (a) The child's counsel may, upon noticed motion to all parties and the local child protective services agency, request the court to authorize release of relevant reports or files, concerning the child represented by the counsel, of the relevant local child protective services agency.

(b) The court shall review the reports or files in camera in order to determine whether they are relevant to the pending action and whether and to what extent they should be released to the child's counsel.

(c) Neither the review by the court nor the release to counsel shall constitute a waiver of the confidentiality of the

reports and files. Counsel shall not disclose the contents or existence of the reports or files to anyone unless otherwise permitted by law.

Comment. Section 3152 continues former Civil Code Section 4606(e) without substantive change. The word “reports” has been substituted for “records” in subdivision (c) to conform to subdivisions (a) and (b).

§ 3153. Compensation of appointed counsel

3153. (a) If the court appoints counsel under this chapter to represent the child, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. Except as provided in subdivision (b), this amount shall be paid by the parties in the proportions the court deems just.

(b) Upon its own motion or that of a party, the court shall determine whether both parties together are financially unable to pay all or a portion of the cost of counsel appointed pursuant to this chapter, and the portion of the cost of that counsel which the court finds the parties are unable to pay shall be paid by the county. The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county payment of counsel appointed by the court pursuant to this chapter.

Comment. Section 3153 continues former Civil Code Section 4606(f)-(g) without substantive change.

CHAPTER 11. MEDIATION OF CUSTODY AND VISITATION ISSUES

Article 1. General Provisions

§ 3160. Superior courts to provide mediation services

3160. Each superior court shall make a mediator available. The court is not required to institute a family conciliation court in order to provide mediation services.

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

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

§ 3161. Purpose of mediation proceeding

3161. The purposes of a mediation proceeding are as follows:

- (a) To reduce acrimony that may exist between the parties.
- (b) To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child.
- (c) To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

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

§ 3162. Uniform standards of practice for mediation

3162. (a) Mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the Judicial Council.

(b) The standards of practice shall include, but not be limited to, all of the following:

(1) Provision for the best interest of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents.

(2) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future.

(3) The conducting of negotiations in such a way as to equalize power relationships between the parties.

(c) In adopting the standards of practice, the Judicial Council shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation of proceedings for the dissolution of marriage.

(d) The Judicial Council shall offer training with respect to the standards to mediators.

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

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

§ 3163. Local court rules

3163. Courts shall develop local rules to respond to requests for a change of mediators or to general problems relating to mediation.

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

§ 3164. Qualifications of mediator

3164. (a) The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court.

(b) The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1815.

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

Article 2. Availability of Mediation

§ 3170. Mediation required where custody or visitation contested

3170. If it appears on the face of a petition, application, or other pleading to obtain or modify a temporary or permanent custody or visitation order that custody, visitation, or both are contested, the court shall set the contested issues for mediation.

Comment. Section 3170 restates the first part of the first sentence of former Civil Code Section 4607(a) without substantive change. The

reference to “to obtain or modify a temporary or permanent custody or visitation order” has been substituted for “as provided in Section 4600, 4600.1, or 4601.” This is not a substantive change. The reference to “children” has been omitted as surplus. See Section 10 (singular includes plural). See also Section 3175 (mediation to be set before or concurrent with hearing).

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

3171. (a) If a stepparent or grandparent has petitioned, or otherwise applied, for a visitation order pursuant to Chapter 5 (commencing with Section 3100), the court shall set the matter for mediation.

(b) A natural or adoptive parent who is not a party to the proceeding is not required to participate in the mediation proceeding, but failure to participate is a waiver of that parent’s right to object to a settlement reached by the other parties during mediation or to require a hearing on the matter.

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

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

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

§ 3172. Mediation available where paternity is at issue

3172. Mediation shall not be denied to the parties on the basis that paternity is at issue in a proceeding before the court.

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

§ 3173. Mediation of dispute concerning existing order

3173. (a) Upon the adoption of a resolution by the board of supervisors authorizing the procedure, a petition may be filed pursuant to this chapter for mediation of a dispute relating to an existing order for custody, visitation, or both.

(b) The mediation of a dispute concerning an existing order shall be set not later than 60 days after the filing of the petition.

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

Article 3. Mediation Proceedings

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

3175. If a matter is set for mediation pursuant to this chapter, the mediation shall be set before or concurrent with the setting of the matter for hearing.

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

§ 3176. Notice of mediation or hearing

3176. (a) Notice of mediation and of any hearing to be held pursuant to this chapter shall be given to the following persons:

(1) Where mediation is required to settle a contested issue of custody or visitation, to each party and to each party's counsel of record.

(2) Where a stepparent or grandparent seeks visitation rights, to the stepparent or grandparent seeking visitation rights, to each parent of the child, and to each parent's counsel of record.

(b) Notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address.

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

§ 3177. Confidentiality of mediation proceeding

3177. Mediation proceedings pursuant to this chapter shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the mediator made in the proceeding are official information within the meaning of Section 1040 of the Evidence Code.

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

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

3178. An agreement reached by the parties as a result of mediation shall be limited as follows:

(a) Where mediation is required to settle a contested issue of custody or visitation, the agreement shall be limited to the

resolution of issues relating to parenting plans, custody, visitation, or a combination of these issues.

(b) Where a stepparent or grandparent seeks visitation rights, the agreement shall be limited to the resolution of issues relating to visitation.

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

§ 3179. Modification of agreement resulting from mediation

3179. A custody or visitation agreement reached as a result of mediation may be modified at any time at the discretion of the court, subject to Chapter 1 (commencing with Section 3020), Chapter 2 (commencing with Section 3040), Chapter 4 (commencing with Section 3080), and Chapter 5 (commencing with Section 3100).

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

§ 3180. Assessment of needs and interest of child

3180. (a) In mediation proceedings pursuant to this chapter, the mediator has the duty to assess the needs and interests of the child involved in the controversy, and is entitled to interview the child where the mediator considers the interview appropriate or necessary.

(b) The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute that is in the best interest of the child, as provided in Section 3011.

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

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

§ 3181. Separate mediation where domestic violence

3181. (a) In a proceeding in which mediation is required pursuant to this chapter, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the mediator appointed pursuant to this chapter shall meet with the parties separately and at separate times.

(b) Any intake form that an agency charged with providing family court services requires the parties to complete before the commencement of mediation shall state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the mediator will meet with the parties separately and at separate times.

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

Unlike the former section, this section does not contain a reference to the section defining “domestic violence.” This is not a substantive change. See Sections 6201 (application of definitions), 6211 (“domestic violence” defined). The term “protective order” has been substituted for the former references to orders under specific sections formerly in the

Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6218 defines “protective order” to include these orders.

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

§ 3182. Exclusion of counsel from mediation proceeding

3182. (a) The mediator has authority to exclude counsel from participation in the mediation proceedings pursuant to this chapter if, in the mediator’s discretion, exclusion of counsel is appropriate or necessary.

(b) The mediator has authority to exclude a domestic violence support person from a mediation proceeding as provided in Section 6303.

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

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

§ 3183. Recommendations to court

3183. (a) The mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child.

(b) Where the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110) or that other action be taken to assist the parties to effect a resolution of the controversy before a hearing on the issues.

(c) In appropriate cases, the mediator may recommend that restraining orders be issued, pending determination of the

controversy, to protect the well-being of the child involved in the controversy.

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

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

§ 3184. Recommendation that counsel be appointed for minor child

3184. Nothing in this chapter prohibits the mediator from recommending to the court that counsel be appointed, pursuant to Chapter 10 (commencing with Section 3150), to represent the minor child. In making this recommendation, the mediator shall inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

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

§ 3185. Hearing on issues not settled by mediation

3185. (a) If issues that may be resolved by agreement pursuant to Section 3178 are not resolved by an agreement of all the parties who participate in mediation, the mediator shall

inform the court in writing and the court shall set the matter for hearing on the unresolved issues.

(b) Where a stepparent or grandparent requests visitation, each natural or adoptive parent and the stepparent or grandparent shall be given an opportunity to appear and be heard on the issue of visitation.

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

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

3186. (a) An agreement reached by the parties as a result of mediation shall be reported to counsel for the parties by the mediator on the day set for mediation or as soon thereafter as practical, but before the agreement is reported to the court.

(b) An agreement may not be confirmed or otherwise incorporated in an order unless each party, in person or by counsel of record, has affirmed and assented to the agreement in open court or by written stipulation.

(c) An agreement may be confirmed or otherwise incorporated in an order if a party fails to appear at a noticed hearing on the issue involved in the agreement.

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

CHAPTER 12. COUNSELING OF PARENTS AND CHILD

§ 3190. Order requiring counseling

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

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

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

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

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

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

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

(d) The court shall not order the parties to return to court upon the completion of counseling. Either party may file a new order to show cause or motion after counseling has been completed, and the court may again order counseling consistent with this chapter.

Comment. Section 3190 supersedes the first paragraph of former Civil Code Section 4608.1(a). In subdivision (a), the reference to proceedings “under this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as unnecessary. See Section 3021 (application of part) & Comment. See also Section 3011 (factors to be considered in determining best interest of child).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 15.4 (SB 1068), which included amendments made by 1993 Cal. Stat. ch. 301, § 1 (AB 197).

§ 3191. Purpose of counseling

3191. The counseling pursuant to this chapter shall be specifically designed to facilitate communication between the parties regarding their minor child’s best interest, to reduce conflict regarding custody or visitation, and to improve the quality of parenting skills of each parent.

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

§ 3192. Separate counseling where protective order against domestic violence

3192. In a proceeding in which counseling is ordered pursuant to this chapter, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of a party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the mental health professional, or attend other community programs or services, separately at separate times.

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

PART 3 . UNIFORM CHILD CUSTODY JURISDICTION ACT

§ 3400. Short title

3400. This part may be cited as the Uniform Child Custody Jurisdiction Act.

Comment. Section 3400 continues former Civil Code Section 5174 without substantive change. See also Sections 3 (construction of provision drawn from uniform act), 13 (severability of provisions).

§ 3401. Purposes of act

3401. (a) The general purposes of this part are to:

(1) Avoid jurisdiction competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child.

(3) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and the child’s family have the closest connection and where significant evidence concerning the child’s care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction

when the child and the child's family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(7) Facilitate the enforcement of custody decrees of other states.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(b) This part shall be construed to promote the general purposes stated in this section.

Comment. Section 3401 continues former Civil Code Section 5150(1)(a)-(h) and (b) without substantive change. Former Civil Code Section 5150(i) is superseded by Section 3 (construction of provision drawn from uniform act).

§ 3402. Definitions

3402. As used in this part:

(a) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.

(c) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as a proceeding for dissolution of marriage or for legal separation

of the parties, and includes child neglect and dependency proceedings.

(d) “Decree” or “custody decree” means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(e) “Home state” means the state in which the child immediately preceding the time involved lived with the child’s parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

(f) “Initial decree” means the first custody decree concerning a particular child.

(g) “Modification decree” means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(h) “Physical custody” means actual possession and control of a child.

(i) “Person acting as parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by the court or claims a right to custody.

(j) “State” means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Comment. Section 3402 continues former Civil Code Section 5151 without substantive change.

§ 3403. Jurisdictional requirements

3403. (a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if the

conditions as set forth in any of the following paragraphs are met:

(1) This state (A) is the home state of the child at the time of commencement of the proceeding, or (B) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of removal or retention by a person claiming custody of the child or for other reasons, and a parent or person acting as parent continues to live in this state.

(2) It is in the best interest of the child that a court of this state assume jurisdiction because (A) the child and the child's parents, or the child and at least one contestant, have a significant connection with this state, and (B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships.

(3) The child is physically present in this state and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent. For the purposes of this subdivision, "subjected to or threatened with mistreatment or abuse" includes a child who has a parent who is a victim of domestic violence, as defined in Section 6211.

(4) Both of the following conditions are satisfied:

(A) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (1), (2), or (3) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child.

(B) It is in the best interest of the child that this court assume jurisdiction.

(b) Except under the conditions specified in paragraphs (3) and (4) of subdivision (a), physical presence in this state of

the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine the custody of the child.

Comment. Section 3403 continues former Civil Code Section 5152 without substantive change. See also Section 3011 (factors to be considered in determining best interest of child).

§ 3404. Notice and opportunity to be heard

3404. Before making a decree under this part, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to Section 3405.

Comment. Section 3404 continues former Civil Code Section 5153 without substantive change.

§ 3405. Notice to person outside this state; submission to jurisdiction

3405. (a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be made in any of the following ways:

(1) By personal delivery outside this state in the manner prescribed for service of process within this state.

(2) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction.

(3) By any form of mail addressed to the person to be served and requesting a receipt.

(4) As directed by the court (including publication, if other means of notification are ineffective).

(b) Notice under this section shall be served, mailed, delivered, or last published at least 10 days before any hearing in this state.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

Comment. Section 3405 continues former Civil Code Section 5154 without change.

§ 3406. Simultaneous proceedings in other states

3406. (a) A court of this state shall not exercise its jurisdiction under this part if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this part, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under Section 3410 and shall consult the child custody registry established under Section 3417 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed

jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with Sections 3420 to 3423, inclusive. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

Comment. Section 3406 continues former Civil Code Section 5155 without substantive change.

§ 3407. Inconvenient forum

3407. (a) A court which has jurisdiction under this part to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) If another state is or recently was the child's home state.

(2) If another state has a closer connection with the child and the child's family or with the child and one or more of the contestants.

(3) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state.

(4) If the parties have agreed on another forum which is no less appropriate.

(5) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in Section 3401.

(d) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to ensuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this part if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum, the court may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known,

shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

Comment. Section 3407 continues former Civil Code Section 5156 without substantive change.

§ 3408. Jurisdiction declined by reason of conduct

3408. (a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction for purposes of adjudication of custody if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) Where the court declines to exercise jurisdiction upon petition for an initial custody decree pursuant to subdivision (a), the court shall notify the parent or other appropriate person and the prosecuting attorney of the appropriate jurisdiction in the other state. If a request to that effect is received from the other state, the court shall order the petitioner to appear with the child in a custody proceeding

instituted in the other state in accordance with Section 3421. If no request is made within a reasonable time after the notification, the court may entertain a petition to determine custody by the petitioner if it has jurisdiction pursuant to Section 3403.

(d) Where the court refuses to assume jurisdiction to modify the custody decree of another state pursuant to subdivision (b) or pursuant to Section 3414, the court shall notify the person who has legal custody under the decree of the other state and the prosecuting attorney of the appropriate jurisdiction in the other state and may order the petitioner to return the child to the person who has legal custody. If it appears that the order will be ineffective and the legal custodian is ready to receive the child within a period of a few days, the court may place the child in a foster care home for that period, pending return of the child to the legal custodian. At the same time, the court shall advise the petitioner that any petition for modification of custody must be directed to (1) the appropriate court of the other state which has continuing jurisdiction or (2) if that court declines jurisdiction, to a court in a state which has jurisdiction pursuant to Section 3403.

(e) In appropriate cases, a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees and the cost of returning the child to another state.

(f) In making a determination pursuant to subdivisions (a) to (e), inclusive, the court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner, as defined in Section 6211.

Comment. Section 3408 continues former Civil Code Section 5157 without substantive change.

§ 3409. Information to be provided to court

3409. (a) Every party in a custody proceeding in the party's first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. However, where there are allegations of domestic violence or child abuse, any addresses of the party alleging abuse and of the child that are unknown to the other party are confidential and may not be disclosed in the pleading or affidavit. In this pleading or affidavit, every party shall further declare under oath as to each of the following whether the party:

(1) Has participated, as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state.

(2) Has information of any custody proceeding concerning the child pending in a court of this or any other state.

(3) Knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which the party obtained information during this proceeding.

Comment. Section 3409 continues former Civil Code Section 5158 without substantive change. See also Sections 3060 (temporary custody order), 6201 (application of definitions), 6211 ("domestic violence" defined).

§ 3410. Additional parties

3410. If the court learns from information furnished by the parties pursuant to Section 3409 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of the person's joinder as a party. If the person joined as a party is outside this state, the person shall be served with process or otherwise notified in accordance with Section 3405.

Comment. Section 3410 continues former Civil Code Section 5159 without substantive change.

§ 3411. Appearance of parties and child

3411. (a) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that the party appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against the party to secure the party's appearance with the child.

(b) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under Section 3405 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this state is directed to appear under subdivision (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing

and of the child if this is just and proper under the circumstances.

Comment. Section 3411 continues former Civil Code Section 5160 without substantive change.

§ 3412. Binding force and res judicata effect of custody decree

3412. A custody decree rendered by a court of this state which had jurisdiction under Section 3403 binds all parties who have been served in this state or notified in accordance with Section 3405 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including this part.

Comment. Section 3412 continues former Civil Code Section 5161 without substantive change.

§ 3413. Recognition of out-of-state custody decree

3413. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this part or which was made under factual circumstances meeting the jurisdictional standards of this part, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this part.

Comment. Section 3413 continues former Civil Code Section 5162 without substantive change.

§ 3414. Modification of custody decree of another state

3414. (a) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under

jurisdictional prerequisites substantially in accordance with this part or has declined to assume jurisdiction to modify the decree and (2) the court of this state has jurisdiction.

(b) If a court of this state is authorized under subdivision (a) and Section 3408 to modify a custody decree of another state, the court shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with Section 3423.

Comment. Section 3414 continues former Civil Code Section 5163 without substantive change.

§ 3415. Submission of child's birth certificate to court; check to determine if child is missing person

3415. Section 3140 is applicable to proceedings pursuant to this part.

Comment. Section 3415 continues former Civil Code Section 5163.5 without substantive change. For a comparable provision, see Section 7603 (Uniform Parentage Act).

§ 3416. Filing and enforcement of custody decree of another state

3416. (a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any superior court of this state. The clerk shall treat the decree in the same manner as a custody decree of the superior court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or that party's witnesses.

Comment. Section 3416 continues former Civil Code Section 5164 without change.

§ 3417. Registry of out-of-state custody decrees and proceedings

3417. The clerk of each superior court shall maintain a registry in which the clerk shall enter all of the following:

(a) Certified copies of custody decrees of other states received for filing.

(b) Communications as to the pendency of custody proceedings in other states.

(c) Communications concerning a finding of inconvenient forum by a court of another state.

(d) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

(e) Any custody agreement for which an order is requested regarding a child who is not the subject of another order. The parties shall submit the affidavit required by Section 3409, on the form developed by the Judicial Council for use with Section 3409.

Comment. Section 3417 continues former Civil Code Section 5165 without substantive change.

§ 3418. Certified copy of custody decree

3418. The clerk of a superior court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

Comment. Section 3418 continues former Civil Code Section 5166 without change.

§ 3419. Taking testimony in another state

3419. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or

otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

Comment. Section 3419 continues former Civil Code Section 5167 without change.

§ 3420. Hearings and studies in another state; orders to appear

3420. (a) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(b) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

Comment. Section 3420 continues former Civil Code Section 5168 without change.

§ 3421. Assistance to courts of other states

3421. (a) Upon request of the court of another state, the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other

procedures available in this state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this state may voluntarily give his or her testimony or statement in this state for use in a custody proceeding outside this state.

(c) Upon request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. If the person who has physical custody of the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against the person to secure the person's appearance with the child in the other state.

Comment. Section 3421 continues former Civil Code Section 5169 without substantive change.

§ 3422. Preservation of records; forwarding to another state

3422. In any custody proceeding in this state, the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

Comment. Section 3422 continues former Civil Code Section 5170 without change.

§ 3423. Request for court records of another state

3423. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending

in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in Section 3422.

Comment. Section 3423 continues former Civil Code Section 5171 without substantive change.

§ 3424. International application

3424. The general policies of this part extend to the international area. The provisions of this part relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

Comment. Section 3424 continues former Civil Code Section 5172 without substantive change.

§ 3425. Calendar priority

3425. Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this part, the case shall be given calendar priority and handled expeditiously.

Comment. Section 3425 continues former Civil Code Section 5173 without substantive change.

DIVISION 9. SUPPORT

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

§ 3500. Application of definitions

3500. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

Comment. Section 3500 is new and is comparable to Section 50. This chapter supplements the general definitions in Part 2 (commencing with Section 50) of Division 1 with special definitions that apply only to this division. For general definitions frequently used in this division, see Sections 92 (“family support”), 142 (“spousal support”), 150 (“support”), and 155 (“support order”). See also Section 11 (reference to married person includes formerly married person).

§ 3515. Separate property

3515. “Separate property” does not include quasi-community property.

Comment. Section 3515 continues former Civil Code Section 4804 without substantive change, insofar as it applied to support. For a comparable provision applicable to property division, see Section 2502. See also Section 125 (“quasi-community property” defined). Compare Section 130 (“separate property” defined in Section 760 *et seq.*).

CHAPTER 2. GENERAL PROVISIONS

§ 3550. Presence or residence of obligor in state

3550. (a) As used in this section:

(1) “Obligee” means a person to whom a duty of support is owed.

(2) “Obligor” means a person who owes a duty of support.

(b) An obligor present or resident in this state has the duty of support as defined in Sections 3900, 3901, 3910, 4300, and 4400, regardless of the presence or residence of the obligee.

Comment. Subdivision (a) of Section 3550 continues former Civil Code Section 241(b)-(c) without substantive change. Subdivision (b) continues former Civil Code Section 244 without substantive change.

§ 3551. Competency of spouse to testify

3551. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this division. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

Comment. Section 3551 continues former Civil Code Section 250 without substantive change and expands its application to this division. This is not a substantive change. See Evid. Code § 972(g) (when spousal privilege not applicable in support proceedings). For a similar provision, see Section 4839 (Uniform Reciprocal Enforcement of Support Act).

§ 3552. Tax returns of parties

3552. (a) In a proceeding involving child, family, or spousal support, no party to the proceeding may refuse to submit copies of the party's state and federal income tax returns to the court, whether individual or joint.

(b) The tax returns may be examined by the other party and are discoverable by the other party. A party also may be examined by the other party as to the contents of a tax return submitted pursuant to this section.

(c) If the court finds that it is relevant to the case to retain the tax return, the tax return shall be sealed and maintained as a confidential record of the court. If the court finds that the tax return is not relevant to disposition of the case, all copies of the tax return shall be returned to the party who submitted it.

Comment. Section 3552 continues former Civil Code Section 4700.7 without substantive change and expands the rule to apply to family sup-

port. See also Sections 3629 (tax returns in proceeding for expedited support order), 3665 (tax returns in discovery proceedings for modification or termination of support order), 3689 (tax returns in simplified procedure for modification of support order).

§ 3554. Appeals

3554. An appeal may be taken from an order or judgment under this division as in other civil actions.

Comment. Section 3554 continues former Civil Code Section 249 without substantive change and expands the rule to apply to this division. This is not a substantive change. See Section 210 (except as provided by statute or rule, procedural rules applicable to civil actions generally applicable to this code). See also Code Civ. Proc. § 904.1 (when appeal may be taken from superior court judgment or order).

§ 3555. Forwarding support paid through county

3555. Where support is ordered to be paid through the county officer designated by the court on behalf of a child or other party not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the designated county officer shall forward the support received to the designated payee within the time standards prescribed by federal law and the State Department of Social Services.

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

The application of the former section was ambiguous, since it was written in broad terms, but located in an earnings assignment order chapter. This section makes clear that it applies to any support paid to a designated county officer, whether or not paid pursuant to an earnings assignment order. See also Sections 3752 (providing district attorney

designated as assigned payee with information concerning health insurance coverage for child), 4200-4203 (designation of county officer to be paid child support payments), 4350-4352 (designation of county officer to be paid spousal support payments), 4573 (payment where support paid through district attorney for child not receiving public assistance), 5237(b) (providing designated county officer notice of change of address under earnings assignment order for support).

§ 3556. Effect of failure to implement custody or visitation rights

3556. The existence or enforcement of a duty of support owed by a noncustodial parent for the support of a minor child is not affected by a failure or refusal by the custodial parent to implement any rights as to custody or visitation granted by a court to the noncustodial parent.

Comment. Section 3556 continues former Civil Code Section 4382 without change.

§ 3557. Attorney's fees and costs

3557. Notwithstanding any other provision of law, absent good cause to the contrary, the court, upon (1) determining an ability to pay and (2) consideration of the respective incomes and needs of the parties in order to ensure that each party has access to legal representation to preserve all of the party's rights, shall award reasonable attorney's fees to any of the following persons:

(a) A custodial parent or other person to whom payments should be made in any action to enforce any of the following:

(1) An existing order for child support.

(2) A penalty incurred pursuant to Chapter 5 (commencing with Section 4720) of Part 5 of Division 9.

(b) A supported spouse in an action to enforce an existing order for spousal support.

Comment. Section 3557 continues former Civil Code Section 4370(c)-(d) without substantive change. Subdivision (a)(2) continues language that was added in 1991, but chaptered out by a later-enacted bill. See 1991 Cal. Stat. ch. 110, § 4, chaptered out by 1991 Cal. Stat. ch. 500, § 1.

See also Section 3652 (attorney's fees in order modifying or terminating child support order).

CHAPTER 3. SUPPORT AGREEMENTS

Article 1. General Provisions

§ 3580. Provisions for spousal and child support in separation agreement

3580. Subject to this chapter and to Section 3651, a husband and wife may agree, in writing, to an immediate separation, and may provide in the agreement for the support of either of them and of their children during the separation or upon the dissolution of their marriage. The mutual consent of the parties is sufficient consideration for the agreement.

Comment. Section 3580 continues the last part of former Civil Code Section 4802 without substantive change. See also Sections 1620 (restrictions on contract altering spouses' legal relations), 3592 (agreement discharged in bankruptcy), 4302 (no support for spouse living separate by agreement unless stipulated), 4323 (agreement concerning effect of cohabitation on spousal support).

Article 2. Child Support

§ 3585. Support order based on agreement between parents

3585. The provisions of an agreement between the parents for child support shall be deemed to be separate and severable from all other provisions of the agreement relating to property and support of the wife or husband. An order for child support based on the agreement shall be law-imposed and shall be made under the power of the court to order child support.

Comment. Section 3585 continues the first two sentences of former Civil Code Section 4811(a) without substantive change. A reference to "parents" has been substituted for the former reference to "parties." The phrase "based on the agreement" has been added to the second sentence. Neither change is intended to be substantive. The rule in former Civil Code Section 4811(c), limiting application of this section to property settlement agreements entered into on or after January 1, 1970, has been

omitted as obsolete. See also Sections 3029 (support order required where parent receiving public assistance), 3557 (attorney's fees for enforcement of support order), 3651 (modification or termination of support order based on agreement), 4013 (child support obligation discharged in bankruptcy). For a comparable provision relating to spousal support, see Section 3590.

§ 3586. Court order to effectuate family support agreement

3586. If an agreement between the parents combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support, the court is not required to make a separate order for child support.

Comment. Section 3586 continues the first paragraph of former Civil Code Section 4811(d) without substantive change. A reference to "parents" has been substituted for the former reference to "parties." This is not a substantive change. The rule in former Civil Code Section 4811(c), limiting application of this section to property settlement agreements entered into on or after January 1, 1970, has been omitted as obsolete. See also Sections 92 ("family support" defined), 3029 (support order required where parent receiving public assistance), 4500 (enforcement of support order).

§ 3587. Court order to effectuate agreement for support for adult child

3587. Notwithstanding any other provision of law, the court has the authority to approve a stipulated agreement by the parents to pay for the support of an adult child or for the continuation of child support after a child attains the age of 18 years and to make a support order to effectuate the agreement.

Comment. Section 3587 continues the first sentence of former Civil Code Section 4700.9 without substantive change. A reference to "parents" has been substituted for the former reference to "parties." This is not a substantive change. The language "and to make a support order to effectuate the agreement" is new, but was implied by the last sentence of former Civil Code Section 4700.9, which is superseded by Family Code Section 4500. See also Sections 3557 (attorney's fees for enforcement of support order), 3901 (duty to support high school student), 3910 (duty to support incapacitated adult child), 4000 (civil

action to enforce parent's duty to support), 4500 (support orders enforceable under this code).

Article 3. Spousal Support

§ 3590. Support agreement severable and enforceable by court

3590. The provisions of an agreement for support of either party shall be deemed to be separate and severable from the provisions of the agreement relating to property. An order for support of either party based on the agreement shall be law-imposed and shall be made under the power of the court to order spousal support.

Comment. Section 3590 continues the first two sentences of former Civil Code Section 4811(b) without substantive change. For a provision limiting applicability of this section, see Section 3593. For a comparable provision relating to child support, see Section 3585.

Absent a written agreement otherwise, spousal support terminates at the death of either party or on remarriage of the supported party. See Section 4337. See also Sections 3557 (attorney's fees for enforcement of support order), 3592 (agreement discharged in bankruptcy), 4302 (no support for spouse living separate by agreement unless stipulated), 4323 (agreement concerning effect of cohabitation on spousal support), 4336 (agreement terminating spousal support jurisdiction), 4360(b) (agreement that annuity, life insurance, or trust for spousal support may not be modified or terminated).

§ 3591. Authority to modify or terminate spousal support agreement

3591. (a) Except as provided in subdivisions (b) and (c), the provisions of an agreement for the support of either party are subject to subsequent modification or termination by court order.

(b) An agreement may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

(c) An agreement for spousal support may not be modified or revoked to the extent that a written agreement, or, if there

is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

Comment. Section 3591 continues the last sentence of former Civil Code Section 4811(b) without substantive change, insofar as that sentence applied to spousal support agreements. References to “terminate” and “termination” have been substituted for “revoke” and “revocation.” These are not substantive changes. For a provision limiting applicability of this section, see Section 3593. See also Section 3592 (agreement discharged in bankruptcy). For a comparable provision relating to orders for support, see Section 3651.

§ 3592. Agreement discharged in bankruptcy

3592. If an obligation under an agreement for settlement of property to a spouse or for support of a spouse is discharged in bankruptcy, the court may make all proper orders for the support of the spouse, as the court determines are just, having regard for the circumstances of the parties and the amount of the obligations under the agreement that are discharged.

Comment. Section 3592 continues the substance of former Civil Code Section 4812. See also Section 4013 (child support obligation discharged in bankruptcy).

§ 3593. Applicability of Sections 3590 and 3591

3593. Sections 3590 and 3591 are effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and do not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 applies.

Comment. Section 3593 continues former Civil Code Section 4811(c) without substantive change, insofar as it applied to spousal support agreements.

CHAPTER 4. SPOUSAL AND CHILD SUPPORT DURING PENDENCY OF PROCEEDING

§ 3600. Order for support during pendency of proceeding

3600. During the pendency of any proceeding for dissolution of marriage or for legal separation of the parties or under Division 8 (commencing with Section 3000) (custody of children) or in any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 3901 or 3910, the court may order (1) the husband or wife to pay any amount that is necessary for the support of the wife or husband, or (2) either or both parents to pay any amount necessary for the support of the child, as the case may be.

Comment. Section 3600 continues the first sentence of former Civil Code Section 4357(a) without substantive change. The language describing the support proceedings to which this section applies is drawn from the first sentence of former Civil Code Section 4700(a), with the addition of language to make clear that this section applies to a child for whom support is authorized under Section 3901. This is not a substantive change. The word “support” has been substituted for “support and maintenance” with reference to support of a husband or wife, since “maintenance” is surplus. The word “support” has been substituted for “support and education” with reference to support of a child. This is not a substantive change. See Section 150 (when used with reference to minor child, “support” includes education). A reference to “child” has been substituted for “children.” This is not a substantive change. See Section 10 (singular includes plural). A reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

See also Sections 2254 (order for support of putative spouse), 3029 (support order required where parent receiving public assistance), 3557 (attorney’s fees for enforcement of support order).

§ 3601. Child support order continues in effect until terminated by court or by operation of law

3601. (a) An order for child support entered pursuant to this chapter continues in effect until the order (1) is terminated by

the court or (2) terminates by operation of law pursuant to Sections 3900, 3901, 4007, and 4013.

(b) Subject to Section 3602, subdivision (a) applies notwithstanding any other provision of law and notwithstanding that the proceeding has not been brought to trial within the time limits specified in Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2 of the Code of Civil Procedure.

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

§ 3602. Order not enforceable where parties are reconciled and living together

3602. Unless the order specifies otherwise, an order made pursuant to this chapter is not enforceable during any period in which the parties have reconciled and are living together.

Comment. Section 3602 continues the last sentence of former Civil Code Section 4357(b) without substantive change.

§ 3603. Modification or termination of order

3603. An order made pursuant to this chapter may be modified or terminated at any time except as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

Comment. Section 3603 continues the last sentence of former Civil Code Section 4357(a) without substantive change. A reference to “terminated” has been substituted for “revoked.” This is not a substantive change. For provisions relating to modification or termination of support orders, see Chapter 6 (commencing with Section 3650).

§ 3604. Rights with respect to subsequent order not prejudiced

3604. An order made pursuant to this chapter does not prejudice the rights of the parties or the child with respect to any subsequent order which may be made.

Comment. Section 3604 continues the second sentence of former Civil Code Section 4357(a) without substantive change. A reference to “child” has been substituted for “children.” This is not a substantive change. See Section 10 (singular includes plural).

CHAPTER 5. EXPEDITED CHILD SUPPORT ORDER**§ 3620. Designation of order as expedited support order**

3620. An order under this chapter shall be known as an expedited support order.

Comment. Section 3620 continues the second sentence of former Civil Code Section 4357.5(a) without substantive change.

§ 3621. Ex parte order for child support during pendency of action

3621. In an action for child support that has been filed and served, the court may, without a hearing, make an order requiring a parent or parents to pay for the support of their minor child or children during the pendency of that action, pursuant to this chapter, the amount required by Section 4055 or, if the income of the obligated parent or parents is unknown to the applicant, then the minimum amount of support as provided in Section 11452 of the Welfare and Institutions Code.

Comment. Section 3621 continues the first sentence of former Civil Code Section 4357.5(a) without substantive change. A reference to Section 4055 has been substituted for the broader reference to former Civil Code Section 4721 (as added by 1990 Cal. Stat. ch. 1493, § 14, and repealed by 1992 Cal. Stat. ch. 46, § 8). This is not a substantive change, since the relevant part of the former section is continued in Section 4055. A reference to maintenance and education of the child has been omitted as surplus. See Section 150 (when used in reference to a child, “support” includes maintenance and education).

§ 3622. Application for order

3622. The court shall make an expedited support order upon the filing of all of the following:

(a) An application for an expedited child support order, setting forth the minimum amount the obligated parent or parents are required to pay pursuant to Section 4055 of this code or Section 11452 of the Welfare and Institutions Code.

(b) An income and expense declaration for both parents, completed by the applicant.

(c) A worksheet setting forth the basis of the amount of support requested.

(d) A proposed expedited child support order.

Comment. Section 3622 continues the first sentence of former Civil Code Section 4357.5(b) without substantive change. A reference to Section 4055 has been substituted for the broader reference to former Civil Code Section 4721 (as added by 1990 Cal. Stat. ch. 1493, § 14, and repealed by 1992 Cal. Stat. ch. 46, § 8). This is not a substantive change, since the relevant part of the former section is continued in Section 4055. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 95 (“income and expense declaration” defined).

§ 3623. Jurisdiction of court

3623. (a) An application for the expedited support order confers jurisdiction on the court to hear only the issue of support of the child or children for whom support may be ordered.

(b) Nothing in this chapter prevents either party from bringing before the court at the hearing other separately noticed issues otherwise relevant and proper to the action in which the application for the expedited support order has been filed.

Comment. Section 3623 continues former Civil Code Section 4357.5(f) without substantive change. The reference to support of a “minor” child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 (“child for whom support may be ordered” defined),

3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

§ 3624. Order automatically effective 30 days after service unless response served

3624. (a) Subject to Section 3625, an expedited support order becomes effective 30 days after service on the obligated parent of all of the following:

- (1) The application for an expedited child support order.
- (2) The proposed expedited child support order, which shall include a notice of consequences of failure to file a response.
- (3) The completed income and expense declaration for both parents.
- (4) A worksheet setting forth the basis of the amount of support requested.
- (5) Three blank copies of the income and expense declaration form.
- (6) Three blank copies of the response to an application for expedited child support order and notice of hearing form.

(b) Service on the obligated parent of the application and other required documents as set forth in subdivision (a) shall be by personal service or by any method available under Sections 415.10 to 415.40, inclusive, of the Code of Civil Procedure.

(c) Unless there is a response to the application for an expedited support order as provided in Section 3625, the expedited support order shall be effective on the obligated parent without further action by the court.

Comment. Subdivision (a) of Section 3624 continues the last sentence of the second paragraph of former Civil Code Section 4357.5(b) without substantive change. This subdivision has been rephrased to adopt language used in the Judicial Council form. See Cal. R. Ct. 1297 (Jan. 1, 1986) (application for expedited child support order). See also Section 95 (“income and expense declaration” defined).

Subdivision (b) continues former Civil Code Section 4357.5(c) without substantive change. Subdivision (c) continues the last paragraph of former Civil Code Section 4357.5(b) without substantive change.

§ 3625. Obligated parent's response to application

3625. (a) A response to the application for the proposed expedited support order and the obligated parent's income and expense declaration may be filed with the court at any time before the effective date of the expedited support order and, on filing, shall be served upon the applicant by any method by which a response to a notice of motion may be served.

(b) The response to the application for an expedited support order shall state the objections of the obligated parent to the proposed expedited support order.

(c) The simultaneous filing of the response to the application for an expedited support order and the obligated parent's income and expense declaration shall stay the effective date of the expedited support order.

(d) No fee shall be charged for, or in connection with, the filing of the response.

Comment. Section 3625 continues former Civil Code Section 4357.5(d) without substantive change. See also Section 95 ("income and expense declaration" defined).

§ 3626. Setting application for hearing

3626. The obligated parent shall cause the court clerk to, and the court clerk shall, set a hearing on the application for the expedited support order not less than 20 nor more than 30 days after the filing of the response to the application for the expedited support order and income and expense declaration.

Comment. Section 3626 continues the first sentence of former Civil Code Section 4357.5(e) without substantive change.

§ 3627. Giving notice of hearing

3627. The obligated parent shall give notice of the hearing to the other parties or their counsel by first-class mail not less than 15 days before the hearing.

Comment. Section 3627 continues the second sentence of former Civil Code Section 4357.5(e) without substantive change.

§ 3628. Effect of failure to give notice of hearing

3628. If notice of the hearing is not given as provided in Section 3627, the expedited support order becomes effective as provided in Section 3624, subject to the relief available to the responding party as provided by Section 473 of the Code of Civil Procedure or any other available relief whether in law or in equity.

Comment. Section 3628 continues the last sentence of former Civil Code Section 4357.5(e) without substantive change. The reference to Section 3624 has been substituted for the broader reference to former Civil Code Section 4357.5(b). This is not a substantive change, since the relevant part of the former section is continued in Family Code Section 3624.

§ 3629. Production of tax returns at hearing

3629. (a) At the hearing on the application for the expedited support order, all parties who are parents of the child or children who are the subject of the action shall produce copies of their most recently filed federal and state income tax returns.

(b) A tax return so submitted may be reviewed by the other parties, and a party also may be examined by the other parties as to the contents of the return.

(c) Except as provided in subdivision (d), a party who fails to submit documents to the court as required by this chapter shall not be granted the relief that the party has requested.

(d) The court may grant the requested relief if the party submits a declaration under penalty of perjury that (1) no such document exists, or (2) in the case of a tax return, it cannot be

produced, but a copy has been requested from the Internal Revenue Service or Franchise Tax Board.

Comment. Section 3629 continues former Civil Code Section 4357.5(g) without substantive change.

§ 3630. Amount of support

3630. (a) Except as provided in subdivision (b), the amount of the expedited support order shall be the minimum amount the obligated parent is required to pay as set forth in the application.

(b) If a hearing is held on the application, the court shall order an amount of support in accordance with Article 2 (commencing with Section 4050) of Chapter 2 of Part 2.

Comment. Subdivision (a) of Section 3630 continues without substantive change the first sentence of the second paragraph of former Civil Code Section 4357.5(b). Subdivision (b) continues former Civil Code Section 4357.5(h) without substantive change.

§ 3631. Order after hearing

3631. When there is a hearing, the resulting order shall be called an order after hearing.

Comment. Section 3631 continues the first sentence of former Civil Code Section 4357.5(i) without substantive change.

§ 3632. Effective date of order after hearing

3632. An order after hearing shall become effective not more than 30 days after the filing of the response to the application for the expedited support order and may be given retroactive effect to the date of the filing of the application.

Comment. Section 3632 continues the last sentence of former Civil Code Section 4357.5(i) without substantive change.

§ 3633. Modification or termination of order

3633. An order entered under this chapter may be modified or terminated at any time on the same basis as any other order for child support.

Comment. Section 3633 continues former Civil Code Section 4357.5(j) without substantive change. The words “or terminated” have been added. For provisions relating to modification or termination of a support order, see Chapter 6 (commencing with Section 3650).

§ 3634. Judicial Council to prepare necessary forms

3634. The Judicial Council shall prepare all forms necessary to give effect to this chapter.

Comment. Section 3634 continues former Civil Code Section 4357.5(k) without substantive change. See also Sections 95 (“income and expense declaration” defined), 115 (“property declaration” defined).

CHAPTER 6. MODIFICATION OR
TERMINATION OF SUPPORT

Article 1. General Provisions

§ 3650. “Support order” defined

3650. Unless the provision or context otherwise requires, as used in this chapter, “support order” means a child, family, or spousal support order.

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

§ 3651. Authority to modify or terminate

3651. (a) Except as provided in subdivisions (b) and (c) and subject to Article 3 (commencing with Section 3680) and Sections 3552, 3587, and 4004, a support order may be modified or terminated at any time as the court determines to be necessary.

(b) A support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

(c) An order for spousal support may not be modified or terminated to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

(d) This section applies whether or not the support order is based upon an agreement between the parties.

(e) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 shall apply.

Comment. Section 3651 continues without substantive change the fifth sentence of former Civil Code Section 4700(a), the third sentence of the last paragraph of former Civil Code Section 4801(a), the last sentences of subdivisions (a) and (b) of former Civil Code Section 4811, and, to the extent it applied to support orders, former Civil Code Section 4811(c). In subdivision (a), the “subject to” clause, which applied only to orders for child support, is extended to cover spousal support orders. This section has been revised to use “terminate” in place of “revoke.” This is not a substantive change.

This section supersedes former Civil Code Section 247, insofar as that section applied to child, family, or spousal support orders. See also Sections 215 (service of notice prerequisite to validity of modification or subsequent order), 3580-3592 (support agreements), 3591 (authority to modify or terminate spousal support agreement), 3603 (modification or termination of order for child or spousal support during pendency of proceeding), 3653 (retroactivity of modification or termination), 3660-3668 (discovery before modification or termination), 3680-3694 (simplified procedure for modification of support order).

§ 3652. Attorney’s fees and court costs

3652. An order modifying or terminating a child support order may include an award of attorney’s fees and court costs to the prevailing party.

Comment. Section 3652 continues the seventh sentence of former Civil Code Section 4700(a) without substantive change. A reference to “terminating” has been substituted for “revoking.” This is not a

substantive change. See also Section 3557 (attorney's fees for enforcement of support order).

§ 3653. Retroactivity of modification or termination

3653. An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided by federal law (42 U.S.C. Sec. 666(a)(9)).

Comment. Section 3653 continues without substantive change the sixth sentence of former Civil Code Section 4700(a), insofar as it related to modification or termination of a support order, and the last part of the last sentence of the last paragraph of former Civil Code Section 4801(a). References to “terminate” and its variants have been substituted for “revoke.” These are not substantive changes. See also Section 4009 (retroactivity of child support order), 4333 (retroactivity of spousal support order).

§ 3654. Statement of decision

3654. At the request of either party, an order modifying or terminating a spousal support order shall include a statement of decision.

Comment. Section 3654 continues without substantive change the first part of the last sentence of the last paragraph of former Civil Code Section 4801(a). The word “terminating” has been substituted for “revoking.” This is not a substantive change.

Article 2. Discovery Before Commencing Modification or Termination Proceeding

§ 3660. Purpose of article

3660. The purpose of this article is to permit inexpensive discovery of facts before the commencement of a proceeding for modification or termination of an order for child, family, or spousal support.

Comment. Section 3660 continues former Civil Code Sections 4700.2(a) and 4801.1(a) without substantive change. The phrase “or termination” has been added to make clear that this article applies to a

proceeding for termination of a support order. The same phrase has also been added to Sections 3662, 3663, and 3667 for consistency.

§ 3662. Limitation on use of other methods of discovery

3662. Methods of discovery other than that described in this article may only be used if a motion for modification or termination of the support order is pending.

Comment. Section 3662 continues without substantive change the first sentence of the last paragraph of former Civil Code Section 4700.2(b) and the first sentence of the last paragraph of former Civil Code Section 4801.1(b).

§ 3663. Limitation on use of discovery under this article

3663. In the absence of a pending motion for modification or termination of a support order, a request for discovery pursuant to this article may be undertaken not more frequently than once every 12 months.

Comment. Section 3663 continues without substantive change the second sentence of the last paragraph of former Civil Code Section 4700.2(b) and the second sentence of the last paragraph of former Civil Code Section 4801.1(b).

§ 3664. Request for production of income and expense declaration

3664. (a) At any time following a judgment of dissolution of marriage or legal separation of the parties that provides for payment of support, either the party ordered to pay support or the party to whom support was ordered to be paid or that party's assignee, without leave of court, may serve a request for the production of a completed current income and expense declaration in the form adopted by the Judicial Council.

(b) Service of a request for production of an income and expense declaration pursuant to this section shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service.

Comment. Subdivision (a) of Section 3664 continues without substantive change the first paragraph of former Civil Code Section

4700.2(b) and the first paragraph of former Civil Code Section 4801.1(b). Subdivision (b) continues former Civil Code Sections 4700.2(d) and 4801.1(d) without substantive change. See also Section 95 (“income and expense declaration” defined).

§ 3665. Tax returns

3665. (a) A copy of the prior year’s federal and state personal income tax returns shall be attached to the income and expense declaration of each party.

(b) A party shall not disclose the contents or provide copies of the other party’s tax returns to anyone except the court, the party’s attorney, the party’s accountant, or other financial consultant assisting with matters relating to the proceeding, or any other person permitted by the court.

(c) The tax returns shall be controlled by the court as provided in Section 3552.

Comment. Section 3665 continues former Civil Code Sections 4700.2(c) and 4801.1(c) without substantive change. See also Section 95 (“income and expense declaration” defined).

§ 3666. Enforcement

3666. This article may be enforced in the manner specified in Sections 1991, 1991.1, 1991.2, 1992, and 1993 of the Code of Civil Procedure and in the Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure), and any other statutes applicable to the enforcement of procedures for discovery.

Comment. Section 3666 continues without substantive change the third sentence of the last paragraph of former Civil Code Section 4700.2(b) and the third sentence of the last paragraph of former Civil Code Section 4801.1(b). See also Section 3557 (attorney’s fees for enforcement of support order).

§ 3667. Sanctions

3667. Upon the subsequent filing of a motion for modification or termination of the support order by the

requesting party, if the court finds that the income and expense declaration submitted by the responding party pursuant to this article was incomplete, inaccurate, or missing the prior year's federal and state personal income tax returns, or that the declaration was not submitted in good faith, the court may order sanctions against the responding party in the form of payment of all costs of the motion, including the filing fee and the costs of the depositions and subpoenas necessary to be utilized in order to obtain complete and accurate information.

Comment. Section 3667 continues former Civil Code Sections 4700.2(e) and 4801.1(e) without substantive change. See also Section 95 ("income and expense declaration" defined).

§ 3668. Forms

3668. The Judicial Council shall adopt forms which shall be used in the procedure provided by this article.

Comment. Section 3668 continues without substantive change the last sentence of the last paragraph of former Civil Code Section 4700.2(b) and the last sentence of the last paragraph of former Civil Code Section 4801.1(b).

Article 3. Simplified Procedure for Modification of Support Order

§ 3680. Purpose of article

3680. The purpose of this article is to provide an additional, simplified method for the modification of child and spousal support orders.

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

§ 3681. Notifying other party of address changes

3681. In order to facilitate service of process under this article, each party to an order for support shall provide the

other party with the party's current mailing address and any later change of address.

Comment. Section 3681 continues without substantive change the last sentence of former Civil Code Section 4700.1(e) and the last sentence of former Civil Code Section 4801.9(e). See also Section 5237 (obligee's duty to notify of change of address under earnings assignment order for support).

§ 3682. Limitation on use of procedure under this article

3682. Except where the modification is based on a significant decrease in the income of the moving party, only one modification of a support order pursuant to this article may be granted within any 12-month period.

Comment. Section 3682 continues without substantive change the first paragraph of former Civil Code Section 4700.1(d) and the first paragraph of former Civil Code Section 4801.9(d). See also Section 3688 (modification based on significant decrease in income of moving party).

§ 3683. Notice of motion to modify support order

3683. (a) A notice of motion to modify a support order may be filed under this article at any time after one year after the entry of the support order to be modified, but this one-year limitation is not applicable if the request for modification is based on a significant decrease in the income of the moving party.

(b) The motion to modify the support order shall include both of the following:

(1) A proposed order for modification of the support order.

(2) A declaration under penalty of perjury that the facts on which the motion is based are true and correct.

(c) The moving party shall cause the notice of motion and the proposed order to be served on the other party to the support order.

Comment. Section 3683 continues without substantive change the first three sentences of former Civil Code Section 4700.1(b) and the first three sentences of former Civil Code Section 4801.9(b). In subdivision (a), the reference to "the support order to be modified" has been substituted for

“a previous order for...support.” This is not a substantive change. See also Section 3690 (manner of service of notice).

In computing the one-year period under subdivision (a) in the case of a support order previously modified, the one-year period runs from the date of entry of the latest modification of the support order, not from the date the original support order was entered.

§ 3684. Objection and request for hearing

3684. (a) The responding party may, within 30 days after the date of service of the notice of motion pursuant to Section 3683, file an objection and request for hearing. If the responding party files an objection and request for hearing, the responding party is responsible for requesting a hearing date and giving notice of the hearing to the moving party. The responding party shall file the original proof of service of the notice of the objection and request for hearing at the same time as the filing of the objection and the request for hearing.

(b) If it appears in the response to a request for modification of a child support order pursuant to this article that an issue other than support is contested with respect to the child, the other issue shall be set for mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8. A separate hearing shall be scheduled for the other issue. The pendency of the mediation proceeding shall not delay a hearing on the request for modification of the support order under this article.

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

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

§ 3685. Lawyers and other nonparties not allowed

3685. (a) Except as otherwise provided in this section and in Section 3693, no attorney at law or person other than the

moving or responding party shall take any part in the filing or prosecution or defense of a proceeding pursuant to this article, unless the attorney is appearing as a party to the proceeding.

(b) Nothing in this article prohibits an attorney from rendering advice to a party to the proceeding, either before or after the commencement of the proceeding.

Comment. Section 3685 continues without substantive change the first two sentences of former Civil Code Section 4700.1(c) and the first two sentences of former Civil Code Section 4801.9(c). See also Section 3693 (election to be represented by counsel in the proceeding).

§ 3686. Consideration of age increase factor in modification of child support order

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

Comment. Section 3686 continues former Civil Code Section 4700.3 without substantive change.

§ 3687. Modification without showing of changed circumstances

3687. (a) The court may grant a modification of child support, not to exceed an amount equal to 10 percent of the current child support award for each year after the date on which the current child support award was granted, without requiring a showing of changed circumstances by the moving party, to the extent justified by the economic evidence presented by way of the income statements (and expense statements, if the court deems them necessary and relevant) of the parties.

(b) The court may grant an increase of spousal support, not to exceed an amount equal to the increase in the California All Consumer Price Index provided by the federal government for each year after the date on which the current spousal support award was granted, without requiring a

showing of changed circumstances by the moving party, to the extent justified by the economic evidence presented by way of income statements (and expense statements, if the court deems them necessary and relevant) of the parties.

(c) If the responding party fails to file a response, the court shall order a modification of the support order without requiring the submission of economic evidence by the moving party.

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

§ 3688. Modification based on significant decrease in income

3688. (a) In a case in which the request for modification is based on a significant decrease in the income of the moving party, the moving party shall present evidence of the moving party's decline in economic circumstances. The amount of the modification shall be based on the economic evidence presented by way of income statements (and expense statements, if the court deems them necessary and relevant) of the parties.

(b) If the responding party defaults in a case where the request for the modification is based on a significant decrease in the income of the moving party, the court shall order a modification based on the evidence.

(c) If the court considering the request for modification of an order for spousal support orders support according to guidelines in use within its jurisdiction, the amount of the modification shall be based on the guidelines. If no guidelines are in use, the amount of the modification shall be based on

the factors used in determining the existing spousal support award.

(d) The court considering the request for modification of an order for child support shall order support according to the statewide uniform guideline in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2.

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

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

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

§ 3689. Tax returns and other documents

3689. (a) In addition to the income statement (and the expense statement, if required by the court), in a contested proceeding, both the moving party and the responding party shall make available to the court at the time of the hearing copies of their federal and state income tax returns for the preceding year. A tax return so submitted may be reviewed by the other party and the party also may be examined by the other party as to the contents of the return.

(b) No relief shall be granted pursuant to this article to a party who fails to submit such documents as may be required by the court or a declaration under penalty of perjury that no such documents exist, or that, in the case of a tax return, it cannot be produced but a copy has been requested from the Internal Revenue Service or the Franchise Tax Board.

(c) The tax returns shall be controlled by the court as provided in Section 3552.

Comment. Subdivisions (a) and (b) of Section 3689 continue without substantive change the last paragraph of former Civil Code Section

4700.1(d) and the last paragraph of former Civil Code Section 4801.9(d). Subdivision (c) is new and conforms this section to Section 3665.

§ 3690. Manner of service of notice

3690. Notice pursuant to this article shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service. Proof of service shall be filed with the court.

Comment. Section 3690 continues without substantive change the first two sentences of former Civil Code Section 4700.1(e) and the first two sentences of former Civil Code Section 4801.9(e). See also Section 3681 (giving notice of mailing address and changes in address to other party).

§ 3691. Notice to district attorney

3691. (a) The party filing a notice of motion to modify child support with the clerk pursuant to this article shall also mail a duplicate copy of the notice to the district attorney within five working days after filing.

(b) If the district attorney has previously attempted to enforce the spousal support obligation on which the motion is based, the party filing a notice of motion to modify spousal support with the clerk pursuant to this article shall also mail a duplicate copy of the notice to the district attorney within five working days of filing.

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

§ 3692. Compliance with federal requirements

3692. Nothing in this article shall be construed to infringe on the duty of the state to comply with any federal rules and regulations pertaining to the establishment, enforcement, and collection of (a) child support payments in cases in which the

child is receiving public assistance or (b) spousal support payments.

Comment. Section 3692 continues former Civil Code Sections 4700.1(h) and 4801.9(g) without substantive change.

§ 3693. Election to be represented by counsel

3693. (a) A party to a proceeding under this article may elect to be represented by counsel in the proceeding. The party's notice of election to proceed with the benefit of counsel shall be accompanied by the party's declaration under penalty of perjury stating facts evidencing the intent to proceed with the benefit of counsel in the proceeding.

(b) Upon notice by a party pursuant to subdivision (a) that the party elects to be represented by counsel in the proceeding, the court shall proceed on the motion as in a proceeding under Article 1 (commencing with Section 3650) for modification of a support order.

Comment. Section 3693 restates without substantive change the third sentence of subdivision (c) and subdivision (i) of former Civil Code Section 4700.1 and the third sentence of subdivision (c) and subdivision (h) of former Civil Code Section 4801.9. In subdivision (b), the reference to Article 1 (commencing with Section 3650) has been substituted for the broader references to former Civil Code Sections 4700 and 4801. This is not a substantive change, since the relevant parts of the former sections have been continued in that article.

§ 3694. Judicial council forms

3694. The Judicial Council shall adopt forms or notices for the use of the procedure provided in this article. The forms or notices shall include a notice advising of the right of a party to proceed with or without benefit of counsel. The forms or notices shall incorporate, where appropriate, advice as to the availability of the additional, simplified method for the modification of support provided in this article.

Comment. Section 3694 continues former Civil Code Sections 4700.1(j) and 4801.9(i) without substantive change.

CHAPTER 7. HEALTH INSURANCE

Article 1. Health Insurance Coverage for Supported Child

§ 3750. “Health insurance coverage” defined

3750. “Health insurance coverage” as used in this article includes all of the following:

(a) Vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan.

(b) Provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to a dependent child of an absent parent.

Comment. Section 3750 continues former Civil Code Section 4726(a)(3) without substantive change. The reference to “children” has been omitted as surplus. See Section 10 (singular includes plural).

§ 3751. Health insurance for supported child

3751. (a)(1) Support orders issued or modified pursuant to this chapter shall include a provision requiring the child support obligor to keep the agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.) informed of whether the obligor has health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(2) The court shall require that health insurance coverage for a supported child shall be maintained by either or both parents if that insurance is available at no cost or at reasonable cost to the parent. The court shall generally consider health insurance coverage to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. If the court determines that the cost of health

insurance coverage is not reasonable, the court shall state its reasons on the record.

(b) If the court determines that health insurance coverage is not available at no or reasonable cost, the court's order for support shall contain a provision that specifies that health insurance coverage shall be obtained if it becomes available at no or reasonable cost. Upon health insurance coverage at no or reasonable cost becoming available to a parent, the parent shall apply for that coverage.

Comment. Subdivisions (a)(2) and (b) of Section 3751 continues former Civil Code Section 4726(a)(1)-(2) without substantive change. References to "parents" have been omitted as surplus. See Section 10 (singular includes plural). See also Sections 2050-2053 (notice to insurance carriers in dissolution, nullity, or legal separation proceeding), 4006 (health insurance coverage as factor in determining child support).

Subdivision (a)(1) was added by 1993 Cal. Stat. ch. 876, § 16.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 16 (SB 1068).

§ 3752. District attorney designated as assigned payee; information on policy for custodial parent

3752. (a) If the district attorney has been designated as the assigned payee for child support, the court shall order the parent to notify the district attorney upon applying for and obtaining health insurance coverage for the child within a reasonable period of time.

(b) The district attorney shall obtain a completed medical form from the parent in accordance with Section 11490 of the Welfare and Institutions Code and shall forward the completed form to the State Department of Health Services.

(c) In those cases where the district attorney is providing medical support enforcement services, the district attorney shall provide the parent or person having custody of the child with information pertaining to the health insurance policy that has been secured for the child.

Comment. Section 3752 continues former Civil Code Section 4726(b)-(c) without substantive change. References to “parents” and to “children” have been omitted as surplus. See Section 10 (singular includes plural).

§ 3752.5. Information included in order

3752.5. A child support order issued or modified pursuant to this division shall include a provision requiring the child support obligor to keep the obligee informed of whether the obligor has health insurance made available through the obligor’s employer or has other group health insurance and, if so, the health insurance policy information. The support obligee under a child support order shall inform the support obligor of whether the obligee has health insurance made available through the employer or other group health insurance and, if so, the health insurance policy information. The Judicial Council shall modify the form of the order for health insurance coverage (family law) to notify child support obligors of the requirements of this section and of Section 3752.

Note. This section was added by 1993 Cal. Stat. ch. 876, § 17 (SB 1068).

§ 3753. Article applicable in all cases

3753. This article is applicable in all cases, irrespective of whether the child support award made is based on the mandatory minimum award schedule or a higher amount based on a state or county schedule.

Comment. Section 3753 continues former Civil Code Section 4726(d) without substantive change.

Article 2. Health Insurance Coverage Assignment

§ 3760. Definitions

3760. As used in this article, unless the provision or context otherwise requires:

(a) “Employer” includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(b) “Health insurance,” “health insurance plan,” “health insurance coverage,” “health care services,” or “health insurance coverage assignment” includes vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan.

(c) “Health insurance coverage assignment” or “assignment order” means an order made under Section 3761.

Comment. Subdivision (a) of Section 3760 continues former Civil Code Section 4726.1(m) without substantive change. Subdivision (b) continues former Civil Code Section 4726.1(p) without substantive change. Subdivision (c) continues the last sentence of former Civil Code Section 4726.1(a)(1) without substantive change.

§ 3761. Application and order for health insurance coverage assignment; notice of intent to seek order

3761. (a) Upon application by a party or district attorney in any proceeding where the court has ordered either or both parents to maintain health insurance coverage under Article 1 (commencing with Section 3750), the court shall order the employer of the obligor parent or other person providing health insurance to the obligor to enroll the supported child in the health insurance plan available to the obligor through the employer or other person and to deduct the appropriate premium or costs, if any, from the earnings of the obligor unless the court makes a finding of good cause for not making the order.

(b) The application shall state that the party or district attorney seeking the assignment has given the obligor a written notice of the intent to seek a health insurance coverage assignment in the event of a default in instituting coverage required by court order on behalf of the parties’ child and that the notice was transmitted by first-class mail,

postage prepaid, or personally served at least 15 days before the date of the filing of the application. The written notice of the intent to seek an assignment required by this subdivision may be given at the time of filing a petition or complaint for support or at any later time, but shall be given at least 15 days before the date of filing the application under this section. The obligor may at any time waive the written notice required by this subdivision.

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

§ 3762. Good cause for not making assignment order

3762. Good cause for not making a health insurance coverage assignment shall be limited to either of the following:

(a) The court finds that one of the conditions listed in subdivision (a) of Section 3765 or in Section 3770 exists.

(b) The court finds that the health insurance coverage assignment would cause extraordinary hardship to the obligor. The court shall specify the nature of the extraordinary hardship and, whenever possible, a date by which the obligor shall obtain health insurance coverage or be subject to a health insurance coverage assignment.

Comment. Section 3762 continues former Civil Code Section 4726.1(a)(2) without substantive change.

§ 3763. Time of making and effect of assignment order; modification of order

3763. (a) The health insurance coverage assignment may be ordered at the time of trial or entry of a judgment ordering health insurance coverage. The order operates as an

assignment and is binding on any existing or future employer of the obligor parent, or other person providing health insurance to the obligor, upon whom a copy of the order has been served.

(b) The order of assignment may be modified at any time by the court.

Comment. Section 3763 continues former Civil Code Section 4726.1(b) without substantive change. In subdivision (a), the phrase “or other person providing health insurance to the obligor” has been added. This conforms with other sections in this article. See, e.g., Sections 3761, 3764-3765, 3767-3768, 3770. See also Sections 2050-2053 (notice to insurance carriers in dissolution, nullity, or legal separation proceeding).

§ 3764. Service of assignment order; delivery of copy and information to obligor

3764. (a) A health insurance coverage assignment does not become effective until 10 days after service by the applicant of the assignment order on the employer or other person providing health insurance to the obligor.

(b) Within 10 days after service of the order, the employer or other person providing health insurance to the obligor shall deliver a copy of the order to the obligor, together with a written statement of the obligor’s rights under the law to move to quash the order.

Comment. Section 3764 continues former Civil Code Section 4726.1(d) without substantive change. See also Sections 2050-2053 (notice to insurance carriers in dissolution, nullity, or legal separation proceeding).

§ 3765. Motion to quash assignment

3765. (a) The obligor may move to quash a health insurance coverage assignment order as provided in this section if the obligor declares under penalty of perjury that there is error on any of the following grounds:

(1) No order to maintain health insurance has been issued under Article 1 (commencing with Section 3750).

(2) The amount to be withheld for premiums is greater than that permissible under Article 1 (commencing with Section 3750) or greater than the amount otherwise ordered by the court.

(3) The amount of the increased premium is unreasonable.

(4) The alleged obligor is not the obligor from whom health insurance coverage is due.

(5) The child is or will be otherwise provided health care coverage.

(6) The employer's choice of coverage is inappropriate.

(b) The motion and notice of motion to quash the assignment order, including the declaration required by subdivision (a), shall be filed with the court issuing the assignment order within 10 days after delivery of a copy of the order to the obligor pursuant to subdivision (b) of Section 3764. The court clerk shall set the motion for hearing not less than 15 days, nor more than 20 days, after receipt of the notice of motion. The clerk shall, within five days after receipt of the notice of motion, deliver a copy of the notice of motion to (1) the district attorney personally or by first-class mail, and (2) the applicant and the employer or other person providing health insurance, at the appropriate addresses contained in the application, by first-class mail.

(c) Upon a finding of error described in subdivision (a), the court shall quash the assignment.

Comment. Section 3765 restates former Civil Code Section 4726.1(e) without substantive change. A reference to "children" has been omitted as surplus. See Section 10 (singular includes plural).

§ 3766. Selection of plans

3766. (a) The employer, or other person providing health insurance, shall take steps to commence coverage, consistent with the order for the health insurance coverage assignment, 10 days after service of the assignment order upon the obligor under Section 3764 if the employer or other person has not

received a notice of motion seeking to quash the order. If the employer or other person providing health insurance receives a notice of motion to quash, the employer or other person shall commence coverage consistent with the assignment order on receipt of the order resolving the motion to quash in favor of the applicant. The employer, or the person providing health insurance, shall commence coverage at the earliest possible time and, if applicable, consistent with the group plan enrollment rules.

(b) If the obligor has made a selection of health coverage inconsistent with the court order, the selection shall not be superseded unless the child to be enrolled in the plan will not be provided benefits or coverage where the child resides.

(c) If the obligor has not enrolled in an available health plan, there is a choice of coverage, and the court has not ordered coverage by a specific plan, the employer or other person providing health insurance shall enroll the child in the plan that will reasonably provide benefits or coverage where the child resides. If that coverage is not available, the employer or other person providing health insurance shall, within 20 days, return the assignment to the attorney or person initiating the assignment.

(d) If an assignment order is served on an employer or other person providing health insurance and no coverage is available for the supported child, the employer or other person shall, within 20 days, return the assignment to the attorney or person initiating the assignment.

Comment. Section 3766 continues former Civil Code Section 4726.1(f) and (j) without substantive change. References to “children” have been omitted as surplus. See Section 10 (singular includes plural). In the last part of the second sentence of subdivision (a) and in the first sentence of subdivision (c), references to the “other person providing health insurance to the obligor” have been added. This conforms with the remainder of this section and with other sections in this article. See, e.g., Sections 3761, 3764-3765, 3767-3768, 3770. See also Sections 2050-

2053 (notice to insurance carriers in dissolution, nullity, or legal separation proceeding).

§ 3767. Notice of commencement of coverage; providing evidence of coverage

3767. The employer or other person providing health insurance shall do all of the following:

(a) Notify the applicant for the assignment order of the commencement date of the coverage of the child.

(b) Provide evidence of coverage to both parents or the person having custody of the child and to the district attorney when requested by the district attorney.

(c) Upon request by the parents or person having custody of the child, provide all forms and other documentation necessary for the purpose of submitting claims to the insurance carrier which the employer or other person providing health insurance usually provides to insureds.

Comment. Section 3767 continues former Civil Code Section 4726.1(h)-(i) without substantive change.

§ 3768. Liability for failure to comply with assignment

3768. (a) An employer or other person providing health insurance who willfully fails to comply with a valid health insurance coverage assignment entered and served on the employer or other person pursuant to this article is liable to the applicant for the amount incurred in health care services that would otherwise have been covered under the insurance policy but for the conduct of the employer or other person that was contrary to the assignment order.

(b) Willful failure of an employer or other person providing health insurance to comply with a health insurance coverage assignment is punishable as contempt of court under Section 1218 of the Code of Civil Procedure.

Comment. Section 3768 continues former Civil Code Section 4726.1(g) without substantive change. See also Sections 2050-2053

(notice to insurance carriers in dissolution, nullity, or legal separation proceeding), 3557 (attorney's fees for enforcement of support order).

§ 3769. Civil penalty for adverse action against employee

3769. No employer shall use a health insurance coverage assignment as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who violates this section may be assessed a civil penalty of a maximum of five hundred dollars (\$500).

Comment. Section 3769 continues former Civil Code Section 4726.1(l) without substantive change.

§ 3770. Termination of assignment

3770. Upon notice of motion by the obligor, the court shall terminate a health insurance coverage assignment if any of the following conditions exists:

(a) A new order has been issued under Article 1 (commencing with Section 3750) that is inconsistent with the existing assignment.

(b) The employer or other person providing health insurance has discontinued that coverage to the obligor.

(c) The court determines that there is good cause, consistent with Section 3762, to terminate the assignment.

(d) The death or emancipation of the child for whom the health insurance has been obtained.

Comment. Section 3770 continues former Civil Code Section 4726.1(k) without substantive change.

§ 3771. Employer providing information to district attorney

3771. Upon request of the district attorney, the employer shall provide the following information to the district attorney within 30 days:

(a) The social security number of the absent parent.

(b) The home address of the absent parent.

(c) Whether the absent parent has a health insurance policy and, if so, the policy names and numbers, and the names of the persons covered.

(d) Whether the health insurance policy provides coverage for dependent children of the absent parent who do not reside in the absent parent's home.

(e) If there is a subsequent lapse in health insurance coverage, the employer shall notify the district attorney, giving the date the coverage ended, the reason for the lapse in coverage and, if the lapse is temporary, the date upon which coverage is expected to resume.

Comment. Section 3771 continues former Civil Code Section 4726.1(o) without substantive change.

§ 3772. Judicial Council forms

3772. The Judicial Council shall adopt forms for the health insurance coverage assignment required or authorized by this article, including, but not limited to, the application, the order, the statement of the obligor's rights, and an employer's return form which shall include the information required by Section 3771. The parties and child shall be sufficiently identified on the forms by the inclusion of birth dates, social security numbers, and any other information the Judicial Council determines is necessary.

Comment. Section 3772 continues former Civil Code Section 4726.1(n) without substantive change.

Article 3. Assignment of Reimbursement Rights Under Health Plan

§ 3780. "Health plan" defined

3780. A health plan for the purposes of this article includes, but is not limited to, a disability insurance plan, a nonprofit hospital service plan, a self-insured employee welfare benefit plan, and a health care service plan.

Comment. Section 3780 continues the last paragraph of former Civil Code Section 4358.5 without change.

§ 3781. Assignment of rights to reimbursement under health plan

3781. (a) Subject to subdivision (b), in any proceeding where there is an order requiring either party to provide coverage under a health plan to a dependent, the court shall order the party covered by a health plan to assign to the other party the rights the covered party has to reimbursement.

(b) The rights assigned pursuant to this section do not include any rights the covered party has to reimbursement for payments actually made by the covered party. The rights assigned are only for reimbursement for payments made by the noncovered party seeking the reimbursement, and reimbursement shall be only for covered health care services received in the manner required by the plan or policy and provided to a dependent.

Comment. Section 3781 continues the first paragraph of former Civil Code Section 4358.5 without substantive change. A reference to “under this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted. Thus, this article applies to any proceeding in which an order to provide health insurance coverage for a child has been made, rather than being limited to dissolution, nullity, or legal separation proceedings. See also Sections 2050-2053 (notice to insurance carriers in dissolution, nullity, or legal separation proceeding).

§ 3782. Party covered by health plan to provide information and forms

3782. (a) The order made pursuant to this article shall also require the party covered by a health plan to provide the appropriate information and forms to enable the party incurring the health care services costs for a dependent to seek reimbursement.

(b) The court shall notify the health plan of the order made pursuant to this article and shall instruct the health plan to

assist the party seeking reimbursement by providing information and forms necessary to receive reimbursement.

Comment. Section 3782 continues the second paragraph of former Civil Code Section 4358.5 without substantive change. See also Sections 2050-2053 (notice to insurance carriers in dissolution, nullity, or legal separation proceeding).

CHAPTER 8. DEFERRED SALE OF HOME ORDER

§ 3800. Definitions

3800. As used in this chapter:

(a) “Custodial parent” means a party awarded physical custody of a child.

(b) “Deferred sale of home order” means an order that temporarily delays the sale and awards the temporary exclusive use and possession of the family home to a custodial parent of a minor child or child for whom support is authorized under Sections 3900 and 3901 or under Section 3910, whether or not the custodial parent has sole or joint custody, in order to minimize the adverse impact of dissolution of marriage or legal separation of the parties on the welfare of the child.

(c) “Resident parent” means a party who has requested or who has already been awarded a deferred sale of home order.

Comment. Section 3800 continues former Civil Code Section 4700.10(a) without substantive change.

§ 3801. Determination of economic feasibility

3801. (a) If one of the parties has requested a deferred sale of home order pursuant to this chapter, the court shall first determine whether it is economically feasible to maintain the payments of any note secured by a deed of trust, property taxes, insurance for the home during the period the sale of the home is deferred, and the condition of the home comparable to that at the time of trial.

(b) In making this determination, the court shall consider all of the following:

- (1) The resident parent's income.
- (2) The availability of spousal support, child support, or both spousal and child support.
- (3) Any other sources of funds available to make those payments.

(c) It is the intent of the Legislature, by requiring the determination under this section, to do all of the following:

- (1) Avoid the likelihood of possible defaults on the payments of notes and resulting foreclosures.
- (2) Avoid inadequate insurance coverage.
- (3) Prevent deterioration of the condition of the family home.
- (4) Prevent any other circumstance which would jeopardize both parents' equity in the home.

Comment. Section 3801 continues the first three sentences of former Civil Code Section 4700.10(b) without substantive change.

§ 3802. Matters to be considered by court in determining whether to grant order

3802. (a) If the court determines pursuant to Section 3801 that it is economically feasible to consider ordering a deferred sale of the family home, the court may grant a deferred sale of home order to a custodial parent if the court determines that the order is necessary in order to minimize the adverse impact of dissolution of marriage or legal separation of the parties on the child.

(b) In exercising its discretion to grant or deny a deferred sale of home order, the court shall consider all of the following:

- (1) The length of time the child has resided in the home.
- (2) The child's placement or grade in school.

(3) The accessibility and convenience of the home to the child's school and other services or facilities used by and available to the child, including child care.

(4) Whether the home has been adapted or modified to accommodate any physical disabilities of a child or a resident parent in a manner that a change in residence may adversely affect the ability of the resident parent to meet the needs of the child.

(5) The emotional detriment to the child associated with a change in residence.

(6) The extent to which the location of the home permits the resident parent to continue employment.

(7) The financial ability of each parent to obtain suitable housing.

(8) The tax consequences to the parents.

(9) The economic detriment to the nonresident parent in the event of a deferred sale of home order.

(10) Any other factors the court deems just and equitable.

Comment. Subdivision (a) of Section 3802 continues without substantive change the introductory clause of the fourth sentence of subdivision (b) and the first sentence of subdivision (c) of former Civil Code Section 4700.10. Subdivision (b) continues the remainder of the fourth sentence of former Civil Code Section 4700.10(b) without substantive change.

§ 3803. Contents of order

3803. A deferred sale of home order shall state the duration of the order and may include the legal description and assessor's parcel number of the real property which is subject to the order.

Comment. Section 3803 continues without substantive change the first part of the second sentence of former Civil Code Section 4700.10(c).

§ 3804. Recording order

3804. A deferred sale of home order may be recorded in the office of the county recorder of the county in which the real property is located.

Comment. Section 3804 continues without substantive change the last part of the second sentence of former Civil Code Section 4700.10(c).

§ 3806. Order concerning maintenance and capital improvements

3806. The court may make an order specifying the parties' respective responsibilities for the payment of the costs of routine maintenance and capital improvements.

Comment. Section 3806 continues former Civil Code Section 4700.10(d) without change.

§ 3807. Modification or termination or order

3807. Except as otherwise agreed to by the parties in writing, a deferred sale of home order may be modified or terminated at any time at the discretion of the court.

Comment. Section 3807 continues former Civil Code Section 4700.10(e)(1) without substantive change.

§ 3808. Presumption arising upon remarriage or other change in circumstances

3808. Except as otherwise agreed to by the parties in writing, if the party awarded the deferred sale of home order remarries, or if there is otherwise a change in circumstances affecting the determinations made pursuant to Section 3801 or 3802 or affecting the economic status of the parties or the children on which the award is based, a rebuttable presumption, affecting the burden of proof, is created that further deferral of the sale is no longer an equitable method of minimizing the adverse impact of the dissolution of marriage or legal separation of the parties on the children.

Comment. Section 3808 continues former Civil Code Section 4700.10(e)(2) without substantive change.

§ 3809. Reservation of jurisdiction by court

3809. In making an order pursuant to this chapter, the court shall reserve jurisdiction to determine any issues that arise with respect to the deferred sale of home order including, but not limited to, the maintenance of the home and the tax consequences to each party.

Comment. Section 3809 continues former Civil Code Section 4700.10(f) without substantive change. The word “any” has been substituted for “any and all,” since “all” is surplus.

§ 3810. Chapter applies to preexisting orders

3810. This chapter is applicable regardless of whether the deferred sale of home order is made before or after January 1, 1989.

Comment. Section 3810 continues former Civil Code Section 4700.10(g) without substantive change.

CHAPTER 9. SOFTWARE USED TO DETERMINE SUPPORT**§ 3830. Software used to determine support**

3830. (a) On and after January 1, 1994, no court shall use any computer software to assist in determining the appropriate amount of child support or spousal support obligations, unless the software conforms to rules of court adopted by the Judicial Council prescribing standards for the software, which shall ensure that it performs in a manner consistent with the applicable statutes and rules of court for determination of child support or spousal support.

(b) The Judicial Council may contract with an outside agency or organization to analyze software to ensure that it conforms to the standards established by the Judicial Council. The cost of this analysis shall be paid by the applicant software producers and fees therefor shall be established by the Judicial Council in an amount that in the aggregate will defray its costs of administering this section.

Comment. Section 3830 continues former Civil Code Section 4395 without substantive change.

PART 2 . CHILD SUPPORT

CHAPTER 1. DUTY OF PARENT TO SUPPORT CHILD

Article 1. Support of Minor Child

§ 3900. Duty of parents

3900. Subject to this division, the father and mother of a minor child have an equal responsibility to support their child in the manner suitable to the child's circumstances.

Comment. Section 3900 continues without substantive change former Civil Code Section 196(a), the first sentence of former Civil Code Section 196a, and former Civil Code Section 242 to the extent that section applied to the duty to support a child. The introductory clause has been substituted for the sections referred to in the second sentence of former Civil Code Section 242. This is not a substantive change. References to the duty to provide for education have been omitted as surplus. See Section 150 ("support" defined to include education when used in reference to child). The provision of former Civil Code Section 196(a) requiring consideration of "the respective earnings or earning capacities of the parents" has been omitted. The factors to be considered in determining child support are provided in Article 2 (commencing with Section 4050) of Chapter 3.

The duty provided in Section 3900 is subject to the other provisions in this division, including but not limited to, Article 2 (commencing with Section 4050) of Chapter 3 (child support guideline). See also Sections 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights), 3556 (effect of failure to implement custody or visitation rights), 3901 (duration of duty); Code Civ. Proc. § 395 (venue for action to enforce support obligation).

§ 3901. Duration of child support duty

3901. (a) The duty of support imposed by Section 3900 continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and who is not

self-supporting, until the time the child completes the 12th grade or attains the age of 19 years, whichever occurs first.

(b) Nothing in this section limits a parent's ability to agree to provide additional support or the court's power to inquire whether an agreement to provide additional support has been made.

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

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

§ 3902. Support from child's property

3902. The court may direct that an allowance be made to the parent of a child for whom support may be ordered out of the child's property for the child's past or future support, on conditions that are proper, if the direction is for the child's benefit.

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

Article 2. Support of Adult Child

§ 3910. Duty to maintain incapacitated child

3910. (a) The father and mother have an equal responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and without sufficient means.

(b) Nothing in this section limits the duty of support under Sections 3900 and 3901.

Comment. Subdivision (a) of Section 3910 restates without substantive change the first sentence of former Civil Code Section 206 and former Civil Code Sections 241(d) and 242 to the extent those sections applied to the duty to maintain an incapacitated adult child. The “equal responsibility” language is new and is drawn from Section 3900.

Subdivision (b) is new. It makes clear that the duty stated in this section does not supersede or limit the duty of support under Sections 3900 and 3901.

See also Sections 3587 (court order to effectuate agreement for support of adult child); Welf. & Inst. Code § 12350 (no liability for support or reimbursement of support to applicant for aid under Burton-Moscone-Bagley Citizens’ Security Act for Aged, Blind and Disabled Californians).

Article 3. Support of Grandchild

§ 3930. Support of grandchild

3930. A parent does not have the duty to support a child of the parent’s child.

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

Article 4. Liability to Others Who Provide Support for Child

§ 3950. Necessaries provided to child

3950. If a parent neglects to provide articles necessary for the parent's child who is under the charge of the parent, according to the circumstances of the parent, a third person may in good faith supply the necessaries and recover their reasonable value from the parent.

Comment. Section 3950 continues former Civil Code Section 207 without substantive change.

§ 3951. When reimbursement not required

3951. (a) A parent is not bound to compensate the other parent, or a relative, for the voluntary support of the parent's child, without an agreement for compensation.

(b) A parent is not bound to compensate a stranger for the support of a child who has abandoned the parent without just cause.

(c) Nothing in this section relieves a parent of the obligation to support a child during any period in which the state, county, or other governmental entity provides support for the child.

Comment. Section 3951 continues former Civil Code Section 208 without substantive change.

§ 3952. Support of public charge out of estate of parent

3952. If a parent chargeable with the support of a child dies leaving the child chargeable to the county or leaving the child confined in a state institution to be cared for in whole or in part at the expense of the state, and the parent leaves an estate sufficient for the child's support, the supervisors of the county or the director of the state department having jurisdiction over the institution may claim provision for the child's support from the parent's estate, and for this purpose has the same remedies as a creditor against the estate of the parent and may

obtain reimbursement from the successor of the deceased parent to the extent provided in Division 8 (commencing with Section 13000) of the Probate Code.

Comment. Section 3952 continues former Civil Code Section 205 without substantive change. A reference to Division 8 (commencing with Section 13000) of the Probate Code (disposition of estate without administration) has been substituted for the reference in the former section to a civil action against the heirs, devisees, and next of kin of the parent. See, e.g., Prob. Code § 13112 (limitation on liability of successor). If there is an administration of the deceased parent's estate, a claim may be submitted to the personal representative administering the estate in the manner provided for the submission of claims. See Part 4 (commencing with Section 9000) of Division 7 of the Probate Code.

CHAPTER 2. COURT-ORDERED CHILD SUPPORT

Article 1. General Provisions

§ 4000. Civil action to enforce parent's duty to support

4000. If a parent has the duty to provide for the support of the parent's child and willfully fails to so provide, the other parent, or the child by a guardian ad litem, may bring an action against the parent to enforce the duty.

Comment. Section 4000 continues former Civil Code Section 4703 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The reference to the duty to provide maintenance and education to a child has been omitted as surplus. See Section 150 ("support" includes maintenance and education when used in reference to child).

Section 4000 supersedes the second sentence of former Civil Code Section 196a, the second sentence of the first paragraph of former Civil Code Section 196.5, the first sentence of former Civil Code Section 248, insofar as it gave a child the right to enforce the duty of support, and the second sentence of the first paragraph of former Civil Code Section 4704.5.

For a provision allowing a county to proceed on behalf of the child to enforce the parent's duty of support, see Section 4002. For general provisions relating to support, see Part 1 (commencing with Section 3500). For provisions relating to enforcement of support orders, see Part 5 (commencing with Section 4500). See also Sections 3028

(compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights), 3029 (support order required where parent receiving public assistance), 3556 (effect of failure to implement custody or visitation rights), 3557 (attorney's fees for enforcement of support order).

§ 4001. Order for child support

4001. In any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 3901 or 3910, the court may order either or both parents to pay an amount necessary for the support of the child.

Comment. Section 4001 continues the first sentence of former Civil Code Section 4700(a) without substantive change. The reference to the duty to provide maintenance and education to a child has been omitted as surplus. See Section 150 ("support" includes maintenance and education when used in reference to child). A reference to Section 3901 has been added to make clear that this section applies to a child for whom support is authorized under that section.

For general provisions relating to support, see Part 1 (commencing with Section 3500). For provisions relating to enforcement of support orders, see Part 5 (commencing with Section 4500). See also Sections 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights), 3029 (support order required where parent receiving public assistance), 3556 (effect of failure to implement custody or visitation rights), 3557 (attorney's fees for enforcement of support order).

§ 4002. Enforcement by county on behalf of child

4002. (a) The county may proceed on behalf of a child to enforce the child's right of support against a parent.

(b) If the county furnishes support to a child, the county has the same right as the child to secure reimbursement and obtain continuing support. The right of the county to reimbursement is subject to any limitation otherwise imposed by the law of this state.

(c) The court may order the parent to pay the county reasonable attorney's fees and court costs in a proceeding brought by the county pursuant to this section.

Comment. Section 4002 continues former Civil Code Section 248 without substantive change to the extent that the former section related to enforcement of child support by the county.

For general provisions relating to support, see Part 1 (commencing with Section 3500). For provisions relation to enforcement of support orders, see Part 5 (commencing with Section 4500). See also Sections 3029 (support order required where parent receiving public assistance), 3556 (effect of failure to implement custody or visitation rights), 3557 (attorney's fees for enforcement of support order). For comparable provisions, see Section 4303 (county enforcement of duty to provide spousal support), 4403 (county enforcement of duty to support parent).

§ 4003. Preference for trial on issue of support

4003. In any case in which the support of a child is at issue, the court may, upon a showing of good cause, order a separate trial on that issue. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date. If the court has also ordered a separate trial on the issue of custody pursuant to Section 3023, the two issues shall be tried together.

Comment. Section 4003 continues former Civil Code Section 4707 without substantive change. The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

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

§ 4004. Child receiving public assistance

4004. In a proceeding where there is at issue the support of a child, the court shall require the parties to reveal whether a party is currently receiving, or intends to apply for, public assistance under the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) for the maintenance of the child.

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

§ 4006. Health insurance coverage as factor

4006. In a proceeding for child support under this code or under Article 7 (commencing with Section 11475) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, the court shall consider the health insurance coverage, if any, of the parties to the proceeding.

Comment. Section 4006 continues former Civil Code Section 4706 without substantive change and expands the section to apply to any child support proceeding under this code. The former section applied in an “action for support” brought under former Chapter 1 (commencing with Section 4700) of Title 5 of the former Family Law Act. The substitution of “proceeding” for “action” is not a substantive change. The reference to “health insurance coverage” has been substituted for the former reference to “medical insurance coverage.” This conforms with the terminology of the related sections dealing with health insurance coverage assignments. For provisions relating to health insurance coverage assignments, see Chapter 7 (commencing with Section 3750).

§ 4007. Support for contingent period of time

4007. (a) If a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 3901 or 3910, the obligation of the person ordered to pay support terminates on the happening of the contingency. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or the person's attorney of record, of the happening of the contingency.

(b) If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make the payments, or the attorney of record of the person ordered to make the payments, of the happening of the contingency and continues to accept support payments, the person shall refund all moneys received that accrued after the happening of the contingency, except that the overpayments shall first be applied to any support payments that are then in default.

Comment. Section 4007 continues former Civil Code Section 4700(c) without substantive change. The reference to Section 3901 has been added. In subdivision (b), references to "all" and to "any" have been substituted for the former references to "any and all," since the phrase "any and all" is redundant. For a comparable provision relating to spousal support, see Section 4334 (spousal support for contingent period of time).

§ 4008. Property available for child support

4008. The community property, the quasi-community property, and the separate property may be subjected to the support of the children in the proportions the court determines are just.

Comment. Section 4008 continues former Civil Code Section 4807 without substantive change. For a provision relating to spousal support, see Section 4338 (order of resort to property for payment of spousal support).

§ 4009. Retroactivity of order

4009. An order for child support may be made retroactive to the date of filing the notice of motion or order to show cause, or to any subsequent date, except as provided by federal law (42 U.S.C. Sec. 666(a)(9)).

Comment. Section 4009 continues the sixth sentence of former Civil Code Section 4700(a) without substantive change, to the extent that sentence related to the making of the order for child support. See also Section 3653 (retroactivity of order modifying or terminating child support order). For a provision relating to spousal support, see Section 4333 (retroactivity of spousal support order).

§ 4010. Notice of modification procedures

4010. In a proceeding in which the court orders a payment for the support of a child, the court shall, at the time of providing written notice of the order, provide the parties with a document describing the procedures by which the order may be modified.

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

§ 4011. Priority of child support payments

4011. Payment of child support ordered by the court shall be made by the person owing the support payment before payment of any debts owed to creditors.

Comment. Section 4011 continues the fourth sentence of former Civil Code Section 4700(a) without substantive change.

§ 4012. Security for payment

4012. Upon a showing of good cause, the court may order a parent required to make a payment of child support to give reasonable security for the payment.

Comment. Section 4012 continues the third sentence of former Civil Code Section 4700(a) without substantive change. The former reference to parents has been omitted as surplus. See Section 10 (singular includes plural). See also Sections 3557 (attorney's fees for enforcement of support order), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments). For a provision relating to spousal support, see Section 4339 (security for payment of spousal support).

§ 4013. Obligation discharged in bankruptcy

4013. If obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support of the child that the court determines are just.

Comment. Section 4013 continues former Civil Code Section 4700(d) without substantive change. The reference to the duty to provide maintenance and education to a child has been omitted as surplus. See Section 150 ("support" includes maintenance and education when used in reference to child). For a provision relating to spousal support, see Section 3592 (agreement for property settlement or support of spouse discharged in bankruptcy).

§ 4014. Information included in order

4014. Any order for child support issued or modified pursuant to this chapter shall include a provision requiring the obligor and child support obligee to notify the other parent or, if the order requires payment through an agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the agency named in the order, of the name and address of his or her current employer. The Judicial Council shall modify the forms for an order requiring or changing child support to inform the obligor of this obligation.

Note. This section was added by 1993 Cal. Stat. ch. 876, § 18 (SB 1068).

Article 2. Statewide Uniform Guideline

§ 4050. Legislative intent

4050. In adopting the statewide uniform guideline provided in this article, it is the intention of the Legislature to ensure that this state remains in compliance with federal regulations for child support guidelines.

Comment. Section 4050 continues without substantive change the first sentence and the first part of the second sentence of former Civil Code Section 4720(a)(1). A reference to this article has been substituted for the narrower reference to former Civil Code Section 4721. This is not a substantive change, since the former section is continued in this article.

§ 4051. Operative date of article

4051. This article takes effect on July 1, 1992.

Comment. Section 4051 continues without substantive change the last part of the second sentence of former Civil Code Section 4720(a)(1). See also Section 4 (transitional provision for amendments, additions, and repeals).

§ 4052. Mandatory adherence to guideline

4052. The court shall adhere to the statewide uniform guideline and may depart from the guideline only in the special circumstances set forth in this article.

Comment. Section 4052 restates former Civil Code Section 4720(a)(2) without substantive change, but states a positive rule rather than a legislative intent. A reference to this article has been substituted for the narrower reference to former Civil Code Section 4721. This is not a substantive change, since the former section is continued in this article.

§ 4053. Mandatory adherence to principles

4053. In implementing the statewide uniform guideline, the courts shall adhere to the following principles:

(a) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.

(b) Both parents are mutually responsible for the support of their children.

(c) The guideline takes into account each parent's actual income and level of responsibility for the children.

(d) Each parent should pay for the support of the children according to his or her ability.

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

(f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.

(g) Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.

(h) The financial needs of the children should be met through private financial resources as much as possible.

(i) It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children.

(j) The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.

(k) The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula.

(l) Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the

state's high standard of living and high costs of raising children compared to other states.

Comment. Section 4053 continues former Civil Code Section 4720(a)(3) without substantive change.

§ 4054. Periodic review by Judicial Council

4054. (a) The Judicial Council shall periodically review the statewide uniform guideline to recommend to the Legislature appropriate revisions.

(b) The review shall include economic data on the cost of raising children and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date. The review shall also include analysis of guidelines and studies from other states, and other research and studies available to or undertaken by the Judicial Council.

(c) Any recommendations for revisions to the guideline shall be made to ensure that the guideline results in appropriate child support orders, to limit deviations from the guideline, or otherwise to help ensure that the guideline is in compliance with federal law.

(d) The Judicial Council may also review and report on other matters, including, but not limited to, the following:

(1) The treatment of the income of a subsequent spouse or nonmarital partner.

(2) The treatment of children from prior or subsequent relationships.

(3) The application of the guideline in a case where a payor parent has extraordinarily low or extraordinarily high income, or where each parent has primary physical custody of one or more of the children of the marriage.

(4) The benefits and limitations of a uniform statewide spousal support guideline and the interrelationship of that guideline with the state child support guideline.

(5) Whether the use of gross or net income in the guideline is preferable.

(6) Whether the guideline affects child custody litigation or the efficiency of the judicial process.

(7) Whether the various assumptions used in computer software used by some courts to calculate child support comport with state law and should be made available to parties and counsel.

(e) The initial review by the Judicial Council shall be submitted to the Legislature and to the State Department of Social Services on or before December 31, 1993, and subsequent reviews shall occur at least every four years thereafter unless federal law requires a different interval.

(f) In developing its recommendations, the Judicial Council shall consult with a broad cross-section of groups involved in child support issues, including, but not limited to, the following:

(1) Custodial and noncustodial parents.

(2) Representatives of established women's rights and fathers' rights groups.

(3) Representatives of established organizations that advocate for the economic well-being of children.

(4) Members of the judiciary, district attorney's offices, the Attorney General's office, and the State Department of Social Services.

(5) Certified family law specialists.

(6) Academicians specializing in family law.

(7) Persons representing low-income parents.

(8) Persons representing recipients of assistance under the Aid to Families with Dependent Children (AFDC) program seeking child support services.

(g) In developing its recommendations, the Judicial Council shall seek public comment and shall be guided by the

legislative intent that children share in the standard of living of both of their parents.

Comment. Section 4054 continues former Civil Code Section 4720(b)-(d) without substantive change. In subdivisions (a) and (c), the references to “the statewide uniform guideline” and “the” guideline have been substituted for the former references to the “guideline established in [former Civil Code] Section 4721.” These are not substantive changes.

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

4055. (a) The statewide uniform guideline for determining child support orders is as follows: $CS = K [HN - (H\%) (TN)]$.

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of both parents' income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

Total Net Disposable Income Per Month	K
\$0–800	$0.20 + \text{TN}/16,000$
\$801–6,666	0.25
\$6,667–10,000	$0.10 + 1000/\text{TN}$
Over \$10,000	$0.12 + 800/\text{TN}$

For example, if H% equals 20 percent and the total monthly net disposable income of the parents is \$1,000, $K = (1 + 0.20) \times 0.25$, or 0.30. If H% equals 80 percent and the total monthly net disposable income of the parents is \$1,000, $K = (2 - 0.80) \times 0.25$, or 0.30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the

custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children.

(7) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases where there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

Comment. Section 4055 supersedes former Civil Code Section 4721(a)-(b).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1156, § 1 (SB 541).

§ 4056. Information to be in writing or on record

4056. (a) To comply with federal law, the court shall state, in writing or on the record, the following information whenever the court is ordering an amount for support that differs from the statewide uniform guideline formula amount under this article:

(1) The amount of support that would have been ordered under the guideline formula.

(2) The reasons the amount of support ordered differs from the guideline formula amount.

(3) The reasons the amount of support ordered is consistent with the best interests of the children.

(b) At the request of any party, the court shall state in writing or on the record the following information used in determining the guideline amount under this article:

(1) The net monthly disposable income of each parent.

(2) The actual federal income tax filing status of each parent (for example, single, married, married filing separately, or head of household and number of exemptions).

(3) Deductions from gross income for each parent.

(4) The approximate percentage of time pursuant to paragraph (1) of subdivision (b) of Section 4055 that each parent has primary physical responsibility for the children compared to the other parent.

Comment. Section 4056 supersedes former Civil Code Section 4721(c). See also Section 3011 (factors in determining best interest of child).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1156, § 2 (SB 541).

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

4057. (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.

(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court states in writing or on the record the information required in subdivision (a) of Section 4056:

(1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

(2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowner's

insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

(4) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.

(5) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:

(A) Cases in which the parents have different time-sharing arrangements for different children.

(B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

(C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

Comment. Section 4057 supersedes former Civil Code Section 4721(d)-(e). The language in subdivisions (a) and (b) has been revised to conform with the language of the Evidence Code sections dealing with presumptions. See, e.g., Evid. Code §§ 660-669.5 (presumptions affecting the burden of proof). This is not a substantive change. In subdivision (b), the reference to Section 4053 has been substituted for the broader reference to former Civil Code Section 4720. This is not a substantive change, since Section 4053 continues the relevant part of former Civil Code Section 4720 without substantive change. See also Section 3011 (factors in determining best interest of child).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1156, § 3.5 (SB 541), which incorporates amendments from 1993 Cal. Stat. ch. 935 (SB 145).

§ 4057.5. Income of spouse or partner of obligor or obligee

4057.5. (a)(1) The income of the obligor parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligor or by the obligor's subsequent spouse or nonmarital partner.

(2) The income of the obligee parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligee or by the obligee's subsequent spouse or nonmarital partner.

(b) For purposes of this section, an extraordinary case may include a parent voluntarily or intentionally quitting work or reducing income.

(c) If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered pursuant to this section, discovery for the purposes of determining income shall be based on W2 and 1099 income tax forms, except where the court determines that application would be unjust or inappropriate.

(d) If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered pursuant to this section, the court shall allow a hardship deduction based on the minimum living expenses for one or more stepchildren of the party subject to the order.

(e) The enactment of this section constitutes cause to bring an action for modification of a child support order entered prior to the operative date of this section.

Note. This section was added by 1993 Cal. Stat. ch. 935, § 2 (SB 145).

§ 4058. Annual gross income

4058. (a) The annual gross income of each parent means income from whatever source derived, except as specified in subdivision (c) and includes, but is not limited to, the following:

(1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article.

(2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(3) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children.

(c) Annual gross income does not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.

Comment. Section 4058 continues former Civil Code Section 4721(f) without substantive change. In subdivision (a)(1), “the proceeding to establish a child support order under this article” has been substituted for “this order.” This is not a substantive change. In subdivision (c), “does not” has been substituted for “shall not.” This is not a substantive change. See also Section 3011 (factors in determining best interest of child).

§ 4059. Annual net disposal income

4059. The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable to the following items or other items permitted under this article:

(a) The state and federal income tax liability resulting from the parties’ taxable income. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents. State and federal income taxes shall be those actually payable (not necessarily current withholding) after considering appropriate filing status, all available exclusions, deductions, and credits. Unless the parties stipulate otherwise, the tax effects of spousal support shall not be considered in determining the net disposable income of the parties for determining child support, but shall be considered in determining spousal support consistent with Chapter 3 (commencing with Section 4330) of Part 3.

(b) Deductions attributed to the employee’s contribution or the self-employed worker’s contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided that the deducted amount is used to secure retirement or disability benefits for the parent.

(c) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of employment.

(d) Deductions for health insurance or health plan premiums for the parent and for any children the parent has an obligation to support and deductions for state disability insurance premiums.

(e) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the guideline, for natural or adopted children of the parent not residing in that parent's home, who are not the subject of the order to be established by the court, and of whom the parent has a duty of support. Unless the parent proves payment of the support, no deduction shall be allowed under this subdivision.

(f) Job-related expenses, if allowed by the court after consideration of whether the expenses are necessary, the benefit to the employee, and any other relevant facts.

(g) A deduction for hardship, as defined by Sections 4070 to 4073, inclusive, and applicable published appellate court decisions. The amount of the hardship shall not be deducted from the amount of child support, but shall be deducted from the income of the party to whom it applies. In applying any hardship under paragraph (2) of subdivision (a) of Section 4071, the court shall seek to provide equity between competing child support orders.

Comment. Section 4059 continues former Civil Code Section 4721(g) without substantive change. In subdivision (g), the reference to Section 4070 has been substituted for the broader reference to former Civil Code Section 4722. This is not a substantive change, since Section 4070 continues the relevant part of the former section without substantive change.

§ 4060. Monthly net disposable income

4060. The monthly net disposable income shall be computed by dividing the annual net disposable income by

12. If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately.

Comment. Section 4060 continues former Civil Code Section 4721(h) without substantive change. The first sentence has been revised to conform with the first sentence Section 4059.

§ 4061. Additional child support

4061. The amounts in Section 4062, if ordered to be paid, shall be considered additional support for the children and shall be computed in accordance with the following:

(a) If there needs to be an apportionment of expenses pursuant to Section 4062, the expenses shall be divided one-half to each parent, unless either parent requests a different apportionment pursuant to subdivision (b) and presents documentation which demonstrates that a different apportionment would be more appropriate.

(b) If requested by either parent, and the court determines it is appropriate to apportion expenses under Section 4062 other than one-half to each parent, the apportionment shall be as follows:

(1) The basic child support obligation shall first be computed using the formula set forth in subdivision (a) of Section 4055, as adjusted for any appropriate rebuttal factors in subdivision (b) of Section 4057.

(2) Any additional child support required for expenses pursuant to Section 4062 shall thereafter be ordered to be paid by the parents in proportion to their net disposable incomes as adjusted pursuant to subdivisions (c) and (d).

(c) In cases where spousal support is or has been ordered to be paid by one parent to the other, for purposes of allocating additional expenses pursuant to Section 4062, the gross income of the parent paying spousal support shall be decreased by the amount of the spousal support paid and the

gross income of the parent receiving the spousal support shall be increased by the amount of the spousal support received for as long as the spousal support order is in effect and is paid.

(d) For purposes of computing the adjusted net disposable income of the parent paying child support for allocating any additional expenses pursuant to Section 4062, the net disposable income of the parent paying child support shall be reduced by the amount of any basic child support ordered to be paid under subdivision (a) of Section 4055. However, the net disposable income of the parent receiving child support shall not be increased by any amount of child support received.

Comment. Section 4061 continues former Civil Code Section 4721(i) without substantive change.

§ 4062. Allocation of additional child support; adjusted net disposable income

4062. (a) The court shall order the following as additional child support:

(1) Child care costs related to employment or to reasonably necessary education or training for employment skills.

(2) The reasonable uninsured health care costs for the children. There is a rebuttable presumption that the costs actually paid for the uninsured health care needs of the children are reasonable.

(b) The court may order the following as additional child support:

(1) Costs related to the educational or other special needs of the children.

(2) Travel expenses for visitation.

Comment. Section 4062 continues former Civil Code Section 4721(j) without substantive change.

§ 4063. Payment to service provider

4063. Unless there is an assignment of rights pursuant to Section 11477 of the Welfare and Institutions Code, any payment ordered pursuant to Section 4062 may be ordered paid directly to a provider of services.

Comment. Section 4063 continues former Civil Code Section 4721(k) without substantive change.

§ 4064. Adjustment for seasonal or fluctuating income

4064. The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent.

Comment. Section 4064 continues former Civil Code Section 4721(l) without change.

§ 4065. Stipulated child support agreement

4065. (a) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement for child support below the guideline formula amount unless the parties declare all of the following:

(1) They are fully informed of their rights concerning child support.

(2) The order is being agreed to without coercion or duress.

(3) The agreement is in the best interests of the children involved.

(4) The needs of the children will be adequately met by the stipulated amount.

(5) The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

(b) A stipulated agreement of child support is not valid unless the district attorney has joined in the stipulation by signing it in any case in which the district attorney is providing services pursuant to Section 11475.1 of the Welfare

and Institutions Code. The district attorney shall not stipulate to a child support order below the guideline amount if the children are receiving assistance under the Aid to Families with Dependent Children (AFDC) program, if an application for public assistance is pending, or if the parent receiving support has not consented to the order.

(c) If the parties to a stipulated agreement stipulate to a child support order below the amount established by the statewide uniform guideline, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.

Comment. Section 4065 supersedes former Civil Code Section 4721(m)-(o). In subdivision (c), the reference to the amount established “by the statewide uniform guideline” has been substituted for the former reference to the amount established by “this section,” meaning former Civil Code Section 4721. This is not a substantive change. See also Section 3011 (factors in determining best interest of child).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1156, § 4 (SB 541).

§ 4066. Order or stipulation designating family support

4066. Orders and stipulations otherwise in compliance with the statewide uniform guideline may designate as “family support” an unallocated total sum for support of the spouse and any children without specifically labeling all or any portion as “child support” as long as the amount is adjusted to reflect the effect of additional deductibility. The amount of the order shall be adjusted to maximize the tax benefits for both parents.

Comment. Section 4066 continues former Civil Code Section 4721(p) without substantive change. The reference to the “statewide uniform guideline” has been substituted for the former reference to “this guideline.” This is not a substantive change.

§ 4067. Continuing review by Legislature

4067. It is the intent of the Legislature that the statewide uniform guideline shall be reviewed by the Legislature at least every four years and shall be revised by the Legislature as appropriate to ensure that its application results in the determination of appropriate child support amounts. The review shall include consideration of changes required by applicable federal laws and regulations or recommended from time to time by the Judicial Council pursuant to Section 4054.

Comment. Section 4067 continues former Civil Code Section 4721(q) without substantive change. The reference to Section 4054 has been substituted for the narrower reference to former Civil Code Section 4720(b). This is not a substantive change. The reference to the “statewide uniform guideline” has been substituted for the former reference to the “uniform guideline provided by this chapter.” This is not a substantive change.

§ 4068. Judicial Council worksheets and forms

4068. The Judicial Council may develop the following:

(a) Model worksheets to assist parties in determining the approximate amount of child support due under the formula provided in subdivision (a) of Section 4055 and the approximate percentage of time each parent has primary physical responsibility for the children.

(b) A form to assist the courts in making the findings and orders required by this article.

Comment. Section 4068 continues former Civil Code Section 4721(r) without substantive change. The phrase “the following” has been added and the section subdivided. The addition of “the following” makes this section consistent with other sections. See, e.g., Section 4058. These are not substantive changes.

§ 4069. Establishment of guideline as change of circumstances

4069. The establishment of the statewide uniform guideline constitutes a change of circumstances.

Comment. Section 4069 supersedes former Civil Code Section 4721(s). The reference to the “statewide uniform guideline” has been

substituted for the former reference to “this guideline.” This is not a substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1156, § 5 (SB 541).

§ 4070. Financial hardship deductions

4070. If a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in Section 4071, on the request of a party, the court may allow the income deductions under Section 4059 that may be necessary to accommodate those circumstances.

Comment. Section 4070 continues the introductory sentence of former Civil Code Section 4722 without substantive change.

§ 4071. Circumstances evidencing hardship

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

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

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

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

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

Comment. Section 4071 supersedes former Civil Code Section 4722(a)-(b).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1156, § 6 (SB 541).

§ 4072. Statement of reasons for and duration of hardship deductions

4072. (a) If a deduction for hardship expenses is allowed, the court shall do both of the following:

(1) State the reasons supporting the deduction in writing or on the record.

(2) Document the amount of the deduction and the underlying facts and circumstances.

(b) Whenever possible, the court shall specify the duration of the deduction.

Comment. Section 4072 continues former Civil Code Section 4722(c) without substantive change. The language of the former section has been revised for clarity. See also Section 10 (singular includes plural).

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

4073. The court shall be guided by the goals set forth in this article when considering whether or not to allow a financial hardship deduction, and, if allowed, when determining the amount of the deduction.

Comment. Section 4073 continues former Civil Code Section 4722(d) without substantive change. The language of the former section has been revised for clarity. The reference to this article has been substituted for the narrower reference to former Civil Code Section 4720. This is not a substantive change, since the former section is continued in this article.

§ 4074. Application to family support awards

4074. This article applies to an award for the support of children, including those awards designated as “family support,” that contain provisions for the support of children as well as for the support of the spouse.

Comment. Section 4074 continues former Civil Code Section 4731 without substantive change.

§ 4075. Treatment of spousal support payments by IRS

4075. This article shall not be construed to affect the treatment of spousal support and separate maintenance payments pursuant to Section 71 of the Internal Revenue Code of 1954 (26 U.S.C. Sec. 71).

Comment. Section 4075 continues former Civil Code Section 4732 without substantive change.

§ 4076. Phase-in

4076. (a) Whenever the court is requested to modify a child support order issued prior to July 1, 1992, for the purpose of conforming to the statewide child support guideline, and it is not using its discretionary authority to depart from the guideline pursuant to paragraph (3), (4), or (5) of subdivision (b) of Section 4057, and the amount of child support to be ordered is the amount provided under the guideline formula in subdivision (a) of Section 4055, the court may, in its discretion, order a two-step phasein of the formula amount of support to provide the obligor with time for transition to the full formula amount if all of the following are true:

(1) The period of the phasein is carefully limited to the time necessary for the obligor to rearrange his or her financial obligations in order to meet the full formula amount of support.

(2) The obligor is immediately being ordered to pay not less than 30 percent of the amount of the child support increase, in

addition to the amount of child support required under the prior order.

(3) The obligor has not unreasonably increased his or her financial obligations following notice of the motion for modification of support, has no arrearages owing, and has a history of good faith compliance with prior support orders.

(b) Whenever the court grants a request for a phasein pursuant to this section, the court shall state the following in writing:

(1) The specific reasons why (A) the immediate imposition of the full formula amount of support would place an extraordinary hardship on the obligor, and (B) this extraordinary hardship on the obligor would outweigh the hardship caused the supported children by the temporary phasein of the full formula amount of support.

(2) The full guideline amount of support, the date and amount of each phasein, and the date that the obligor must commence paying the full formula amount of support, which in no event shall be later than one year after the filing of the motion for modification of support.

(c) In the event the court orders a phasein pursuant to this section, and the court thereafter determines that the obligor has violated the phasein schedule or has intentionally lowered the income available for the payment of child support during the phasein period, the court may order the immediate payment of the full formula amount of child support and the difference in the amount of support that would have been due without the phasein and the amount of support due with the phasein, in addition to any other penalties provided for by law.

Note. This section was added by 1993 Cal. Stat. ch. 1156, § 7.5 (SB 541).

Article 3. Payment to Court Designated County Officer; Enforcement by District Attorney

§ 4200. Child support payable to parent receiving welfare

4200. In any proceeding where a court makes or has made an order requiring the payment of child support to a parent receiving welfare moneys for the maintenance of children for whom support may be ordered, the court shall do both of the following:

(a) Direct that the payments of support shall be made to the county officer designated by the court for that purpose.

(b) Direct the district attorney to appear on behalf of the welfare recipient in any proceeding to enforce the order.

Comment. Section 4200 continues former Civil Code Section 4702(a) without substantive change. The reference to support of a “minor” child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 (“child for whom support may be ordered” defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent’s duty to support child), 4001 (order for child support). The reference in former law to Civil Code Section 4701 has been omitted as obsolete, since Section 4701 was repealed by its own terms on January 1, 1991. See 1989 Cal. Stat. ch. 1359, § 3.5.

See also Sections 3029 (order for support required when custodial parent receiving public assistance), 3555 (forwarding of support payments paid through county officer), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments). For a comparable procedure for spousal support payments, see Section 4350 *et seq.*

§ 4201. Child support payable to person having custody of minor child

4201. In any proceeding where a court makes or has made an order requiring the payment of child support to the person having custody of a child for whom support may be ordered, the court may do either or both of the following:

(a) Direct that the payments shall be made to the county officer designated by the court for that purpose.

(b) Direct the district attorney to appear on behalf of the minor children in any proceeding to enforce the order.

Comment. Section 4201 continues former Civil Code Section 4702(b) without substantive change. The reference to support of a “minor” child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 (“child for whom support may be ordered” defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent’s duty to support child), 4001 (order for child support). The limitation to children “of the marriage” has been omitted, since this section applies to proceedings for support involving unmarried parents. See, e.g., Section 7637 (court authorized to order child support in Uniform Parentage Act proceeding). In subdivision (b), the reference to “proceeding” has been substituted for “action.” This is a nonsubstantive change that conforms with Section 4200(b).

See also Sections 3555 (forwarding of support payments paid through county officer), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments).

§ 4202. Custodial and supporting parents reside in different counties

4202. (a) Notwithstanding any other provision of law, in a proceeding where the custodial parent resides in one county and the parent ordered to pay support resides in another county, the court may direct payment to be made to the county officer designated by the court for those purposes in the county of residence of the custodial parent, and may direct the district attorney of either county to enforce the order.

(b) Civil enforcement by the district attorney of the county of residence of the custodial parent, where the order is in the county of the noncustodial parent or any other county, may be brought in accordance with Section 4848. If the court directs the district attorney of the county of residence of the noncustodial parent to enforce the order, the expenses of the

district attorney with respect to the enforcement is a charge upon the county of residence of the noncustodial parent.

Comment. Section 4202 continues former Civil Code Section 4702(c) without substantive change. See also Section 3555 (forwarding of support payments paid through county officer).

§ 4203. County responsible for expenses and fees

4203. (a) Except as provided in Section 4202, expenses of the county officer designated by the court, and expenses of the district attorney incurred in the enforcement of an order of the type described in Section 4200 or 4201, are a charge upon the county where the proceedings are pending.

(b) Fees for service of process in the enforcement of an order of the type described in Section 4200 or 4201 are a charge upon the county where the process is served.

Comment. Section 4203 continues former Civil Code Section 4702(d) without substantive change.

PART 3 . SPOUSAL SUPPORT

CHAPTER 1. DUTY TO SUPPORT SPOUSE

§ 4300. Duty to support spouse

4300. Subject to this division, a person shall support the person's spouse.

Comment. Section 4300 restates former Civil Code Section 242 without substantive change, to the extent the former section applied to support of a spouse. The introductory clause has been substituted for the specific sections referred to in the second sentence of former Civil Code Section 242. This is not a substantive change. The former reference to the requirement that the spouse be supported "when in need" has been omitted as surplus. See Sections 4320-4323 (factors to be considered in ordering spousal support).

See also Sections 720 (husband and wife contract toward each other obligations of mutual respect, fidelity, and support), 2254 (duty to support putative spouse), 4302 (no liability for support of spouse living separate by agreement unless stipulated).

§ 4301. Use of separate property for support while living together

4301. Subject to Section 914, a person shall support the person's spouse while they are living together out of the separate property of the person when there is no community property or quasi-community property.

Comment. Section 4301 continues former Civil Code Section 5132 without substantive change. The second sentence of the former section, which made the definitions set out in former Civil Code Sections 4803 and 4804 applicable to this section, has been omitted as surplus. This is not a substantive change, since the former definitions are continued in Sections 125 ("quasi-community property" defined) and 3515 ("separate property" defined). See also Sections 65 ("community property" defined in Section 760 *et seq.*), 130 ("separate property" defined in Section 760 *et seq.*).

This section is consistent with Section 914(a)(1) and (b), but Section 914(a)(1) and (b) do not require exhaustion of community and quasi-community property before separate property of a nondebtor spouse can be reached by a third-party creditor.

For background on former Civ. Code § 5132, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

§ 4302. Spouse living separate by agreement

4302. A person is not liable for support of the person's spouse when the person is living separate from the spouse by agreement unless support is stipulated in the agreement.

Comment. Section 4302 continues former Civil Code Section 5131 without substantive change. See also Section 3580 (spousal support in separation agreement).

§ 4303. Civil action to enforce spouse's right to support

4303. (a) The obligee spouse, or the county on behalf of the obligee spouse, may bring an action against the obligor spouse to enforce the duty of support.

(b) If the county furnishes support to a spouse, the county has the same right as the spouse to whom the support was furnished to secure reimbursement and obtain continuing

support. The right of the county to reimbursement is subject to any limitation otherwise imposed by the law of this state.

(c) The court may order the obligor to pay the county reasonable attorney's fees and court costs in a proceeding brought by the county under this section.

Comment. Section 4303 continues without substantive change former Civil Code Section 248, insofar as that section applied to enforcement of spousal support. For comparable provisions, see Sections 4002 (county enforcement of duty to support child), 4403 (county enforcement of duty to support parent).

CHAPTER 2. FACTORS TO BE CONSIDERED IN ORDERING SUPPORT

§ 4320. Circumstances to be considered in ordering spousal support

4320. In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability to pay of the supporting party, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties.

(i) The immediate and specific tax consequences to each party.

(j) Any other factors the court determines are just and equitable.

Comment. Section 4320 continues former Civil Code Section 4801(a)(1)-(10) without substantive change. In the introductory clause, the reference to "under this part" has been added to make clear that the court is only required to consider these factors when making an order for permanent spousal support.

For provisions dealing with temporary support orders, see Chapter 4 (commencing with Section 3600) of Part 1. In subdivisions (a)-(c), the references to parties have been substituted for the former references to spouses. These are not substantive changes, but conform to the terminology of the remainder of this section.

See Section 4360 (in determining supported spouse's needs under Section 4320, court may include amount sufficient for annuity, insurance, or trust to provide support in event of supporting spouse's death). See also Sections 2641 (reimbursement for community contributions to education or training), 3557 (attorney's fees for enforcement of support order), 3592 (support order where agreement for support of spouse discharged in bankruptcy).

§ 4321. Denial of support from separate property of other party

4321. In a judgment of dissolution of marriage or legal separation of the parties, the court may deny support to a

party out of the separate property of the other party in any of the following circumstances:

(a) The party has separate property, or is earning the party's own livelihood, or there is community property or quasi-community property sufficient to give the party proper support.

(b) The custody of the children has been awarded to the other party, who is supporting them.

Comment. Section 4321 restates the first sentence of former Civil Code Section 4806 without substantive change. In the introductory clause, the reference to a "judgment of dissolution of marriage or legal separation of the parties" has been substituted for the former reference to a "proceeding under this part," meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). The reference to the court's authority to "deny support" has been substituted for the former reference to withholding an allowance. This is not a substantive change. A reference to the defined term "separate property" has been substituted for the former reference to the undefined term "separate estate." This is not a substantive change.

See also Sections 65 ("community property" defined in Section 760 *et seq.*), 125 ("quasi-community property" defined), 130 ("separate property" defined in Section 760 *et seq.*), 2254 (support of putative spouse), 3515 ("separate property" defined).

§ 4322. No support order where no children and other party's separate estate sufficient

4322. In an original or modification proceeding, where there are no children, and a party has or acquires a separate estate, including income from employment, sufficient for the party's proper support, no support shall be ordered or continued against the other party.

Comment. Section 4322 continues the second sentence of former Civil Code Section 4806 without substantive change.

§ 4323. Effect of cohabitation on support

4323. (a)(1) Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the

supported party is cohabiting with a person of the opposite sex. Upon a determination that circumstances have changed, the court may modify or terminate the spousal support as provided for in Chapter 6 (commencing with Section 3650) of Part 1.

(2) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this subdivision.

(b) The income of a supporting spouse's subsequent spouse or nonmarital partner shall not be considered when determining or modifying spousal support.

(c) Nothing in this section precludes later modification or termination of spousal support on proof of change of circumstances.

Comment. Subdivisions (a) and (c) of Section 4323 continue former Civil Code Section 4801.5 without substantive change. In subdivision (a)(1), the reference to Chapter 6 (commencing with Section 3650) of Part 1 has been substituted for the broader reference to former Civil Code Section 4801(a). This is not a substantive change, since the relevant parts of the former section are continued in the Family Code sections. The references to termination have been added. These are nonsubstantive changes that conform with the court's authority pursuant to Chapter 6 (commencing with Section 3650) of Part 1.

Subdivision (b) was added by 1993 Cal. Stat. ch. 935, § 3.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 935, § 3 (SB 145).

CHAPTER 3. SPOUSAL SUPPORT UPON DISSOLUTION OR LEGAL SEPARATION

§ 4330. Order for spousal support in dissolution or legal separation proceeding

4330. In a judgment of dissolution of marriage or legal separation of the parties, the court may order a party to pay for the support of the other party an amount, for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage,

taking into consideration the circumstances as provided in Chapter 2 (commencing with Section 4320).

Comment. Section 4330 continues the first sentence of former Civil Code Section 4801(a) without substantive change. The reference to Chapter 2 (commencing with Section 4320) has been added. This is not a substantive change. See also Sections 2254 (putative spouse to be supported as if marriage not nullified), 3557 (attorney's fees for enforcement of support order).

§ 4331. Examination by vocational training consultant

4331. (a) In a proceeding for dissolution of marriage or for legal separation of the parties, the court may order a party to submit to an examination by a vocational training counselor. The examination shall include an assessment of the party's ability to obtain employment based upon the party's age, health, education, marketable skills, employment history, and the current availability of employment opportunities. The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain herself or himself at the marital standard of living.

(b) The order may be made only on motion, for good cause, and on notice to the party to be examined and to all parties. The order shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made.

(c) A party who does not comply with an order under this section is subject to the same consequences provided for failure to comply with an examination ordered pursuant to Section 2032 of the Code of Civil Procedure.

(d) "Vocational training counselor" for the purpose of this section means an individual with sufficient knowledge, skill, experience, training, or education in interviewing, administering, and interpreting tests for analysis of marketable skills, formulating career goals, planning courses of training and study, and assessing the job market, to qualify

as an expert in vocational training under Section 720 of the Evidence Code.

(e) A vocational training counselor shall have at least the following qualifications:

(1) A master's degree in the behavioral sciences.

(2) Be qualified to administer and interpret inventories for assessing career potential.

(3) Demonstrated ability in interviewing clients and assessing marketable skills with understanding of age constraints, physical and mental health, previous education and experience, and time and geographic mobility constraints.

(4) Knowledge of current employment conditions, job market, and wages in the indicated geographic area.

(5) Knowledge of education and training programs in the area with costs and time plans for these programs.

(f) The court may order the supporting spouse to pay, in addition to spousal support, the necessary expenses and costs of the counseling, retraining, or education.

Comment. Section 4331 continues former Civil Code Section 4801(e)-(g) without substantive change. The reference to a proceeding for dissolution or legal separation has been substituted for the reference to former Civil Code Section 4801. This is not a substantive change. See also Section 2254 (putative spouse to be supported as if marriage not nullified).

§ 4332. Court findings concerning circumstances

4332. In a proceeding for dissolution of marriage or for legal separation of the parties, the court shall make specific factual findings with respect to the standard of living during the marriage, and, at the request of either party, the court shall make appropriate factual determinations with respect to other circumstances.

Comment. Section 4332 continues the first sentence of the last paragraph of former Civil Code Section 4801(a) without substantive change. The reference to a proceeding for dissolution or legal separation has been added. This is not a substantive change. See also Sections 2254

(putative spouse to be supported as if marriage not nullified), 4320-4323 (factors to be considered in ordering spousal support).

§ 4333. Retroactivity of order

4333. An order for spousal support in a proceeding for dissolution of marriage or for legal separation of the parties may be made retroactive to the date of filing the notice of motion or order to show cause, or to any subsequent date.

Comment. Section 4333 continues the fourth sentence of the last paragraph of former Civil Code Section 4801(a) without substantive change. The reference to a proceeding for dissolution or legal separation has been added. This is not a substantive change.

§ 4334. Support for contingent period of time

4334. (a) If a court orders spousal support for a contingent period of time, the obligation of the supporting party terminates on the happening of the contingency. The court may, in the order, order the supported party to notify the supporting party, or the supporting party's attorney of record, of the happening of the contingency.

(b) If the supported party fails to notify the supporting party, or the attorney of record of the supporting party, of the happening of the contingency and continues to accept spousal support payments, the supported party shall refund payments received that accrued after the happening of the contingency, except that the overpayments shall first be applied to spousal support payments that are then in default.

Comment. Section 4334 restates former Civil Code Section 4801(c) without substantive change. The reference in the former section to the court making the order requiring notification of the happening of the contingency in the "original" order has been omitted. This is not a substantive change. For a provision relating to child support, see Section 4007 (child support for contingent period of time).

§ 4335. Support for fixed period of time

4335. An order for spousal support terminates at the end of the period provided in the order and shall not be extended

unless the court retains jurisdiction in the order or under Section 4336.

Comment. Section 4335 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 4801(d). The reference to an order for “spousal support” has been substituted for the former reference to an “allowance” for support. This is not a substantive change. The reference in the former section to the court’s retaining jurisdiction in the “original” order has been omitted. This is not a substantive change. The reference to Section 4336 has been added.

§ 4336. Retention of jurisdiction

4336. (a) Except on written agreement of the parties to the contrary or a court order terminating spousal support, the court retains jurisdiction indefinitely in a proceeding for dissolution of marriage or for legal separation of the parties where the marriage is of long duration.

(b) For the purpose of retaining jurisdiction, there is a presumption affecting the burden of producing evidence that a marriage of 10 years or more, from the date of marriage to the date of separation, is a marriage of long duration. However, the court may consider periods of separation during the marriage in determining whether the marriage is in fact of long duration. Nothing in this subdivision precludes a court from determining that a marriage of less than 10 years is a marriage of long duration.

(c) Nothing in this section limits the court’s discretion to terminate spousal support in later proceedings on a showing of changed circumstances.

(d) This section applies to the following:

- (1) A proceeding filed on or after January 1, 1988.
- (2) A proceeding pending on January 1, 1988, in which the court has not entered a permanent spousal support order or in which the court order is subject to modification.

Comment. Section 4336 continues without substantive change former Civil Code Section 4801(d) from the last sentence of the first paragraph to the end of that subdivision. In subdivision (a), the reference to a

proceeding for dissolution or legal separation has been added. This is not a substantive change. See also Section 2254 (putative spouse to be supported as if marriage not nullified).

§ 4337. Effect of death or remarriage

4337. Except as otherwise agreed by the parties in writing, the obligation of a party under an order for the support of the other party terminates upon the death of either party or the remarriage of the other party.

Comment. Section 4337 continues former Civil Code Section 4801(b) without substantive change. The reference to a “judgment” for support has been omitted as surplus. See Section 155 (“support order” means a judgment or order of support). The reference to the duty to provide for “maintenance” of a spouse has been omitted as surplus. Neither of these revisions is a substantive change. See also Sections 4334 (support for contingent period of time), 4335 (support for fixed period to time), 4360 (provision for support after death of supporting party).

§ 4338. Order of resort to property for payment of spousal support

4338. In the enforcement of an order for spousal support, the court shall resort to the property described below in the order indicated:

(a) The earnings, income, or accumulations of either spouse, while living separate and apart from the other spouse, which would have been community property if the spouse had not been living separate and apart from the other spouse.

(b) The community property.

(c) The quasi-community property.

(d) The other separate property of the party required to make the support payments.

Comment. Section 4338 continues former Civil Code Section 4805 without substantive change. References to both “decree” and “judgment” have been omitted as surplus. See Sections 100 (“order” includes decree, as appropriate), 155 (“support order” means a judgment or order of support). The reference to an order rendered pursuant to “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted.

These revisions are not substantive changes. Language has been added to make clear that application of this section is limited to spousal support.

See also Sections 65 (“community property” defined in Section 760 *et seq.*), 125 (“quasi-community property” defined), 130 (“separate property” defined in Section 760 *et seq.*), 3515 (“separate property” defined). For a provision relating to child support, see Section 4008 (property available for child support).

§ 4339. Security for payment

4339. The court may order the supporting party to give reasonable security for payment of spousal support.

Comment. Section 4339 continues without substantive change the second sentence of the last paragraph of former Civil Code Section 4801(a). For provisions relating to child support, see Sections 4012 (security for payment of child support), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments).

CHAPTER 4. PAYMENT TO COURT-DESIGNATED OFFICER; ENFORCEMENT BY DISTRICT ATTORNEY

§ 4350. Payment of support payments to designated county officer

4350. In any proceeding where a court makes or has made an order requiring the payment of spousal support, the court may direct that payment shall be made to the county officer designated by the court for that purpose. The court may include in its order made pursuant to this section any service charge imposed under the authority of Section 279 of the Welfare and Institutions Code.

Comment. Section 4350 continues former Civil Code Section 4801.7(a) without substantive change. See also Section 3555 (forwarding of support payments paid through county officer). For similar provisions relating to child support, see Sections 4200-4203.

§ 4351. Referral of enforcement to district attorney

4351. (a) In any proceeding where the court has entered an order pursuant to Section 4350, the court may also refer the matter of enforcement of the spousal support order to the

district attorney. The district attorney may bring such enforcement proceedings as the district attorney in the district attorney's discretion determines to be appropriate.

(b) Notwithstanding subdivision (a), in any case in which the district attorney is required to appear on behalf of a welfare recipient in a proceeding to enforce an order requiring payment of child support, the district attorney shall also enforce any order requiring payment to the welfare recipient of spousal support that is in arrears.

(c) Nothing in this section shall be construed to prohibit the district attorney from bringing an action or initiating process to enforce or punish the failure to obey an order for spousal support under any provision of law which empowers the district attorney to bring such an action or initiate such a process, whether or not there has been a referral by the court pursuant to this chapter.

Comment. Section 4351 continues former Civil Code Section 4801.7(b)-(c) without substantive change.

§ 4352. County responsible for expenses and fees

4352. (a) Insofar as expenses of the county officer designated by the court and expenses of the district attorney incurred in the enforcement of an order referred by the court under this chapter exceed any service charge imposed under Section 279 of the Welfare and Institutions Code, the expenses are a charge upon the county where the proceedings are pending.

(b) Fees for service of process in the enforcement of an order referred by the court under this chapter are a charge upon the county where the process is served.

Comment. Section 4352 continues former Civil Code Section 4801.7(d) without substantive change.

CHAPTER 5. PROVISION FOR SUPPORT AFTER DEATH OF SUPPORTING PARTY

§ 4360. Annuity, life insurance, or trust for support

4360. (a) For the purpose of Section 4320, where it is just and reasonable in view of the circumstances of the parties, the court, in determining the needs of a supported spouse, may include an amount sufficient to purchase an annuity for the supported spouse or to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support, or may require the spouse required to make the payment of support to establish a trust to provide for the support of the supported spouse, so that the supported spouse will not be left without means of support in the event that the spousal support is terminated by the death of the party required to make the payment of support.

(b) Except as otherwise agreed to by the parties in writing, an order made under this section may be modified or terminated at the discretion of the court at any time before the death of the party required to make the payment of support.

Comment. Section 4360 continues former Civil Code Section 4801.4 without substantive change. This section gives the court authority to order the purchase of an annuity for the supported spouse or to order that the support obligor establish a trust to provide for the support of the supported spouse. This authority is given in recognition that in some circumstances the amount of insurance in force, if any, on the life of the support obligor may be insufficient and the support obligor may no longer be insurable or insurance can be obtained only at a prohibitive cost.

If insurance is already in force on the life of the support obligor, this section authorizes the court to order that the support obligor maintain some or all of the insurance in force and name the supported spouse as the beneficiary of the insurance. And, if the support obligor is insurable, this section authorizes the court to order that the support obligor obtain and maintain insurance and name the supported spouse as beneficiary. The support obligor can change the beneficiary on the insurance if the supported spouse dies before the support obligor. Instead of ordering the support obligor to maintain insurance and name the supported spouse as

beneficiary, the court may order the support obligor to purchase an annuity for the supported spouse to provide support in the event that the support obligor dies before the supported spouse. In some cases, this may be less expensive than insurance. In other cases, the establishment of a trust to provide for the support of the supported spouse during that spouse's lifetime may be the best solution. If a trust is used, after the death of the supported spouse, the income or assets of the trust, or both, could be paid to the person designated by the support obligor.

This section does not change the rule that the support order terminates when the support obligor dies. See Section 4337 (effect of death or remarriage). This section permits the court, where it is just and reasonable, to do so in view of the circumstances of the particular case to order (as a part of the support) insurance, an annuity, or establishment of a trust, where necessary so that the supported spouse will not be left without means for support if the support obligor dies. This section supplements Section 4320, which requires the court to consider a number of factors in determining the amount and duration of support.

For background on former Civ. Code § 4801.4, see *Recommendation Relating to Provision for Support if Support Obligor Dies*, 18 Cal. L. Revision Comm'n Reports 119 (1986).

PART 4 . SUPPORT OF PARENTS

CHAPTER 1. GENERAL PROVISIONS

§ 4400. Duty to support parent in need

4400. Except as otherwise provided by law, an adult child shall, to the extent of his or her ability, support a parent who is in need and unable to maintain himself or herself by work.

Comment. Section 4400 restates without substantive change the first sentence of former Civil Code Section 206 and former Civil Code Section 242, insofar as those sections applied to the duty of an adult child to support a parent. The introductory clause recognizes exceptions such as that found in Welfare and Institutions Code Section 12350 (no liability for support or reimbursement to applicant for aid under Burton-Moscone-Bagley Citizens' Security Act for Aged, Blind and Disabled Californians). The last sentence of former Civil Code Section 206 (which defined a parent who receives aid to the aged as one in need) has been omitted as obsolete. See Welf. & Inst. Code § 12350.

The duty of support stated in Section 4400 is subject to Chapter 2 (commencing with Section 4410) (relief from duty to support parent on ground of abandonment).

§ 4401. Promise to pay for previous support

4401. The promise of an adult child to pay for necessities previously furnished to a parent described in Section 4400 is binding.

Comment. Section 4401 continues the second sentence of former Civil Code Section 206 without substantive change.

§ 4402. Duty cumulative

4402. The duty of support under this part is cumulative and not in substitution for any other duty.

Comment. Section 4402 continues former Civil Code Section 251 without substantive change, insofar as that section applied to the duty of an adult child to support a parent.

§ 4403. Civil action to enforce parent's right to support

4403. (a) Subject to subdivision (b):

(1) A parent, or the county on behalf of the parent, may bring an action against the child to enforce the duty of support under this part.

(2) If the county furnishes support to a parent, the county has the same right as the parent to whom the support was furnished to secure reimbursement and obtain continuing support.

(b) The right of the county to proceed on behalf of the parent or to obtain reimbursement is subject to any limitation otherwise imposed by the law of this state.

(c) The court may order the child to pay the county reasonable attorney's fees and court costs in a proceeding by the county under this section.

Comment. Section 4403 continues former Civil Code Section 248 without substantive change, insofar as that section applied to enforcement of the duty of an adult child to support a parent. For a provision limiting the right of the county to bring an action or to obtain

reimbursement, see, e.g., Welf. & Inst. Code § 12350 (no relative liable under Burton-Moscone-Bagley Citizens' Security Act for Aged, Blind and Disabled Californians).

For comparable provisions, see Sections 4002 (county enforcement of duty to support child), 4303 (county enforcement of duty to support spouse).

§ 4404. Determination of amount of support

4404. In determining the amount to be ordered for support, the court shall consider the following circumstances of each party:

- (a) Earning capacity and needs.
- (b) Obligations and assets.
- (c) Age and health.
- (d) Standard of living.
- (e) Other factors the court deems just and equitable.

Comment. Section 4404 continues without substantive change former Civil Code Section 246 (repealed by 1993 Cal. Stat. ch. 46, § 1), insofar as that section applied to an order for support of a parent.

§ 4405. Modification or termination of order

4405. The court retains jurisdiction to modify or terminate an order for support where justice requires.

Comment. Section 4405 continues the substance of former Civil Code Section 247, insofar as that section applied to an order for support of a parent. A reference to "terminate" has been substituted for "vacate." This is not a substantive change.

CHAPTER 2. RELIEF FROM DUTY TO SUPPORT PARENT WHO ABANDONED CHILD

§ 4410. Proceeding to obtain relief from obligation to support parent

4410. An adult child may file a petition in the county where a parent of the child resides requesting that the court make an order freeing the petitioner from the obligation otherwise imposed by law to support the parent. If the parent does not

reside in this state, the petition shall be filed in the county where the adult child resides.

Comment. The first sentence of Section 4410 continues without substantive change the first and last parts of the first sentence of former Civil Code Section 206.5. The second sentence of this section is new and has been added to make clear the correct venue where the parent is not a California resident. References to the “superior” court and to a “verified” petition have been omitted as surplus. See Sections 200 (jurisdiction in superior court), 212 (pleadings to be verified).

The provision of former Civil Code Section 206.7, requiring an adult child to request relief from the county board of supervisors before filing a court petition for relief from the duty to support a parent, has been omitted as obsolete. The request was required to be directed to the board of supervisors in the county responsible for granting public aid to the parent. Since public aid programs, such as the Burton-Moscone-Bagley Citizens’ Security Act for Aged, Blind and Disabled Californians, no longer require reimbursement for such aid, the former section is obsolete. See Welf. & Inst. Code § 12350.

§ 4411. Requirements for order granting relief

4411. The court shall make the order requested pursuant to Section 4410 only if the petition alleges and the court finds all of the following:

(a) The child was abandoned by the parent when the child was a minor.

(b) The abandonment continued for a period of two or more years before the time the child attained the age of 18 years.

(c) During the period of abandonment the parent was physically and mentally able to provide support for the child.

Comment. Section 4411 restates without substantive change the middle part of the first sentence of former Civil Code Section 206.5.

§ 4412. Citation and notice of hearing

4412. On the filing of a petition under this chapter, the clerk shall set the matter for hearing by the court and shall issue a citation, stating the time and place of the hearing, directed to the parent and to the parent’s conservator, if any, or, if the parent is deceased, the personal representative of the parent’s

estate. At least five days before the date of the hearing, the citation and a copy of the petition shall be personally served on each person to whom it is directed, in the same manner as provided by law for the service of summons.

Comment. Section 4412 restates without substantive change the second and third sentences of the first paragraph of former Civil Code Section 206.5.

§ 4413. Notice to district attorney or county counsel

4413. If the parent is a resident of this state, the court does not have jurisdiction to make an order under this chapter until 30 days after the county counsel, or the district attorney in a county not having a county counsel, of the county in which the parent resides has been served with notice of the pendency of the proceeding.

Comment. Section 4413 restates former Civil Code Section 206.6 without substantive change. The reference to making an “order” has been substituted for the former reference to rendering a “judgment.” This is not a substantive change. See also Section 155 (“support order” means a judgment or order of support).

§ 4414. Hearing and order

4414. (a) If, upon hearing, the court determines that the requirements of Section 4411 are satisfied, the court shall make an order that the petitioner is relieved from the obligation otherwise imposed by law to support the parent.

(b) An order under this section also releases the petitioner with respect to any state law under which a child is required to do any of the following:

(1) Pay for the support, care, maintenance, and the like of a parent.

(2) Reimburse the state or a local public agency for furnishing the support, care, maintenance, or the like of a parent.

Comment. Section 4414 restates without substantive change the last sentence of the first paragraph and the last paragraph of former Section

206.5. In subdivision (a), the reference to the court “making an order” has been substituted for the former reference to “issuing a decree.” This is not a substantive change. See Section 100 (“order” includes decree, as appropriate).

PART 5 . ENFORCEMENT OF SUPPORT ORDERS

CHAPTER 1. GENERAL PROVISIONS

§ 4500. Support orders enforceable under this code

4500. An order for child, family, or spousal support that is made, entered, or enforceable in this state is enforceable under this code, whether or not the order was made or entered pursuant to this code.

Comment. Section 4500 continues former Civil Code Section 4385 without substantive change. References to “this code” have been substituted for the former references to “this chapter” and “this part,” which formerly referred to the provisions for enforcement found in the former Family Law Act. The former references to both “judgment” and “decree” have been omitted as surplus. See Sections 100 (“order” includes decree, as appropriate), 155 (“support order” means judgment or order of support). The reference to “family” support is new and is consistent with Section 4501. See also Sections 290-291 (enforcement of judgments and orders), 3557 (attorney’s fees and costs for enforcement of support order).

This section supersedes the last sentence of former Civil Code Section 4700.9 (child support orders based on agreement of parties to pay for support of adult child enforceable in same manner as other child support award).

For background on former Civ. Code § 4385, see 16 Cal. L. Revision Comm’n Reports 2143 (1982).

§ 4501. Enforcement of family support order

4501. A family support order is enforceable in the same manner and to the same extent as a child support order.

Comment. Section 4501 continues without substantive change the last part of the first sentence of the second paragraph of former Civil Code Section 4811(d). The rule in former Civil Code Section 4811(c) limiting

application of this section to property settlement agreements entered into on or after January 1, 1970, has been omitted as obsolete. The last sentence of former Civil Code Section 4811(d) also has been omitted. See also Section 92 (“family support” defined).

§ 4502. Exception to renewal requirement

4502. Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement or other arrearages, is exempt from any requirement that judgments be renewed. A judgment for child, family, or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full.

Comment. Section 4502 continues former Civil Code Section 4384.5 without substantive change. The reference to “family” support is new and is consistent with Section 4501. As to lack of diligence in seeking enforcement of a support order, see Section 291. See also Code Civ. Proc. § 683.310 (except as provided in Family Code Section 4502, Code of Civil Procedure sections on enforcement and renewal of judgments are inapplicable to judgment made or entered under Family Code).

§ 4503. Limitation period for recovery of arrearages in child support not affected by child attaining age of 18

4503. If a parent has been ordered to make payments for the support of a minor child, an action to recover an arrearage in those payments may be maintained at any time within the period otherwise specified for the enforcement of such a judgment, notwithstanding the fact that the child has attained the age of 18 years.

Comment. Section 4503 continues former Civil Code Section 4708 without substantive change. The reference to paying for maintenance and education of a child has been omitted as surplus. See Section 150 (“support” includes maintenance and education when used with reference to a minor child). See also Section 4011 (priority of child support payments).

§ 4504. Crediting payments made pursuant to Social Security or Railroad Retirement Acts against amount of court-ordered support

4504. If the court has ordered a noncustodial parent to pay for the support of a child, payments for the support of the child made by the federal government pursuant to the Social Security Act or Railroad Retirement Act because of the retirement or disability of the noncustodial parent and transmitted to the custodial parent each month shall be credited toward the amount ordered by the court to be paid for that month by the noncustodial parent for support of the child unless the payments made by the federal government were taken into consideration by the court in determining the amount of support to be paid by the noncustodial parent.

Comment. Section 4504 continues former Civil Code Section 4705 without substantive change. The reference to paying for maintenance and education of a child has been omitted as surplus. See Section 150 (“support” includes maintenance and education when used with reference to a minor child).

§ 4505. Submitting list of places applied for employment where default in support due to unemployment

4505. A court may require a parent who alleges that the parent’s default in a child or family support order is due to the parent’s unemployment to submit to the appropriate child support enforcement agency or any other entity designated by the court, including, but not limited to, the court itself, each two weeks, or at a frequency deemed appropriate by the court, a list of at least five different places the parent has applied for employment.

Comment. Section 4505 continues former Civil Code Section 4709 without substantive change. This section has been expanded to apply to all child or family support orders. Former Civil Code Section 4709 applied only to orders issued under the child support title of the former Family Law Act.

§ 4506. Abstract of judgment

4506. (a) An abstract of a judgment ordering a party to pay spousal, child, or family support to the other party shall be certified by the clerk of the court where the judgment was entered and shall contain all of the following:

(1) The title of the court where the judgment is entered and the cause and number of the proceeding.

(2) The date of entry of the judgment and of any renewal of the judgment.

(3) Where the judgment and any renewals are entered in the records of the court.

(4) The name and last known address of the party ordered to pay support.

(5) The name and address of the party to whom support payments are ordered to be paid.

(6) The social security number, birth date, and driver's license number of the party to whom support payments are to be paid. If any of those numbers are not known to the party to whom support payments are to be paid, that fact shall be indicated on the abstract of the court judgment.

(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(8) The date of issuance of the abstract.

(9) Any other information deemed reasonable and appropriate by the Judicial Council.

(b) The Judicial Council may develop a form for an abstract of a judgment ordering a party to pay child, family, or spousal support to another party which contains the information required by subdivision (a).

(c) As used in this section, "judgment" includes an order for child, family, or spousal support.

Comment. Subdivisions (a) and (b) of Section 4506 continue without substantive change former Code of Civil Procedure Section 674(b)-(c) (as amended by 1988 Cal. Stat. ch. 1411, § 1). Subdivision (c) is new.

In subdivision (a)(1), the reference to “proceeding” has been substituted for the former reference to “action.” This is not a substantive change. In subdivision (a)(6), the reference to an abstract of “judgment” has been substituted for the former reference to an abstract of a “court order.” This is not a substantive change and is consistent with the remainder of the section. References to “decree” have been omitted as surplus. See Section 100 (“judgment” includes decree, as appropriate). See also Code Civ. Proc. § 674(b) (amendment to abstract of judgment).

§ 4507. Order for payment by state employee pursuant to Government Code

4507. When a court orders a person to make payment for child support or family support, the court may order that individual to make that payment as provided in Section 1151.5 of the Government Code.

Note. This section was added by 1993 Cal. Stat. ch. 176, § 1 (AB 877).

**CHAPTER 2. DEPOSIT OF MONEY TO SECURE
FUTURE CHILD SUPPORT PAYMENTS**

Article 1. General Provisions

§ 4550. “Child support obligee” defined

4550. “Child support obligee” as used in this chapter means either the parent, guardian, or other person to whom child support has been ordered to be paid or the district attorney designated by the court to receive the payment. The district attorney is the “child support obligee” for the purposes of this chapter for all cases in which an application for services has been filed under Part D of Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

Comment. Section 4550 continues the first two sentences of former Civil Code Section 4710(f) without substantive change. The reference to “other person” has been substituted for “conservatee.” This is not a substantive change. See also Section 4573 (payment to custodial parent or other person where support paid through district attorney for child not receiving public assistance).

§ 4551. Application of chapter

4551. Except as provided in this section, this chapter:

(a) Does not apply to a temporary child support order.

(b) Applies to an application for modification of child support filed on or after January 1, 1992, but this chapter does not constitute the basis for the modification.

(c) Applies to an application for modification of child support in a case where the child support obligee has previously waived the establishment of a child support trust account pursuant to subdivision (b) of Section 4560 and now seeks the establishment of the child support trust account.

(d) Applies to an order or judgment entered by the court on or after January 1, 1993, ordering a child support obligor to pay a then existing child support arrearage that the child support obligor has unlawfully failed to pay as of the date of that order or judgment, including the arrearages which were incurred before January 1, 1992.

Comment. Section 4551 continues former Civil Code Section 4710(g) without substantive change. In subdivision (b), the word “filed” has been substituted for “entered into.” This is not a substantive change.

§ 4552. Judicial Council rules and forms

4552. The Judicial Council shall promulgate such rules of court and publish such related judicial forms as the Judicial Council determines are necessary and appropriate to implement this chapter. In taking these steps, the Judicial Council shall ensure the uniform statewide application of this chapter and compliance with Part D of Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.) and any regulations promulgated thereunder.

Comment. Section 4552 continues without substantive change Section 4 of Chapter 1141 of the Statutes of 1991.

§ 4553. Compliance with requirements of federal law

4553. Nothing in this chapter shall be construed to permit any action or omission by the state or any of its political subdivisions that would place the state in noncompliance with any requirement of federal law, including, but not limited to, the state reimbursement requirements of Part D of Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.) and any regulations promulgated thereunder.

Comment. Section 4552 continues without substantive change Section 5 of Chapter 1141 of the Statutes of 1991.

§ 4554. Chapter applicable notwithstanding any other law

4554. This chapter applies notwithstanding any other law.

Comment. Section 4554 continues the introductory clause of former Civil Code Section 4710 without substantive change. See also Section 4553 (compliance with requirements of federal law).

Article 2. Order for Deposit of Money

§ 4560. Order for child support security deposit

4560. (a) Except as provided in subdivision (b) or in Article 3 (commencing with Section 4565), every order or judgment to pay child support may also require the payment by the child support obligor of up to one year's child support or such lesser amount as is equal to the child support amount due to be paid by the child support obligor between the time of the date of the order and the date when the support obligation will be terminated by operation of law. This amount shall be known as the "child support security deposit."

(b) Unless expressly waived by the child support obligee, the court may order the establishment of a child support trust account pursuant to this chapter in every proceeding in which a child support obligation is imposed by order of the court. Among other reasons, the court may decline to establish a child support trust account upon its finding that an adequately

funded child support trust account already exists pursuant to this chapter for the benefit of the child or children involved in the proceeding or that the child support obligor has provided adequate alternative security which is equivalent to the child support security deposit otherwise required by this chapter.

Comment. Subdivision (a) of Section 4560 continues the first two sentences of former Civil Code Section 4710(a) without substantive change. Subdivision (b) continues former Civil Code Section 4710(d) without substantive change. In subdivision (b), a reference to “every proceeding in which a child support obligation is imposed by order of the court” has been substituted for “every proceeding to establish paternity or for dissolution of a marriage” for consistency with subdivision (a).

See also Sections 4551 (application of chapter), 4565 (grounds for application to reduce or eliminate deposit), 4600-4641 (deposit of assets to secure future child support payments).

§ 4561. Deposit in court controlled account

4561. If a child support security deposit is ordered, the court shall order that the moneys be deposited by the child support obligor in an interest-bearing account with a state or federally chartered commercial bank, a trust company authorized to transact trust business in this state, or a savings and loan association, or in shares of a federally insured credit union doing business in this state and having a trust department, subject to withdrawal only upon authorization of the court. The moneys so deposited shall be used exclusively to guarantee the monthly payment of child support.

Comment. Section 4561 continues the third and last sentences of former Civil Code Section 4710(a) without substantive change. See also Section 4560(a) (amount of “child support security deposit”).

§ 4562. Child support obligor to provide evidence deposit made

4562. The court shall also order that evidence of the deposit shall be provided by the child support obligor in the form specified by the court, which shall be served upon the child support obligee and filed with the court within a reasonable time specified by the court, not to exceed 30 days.

Comment. Section 4562 continues the next to last sentence of former Civil Code Section 4710(a) without substantive change.

§ 4563. Dissolution of account and disposition of remaining funds

4563. An account established pursuant to this chapter shall be dissolved and any remaining funds in the account shall be returned to the support obligor, with any interest earned thereon, upon the full payment and cessation of the child support obligation as provided by court order or operation of law.

Comment. Section 4563 continues former Civil Code Section 4710(c) without substantive change.

Article 3. Application to Reduce or Eliminate Deposit

§ 4565. Application by child support obligor

4565. (a) Before entry of a child support order pursuant to Section 4560, the court shall give the child support obligor reasonable notice and opportunity to file an application to reduce or eliminate the child support security deposit on either of the following grounds:

(1) The obligor has provided adequate alternative equivalent security to assure timely payment of the amount required by Section 4560.

(2) The obligor is unable, without undue financial hardship, to pay the support deposit required by Section 4560.

(b) The application shall be supported by all reasonable and necessary financial and other information required by the court to establish the existence of either ground for relief.

Comment. Section 4565 continues the first two sentences of former Civil Code Section 4710(e) without substantive change. See also Sections 4600-4641 (deposit of assets to secure future child support payments).

§ 4566. Filing information in opposition to application

4566. Upon the filing of an application under Section 4565 with the court and the service of the application upon the child support obligee and any other party to the proceedings, the court shall provide notice and opportunity for any party opposing the application to file responsive financial and other information setting forth the factual and legal bases for the party's opposition.

Comment. Section 4566 continues the third sentence of former Civil Code Section 4710(e) without substantive change.

§ 4567. Hearing and court order

4567. The court shall then provide an opportunity for hearing, and shall thereafter enter its order exercising its discretion under all the facts and circumstances as disclosed in the admissible evidence before it so as to maximize the payment and deposit of the amount required by Section 4560, or an equivalent adequate security for the payment thereof, without imposition of undue financial hardship on the support obligor. If the court finds that the deposit of the amount required by Section 4560 would impose an undue financial hardship upon the child support obligor, the court shall reduce this amount to an amount that the child support obligor can pay as the child support security deposit without undue financial hardship.

Comment. Section 4567 continues the last two sentences of former Civil Code Section 4710(e) without substantive change. See also Sections 4600-4641 (deposit of assets to secure future child support payments).

Article 4. Use of Deposit To Make Delinquent Support Payment

§ 4570. Court order for disbursement and for replenishment of account

4570. (a) Upon the application of the child support obligee stating that the support payment is 10 or more days late, the court shall immediately order disbursement of funds from the account established pursuant to this chapter solely for the purpose of providing the amount of child support then in arrears.

(b) Funds so disbursed shall be used exclusively for the support, maintenance, and education of the child or children subject to the child support order.

(c) The court shall also order the account to be replenished by the child support obligor in the same amounts as are expended from the account to pay the amount of child support which the child support obligor has failed to pay the child support obligee in a timely manner.

Comment. Section 4570 continues the first three sentences of former Civil Code Section 4710(b) without substantive change. The reference to a “verified” application has been omitted as surplus. See Section 212 (pleadings to be verified).

§ 4571. Service on support obligor

4571. The court shall cause a copy of the application, as well as its order to disburse and replenish funds, to be served upon the child support obligor, who shall be subject to contempt of court for failure to comply with the order.

Comment. Section 4571 continues the next to last sentence of former Civil Code Section 4710(b) without substantive change. The reference to a “verified” application has been omitted as surplus. See Section 212 (pleadings to be verified).

§ 4572. Service on depository institution and district attorney

4572. The court shall cause a copy of its order to disburse and replenish funds to be served upon the depository institution where the child support security deposit is maintained, and upon the district attorney with jurisdiction over the case.

Comment. Section 4572 continues the last sentence of former Civil Code Section 4710(b) without substantive change.

§ 4573. Payment where support paid through district attorney for child not receiving public assistance

4573. If support is ordered to be paid through the district attorney on behalf of a child not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the district attorney shall forward the support received pursuant to this chapter to the custodial parent or other person having care or control of the child or children involved.

Comment. Section 4573 continues the third sentence of former Civil Code Section 4710(f) without substantive change. References to support of a “minor” child have been omitted. These are not substantive changes, but recognize that in some cases support may be ordered for an adult child. See Sections 58 (“child for whom support may be ordered” defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent’s duty to support child), 4001 (order for child support). See also Section 3555 (forwarding support paid through designated county officer).

CHAPTER 3. DEPOSIT OF ASSETS TO SECURE FUTURE CHILD SUPPORT PAYMENTS

Article 1. General Provisions

§ 4600. Purpose of chapter

4600. The purpose of this chapter is to provide an extraordinary remedy for cases of bad faith failure to pay child support obligations.

Comment. Section 4600 continues former Civil Code Section 4701.1(i) without substantive change. See also Section 4011 (priority of child support payments).

§ 4601. “Deposit holder” defined

4601. “Deposit holder” as used in this chapter means the district attorney, county officer, or trustee designated by the court to receive assets deposited pursuant to this chapter to secure future support payments.

Comment. Section 4601 is new and is drawn from former Civil Code Section 4701.1. This provision is included for drafting convenience. Throughout this chapter the new term has been substituted, without substantive change, for the former specific references to those persons now referred to as the “deposit holder.” See, e.g., Sections 4602-4604, 4610, 4616, 4630, 4640-4641.

§ 4602. Statement of receipts and disbursements

4602. If requested by an obligor-parent, the deposit holder shall prepare a statement setting forth disbursements and receipts made under this chapter.

Comment. Section 4602 continues former Civil Code Section 4701.1(g) without substantive change.

§ 4603. Protection of deposit holder from liability

4603. The deposit holder who is responsible for any money or property and for any disbursements under this chapter is not liable for any action undertaken in good faith and in conformance with this chapter.

Comment. Section 4603 continues former Civil Code Section 4701.1(e) without substantive change.

§ 4604. Reimbursement of deposit holder for fees or costs not otherwise compensated

4604. (a) If the deposit holder incurs fees or costs under this chapter which are not compensated by the deduction under subdivision (c) of Section 4630 (including, but not limited to, fees or costs incurred in a sale of assets pursuant to this chapter and in the preparation of a statement pursuant to Section 4602), the court shall, after a hearing, order the obligor-parent to pay the reasonable fees and costs incurred by the deposit holder. The hearing shall be held not less than 20 days after the deposit holder serves notice of motion or order to show cause upon the obligor-parent.

(b) Fees and costs ordered to be paid under this section shall be in addition to any deposit made under this chapter but shall not exceed whichever of the following is less:

- (1) Five percent of one year's child support obligation.
- (2) The total amount ordered deposited under Section 4614.

Comment. Section 4604 continues former Civil Code Section 4701.1(h) without substantive change. The reference to Section 4614 has been substituted for the former reference to former Civil Code Section 4701.1(a)(1). This is not a substantive change.

Article 2. Order for Deposit of Assets

§ 4610. Order for deposit of assets

4610. (a) Subject to Sections 4613, 4614, and 4615, in any proceeding where the court has ordered either or both parents to pay any amount for the support of a child for whom support may be ordered, upon an order to show cause or notice of motion, application, and declaration signed under penalty of perjury by the person or county officer to whom support has been ordered to have been paid stating that the parent or parents so ordered is in arrears in payment in a sum

equal to the amount of 60 days of payments, the court shall issue to the parent or parents ordered to pay support, following notice and opportunity for a hearing, an order requiring that the parent or parents deposit assets to secure future support payments with the deposit holder designated by the court.

(b) In a proceeding under this article, upon request of any party, the court may also issue an ex parte restraining order as specified in Section 4620.

Comment. Section 4610 continues the first two sentences of former Civil Code Section 4701.1(a)(1) without substantive change. The reference to support of a “minor” child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 (“child for whom support may be ordered” defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent’s duty to support child), 4001 (order for child support).

§ 4611. Presumptions

4611. In a proceeding under this chapter, an obligor-parent shall rebut both of the following presumptions:

(a) The nonpayment of child support was willful, without good faith.

(b) The obligor had the ability to pay the support.

Comment. Section 4611 continues the next to last paragraph of former Civil Code Section 4701.1(a)(4) without substantive change.

§ 4612. Grounds for defense to allegation that obligor-parent in arrears

4612. An obligor-parent alleged to be in arrears may use any of the following grounds as a defense to the motion filed pursuant to this article or as a basis for filing a motion to stop a sale or use of assets under Section 4631:

(a) Child support payments are not in arrears.

(b) Laches.

(c) There has been a change in the custody of the children.

(d) There is a pending motion for reduction in support due to a reduction in income.

(e) Illness or disability.

(f) Unemployment.

(g) Serious adverse impact on the immediate family of the obligor-parent residing with the obligor-parent that outweighs the impact of denial of the motion or stopping the sale on obligee.

(h) Serious impairment of the ability of the obligor-parent to generate income.

(i) Other emergency conditions.

Comment. Section 4612 restates without substantive change former Civil Code Section 4701.1(a)(4)(A)-(I), including the introductory clause. See also Sections 4011 (priority of child support payments), 4505 (submitting list of places applied for employment where default in support due to unemployment), 4632 (grounds for motion to stop sale or use of asset listed in Section 4612).

§ 4613. Determination by court of need for deposit order

4613. The court shall not issue an order pursuant to this article unless the court determines that one or more of the following conditions exist:

(a) The obligor-parent is not receiving salary or wages subject to an assignment pursuant to Chapter 8 (commencing with Section 5200) and there is reason to believe that the obligor-parent has earned income from some source of employment.

(b) An assignment of a portion of salary or wages pursuant to Chapter 8 (commencing with Section 5200) would not be sufficient to meet the amount of the support obligation, for reasons other than a change of circumstances which would qualify for a reduction in the amount of child support ordered.

(c) The job history of the obligor-parent shows that an assignment of a portion of salary or wages pursuant to Chapter 8 (commencing with Section 5200), would be difficult to enforce or would not be a practical means for

securing the payment of the support obligation, due to circumstances including, but not limited to, multiple concurrent or consecutive employers.

Comment. Section 4613 continues former Civil Code Section 4701.1(b) without substantive change. In the introductory clause, the language has been revised to state that the court may not make the order unless one or more of the conditions are met. This is not a substantive change.

§ 4614. Determination by court of assets subject to order

4614. The designation of assets subject to an order pursuant to this article shall be based upon concern for maximizing the liquidity and ready conversion into cash of the deposited asset. In all instances, the assets shall include a sum of money up to or equal in value to one year of support payments or six thousand dollars (\$6,000) whichever is less, or any other assets, personal or real, designated by the court which equal in value up to one year of payments for support of the child, or six thousand dollars (\$6,000), whichever is less, subject to Section 703.070 of the Code of Civil Procedure.

Comment. Section 4614 continues the first two sentences of former Civil Code Section 4701.1(c) without substantive change. The reference to support of a “minor” child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 (“child for whom support may be ordered” defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent’s duty to support child), 4001 (order for child support).

§ 4615. Providing bond in lieu of depositing cash or other assets

4615. In lieu of depositing cash or other assets as provided in Section 4614, the obligor-parent may, if approved by the court, provide a performance bond secured by real property or other assets of the obligor-parent and equal in value to one year of payments.

Comment. Section 4615 continues the last sentence of former Civil Code Section 4701.1(c) without substantive change.

§ 4616. Order for sale of deposited asset and deposit of proceeds

4616. Upon deposit of an asset which is not readily convertible into money, the court may, after a hearing, order the sale of that asset and the deposit of the proceeds with the deposit holder. Not less than 20 days written notice of the hearing shall be served on the obligor-parent.

Comment. Section 4616 restates the third sentence of former Civil Code Section 4701.1(a)(1) without substantive change. The references to “parents” and to “assets” have been omitted as surplus. See Section 10 (singular includes plural).

§ 4617. Deposit of real property

4617. (a) If the asset ordered to be deposited is real property, the order shall be certified as an abstract of judgment in accordance with Section 674 of the Code of Civil Procedure.

(b) A deposit of real property is made effective by recordation of the certified abstract with the county recorder.

(c) The deposited real property and the rights, benefits, and liabilities attached to that property shall continue in the possession of the legal owner.

(d) For purposes of Section 701.545 of the Code of Civil Procedure, the date of the issuance of the order to deposit assets shall be construed as the date notice of levy on an interest in real property was served on the judgment debtor.

Comment. Section 4617 continues the last four sentences of former Civil Code Section 4701.1(a)(1) without substantive change.

Article 3. Ex Parte Restraining Orders

§ 4620. Ex parte restraining orders

4620. (a) During the pendency of a proceeding under this chapter, upon the application of either party in the manner

provided by Part 4 (commencing with Section 240) of Division 2, the court may, without a hearing, issue ex parte orders restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring the party to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.

(b) The matter shall be made returnable not later than 20 days, or if good cause appears to the court, 25 days from the date of the order at which time the ex parte order shall expire.

(c) The court, at the hearing, shall determine for which property the obligor-parent shall be required to report extraordinary expenditures and shall specify what is deemed an extraordinary expenditure for purposes of this subdivision.

(d) An order issued pursuant to this section after the hearing shall state on its face the date of expiration of the order, which shall expire in one year or upon deposit of assets or money pursuant to Article 2 (commencing with Section 4610), whichever first occurs.

Comment. Section 4620 continues former Civil Code Section 4701.1(d) without substantive change. In subdivision (a), the reference to Part 4 (commencing with Section 240) of Division 2 has been substituted for the former reference to Code of Civil Procedure Section 527. This is not a substantive change, since Part 4 (commencing with Section 240) of Division 2 is drawn from and duplicates the applicable parts of Code of Civil Procedure Section 527.

In subdivision (d), the reference to this section has been substituted for the broader reference to all of former Civil Code Section 4701.1. This revision makes it clear that subdivision (d) only applies to an ex parte order issued under this section. The duration of the order that assets be deposited is specified in Section 4640.

Article 4. Use or Sale of Assets To Make Support Payments

§ 4630. Use or sale of assets

4630. (a) Upon an obligor-parent's failure, within the time specified by the court, to make reasonable efforts to cure the default in child support payments or to comply with a court-approved payment plan, if payments continue in arrears, the deposit holder shall, not less than 25 days after providing the obligor-parent or parents with a written notice served personally or with return receipt requested, unless a motion or order to show cause has been filed to stop the use or sale, use the money or sell or otherwise process the deposited assets for an amount sufficient to pay the arrearage and the amount ordered by the court for the support currently due for the child for whom support may be ordered.

(b) Assets deposited pursuant to an order issued under Article 2 (commencing with Section 4610) shall be construed as being assets subject to levy pursuant to Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The sale of assets shall be conducted in accordance with Article 6 (commencing with Section 701.510) and Article 7 (commencing with Section 701.810) of Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) The deposit holder may deduct from the deposited money the sum of one dollar (\$1) for each payment made pursuant to this section.

Comment. Section 4630 continues former Civil Code Section 4701.1(a)(2)-(3) without substantive change. In subdivision (a), the reference to the maintenance and education of the minor child has been omitted as surplus. See Section 150 ("support" includes maintenance and education when used in reference to minor child). See also Section 4011 (priority of child support payments). The reference to support of a "minor" child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 ("child for whom support may be ordered" defined),

3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent's duty to support child), 4001 (order for child support).

§ 4631. Motion to stop sale or use of assets

4631. (a) An obligor-parent may file a motion to stop the use of the money or the sale of the asset under this article within 15 days after service of notice on the obligor-parent pursuant to Section 4630.

(b) The clerk of the court shall set the motion for hearing not less than 20 days after service of the notice of motion and the motion on the person or county officer to whom support has been ordered to have been paid.

Comment. Section 4631 continues the last paragraph of former Civil Code Section 4701.1(a)(4) without substantive change.

§ 4632. Grounds for defense to allegation that obligor-parent in arrears

4632. An obligor-parent alleged to be in arrears under this article may use any ground set forth in Section 4612 as a basis for filing a motion under Section 4631 to stop a sale or use of assets under this article.

Comment. Section 4632 is new and is drawn from the part of former Civil Code Section 4701.1(a) that is continued in Section 4612. See also Section 4011 (priority of child support payments).

Article 5. Return of Assets of Obligor

§ 4640. Conditions for return of assets to obligor

4640. The deposit holder shall return all assets subject to court order under Article 2 (commencing with Section 4610) to the obligor-parent when both of the following occur:

(a) One year has elapsed since the court issued the order described under Article 2 (commencing with Section 4610).

(b) The obligor-parent has made all support payments on time during that one-year period.

Comment. Section 4640 continues without substantive change former Civil Code Section 4701.1(f)(1)-(2), including the introductory clause. References to “parents” have been omitted as surplus. See Section 10 (singular includes plural).

§ 4641. Release of real property

4641. If the deposited asset is real property and the requirements of Section 4640 have been satisfied, the deposit holder shall do all of the following:

(a) Prepare a release in accordance with Section 697.370 of the Code of Civil Procedure.

(b) Request the clerk of the court where the order to deposit assets was made to certify the release.

(c) Record the certified release in the office of the county recorder where the certified abstract was recorded under Section 4617.

Comment. Section 4641 continues the last paragraph of former Civil Code Section 4701.1(f) without substantive change. Revisions to the former section make clear that the deposit holder, and not the court clerk, has the duty to record the certified release. In subdivision (c), language has been added to make clear where the certified release must be recorded.

CHAPTER 4. CHILD SUPPORT DELINQUENCY REPORTING

§ 4700. Short title

4700. This chapter may be cited as the Child Support Delinquency Reporting Law.

Comment. Section 4700 replaces former Civil Code Section 4750. The title of the former statute was “Child Support Delinquency Reporting Act of 1984.”

§ 4701. Child support delinquency reporting

4701. (a) The State Department of Social Services shall administer a statewide automated system for the reporting of court-ordered child support obligations to credit reporting agencies.

(b) The department shall design and develop standards for the system in conjunction with representatives of the California Family Support Council and the credit reporting industry.

(c) The standards for the system shall be consistent with credit reporting industry standards and reporting format and with the department's statewide central automated system for support enforcement.

(d) The standards shall include, but not be limited to, all of the following:

(1) Court-ordered child support obligations and delinquent payments, including amounts owed and by whom. The California district attorneys, on a monthly basis, shall update this information, and then submit it to the department which, in turn, shall consolidate and transmit it to the credit reporting agencies.

(2) Before the initial reporting of a court-ordered child support obligation or a delinquent payment, the district attorney shall attempt to notify the obligor parent of the proposed action and give 30 days to contest in writing the accuracy of the information, or to pay the arrearage, if any, in compliance with the due process requirements of the laws of this state.

(e) The department and the district attorneys are responsible for the accuracy of information provided pursuant to this section, and the information shall be based upon the data available at the time the information is provided. Each of these organizations and the credit reporting agencies shall follow reasonable procedures to ensure maximum possible

accuracy of the information provided. Neither the department, nor the district attorneys are liable for any consequences of the failure of a parent to contest the accuracy of the information within the time allowed under paragraph (2) of subdivision (d).

Comment. Section 4701 restates former Civil Code Section 4752 without substantive change. The parts of the former section that were temporary or transitional in nature have been omitted. Federal law contains provisions for the program provided in this section. See Pub. L. No. 98-378, Aug. 16, 1984. See also Section 4011 (priority of child support payments).

CHAPTER 5. CIVIL PENALTY FOR CHILD SUPPORT DELINQUENCY

§ 4720. “Support” defined

4720. “Support” for the purposes of this chapter means support as defined in Section 150.

Comment. Section 4720 continues former Civil Code Section 4700.11(m) without substantive change.

§ 4721. Chapter applies only to child support installments due on or after January 1, 1992

4721. This chapter applies only to installments of child support that are due on or after January 1, 1992.

Comment. Section 4721 continues former Civil Code Section 4700.11(k) without substantive change.

§ 4722. Notice of delinquency; financial penalty for failure to pay delinquent amount

4722. (a) Any person with a court order for child support, the payments on which are more than 30 days in arrears, may file and then serve a notice of delinquency, as described in this chapter.

(b) Except as provided in Section 4726, and subject to Section 4727, any amount of child support specified in a notice of delinquency that remains unpaid for more than 30

days after the notice of delinquency has been filed and served shall incur a penalty of 6 percent of the delinquent payment for each month that it remains unpaid, up to a maximum of 72 percent of the unpaid balance due.

Comment. Section 4722 continues former Civil Code Section 4700.11(a) without substantive change. The reference to Section 4727 has been added. This is not a substantive change.

§ 4723. Execution and contents of notice of delinquency

4723. (a) The notice of delinquency shall be signed under penalty of perjury by the support obligee.

(b) The notice of delinquency shall state all of the following:

(1) The amount that the child support obligor is in arrears.

(2) The installments of support due, the amounts, if any, that have been paid, and the balance due.

(3) That any unpaid installment of child support will incur a penalty of 6 percent of the unpaid support per month until paid, to a maximum of 72 percent of the original amount of the unpaid support, unless the support arrearage is paid within 30 days of the date of service of the notice of delinquency.

(c) In the absence of a protective order prohibiting the support obligor from knowing the whereabouts of the child or children for whom support is payable, or otherwise excusing the requirements of this subdivision, the notice of delinquency shall also include a current address and telephone number of all of the children for whom support is due and, if different from that of the support obligee, the address at which court papers may be served upon the support obligee.

Comment. Subdivisions (a) and (b) of Section 4723 continue former Civil Code Section 4700.11(b) without substantive change. Subdivision (c) continues former Civil Code Section 4700.11(g) without substantive change.

§ 4724. Service of notice of delinquency

4724. The notice of delinquency may be served personally or by certified mail or in any manner provided for service of summons.

Comment. Section 4724 continues former Civil Code Section 4700.11(c) without substantive change.

§ 4725. Motion to obtain judgment; enforcement of judgment

4725. If the child support owed, or any arrearages, interest, or penalty, remains unpaid more than 30 days after serving the notice of delinquency, the support obligee may file a motion to obtain a judgment for the amount owed, which shall be enforceable in any manner provided by law for the enforcement of judgments.

Comment. Section 4725 continues former Civil Code Section 4700.11(e) without substantive change.

§ 4726. Showing required to avoid imposition of penalties

4726. No penalties may be imposed pursuant to this chapter if, in the discretion of the court, all of the following conditions are met:

(a) Within a timely fashion after service of the notice of delinquency, the support obligor files and serves a motion to determine arrearages and to show cause why the penalties provided in this chapter should not be imposed.

(b) At the hearing on the motion filed by the support obligor, the court finds that the support obligor has proved any of the following:

(1) The child support payments were not 30 days in arrears as of the date of service of the notice of delinquency and are not in arrears as of the date of the hearing.

(2) The support obligor suffered serious illness, disability, or unemployment which substantially impaired the ability of the support obligor to comply fully with the support order and

the support obligor has made every possible effort to comply with the support order.

(3) The support obligor is a public employee and for reasons relating to fiscal difficulties of the employing entity the obligor has not received a paycheck for 30 or more days.

(4) It would not be in the interests of justice to impose a penalty.

Comment. Section 4726 continues former Civil Code Section 4700.11(d) without substantive change.

§ 4727. Limit on amount of penalty

4727. Any penalty due under this chapter shall not be greater than 6 percent per month of the original amount of support arrearages or support installment, nor may the penalties on any arrearage amount or support installment exceed 72 percent of the original amount due, regardless of whether or not the installments have been listed on more than one notice of delinquency.

Comment. Section 4727 continues the last sentence of former Civil Code Section 4700.11(h) without substantive change.

§ 4728. Enforcement of penalties

4728. Penalties due pursuant to this chapter may be enforced by the issuance of a writ of execution in the same manner as a writ of execution may be issued for unpaid installments of child support, as described in Chapter 7 (commencing with Section 5100), except that payment of penalties under this chapter may not take priority over payment of arrearages or current support.

Comment. Section 4728 continues former Civil Code Section 4700.11(i) without substantive change. See also Section 3557 (attorney's fees in action to enforce penalty).

§ 4729. Utilization of penalties by district attorney

4729. The district attorney or any other agency providing support enforcement services pursuant to Title IV-D of the

federal Social Security Act shall enforce child support obligations utilizing the penalties provided for by this chapter to the extent permitted by federal law upon implementation of the Statewide Automated Child Support System (SACSS) prescribed in Section 10815 of the Welfare and Institutions Code and certification of the SACSS by the United States Department of Health and Human Services.

Comment. Section 4729 continues former Civil Code Section 4700.11(l) without substantive change.

§ 4730. Penalties not considered in setting or modifying support

4730. At any hearing to set or modify the amount payable for the support of a child, the court shall not consider any penalties imposed under this chapter in determining the amount of current support to be paid.

Comment. Section 4730 continues former Civil Code Section 4700.11(f) without substantive change. The reference to support of a “minor” child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58 (“child for whom support may be ordered” defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent’s duty to support child), 4001 (order for child support).

§ 4731. Subsequent notice of delinquency

4731. A subsequent notice of delinquency may be served and filed at any time. The subsequent notice shall indicate those child support arrearages and ongoing installments that have been listed on a previous notice.

Comment. Section 4731 continues the first two sentences of former Civil Code Section 4700.11(h) without substantive change.

§ 4732. Judicial Council forms

4732. The Judicial Council shall adopt forms or notices for the use of the procedures provided by this chapter.

Comment. Section 4732 continues former Civil Code Section 4700.11(j) without substantive change.

§ 4733. Payment of penalties to custodian

4733. Penalties collected pursuant to this chapter shall be paid to the custodian of the child who is the subject of the child support judgment or order, whether or not the child is a recipient of public assistance.

Comment. Section 4733 continues former Civil Code Section 4700.11(n) without substantive change. The former reference to “children” is omitted as surplus. See Section 10 (singular includes plural). The former reference to a decree is omitted as surplus. See Section 100 (“judgment” includes decree, as appropriate).

CHAPTER 6. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

Article 1. General Provisions

§ 4800. Short title

4800. This chapter may be cited as the Uniform Reciprocal Enforcement of Support Act.

Comment. Section 4800 continues former Code of Civil Procedure Section 1650 without substantive change. The title “Uniform Reciprocal Enforcement of Support Act” has been substituted for “Revised Reciprocal Enforcement of Support Act of 1968,” for consistency with the usage of the National Conference of Commissioners on Uniform State Laws. Former Code of Civil Procedure Sections 1651 and 1656 have been generalized. See Sections 3 (construction of provision drawn from uniform act), 13 (severability of provisions).

§ 4801. Purpose

4801. The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

Comment. Section 4801 continues former Code of Civil Procedure Section 1652 without substantive change. See Section 3 (construction of provision drawn from uniform act).

§ 4802. Definitions

4802. As used in this chapter, unless the context requires otherwise:

(a) “Court” means the superior court of this state and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(b) “Duty of support” means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court whether interlocutory or final or whether incidental to a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, or to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) “Governor” includes any person performing the functions of Governor or the executive authority of any state covered by this chapter.

(d) “Initiating state” means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. “Initiating court” means the court in which a proceeding is commenced.

(e) “Law” includes both common and statutory law.

(f) “Obligee” means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) “Obligor” means a person owing a duty of support or against whom a proceeding for the enforcement of a duty of support is commenced.

(h) “Prosecuting attorney” means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) “Responding state” means a state in which a responsive proceeding pursuant to the proceeding in the initiating state is commenced. “Responding court” means the court in which the responsive proceeding is commenced.

(j) “State” includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar law or procedure is in effect or which has established enforcement procedures with or without court participation under a treaty, the application of which is extended to this state.

(k) “Support order” means a judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

(l) “Register” means to file in the Registry of Foreign Support Orders.

(m) “Registering court” means a court of this state in which a support order of a rendering state is registered.

(n) “Rendering state” means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(o) “Rendering court” means a court which has issued a support order for which registration is sought.

(p) “Foreign support order” includes a foreign order for the assignment of wages for the satisfaction of a support order.

Comment. Section 4802 continues former Code of Civil Procedure Section 1653 without substantive change. See also Section 200 (jurisdiction in superior court).

§ 4803. Cumulative remedies; attorney’s fees

4803. (a) The remedies provided in this chapter are in addition to and not in substitution for any other remedies.

(b) Notwithstanding subdivision (a) or any other provision of law, no party to an action under this chapter, nor assignee

of a party of an action under this chapter, is entitled to attorney's fees from the opposing party for prosecuting or defending the action, except where the court finds that the opposing party has not prosecuted or defended the action in good faith.

Comment. Section 4803 continues former Code of Civil Procedure Section 1654 without substantive change. See also Sections 200 (jurisdiction in superior court), 3557 (attorney's fees and costs for enforcement of support order).

§ 4804. Obligor in this state bound by duty of support, regardless of residence of obligee

4804. Duties of support arising under the law of this state, when applicable under Section 4820, bind the obligor, present in this state, regardless of the presence or residence of the obligee.

Comment. Section 4804 continues former Code of Civil Procedure Section 1655 without substantive change. See also Sections 3557 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from opposing party for prosecuting or defending action).

§ 4805. Representation by private counsel

4805. Notwithstanding any other provision of law, privately retained counsel may represent an obligee in any proceeding under this chapter.

Comment. Section 4805 continues former Code of Civil Procedure Section 1655.5 without substantive change. See also Sections 3557 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from opposing party for prosecuting or defending action).

Article 2. Criminal Enforcement

§ 4810. Extradition

4810. (a) The Governor of this state may do either of the following:

(1) Demand of the Governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person.

(2) Surrender on demand by the Governor of another state a person found in this state who is charged criminally in another state with failing to provide for the support of any person.

(b) Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom.

(c) The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

Comment. Section 4810 continues former Code of Civil Procedure Section 1660 without substantive change. See also Section 200 (jurisdiction in superior court).

§ 4811. Prerequisite to demand for surrender by Governor

4811. (a) Before making the demand on the Governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of any person, the Governor of this state may require any prosecuting attorney of this state to satisfy the Governor that at least 60 days prior thereto the obligee brought an action for support under this chapter, or that the bringing of an action would be of no avail.

(b) If, under a substantially similar law, the Governor of another state makes a demand upon the Governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate

the demand and to report to the Governor whether an action for support has been brought or would be effective. If it appears to the Governor that an action for support would be effective but has not been brought, the Governor may delay honoring the demand for a reasonable time to permit the bringing of an action for support.

(c) If an action for support has been brought, and the person demanded has prevailed in that action, the Governor may decline to honor the demand. If the obligee prevailed therein and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

Comment. Section 4811 continues former Code of Civil Procedure Section 1661 without substantive change.

Article 3. Civil Enforcement

§ 4820. Enforceable duties of support; presumption of presence in responding state

4820. Duties of support applicable under this chapter are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

Comment. Section 4820 continues former Code of Civil Procedure Section 1670 without substantive change.

§ 4821. Right of state or political subdivision to bring support action

4821. If a state or a political subdivision furnishes support to an individual obligee, it has the same right to initiate an action under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

Comment. Section 4821 continues former Code of Civil Procedure Section 1671 without substantive change. See also Section 200 (jurisdiction in superior court).

§ 4822. Action to enforce support; defenses based on relationship not available

4822. All duties of support, including the duty to pay arrearages, are enforceable by an action under this chapter, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

Comment. Section 4822 continues former Code of Civil Procedure Section 1672 without substantive change. Former Code of Civil Procedure Section 1672.5, which vested jurisdiction in the superior court, has been generalized. See Section 200 (jurisdiction in superior court).

§ 4824. Complaint; transfer of proceeding

4824. (a) The complaint or claim shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. Verification shall be in accordance with the requirements of the initiating state. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on the obligor's person, other names and aliases by which the obligor has been or is known, the name of the obligor's employer, the obligor's fingerprints, and the obligor's social security number.

(b) The complaint may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other state where there is pending a proceeding for dissolution of the marriage or for legal separation of the

parties, or another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody, between the same parties, or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

(c) When the obligee removes the obligee's residence from the county in which the proceeding was initiated to another county in the state, the court may transfer the proceeding to the new county of residence. The clerk of the court in which the proceeding was initiated shall forward certified copies of all documents necessary for continued prosecution of the proceeding to the county where the proceeding was transferred. The clerk of the court to which the proceeding has been transferred shall inform the court of the responding state that the case has been transferred, and that payment should be made through the appropriate agency of the transferee county. Transfer procedures under this section may be initiated by the obligee or by the court, prosecuting official, or clerk of either county or of the responding state.

Comment. Section 4824 continues former Code of Civil Procedure Section 1673 without substantive change.

§ 4825. Initiation of proceedings by prosecuting attorney or Attorney General

4825. If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court or the obligee, shall initiate proceedings under this chapter. If the prosecuting attorney neglects or refuses to initiate proceedings, the Attorney General may order the prosecuting attorney to comply with the request of the court or may undertake the initiation of proceedings.

Comment. Section 4825 continues former Code of Civil Procedure Section 1674 without substantive change. See also Sections 3557 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from opposing party for prosecuting or defending action).

§ 4826. Complaint by person having custody of minor obligee

4826. A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

Comment. Section 4826 continues former Code of Civil Procedure Section 1675 without change.

§ 4827. Certification to responding state

4827. If the initiating court or agency finds that the complaint or claim sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or the obligor's property, the court or agency shall so certify and cause three copies of the complaint or claim and its certificate and one copy of this chapter or of the declaration of reciprocity made pursuant to Section 4844 to be sent to the responding state. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

Comment. Section 4827 continues former Code of Civil Procedure Section 1676 without substantive change.

§ 4828. Fees and costs

4828. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and

costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

Comment. Section 4828 continues former Code of Civil Procedure Section 1677 without change.

§ 4829. Arrest of obligor

4829. (a) If the court of this state believes that the obligor may flee, it may do either of the following:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process.

(2) As a responding court, obtain the body of the obligor by appropriate process.

(b) Thereupon it may release the obligor upon the obligor's own recognizance or upon the giving of a bond in an amount set by the court to assure the obligor's appearance at the hearing.

Comment. Section 4829 continues former Code of Civil Procedure Section 1678 without substantive change.

§ 4830. Attorney General as state information agency

4830. (a) The Attorney General is hereby designated as the state information agency under this chapter.

(b) The state information agency shall:

(1) Compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the Legislature, the Attorney General shall distribute copies of any amendments

to this chapter and a statement of their effective dates to all other state information agencies.

(2) Maintain a register of such lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this chapter.

(3) Forward to the court in this state which has jurisdiction over the obligor or the obligor's property petitions, certificates, and copies of the act it receives from courts or information agencies of other states.

(c) If the state information agency does not know the location of the obligor or the obligor's property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(d) Notwithstanding any other provision of law, copies of all documents used to initiate enforcement of any interstate child support obligation shall be sent directly to the state information agency.

Comment. Section 4830 continues former Code of Civil Procedure Section 1679 without substantive change.

§ 4831. Duties of responding court; prosecution of case by prosecuting attorney or Attorney General

4831. (a) After the responding court receives copies of the complaint, certificate, and act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of that action. Claims received by this

state from an initiating agency shall be forwarded to the district attorney for preparation and filing of appropriate pleadings.

(b) The prosecuting attorney shall prosecute the case diligently. The prosecuting attorney shall take all action necessary to enable the court to obtain jurisdiction over the obligor or the obligor's property in accordance with law. The prosecuting attorney shall, upon being notified that the cause has been docketed, either (1) request the court to issue a citation requiring the defendant to appear personally at a specified time and place to show cause why an order should not be issued on the basis of the complaint on file and cause a copy of the complaint and of the citation to be served upon the obligor at least 10 days before the hearing or (2) request the issuance of a summons and cause a copy of the complaint and summons to be served upon the obligor.

(c) If the prosecuting attorney neglects or refuses to prosecute the case pursuant to this chapter, the Attorney General may order the prosecuting attorney to prosecute the case or may undertake the prosecution.

Comment. Section 4831 continues former Code of Civil Procedure Section 1680 without substantive change.

§ 4832. Tracing obligor or obligor's property; reports to initiating court

4832. (a) The prosecuting attorney on its own initiative shall use all means at its disposal to locate the obligor or the obligor's property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what the prosecuting attorney has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(b) If the obligor or the obligor's property is not found in the county, and the prosecuting attorney discovers that the obligor or the obligor's property may be found in another county of this state or in another state, the prosecuting attorney shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court, the clerk shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or the obligor's property, the prosecuting attorney shall so inform the initiating court.

Comment. Section 4832 continues former Code of Civil Procedure Section 1681 without substantive change.

§ 4833. Order for support or reimbursement; enforcement of order

4833. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this chapter shall require that payments be made to the county clerk, probation officer, or other officer of the court or county officer designated by the court for that purpose. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that

proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

Comment. Section 4833 continues former Code of Civil Procedure Section 1682 without substantive change. See also Sections 3557 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from opposing party for prosecuting or defending action).

§ 4834. Absent obligee in contested case

4834. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence which constitutes a defense, the court, upon request of either party, shall continue the case for further hearing and the submission of evidence by both parties either by deposition or personal appearance. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

Comment. Section 4834 continues former Code of Civil Procedure Section 1683 without change.

§ 4835. Copy of support order to initiating court and obligor

4835. The responding court shall cause a copy of all support orders to be sent to the initiating court or agency and to the obligor.

Comment. Section 4835 continues former Code of Civil Procedure Section 1684 without change.

§ 4836. Terms and conditions to ensure obligor's compliance

4836. In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to ensure compliance with its orders and in particular may do any one or more of the following:

(a) Require the obligor to furnish a cash deposit or bond of a character and amount to ensure payment of any amount due.

(b) Require the obligor to report personally and to make payments at specified intervals to the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose.

(c) Punish under the power of contempt the obligor who violates any order of the court.

Comment. Section 4836 continues former Code of Civil Procedure Section 1685 without substantive change.

§ 4837. Duties of responding court as to payments by obligor

4837. A responding court has the following duties which may be carried out through the county clerk, probation officer, or other officer of the court or county officer designated by the court for that purpose:

(a) To transmit to the initiating court any payment made by the obligor pursuant to an order of the court or otherwise.

(b) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

Comment. Section 4837 continues former Code of Civil Procedure Section 1686 without substantive change. See also Section 4011 (priority of child support payments).

§ 4838. Duties of initiating court as to payments

4838. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the county clerk, probation officer, or other officer of the court or county officer designated by the court for that purpose.

Comment. Section 4838 continues former Code of Civil Procedure Section 1687 without substantive change.

§ 4839. Competency of spouse to testify; privileges not applicable

4839. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are

competent witnesses to testify to any relevant matter, including marriage and parentage.

Comment. Section 4839 continues former Civil Code Section 1688 without substantive change. This section is the same as Section 3551.

§ 4840. Effect of support order on other support orders

4840. A support order made by a court of this state pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar provision of law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to a support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under a support order made by the court of this state.

Comment. Section 4840 continues former Code of Civil Procedure Section 1689 without substantive change. See also Section 4011 (priority of child support payments).

§ 4841. Other proceedings

4841. Participation in a proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

Comment. Section 4841 continues former Code of Civil Procedure Section 1690 without substantive change.

§ 4842. Stay of proceedings

4842. A responding court shall not stay the proceeding or refuse a hearing under this chapter because of a pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof, it may require the obligor to give a bond for the prompt prosecution of the

pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

Comment. Section 4842 continues former Code of Civil Procedure Section 1691 without substantive change.

§ 4843. Obligor and obligee in different counties

4843. This chapter applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or the obligor's property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or the obligor's property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

Comment. Section 4843 continues former Code of Civil Procedure Section 1692 without substantive change.

§ 4844. Declaration of foreign jurisdiction as reciprocating state

4844. When the Attorney General is satisfied that reciprocal provisions will be made by a foreign jurisdiction for the enforcement therein of support orders made within this state, the Attorney General may declare the foreign jurisdiction to

be a reciprocating state for the purpose of this chapter. Any such declaration may be revoked by the Attorney General. Any such declaration by the Attorney General may be reviewed by the court in an action brought pursuant to this chapter.

Comment. Section 4844 continues former Code of Civil Procedure Section 1693 without substantive change.

§ 4845. Rules of evidence; interference with rights of custody and visitation

4845. (a) In a hearing for the civil enforcement of this chapter, the court is governed by the rules of evidence applicable in a civil court action in the superior court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses or modification available to a defendant in a proceeding to enforce a foreign support judgment.

(b) The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

Comment. Section 4845 continues former Code of Civil Procedure Section 1694 without substantive change.

§ 4846. Paternity issue

4846. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

Comment. Section 4846 continues former Code of Civil Procedure Section 1695 without change.

§ 4847. Appeals in public interest by Attorney General

4847. (a) If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, the Attorney General may:

(1) If the support order was issued by a court of this state, perfect an appeal to the proper appellate court.

(2) If the support order was issued in another state, cause the appeal to be taken in the other state.

(b) In either case, expenses of appeal may be paid on order of the Attorney General from funds appropriated for the Office of the Attorney General.

Comment. Section 4847 continues former Code of Civil Procedure Section 1696 without substantive change.

§ 4848. Additional remedies for foreign support order; registration of support order made in this state

4848. (a) If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Sections 4849 to 4853, inclusive.

(b) A support order made in this state may also be registered pursuant to Sections 4849 to 4853, inclusive, in any county in which the obligor, the obligee, or the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or property.

Comment. Section 4848 continues former Code of Civil Procedure Section 1697 without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 19 (SB 1068).

§ 4849. Registration of foreign support order

4849. The obligee may register a foreign support order in a court of this state in the manner, with the effect, and for the purposes provided in this article. These orders may be registered in any county in which the obligor, the obligee, or

the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or property.

Comment. Section 4849 continues former Code of Civil Procedure Section 1698 without substantive change. The reference to a “foreign order for the assignment of wages” has been omitted as surplus. See Section 4802(p) (“foreign support order” defined).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 20 (SB 1068).

§ 4850. Registry of foreign support orders

4850. The clerk of the court shall maintain a registry of foreign support orders in which the clerk shall file foreign support orders.

Comment. Section 4850 continues former Code of Civil Procedure Section 1698.1 without substantive change.

§ 4851. Prosecuting attorney or Attorney General represents public interest in enforcing support obligations

4851. If this state is acting either as a rendering or a registering state, the prosecuting attorney shall represent the public interest in enforcing support obligations in proceedings under this chapter. If the prosecuting attorney neglects or refuses to represent the public interest in enforcing support obligations, the Attorney General may order the prosecuting attorney to represent the public interest or may undertake the representation.

Comment. Section 4851 continues former Code of Civil Procedure Section 1698.2 without substantive change. The reference to proceedings under this chapter, meaning proceedings under the Uniform Reciprocal Enforcement of Support Act, has been substituted for the former reference to proceedings under “this part,” meaning Part 3 (commencing with Section 1063) of the Code of Civil Procedure (Special Proceedings of a Civil Nature). This is not a substantive change and corrects what appears to have been an error in the former section. See also Sections 3557 (attorney’s fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney’s fees from opposing party for prosecuting or defending action).

§ 4852. Procedure for registration of foreign support order; enforcement of registered order

4852. (a) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court all of the following:

(1) Three certified copies of the order with all modifications thereof.

(2) One copy of the reciprocal enforcement of support act of the state in which the order was made.

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered.

(b) Upon receipt of the documents described in subdivision (a), the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this article.

(c) Promptly upon registration, the clerk of the court shall send, by any form of mail requiring a return receipt from the addressee only, to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. Proof shall be made to the satisfaction of the court that the obligor personally received the notice of registration by mail or other method of service. A return receipt signed by the obligor shall be satisfactory evidence of personal receipt. The court clerk shall also docket the case and notify the prosecuting attorney of that action. The prosecuting attorney shall proceed diligently to enforce the order.

Comment. Section 4852 continues former Code of Civil Procedure Section 1698.3 without substantive change.

§ 4853. Effect of registration of foreign support or assignment order; enforcement of registered order

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

(b) The obligor has 20 days after the mailing or other service of notice of the registration of a foreign order of support in which to file a noticed motion requesting the court to vacate the registration or for other relief. In an action under this section, there shall be no joinder of actions, coordination of actions, or cross-complaints, and the claims or defenses shall be limited strictly to the identity of the obligor, the validity of the underlying foreign support order, or the accuracy of the obligee's statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order. The obligor shall serve a copy of the motion, personally or by first-class mail, on the office of the district attorney, private attorney representing the obligee, or obligee representing himself or herself who filed the request for registration of the order, not less than 15 days prior to the date on which the motion is to be heard. If service is by mail, Section 1013 of the Code of Civil Procedure applies. If the obligor does not file the motion within 20 days, the registered foreign support order and all other documents filed pursuant to subdivision (a) of Section 4852 are confirmed.

(c) At the hearing on the motion to vacate the registration of the order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows and the court finds that an appeal from the order is pending or that a stay of

execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If the obligor shows and the court finds any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

(d) Registration of an out-of-state order for the sole purpose of interstate wage withholding does not confer jurisdiction on the court for any purpose other than income withholding.

(e) After registration, a foreign order for the assignment of wages or other earnings for support shall be treated for all purposes in the same manner as an order for assignment of earnings entered pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code or, on and after January 1, 1994, this article. The registered foreign order for assignment of wages shall be served upon the obligor's employer and the obligor shall be sent, by first-class mail, a copy of the foreign assignment order at the same time that the employer is served with the notice. The obligor may move to quash the assignment in accordance with Section 4390.9 of the Civil Code or, on and after January 1, 1994, Section 5270.

Comment. Section 4853 continues former Code of Civil Procedure Section 1699 without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 20.5 (SB 1068).

§ 4854. Support orders registered in court of county other than that of rendering court; service of copy by mail

4854. If a support order issued by a court of this state is registered in the court of a county other than that of the rendering court, the obligee shall serve a copy of any subsequent modification of the order on the rendering court, by mail.

Comment. Section 4854 continues former Code of Civil Procedure Section 1699.4 without substantive change.

CHAPTER 7. ENFORCEMENT BY WRIT OF EXECUTION

§ 5100. Enforcement of child or family support without prior court approval

5100. Notwithstanding Section 290, a child or family support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

Comment. Section 5100 supersedes the first sentence of former Civil Code Section 4383(a). The former references to both “judgment” and “decree” have been omitted as surplus. See Sections 100 (“order” includes decree, as appropriate), 155 (“support order” means judgment or order of support).

See also Sections 150 (“support” includes maintenance and education when used in reference to minor child), 3557 (attorney’s fees and costs for enforcement of support order), 4011 (priority of child support payments), 4500 (support orders enforceable under this code), 4502 (exception to renewal requirement); Code Civ. Proc. § 683.130 (renewal of judgment). For a similar rule relating to spousal support, see Section 5101 (enforcement of spousal support without prior court approval).

For background on former Civ. Code § 4383, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001, 2616 (1980).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 21 (SB 1068).

§ 5101. Enforcement of spousal support without prior court approval

5101. Notwithstanding Section 290, a spousal support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

Comment. Section 5101 supersedes the second sentence of former Civil Code Section 4383(a). A reference to Section 290 has been added. This is not a substantive change and conforms with Section 5100. The former references to both “judgment” and “decree” have been omitted as surplus. See Sections 100 (“order” includes decree, as appropriate), 155 (“support order” means judgment or order of support).

See also Sections 3557 (attorney’s fees and costs for enforcement of support order), 4502 (exception to renewal requirement); Code Civ. Proc. § 683.130 (renewal of judgment). For a similar rule relating to child support, see Section 5100 (enforcement of child support without prior court approval).

For background on former Civ. Code § 4383, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001, 2616 (1980).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 22 (SB 1068).

§ 5102. Period for enforcement of installment payments

5102. If a support order provides for the payment of support in installments, the period specified pursuant to this chapter runs as to each installment from the date the installment became due.

Comment. Section 5102 continues the last sentence of former Civil Code Section 4384 without substantive change. The former references to both “judgment” and “decree” have been omitted as surplus. See Sections 100 (“order” includes decree, as appropriate), 155 (“support order” means judgment or order of support).

For background on former Civ. Code § 4384, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001, 2617 (1980).

§ 5103. Enforcement of support against employee pension benefit plan

5103. (a) Notwithstanding Section 2060, an order for the payment of child, family, or spousal support may be enforced against an employee pension benefit plan regardless of whether the plan has been joined as a party to the proceeding in which the support order was obtained.

(b) Notwithstanding Section 697.710 of the Code of Civil Procedure, an execution lien created by a levy on the judgment debtor's right to payment of benefits from an employee pension benefit plan to enforce an order for the payment of child, family, or spousal support continues until the date the plan has withheld and paid over to the levying officer, as provided in Section 701.010 of the Code of Civil Procedure, the full amount specified in the notice of levy, unless the plan is directed to stop withholding and paying over before that time by court order or by the levying officer.

(c) A writ of execution pursuant to which a levy is made on the judgment debtor's right to payment of benefits from an employee pension benefit plan under an order for the payment of child, family, or spousal support shall be returned not later than one year after the date the execution lien expires under subdivision (b).

Comment. Subdivisions (a) and (b) of Section 5103 continue the last two sentences of former Civil Code Section 4383(a) without substantive change. The former references to both "judgment" and "decree" have been omitted as surplus. See Sections 100 ("order" includes decree, as appropriate), 155 ("support order" means judgment or order of support). In subdivision (a), "the proceeding in which the support order was obtained" has been substituted for "a proceeding under this part," meaning the former Family Law Act, former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code. In subdivisions (a) and (b), references to "family" support are new and are consistent with the rule stated in Section 4501. See Section 4501 (family support order enforceable in same manner and to same extent as child support order).

Subdivision (c) continues former Civil Code Section 4383(c) without substantive change. See also Sections 80 ("employee pension benefit

plan” defined), 3557 (attorney’s fees and costs for enforcement of support order), 4011 (priority of child support payments).

For background on former Civ. Code § 4383, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001, 2616 (1980).

§ 5104. Application for writ

5104. (a) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is authorized to be enforced pursuant to Sections 5100 to 5103, inclusive, on the date of the application.

(b) If interest on the overdue installments is sought, the affidavit shall state the total amount of the interest and the amount of each due and unpaid installment and the date it became due.

(c) The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

Comment. Section 5104 continues subdivision (b) of former Civil Code Section 4383 without substantive change. This section provides technical requirements that must be complied with in addition to the general provisions governing execution. The affidavit provides the court clerk with the information needed to issue the writ and informs the judgment debtor concerning the nature of the debt sought to be collected. If no interest is sought on the amount due and unpaid, the affidavit need state only the total amount. If interest is sought, the affidavit need state only the total amount of interest and also state the amount of each unpaid installment and the date it became due so that the judgment debtor can verify that the interest was accurately computed. See also Sections 3557 (attorney’s fees and costs for enforcement of support order), 4502 (exception to renewal requirement); Code Civ. Proc. § 683.130 (renewal of judgment).

For background on former Civ. Code § 4383, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001, 2616 (1980).

CHAPTER 8. EARNINGS ASSIGNMENT ORDER

Article 1. Definitions

§ 5200. Application of definitions

5200. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

Comment. Section 5200 continues the introductory clause of former Civil Code Section 4390 without substantive change. For additional definitions of terms used in this chapter, see, e.g., Section 150 (“support” defined).

§ 5202. “Assignment order”

5202. “Assignment order” has the same meaning as “earnings assignment order for support.”

Comment. Section 5202 restates former Civil Code Section 4390(a) without substantive change. See also Section 5208 (“earnings assignment order for support” defined).

§ 5204. “Due date of support payments”

5204. “Due date of support payments” is the date specifically stated in the order of support or, if no date is stated in the support order, the last day of the month in which the support payment is to be paid.

Comment. Section 5204 continues former Civil Code Section 4390(b) without substantive change.

§ 5206. “Earnings”

5206. “Earnings,” to the extent that they are subject to an earnings assignment order for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, include:

(a) Wages, salary, bonus, money, and benefits described in Sections 704.110, 704.113, and 704.115 of the Code of Civil Procedure.

(b) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights.

(c) Payments or credits due or becoming due as a result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(d) Payments due for workers' compensation temporary disability benefits.

(e) Any other payments or credits due or becoming due as a result of an enforceable obligation.

Comment. Section 5206 continues former Civil Code Section 4390(c) without substantive change. In subdivision (c), the reference to payments "or" credits was substituted for consistency with subdivision (e). In subdivision (d), the reference to "[a]ny" payments is omitted as surplus. This is not a substantive change.

§ 5208. "Earnings assignment order for support"

5208. "Earnings assignment order for support" means an order that assigns to an obligee a portion of the earnings of a support obligor due or to become due in the future.

Comment. Section 5208 is new and is drawn from the first sentence of former Civil Code Section 4390.3(a). This section is based on the concept that the assignment order operates without the need for the obligor to make an assignment to the obligee. This section supersedes the last sentence of former Civil Code Section 4390.5(c). See also Section 5202 ("assignment order" has same meaning as "earnings assignment order for support").

Throughout this chapter references to "earnings assignment order for support" or to "assignment order" have been substituted, without substantive change, for former references to wage assignments and earnings assignments. See, e.g., Sections 5202, 5206, 5230-5231, 5235-5236, 5240, 5242, 5250-5252, 5260, 5270-5271, 5281-5282, 5295.

§ 5210. "Employer"

5210. "Employer" includes all of the following:

(a) A person for whom an individual performs services as an employee, as defined in Section 706.011 of the Code of Civil Procedure.

(b) The United States government and any public entity as defined in Section 811.2 of the Government Code.

(c) Any person or entity paying earnings as defined under Section 5206.

Comment. Section 5210 continues former Civil Code Section 4390(d) without substantive change.

§ 5212. “IV-D Case”

5212. “IV-D Case” means any case being established, modified, or enforced by the district attorney pursuant to Section 654 of Title 42 of the United States Code (Section 454 of the Social Security Act).

Comment. Section 5212 continues former Civil Code Section 4390(e) without change.

§ 5214. “Obligee”; “assigned obligee”

5214. “Obligee” or “assigned obligee” means either the person to whom support has been ordered to be paid, the district attorney, or other person designated by the court to receive the payment. The district attorney is the obligee for all IV-D Cases as defined under Section 5212 or in which an application for services has been filed under Part D (commencing with Section 651) and Part E (commencing with Section 670) of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Title IV-D or IV-E of the Social Security Act).

Comment. Section 5214 continues former Civil Code Section 4390(f) without substantive change.

§ 5216. “Obligor”

5216. “Obligor” means a person owing a duty of support.

Comment. Section 5216 continues former Civil Code Section 4390(g) without substantive change.

§ 5220. “Timely payment”

5220. “Timely payment” means receipt of support payments by the obligee or assigned obligee within five days of the due date.

Comment. Section 5220 continues former Civil Code Section 4390(i) without change.

Article 2. General Provisions

§ 5230. Support order to include earnings assignment order

5230. (a) When the court orders a party to pay an amount for support or orders a modification of the amount of support to be paid, the court shall include in its order an earnings assignment order for support that orders the employer of the obligor to pay to the obligee that portion of the obligor’s earnings due or to become due in the future as will be sufficient to pay an amount to cover both of the following:

(1) The amount ordered by the court for support.

(2) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage.

(b) Upon the filing and service of a notice of motion or order to show cause with the supporting application, an obligee or custodial parent receiving services under Title IV-D of the Social Security Act may request the court to issue an earnings assignment order for support to enforce a support order made or modified before July 1, 1990, including any arrearages, or to modify the support order.

Comment. Section 5230 restates former Civil Code Section 4390.3(a) without substantive change. In subdivision (a), the reference to the requirement that the earnings assignment order for support include an order that the employer make the specified payments has been substituted for the former reference to an order that the obligor make the assignment. This is not a substantive change. See Section 5208 & Comment (“earnings assignment order for support” defined as order that assigns to obligee part of earnings of obligor). The former reference to a “judgment” of support has been omitted as surplus. See Section 155 (“support order” means a judgment or order of support). The introductory

clause of the first sentence of former Civil Code Section 4390.3, which made the provision now found in subdivision (a) applicable on and after July 1, 1990, has been omitted as unnecessary. In subdivision (b), reference to a support order made or modified before July 1, 1990, has been substituted for the former reference to an “existing” support order. This is not a substantive change. See also Section 5251 (procedure for obtaining assignment order where support order issued or modified before July 1, 1990).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 22.5 (SB 1068).

§ 5231. Order binds existing and future employers

5231. Unless stayed pursuant to Article 4 (commencing with Section 5260), an assignment order is effective and binding upon any existing or future employer of the obligor upon whom a copy of the order is served in compliance with Sections 5232 and 5233.

Comment. Section 5231 restates former Civil Code Sections 4390.3(b) and 4390.7(c) without substantive change.

§ 5232. Manner of service on employer

5232. Service on an employer of an assignment order may be made by first-class mail in the manner prescribed in Section 1013 of the Code of Civil Procedure.

Comment. Section 5232 continues the last sentence of former Civil Code Section 4390.8(a) without substantive change.

§ 5233. Commencement of withholding by employer

5233. Unless the order states a later date, beginning as soon as possible after service of the order on the employer but not later than 10 days after service of the order on the employer, the employer shall commence withholding pursuant to the assignment order from all earnings payable to the employee.

Comment. Section 5233 restates the first two sentences of former Civil Code Section 4390.8(a) without substantive change. The former provision for withholding from all earnings of the employee payable for a pay period ending after the assignment becomes effective has been revised. This section only requires withholding from earnings payable to

the employee after the order becomes effective. This is not a substantive change. The introductory clause is new and recognizes that the order itself may provide for a later effective date.

§ 5234. Delivery of copy of order and statement of rights to obligor

5234. Within 10 days of service of an assignment order on an employer, the employer shall deliver both of the following to the obligor:

(a) A copy of the assignment order.

(b) A written statement of the obligor's rights under the law to move to quash the assignment order.

Comment. Section 5234 continues former Civil Code Section 4390.8(b) without substantive change. See also Section 5295 (Judicial Council to prepare form for written statement of obligor's rights).

§ 5235. Employer to withhold and forward support

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order.

(b) The employer shall send the amounts withheld to the obligee within 10 days of the date the obligor is paid and shall report to the obligee the date on which the amount was withheld from the obligor's wages.

(c) The employer may deduct from the earnings of the employee the sum of one dollar (\$1) for each payment made pursuant to the order.

Comment. Section 5235 continues former Civil Code Section 4390.10(a) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 23 (SB 1068).

§ 5236. Consolidated check by employer

5236. The state agency or the local agency, designated to enforce support obligations as required by federal law, shall allow employers to simplify the process of assignment order withholding by forwarding, as ordered by the court, the

amounts of support withheld under more than one order in a consolidated check, accompanied by an itemized accounting providing names, social security number or other identifying number, and the amount attributable to each obligor.

Comment. Section 5236 continues former Civil Code Section 4390.16(b) without substantive change.

§ 5237. Obligee's notice of change of address

5237. (a) Except as provided in subdivision (b), the obligee shall notify the employer of the obligor, by first-class mail, postage prepaid, of any change of address within a reasonable period of time after the change.

(b) Where payments have been ordered to be made to a county officer designated by the court, the obligee who is the parent, guardian, or other person entitled to receive payment through the designated county officer shall notify the designated county officer by first-class mail, postage prepaid, of any address change within a reasonable period of time after the change.

(c) If the employer or designated county officer is unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer or designated county officer of a change of address, the employer or designated county officer shall not make any further payments under the assignment order and shall return all undeliverable payments to the obligor.

Comment. Section 5237 continues former Civil Code Section 4390.13 without substantive change. See also Section 3555 (forwarding support payments paid through designated county officer).

§ 5238. Priorities where order includes both current support and arrearages

5238. Where an assignment order or assignment orders include both current support and payments towards the liquidation of arrearages, priority shall be given first to the current child support obligation, then the current spousal

support obligation, and thereafter to the liquidation of child and then spousal support arrearages.

Comment. Section 5238 continues former Civil Code Section 4390.12(a) without substantive change.

§ 5239. Manner of computing arrearages of support payments

5239. Arrearages of support payments shall be computed on the basis of the payments owed and unpaid on the date that the obligor has been given notice of the assignment order as required by Section 5234.

Comment. Section 5239 continues former Civil Code Section 4390.2 without substantive change. The reference to Section 5234 is new and is not a substantive change.

§ 5240. Termination of order

5240. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate the service of an assignment order if past due support has been paid in full, including any interest due, and if any of the following conditions exist:

(a) With regard to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regard to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 5260, to terminate the assignment order. This subdivision does not apply if there has been more than one application for an assignment order.

(d) The obligor meets the conditions of an alternative arrangement specified in paragraph (2) of subdivision (b) of Section 5260, and a wage assignment has not been previously terminated and subsequently initiated.

(e) There is no longer a current order for support.

(f) The termination of the stay of an assignment order under Section 5261 was improper, but only if that termination was

based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 5261.

(g) The employer or agency designated to provide services under Title IV-D of the Social Security Act is unable to deliver payment for a period of six months due to the failure of the obligee to notify that employer or agency of a change in the obligee's address.

Comment. Section 5240 continues former Civil Code Section 4390.14 without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 24 (SB 1068).

§ 5241. Penalty for employer failing to comply with order

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee.

(b) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

Comment. Section 5241 continues former Civil Code Section 4390.10(b) without substantive change. See also Sections 3557 (attorney's fees and costs for enforcement of support order), 5290 (civil penalty for using assignment order as grounds for refusing to hire or for discharging or taking disciplinary action against employee).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 25 (SB 1068).

§ 5242. Service of order creates lien

5242. Service of the assignment order creates a lien on the earnings of the employee and the property of the employer to the same extent as the service of an earnings withholding order as provided in Section 706.029 of the Code of Civil Procedure.

Comment. Section 5242 continues former Civil Code Section 4390.10(c) without substantive change.

§ 5243. Priority of order over attachment, execution, or other assignment

5243. An assignment order for support has priority as against any attachment, execution, or other assignment as specified in Section 706.031 of the Code of Civil Procedure.

Comment. Section 5243 continues former Civil Code Section 4390.12(b) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 26 (SB 1068).

§ 5244. Application of chapter to district attorney

5244. A reference to the district attorney in this chapter applies only when the district attorney is otherwise ordered or required to act pursuant to law. Nothing in this chapter shall be deemed to mandate additional enforcement or collection duties upon the district attorney beyond those otherwise imposed by law.

Comment. Section 5244 continues former Civil Code Section 4390.1 without substantive change. This section has been revised to omit references to “existing” law. These are not substantive changes.

§ 5245. Use of other remedies not limited

5245. Nothing in this chapter limits the authority of the district attorney to use any other civil and criminal remedies to enforce support obligations, regardless of whether or not the child or the obligee who is the parent, guardian, or other person entitled to receive payment is the recipient of welfare moneys.

Comment. Section 5245 continues former Civil Code Section 4390.19 without substantive change. The former reference to any “and all” enforcement remedies has been omitted. This is not a substantive change, since “all” is surplus. The reference to support of a “minor” child has been omitted. This is not a substantive change, but recognizes that in some cases support may be ordered for an adult child. See Sections 58

(“child for whom support may be ordered” defined), 3587 (court order to effectuate agreement for support of adult child), 3901 (duration of duty to support child), 3910 (duty to maintain incapacitated adult child), 4000 (civil action to enforce parent’s duty to support child), 4001 (order for child support).

Article 3. Support Orders Issued or Modified Before July 1, 1990

§ 5250. Article applies to support orders first issued or modified before July 1, 1990

5250. For a support order first issued or modified before July 1, 1990, this article provides a procedure for obtaining an earnings assignment order for support when the court in ordering support or modification of support did not issue an assignment order.

Comment. Section 5250 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 4390.5(a).

§ 5251. Procedures available for obtaining assignment order

5251. The obligee seeking issuance of an assignment order to enforce a support order described in Section 5250 may use the procedure set forth in this article by filing an application under Section 5252, or by notice of motion or order to show cause, or pursuant to subdivision (b) of Section 5230.

Comment. Section 5251 continues without substantive change the last sentence of the first paragraph of former Civil Code Section 4390.5(a).

§ 5252. Application for order under this article

5252. (a) An assignment order under this article may be issued only upon an application signed under penalty of perjury by the obligee that the obligor is in default in support payments in a sum equal to the amount of support payable for one month, for any other occurrence specified by the court in the support order, or earlier by court order if requested by the district attorney or the obligor.

(b) If the order for support does not contain a provision for an earnings assignment order for support, the application shall state that the obligee has given the obligor a written notice of the obligee's intent to seek an assignment order if there is a default in support payments and that the notice was transmitted by first-class mail, postage prepaid, or personally served at least 15 days before the date of the filing of the application. The written notice of the intent to seek an assignment order may be given at any time, including at the time of filing a petition or complaint in which support is requested or at any time subsequent thereto. The obligor may at any time waive the written notice required by this subdivision.

(c) In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration or notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

Comment. Subdivision (a) of Section 5252 continues without substantive change the last paragraph of former Civil Code Section 4390.5(a). Subdivision (b) continues former Civil Code Section 4390.5(d)-(e) without substantive change. Subdivision (c) continues former Civil Code Section 4390.5(b) without substantive change.

§ 5253. Issuance of assignment order

5253. Upon receipt of the application, the court shall issue, without notice to the obligor, an assignment order requiring the employer of the obligor to pay to the obligee that portion of the earnings of the obligor due or to become due in the future as will be sufficient to pay an amount to cover both of the following:

(a) The amount ordered by the court for support.

(b) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage or past due support amount.

Comment. Section 5253 restates the first sentence of former Civil Code Section 4390.5(c) without substantive change. The reference to the

requirement that the earnings assignment order for support include an order that the employer make the specified payments has been substituted for the former reference to an order that the obligor make the assignment. This is not a substantive change. See Section 5208 & Comment (“earnings assignment order for support” defined as order that assigns to obligee part of earnings of obligor).

Article 4. Stay of Service of Assignment Order

§ 5260. Finding of good cause required to stay order

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

(b) For purposes of this section, good cause or an alternative arrangement for staying an assignment order is as follows:

(1) Good cause for staying a wage assignment exists only when all of the following conditions exist:

(A) The court provides a written explanation of why the stay of the wage assignment would be in the best interests of the child.

(B) The obligor has a history of uninterrupted, full, and timely payment, other than through a wage assignment or other mandatory process of previously ordered support, during the previous 12 months.

(C) The obligor does not owe an arrearage for prior support.

(D) The obligor proves, and the court finds, by clear and convincing evidence that service of the wage assignment would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that any stay ordered under this section will automatically terminate.

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

Comment. Section 5260 continues former Civil Code Section 4390.3(c) without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 27 (SB 1068).

§ 5261. Termination of stay

5261. (a) If service of the assignment order has been ordered stayed, the stay shall terminate pursuant to subdivision (b) upon the obligor's failure to make timely support payments or earlier by court order if requested by the district attorney or by the obligor. The stay shall terminate earlier by court order if requested by any other obligee who can establish that good cause, as defined in Section 5260, no longer exists.

(b) To terminate a stay of the service of the assignment order, the obligee shall file a declaration signed under penalty of perjury by the obligee that the obligor is in arrears in payment of any portion of the support. At the time of filing the declaration, the stay shall terminate by operation of law without notice to the obligor.

(c) In addition to any other penalty provided by law, the filing of a declaration under subdivision (b) with knowledge

of the falsity of its contents is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

Comment. Section 5261 continues former Civil Code Section 4390.4 without substantive change.

Article 5. Motion To Quash Assignment Order

§ 5270. Grounds for motion to quash

5270. (a) An obligor may move to quash an assignment order on any of the following grounds:

(1) The assignment order does not correctly state the amount of current or overdue support ordered by the courts.

(2) The alleged obligor is not the obligor from whom support is due.

(3) The amount to be withheld exceeds that allowable under federal law in subsection (b) of Section 1673 of Title 15 of the United States Code.

(b) If an assignment order is sought under Article 3 (commencing with Section 5250), the party ordered to pay support may also move to quash the service of the order based upon Section 5260.

(c) The obligor shall state under oath the ground on which the motion to quash is made.

(d) If an assignment order which has been issued and served on a prior employer is served on the obligor's new employer, the obligor does not have the right to move to quash the assignment order on any grounds which the obligor previously raised when the assignment order was served on the prior employer or on any grounds which the obligor could have raised when the assignment order was served on the prior employer but failed to raise.

Comment. Section 5270 continues former Civil Code Section 4390.9(a)-(c) without substantive change. The reference to the time for making the motion in former Civil Code Section 4390.9(a) has been omitted as unnecessary, because this duplicated a provision of former Civil Code Section 4390.11, now Family Code Section 5271(a).

§ 5271. Procedure

5271. (a) The motion and notice of motion to quash the assignment order shall be filed with the court issuing the order within 10 days after delivery of the copy of the assignment order to the obligor by the employer.

(b) The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion.

(c) The obligor shall serve personally or by first-class mail, postage prepaid, a copy of the motion and notice of motion on the obligee named in the assignment order no less than 10 days before the date of the hearing.

Comment. Section 5271 continues former Civil Code Section 4390.11 without substantive change. In subdivision (a), the phrase “delivery of the copy of the assignment order to the obligor” has been substituted for “service on the obligor of notice of the order,” which was used in the former provision. This revision makes subdivision (a) consistent with Section 5234 and is not a substantive change. See Section 5234 (delivery of copy of assignment order to obligor).

§ 5272. Modification of order to reflect correct or allowable amount

5272. A finding of error in the amount of the current support or arrearage or that the amount exceeds federal or state limits is not grounds to vacate the assignment order. The court shall modify the order to reflect the correct or allowable amount of support or arrearages. The fact that the obligor may have subsequently paid the arrearages does not relieve the court of its duty to enter the assignment order.

Comment. Section 5272 continues former Civil Code Section 4390.9(d) without substantive change.

Article 6. Information Concerning Address and Employment of Obligor

§ 5280. Use of California parent locator service

5280. If the obligee making the application under this chapter also states that the whereabouts of the obligor or the identity of the obligor's employer is unknown to the party to whom support has been ordered to be paid, the district attorney shall do both of the following:

(a) Contact the California parent locator service maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code.

(b) Upon receiving the requested information, notify the court of the last known address of the obligor and the name and address of the obligor's last known employer.

Comment. Section 5280 continues former Civil Code Section 4390.6 without substantive change.

§ 5281. Obligor to inform obligee of change of employment

5281. An assignment order required or authorized by this chapter shall include a requirement that the obligor notify the obligee of any change of employment and of the name and address of the obligor's new employer within 10 days of obtaining new employment.

Comment. Section 5281 continues former Civil Code Section 4390.7(a) without substantive change.

§ 5282. Employer to notify obligee when obligor leaves employment

5282. After the obligor has left employment with the employer, the employer, at the time the next payment is due on the assignment order, shall notify the obligee designated in the assignment order by first-class mail, postage prepaid, to the last known address of the obligee that the obligor has left employment.

Comment. Section 5282 continues former Civil Code Section 4390.7(b) without substantive change. The phrase "designated in the

assignment order” has been added to make clear that the notice is to be given to the district attorney or other person designated in the order to receive the payment. See also Section 5214 (“obligee” defined).

§ 5283. Employer to provide information to district attorney

5283. (a) Upon receipt of a written request from a district attorney enforcing the obligation of parents to support their children pursuant to Section 11475.1 of the Welfare and Institutions Code, every employer shall cooperate with and provide relevant employment and income information, that the employer has in its possession, to the district attorney for the purpose of establishing, modifying, or enforcing the support obligation. No employer shall incur any liability for providing this information to the district attorney.

(b) Relevant employment and income information shall include, but not be limited to, all of the following:

(1) Whether a named person has or has not been employed by an employer.

(2) The full name of the employee or the first and middle initial and last name of the employee.

(3) The employee’s last known residence address.

(4) The employee’s date of birth.

(5) The employee’s social security number.

(6) The dates of employment.

(7) All earnings paid to the employee and reported as W-2 compensation in the prior tax year and the employee’s current basic rate of pay.

(8) Whether dependent health insurance coverage is available to the employee through employment.

(c) The district attorney shall notify the employer of the district attorney case file number in making a request pursuant to this section. The written request shall include at least three of the following elements regarding the person who is the subject of the inquiry:

(1) First and last name and middle initial, if known.

- (2) Social security number.
- (3) Driver's license number.
- (4) Birth date.
- (5) Last known address.
- (6) Spouse's name.

(d) An employer that fails to provide relevant employment information to the district attorney within 30 days of receiving a request pursuant to subdivision (a) may be assessed a civil penalty of a maximum of five hundred dollars (\$500), plus attorneys' fees and costs. Proceedings to impose the civil penalty shall be commenced by the filing and service of an order to show cause.

Comment. Section 5283 continues subdivisions (a) and (c) of former Civil Code Section 4390.16 without substantive change.

Article 7. Prohibited Practices

§ 5290. Assignment not grounds for refusal to hire, discharge, or disciplinary action

5290. No employer shall use an assignment order authorized by this chapter as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who engages in the conduct prohibited by this section may be assessed a civil penalty of a maximum of five hundred dollars (\$500).

Comment. Section 5290 continues former Civil Code Section 4390.17 without substantive change. See also Section 5241 (penalty for employer failing to comply with order).

Article 8. Judicial Council Forms

§ 5295. Forms to implement statute

5295. The Judicial Council shall prescribe forms necessary to carry out the requirements of this chapter, including the following:

- (a) The written statement of the obligor's rights.

- (b) The earnings assignment order for support.
- (c) The instruction guide for obligees and obligors.
- (d) The application forms required under Sections 5230, 5252, and 5261.
- (e) The notice form required under Section 5252.
- (f) Revised judgment and assignment order forms as necessary.

Comment. Section 5295 continues former Civil Code Section 4390.15 without substantive change.

DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE

PART 1. SHORT TITLE AND DEFINITIONS

§ 6200. Short title

6200. This division may be cited as the Domestic Violence Prevention Act.

Comment. Section 6200 continues former Code of Civil Procedure Section 541 without substantive change.

This division collects the substantive provisions for issuance of restraining orders intended to prevent domestic violence. Formerly these substantive provisions were duplicated in substantial part in the former Family Law Act, the Domestic Violence Prevention Act, and the Uniform Parentage Act. Now that these bodies of law have been consolidated in the Family Code, these duplicative provisions have been consolidated and continued in this division.

The orders that may be issued under this division may be issued in a proceeding brought pursuant to this division. These orders may also be issued in a proceeding for dissolution, nullity, or legal separation, and in an action brought pursuant to the Uniform Parentage Act. See Section 6221 (application of this division). See also Sections 2045, 2047, 2049 (restraining orders in dissolution, nullity, or legal separation proceeding), 7710, 7720, 7730 (restraining orders in Uniform Parentage Act proceeding).

See also Welf. & Inst. Code § 213.5 (protective orders during pendency of proceeding to declare minor dependent).

§ 6201. Application of definitions

6201. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this code.

Comment. Section 6201 continues without substantive change and generalizes the introductory clause of former Code of Civil Procedure Section 542. The introductory clause of this section has been added for conformity with other sections in this code. See Section 50 & Comment.

For provisions outside this division that use the definitions in this division, see Sections 213 (responding party's request for affirmative

relief alternative to moving party's requested relief), 3064 (limitation on ex parte order granting or modifying custody order), 3100 (visitation rights of a parent), 3101 (visitation rights of stepparent), 3103 (visitation rights of grandparent), 3113 (separate meetings with court appointed investigator), 3181 (separate meetings with mediator), 3192 (separate meetings with counselor appointed in custody proceeding).

§ 6203. "Abuse"

6203. "Abuse" means intentionally or recklessly to cause or attempt to cause bodily injury, or sexual assault, or to place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

Comment. Section 6203 continues former Code of Civil Procedure Section 542(a) without substantive change. For provisions adopting this definition by reference, see Section 3011 (determining best interest of child in custody proceeding); Evid. Code § 1107 (admissibility of expert witness testimony regarding battered women's syndrome).

§ 6205. "Affinity"

6205. "Affinity," when applied to the marriage relation, signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other.

Comment. Section 6205 is a new provision drawn from Code of Civil Procedure Section 17(9).

§ 6209. "Cohabitant"

6209. "Cohabitant" means a person who regularly resides in the household. "Former cohabitant" means a person who formerly regularly resided in the household.

Comment. Section 6209 continues former Code of Civil Procedure Section 542(c) without change.

§ 6211. "Domestic violence"

6211. "Domestic violence" is abuse perpetrated against any of the following persons:

- (a) A spouse or former spouse.

(b) A cohabitant or former cohabitant, as defined in Section 6209.

(c) A person with whom the respondent is having or has had a dating or engagement relationship.

(d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(f) Any other person related by consanguinity or affinity within the second degree.

Comment. Subdivisions (a)-(d) and (f) of Section 6211 continue without substantive change and broaden former Code of Civil Procedure Section 542(b). In subdivision (c), the reference to an ongoing dating or engagement relationship has been added. This is drawn from the definition of domestic violence in Penal Code Section 13700. In subdivision (f), the reference to any “adult” person related by consanguinity or affinity has been omitted. This is consistent with the addition of children in subdivision (e).

Subdivision (e) is drawn from former Civil Code Section 7020 and eliminates any implication that children are not covered by this statute. Former Civil Code Section 7020 authorized restraining orders to protect children who are the subject of a proceeding pursuant to the Uniform Parentage Act. The former Domestic Violence Protection Act protected “cohabitants” but did not specifically mention children. See former Code Civ. Proc. § 542(b)-(c). Subdivision (e) continues the protection explicit in the former Uniform Parentage Act and extends it explicitly to include a child of a party to the proceeding in which the orders are sought. See Section 6221 (application of division).

Where a child has been declared a dependent of the juvenile court, that court may issue orders to protect the child from violence pursuant to the Welfare and Institutions Code. See, e.g., Welf. & Inst. Code §§ 213.5 (ex parte orders during pendency of proceeding to declare child a dependent), 304 (juvenile court authority to issue protective orders sua sponte). See

also Section 6221(b) (nothing in this division affects the jurisdiction of the juvenile court).

See Sections 6320 (ex parte order enjoining harassment, threats, and violence), 6321 (ex parte order excluding party from dwelling), 6340 (orders that may be issued after notice and hearing); see also Sections 6203 (“abuse” defined), 6205 (“affinity” defined), 6209 (“cohabitant” and “former cohabitant” defined); Welf. & Inst. Code § 213.5 (issuance of restraining order during pendency of proceeding to determine minor dependent).

For provisions adopting this definition by reference, see Sections 3064 (limitation on ex parte order granting or modifying custody order), 3113 (separate meetings with court appointed investigator), 3181 (separate meetings with mediator), 3192 (separate meetings with counselor appointed in custody proceeding); Code Civ. Proc. §§ 128 (contempt powers of court), 1219 (punishment for contempt); Evid. Code §§ 1037.7 (victim-counselor privilege), 1107 (admissibility of expert witness testimony regarding battered women’s syndrome); Penal Code §§ 273.6 (penalty for violation of protective order), 977 (appearance in misdemeanors), 1377 (compromise of misdemeanors).

For other domestic violence provisions, see, e.g., Penal Code §§ 136.2 (penalty for intimidation of witness), 273.83 (individuals subject to prosecution by district attorney’s “spousal abuser” unit), 277 (penalty for child abduction), 653m (penalty for annoying telephone calls), 853.6 (citation and release not automatically available for misdemeanor violation of order to prevent domestic violence), 1000.6 (diversion of misdemeanor to counseling), 12028.5 (confiscating weapons at scene of domestic violence), 13700 (law enforcement response to domestic violence); Welf. & Inst. Code § 18291 (“domestic violence” defined for purposes of the Domestic Violence Centers Act).

§ 6215. “Emergency protective order”

6215. “Emergency protective order” means an order issued under Part 3 (commencing with Section 6240).

Comment. Section 6215 is a new provision included for drafting convenience.

§ 6218. “Protective order”

6218. “Protective order” means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(a) An order described in Section 6320 enjoining specific acts of abuse.

(b) An order described in Section 6321 excluding a person from a dwelling.

(c) An order described in Section 6322 enjoining other specified behavior.

Comment. Section 6218 restates former Code of Civil Procedure Section 542(d) and expands the definition to include orders described in Sections 6321 and 6322. As revised, this term describes the three orders that most directly protect a victim of domestic violence from abuse. These are the orders to prevent specific acts of abuse, such as contacting, molesting, and striking, to exclude a party from a dwelling, and to enjoin other specified behaviors necessary to effectuate the first two orders. See Sections 6320 (enjoining harassment, threats, and violence), 6321 (exclusion from dwelling), 6322 (enjoining additional specified behaviors).

In this division, the term “protective order” is used in Sections 6252 (orders included in emergency protective order), 6303 (support person for victim of domestic violence), 6304 (court to provide information to parties concerning terms and effect of order), 6343 (participation in counseling), 6360 (orders included in judgment), 6385 (notice to Department of Justice), 6386 (appointment of counsel and payment if fees and costs to enforce order), 6388 (criminal penalty for violation of order).

For provisions adopting this definition by reference, see Sections 213 (responding party’s request for affirmative relief alternative to moving party’s requested relief), 2045, 2047, 2049 (restraining orders in proceeding for dissolution, nullity, and legal separation), 3100 (visitation rights of a parent), 3101 (visitation rights of stepparent), 3113 (separate meetings with court appointed investigator), 3103 (visitation rights of grandparent), 3181 (separate meetings with mediator), 3192 (separate meetings with counselor appointed in custody proceeding), 7710, 7720, 7730 (restraining orders in action pursuant to the Uniform Parentage Act); Gov’t Code § 26841 (fees for protective order); Penal Code §§ 273.6 (willful violation of court order), 12021 (firearms), 14152 (referrals by district attorney to community conflict resolution program); Welf. & Inst. Code §§ 304 (custody of dependent children of the court), 362.4 (juvenile court order concerning custody or visitation).

PART 2 . GENERAL PROVISIONS

§ 6220. Purposes of division

6220. The purposes of this division are to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.

Comment. Section 6220 continues former Code of Civil Procedure Section 540 without substantive change. The list of persons in the former section has been omitted. This is not a substantive change, since the list is duplicated in the definition of domestic violence that applies to this section. See Section 6211 (“domestic violence” defined).

§ 6221. Application of division

6221. (a) Unless the provision or context otherwise requires, this division applies to any order described in this division, whether the order is issued in a proceeding brought pursuant to this division, in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), or in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

(b) Nothing in this division affects the jurisdiction of the juvenile court.

Comment. Subdivision (a) of Section 6221 is new and is added to make clear that the provisions of this division are applicable not only to proceedings brought pursuant to this division, but also in proceedings for dissolution, nullity, and legal separation and in actions brought pursuant to the Uniform Parentage Act.

Subdivision (b) is new is added to help to ensure that conflicts of jurisdiction between the family court and the juvenile court do not arise.

§ 6222. Fees

6222. (a) There is no filing fee for a petition, response, or modification of a protective order filed in a proceeding brought pursuant to this division.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226.

(d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

Comment. Section 6222 restates former Code of Civil Procedure Section 546.5 without substantive change. In subdivisions (b) and (d), references to “an order issued under this division” have been substituted for the former reference to “an order obtained under this section.” The former language was unclear, since former Code of Civil Procedure Section 546.5 did not provide for the issuance of orders. The reference has been corrected to include any of the orders that may be issued under the Domestic Violence Prevention Act — this division of the Family Code.

Note. Subdivision (a) of this section includes amendments made by 1993 Cal. Stat. ch. 583, § 2 (AB 284).

§ 6223. Matters to be considered where custody or visitation order issued pursuant to Domestic Violence Prevention Act

6223. A custody or visitation order issued in a proceeding brought pursuant to this division is subject to Part 2 (commencing with Section 3020) of Division 8 (custody of children).

Comment. Section 6223 is a new provision that provides a cross-reference to the main custody statute in Division 8. This section makes clear that, where a custody or visitation order is issued in a proceeding brought pursuant to the Domestic Violence Prevention Act, the court is to apply the same substantive and procedural rules as would be applied in any other proceeding in which these issues may be determined.

For sections of particular importance in situations involving domestic violence, see Sections 3030 (custody and unsupervised visitation prohibited where parent convicted under certain Penal Code provisions), 3031 (custody or visitation should not be inconsistent with restraining orders), 3100(b) (limiting visitation to situation where third party present), 3131 (action by district attorney where child taken or detained in violation of visitation order).

§ 6224. Required statements in order

6224. An order described in this division shall state on its face the date of expiration of the order and the following statements in substantially the following form:

“This order is effective when made. The law enforcement agency shall enforce it immediately on receipt. It is enforceable anywhere in California by any law enforcement agency that has received the order or is shown a copy of the order. If proof of service on the restrained person has not been received, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it.”

Comment. Section 6224 continues without substantive change former Code of Civil Procedure Section 552, the third paragraph of former Civil Code Section 4359(a), the first sentence of former Civil Code Section 4359(c), and former Civil Code Section 7020(c). This section generalizes the requirements of the former sections to apply to all orders issued pursuant to this division. This is not a substantive change. See Cal. R. Ct. 1285.05 (rev. July 1, 1987) (temporary restraining order in dissolution, nullity, or legal separation proceeding), 1296.10 (rev. Jan. 1, 1991) (order to show cause and temporary restraining order in proceeding pursuant to Domestic Violence Prevention Act or Uniform Parentage Act), 1296.29 (new July 1, 1991) (restraining order after hearing in dissolution, nullity,

or legal separation or in proceedings under Domestic Violence Prevention Act or Uniform Parentage Act).

§ 6225. Explicit statement of address not required

6225. A petition for an order described in this division is valid and the order is enforceable without explicitly stating the address of the petitioner or the petitioner's place of residence, school, employment, the place where the petitioner's child is provided child care services, or the child's school.

Comment. Section 6225 generalizes and continues the last sentence of former Code of Civil Procedure Section 545 without substantive change. This section has been expanded to apply to orders contained in a judgment. The references to "petitioner" have been substituted for the former references to "applicant." These are not substantive changes.

§ 6226. Judicial council forms and instructions

6226. The Judicial Council shall prescribe the form of the orders and any other documents required by this division and shall promulgate forms and instructions for applying for orders described in this division.

Comment. Section 6226 continues without substantive change former Code of Civil Procedure Section 543, the first sentence of the third paragraph of subdivision (b) and the first sentence of the fourth paragraph of subdivision (c) of former Code of Civil Procedure Section 546, and the last paragraph of former Civil Code Section 4359(a).

§ 6227. Remedies cumulative

6227. The remedies provided in this division are in addition to any other civil or criminal remedies that may be available to the petitioner.

Comment. Section 6227 continues former Code of Civil Procedure Section 549 without substantive change. The word "petitioner" has been substituted for "plaintiff" to conform to revisions made in former law. See 1990 Cal. Stat. ch. 752.

PART 3 . EMERGENCY PROTECTIVE ORDERS

CHAPTER 1. GENERAL PROVISIONS

§ 6240. Definitions

6240. As used in this part:

(a) “Judicial officer” means a judge, commissioner, or referee designated under Section 6241.

(b) “Law enforcement officer” means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff’s officer.

(3) A peace officer of the California Highway Patrol.

(4) A peace officer of the California State Police.

(5) A peace officer of the University of California Police Department.

(6) A peace officer of the California State University and College Police Departments.

(7) A peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2 of the Penal Code.

(8) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.

Comment. Section 6240 is a new section that defines terms for the purposes of this part relating exclusively to emergency protective orders. The terms “judicial officer” and “law enforcement officer” are consistent with the Judicial Council form for the emergency protective order. See Cal. R. Ct. 1295.90 (rev. Jan. 1, 1992). See also Section 6215 (“emergency protective order” defined).

In this part, provisions concerning emergency protective orders relating to domestic violence from former Code of Civil Procedure Section 546(b) and provisions concerning emergency protective orders relating to child abuse from former Code of Civil Procedure Section 546(c) have been unified to the extent practicable. This approach is

consistent with the unified Judicial Council form for the emergency protective order.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1229, § 1 (AB 224).

§ 6241. Designation of judicial officer to orally issue ex parte emergency protective orders

6241. The presiding judge of the superior court in each county shall designate at least one judge, commissioner, or referee to be reasonably available to issue orally, by telephone or otherwise, emergency protective orders at all times whether or not the court is in session.

Comment. Section 6241 continues without substantive change the first sentence of the first paragraph of former Code of Civil Procedure Section 546(b). See Section 6240(a) (“judicial officer” defined by reference to this section). See also Section 6215 (“emergency protective order” defined).

CHAPTER 2. ISSUANCE AND EFFECT OF EMERGENCY
PROTECTIVE ORDER

§ 6250. Grounds for ex parte emergency protective order

6250. A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe either or both of the following:

(a) That a person is in immediate and present danger of domestic violence, based on the person’s allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

Comment. Section 6250 continues without substantive change the second sentence of the first paragraph of subdivision (b) and the first sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546. In subdivision (a), the phrase “by the person

against whom the order is sought” has been added. This is not a substantive change. See Sections 6203 (“abuse” defined), 6211 (“domestic violence” defined).

See also Sections 6215 (“emergency protective order” defined), 6240(a) (“judicial officer” defined).

§ 6251. Finding required to issue order

6251. An emergency protective order may be issued only if the judicial officer finds both of the following:

(a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists or that a child is in immediate and present danger of abuse.

(b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence or child abuse.

Comment. Section 6251 continues without substantive change the first sentence of the second paragraph of subdivision (b) and the first sentence of the second paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6203 (“abuse” defined), 6211 (“domestic violence” defined), 6215 (“emergency protective order” defined), 6240(a) (“judicial officer” defined).

§ 6252. Orders included in emergency protective order

6252. An emergency protective order may include any of the following specific orders, as appropriate:

(a) A protective order, as defined in Section 6218.

(b) An order determining the temporary care and control of any minor child of the endangered person and the person against whom the order is sought.

(c) An order authorized in Section 213.5 of the Welfare and Institutions Code, including provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or guardian of the endangered child who is not a restrained party.

Comment. The introductory clause and subdivisions (a) and (b) of Section 6252 continue without substantive change the third sentence of the first paragraph of former Code of Civil Procedure Section 546(b). A reference to “child” has been substituted for “children.” This is not a substantive change. See Section 10 (singular includes plural).

The introductory clause and subdivision (c) continue without substantive change the second sentence of the first paragraph of former Code of Civil Procedure Section 546(c). The reference to the “legal” guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) (“guardian” defined).

See also Sections 6203 (“abuse” defined), 6211 (“domestic violence” defined), 6215 (“emergency protective order” defined).

§ 6253. Contents of order

6253. An emergency protective order shall include all of the following:

(a) A statement of the grounds asserted for the order.

(b) The date and time the order expires.

(c) The address of the superior court for the district or county in which the endangered person resides.

(d) The following statements, which shall be printed in English and Spanish:

(1) “To the Protected Person: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application.”

(2) “To the Restrained Person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be

consulted promptly so that the attorney may assist you in responding to the application.”

(e) In the case of an endangered child, the following statement, which shall be printed in English and Spanish: “This order will last only until the date and time noted above. You may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code from the court at the address noted above. You may seek the advice of an attorney in connection with the application for a more permanent restraining order.”

Comment. Section 6253 continues without substantive change the parts of the second paragraphs of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 that enumerated the contents of an emergency protective order, and the last sentence of the third paragraph of subdivision (b) and the last sentence of the fourth paragraph of subdivision (c) of former Code of Civil Procedure Section 546. The language concerning attorney advice in subdivision (e) has been conformed to the language of subdivision (d)(1). See also Section 6215 (“emergency protective order” defined).

§ 6254. Availability of emergency protective order

6254. The fact that the endangered person has left the household to avoid abuse does not affect the availability of an emergency protective order.

Comment. Section 6254 continues without substantive change the seventh paragraph of subdivision (b) and the seventh paragraph of subdivision (c) of former Code of Civil Procedure Section 546. The endangered person may be an adult or a child. See also Section 6203 (“abuse” defined), 6215 (“emergency protective order” defined).

§ 6255. Issuance of ex parte emergency protective order

6255. An emergency protective order shall be issued without prejudice to any person.

Comment. Section 6255 continues without substantive change the last sentence of the first paragraph of subdivision (b) and the last sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Section 6215 (“emergency protective order” defined).

§ 6256. Expiration of order

6256. An emergency protective order expires at the earlier of the following times:

(a) The close of judicial business on the fifth court day following the day of its issuance.

(b) The seventh calendar day following the day of its issuance.

Comment. Section 6256 supersedes the sixth paragraph of subdivision (b) and the third sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Section 6215 (“emergency protective order” defined).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1229, § 2 (AB 224).

§ 6257. Application for more permanent restraining order

6257. If an emergency protective order concerns an endangered child, the child’s parent or guardian who is not a restrained person, or a person having temporary custody of the endangered child, may apply to the court for a restraining order under Section 213.5 of the Welfare and Institutions Code.

Comment. Section 6257 continues the third paragraph of former Code of Civil Procedure Section 546(c) without substantive change. For provisions relating to orders concerning endangered children, see Section 6250(b), 6251(a), 6252(b)-(c). See also Section 6215 (“emergency protective order” defined). The reference to the “legal” guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) (“guardian” defined).

CHAPTER 3. DUTIES OF LAW ENFORCEMENT OFFICER**§ 6270. Reducing order to writing and signing order**

6270. A law enforcement officer who requests an emergency protective order shall reduce the order to writing and sign it.

Comment. Section 6270 continues without substantive change the second sentence of the second paragraph of subdivision (b) and the

second sentence of the second paragraph of subdivision (c) of former Code of Civil Procedure Section 546. The requirement of this section is satisfied by use of the Judicial Council form. See Cal. R. Ct. 1295.90 (rev. Jan. 1, 1992). See also Sections 6215 (“emergency protective order” defined), 6240(b) (“law enforcement officer” defined).

§ 6271. Service, filing, and delivery of order

6271. A law enforcement officer who requests an emergency protective order shall do all of the following:

(a) Serve the order on the restrained person, if the restrained person can reasonably be located.

(b) Give a copy of the order to the protected person or, if the protected person is a minor child, to a parent or guardian of the endangered child who is not a restrained person, if the parent or guardian can reasonably be located, or to a person having temporary custody of the endangered child.

(c) File a copy of the order with the court as soon as practicable after issuance.

Comment. Section 6271 continues without substantive change the fifth paragraph of subdivision (b) and the sixth paragraph of subdivision (c) of former Code of Civil Procedure Section 546. References to the “legal” guardian have been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) (“guardian” defined).

See Section 6252 (b)-(c) (orders concerning endangered child); see also Sections 6215 (“emergency protective order” defined), 6240(b) (“law enforcement officer” defined).

§ 6272. Means of enforcement; protection of officer from liability

6272. (a) A law enforcement officer shall use every reasonable means to enforce an emergency protective order.

(b) A law enforcement officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.

Comment. Section 6272 restates without substantive change the last paragraph of subdivision (b) and the last paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6215

(“emergency protective order” defined), 6240(b) (“law enforcement officer” defined).

§ 6273. Officer to carry copies of order

6273. A law enforcement officer who requests an emergency protective order shall carry copies of the order while on duty.

Comment. Section 6273 continues without substantive change the fourth paragraph of subdivision (b) and the fifth paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6215 (“emergency protective order” defined), 6240(b) (“law enforcement officer” defined).

PART 4. PROTECTIVE ORDERS AND
OTHER DOMESTIC VIOLENCE
PREVENTION ORDERS

CHAPTER 1. GENERAL PROVISIONS

§ 6300. Issuance on affidavit showing reasonable proof of past act or acts of abuse

6300. An order may be issued under this part, with or without notice, to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.

Comment. Section 6300 continues without substantive change and generalizes the first sentence of former Code of Civil Procedure Section 545 and supersedes the fourth sentence of Section 545. A reference to an order issued under “this part” has been substituted for the former reference to a “temporary” restraining order. This is not a substantive change. See also Sections 6203 (“abuse” defined), 6211 (“domestic violence” defined).

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

§ 6301. Persons who may be granted restraining order

6301. (a) An order under this part may be granted to any person described in Section 6211.

(b) The right to petition for relief shall not be denied because the petitioner has vacated the household to avoid abuse, and in the case of a marital relationship, notwithstanding that a petition for dissolution of marriage, for nullity of marriage, or for legal separation of the parties has not been filed.

Comment. Section 6301 continues the second and third sentences of former Code of Civil Procedure Section 545 without substantive change. A reference to Section 6211 has been substituted for the reference to former Code of Civil Procedure Section 542. This is not a substantive change, since the relevant part of the former section is continued in Section 6211. The former reference to a “temporary” restraining order has been omitted, for consistency with other sections in this part. This is not a substantive change. See also Section 6203 (“abuse” defined).

§ 6302. Notice in order

6302. An order issued under this part shall set forth on its face a notice in substantially the following form:

“NOTICE TO RESTRAINED PERSON: If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you.”

Comment. Section 6302 continues without substantive change the second paragraph of Code of Civil Procedure Section 546(a) and former Civil Code Sections 4359(d) and 7020(d). A reference to “restrained person” has been substituted for references to “defendant” in former Code of Civil Procedure Section 546(a) and former Civil Code Section 7020(d) and to “Petitioner/Respondent” in former Civil Code Section 4359(d). These are not substantive changes. See Cal. R. Ct. 1296.10 (rev. Jan. 1, 1991) (order to show cause and restraining order).

§ 6303. Support person for victim of domestic violence

6303. (a) It is the function of a support person to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person shall assist the person in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person and the other party must be present in close proximity. The support person is not present as a legal advisor and shall not give legal advice.

(b) A support person may accompany either party to any proceeding to obtain a protective order, as defined in Section 6218. Where the party is not represented by an attorney, the support person may sit with the party at the table that is generally reserved for the party and the party's attorney.

(c) Notwithstanding any other provision of law to the contrary, if a court has issued a protective order, a support person may accompany a party protected by the order during a mediation session held pursuant to a proceeding described in Section 3021. The agency charged with providing family court services shall advise the party protected by the order of the right to have a support person during mediation. A mediator may exclude a support person from a mediation session if the support person participates in the mediation session, or acts as an advocate, or the presence of a particular support person is disruptive or disrupts the process of mediation. The presence of the support person does not waive the confidentiality of the mediation, and the support person is bound by the confidentiality of the mediation.

(d) In a proceeding subject to this section, a support person may accompany a party in court where there are allegations or threats of domestic violence and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney.

(e) Nothing in this section precludes a court from exercising its discretion to remove a person from the courtroom who it believes is prompting, swaying, or influencing the party protected by the order.

Comment. Section 6303 continues without substantive change and generalizes former Civil Code Section 4351.6. Subdivision (a) has been revised to refer to the function of a support person, rather than the legislative intent regarding that function. This is not a substantive change. Duplicative references to “the person who alleges he or she is a victim of domestic violence” have been omitted and references to “the person” substituted. In subdivisions (b) and (c), the term “protective order” has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. Section 6218 defines “protective order” to include the orders formerly listed, except as to orders under Code of Civil Procedure 527.6, which provides for similar orders in situations not covered by this division. This is not a substantive change, since, insofar as former Civil Code Section 4351.6 applied to Code of Civil Procedure Section 527.6, the former section is continued in new subdivision (f) of Code of Civil Procedure Section 527.6. See Code Civ. Proc. § 527.6 (civil harassment orders) & Comment. See also Section 6211 (“domestic violence” defined).

In subdivision (c), a reference to a “proceeding described in Section 3021” has been substituted for the narrower reference to an “action or proceeding under this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). See Section 3021 Comment.

Former Civil Code Section 4351.6(e) has been omitted. This is not a substantive change, since the former subdivision duplicated a provision that is continued in Section 6303(a).

§ 6304. Information to parties concerning terms and effect of order

6304. When making a protective order, as defined in Section 6218, where both parties are present in court, the court shall inform both the petitioner and the respondent of the terms of the order, including notice that the respondent is prohibited from purchasing or receiving or attempting to purchase or receive a firearm, and including notice of the penalty for violation.

Comment. Section 6304 continues former Code of Civil Procedure Section 550(f) without substantive change. The reference to “protective

order” has been substituted for the reference to an order “predicated on” what are now Sections 6320-6322. This is not a substantive change, since “protective order” has been defined to include the same orders. See Section 6218 (“protective order” defined). See also Penal Code § 12021 (penalty for violation of firearm prohibition in restraining order).

§ 6305. Conditions for issuance of mutual order

6305. The court may not issue a mutual order enjoining the parties from specific acts of abuse described in Section 6320 unless both parties personally appear and each party presents written evidence of abuse or domestic violence. In this case, written evidence is not required if both parties agree that this requirement does not apply.

Comment. Section 6305 continues without substantive change former Code of Civil Procedure Section 545.5, the second paragraph of former Civil Code Section 4359(a), and former Civil Code Section 7020(f). The references in the former sections to the definition of domestic violence have been omitted. These are not substantive changes, since the definition applicable to this section is the same. See Section 6211 (“domestic violence” defined); see also Section 6302 (“abuse” defined). A reference to Section 6320 has been substituted for a specific list of acts. This is not a substantive change, since Section 6320 duplicates the omitted list.

CHAPTER 2. ISSUANCE OF ORDERS

Article 1. Ex Parte Orders

§ 6320. Enjoining harassment, threats, and violence

6320. The court may issue an ex parte order enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family and household members.

Comment. Section 6320 restates part of the first sentence of former Code of Civil Procedure Section 546(a) without substantive change, and continues former Civil Code Sections 4359(a)(2) and 7020(a)(1) without

substantive change. A reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

The language preventing “contacting repeatedly by mail with the intent to harass” has been added. This language is drawn from a 1992 amendment to Penal Code Section 273.6. See 1992 Cal. Stat. ch. 1209, §§ 1-2.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Section 6305 (conditions for issuance of mutual restraining order).

§ 6321. Exclusion from dwelling

6321. (a) The court may issue an ex parte order excluding a party from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence for the period of time and on the conditions the court determines, regardless of which party holds legal or equitable title or is the lessee of the dwelling.

(b) The court may issue an order under subdivision (a) only on a showing of all of the following:

(1) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(2) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(3) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

Comment. Section 6321 restates without substantive change part of the first sentence of Code of Civil Procedure Section 546(a), and continues without substantive change the last paragraph of former Code of

Civil Procedure Section 546(a) and former Civil Code Sections 4359(a)(3) and 7020(a)(2). This section supersedes the third part of former Civil Code Section 5102(a). The reference to “the common dwelling of both parties” is drawn from former Civil Code Section 7020(b). This is not a substantive change, but rather is added to clarify application of the section to unmarried persons. A reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

§ 6322. Enjoining additional specified behaviors

6322. The court may issue an ex parte order enjoining a party from specified behavior that the court determines is necessary to effectuate orders under Section 6320 or 6321.

Comment. Section 6322 restates without substantive change part of the first sentence of former Code of Civil Procedure Section 546(a), and continues without substantive change former Civil Code Sections 4359(a)(6) and 7020(a)(3). A reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

§ 6323. Determining temporary custody and visitation

6323. Subject to Section 3064:

(a) The court may issue an ex parte order determining the temporary custody of a minor child on the conditions the court determines.

(b) The court may issue an ex parte order determining the right of a party to visit a minor child on the conditions the court determines in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, in an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), or in a proceeding

commenced under this division in the case of a marital relationship between the parties.

Comment. Section 6323 restates without substantive change part of the first sentence of Code of Civil Procedure Section 546(a), and continues without substantive change former Civil Code Sections 4359(a)(4) and 7020(a)(4). The intention of this section is to continue the prior law and practice. The reference to Section 3064 has been added. To the extent that the court's authority to issue custody orders ex parte is limited by Section 3064, this limitation also applies to visitation. A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

Section 6223 requires that procedural and substantive rules contained in Part 2 (commencing with Section 3020) of Division 8 of this code be applied where a court determines custody or visitation in a proceeding brought pursuant to the Domestic Violence Prevention Act. For sections of particular importance in situations involving domestic violence, see Sections 3030 (custody and unsupervised visitation prohibited where parent convicted under certain Penal Code provisions), 3031 (custody or visitation should not be inconsistent with restraining orders), 3100(b) (limiting visitation to situation where third party present), 3131 (action by district attorney where child taken or detained in violation of visitation order). See also Cal. R. Ct. 1285.05 (rev. July 1, 1991) (temporary restraining order), 1296.10 (rev. Jan. 1, 1991) (order to show cause and temporary restraining order).

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Section 3021 (Part 2 of Division 8 applicable to proceeding for dissolution, nullity, and legal separation and to action pursuant to the Uniform Parentage Act).

§ 6324. Determining temporary use of property and payment of debts

6324. The court may issue an ex parte order determining the temporary use, possession, and control of real or personal property of the parties and the payment of any liens or encumbrances coming due during the period the order is in effect.

Comment. Section 6324 restates part of the first sentence of Code of Civil Procedure Section 546(a) without substantive change, and continues part of former Civil Code Section 4359(a)(5) without substantive

change. Former Code of Civil Procedure Section 546(a) did not provide for issuance of an ex parte order determining temporary the use of property and the payment of debts for unmarried parties. This section has been generalized to allow issuance of the order in cases where the parties are not married, both in a proceeding brought pursuant to the Domestic Violence Prevention Act and in an action brought pursuant to the Uniform Parentage Act. Authorizing the court to issue an order determining the use of the property of unmarried parties is not a substantive change, since the Judicial Council form allows this order. See Cal. R. Ct. 1296.10 (rev. Jan. 1, 1991) (order to show cause and temporary restraining order). A reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

§ 6325. Restraints on community, quasi-community, and separate property of married persons

6325. The court may issue an ex parte order restraining a married person from specified acts in relation to community, quasi-community, and separate property as provided in Section 2045.

Comment. Section 6325 restates part of the first sentence of Code of Civil Procedure Section 546(a) without substantive change.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Section 11 (reference to married person includes formerly married person).

§ 6326. Time limits on issuance or denial of ex parte order

6326. An ex parte order under this article shall be issued or denied on the same day that the application is submitted to the court, unless the application is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

Note. This section was added by 1993 Cal. Stat. ch. 148, § 2 (AB 1331).

§ 6327. Application of general rules

6327. Part 4 (commencing with Section 240) of Division 2 applies to the issuance of an ex parte order under this article.

Comment. Section 6327 makes clear that the general rules concerning issuance of temporary restraining orders apply to this article.

Note. This section was renumbered by 1993 Cal. Stat. ch. 876, § 27.2 (SB 1068).

Article 2. Orders Issuable After Notice and Hearing**§ 6340. Orders that may be issued ex parte may also be issued after notice and hearing**

6340. (a) The court may issue any of the orders described in Article 1 (commencing with Section 6320) after notice and a hearing.

(b) The court may issue an order described in Section 6321 excluding a person from a dwelling if the court finds that physical or emotional harm would otherwise result to the other party, to a person under the care, custody, and control of the other party, or to a minor child of the parties or of the other party.

Comment. Section 6340 generalizes and continues without substantive change former Code of Civil Procedure Section 547(a), the last part of former Civil Code Section 5102(a), and the first two sentences of former Civil Code Section 7020(b). In subdivision (b), the phrase “if the court finds” has been substituted for inconsistent references in the former sections to a “showing” by the petitioner and a “finding” by the court.

This section generalizes the former sections as follows:

(1) The former Family Law Act, applicable to proceedings for dissolution, nullity, and legal separation, did not contain a provision for orders after hearing, except in the case of former Civil Code Section 5102 which provided for orders excluding a party from a dwelling. This section makes clear that any of the orders described in Section 6320 may be issued after notice and hearing in a proceeding for dissolution, nullity, or legal separation. This is not a substantive change. See Cal. R. Ct. 1296.29 (July 1, 1991) (restraining order after hearing).

(2) Former Civil Code Section 7020(b) did not provide for orders determining the temporary use of property or payment of debts in a proceeding under the Uniform Parentage Act. This section generalizes

former Code of Civil Procedure Section 547(a) which provided for these orders as between unmarried parties in a proceeding under the Domestic Violence Prevention Act. This is not a substantive change. See Cal. R. Ct. 1296.31E (Jan. 1, 1992) (domestic violence miscellaneous orders attachment).

§ 6341. Payment of child support by presumed father

6341. (a) If there is a presumption under Section 7611 that the respondent is the natural father of a minor child, and the child is in the custody of the petitioner, after notice and a hearing, the court may order a party to pay an amount necessary for the support and maintenance of the child if the order would otherwise be authorized in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(b) An order issued pursuant to this section shall be without prejudice in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

Comment. Section 6341 continues former Code of Civil Procedure Section 547(b) without substantive change.

§ 6342. Payment of restitution for loss of earnings and out-of-pocket expenses

6342. (a) After notice and a hearing, the court may issue any of the following orders:

(1) An order that restitution be paid to the petitioner for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing, incurred as a direct result of the abuse inflicted by the respondent or any actual physical injuries sustained from the abuse.

(2) An order that restitution be paid by the petitioner for out-of-pocket expenses incurred by a party as a result of an ex parte order that is found by the court to have been issued on

facts shown at a noticed hearing to be insufficient to support the order.

(3) An order that restitution be paid by the respondent to any public or private agency for the reasonable cost of providing services to the petitioner required as a direct result of the abuse inflicted by the respondent or any actual injuries sustained therefrom.

(b) An order for restitution under this section shall not include damages for pain and suffering.

Comment. Section 6342 continues former Code of Civil Procedure Section 547(c) and the last two sentences of former Civil Code Section 7020(b) without substantive change. References to “petitioner” have been substituted for the former references to “family or household member” in the former Code of Civil Procedure section. References to “petitioner” have been substituted for references to “plaintiff” in the former Civil Code section. These are not substantive changes. See also Section 6203 (“abuse” defined).

§ 6343. Participation in counseling

6343. (a) After notice and a hearing, the court may issue an order requiring any party to participate in counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, where it is shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous instances of domestic violence. The court may also order a restrained party to participate in batterer’s treatment counseling.

(b) Where there has been a history of domestic violence between the parties or where a protective order, as defined in Section 6218, is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or who is protected by the order, the parties shall participate in counseling separately and at separate times. The

court may also order a restrained party to participate in batterer's treatment counseling for up to one year, provided that the program selected has counseling available for the designated period of time.

(c) Each party shall bear the cost of his or her own counseling separately, unless good cause appears for a different apportionment.

Comment. Section 6343 continues former Code of Civil Procedure Section 547(d) without substantive change and includes 1993 amendments. See 1993 Cal. Stat. ch. 197, § 2 (amending repealed Fam. Code § 5754). The requirements for meeting separately with the counselor have been revised to provide that either a history of violence or the existence of a protective order is sufficient. This is consistent with other sections in the code. See Sections 3113 (separate meetings with court appointed investigator), 3181 (separate meetings with mediator), 3192 (separate meetings with counselor appointed in custody proceeding). See also Sections 6211 ("domestic violence" defined), 6218 ("protective order" defined).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 876, § 27.3 (SB 1068).

§ 6344. Payment of attorney's fees and costs

6344. After notice and a hearing, the court may issue an order for the payment of attorney's fees and costs of the prevailing party.

Comment. Section 6344 continues former Code of Civil Procedure Section 547(e) without substantive change. See also Sections 270-272 (general provisions for attorney's fees and costs).

§ 6345. Duration of restraining order granted after notice and hearing

6345. (a) In the discretion of the court, an order issued after notice and a hearing under this article may have a duration of not more than three years, unless otherwise terminated or extended by further order of the court either on written stipulation filed with the court or on the motion of a party.

(b) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(c) Nothing in this section prohibits parties, by written stipulation, from creating an order with a permanent duration.

Comment. Section 6345 continues without substantive change and generalizes former Code of Civil Procedure Section 548 and the third sentence of former Civil Code Section 7020(b). In subdivision (a), the requirement that the stipulation be written has been generalized. Former Civil Code Section 7020(b) did not contain a writing requirement, but rather allowed stipulation by “mutual consent.” In subdivision (c), the reference to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code) has been omitted. This expands application of this subdivision to all orders that may be issued after notice and a hearing under this article, whether issued in a proceeding for dissolution, nullity, or legal separation, in an action brought pursuant to the Uniform Parentage Act, or in a proceeding brought pursuant to the Domestic Violence Prevention Act.

Article 3. Orders Included in Judgment

§ 6360. Orders included in judgment

6360. A judgment entered in a proceeding for dissolution of marriage, for nullity of marriage, for legal separation of the parties, in a proceeding brought pursuant to this division, or in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12) may include a protective order as defined in Section 6218.

Comment. Section 6360 continues without substantive change and generalizes the first sentences of former Civil Code Sections 4458, 4516, and 7021. The former sections applied only to judgments pursuant to the former Family Law Act and the Uniform Parentage Act, whereas this section allows the inclusion of these orders in a judgment in a proceeding brought pursuant to the Domestic Violence Prevention Act. The reference to a “protective order” has been substituted for the former reference to orders that may be issued pursuant to what are now Sections 6320-6322. This is not a substantive change, since “protective order” has been defined to include the same orders. See Section 6218 (“protective order”

defined). See also Sections 6380 (transmittal to local law enforcement agency), 6388 (criminal penalty for violation of order).

§ 6361. Statements required where order included in judgment

6361. If an order is included in a judgment pursuant to this article, the judgment shall state on its face both of the following:

(a) Which provisions of the judgment are the orders.

(b) The date of expiration of the orders, which shall be not more than three years from the date the judgment is issued, unless extended by the court after notice and a hearing.

Comment. Section 6361 continues without substantive change and generalizes the second sentences of former Civil Code Sections 4458, 4516, and 7021. The former sections applied only to judgments pursuant to the former Family Law Act and the Uniform Parentage Act, whereas this section allows the inclusion of these orders in any judgment under this code. See also Sections 6380 (transmittal to local law enforcement agency), 6388 (criminal penalty for violation of order).

CHAPTER 3. REGISTRATION AND ENFORCEMENT OF ORDERS

§ 6380. Transmittal to local law enforcement agency

6380. The court shall order the petitioner or the attorney for the petitioner to deliver, or the county clerk to mail, a copy of an order issued under this part, or an extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, the residence of a party with care, custody, and control of a child to be protected from domestic violence, and other locations where the court determines that acts of domestic violence against the petitioner and any other person protected by the order are likely to occur.

Comment. Section 6380 continues without substantive change the first sentence of the first paragraph of former Code of Civil Procedure Section 550(a), the first sentence of the first paragraph of former Civil Code Section 4359(b), the first sentence of former Civil Code Section 7020(e), and the third sentences of former Civil Code Sections 4458, 4516, and 7021. The reference to other locations where the court determines that acts of violence against “any other person protected by the order” are likely to occur has been added. This conforms this section to Section 6320 which allows the court to extend the protection of the order to other named family and household members. See also Section 6211 (“domestic violence” defined).

§ 6381. Enforcement of order

6381. (a) Notwithstanding Section 6380 and subject to subdivision (b), an order issued under this part is enforceable in any place in this state.

(b) An order issued under this part is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to Section 6380 or has otherwise received a copy of the order, or the officer enforcing the order has been shown a copy of the order.

Comment. Section 6381 continues without substantive change and generalizes the last paragraph of former Civil Code Section 4359(b). The former section applied only to the former Family Law Act.

§ 6382. Availability of information concerning order

6382. Each appropriate law enforcement agency shall make available to any law enforcement officer responding to the scene of reported domestic violence, through an existing system for verification, information as to the existence, terms, and current status of an order issued under this part.

Comment. Section 6382 continues without substantive change the first sentence of the second paragraph of former Code of Civil Procedure Section 550(a), the last sentence of the first paragraph of former Civil Code Section 4359(b), and the last sentence of former Civil Code Section 7020(e). See also Section 6211 (“domestic violence” defined).

§ 6383. Service of protective order by law enforcement officer

6383. (a) An order issued under this part may, on request of the petitioner, be served on the respondent by any law enforcement officer who is present at the scene of reported domestic violence involving the parties to the proceeding.

(b) The moving party shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and transmit to the issuing court.

(c) It is a rebuttable presumption that the proof of service was signed on the date of service.

Comment. Section 6383 continues without substantive change and generalizes the last two sentences of the second paragraph of former Code of Civil Procedure Section 550(a), former Code of Civil Procedure Section 550(h), former Civil Code Section 4359(e), and former Civil Code Section 7020(g). See also Section 6211 (“domestic violence” defined).

§ 6384. When personal service not required

6384. (a) If a person named in an order issued under this part has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(b) The judicial forms for orders issued under this part shall contain a statement in substantially the following form:

“NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED.”

Comment. Subdivision (a) of Section 6384 continues former Code of Civil Procedure Section 550(e) without substantive change. In subdivision (a), a reference to an order issued under “this part” has been substituted for the former reference to “this section.” The former reference was unclear, since former Code of Civil Procedure Section 550 did not pro-

vide for the issuance of orders. The reference has been corrected to include any of the orders issued under Part 4 of this division.

Subdivision (b) of Section 6384 continues former Code of Civil Procedure Section 550(g) without substantive change. The former reference to “temporary restraining orders or restraining orders issued after a hearing” has been replaced by a reference to orders issued under “this part.” This is not a substantive change.

§ 6385. Notice to Department of Justice

6385. (a) Except as provided in subdivision (b), on receipt of a copy of a protective order, as defined in Section 6218, together with the subsequent proof of service of the protective order, the local law enforcement agency having jurisdiction over the residence of the petitioner shall immediately notify the Department of Justice regarding the name, race, date of birth, and other personal descriptive information as required by a form prescribed by the Department of Justice, the date of issuance of the order, and the duration of the order or its expiration date.

(b) Proof of service of the protective order is not required for the purposes of this section if the order indicates on its face that both parties were personally present at the hearing where the order was issued and that, for the purpose of Section 6384, no proof of service is required.

(c) The failure of the petitioner to provide the Department of Justice with the personal descriptive information regarding the person restrained does not invalidate the protective order.

(d) If a court issues a modification, extension, or termination of the protective order described in subdivision (a), the court shall notify the law enforcement agency having jurisdiction over the residence of the petitioner. The law enforcement agency shall then immediately notify the Department of Justice.

(e) There is no civil liability on the part of, and no cause of action arises against, an employee of a local law enforcement agency or the Department of Justice, acting within the scope

of employment, if a person described in subdivision (g) of Section 12021 of the Penal Code unlawfully purchases or receives or attempts to purchase or receive a firearm and a person is injured by that firearm or a person who is otherwise entitled to receive a firearm is denied a firearm and either wrongful action is due to a failure of a court to provide the notification provided for in this section.

Comment. Section 6385 continues former Code of Civil Procedure Section 550(b)-(d) without substantive change. The word “petitioner” has been substituted for “plaintiff” to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. The reference to “protective order” has been substituted for the reference to an order based on what are now Sections 6320-6322. This is not a substantive change, since “protective order” has been defined to include the same orders. See Section 6218 (“protective order” defined). In subdivision (c), a reference to providing information to the “Department of Justice” has been substituted for the reference to “local law enforcement,” since the purpose of this section is the provision of information to the Department of Justice. This is not a substantive change.

See also Section 6304 (court to provide information to parties concerning terms and effect of order); Penal Code § 12021 (criminal penalty for acquiring firearm while subject to restraining order against domestic violence).

§ 6386. Appointment of counsel and payment of fees and costs to enforce order

6386. (a) The court may, in its discretion, appoint counsel to represent the petitioner in a proceeding to enforce the terms of a protective order, as defined in Section 6218.

(b) In a proceeding in which private counsel was appointed by the court pursuant to subdivision (a), the court may order the respondent to pay reasonable attorney’s fees and costs incurred by the petitioner.

Comment. Section 6386 restates former Code of Civil Procedure Section 553 without substantive change. The words “petitioner” and “respondent” have been substituted for “plaintiff” and “defendant” to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. The reference to “protective order” has been substituted for the reference to an order based on what are now Sections 6320-6322. This is not a

substantive change, since “protective order” has been defined to include the same orders. See Section 6218 (“protective order” defined). See also Sections 270-272 (general provisions for attorney’s fees and costs).

§ 6387. Clerk to provide petitioner with copies of order

6387. The court shall order the county clerk to provide to a petitioner, without cost, five certified, stamped, and endorsed copies of any order issued under this part, and of an extension, modification, or termination of the order.

Comment. Section 6387 continues without substantive change the last sentence of the first paragraph of former Code of Civil Procedure Section 550(a).

§ 6388. Criminal penalty for violation of order

6388. A willful and knowing violation of a protective order, as defined in Section 6218, is a crime punishable as provided by Section 273.6 of the Penal Code.

Comment. Section 6388 continues without substantive change former Code of Civil Procedure Section 551, the last sentence of former Civil Code Section 4359(c), former Civil Code Section 7020(h), and the last sentences of former Civil Code Section 4458, 4516, and 7021. The reference to “protective order” has been substituted for the reference to an order based on what are now Sections 6320-6322. This is not a substantive change, since “protective order” has been defined to include the same orders. See Section 6218 (“protective order” defined).

DIVISION 11. MINORS

PART 1. AGE OF MAJORITY

§ 6500. Minor

6500. A minor is an individual who is under 18 years of age. The period of minority is calculated from the first minute of the day on which the individual is born to the same minute of the corresponding day completing the period of minority.

Comment. The first sentence of Section 6500 restates former Civil Code Section 25 without substantive change. The second sentence continues former Civil Code Section 26 without substantive change. The word “individual” has been substituted for “persons.” This is not a substantive change. See also Sections 7002 (conditions for emancipation), 7050 (emancipated minor considered an adult).

§ 6501. Adult

6501. An adult is an individual who is 18 years of age or older.

Comment. Section 6501 restates former Civil Code Section 27 without substantive change. The word “individual” has been substituted for “persons.” This is not a substantive change. See also Sections 7002 (conditions for emancipation), 7050 (emancipated minor considered an adult).

§ 6502. Transitional provision

6502. (a) The use of or reference to the words “age of majority,” “age of minority,” “adult,” “minor,” or words of similar intent in any instrument, order, transfer, or governmental communication made in this state:

(1) Before March 4, 1972, makes reference to individuals 21 years of age and older, or younger than 21 years of age.

(2) On or after March 4, 1972, makes reference to individuals 18 years of age and older, or younger than 18 years of age.

(b) Nothing in subdivision (a) or in Chapter 1748 of the Statutes of 1971 prevents amendment of any court order, will, trust, contract, transfer, or instrument to refer to the 18-year-old age of majority if the court order, will, trust, contract, transfer, or instrument satisfies all of the following conditions:

(1) It was in existence on March 4, 1972.

(2) It is subject to amendment by law, and amendment is allowable or not prohibited by its terms.

(3) It is otherwise subject to the laws of this state.

Comment. Section 6502 continues former Civil Code Section 25.1 without substantive change. The word "individual" has been substituted for "persons." This is not a substantive change.

PART 2 . RIGHTS AND LIABILITIES; CIVIL ACTIONS AND PROCEEDINGS

§ 6600. Civil liability of minor

6600. A minor is civilly liable for a wrong done by the minor, but is not liable in exemplary damages unless at the time of the act the minor was capable of knowing that the act was wrongful.

Comment. Section 6600 continues without substantive change the part of former Civil Code Section 41 that related to minors. The part of the former section that related to persons of unsound mind is continued in new Civil Code Section 41.

§ 6601. Enforcement of minor's rights by civil proceeding

6601. A minor may enforce the minor's rights by civil action or other legal proceedings in the same manner an adult, except that a guardian must conduct the action or proceedings.

Comment. Section 6601 continues former Civil Code Section 42 without substantive change. See Code Civ. Proc. §§ 372 (minor must appear either by a guardian of the estate or by a guardian ad litem), 373 (appointment of guardian ad litem to represent interest of minor); Lab.

Code §§ 5307.5, 5408 (appointment of trustee or guardian ad litem to represent minor in workers' compensation proceeding); Prob. Code §§ 1003 (appointment of guardian ad litem to represent interest of minor in proceeding under Probate Code), 2462 (representation by guardian of estate in actions and proceedings), 2500-2507 (compromise of claims, actions, and proceedings by guardian), 3500, 3600-3603 (compromise by parent of minor's disputed claim). For related provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(4) (emancipated minor may sue in own name), 7050(e)(5) (emancipated minor may compromise claim).

§ 6602. Minor's attorney's fees

6602. A contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved, on petition by an interested person, by the court in which the litigation is pending or by the court having jurisdiction of the guardianship estate of the minor. If the contract is not approved and a judgment is recovered by or on behalf of the minor, the attorney's fees chargeable against the minor shall be fixed by the court rendering the judgment.

Comment. Section 6602 continues former Probate Code Section 3302 without substantive change. For related provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(2) (emancipated minor may enter binding contract), 7050(e)(4) (emancipated minor may sue in own name), 7050(e)(5) (emancipated minor may compromise claim).

PART 3 . C O N T R A C T S

CHAPTER 1. CAPACITY TO CONTRACT

§ 6700 Contractual capacity of minor

6700. Except as provided in Section 6701, a minor may make a contract in the same manner as an adult, subject to the power of disaffirmance under Chapter 2 (commencing with

Section 6710), and subject to Part 1 (commencing with Section 300) of Division 3 (validity of marriage).

Comment. Section 6700 restates former Civil Code Section 34 without substantive change. The former reference to the repealed title on master and servant has been omitted as obsolete. For related provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

§ 6701. Limitation on authority of minor

6701. A minor cannot do any of the following:

- (a) Give a delegation of power.
- (b) Make a contract relating to real property or any interest therein.
- (c) Make a contract relating to any personal property not in the immediate possession or control of the minor.

Comment. Section 6701 continues former Civil Code Section 33 without substantive change. For related provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(2) (emancipated minor may make binding contract or delegation), 7050(e)(3) (emancipated minor may convey real or personal property).

CHAPTER 2. DISAFFIRMANCE OF CONTRACTS

§ 6710. Right of disaffirmance

6710. Except as otherwise provided by statute, a contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards or, in case of the minor's death within that period, by the minor's heirs or personal representative.

Comment. Section 6710 continues former Civil Code Section 35 without substantive change. "Except as otherwise provided by statute" has been substituted for the specific sections referred to in the introductory clause of the former section. For exceptions to the right of disaffirmance, see Sections 6711 (contract made under express statutory authority), 6712 (contracts for necessities), 6713 (protection of good faith purchaser), 6751 (contract in arts, entertainment, or professional

sports approved by court), 6921 (consent given by minor to medical or dental care). For related provisions concerning emancipated minors, sections 7002 (conditions for emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

§ 6711. Contract made under express statutory authority

6711. A minor cannot disaffirm an obligation, otherwise valid, entered into by the minor under the express authority or direction of a statute.

Comment. Section 6711 continues former Civil Code Section 37 without substantive change.

§ 6712. Contracts for necessities

6712. A contract, otherwise valid, entered into during minority, may not be disaffirmed on that ground either during the actual minority of the person entering into the contract, or at any time thereafter, if all of the following requirements are satisfied:

(a) The contract is to pay the reasonable value of things necessary for the support of the minor or the minor's family.

(b) These things have been actually furnished to the minor or to the minor's family.

(c) The contract is entered into by the minor when not under the care of a parent or guardian able to provide for the minor or the minor's family.

Comment. Section 6712 continues former Civil Code Section 36(a)(1) without substantive change. For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

§ 6713. Protection of good faith purchaser

6713. If, before the contract of a minor is disaffirmed, goods the minor has sold are transferred to another purchaser who bought them in good faith for value and without notice of the transferor's defect of title, the minor cannot recover the goods from an innocent purchaser.

Comment. Section 6713 continues former Civil Code Section 35a without substantive change. For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

CHAPTER 3. CONTRACTS IN ART, ENTERTAINMENT, AND PROFESSIONAL SPORTS

§ 6750. Types of contracts governed by this chapter

6750. This chapter applies to the following contracts:

(a) A contract pursuant to which a person is employed or agrees to render artistic or creative services. “Artistic or creative services” includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor, or designer.

(b) A contract pursuant to which a person agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field.

(c) A contract pursuant to which a person is employed or agrees to render services as a participant or player in a professional sport, including, but not limited to, services as a professional boxer, professional wrestler, or professional jockey.

Comment. Section 6750 continues without substantive change the first part of subdivision (a)(2)(A), subdivision (a)(2)(B), and the first part of subdivision (a)(3) of former Civil Code Section 36. References to “agreement” have been omitted as surplus. See Civ. Code § 1549 (“contract” defined). See also Lab. Code § 1700.37 (limitation on minor’s right to disaffirm contract with licensed talent agency).

§ 6751. Contract approved by court not subject to disaffirmance

6751. (a) A contract, otherwise valid, of a type described in Section 6750, entered into during minority, cannot be disaffirmed on that ground either during the minority of the person entering into the contract, or at any time thereafter, if the contract has been approved by the superior court in the county in which the minor resides or is employed or, if the minor neither resides in nor is employed in this state, by the superior court of the county in which any party to the contract has its principal office in this state for the transaction of business.

(b) Approval of the court may be given on petition of either party to the contract, after such reasonable notice to the other party to the contract as is fixed by the court, with opportunity to such other party to appear and be heard.

(c) Approval of the court given under this section extends to the whole of the contract and all of its terms and provisions, including, but not limited to, any optional or conditional provisions contained in the contract for extension, prolongation, or termination of the term of the contract.

Comment. Section 6751 continues without substantive change the introductory part of subdivision (a), the last part of subdivision (a)(2)(A), the last part of subdivision (a)(3), and subdivision (b) of former Civil Code Section 36. References to “agreement” have been omitted as surplus. See Civ. Code § 1549 (“contract” defined). See also Lab. Code § 1700.37 (limitation on minor’s right to disaffirm contract with licensed talent agency). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

§ 6752. Court order setting aside net earnings for benefit of minor

6752. (a) Notwithstanding any other statute, in an order approving a contract of a minor of a type described in Section 6750, the court may require that the portion of the net earnings of the minor, not exceeding one-half thereof, that the court determines is just and proper, be set aside and preserved

for the benefit of the minor, either in a trust fund or other savings plan approved by the court.

(b) The court may withhold approval of the contract until the parent or parents or guardian, as the case may be, execute and file with the court written consent to the making of the order described in subdivision (a).

(c) “Net earnings of the minor” for the purposes of this section means the total sum received for the services of the minor pursuant to the contract less all of the following:

(1) All sums required by law to be paid as taxes to any government or governmental agency.

(2) Reasonable sums expended for the support, care, maintenance, education, and training of the minor.

(3) Fees and expenses paid in connection with procuring the contract or maintaining the employment of the minor.

(4) Attorney’s fees for services rendered in connection with the contract and other business of the minor.

Comment. Section 6752 restates former Civil Code Section 36.1 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

§ 6753. Modification or termination of trust or other savings plan

6753. The court has continuing jurisdiction over a trust or other savings plan established pursuant to Section 6752 and may at any time, on good cause shown, order that the trust or other savings plan be amended or terminated, notwithstanding the provisions of the declaration of trust or other savings plan. The order may be made only after such reasonable notice to the beneficiary and to the parent or parents or guardian, if any, as is fixed by the court, with opportunity of all such parties to appear and be heard.

Comment. Section 6753 continues former Civil Code Section 36.2 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

PART 4 . MEDICAL TREATMENT

CHAPTER 1. DEFINITIONS

§ 6900. Application of definitions

6900. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 6900 is new and is comparable to Section 50.

§ 6901. “Dental care”

6901. “Dental care” means X-ray examination, anesthetic, dental or surgical diagnosis or treatment, and hospital care by a dentist licensed under the Dental Practice Act.

Comment. Section 6901 continues without substantive change and generalizes the last part of former Civil Code Section 25.8 and the last part of the first sentence of the first paragraph of former Civil Code Section 34.6.

§ 6902. “Medical care”

6902. “Medical care” means X-ray examination, anesthetic, medical or surgical diagnosis or treatment, and hospital care under the general or special supervision and upon the advice of or to be rendered by a physician and surgeon licensed under the Medical Practice Act.

Comment. Section 6902 continues without substantive change and generalizes the second part of former Civil Code Section 25.8 and part of the first sentence of the first paragraph of former Civil Code Section 34.6.

§ 6903. “Parent or guardian”

6903. “Parent or guardian” means either parent if both parents have legal custody, or the parent or person having legal custody, or the guardian, of a minor.

Comment. Section 6903 continues without substantive change and generalizes the first part of former Civil Code Section 25.8. The reference to the “legal” guardian has been omitted as surplus. This conforms

with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) (“guardian” defined).

CHAPTER 2. CONSENT BY PERSON HAVING CARE OF MINOR OR BY COURT

§ 6910. Parent or guardian may authorize care provider to consent

6910. The parent or guardian of a minor may authorize in writing an adult into whose care a minor has been entrusted to consent to medical care or dental care, or both, for the minor.

Comment. Section 6910 restates former Civil Code Section 25.8 without substantive change. See Sections 6901 (“dental care” defined), 6902 (“medical care” defined), 6903 (“parent or guardian” defined). See also Prob. Code § 2353 (guardian’s right to consent to medical treatment same as parent with legal custody); Health & Safety Code § 1530.6 (foster care licensees authorized to consent to ordinary medical and dental treatment for child). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6911. Court consent

6911. (a) Upon application by a minor, the court may summarily grant consent for medical care or dental care or both for the minor if the court determines all of the following:

(1) The minor is 16 years of age or older and resides in this state.

(2) The consent of a parent or guardian is necessary to permit the medical care or dental care or both, and the minor has no parent or guardian available to give the consent.

(b) No fee may be charged for proceedings under this section.

Comment. Section 6911 restates without substantive change former Probate Code Section 3301, insofar as that section related to consent to medical care. The reference to “dental care” has been added. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 6901 (“dental care” defined), 6902 (“medical care” defined), 6903 (“parent or guardian”

defined). Section 6911 does not apply if the minor is under the age of 16 years, but in such a case, a temporary guardian may be appointed to give consent to medical care or dental care. See Prob. Code §§ 2252(b)(1), 2353. For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

CHAPTER 3. CONSENT BY MINOR

§ 6920. Minor's capacity to consent to medical or dental care without consent of parent or guardian

6920. Subject to the limitations provided in this chapter, notwithstanding any other provision of law, a minor may consent to the matters provided in this chapter, and the consent of the minor's parent or guardian is not necessary.

Comment. Section 6920 generalizes provisions found in former Civil Code Sections 25.9, 34.5, 34.6, 34.7, 34.8, 34.9, and 34.10. References to "parents" have been omitted as surplus. See Section 10 (singular includes the plural). References to the "legal" guardian have been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined). See also Section 6903 ("parent or guardian" defined). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

Former Civil Code Section 25.5, which authorized a minor to consent to the donation of blood subject to certain limitations, has not been continued in this chapter, because it was surplus. See Health & Safety Code § 1607.5 (minor's right to consent to donation of blood). Where a minor consents to the donation of blood pursuant to Health and Safety Code Section 1607.5, this consent is not subject to disaffirmance. See Section 6711 (obligation entered into under express statutory authority not subject to disaffirmance).

§ 6921. Minor's consent not subject to disaffirmance

6921. A consent given by a minor under this chapter is not subject to disaffirmance because of minority.

Comment. Section 6921 generalizes provisions found in former Civil Code Sections 25.9, 34.5, 34.6, 34.7, 34.8, 34.9, and 34.10.

§ 6922. Consent by minor 15 or older living separately

6922. (a) A minor may consent to the minor's medical care or dental care if all of the following conditions are satisfied:

(1) The minor is 15 years of age or older.

(2) The minor is living separate and apart from the minor's parents or guardian, whether with or without the consent of a parent or guardian and regardless of the duration of the separate residence.

(3) The minor is managing the minor's own financial affairs, regardless of the source of the minor's income.

(b) The parents or guardian are not liable for medical care or dental care provided pursuant to this section.

(c) A physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian.

Comment. Section 6922 restates former Civil Code Section 34.6 without substantive change. See Sections 6901 ("dental care" defined), 6902 ("medical care" defined), 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). References to "parents" have been omitted as surplus. See Section 10 (singular includes plural). The reference to the "legal" guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined). See also Section 6903 ("parent or guardian" defined). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6924. Consent by minor to mental health treatment or counseling or residential shelter services

6924. (a) As used in this section:

(1) "Mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) A professional person, as defined in paragraph (2).

(2) “Professional person” means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations.

(B) A marriage, family and child counselor as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as described in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) The chief administrator of an agency referred to in paragraph (1) or (3).

(3) “Residential shelter services” means any of the following:

(A) The provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

(B) The provision of other support services on a temporary or emergency basis by any professional person as defined in paragraph (2).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.

(d) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and

then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

(f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

Comment. Section 6924 restates former Civil Code Section 25.9 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). Most references to "parents" have been omitted as surplus. See Section 10 (singular includes plural). The reference to the "legal" guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined). See also Section 6903 ("parent or guardian" defined). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (minor may consent to medical, dental, or psychiatric care).

§ 6925. Consent by minor to pregnancy treatment

6925. (a) A minor may consent to medical care related to the prevention or treatment of pregnancy.

(b) This section does not authorize a minor:

(1) To be sterilized without the consent of the minor's parent or guardian.

(2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 25958 of the Health and Safety Code.

Comment. Section 6925 restates former Civil Code Section 34.5 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). The reference to an "unemancipated" minor has been omitted. This is not a substantive change. The term "medical care" has been substituted for "the furnishing of hospital, medical and surgical care." This is not a substantive change. See Section 6902 ("medical care" defined). See also

Section 6903 (“parent or guardian” defined). For related provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6926. Consent by minor to treatment for communicable disease

6926. (a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.

(b) The minor’s parents or guardian are not liable for payment for medical care provided pursuant to this section.

Comment. Section 6926 restates former Civil Code Section 34.7 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). The term “medical care” has been substituted for “the furnishing of hospital, medical and surgical care.” This is not a substantive change. See Sections 6902 (“medical care” defined). A reference to “parent” has been omitted as surplus. See Section 10 (plural includes the singular). The reference to the “legal” guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) (“guardian” defined). See also Section 6903 (“parent or guardian” defined). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6927. Consent by rape victim to treatment

6927. A minor who is 12 years of age or older and who is alleged to have been raped may consent to medical care related to the diagnosis or treatment of the condition and the collection of medical evidence with regard to the alleged rape.

Comment. Section 6927 restates former Civil Code Section 34.8 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). The

term “medical care” has been substituted for “the furnishing of hospital, medical, and surgical care.” This is not a substantive change. See Section 6902 (“medical care” defined). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6928. Consent by assault victim to treatment

6928. (a) “Sexually assaulted” as used in this section includes, but is not limited to, conduct coming within Section 261, 286, or 288a of the Penal Code.

(b) A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.

(c) The professional person providing medical treatment shall attempt to contact the minor’s parent or guardian and shall note in the minor’s treatment record the date and time the professional person attempted to contact the parent or guardian and whether the attempt was successful or unsuccessful. This subdivision does not apply if the professional person reasonably believes that the minor’s parent or guardian committed the sexual assault on the minor.

Comment. Section 6928 restates former Civil Code Section 34.9 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). The term “medical care” has been substituted for “the furnishing of hospital, medical, and surgical care.” This is not a substantive change. See Section 6902 (“medical care” defined). A reference to “parents” has been omitted as surplus. See Section 10 (plural includes the singular). The reference to the “legal” guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) (“guardian” defined). See also Section 6903 (“parent or guardian” defined). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6929. Consent by minor to drug or alcohol treatment

6929. (a) As used in this section:

(1) “Counseling” means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.

(2) “Drug or alcohol” includes, but is not limited to, any substance listed in any of the following:

(A) Section 380 or 381 of the Penal Code.

(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) Subdivision (f) of Section 647 of the Penal Code.

(3) “Professional person” means a physician and surgeon, registered nurse, psychologist, clinical social worker, or marriage, family, and child counselor.

(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug or alcohol related problem.

(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor’s parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor’s treatment record whether and when the professional person attempted to contact the minor’s parent or guardian, and whether the attempt to contact the parent or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor’s parent or guardian.

(d) The minor's parents or guardian are not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive methadone treatment without the consent of the minor's parent or guardian.

Comment. Section 6929 restates former Civil Code Section 34.10 without substantive change. This section has been revised to correct former references to repealed sections.

See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). See also Sections 6902 ("medical care" defined), 6903 ("parent or guardian" defined). For related provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

PART 5 . ENLISTMENT IN ARMED FORCES

§ 6950. Court consent

6950. (a) Upon application by a minor, the court may summarily grant consent for enlistment by the minor in the armed forces of the United States if the court determines all of the following:

(1) The minor is 16 years of age or older and resides in this state.

(2) The consent of a parent or guardian is necessary to permit the enlistment, and the minor has no parent or guardian available to give the consent.

(b) No fee may be charged for proceedings under this section.

Comment. Section 6950 restates former Probate Code Section 3301 without substantive change, insofar as that section related to consent to enlist in the armed forces. The reference to the "superior" court has been

omitted as surplus. See Section 200 (jurisdiction in superior court). The phrase “armed forces of the United States” has been substituted for “armed services” to conform to Section 7002(b). For related provisions concerning emancipated minors, see Sections 7002(b) (person on active duty in armed forces meets condition for emancipation), 7050 (effects of emancipation).

PART 6 . E M A N C I P A T I O N O F M I N O R S L A W

CHAPTER 1. GENERAL PROVISIONS

§ 7000. Short title

7000. This part may be cited as the Emancipation of Minors Law.

Comment. Section 7000 continues former Civil Code Section 60 without substantive change.

§ 7001. Purpose and intent

7001. It is the purpose of this part to provide a clear statement defining emancipation and its consequences and to permit an emancipated minor to obtain a court declaration of the minor’s status. This part is not intended to affect the status of minors who may become emancipated under the decisional case law that was in effect before the enactment of Chapter 1059 of the Statutes of 1978.

Comment. Section 7001 continues the last two sentences of former Civil Code Section 61 without substantive change. The part of the last sentence of former Civil Code Section 61 that referred to “minors who are now emancipated” under the 1978 case law has been omitted as obsolete.

Section 7001 omits the first sentence of former Civil Code Section 61. This sentence was an obsolete provision describing the need for the enactment of the former Emancipation of Minors Act.

§ 7002. Emancipation

7002. A person under the age of 18 years is an emancipated minor if any of the following conditions is satisfied:

(a) The person has entered into a valid marriage, whether or not the marriage has been dissolved.

(b) The person is on active duty with the armed forces of the United States.

(c) The person has received a declaration of emancipation pursuant to Section 7122.

Comment. Section 7002 restates former Civil Code Section 62 without substantive change. In subdivision (c), a reference to Section 7122 has been substituted for the broader reference to former Civil Code Section 64. This is not a substantive change, since the relevant part of the former section is continued in Section 7122. See also Section 310 (methods of dissolution).

Sections 7002 and 7050(e)(1) supersede former Civil Code Sections 25.6 (furnishing hospital, medical, and surgical care to married minor) and 25.7 (furnishing hospital, medical, and surgical care to minor on active duty with armed services).

CHAPTER 2. EFFECT OF EMANCIPATION

§ 7050. Emancipated minor considered an adult

7050. An emancipated minor shall be considered as being an adult for the following purposes:

(a) The minor's right to support by the minor's parents.

(b) The right of the minor's parents to the minor's earnings and to control the minor.

(c) The application of Sections 300 and 601 of the Welfare and Institutions Code.

(d) Ending all vicarious or imputed liability of the minor's parents or guardian for the minor's torts. Nothing in this section affects any liability of a parent, guardian, spouse, or employer imposed by the Vehicle Code, or any vicarious liability that arises from an agency relationship.

(e) The minor's capacity to do any of the following:

(1) Consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability.

(2) Enter into a binding contract or give a delegation of power.

(3) Buy, sell, lease, encumber, exchange, or transfer an interest in real or personal property, including, but not limited to, shares of stock in a domestic or foreign corporation or a membership in a nonprofit corporation.

(4) Sue or be sued in the minor's own name.

(5) Compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor.

(6) Make or revoke a will.

(7) Make a gift, outright or in trust.

(8) Convey or release contingent or expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, and consent to a transfer, encumbrance, or gift of marital property.

(9) Exercise or release the minor's powers as donee of a power of appointment unless the creating instrument otherwise provides.

(10) Create for the minor's own benefit or for the benefit of others a revocable or irrevocable trust.

(11) Revoke a revocable trust.

(12) Elect to take under or against a will.

(13) Renounce or disclaim any interest acquired by testate or intestate succession or by inter vivos transfer, including exercise of the right to surrender the right to revoke a revocable trust.

(14) Make an election referred to in Section 13502 of, or an election and agreement referred to in Section 13503 of, the Probate Code.

(15) Establish the minor's own residence.

(16) Apply for a work permit pursuant to Section 49110 of the Education Code without the request of the minor's parents.

(17) Enroll in a school or college.

Comment. Section 7050 continues former Civil Code Section 63 without substantive change. A reference to “adult” has been substituted for “over the age of majority.” This is not a substantive change. See Section 6501 (“adult” defined). In subdivisions (b) and (e)(16), the former references to “guardian” have been omitted. In subdivision (e)(2), the phrase “or give a delegation of power” is new. This makes clear that Section 6701(a) (limitation on authority of minor) does not limit the powers of an emancipated minor. In subdivision (d), the reference to “imputed” liability is new and is added, to conform with statutory provisions imposing “imputed” parental liability. See, e.g., Code Civ. Proc. §§ 1714.1 (liability of parents and guardian for willful misconduct or minor), 1714.3 (liability of parent or guardian for injury to person or property caused by discharge of firearm by minor).

Sections 7002 and 7050(e)(1) supersede former Civil Code Sections 25.6 (furnishing hospital, medical, and surgical care to married minor) and 25.7 (furnishing hospital, medical, and surgical care to minor on active duty with armed services).

§ 7051. Insurance contracts

7051. An insurance contract entered into by an emancipated minor has the same effect as if it were entered into by an adult and, with respect to that contract, the minor has the same rights, duties, and liabilities as an adult.

Comment. Section 7051 continues former Civil Code Section 63.1 without substantive change.

§ 7052. Stock, memberships, and property

7052. With respect to shares of stock in a domestic or foreign corporation held by an emancipated minor, a membership in a nonprofit corporation held by an emancipated minor, or other property held by an emancipated minor, the minor may do all of the following:

(a) Vote in person, and give proxies to exercise any voting rights, with respect to the shares, membership, or property.

(b) Waive notice of any meeting or give consent to the holding of any meeting.

(c) Authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

Comment. Section 7052 continues former Civil Code Section 63.2 without substantive change.

CHAPTER 3. COURT DECLARATION OF EMANCIPATION

Article 1. General Provisions

§ 7110. Legislative intent

7110. It is the intent of the Legislature that proceedings under this part be as simple and inexpensive as possible. To that end, the Judicial Council is requested to prepare and distribute to the clerks of the superior courts appropriate forms for the proceedings that are suitable for use by minors acting as their own counsel.

Comment. Section 7110 continues former Civil Code Section 70 without substantive change. A reference to this part has been substituted for references to the former sections providing for proceedings to declare a minor emancipated and to rescind a declaration of emancipation. This expands the scope of this section to apply to a proceeding to void a declaration of emancipation obtained by fraud or withholding material information.

§ 7111. Effect of declaration on benefits

7111. The issuance of a declaration of emancipation does not entitle the minor to any benefits under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code which would not otherwise accrue to an emancipated minor.

Comment. Section 7111 continues former Civil Code Section 67 without substantive change.

Article 2. Procedure for Declaration

§ 7120. Petition for declaration of emancipation

7120. (a) A minor may petition the superior court of the county in which the minor resides or is temporarily domiciled for a declaration of emancipation.

(b) The petition shall set forth with specificity all of the following facts:

(1) The minor is at least 14 years of age.

(2) The minor willingly lives separate and apart from the minor's parents or guardian with the consent or acquiescence of the minor's parents or guardian.

(3) The minor is managing his or her own financial affairs. As evidence of this, the minor shall complete and attach a declaration of income and expenses as provided in Section 1285.50 of the California Rules of Court.

(4) The source of the minor's income is not derived from any activity declared to be a crime by the laws of this state or the laws of the United States.

Comment. Section 7120 continues former Civil Code Section 64(a) without substantive change. References to the "legal" guardian have been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined). The requirement that the petition be verified has been omitted as surplus. See Section 212 (pleadings to be verified).

§ 7121. Notice of petition for declaration of emancipation

7121. (a) Before the petition for a declaration of emancipation is heard, notice the court determines is reasonable shall be given to the minor's parents, guardian, or other person entitled to the custody of the minor, or proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given.

(b) The clerk of the court shall also notify the district attorney of the county where the matter is to be heard of the proceeding. If the minor is a ward or dependent child of the court, notice shall be given to the probation department.

(c) The notice shall include a form whereby the minor's parents, guardian, or other person entitled to the custody of the minor may give their written consent to the petitioner's emancipation. The notice shall include a warning that a court may void or rescind the declaration of emancipation and the

parents may become liable for support and medical insurance coverage pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 of this code and Sections 11350, 11350.1, 11475.1, and 11490 of the Welfare and Institutions Code.

Comment. Section 7121 continues without substantive change the first, second, and fourth sentences of subdivision (b)(1) and subdivision (b)(2) of former Civil Code Section 64. In subdivision (c), a reference to “medical insurance coverage” has been substituted for the former reference to “medical support.” This is consistent with the language in Section 7133 and is not a substantive change. A reference to Chapter 2 (commencing with Section 4000) of Part 2 of Division 10 has been substituted for a narrower reference to former Civil Code Section 4700. This is not a substantive change.

§ 7122. Issuance of declaration of emancipation

7122. (a) The court shall sustain the petition if it finds that the minor is a person described by Section 7120 and that emancipation would not be contrary to the minor’s best interest.

(b) If the petition is sustained, the court shall forthwith issue a declaration of emancipation, which shall be filed by the county clerk.

(c) A declaration is conclusive evidence that the minor is emancipated.

Comment. Section 7122 continues without substantive change the third sentence of subdivision (b)(1), the first sentence of subdivision (c), and subdivision (f) of former Civil Code Section 64.

§ 7123. Writ of mandate

7123. (a) If the petition is denied, the minor has a right to file a petition for a writ of mandate.

(b) If the petition is sustained, the parents or guardian have a right to file a petition for a writ of mandate if they have appeared in the proceeding and opposed the granting of the petition.

Comment. Section 7123 continues former Civil Code Section 64(d)-(e) without substantive change.

Article 3. Voiding or Rescinding Declaration

§ 7130. Grounds for voiding or rescinding

7130. (a) A declaration of emancipation obtained by fraud or by the withholding of material information is voidable.

(b) A declaration of emancipation of a minor who is indigent and has no means of support is subject to rescission.

Comment. Section 7130 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 69 and restates part of the first sentence of former Civil Code Section 65(c).

§ 7131. Petition to void declaration

7131. A petition to void a declaration of emancipation on the ground that the declaration was obtained by fraud or by the withholding of material information may be filed by any person or by any public or private agency. The petition shall be filed in the court that made the declaration.

Comment. The first sentence of Section 7131 restates without substantive change the first sentence of the second paragraph of former Civil Code Section 69. The second sentence is new.

§ 7132. Petition to rescind declaration

7132. (a) A petition to rescind a declaration of emancipation on the ground that the minor is indigent and has no means of support may be filed by the minor declared emancipated, by the minor's conservator, or by the district attorney of the county in which the minor resides. The petition shall be filed in the county in which the minor or the conservator resides.

(b) The minor may be considered indigent if the minor's only source of income is from public assistance benefits. The court shall consider the impact of the rescission of the declaration of emancipation on the minor and shall find the rescission of the declaration of emancipation will not be

contrary to the best interest of the minor before granting the order to rescind.

Comment. Subdivision (a) of Section 7132 restates former Civil Code Section 65(a) without substantive change, and adds the provision specifying the ground on which the petition is based, drawn from former Civil Code Section 65(c). The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The second sentence of Section 7132 also makes clear that a petition filed by the conservator may be filed either in the county where the minor resides or in the county where the conservator resides.

Subdivision (b) continues the second and third sentences of former Civil Code Section 65(c) without substantive change. The references to an “order of emancipation” have been changed to a “declaration of emancipation” for consistency with other sections. See, e.g., Section 7120 (petition for declaration of emancipation).

§ 7133. Notice

7133. (a) Before a petition under this article is heard, notice the court determines is reasonable shall be given to the minor’s parents or guardian, or proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given.

(b) The notice to parents shall state that if the declaration of emancipation is voided or rescinded, the parents may be liable to provide support and medical insurance coverage for the child pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 of this code and Sections 11350, 11350.1, 11475.1, and 11490 of the Welfare and Institutions Code.

(c) No liability accrues to a parent or guardian not given actual notice, as a result of voiding or rescinding the declaration of emancipation, until that parent or guardian is given actual notice.

Comment. Section 7133 continues without substantive change former Civil Code Section 65(b) and part of the last sentence of the last paragraph of former Civil Code Section 69. The reference to voiding the declaration of emancipation in subdivision (b) has been added for consistency with subdivision (c) and with Section 7130 (grounds for voiding or

rescinding). In subdivision (b), a reference to Chapter 2 (commencing with Section 4000) of Part 2 of Division 10 has been substituted for a narrower reference to former Civil Code Section 4700. This is not a substantive change.

§ 7134. Court order

7134. If the petition is sustained, the court shall forthwith issue an order voiding or rescinding the declaration of emancipation, which shall be filed by the county clerk.

Comment. Section 7134 continues without substantive change the first sentence of former Civil Code Section 65(d) and part of the last sentence of the last paragraph of former Civil Code Section 69.

§ 7135. Effect of voiding or rescission on contract and property rights

7135. Voiding or rescission of the declaration of emancipation does not alter any contractual obligation or right or any property right or interest that arose during the period that the declaration was in effect.

Comment. Section 7135 continues without substantive change former Civil Code Section 65(e) and the last sentence of the first paragraph of former Civil Code Section 69.

Article 4. Identification Cards and Information

§ 7140. Department of Motor Vehicles records system and identification cards

7140. On application of a minor declared emancipated under this chapter, the Department of Motor Vehicles shall enter identifying information in its law enforcement computer network, and the fact of emancipation shall be stated on the department's identification card issued to the emancipated minor.

Comment. Section 7140 continues the last sentence of former Civil Code Section 64(c) without substantive change.

§ 7141. Good faith reliance on identification card

7141. A person who, in good faith, has examined a minor's identification card and relies on a minor's representation that the minor is emancipated, has the same rights and obligations as if the minor were in fact emancipated at the time of the representation.

Comment. Section 7141 continues former Civil Code Section 66 without substantive change.

§ 7142. Protection of public entities and public employees

7142. No public entity or employee is liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in the Department of Motor Vehicles records system or identification cards as provided in this part.

Comment. Section 7142 continues former Civil Code Section 68 without substantive change.

§ 7143. Notice of Department of Motor Vehicles if declaration voided or rescinded

7143. If a declaration of emancipation is voided or rescinded, notice shall be sent immediately to the Department of Motor Vehicles which shall remove the information relating to emancipation in its law enforcement computer network. Any identification card issued stating emancipation shall be invalidated.

Comment. Section 7143 continues without substantive change the last two sentences of former Civil Code Section 65(d) and part of the last sentence of the last paragraph of former Civil Code Section 69.

DIVISION 12. PARENT AND CHILD RELATIONSHIP

PART 1. RIGHTS OF PARENTS

§ 7500. Right of parent to services and earnings of unemancipated minor child

7500. (a) The mother of an unemancipated minor child, and the father, if presumed to be the father under Section 7611, are equally entitled to the services and earnings of the child.

(b) If one parent is dead, is unable or refuses to take custody, or has abandoned the child, the other parent is entitled to the services and earnings of the child.

Comment. Section 7500 restates without substantive change the part of former Civil Code Section 197 relating to services and earnings of a minor. The rule in this section is parallel to the general rule on the right to custody provided in Section 3010. The word “unemancipated” has been substituted for “unmarried.” This is not a substantive change. See Section 7002 (conditions of emancipation). See also Sections 7503 (payment of earnings to minor), 7504 (parent may relinquish right of controlling child and receiving child’s earnings).

§ 7501. Right of parent to determine residence of child

7501. A parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.

Comment. Section 7501 continues former Civil Code Section 213 without substantive change. The reference to the “proper” court is omitted as surplus. See also Section 3063 (order restraining removal of child from state); Prob. Code § 2352 (guardian may fix residence of minor ward).

§ 7502. Parent cannot control property of child

7502. The parent, as such, has no control over the property of the child.

Comment. Section 7502 continues former Civil Code Section 202 without change. See also Section 3902 (court allowance to parent for support of child from child's property).

§ 7503. Payment of earnings to minor

7503. The employer of a minor shall pay the earnings of the minor to the minor until the parent or guardian entitled to the earnings gives the employer notice that the parent or guardian claims the earnings.

Comment. Section 7503 restates former Civil Code Section 212 without substantive change. The word "shall" has been substituted for "may." This is consistent with Probate Code Section 2601(a)(2) (earnings shall be paid to ward unless otherwise ordered by court). The word "earnings" has been substituted for "wages" to conform with terminology in other sections of this code and to provide consistent treatment of different forms of income. See, e.g., Section 5206 ("earnings" defined). The phrase "employed in service" has been omitted as obsolete. See also Section 7504 (relinquishment by parent of right to receive earnings of child).

§ 7504. Parent may relinquish control and earnings of child

7504. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling the child and receiving the child's earnings. Abandonment by the parent is presumptive evidence of that relinquishment.

Comment. Section 7504 continues former Civil Code Section 211 without substantive change.

§ 7505. When parental authority ceases

7505. The authority of a parent ceases on any of the following:

- (a) The appointment, by a court, of a guardian of the person of the child.
- (b) The marriage of the child.
- (c) The child attaining the age of majority.

Comment. Section 7505 continues former Civil Code Section 204 without substantive change. See also Sections 7050-7052 (effect of emancipation under Emancipation of Minors Law).

§ 7506. Compensation where adult child continues to serve and be supported by parent

7506. Where a child, after attaining the age of majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement for the compensation.

Comment. Section 7506 continues former Civil Code Section 210 without substantive change.

§ 7507. Remedy for abuse of parental authority

7507. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by the child's relative within the third degree, or by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

Comment. Section 7507 continues former Civil Code Section 203 without change.

PART 2 . PRESUMPTION CONCERNING
CHILD OF MARRIAGE AND BLOOD
TESTS TO DETERMINE PATERNITY

CHAPTER 1. CHILD OF WIFE COHABITING
WITH HUSBAND

§ 7540 (amended and renumbered). Presumption arising from birth of child during marriage

7540. Except as provided in Section 7541, the child of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage.

Comment. Section 7540 continues former Evidence Code Section 621(a) without substantive change.

§ 7541 (amended and renumbered). Use of blood tests to determine paternity

7541. (a) Notwithstanding Section 7540, if the court finds that the conclusions of all the experts, as disclosed by the evidence based on blood tests performed pursuant to Chapter 2 (commencing with Section 7550), are that the husband is not the father of the child, the question of paternity of the husband shall be resolved accordingly.

(b) The notice of motion for blood tests under this section may be filed not later than two years from the child's date of birth by the husband, or for the purposes of establishing paternity by the presumed father or the child through or by the child's guardian ad litem. As used in this subdivision, "presumed father" has the meaning given in Sections 7611 and 7612.

(c) The notice of motion for blood tests under this section may be filed by the mother of the child not later than two years from the child's date of birth if the child's biological father has filed an affidavit with the court acknowledging paternity of the child.

(d) The notice of motion for blood tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court.

(e) Subdivision (a) does not apply in any of the following cases:

(1) A case which reached final judgment of paternity on or before September 30, 1980.

(2) A case coming within Section 7613.

(3) A case in which the wife, with the consent of the husband, conceived by means of a surgical procedure.

Comment. Section 7541 restates former Evidence Code Section 621(b)-(h) without substantive change. The last sentence of former Evidence Code Section 621(f), pertaining to cases pending on September 30, 1980, has been omitted as obsolete.

CHAPTER 2. BLOOD TESTS TO DETERMINE PATERNITY

§ 7550. Short title

7550. This chapter may be cited as the Uniform Act on Blood Tests to Determine Paternity.

Comment. Section 7550 continues former Evidence Code Section 890 without substantive change. This section is similar to Section 9 of the Uniform Act on Blood Tests to Determine Paternity (1952). See also Sections 3 (construction of provisions drawn from uniform acts), 13 (severability of provisions).

§ 7551. Order for blood tests in civil proceeding involving paternity

7551. In a civil action or proceeding in which paternity is a relevant fact, the court may upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved, and shall upon motion of any party to the action or proceeding made at a time so as not to delay the proceedings unduly, order the mother, child, and alleged father to submit to blood tests. If a party refuses to submit to the tests, the court may resolve the question of paternity against that party or enforce its order if the rights of others and the interests of justice so require. A party's refusal to submit to the tests is admissible in evidence in any proceeding to determine paternity.

Comment. Section 7551 continues former Evidence Code Section 892 without substantive change. This section is similar to Section 1 of the Uniform Act on Blood Tests to Determine Paternity (1952). In the first sentence, the reference to "proceeding" has been added. This is not a substantive change. See Evid. Code § 120 ("civil action" defined to include civil proceeding).

§ 7552. Tests made by experts

7552. The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and are subject to cross-examination by the parties. Any party or person at whose suggestion the tests

have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of the court, the results of which may be offered in evidence. The number and qualifications of these experts shall be determined by the court.

Comment. Section 7552 continues former Evidence Code Section 893 without substantive change. This section is the same as Section 2 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 7553. Compensation of experts

7553. The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in the proportions and at the times the court prescribes, or that the proportion of any party be paid by the county, and that, after payment by the parties or the county or both, all or part or none of it be taxed as costs in the action or proceeding.

Comment. Section 7553 continues former Evidence Code Section 894 without substantive change. This section is similar to the first three sentences of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952). The reference to “proceeding” has been added. This is not a substantive change. See Evid. Code § 120 (“civil action” defined to include civil proceeding).

§ 7554. Effect of test results

7554. (a) If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly.

(b) If the experts disagree in their findings or conclusions, or if the tests show the probability of the alleged father’s paternity, the question, subject to Section 352 of the Evidence Code, shall be submitted upon all the evidence, including evidence based upon the tests.

Comment. Section 7554 continues former Evidence Code Section 895 without change. This section is similar to Section 4 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 7555. Rebuttable presumption of paternity

7555. (a) There is a rebuttable presumption, affecting the burden of proof, of paternity, if the court finds that the paternity index, as calculated by the experts qualified as examiners of genetic markers, is 100 or greater. This presumption may be rebutted by a preponderance of the evidence.

(b) As used in this section:

(1) “Genetic markers” mean separate genes or complexes of genes identified as a result of blood tests.

(2) “Paternity index” means the commonly accepted indicator used for denoting the existence of paternity. It expresses the relative strength of the test results for and against paternity. The paternity index, computed using results of various paternity tests following accepted statistical principles, shall be in accordance with the method of expression accepted at the International Conference on Parentage Testing at Airlie House, Virginia, May 1982, sponsored by the American Association of Blood Banks.

Comment. Section 7555 continues former Evidence Code Section 895.5 without change.

§ 7556. Limitation on application in criminal matters

7556. This part applies to criminal actions subject to the following limitations and provisions:

(a) An order for the tests shall be made only upon application of a party or on the court’s initiative.

(b) The compensation of the experts shall be paid by the county under order of court.

(c) The court may direct a verdict of acquittal upon the conclusions of all the experts under Section 7554; otherwise,

the case shall be submitted for determination upon all the evidence.

Comment. Section 7556 continues former Evidence Code Section 896 without substantive change. This section is similar to Section 6 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 7557. Right to produce other expert evidence

7557. Nothing in this part prevents a party to an action or proceeding from producing other expert evidence on the matter covered by this part; but, where other expert witnesses are called by a party to the action or proceeding, their fees shall be paid by the party calling them and only ordinary witness fees shall be taxed as costs in the action or proceeding.

Comment. Section 7557 continues former Evidence Code Section 897 without substantive change. The last part of this section is similar to the last sentence of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952). The references to “proceeding” have been added. These are not substantive changes. See Evid. Code § 120 (“civil action” defined to include civil proceeding).

CHAPTER 3. ESTABLISHMENT OF PATERNITY BY VOLUNTARY DECLARATION

§ 7570. Legislative declaration

7570. The Legislature hereby finds and declares as follows:

(a) There is a compelling state interest in establishing paternity for all children. Establishing paternity is the first step toward a child support award, which, in turn, provides children with equal rights and access to benefits, including, but not limited to, social security, health insurance, survivors’ benefits, military benefits, and inheritance rights. Knowledge of family medical history is often necessary for correct medical diagnosis and treatment. Additionally, knowing one’s father is important to a child’s development.

(b) A simple system allowing for establishment of voluntary paternity will result in a significant increase in the ease of establishing paternity, a significant increase in paternity establishment, an increase in the number of children who have greater access to child support and other benefits, and a significant decrease in the time and money required to establish paternity due to the removal of the need for a lengthy and expensive court process to determine and establish paternity and is in the public interest.

Note. This section was added by 1993 Cal. Stat. ch. 1240, § 1 (AB 1277).

§ 7571. Declaration

7571. (a) On and after January 1, 1995, upon the event of a live birth, prior to an unmarried mother leaving any hospital, clinic, or other place of birth in the state, the person responsible for registering live births under Sections 10101 and 10102 of the Health and Safety Code shall provide to the natural mother and shall attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a declaration for completion that meets the requirements of Section 7574. The declaration may be a part of the birth certificate provided that copies of the declaration are available to the parents separate from the birth certificate. The person responsible for registering the birth shall file the declaration, if completed, with the birth certificate, and shall transmit a copy of the declaration to the district attorney of the county where the birth occurred. A copy of the declaration shall be made available to each of the attesting parents. No health care provider shall be subject to any civil, criminal, or administrative liability for any negligent act or omission relative to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies. Each district attorney shall pay to the hospital, clinic, or other place of birth that files the completed

declaration with the birth certificate, as set forth in this subdivision, the sum of ten dollars (\$10) for each declaration filed by it.

(b) Except as provided in Section 7575, the child of a woman and a man executing a declaration of paternity under this chapter, which meets the requirements of Section 7574, is conclusively presumed to be the man's child. The presumption under this section has the same force and effect as the presumption under Section 7540.

Note. This section was added by 1993 Cal. Stat. ch. 1240, § 1 (AB 1277).

§ 7572. Informational pamphlets

7572. (a) The State Department of Social Services, in consultation with the State Department of Health Services, the California Association of Hospitals and Health Systems, and other affected health provider organizations, shall work cooperatively to develop informational pamphlets and related materials to assist providers and parents in complying with this chapter.

(b) The State Department of Social Services shall, free of charge, make available to hospitals, clinics, and other places of birth any and all informational and training materials for the program under this chapter, as well as the paternity declaration form. The State Department of Social Services shall make training available to every hospital, clinic, and other place of birth no later than October 31, 1994.

(c) The State Department of Social Services shall adopt regulations, including emergency regulations, necessary to implement this chapter.

Note. This section was added by 1993 Cal. Stat. ch. 1240, § 1 (AB 1277).

§ 7573. “Father”

7573. “Father,” as used in this chapter, has the meaning given in Section 7540.

Note. This section was added by 1993 Cal. Stat. ch. 1240, § 1 (AB 1277).

§ 7574. Establishment of conclusive presumption

7574. In order for a conclusive presumption of paternity to be established pursuant to this chapter, the following must appear on the declaration:

- (a) The full name, place, and date of birth of the child.
- (b) The full name and current address of the attesting father of the child.
- (c) The full name and current address of the attesting mother of the child.
- (d) The social security numbers of the attesting mother and father of the child, on a voluntary basis.
- (e) A notice captioned “READ THIS BEFORE SIGNING” conspicuously placed on the declaration stating:

“(1) The purpose of this declaration is to establish paternity of your newborn child. Signing this declaration is completely voluntary. If you have any questions not answered by the written information given to you with this form, consult an attorney before signing.

(2) This form is a legal document. It establishes paternity, which is the legal identity of the natural father of a child. If you sign it, legal rights and duties are created under California law. It assures that your child receives the same rights that he or she would receive if you were married to the other parent.

(3) There is a right to a trial by the court in paternity cases. By signing this form, the man is stating that he is the father of the child named, and he understands that he is willingly, knowingly, and intelligently giving up his right to a trial on

the question of paternity unless he takes legal action to challenge paternity within three years from the date of his signature on the form as attesting father or from the date of the signature of the attesting mother on the form, whichever signature is later.

(4) Blood or genetic test results which show that the man who signs this form cannot be the natural father, or that someone else is definitely the natural father, can be used in court to challenge paternity established by this form only if an action challenging paternity is filed in court within three years from the date of signature by the attesting father, or the attesting mother, whichever signature is later.

(5) If an action to challenge paternity is not filed within three years, the attesting father will be the legal father of this child regardless of any evidence, including blood or genetic test, presented to a court after three years have passed.

(6) Once the attesting father signs this form, and establishes himself as the child's father, he is legally responsible for the support of the child. This responsibility may include the payment of court-ordered child support. He is also entitled to all rights and benefits with regard to the child that a father has when he is married to the mother of the child. These rights may include, but are not limited to, the right to physical or legal custody of the child, the right to consent to the adoption of the child, and visitation rights.

(7) Providing social security numbers is not mandatory. The numbers will be used to locate parents for the purposes of collecting child support and other benefits due your child.”

(f) The signature of the father attesting under penalty of perjury under the laws of the State of California that the information provided is true and correct, that he has read and fully understands the rights he is waiving and the duties imposed on him as described in subdivision (e), and that he is executing this declaration to establish that he is the natural

father of the child and understands that by acknowledging paternity of the child he accepts an obligation to provide child support under the laws of the State of California.

(g) The signature of the natural mother attesting under penalty of perjury under the laws of the State of California that the information provided is true and correct, that the man named is the natural father of her child, that she is executing this declaration to name the natural father of her child and that she fully understands that by executing this declaration she is establishing the paternal rights of the named father under the laws of the State of California, which include the right to physical and legal custody of the child, the right to consent to adoption of the child, and visitation rights.

(h) The full name and signature of the party registering the declaration and the date of registration.

(i) A statement that execution of this declaration authorizes the state to add the signator's name as the natural father of the child to the child's birth certificate.

Note. This section was added by 1993 Cal. Stat. ch. 1240, § 1 (AB 1277).

§ 7575. Rebutting presumption

7575. (a)(1) The presumption established by this chapter may be rebutted, by any person as provided by subdivision (a) of Section 7541, within three years from the date of execution of the declaration by the attesting father, or by the attesting mother, whichever signature is later. The two-year statute of limitations specified in subdivision (b) of Section 7541 is inapplicable for purposes of this section.

(2) The Judicial Council, in consultation with the Family Support Counsel and representatives of the Senate Judiciary Committee and the Assembly Judiciary Committee, shall develop the forms and procedures necessary to effectuate this subdivision.

(b) A presumption under this chapter shall not override a presumption arising under Section 7540. A presumption under this chapter shall override all presumptions except a presumption arising under Section 7540, including presumptions under Section 7611.

Note. This section was added by 1993 Cal. Stat. ch. 1240, § 1 (AB 1277).

§ 7576. Completion of declaration

7576. (a) If the declaration is not registered by the person responsible for registering live births at the hospital, clinic, or place of birth, it may be completed by the attesting parents via notarized signatures and mailed to, or registered personally by either or both parents with, the local registrar of the State Office of Vital Statistics at any time after the child's birth.

(b) The declaration, whether filed by the person responsible for registering live births, or by the parents at a later date, shall be attached as an addendum to the public, nonconfidential portion of the birth certificate.

Note. This section was added by 1993 Cal. Stat. ch. 1240, § 1 (AB 1277).

§ 7577. Transitional provision

7577. (a) Nothing in this chapter shall prevent any county or any hospital, clinic, or other place of birth from complying with this chapter prior to January 1, 1995.

(b) Hospitals in the Counties of Humboldt, Los Angeles, and Nevada, along with any other hospitals that choose to participate and obtain the concurrence of the State Department of Social Services, may participate in the pilot projects authorized by Section 621.1 of the Evidence Code as that section existed on December 31, 1993, until January 1, 1995. The State Department of Social Services shall report to the Legislature on or before December 31, 1994, on these pilot projects.

Note. This section was added by 1993 Cal. Stat. ch. 1240, § 1 (AB 1277).

PART 3 . UNIFORM PARENTAGE ACT

CHAPTER 1. GENERAL PROVISIONS

§ 7600. Short title

7600. This part may be cited as the Uniform Parentage Act.

Comment. Section 7600 continues former Civil Code Section 7000 without substantive change. This section is similar to Section 27 of the Uniform Parentage Act (1973). See also Sections 3 (construction of provisions drawn from uniform acts), 13 (severability of provisions).

§ 7601. “Parent and child relationship” defined

7601. “Parent and child relationship” as used in this part means the legal relationship existing between a child and the child’s natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship.

Comment. Section 7601 continues former Civil Code Section 7001 without substantive change. This section is the same in substance as Section 1 of the Uniform Parentage Act (1973).

§ 7602. Relationship not dependent on marriage

7602. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Comment. Section 7602 continues former Civil Code Section 7002 without change. This section is the same as Section 2 of the Uniform Parentage Act (1973).

§ 7603. Check to determine if child is missing person

7603. Section 3140 is applicable to proceedings pursuant to this part.

Comment. Section 7603 continues former Civil Code Section 7017.6 without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7604. Pendente lite relief of custody or grant of visitation rights

7604. A court may order pendente lite relief consisting of a custody or visitation order pursuant to Part 2 (commencing with Section 3020) of Division 8, if the court finds both of the following:

(a) Based on the tests authorized by Section 7541, a parent and child relationship exists pursuant to Section 7540.

(b) The custody or visitation order would be in the best interest of the child.

Comment. Section 7604 continues without substantive change the first paragraph of former Civil Code Section 7004.5. The last two paragraphs of former Civil Code Section 7004.5 are superseded. There is no comparable provision in the Uniform Parentage Act (1973).

In the introductory clause, a reference to Part 2 (commencing with Section 3020) of Division 8 has been substituted for narrower references to former Civil Code Sections 4600 and 4601. This supersedes the last two paragraphs of former Civil Code Section 7004.5 and is not a substantive change. The substance of the superseded paragraphs is contained in Section 3100(b) of Part 2 of Division 8, made expressly applicable to a determination of custody or visitation under this section.

See also Sections 200 (jurisdiction in superior court), 3011 (factors in determining best interest of child), 3030 (parent convicted under certain Penal Code provisions not allowed unsupervised visitation), 3131 (action by district attorney where child taken or detained in violation of visitation order), 3160-3186 (mediation of custody or visitation issues); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

CHAPTER 2. ESTABLISHING PARENT AND CHILD RELATIONSHIP

§ 7610. Methods of establishing

7610. The parent and child relationship may be established as follows:

(a) Between a child and the natural mother, it may be established by proof of her having given birth to the child, or under this part.

(b) Between a child and the natural father, it may be established under this part.

(c) Between a child and an adoptive parent, it may be established by proof of adoption.

Comment. Section 7610 continues former Civil Code Section 7003 without change. This section is the same in substance as Section 3 of the Uniform Parentage Act (1973), except that Section 7610 omits the Uniform Parentage Act reference to the Revised Uniform Adoption Act.

§ 7611. Presumption of paternity

7611. A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with Section 7540) of Part 2 or in any of the following subdivisions:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) With his consent, he is named as the child's father on the child's birth certificate.

(2) He is obligated to support the child under a written voluntary promise or by court order.

(d) He receives the child into his home and openly holds out the child as his natural child.

(e) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision shall remain in effect only until January 1, 1997, and on that date shall become inoperative.

Comment. Section 7611 continues former Civil Code Section 7004(a) without substantive change. This section is the same in substance as Section 4(a) of the Uniform Parentage Act (1973). In subdivision (a), "judgment" has been substituted for "decree." This is not a substantive change. See Section 100 ("judgment" includes decree, as appropriate). See also Section 7612 (nature of paternity presumptions).

§ 7611.5. Prohibition on presumption of paternity

7611.5. Where Section 7611 does not apply, a man shall not be presumed to be the natural father of a child if either of the following is true:

(a) The child was conceived as a result of an act in violation of Section 261 of the Penal Code and the father was convicted of that violation.

(b) The child was conceived as a result of an act in violation of Section 261.5 of the Penal Code, the father was convicted of that violation, and the mother was under the age of 15

years and the father was 21 years of age or older at the time of conception.

Comment. Section 7611.5 continues former Civil Code Section 7004(b) without substantive change.

§ 7612. Nature of paternity presumptions

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7611 which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) The presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.

Comment. Section 7612 continues former Civil Code Section 7004(c) without substantive change. This section is similar to Section 4(b) of the Uniform Parentage Act (1973). In subdivision (c), “judgment” has been substituted for “decree.” This is not a substantive change. See Section 100 (“judgment” includes decree, as appropriate).

§ 7613. Artificial insemination

7613. (a) If, under the supervision of a licensed physician and surgeon and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband’s consent must be in writing and signed by him and his wife. The physician and surgeon shall certify their signatures and the date of the insemination, and retain the husband’s consent as part of the medical record, where it shall be kept confidential and in a sealed file. However, the physician and surgeon’s failure to do so does not affect the father and child relationship. All papers and records pertaining to the

insemination, whether part of the permanent record of a court or of a file held by the supervising physician and surgeon or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician and surgeon for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

Comment. Section 7613 continues former Civil Code Section 7005 without substantive change. This section is similar to Section 5 of the Uniform Parentage Act (1973). The phrase "physician and surgeon" has been substituted for "physician." See Section 580 Comment.

§ 7614. Promise to furnish support

7614. (a) A promise in writing to furnish support for a child, growing out of a presumed or alleged father and child relationship, does not require consideration and, subject to Section 7632, is enforceable according to its terms.

(b) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

Comment. Section 7614 continues former Civil Code Section 7016 without substantive change. This section is the same in substance as Section 22 of the Uniform Parentage Act (1973). A reference to Section 7632 has been substituted for the reference to former Civil Code Section 7006(d). This corrects an error in former Civil Code Section 7016, which should have referred to former Civil Code Section 7006(e), now Family Code Section 7632. See also Section 3011 (factors in determining best interest of child).

CHAPTER 3. JURISDICTION AND VENUE

§ 7620. Jurisdiction; venue

7620. (a) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as

to an action brought under this part with respect to a child who may have been conceived by that act of intercourse.

(b) An action under this part may be brought in the county in which the child resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

Comment. Section 7620 continues former Civil Code Section 7007(b)-(c) without substantive change. This section is the same in substance as parts of Section 8 of the Uniform Parentage Act (1973). Former Civil Code Section 7007(a), which stated that the superior court has jurisdiction of an action under the Uniform Parentage Act, has been generalized. See Section 200 (jurisdiction in superior court).

CHAPTER 4. DETERMINATION OF PARENT AND CHILD RELATIONSHIP

Article 1. Determination of Father and Child Relationship

§ 7630. Persons who may bring action; when action may be brought

7630. (a) A child, the child's natural mother, or a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 7611, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) of Section 7611.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the State Department of Social Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664.

Comment. Section 7630 continues former Civil Code Section 7006(a)-(c) without substantive change. This section is similar to Section 6(a)-(c) of the Uniform Parentage Act (1973). In subdivision (c), a reference to the filing of a proceeding under Chapter 5 (commencing with Section 7660) has been substituted for a narrower reference to former Civil Code Section 7017 in former law. This is not a substantive change.

§ 7631. Action by man not presumed father to establish paternity

7631. Except as to cases coming within Chapter 1 (commencing with Section 7540) of Part 2, a man not a presumed father may bring an action for the purpose of declaring that he is the natural father of a child having a presumed father under Section 7611, if the mother relinquishes for, consents to, or proposes to relinquish for or consent to, the adoption of the child. An action under this section shall be brought within 30 days after (1) the man is served as prescribed in Section 7666 with a notice that he is or could be the father of the child or (2) the birth of the child, whichever is later. The commencement of the action suspends a pending proceeding in connection with the adoption of the child until a judgment in the action is final.

Comment. Section 7631 continues former Civil Code Section 7006(d) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7632. Agreement between alleged father or mother or child does not bar action

7632. Regardless of its terms, an agreement between an alleged or presumed father and the mother or child does not bar an action under this chapter.

Comment. Section 7632 continues former Civil Code Section 7006(e) without substantive change. This section is similar to Section 6(d) of the Uniform Parentage Act (1973).

§ 7633. Action before birth of child

7633. An action under this chapter may be brought before the birth of the child.

Comment. Section 7633 continues former Civil Code Section 7006(f) without substantive change. This section is a substitute for Section 6(e) of the Uniform Parentage Act (1973).

§ 7634. Action by district attorney

7634. The district attorney may, in the district attorney's discretion, bring an action under this chapter in any case in which the district attorney believes it to be appropriate.

Comment. Section 7634 continues former Civil Code Section 7006(g) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7635. Parties

7635. (a) The child may, if under the age of 12 years, and shall, if 12 years of age or older, be made a party to the action. If the child is a minor and a party to the action, the child shall be represented by a guardian ad litem appointed by the court.

(b) The natural mother, each man presumed to be the father under Section 7611, and each man alleged to be the natural father, may be made parties and shall be given notice of the

action in the manner prescribed in Section 7666 and an opportunity to be heard.

(c) The court may align the parties.

Comment. Section 7635 continues former Civil Code Section 7008 without substantive change. This section is similar to Section 9 of the Uniform Parentage Act (1973).

§ 7636. Effect of judgment determining existence or nonexistence of parent and child relationship

7636. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes except for actions brought pursuant to Section 270 of the Penal Code.

Comment. Section 7636 continues former Civil Code Section 7010(a) without change. This section is similar to Section 15(a) of the Uniform Parentage Act (1973).

§ 7637. Other provisions of judgment

7637. The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

Comment. Section 7637 continues former Civil Code Section 7010(c) without change. This section is the same as Section 15(c) of the Uniform Parentage Act (1973). See also Section 3011 (factors in determining best interest of child).

§ 7638. Change of name of child

7638. The procedure in an action under this part to change the name of a minor or adult child for whom a parent and child relationship is established pursuant to Section 7636, upon application in accordance with Title 8 (commencing

with Section 1275) of Part 3 of the Code of Civil Procedure shall conform to those provisions, except that the application for the change of name may be included with the petition filed under this part and except as provided in Sections 1277 and 1278 of the Code of Civil Procedure.

Comment. Section 7638 restates former Civil Code Section 7007(d) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). The reference to Section 7636 has been substituted for the broader reference to former Civil Code Section 7010. This is not a substantive change, since the relevant part of former Civil Code Section 7010 is continued in Section 7636. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 7639 (issuance of new birth certificate).

§ 7639. Issuance of new birth certificate

7639. If the judgment or order of the court is at variance with the child’s birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 6 (commencing with Section 10450) of Chapter 8 of Division 9 of the Health and Safety Code.

Comment. Section 7639 continues former Civil Code Section 7010(b) without change. This section is similar to Section 15(b) of the Uniform Parentage Act (1973). See also Section 7638 (change of name of child).

§ 7640. Award of attorney’s fees and other costs

7640. The court may order reasonable fees of counsel, experts, and the child’s guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court.

Comment. Section 7640 continues former Civil Code Section 7011 without change. This section is the same as the first sentence of Section 16 of the Uniform Parentage Act (1973). For general provisions relating to the award of attorney’s fees and costs, see Sections 270-272.

§ 7641. Enforcement of judgment

7641. (a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the obligation of the father may be enforced in the same or other proceedings by any of the following:

(1) The mother.

(2) The child.

(3) The public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral.

(4) Any other person, including a private agency, to the extent the person has furnished or is furnishing these expenses.

(b) The court may order support payments to be made to any of the following:

(1) The mother.

(2) The clerk of the court.

(3) A person, corporation, or agency designated to administer the payments for the benefit of the child under the supervision of the court.

(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments, including imprisonment for contempt, apply.

Comment. Section 7641 continues former Civil Code Section 7012 without substantive change. This section is the same in substance as Section 17 of the Uniform Parentage Act (1973).

§ 7642. Modification of judgment

7642. The court has continuing jurisdiction to modify a judgment or order made under this part. A judgment or order relating to an adoption may only be modified in the same manner and under the same conditions as an order of adoption may be modified under Section 9100 or 9102.

Comment. Section 7642 continues former Civil Code Section 7013 without substantive change. This section is similar to Section 18 of the Uniform Parentage Act (1973). A reference to “order of adoption” has been substituted for the former reference to “decree of adoption.” This is not a substantive change. See Section 100 (“order” includes decree, as appropriate).

§ 7643. Confidentiality of hearings and records

7643. (a) Notwithstanding any other law concerning public hearings and records, a hearing or trial held under this part may be held in closed court without admittance of any person other than those necessary to the action or proceeding. Except as provided in subdivision (b), all papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in a public agency or elsewhere, are subject to inspection only in exceptional cases upon an order of the court for good cause shown.

(b) Papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys.

Comment. Section 7643 continues former Civil Code Section 7014 without substantive change. This section is similar to Section 20 of the Uniform Parentage Act (1973).

Article 2. Determination of Mother and Child Relationship

§ 7650. Action to determine mother and child relationship

7650. Any interested person may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

Comment. Section 7650 continues former Civil Code Section 7015 without change. This section is the same in substance as Section 21 of the Uniform Parentage Act (1973).

CHAPTER 5. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS

§ 7660. Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is legitimate child

7660. If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who has (1) a presumed father under Section 7611 or (2) a father as to whom the child is a legitimate child under the law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under Part 2 (commencing with Section 8600) of Division 13, unless the father's relationship to the child has been previously terminated or determined by a court not to exist or the father has voluntarily relinquished for or consented to the adoption of the child.

Comment. Section 7660 continues former Civil Code Section 7017(a)(1) without substantive change. This section is similar to Section 24 of the Uniform Parentage Act (1973). In clause (2), the reference to "prior" law has been omitted.

§ 7661. Relinquishment or consent by father; notice to and rights of mother

7661. If a father relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child, the mother shall be given notice of the adoption proceeding and have the rights provided under Part 2 (commencing with Section 8600) of Division 13, unless the mother's relationship to the child has been previously terminated by a court or the mother has voluntarily relinquished for or consented to the adoption of the child.

Comment. Section 7661 continues former Civil Code Section 7017(a)(2) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7662. Proceeding to terminate parental rights of father

7662. If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who does not have (1) a presumed father under Section 7611 or (2) a father as to whom the child is a legitimate child under the law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding and the alleged father, if any, has not, in writing, denied paternity, waived his right to notice, or voluntarily relinquished for or consented to the adoption, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition to terminate the parental rights of the father, unless either of the following occurs:

(a) The father's relationship to the child has been previously terminated or determined not to exist by a court.

(b) The father has been served as prescribed in Section 7666 with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

Comment. Section 7662 continues former Civil Code Section 7017(b) without substantive change. This section replaces Section 25(a) of the Uniform Parentage Act (1973). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In the introductory part of this section, the reference to "prior" law has been omitted.

§ 7663. Effort to identify natural father

7663. (a) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person by any of the following:

- (1) The State Department of Social Services.
- (2) A licensed county adoption agency.

(3) The licensed adoption agency to which the child is to be relinquished.

(4) In the case of a stepparent adoption, at the option of the board of supervisors, a licensed county adoption agency, the county department designated by the board of supervisors to administer the public social services program, or the county probation department.

(b) The inquiry shall include all of the following:

(1) Whether the mother was married at the time of conception of the child or at any time thereafter.

(2) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(3) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(4) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) The department or the licensed adoption agency shall report the findings to the court.

Comment. Section 7663 continues former Civil Code Section 7017(c) without substantive change. This section is similar to Section 25(b) of the Uniform Parentage Act (1973).

§ 7664. Notice to man identified as possible natural father; determination and order concerning parental rights

7664. (a) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Section 7666, unless he has been served with a written notice alleging that he is or could be the natural father of the child to be adopted or placed or relinquished for adoption and has failed to bring an action pursuant to subdivision (c) of Section 7630 to declare the existence of the father and child relationship within 30 days after service of the notice or the birth of the child, whichever

is later. If any of them fails to appear or, if appearing, fails to claim parental rights, his parental rights with reference to the child shall be terminated.

(b) If the natural father or a man representing himself to be the natural father claims parental rights, the court shall determine if he is the father. The court shall then determine if it is in the best interest of the child that the father retain his parental rights, or that an adoption of the child be allowed to proceed. The court, in making that determination, may consider all relevant evidence, including the efforts made by the father to obtain custody, the age and prior placement of the child, and the effects of a change of placement on the child. If the court finds that it is in the best interest of the child that the father should be allowed to retain his parental rights, it shall order that his consent is necessary for an adoption. If the court finds that the man claiming parental rights is not the father, or that if he is the father it is in the child's best interest that an adoption be allowed to proceed, it shall order that that person's consent is not required for an adoption. This finding terminates all parental rights and responsibilities with respect to the child. Section 3041 does not apply to a proceeding under this chapter.

(c) Nothing in this part changes the rights of a presumed father under Section 7611.

Comment. Section 7664 continues former Civil Code Section 7017(d) without substantive change. This section replaces Section 25(c) of the Uniform Parentage Act (1973). In subdivision (b), a reference to Section 3041 has been substituted for the broader reference to former Civil Code Section 4600. This is not a substantive change, since the relevant part of the former section is continued in Section 3041. See also Section 3011 (factors in determining best interest of child).

§ 7665. Order terminating parental rights of unknown natural father

7665. If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming

custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child.

Comment. Section 7665 continues former Civil Code Section 7017(e) without change. This section is the same as the first sentence of Section 25(d) of the Uniform Parentage Act (1973).

§ 7666. Manner of giving notice; order dispensing with notice

7666. (a) Except as provided in subdivision (b), notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in accordance with the Code of Civil Procedure for the service of process in a civil action in this state, except that publication or posting of the notice of the proceeding is not required. Proof of giving the notice shall be filed with the court before the petition is heard.

(b) If a person identified as the natural father or possible natural father cannot be located or his whereabouts is unknown or cannot be ascertained, the court may issue an order dispensing with notice to that person.

Comment. Section 7666 continues former Civil Code Section 7017(f) without substantive change. This section is similar to Section 25(e) of the Uniform Parentage Act (1973).

§ 7667. Setting for hearing; preference for trial

7667. (a) Notwithstanding any other provision of law, an action to terminate the parental rights of a father of a child as specified in this part shall be set for hearing not more than 45 days after filing of the petition therefor and completion of service thereon or the entry of an order dispensing with notice of the proceedings. The petition shall either specify the date of the hearing or state that a hearing will be held on a date as determined pursuant to this section, which shall be separately noticed.

(b) The matter so set shall have precedence over all other civil matters on the date set for trial, except an action to

terminate parental rights pursuant to Part 4 (commencing with Section 7800).

Comment. Section 7667 continues without substantive change subdivision (a) and the first sentence of subdivision (b) of former Civil Code Section 7017.2. There is no comparable provision in the Uniform Parentage Act (1973). In subdivision (a), a reference to this part has been substituted for the narrower reference to former Civil Code Section 7017. This is not a substantive change. In subdivision (b), a reference to Part 4 (commencing with Section 7800) has been substituted for the narrower reference to former Civil Code Section 232. This is not a substantive change.

§ 7668. Continuance of hearing

7668. (a) The court may continue the proceedings for not more than 30 days as necessary to appoint counsel and to enable counsel to prepare for the case adequately or for other good cause.

(b) In order to obtain an order for a continuance of the hearing, written notice shall be filed within two court days of the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.

(c) Continuances shall be granted only upon a showing of good cause. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause.

(d) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. If a continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.

Comment. Section 7668 continues without substantive change the last sentence of subdivision (b) and subdivision (c) of former Civil Code Section 7017.2. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7669. Appeal from order requiring or dispensing with father's consent

7669. An order requiring or dispensing with a father's consent for the adoption of a child may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

Comment. Section 7669 continues former Civil Code Section 7017(g) without substantive change. This section replaces the second sentence of Section 25(d) of the Uniform Parentage Act (1973).

§ 7670. No filing fee

7670. There shall be no filing fee charged for a petition filed pursuant to Section 7662.

Comment. Section 7670 continues former Civil Code Section 7017.1 without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

CHAPTER 6. PROTECTIVE AND RESTRAINING ORDERS

Article 1. Orders in Summons

§ 7700. Temporary restraining order in summons

7700. In addition to the contents required by Section 412.20 of the Code of Civil Procedure, in a proceeding under this part the summons shall contain a temporary restraining order restraining all parties, without the prior written consent of the other party or an order of the court, from removing from the state any minor child for whom the proceeding seeks to establish a parent and child relationship.

Comment. Section 7700 continues without substantive change the first sentence and the last part of the last sentence of the first paragraph of former Code of Civil Procedure Section 412.21(b). The reference to "children" has been omitted as surplus. See Section 10 (singular includes plural). For general provisions governing restraining orders in summons, see Sections 231-235.

Article 2. Ex Parte Orders

§ 7710. Ex parte protective and other restraining orders

7710. During the pendency of a proceeding under this part, on application of a party in the manner provided by Part 4 (commencing with Section 240) of Division 2, the court may issue ex parte a protective order as defined in Section 6218 and any other order as provided in Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10.

Comment. Section 7710 is new. This section provides a reference to the article in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the issuance of ex parte restraining orders. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence).

Article 3. Orders After Notice and Hearing

§ 7720. Orders issuable after notice and hearing

7720. After notice and a hearing, the court may issue a protective order as defined in Section 6218 and any other restraining order as provided in Article 2 (commencing with Section 6340) of Chapter 2 of Part 4 of Division 10.

Comment. Section 7720 is new. This section provides a reference to the article in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the issuance of restraining orders after notice and hearing. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence).

The former provisions for issuance of orders after notice and hearing in a proceeding under the Uniform Parentage Act did not provide for issuance of the orders described in Sections 6343 (counseling) or 6344 (attorney's fees and costs). However, the Judicial Council form used for orders after hearing applies to proceedings under the Uniform Parentage Act and allows for attorney's fees and costs. See Cal. R. Ct. 1296.31 (rev. Jan. 1, 1992) (findings and order after hearing). Expanding the court's authority to issue a counseling order in an action pursuant to the Uniform Parentage Act resolves an inconsistency, since the counseling

order could be obtained by unmarried parties under the Domestic Violence Prevention Act.

Article 4. Orders Included in Judgment

§ 7730. Orders included in judgment

7730. A judgment entered in a proceeding under this part may include a protective order as defined in Section 6218 and any other restraining order as provided in Article 3 (commencing with Section 6360) of Chapter 2 of Part 4 of Division 10.

Comment. Section 7730 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the inclusion of restraining orders in a judgment. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders to prevent domestic violence).

PART 4. FREEDOM FROM PARENTAL CUSTODY AND CONTROL

CHAPTER 1. GENERAL PROVISIONS

§ 7800. Purpose of part

7800. The purpose of this part is to serve the welfare and best interest of a child by providing the stability and security of an adoptive home when those conditions are otherwise missing from the child's life.

Comment. Section 7800 continues the first sentence of former Civil Code Section 232.6 without substantive change.

§ 7801. Liberal construction

7801. This part shall be liberally construed to serve and protect the interests and welfare of the child.

Comment. Section 7801 continues the first sentence of former Civil Code Section 232.5 without substantive change.

§ 7802. Proceeding to declare minor free from parental custody and control

7802. A proceeding may be brought under this part for the purpose of having a minor child declared free from the custody and control of either or both parents.

Comment. Section 7802 continues without substantive change the first part of the first sentence of former Civil Code Section 232(a). A reference to “proceeding” has been substituted for the former reference to “action.” This is not a substantive change. A reference to “minor” child has been substituted for “child under the age of 18 years.” This is not a substantive change. See Section 6500 (minor is individual under 18). See also Sections 7820-7829 (circumstances where proceeding may be brought).

As noted in the Comments to sections in this part, references to “child” have been substituted for the former references to a “minor” or “minor person.” Formerly, the words “child” and “minor” were used interchangeably. Nevertheless, as provided in this section, only a minor child (one under 18 years of age) can be declared free from the custody and control of either or both of the child’s parents. See also Section 7820 (proceeding to declare minor free from parental custody and control).

§ 7803. Effect of declaration

7803. A declaration of freedom from parental custody and control pursuant to this part terminates all parental rights and responsibilities with regard to the child.

Comment. Section 7803 continues the second sentence of former Civil Code Section 232.6 without substantive change.

§ 7804. Appointment of person to act on child’s behalf

7804. In a proceeding under this part, the court may appoint a suitable party to act in behalf of the child and may order such further notice of the proceedings to be given as the court deems proper.

Comment. Section 7804 restates former Civil Code Section 237 without substantive change. The reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment.

§ 7805. Persons entitled to inspect petitions, reports, and records

7805. (a) A petition filed in a proceeding under this part, or a report of the probation officer or county department designated by the board of supervisors to administer the public social services program filed in a proceeding under this part, may be inspected only by the following persons:

- (1) Court personnel.
- (2) The child who is the subject of the proceeding.
- (3) The parents or guardian of the child.
- (4) The attorneys for the parties.
- (5) Any other person designated by the judge.

(b) In a proceeding before the court of appeal or Supreme Court to review a judgment or order entered in a proceeding under this part, the court record and briefs filed by the parties may be inspected only by the following persons:

- (1) Court personnel.
- (2) A party to the proceeding.
- (3) The attorneys for the parties.
- (4) Any other person designated by the presiding judge of the court before which the matter is pending.

(c) Notwithstanding any other provision of law, if it is believed that the welfare of the child will be promoted thereby, the court and the probation officer may furnish information, pertaining to a petition under this part, to any of the following:

- (1) The State Department of Social Services.
- (2) A county welfare department.
- (3) A public welfare agency.
- (4) A private welfare agency licensed by the State Department of Social Services.

Comment. Subdivisions (a) and (b) of Section 7805 continue former Civil Code Section 233.5 without substantive change. In subdivision (a), a reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment. Subdivision (c) continues former Civil Code Section 233.6 without

substantive change. The references to the “superior” court have been omitted as surplus. See Section 200 (jurisdiction in superior court).

§ 7806. No filing fee

7806. There shall be no filing fee charged for a proceeding brought under this part.

Comment. Section 7806 continues without substantive change the second sentence of the first paragraph of former Civil Code Section 233(a). A reference to “proceeding” has been substituted for the former reference to “action.” This is not a substantive change.

§ 7807. Inapplicability of certain statutory provisions in proceeding under this part

7807. Sections 3020, 3022, 3040 to 3043, inclusive, and 3409 do not apply in a proceeding under this part.

Comment. Section 7807 continues former Civil Code Section 232(d) without substantive change.

§ 7808. Child adjudged to be dependent child after January 1, 1989

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

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

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

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

Comment. Section 7808 continues former Civil Code Section 232(e) without substantive change. A reference to Chapter 5 (commencing with Section 7660) of Part 3 has been substituted for a narrower reference to former Civil Code Section 7017. This is not a substantive change.

CHAPTER 2. CIRCUMSTANCES WHERE PROCEEDING MAY BE BROUGHT

§ 7820. Proceeding to declare minor free from parental custody and control

7820. A proceeding may be brought under this part for the purpose of having a child under the age of 18 years declared free from the custody and control of either or both parents if the child comes within any of the descriptions set out in this chapter.

Comment. Section 7820 continues the introductory part of former Civil Code Section 232(a) without substantive change. A reference to “proceeding” has been substituted for the former reference to “action.” This is not a substantive change.

§ 7821. Clear and convincing evidence

7821. A finding pursuant to this chapter shall be supported by clear and convincing evidence.

Comment. Section 7821 continues former Civil Code Section 232(c) without substantive change.

§ 7822. Abandoned child

7822. (a) A proceeding under this part may be brought where the child has been left without provision for the child’s identification by the child’s parent or parents or by others or has been left by both parents or the sole parent in the care and custody of another for a period of six months or by one parent in the care and custody of the other parent for a period of one year without any provision for the child’s support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child.

(b) The failure to provide identification, failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the

court may declare the child abandoned by the parent or parents.

(c) If the child has been left without provision for the child's identification and the whereabouts of the parents are unknown, a petition may be filed after the 120th day following the discovery of the child and citation by publication may be commenced. The petition may not be heard until after the 180th day following the discovery of the child.

(d) If the parent has placed the child for adoption and has not refused to give the required consent to adoption, evidence of the adoptive placement shall not in itself preclude the court from finding an intent on the part of that parent to abandon the child. If the parent has placed the child for adoption and has refused to give the required consent to adoption but has not taken reasonable action to obtain custody of the child, evidence of the adoptive placement shall not in itself preclude the court from finding an intent on the part of that parent to abandon the child.

Comment. Section 7822 continues former Civil Code Section 232(a)(1) without substantive change.

§ 7823. Neglected or cruelly treated child

7823. (a) A proceeding under this part may be brought where all of the following requirements are satisfied:

(1) The child has been neglected or cruelly treated by either or both parents.

(2) The child has been a dependent child of the juvenile court under any subdivision of Section 300 of the Welfare and Institutions Code and the parent or parents have been deprived of the child's custody for one year before the filing of a petition pursuant to this part.

(b) Physical custody by the parent or parents for insubstantial periods of time does not interrupt the running of the one-year period.

Comment. Section 7823 continues former Civil Code Section 232(a)(2) without substantive change.

§ 7824. Parent under disability due to alcohol or controlled substance or moral depravity

7824. (a) “Disability” as used in this section means any physical or mental incapacity which renders the parent or parents unable to care for and control the child adequately.

(b) A proceeding under this part may be brought where all of the following requirements are satisfied:

(1) The child is one whose parent or parents (A) suffer a disability because of the habitual use of alcohol, or any of the controlled substances specified in Schedules I to V, inclusive, of Division 10 (commencing with Section 11000) of the Health and Safety Code, except when these controlled substances are used as part of a medically prescribed plan, or (B) are morally depraved.

(2) The child has been a dependent child of the juvenile court, and the parent or parents have been deprived of the child’s custody continuously for one year immediately before the filing of a petition pursuant to this part.

(c) Physical custody by the parent or parents for insubstantial periods of time does not interrupt the running of the one-year period.

Comment. Section 7824 continues former Civil Code Section 232(a)(3) without substantive change.

§ 7825. Parent convicted of felony

7825. A proceeding under this part may be brought where both of the following requirements are satisfied:

(a) The child is one whose parent or parents are convicted of a felony.

(b) The facts of the crime of which the parent or parents were convicted are of such a nature so as to prove the

unfitness of the parent or parents to have the future custody and control of the child.

Comment. Section 7825 continues former Civil Code Section 232(a)(4) without substantive change.

§ 7826. Parent declared developmentally disabled or mentally ill

7826. A proceeding under this part may be brought where both of the following requirements are satisfied:

(a) The child is one whose parent or parents have been declared by a court of competent jurisdiction, wherever situated, to be developmentally disabled or mentally ill.

(b) In the state or country in which the parent or parents reside or are hospitalized, the Director of Mental Health or the Director of Developmental Services, or their equivalent, if any, and the superintendent of the hospital, if any, of which the parent or parents are inmates or patients, certify that the parent or parents so declared to be developmentally disabled or mentally ill will not be capable of supporting or controlling the child in a proper manner.

Comment. Section 7826 continues former Civil Code Section 232(a)(5) without substantive change.

§ 7827. Parent mentally disabled

7827. (a) “Mentally disabled” as used in this section means that a parent or parents suffer a mental incapacity or disorder which renders the parent or parents unable to care for and control the child adequately.

(b) A proceeding under this part may be brought where the child is one whose parent or parents are mentally disabled and are likely to remain so in the foreseeable future.

(c) Except as provided in subdivision (d), the evidence of any two experts, each of whom shall be either a physician and surgeon, certified either by the American Board of Psychiatry and Neurology or under Section 6750 of the Welfare and Institutions Code, or a licensed psychologist who has a

doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, is required to support a finding under this section.

(d) If the parent or parents reside in another state or in a foreign country, the evidence required by this section may be supplied by the affidavits of two experts, each of whom shall be either of the following:

(1) A physician and surgeon who is a resident of that state or foreign country, and who has been certified by a medical organization or society of that state or foreign country to practice psychiatric or neurological medicine.

(2) A licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders and who is licensed in that state or authorized to practice in that country.

(e) If the rights of a parent are sought to be terminated pursuant to this section, and the parent has no attorney, the court shall appoint an attorney for the parent pursuant to Article 4 (commencing with Section 7860) of Chapter 3, whether or not a request for the appointment is made by the parent.

Comment. Section 7827 continues former Civil Code Section 232(a)(6) without substantive change.

§ 7828. Child in supervised out-of-home placement for one-year period

7828. (a) A proceeding under this part may be brought where all of the following requirements are satisfied:

(1) The child is one who has been in out-of-home placement under the supervision of the juvenile court, the county welfare department, or other public or private licensed child-placing agency for a one-year period.

(2) The court finds that return of the child to the child's parent or parents would be detrimental to the child and that the parent or parents have failed during the one-year period, and are likely to fail in the future, to maintain an adequate parental relationship with the child, which includes providing both a home and care and control for the child.

(b) If the child has been adjudged a dependent child of the juvenile court and placed in out-of-home placement pursuant to Section 361 of the Welfare and Institutions Code, the one-year period is calculated from the date of the dispositional hearing at which the child was placed in out-of-home placement pursuant to that section.

(c) If the child is in placement under the supervision of a county welfare department or other public or private licensed child-placing agency, pursuant to a voluntary placement, as described in Section 16507.4 of the Welfare and Institutions Code, the one-year period is calculated from the date the child entered out-of-home placement.

(d) Trial placement of the child in the physical custody of the parent or visitation of the child with the parent during the one-year period, when the trial placement or visitation does not result in permanent placement of the child with the parent, does not interrupt the running of the one-year period.

(e) The court shall make a determination that reasonable services have been provided or offered to the parents which were designed to aid the parents to overcome the problems which led to the deprivation or continued loss of custody and that despite the availability of these services, return of the child to the parents would be detrimental to the child. The probation officer or social worker currently assigned to the case of the child shall appear at the termination proceedings. If the child has been adjudged to be a dependent child of the court pursuant to Section 300 of the Welfare and Institutions Code, the court shall review and consider the contents of the

juvenile court file in determining if the services offered were reasonable under the circumstances.

Comment. Section 7828 continues former Civil Code Section 232(a)(7) without substantive change. In subdivisions (b), (c), and (e), references to “child” have been substituted for the former references to “minor.” These are not substantive changes. See Section 7802 Comment.

§ 7829. Child found to be dependent child and reunification services not to be provided

7829. A proceeding under this part may be brought where both of the following requirements are satisfied:

(a) The child has been found to be a dependent child of the juvenile court.

(b) The juvenile court has determined, pursuant to paragraph (3), (4), or (5) of subdivision (b) of Section 361.5 of the Welfare and Institutions Code, that reunification services shall not be provided to the child’s parent or guardian.

Comment. Section 7829 continues former Civil Code Section 232(a)(8) without substantive change. References to “child” have been substituted for the former references to “minor.” These are not substantive changes. See Section 7802 Comment.

CHAPTER 3. PROCEDURE

Article 1. Authorized Petitioners

§ 7840. Petition by private or public adoption agency or state or county agency

7840. (a) A petition may be filed under this part for an order or judgment declaring a child free from the custody and control of either or both parents by any of the following:

(1) The State Department of Social Services, a county welfare department, a licensed private or public adoption agency, a county adoption department, or a county probation department which is planning adoptive placement of the child with a licensed adoption agency.

(2) The State Department of Social Services acting as an adoption agency in counties which are not served by a county adoption agency.

(b) The fact that a child is in a foster care home subject to the requirements of Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code does not prevent the filing of a petition under subdivision (a).

(c) The county counsel or, if there is no county counsel, the district attorney of the county specified in Section 7845 shall, in a proper case, institute the proceeding upon the request of any of the state or county agencies mentioned in subdivision (a). The proceeding shall be instituted pursuant to this part within 30 days of the request.

(d) If, at the time of the filing of a petition by a department or agency specified in subdivision (a), the child is in the custody of the petitioner, the petitioner may continue to have custody of the child pending the hearing on the petition unless the court, in its discretion, makes such other order regarding custody pending the hearing as it finds will best serve and protect the interest and welfare of the child.

Comment. Section 7840 restates former Civil Code Section 232.9 without substantive change. In subdivision (c), the reference to a “verified” petition has been omitted as surplus. See Section 212 (pleadings to be verified). In subdivision (d), references to “proceeding” have been substituted for the former references to “action.” These are not substantive changes. See also Sections 7841 (any interested person may file petition), 7845 (venue).

§ 7841. Right of interested person to file petition

7841. Any interested person may file a petition under this part for an order or judgment declaring a child free from the custody and control of either or both parents.

Comment. Section 7841 restates without substantive change the first and last parts of the first sentence of the first paragraph of former Civil Code Section 233(a). The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 7845 (venue).

Article 2. Venue

§ 7845. Venue

7845. The petition shall be filed in either of the following:

(a) The county in which a minor described in Chapter 2 (commencing with Section 7820) resides or is found.

(b) The county in which any of the acts which are set forth in Chapter 2 (commencing with Section 7820) are alleged to have occurred.

Comment. Section 7845 restates without substantive change the first half of the first sentence of the first paragraph of former Civil Code Section 233(a). See also Section 200 (jurisdiction in superior court).

Article 3. Investigation and Report

§ 7850. Investigation of circumstances of child

7850. Upon the filing of a petition under Section 7841, the clerk of the court shall, in accordance with the direction of the court, immediately notify the juvenile probation officer, qualified court investigator, or the county department designated by the board of supervisors to administer the public social services program, who shall immediately investigate the circumstances of the child and the circumstances which are alleged to bring the child within any of the provisions of Chapter 2 (commencing with Section 7820).

Comment. Section 7850 continues the third sentence of former Civil Code Section 233(a) without substantive change. References to “child” have been substituted for the former references to “minor.” These are not substantive changes. See Section 7802 Comment. Section 7850 does not require the notice and investigation if the petition is filed under Section 7840 (petition by licensed private or public adoption agency or state or county agency).

§ 7851. Report and recommendations to court

7851. (a) The juvenile probation officer, qualified court investigator, or the county department shall render to the

court a written report of the investigation with a recommendation to the court of the proper disposition to be made in the proceeding in the best interest of the child.

(b) The report shall include all of the following:

(1) A statement that the person making the report explained to the child the nature of the proceeding to end parental custody and control.

(2) A statement of the child's feelings and thoughts concerning the pending proceeding.

(3) A statement of the child's attitude towards the child's parent or parents and particularly whether or not the child would prefer living with his or her parent or parents.

(4) A statement that the child was informed of the child's right to attend the hearing on the petition and the child's feelings concerning attending the hearing.

(c) If the age, or the physical, emotional, or other condition of the child precludes the child's meaningful response to the explanations, inquiries, and information required by subdivision (b), a description of the condition shall satisfy the requirement of that subdivision.

(d) The court shall receive the report in evidence and shall read and consider its contents in rendering the court's judgment.

Comment. Section 7851 continues without substantive change former Civil Code Section 233, from the last sentence of the first paragraph of subdivision (a) to the end of subdivision (a). In subdivisions (a) and (b)(1), references to "proceeding" have been substituted for the former references to "action." These are not substantive changes. Throughout this section, references to "child" have been substituted for the former references to "minor." These are not substantive changes. See Section 7802 Comment.

§ 7852. "Qualified court investigator" defined

7852. "Qualified court investigator," as used in this article, has the meaning provided by Section 8543.

Comment. Section 7852 continues former Civil Code Section 233(b) without substantive change.

Article 4. Appointment of Counsel

§ 7860. Procedure for appointment of counsel

7860. At the beginning of the proceeding on a petition filed pursuant to this part, counsel shall be appointed as provided in this article. The public defender or private counsel may be appointed as counsel pursuant to this article. The same counsel shall not be appointed to represent both the child and the child's parent.

Comment. Section 7860 continues without substantive change the introductory part, the last sentence of subdivision (b), and the first sentence of subdivision (c) of former Civil Code Section 237.5. The reference to "child" has been substituted for the former reference to "minor." This is not a substantive change. See Section 7802 Comment. See also Sections 7827(e) (mandatory appointment of counsel for mentally disabled parent), 7895 (appointment of counsel for indigent appellant).

§ 7861. Appointment to protect interests of child

7861. The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child require representation by counsel, the court shall appoint counsel to represent the child, whether or not the child is able to afford counsel. The child shall not be present in court unless the child so requests or the court so orders.

Comment. Section 7861 continues former Civil Code Section 237.5(a) without substantive change. References to "child" have been substituted for the former references to "minor." These are not substantive changes. See Section 7802 Comment. This section has been reworded to make it more concise.

§ 7862. Appointment of counsel for parent

7862. If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless that representation is knowingly and intelligently waived.

Comment. Section 7862 continues the first sentence of former Civil Code Section 237.5(b) without substantive change.

§ 7863. Compensation and expenses of private appointed counsel

7863. Private counsel appointed under this article shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount so determined shall be paid by the real parties in interest, other than the child, in proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

Comment. Section 7863 continues the last three sentences of former Civil Code Section 237.5(c) without substantive change. The reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment.

§ 7864. Continuance

7864. The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel and to enable counsel to become acquainted with the case.

Comment. Section 7864 continues former Civil Code Section 237.5(d) without substantive change. For a general provision on continuances, see Section 7871.

Article 5. Time for Hearing; Continuance

§ 7870. Time for hearing; precedence over other matters; continuance

7870. (a) It is the public policy of this state that judicial proceedings to declare a child free from parental custody and control shall be fully determined as expeditiously as possible.

(b) Notwithstanding any other provision of law, a proceeding to declare a child free from parental custody and control pursuant to this part shall be set for trial not more than 45 days after filing notification therefor and completion of service thereon in the manner prescribed by law for service of civil process. The matter so set has precedence over all other civil matters on the date set for trial.

(c) The court may continue the proceeding as provided in Section 7864 or Section 7871.

Comment. Section 7870 continues former Civil Code Section 232.3(a)-(b) without substantive change. In subdivision (c), a reference to Section 7871 has been added.

§ 7871. Continuance of hearing

7871. (a) A continuance may be granted only upon a showing of good cause. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause.

(b) Unless the court for good cause entertains an oral motion for continuance, written notice of a motion for a continuance of the hearing shall be filed within two court days of the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary.

(c) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever a continuance is granted,

the facts proven which require the continuance shall be entered upon the minutes of the court.

Comment. Section 7871 restates former Civil Code Section 232.3(c) without substantive change. See also Section 7864 (continuance for up to 30 days as necessary to appoint counsel and to enable counsel to become acquainted with case).

Article 6. Notice of Proceeding and Attendance at Hearing

§ 7880. Citation requiring attendance at hearing

7880. (a) Upon the filing of the petition, a citation shall issue requiring any person having the custody or control of the child, or the person with whom the child is, to appear at a time and place stated in the citation.

(b) The citation shall also require the person to appear with the child except that, if the child is under the age of 10 years, appearance with the child is required only upon order of the court after necessity has been shown.

(c) Service of the citation shall be made in the manner prescribed by law for service of civil process at least 10 days before the time stated in the citation for the appearance.

Comment. Section 7880 continues the first paragraph of former Civil Code Section 234 without substantive change. The requirement that service “be made in the manner prescribed by law for service of civil process” is new and is drawn from the first paragraph of former Civil Code Section 232.3(b), now Family Code Section 7870(b). Throughout this section, references to “child” have been substituted for the former references to “minor.” These are not substantive changes. See Section 7802 Comment.

§ 7881. Service of citation on parents or relatives

7881. (a) Notice of the proceeding shall be given by service of a citation on the father or mother of the child, if the place of residence of the father or mother is known to the petitioner. If the place of residence of the father or mother is not known to the petitioner, then the citation shall be served on the grandparents and adult brothers, sisters, uncles, aunts, and

first cousins of the child, if there are any and if their residences and relationships to the child are known to the petitioner.

(b) The citation shall advise the person or persons that they may appear at the time and place stated in the citation. The citation shall also advise the person or persons of the rights and procedures set forth in Article 4 (commencing with Section 7860). If the petition is filed for the purpose of freeing the child for placement for adoption, the citation shall so state.

(c) The citation shall be served in the manner provided by law for the service of a summons in a civil action, other than by publication. If one parent has relinquished the child for the purpose of adoption, or has signed a consent for adoption as provided in Sections 8700, 8814, or 9003, notice as provided in this section need not be given to the parent who has signed the relinquishment or consent.

(d) Service of the citations required by this section shall be made at least 10 days before the time stated in the citation for the appearance.

Comment. Section 7881 continues former Civil Code Section 235(a) without substantive change. In subdivision (a), references to “child” have been substituted for the former references to “minor.” These are not substantive changes. See Section 7802 Comment.

§ 7882. Service on parent who cannot be found or whose residence is unknown

7882. (a) If the father or mother of the child or a person alleged to be or claiming to be the father or mother cannot, with reasonable diligence, be served as provided for in Section 7881, or if his or her place of residence is not known to the petitioner, the petitioner or the petitioner’s agent or attorney shall make and file an affidavit, which shall state the name of the father or mother or alleged father or mother and his or her place of residence, if known to the petitioner, and

the name of the father or mother or alleged father or mother whose place of residence is unknown to the petitioner.

(b) Upon the filing of the affidavit, the court shall make an order that (1) the service shall be made by the publication of a citation requiring the father or mother or alleged father or mother to appear at the time and place stated in the citation and (2) the citation shall be published pursuant to Section 6064 of the Government Code in a newspaper to be named and designated in the order as most likely to give notice to the father or mother or alleged father or mother to be served.

(c) In case of publication where the residence of a parent or alleged parent is known, the court shall also direct a copy of the citation to be forthwith served upon that parent or alleged parent by mail by deposit in the post office properly addressed and with the postage thereon fully prepaid, directed to that parent or alleged parent at the place of residence. When publication is ordered, service of a copy of the citation in the manner provided for in Section 7881 is equivalent to publication and deposit in the post office.

(d) If one or both of the parents of the child are unknown or if the names of one or both of the child's parents are uncertain, that fact shall be set forth in the affidavit and the court shall order the citation to be directed to either or both of the child's parents, naming and otherwise describing the child, and to all persons claiming to be a parent of the child.

(e) Service is complete at the expiration of the time prescribed by the order for publication or when service is made as provided for in Section 7881, whichever event first occurs.

Comment. Section 7882 continues former Civil Code Section 235(b) without substantive change. In subdivisions (a) and (d), references to "child" have been substituted for the former references to "minor." These are not substantive changes. See Section 7802 Comment. In subdivision (b), a reference to Government Code Section 6064 has been substituted for the requirement that the notice be published once a week for four successive weeks. This is not a substantive change.

§ 7883. Failure to comply with citation as contempt

7883. If a person personally served with a citation within this state as provided in Section 7880 fails without reasonable cause to appear and abide by the order of the court, or to bring the child before the court if so required in the citation, the failure constitutes a contempt of court.

Comment. Section 7883 continues former Civil Code Section 236 without substantive change. A reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment. A reference to Section 7880 has been added to make clear that this section applies only when attendance by the person is required by the citation. A person served with a citation under Section 7881 may, but is not required to, attend the hearing.

§ 7884. Admission of public to proceeding

7884. (a) Unless requested by the child concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a proceeding under this part.

(b) Notwithstanding subdivision (a), the judge may admit those persons the judge determines have a direct and legitimate interest in the particular case or in the work of the court.

Comment. Section 7884 continues former Civil Code Section 235.5 without substantive change. In subdivision (a), a reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment.

Article 7. Hearing and Subsequent Proceedings

§ 7890. Wishes and best interest of child

7890. In a proceeding under this part, the court shall consider the wishes of the child, bearing in mind the age of the child, and shall act in the best interest of the child.

Comment. Section 7890 restates without substantive change the last sentence of former Civil Code Section 232.5 and the first paragraph of former Civil Code Section 232(b).

§ 7891. Hearing in chambers to determine wishes of child

7891. (a) Except as otherwise provided in this section, if the child who is the subject of the petition is 10 years of age or older, the child shall be heard by the court in chambers on at least the following matters:

(1) The feelings and thoughts of the child concerning the custody proceeding about to take place.

(2) The feelings and thoughts of the child about the child's parent or parents.

(3) The child's preference as to custody, according to Section 3042.

(b) The court shall inform the child of the child's right to attend the hearing. However, counsel for the child may waive the hearing in chambers by the court.

(c) This section does not apply if the child is confined because of illness or other incapacity to an institution or residence and is therefore unable to attend.

Comment. Section 7891 continues without substantive change the second paragraph and subdivisions (a)-(c) of former Civil Code Section 234. Throughout this section, references to "child" have been substituted for the former references to "minor." These are not substantive changes. See Section 7802 Comment. The reference to Section 3042 has been substituted for the broader reference to former Civil Code Section 4600. This is not a substantive change, since Section 3042 continues the relevant part of the former section. See also Section 7954 (minor's right to make statement in connection with priorities for foster care placement).

§ 7892. Testimony of child in chambers

7892. (a) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of the child's parent or parents.

(b) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in subdivision (a).

(c) A finding pursuant to this section shall be supported by clear and convincing evidence.

(d) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

Comment. Subdivisions (a), (b), and (d) of Section 7892 continue without substantive change former Civil Code Section 232(b) from the second paragraph to the end of the former subdivision. Subdivision (c) continues former Civil Code Section 232(c) without substantive change. Throughout this section, references to "child" have been substituted for the former references to "minor." These are not substantive changes. See Section 7802 Comment.

§ 7893. Appointment of guardian or referral for adoption

7893. (a) If the court, by order or judgment, declares a child free from the custody and control of both parents under this part, or one parent if the other no longer has custody and control, the court shall at the same time take one of the following actions:

(1) Appoint a guardian for the child.

(2) At the request of the State Department of Social Services or a licensed adoption agency, or where the court finds it is in the child's best interest, refer the child to a licensed adoption agency for adoptive placement by the agency.

(b) When the court refers the child to a licensed adoption agency for adoptive placement by the agency:

(1) The agency is responsible for the care of the child and is entitled to the exclusive custody and control of the child at all times until a petition for adoption has been granted.

(2) After the referral, no petition for guardianship may be filed without the consent of the agency.

(3) No petition for adoption may be heard until the appellate rights of the natural parents have been exhausted.

Comment. Section 7893 continues former Civil Code Section 239 without substantive change. Throughout this section, references to “child” have been substituted for the former references to “minor.” These are not substantive changes. See Section 7802 Comment.

§ 7894. Conclusiveness of order or judgment

7894. (a) An order and judgment of the court declaring a child free from the custody and control of a parent or parents under this part is conclusive and binding upon the child, upon the parent or parents, and upon all other persons who have been served with citations by publication or otherwise as provided in this part.

(b) After making the order and judgment, the court has no power to set aside, change, or modify it.

(c) Nothing in this section limits the right to appeal from the order and judgment.

Comment. Section 7894 continues former Civil Code Section 238 without substantive change. In subdivision (a), references to “child” have been substituted for the former references to “minor.” These are not substantive changes. See Section 7802 Comment. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control).

§ 7895. Appointment of counsel for indigent appellant; free copy of transcripts

7895. (a) Upon appeal from a judgment freeing a child who is a dependent child of the juvenile court from parental custody and control, the appellate court shall appoint counsel for the appellant as provided by this section.

(b) Upon motion by the appellant and a finding that the appellant is unable to afford counsel, the appellate court shall appoint counsel for the indigent appellant, and appellant's counsel shall be provided a free copy of the reporter's and clerk's transcript. All of those costs are a charge against the state.

(c) The reporter's and clerk's transcripts shall be prepared and transmitted immediately after filing of the notice of appeal, at state expense and without advance payment of fees. If the appellant is able to afford counsel, the state may seek reimbursement from the appellant for the cost of the transcripts under subdivision (c) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

Comment. Section 7895 continues former Civil Code Section 237.7 without substantive change. In subdivision (a), a reference to "child" has been substituted for the former reference to "minor." This is not a substantive change. See Section 7802 Comment. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control).

PART 5 . INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

§ 7900. Adoption of compact

7900. The Interstate Compact on Placement of Children as set forth in Section 7901 is hereby adopted and entered into with all other jurisdictions joining therein.

Comment. Section 7900 continues former Civil Code Section 264 without substantive change.

§ 7901. Provisions of compact

7901. The provisions of the interstate compact referred to in Section 7900 are as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Article 1. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article 2. Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(b) "Sending agency" means a party state, or officer or employee thereof; subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity

which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

Article 3. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Before sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (1) The name, date, and place of birth of the child.
- (2) The identity and address or addresses of the parents or legal guardian.
- (3) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for the proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article 4. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. A violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any punishment or penalty, any violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article 5. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. That jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of that case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) of this article.

Article 6. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child

is given a court hearing on notice to the parent or guardian with opportunity to be heard, before being sent to the other party jurisdiction for institutional care and the court finds that both of the following exist:

(a) Equivalent facilities for the child are not available in the sending agency's jurisdiction.

(b) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article 7. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article 8. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his or her parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his or her guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article 9. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any of these jurisdictions when that jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of the statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made before the effective date of withdrawal.

Article 10. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Comment. Section 7901 continues former Civil Code Section 265 without substantive change.

§ 7902. Financial responsibility for child placed pursuant to compact

7902. Financial responsibility for a child placed pursuant to the Interstate Compact on the Placement of Children shall be determined in accordance with Article 5 of the compact in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of other state laws also may be invoked.

Comment. Section 7902 continues former Civil Code Section 266 without change.

§ 7903. “Appropriate public authorities” defined

7903. The phrase “appropriate public authorities” as used in Article 3 of the Interstate Compact on the Placement of Children means, with reference to this state, the State Department of Social Services, and that department shall receive and act with reference to notices required by Article 3 of the compact.

Comment. Section 7903 continues former Civil Code Section 267 without substantive change.

§ 7904. “Appropriate authority in receiving state” defined

7904. The phrase “appropriate authority in receiving state” as used in paragraph (a) of Article 5 of the Interstate Compact on the Placement of Children, with reference to this state, means the State Department of Social Services.

Comment. Section 7904 continues former Civil Code Section 268 without substantive change.

§ 7905. Agreements with party states; approval of financial obligations

7905. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial

commitment or imposes a financial obligation on this state or subdivision or agency thereof is not binding unless it has the approval in writing of the Controller in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

Comment. Section 7905 continues former Civil Code Section 269 without substantive change.

§ 7906. Requirements for visitation, inspection, or supervision in another state

7906. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under the law of this state shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children.

Comment. Section 7906 continues former Civil Code Section 270 without change.

§ 7907. Application of law restricting out-of-state placements

7907. No provision of law restricting out-of-state placement of children for adoption shall apply to placements made pursuant to the Interstate Compact on the Placement of Children.

Comment. Section 7907 continues former Civil Code Section 271 without change.

§ 7908. Placement of delinquent children in institution in another state

7908. A court having jurisdiction to place delinquent children may place a delinquent child in an institution in another state pursuant to Article 6 of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article 5 of the compact.

Comment. Section 7908 continues former Civil Code Section 272 without substantive change.

§ 7909. Appointment of compact administrator

7909. “Executive head” as used in Article 7 of the Interstate Compact on the Placement of Children means the Governor. The Governor shall appoint a compact administrator in accordance with the terms of Article 7 of the compact.

Comment. Section 7909 continues former Civil Code Section 273 without substantive change.

§ 7910. Refusal to grant approval of placement in violation of state law

7910. Approval of an interstate placement of a child for adoption shall not be granted by the compact administrator if the placement is in violation of either Section 8801 of this code or Section 273 of the Penal Code.

Comment. Section 7910 continues former Civil Code Section 274 without substantive change.

**PART 6 . PRIORITIES FOR FOSTER
CARE PLACEMENT**

§ 7950. Order of placement preference

7950. (a) With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a child is being considered for placement in foster care, the following order of placement preference regarding racial or ethnic background shall be used, except where application of these priorities would not be in the best interest of the child:

(1) Placement shall, if possible, be made in the home of a relative. Diligent efforts shall be made to locate an appropriate relative. Before any child may be placed in long-term foster care, each relative whose name has been

submitted to the agency as a possible caretaker, either by himself or herself or by other persons, shall be evaluated as an appropriate placement resource.

(2) If a relative is not available after 30 days from the time the child comes under the jurisdiction of the juvenile court, or if placement with available relatives is not in the child's best interest, placement shall be made with a foster parent with the same racial or ethnic identification as the child. If the child has a mixed racial or ethnic background, placement shall be made with a family of the racial or ethnic group with which the child has the more significant contacts.

(3) If placement cannot be made under the rules set forth in paragraphs (1) and (2), placement shall be made with a family of a different racial background or ethnic identification where there is evidence of sensitivity to the child's race, ethnicity, and culture. The child's religious background shall also be considered in determining an appropriate placement.

(b) Nothing in this section precludes either of the following:

(1) A search for an appropriate relative being conducted simultaneously with a search for a foster family.

(2) The child remaining at the same placement site while the search for an appropriate relative or foster family is being conducted.

Comment. Section 7950 continues former Civil Code Section 275 without substantive change.

§ 7951. Considerations constituting good cause not to follow rules

7951. A determination of good cause not to follow the rules set forth in Section 7950 may be based on one or more of the following considerations:

(a) Request of the parent or parents.

(b) The extraordinary physical or emotional needs of the child.

(c) The unavailability of suitable parents for placement after a diligent search has been completed for families meeting the preference criteria.

Comment. Section 7951 continues former Civil Code Section 275.1 without substantive change.

§ 7952. Records showing diligent search conducted

7952. (a) Every public or private agency is encouraged to maintain records for the placement of each child to show that a diligent search has been conducted for families meeting the criteria of this part, and in accordance with preference of placement criteria established by the State Department of Social Services.

(b) Records of agencies maintained pursuant to this section may be reviewed upon request by the state department.

Comment. Section 7952 continues former Civil Code Section 275.2 without substantive change.

§ 7953. Placing child for period not intended to exceed 30 days

7953. This part does not apply in determining the foster care setting in which the child may be placed for a period not intended to exceed 30 days.

Comment. Section 7953 continues former Civil Code Section 275.3 without substantive change.

§ 7954. Minor's right to make statement

7954. A minor 10 years of age or older being considered for placement in a foster home has the right to make a brief statement to the court making a decision on placement. The court may disregard any preferences expressed by the minor. The minor's right to make a statement is not limited to the initial placement, but continues for any proceedings concerning continued placement or a decision to return to parental custody.

Comment. Section 7954 continues former Civil Code Section 275.4 without substantive change.

DIVISION 13. ADOPTION

PART 1 . DEFINITIONS

§ 8500. Application of definitions

8500. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this division.

Comment. Section 8500 is new and is comparable to Section 50. Section 8500 supersedes the introductory clause of former Civil Code Section 220.20. The definitions in this part have been made applicable to both minor adoptions governed by Part 2 and adult adoptions governed by Part 3.

§ 8502. “Adoption service provider”

8502. “Adoption service provider” means any of the following:

(a) A licensed private adoption agency.

(b) An individual who has presented satisfactory evidence to the department that he or she is a licensed clinical social worker who also has a minimum of five years’ experience providing professional social work services while employed by a licensed California adoption agency or the department.

(c) In a state other than California, an adoption agency licensed or otherwise approved under the laws of that state, or an individual who is licensed or otherwise certified as a clinical social worker under the laws of that state.

(d) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 3 (SB 792).

§ 8503. “Adoptive parent”

8503. “Adoptive parent” means a person who has obtained an order of adoption of a minor child or, in the case of an adult adoption, an adult.

Comment. Section 8503 supersedes former Civil Code Section 220.20(a). The definition has been broadened to apply to adoptions of minors and adults. The reference in the former law to petitioning for an adoption order has been omitted as surplus. The reference to final decrees of adoption has been omitted as surplus. See Section 100 (“order” includes decree, as appropriate). The reference to children is also omitted as surplus. See Section 10 (singular includes plural).

§ 8506. “Agency adoption”

8506. “Agency adoption” means the adoption of a minor, other than an intercountry adoption, in which the department or a licensed adoption agency is a party to, or joins in, the adoption petition.

Comment. Section 8506 continues former Civil Code Section 220.20(b) without substantive change. The defined term “licensed adoption agency” is used instead of the former reference to “an agency licensed by the department.” For provisions relating to agency adoptions, see Chapter 2 (commencing with Section 8700) of Part 2.

See also Sections 8518 (“department” defined), 8527 (“intercountry adoption” defined), 8530 (“licensed adoption agency” defined).

§ 8509. “Applicant”

8509. “Applicant” means a person who has submitted a written application to adopt a child from the department or a licensed adoption agency and who is being considered by the department or agency for the adoptive placement of a child.

Comment. Section 8509 continues former Civil Code Section 220.20(c) without change. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 8512. “Birth parent”

8512. “Birth parent” means the biological parent or, in the case of a person previously adopted, the adoptive parent.

Comment. Section 8512 continues former Civil Code Section 220.20(d) without substantive change. A reference to “person” has been substituted for “child,” since this definition also applies to Part 3 (commencing with Section 9300) concerning adult adoptions. See also Section 8503 (“adoptive parent” defined).

§ 8515. “Delegated county adoption agency”

8515. “Delegated county adoption agency” means a licensed county adoption agency that has agreed to provide the services described in Chapter 3 (commencing with Section 8800) of Part 2.

Comment. Section 8515 continues former Civil Code Section 220.20(f) without substantive change. See also Section 8530 (“licensed adoption agency” defined).

§ 8518. “Department”

8518. “Department” means the State Department of Social Services.

Comment. Section 8518 continues former Civil Code Section 220.20(g) without change.

§ 8521. “Full-service adoption agency”

8521. (a) “Full-service adoption agency” means a licensed entity engaged in the business of providing adoption services, which does all of the following:

(1) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(2) Assesses the birth parents, prospective adoptive parents, or child.

(3) Places children for adoption.

(4) Supervises adoptive placements.

(b) Private full-service adoption agencies shall be organized and operated on a nonprofit basis.

Comment. Section 8521 continues former Civil Code Section 220.20(h) without substantive change. Language in subdivision (b) that was subject to a January 1, 1994, sunset clause has been omitted. See also Sections 8512 (“birth parent” defined), 8542 (“prospective adoptive parent” defined).

§ 8524. “Independent adoption”

8524. “Independent adoption” means the adoption of a child in which neither the department nor an agency licensed by the department is a party to, or joins in, the adoption petition.

Comment. Section 8524 continues former Civil Code Section 220.20(i) without substantive change. For provisions relating to independent adoptions, see Chapter 3 (commencing with Section 8800) of Part 2.

See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 8527. “Intercountry adoption”

8527. “Intercountry adoption” means the adoption of a foreign-born child for whom federal law makes a special immigration visa available. Intercountry adoption includes completion of the adoption in the child’s native country or completion of the adoption in this state.

Comment. Section 8527 continues former Civil Code Section 220.20(j) without substantive change. For provisions relating to intercountry adoptions, see Chapter 4 (commencing with Section 8900) of Part 2.

§ 8530. “Licensed adoption agency”

8530. “Licensed adoption agency” means an agency licensed by the department to provide adoption services, including a licensed county adoption agency and a licensed private adoption agency.

Comment. Section 8530 continues former Civil Code Section 220.20(k) without change. See also Section 8518 (“department” defined).

§ 8533. “Noncustodial adoption agency”

8533. (a) “Noncustodial adoption agency” means any licensed entity engaged in the business of providing adoption services, which does all of the following:

- (1) Assesses the prospective adoptive parents.
- (2) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption

agency, for adoption, with assessed and approved prospective adoptive parents.

(3) Cooperatively supervises adoptive placements with a full-service adoption agency, but does not disrupt a placement or remove a child from a placement.

(b) Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.

Comment. Section 8533 continues former Civil Code Section 220.20(l) without substantive change. In subdivision (a)(2), the reference to “prospective adoptive applicants” has been changed to “prospective adoptive parents.” See Section 8542 (“prospective adoptive parent” defined). Language in subdivision (b) that was subject to a January 1, 1994, sunset clause has been omitted. See also Sections 8512 (“birth parent” defined), 8521 (“full-service adoption agency” defined), 8530 (“licensed adoption agency” defined).

§ 8539. “Place for adoption”

8539. “Place for adoption” means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents and the completion of an adoptive placement agreement on a form prescribed by the department by the birth parent or parents placing the child with prospective adoptive parents.

This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 4 (SB 792).

§ 8542. “Prospective adoptive parent”

8542. “Prospective adoptive parent” means a person who has filed or intends to file a petition under Part 2 (commencing with Section 8600) to adopt a child who has been or who is to be placed in the person’s physical care or a petition under Part 3 (commencing with Section 9300) to adopt an adult.

Comment. Section 8542 restates former Civil Code Section 220.20(p) without substantive change and also applies the definition to adult adoptions.

§ 8543. “Qualified court investigator”

8543. “Qualified court investigator” means a superior court investigator with the same minimum qualifications as a probation officer or county welfare worker designated to conduct stepparent adoption investigations in stepparent adoption proceedings and proceedings to declare a minor free from parental custody and control.

Comment. Section 8543 continues without substantive change part of former Civil Code Section 220.20 added by Section 1 of Chapter 472 of the Statutes of 1992, but inadvertently chaptered out by amendments to the same section made by Section 2 of Chapter 1353 of the Statutes of 1992.

§ 8545. “Special-needs child”

8545. “Special-needs child” means a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group that should remain intact, mental, physical, medical, or emotional handicaps, or age of three years or more.

Comment. Section 8545 continues former Civil Code Section 220.20(q) without substantive change.

§ 8548. “Stepparent adoption”

8548. “Stepparent adoption” means an adoption of a child by a stepparent where one birth parent retains custody and control of the child.

Comment. Section 8548 continues former Civil Code Section 220.20(r) without substantive change. For provisions relating to stepparent adoptions, see Chapter 5 (commencing with Section 9000) of Part 2. See also Section 8512 (“birth parent” defined).

PART 2. ADOPTION OF UNMARRIED MINORS

CHAPTER 1. GENERAL PROVISIONS

§ 8600. Minors eligible for adoption

8600. An unmarried minor may be adopted by an adult as provided in this part.

Comment. Section 8600 restates former Civil Code Section 221.10 without substantive change and supersedes former Civil Code Section 220.20(e) (“child” means minor child). The language of this section has been simplified.

§ 8601. Required age difference between adoptive parents and child

8601. (a) Except as otherwise provided in subdivision (b), a prospective adoptive parent or parents shall be at least 10 years older than the child.

(b) If the court is satisfied that the adoption of a child by a stepparent, or by a sister, brother, aunt, uncle, or first cousin and, if that person is married, by that person and that person’s spouse, is in the best interest of the parties and is in the public interest, it may approve the adoption without regard to the ages of the child and the prospective adoptive parent or parents.

Comment. Section 8601 continues former Civil Code Section 221.12 without substantive change. In subdivision (a), “prospective adoptive parent or parents” has been substituted for “person adopting a child” for consistency with the language of subdivision (b) and Sections 8612, 8801, and 8815. As revised, subdivision (a) provides that both prospective adoptive parents are subject to the 10-year age difference rule. See Section 8542 (“prospective adoptive parent” defined). A reference to “child” has been substituted for “person adopted.” This is not a substantive change.

In subdivision (b), a reference to “first cousin” has been substituted for “cousin-german.” This is not a substantive change.

§ 8602. Consent of child over 12

8602. The consent of a child, if over the age of 12 years, is necessary to the child's adoption.

Comment. Section 8602 continues former Civil Code Section 221.13 without substantive change.

§ 8603. Consent of spouse of married adoptive parent

8603. A married person, not lawfully separated from the person's spouse, may not adopt a child without the consent of the spouse, provided that the spouse is capable of giving that consent.

Comment. Section 8603 continues former Civil Code Section 221.14 without substantive change. The language of this section has been simplified by eliminating paired references to husband and wife.

§ 8604. Consent of parents

8604. (a) Except as provided in subdivision (b), a child having a presumed father under Section 7611 may not be adopted without the consent of the child's birth parents, if living.

(b) If one birth parent has been awarded custody by judicial order, or has custody by agreement of both parents, and the other birth parent for a period of one year willfully fails to communicate with and to pay for the care, support, and education of the child when able to do so, then the birth parent having sole custody may consent to the adoption, but only after the birth parent not having custody has been served with a copy of a citation in the manner provided by law for the service of a summons in a civil action that requires the birth parent not having custody to appear at the time and place set for the appearance in court under Section 8718, 8823, 8913, or 9007.

(c) Failure of a birth parent to pay for the care, support, and education of the child for the period of one year or failure of a birth parent to communicate with the child for the period of

one year is prima facie evidence that the failure was willful and without lawful excuse.

Comment. Section 8604 continues the first three sentences of former Civil Code Section 221.20 without substantive change. In subdivision (a), the word “birth” has been added preceding “parents” for consistency with the remainder of this section. See also Section 8512 (“birth parent” defined).

In subdivision (b), the reference to “parent having sole custody” has been substituted for “parent having custody alone” for consistency with the language of Sections 8700, 8814, and 9003. A reference to “order” has been substituted for “decree.” This is not a substantive change. See Section 100 (“order” includes decree, as appropriate). A reference to agreement by “both parents” has been substituted for the former reference to “the birth parents.” This is not a substantive change.

§ 8605. Consent of mother

8605. A child not having a presumed father under Section 7611 may not be adopted without the consent of the child’s mother, if living.

Comment. Section 8605 continues the fourth sentence of former Civil Code Section 221.20 without substantive change.

§ 8606. Exception to requirement of parental consent

8606. Notwithstanding Sections 8604 and 8605, the consent of a birth parent is not necessary in the following cases:

(a) Where the birth parent has been judicially deprived of the custody and control of the child (1) by a court order declaring the child to be free from the custody and control of either or both birth parents pursuant to Part 4 (commencing with Section 7800) of Division 12 of this code, or Section 366.25 or 366.26 of the Welfare and Institutions Code, or (2) by a similar order of a court of another jurisdiction, pursuant to a law of that jurisdiction authorizing the order.

(b) Where the birth parent has, in a judicial proceeding in another jurisdiction, voluntarily surrendered the right to the custody and control of the child pursuant to a law of that jurisdiction providing for the surrender.

(c) Where the birth parent has deserted the child without provision for identification of the child.

(d) Where the birth parent has relinquished the child for adoption as provided in Section 8700.

(e) Where the birth parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction pursuant to the law of that jurisdiction.

Comment. Section 8606 continues without substantive change the last sentence of the first paragraph and subdivisions (a)-(c) of former Civil Code Section 221.20. Throughout this section, “birth parent” has been substituted for “birth father or mother.” See Section 8512 (“birth parent” defined). See also Section 8530 (“licensed adoption agency” defined).

§ 8607. Required provisions in forms

8607. All forms adopted by the department authorizing the release of an infant from a health facility to the custody of persons other than the person entitled to custody of the child pursuant to Section 3010 and authorizing these other persons to obtain medical care for the infant shall contain a statement in boldface type delineating the various types of adoptions available, the birth parents’ rights with regard thereto, including, but not limited to, rights with regard to revocation of consent to adoption, and a statement regarding the authority of the court under Part 4 (commencing with Section 7800) of Division 12 to declare the child abandoned by the birth parent or parents.

Comment. Section 8607 continues former Civil Code Section 221.30 without substantive change. The reference to Part 4 (commencing with Section 7800) of Division 12 has been substituted for the narrower reference to former Civil Code Section 232. This is not a substantive change. See also Sections 8512 (“birth parent” defined), 8518 (“department” defined).

§ 8608. Regulations concerning medical reports

8608. (a) The department shall adopt regulations specifying the form and content of the reports required by Sections 8706, 8817, and 8909. In addition to any other material that may be

required by the department, the form shall include inquiries designed to elicit information on any illness, disease, or defect of a genetic or hereditary nature.

(b) All licensed adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to adoptees or prospective adoptive parents of pertinent medical information reported to the department or the licensed adoption agency, upon the request of the person reporting the medical information.

Comment. Section 8608 continues former Civil Code Sections 222.26(b), 224.70(b), and 226.35(b) without substantive change. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined), 8542 (“prospective adoptive parent” defined).

For a related provision, see Section 9202 (regulations concerning availability of medical report).

§ 8609. Advertising by unlicensed person prohibited

8609. (a) Any person or organization that, without holding a valid and unrevoked license to place children for adoption issued by the department, advertises in any periodical or newspaper, by radio, or other public medium, that he, she, or it will place children for adoption, or accept, supply, provide, or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor.

(b) Any person, other than a birth parent, or any organization, association, or corporation that, without holding a valid and unrevoked license to place children for adoption issued by the department, places any child for adoption is guilty of a misdemeanor.

Comment. Section 8609 continues former Civil Code Section 221.40 without change. See also Sections 8512 (“birth parent” defined), 8518 (“department” defined).

§ 8610. Accounting report

8610. (a) The petitioners in a proceeding for adoption of a child shall file with the court a full accounting report of all disbursements of anything of value made or agreed to be made by them or on their behalf in connection with the birth of the child, the placement of the child with the petitioners, any medical or hospital care received by the child's birth mother or by the child in connection with the child's birth, any other expenses of either birth parent, or the adoption. The accounting report shall be made under penalty of perjury and shall be submitted to the court on or before the date set for the hearing on the adoption petition, unless the court grants an extension of time.

(b) The accounting report shall be itemized in detail and shall show the services relating to the adoption or to the placement of the child for adoption that were received by the petitioners, by either birth parent, by the child, or by any other person for whom payment was made by or on behalf of the petitioners. The report shall also include the dates of each payment, the names and addresses of each attorney, physician and surgeon, hospital, licensed adoption agency, or other person or organization who received any funds of the petitioners in connection with the adoption or the placement of the child with them, or participated in any way in the handling of those funds, either directly or indirectly.

(c) This section does not apply to an adoption by a stepparent where one birth parent or adoptive parent retains custody and control of the child.

Comment. Section 8610 continues former Civil Code Section 221.50 without substantive change. In subdivision (b), the phrase "physician and surgeon" has been substituted for "doctor." See Section 580 Comment. See also Sections 8503 ("adoptive parent" defined), 8512 ("birth parent" defined), 8530 ("licensed adoption agency" defined).

§ 8611. Closed hearings

8611. All court hearings in an adoption proceeding shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their witnesses, counsel, and representatives of the agencies present to perform their official duties under the law governing adoptions.

Comment. Section 8611 continues former Civil Code Section 221.60 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

§ 8612. Examination by court; agreement; order of adoption

8612. (a) The court shall examine all persons appearing before it pursuant to this part. The examination of each person shall be conducted separately but within the physical presence of every other person unless the court, in its discretion, orders otherwise.

(b) The prospective adoptive parent or parents shall execute and acknowledge an agreement in writing that the child will be treated in all respects as their lawful child.

(c) If satisfied that the interest of the child will be promoted by the adoption, the court may make and enter an order of adoption of the child by the prospective adoptive parent or parents.

Comment. Section 8612 continues former Civil Code Section 221.63 without substantive change, except for the last part of subdivision (c) of the former provision, which is continued in Section 8616. The reference to “persons” has been omitted as surplus. See Section 10 (singular includes plural).

In subdivision (b), the reference to “prospective adoptive parent or parents” has been substituted for “party or parties adopting.” See Section 8542 (“prospective adoptive parent” defined). See also Section 8503 (“adoptive parent” defined).

§ 8613. Appearance by counsel for adoptive parent in military or Red Cross service

8613. (a) If the prospective adoptive parent is commissioned or enlisted in the military service, or auxiliary

thereof, of the United States, or of any of its allies, or is engaged in service on behalf of any governmental entity of the United States, or in the American Red Cross, or in any other recognized charitable or religious organization, so that it is impossible or impracticable, because of the prospective adoptive parent's absence from this state, or otherwise, to make an appearance in person, and the circumstances are established by satisfactory evidence, the appearance may be made for the prospective adoptive parent by counsel, commissioned and empowered in writing for that purpose. The power of attorney may be incorporated in the adoption petition.

(b) Where the prospective adoptive parent is permitted to appear by counsel, the agreement may be executed and acknowledged by the counsel, or may be executed by the absent party before a notary public, or any other person authorized to take acknowledgments including the persons authorized by Sections 1183 and 1183.5 of the Civil Code.

(c) Where the prospective adoptive parent is permitted to appear by counsel, or otherwise, the court may, in its discretion, cause an examination of the prospective adoptive parent, other interested person, or witness to be made upon deposition, as it deems necessary. The deposition shall be taken upon commission, as prescribed by the Code of Civil Procedure, and the expense thereof shall be borne by the petitioner.

(d) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition shall be filed in the office of the county clerk.

(e) The provisions of this section permitting an appearance through counsel are equally applicable to the spouse of a prospective adoptive parent who resides with the prospective adoptive parent outside this state.

(f) Where, pursuant to this section, neither prospective adoptive parent need appear before the court, the child proposed to be adopted need not appear. If the law otherwise requires that the child execute any document during the course of the hearing, the child may do so through counsel.

(g) Where none of the parties appears, the court may not make an order of adoption until after a report has been filed with the court pursuant to Section 8715, 8807, 8914, or 9001.

Comment. Section 8613 supersedes former Civil Code Section 221.65. See also Section 8542 (“prospective adoptive parent” defined).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 1158, § 1 (SB 1152).

§ 8614. Certificate of adoption

8614. Upon the request of the adoptive parents or the adopted child, a county clerk may issue a certificate of adoption that states the date and place of adoption, the birthday of the child, the names of the adoptive parents, and the name the child has taken. Unless the child has been adopted by a stepparent, the certificate shall not state the name of the birth parents of the child.

Comment. Section 8614 continues former Civil Code Section 221.70 without substantive change. See also Sections 8503 (“adoptive parent” defined), 8512 (“birth parent” defined).

§ 8615. New birth certificate naming deceased spouse

8615. (a) Notwithstanding any other law, an action may be brought in the county in which the petitioner resides for the purpose of obtaining for a child adopted by the petitioner a new birth certificate specifying that a deceased spouse of the petitioner who was in the home at the time of the initial placement of the child is a parent of the child.

(b) In an adoption proceeding, the petitioner may request that the new birth certificate specify that a deceased spouse of

the petitioner who was in the home at the time of the initial placement of the child is a parent of the child.

(c) The inclusion of the name of a deceased person in a birth certificate issued pursuant to a court order under this section does not affect any matter of testate or intestate succession, and is not competent evidence on the issue of the relationship between the adopted child and the deceased person in any action or proceeding.

Comment. Section 8615 continues former Civil Code Section 221.72 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

In subdivision (b), the reference to “adoption proceeding” has been substituted for “action for adoption” for consistency with the language of this part.

§ 8616. Relationship between adopted child and adoptive parents

8616. After adoption, the adopted child and the adoptive parents shall sustain towards each other the legal relationship of parent and child and have all the rights and are subject to all the duties of that relationship.

Comment. Section 8616 continues without substantive change the last part of former Civil Code Section 221.63(c) and the last sentence of former Civil Code Section 221.74. See also Section 8503 (“adoptive parent” defined).

For a comparable provision, see Section 9305 (relationship in adoption of adults and married minors).

§ 8617. Responsibility of birth parents terminated

8617. The birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

Comment. Section 8617 continues former Civil Code Section 221.76 without substantive change. See also Section 8512 (“birth parent” defined).

For a comparable provision, see Section 9306 (responsibility of birth parents of adults and unmarried minors).

§ 8618. Name of child

8618. A child adopted pursuant to this part may take the family name of the adoptive parent.

Comment. Section 8618 continues the first sentence of former Civil Code Section 221.74 without substantive change. The reference to “adoptive parent” has been substituted for “person adopting.” See also Section 8503 (“adoptive parent” defined).

For a comparable provision, see Section 9304 (name of adopted adult).

§ 8619. Children of Indian ancestry

8619. The department shall adopt rules and regulations it determines are reasonably necessary to ensure that the birth parent or parents of Indian ancestry, seeking to relinquish a child for adoption, provide sufficient information to the department or to the licensed adoption agency so that a certificate of degree of Indian blood can be obtained from the Bureau of Indian Affairs. The department shall immediately request a certificate of degree of Indian blood from the Bureau of Indian Affairs upon obtaining the information. A copy of all documents pertaining to the degree of Indian blood and tribal enrollment, including a copy of the certificate of degree of Indian blood, shall become a permanent record in the adoption files and shall be housed in a central location and made available to authorized personnel from the Bureau of Indian Affairs when required to determine the adopted person’s eligibility to receive services or benefits because of the adopted person’s status as an Indian. This information shall be made available to the adopted person upon reaching the age of majority.

Comment. Section 8619 continues former Civil Code Section 221.80 without substantive change. See also Sections 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 8621. Regulations

8621. The department shall adopt regulations regarding the provision of adoption services by the department, licensed adoption agencies and other adoption service providers, and shall monitor the provision of those services by licensed adoption agencies and other adoption providers. The department shall report violations of regulations to the appropriate licensing authority.

This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 6 (SB 792).

§ 8622. Notice of service limitations

8622. A licensed private adoption agency whose services are limited to a particular target population shall inform all birth parents and prospective adoptive parents of its service limitations before commencing any services, signing any documents or agreements, or accepting any fees.

This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 6.2 (SB 792).

CHAPTER 2. AGENCY ADOPTIONS**§ 8700. Relinquishment of child to department or licensed adoption agency**

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A birth parent who is a minor has the right to relinquish the birth parent's child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a birth parent resides outside this state and the child is being cared for and is placed for adoption by the department or a licensed adoption agency, the birth parent may relinquish the child to the department or agency by a written statement signed by the birth parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, which signifies the willingness of the department or agency to accept the relinquishment.

(d) The relinquishment authorized by this section has no effect until a certified copy is filed with the department. Upon filing with the department, the relinquishment is final and may be rescinded only by the mutual consent of the department or licensed adoption agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(e) The birth parent may name in the relinquishment the person or persons with whom the birth parent intends that placement of the child for adoption be made by the department or licensed adoption agency.

(f) Notwithstanding subdivision (d), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72 hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(g) The birth parent has 30 days from the date on which the notice described in subdivision (f) was mailed to rescind the relinquishment.

(1) If the birth parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the birth parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the birth parent and the department or licensed adoption agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(h) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (f) and (g).

Comment. Section 8700 continues former Civil Code Section 222.10 without substantive change. Throughout this section, “birth parent” has been substituted for “birth father or mother.” See Section 8512 (“birth parent” defined). The word “duly,” formerly preceding “acknowledged,” has been omitted as surplus. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For related provisions, see Sections 8814 (consent to independent adoption), 9003 (consent to stepparent adoption).

§ 8701. Information to birth parents on status of adoption

8701. At or before the time a relinquishment is signed, the department or licensed adoption agency shall advise the birth parent signing the relinquishment, verbally and in writing, that the birth parent may, at any time in the future, request from the department or agency all known information about the status of the child’s adoption, except for personal, identifying information about the adoptive family. The birth

parent shall be advised that this information includes, but is not limited to, all of the following:

- (a) Whether the child has been placed for adoption.
- (b) The approximate date that an adoption was completed.
- (c) If the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.

Comment. Section 8701 continues former Civil Code Section 222.13 without substantive change. See also Sections 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For a comparable provision, see Section 8813 (request for information on status of independent adoption).

§ 8702. Statement to birth parents at time of relinquishment

8702. (a) The department shall adopt a statement to be presented to the birth parents at the time a relinquishment is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parents of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the child’s best interest that the birth parent keep the department or licensed adoption agency to whom the child was relinquished for adoption informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep an address current with the department or licensed adoption agency to whom the child was relinquished for adoption in order to permit a response to inquiries concerning medical or social history.

(3) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to request the department or the licensed adoption agency to disclose the name and address of the adoptee’s birth parents.

Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department or to the licensed adoption agency that joined in the adoption petition.

(5) The relinquishment will be filed in the office of the county clerk of the county in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the relinquishment is signed, which shall provide as follows:

“Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

- YES
- NO
- UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE.”

Comment. Section 8702 continues former Civil Code Section 222.15 without substantive change. The statement concerning the requirements of Section 9203 has been revised to conform to the language of that

section. For example, “petition” has been changed to “request.” See also Sections 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined), 8542 (“prospective adoptive parent” defined).

For a comparable provision, see Section 8818 (statement to birth parents in independent adoption).

§ 8703. Notice to birth parent on termination of parental rights

8703. When the parental rights of a birth parent are terminated pursuant to Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 or Part 4 (commencing with Section 7800) of Division 12, or pursuant to Section 366.25 or 366.26 of the Welfare and Institutions Code, the department or licensed adoption agency responsible for the adoptive placement of the child shall send a written notice to the birth parent, if the birth parent’s address is known, that contains the following statement:

“You are encouraged to keep the department or this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights.”

Comment. Section 8703 continues former Civil Code Section 222.18 without substantive change. The references to the Family Code sections are broader than the references in former law to former Civil Code Sections 232 and 7017. These are not substantive changes. The language of the required statement has been revised to refer to the department. This is consistent with other provisions of this section. See also Sections 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For a comparable provision, see Section 8819 (notice of termination of parental rights in independent adoption).

§ 8704. Custody by department or licensed adoption agency; petition only by prospective adoptive parents; consideration of long-term foster parents

8704. (a) The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights is responsible for the care of the child, and is entitled to the exclusive custody and control of the child until an order of adoption is granted. Any placement for temporary care, or for adoption, made by the department or a licensed adoption agency may be terminated in its discretion at any time before the granting of an order of adoption. In the event of termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the department or licensed adoption agency.

(b) No petition may be filed to adopt a child relinquished to the department or a licensed adoption agency or a child declared free from the custody and control of either or both birth parents and referred to the department or a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the department or licensed adoption agency. After the adoption petition has been filed, the department or licensed adoption agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the department or licensed adoption agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If the department or licensed adoption agency refuses to consent to the adoption of a child by the person or persons with whom the department or licensed adoption agency placed the child for adoption, the court may nevertheless order the adoption if it finds that the refusal to consent is not in the child's best interest.

(c) Notwithstanding any other law, if the child has been in foster care for a period of more than four months, the child has substantial emotional ties to the foster parent or parents, the child's removal from the foster parent or parents would be seriously detrimental to the child's well-being, and the foster parent or parents make a written request to be considered to adopt the child, the foster parent or parents shall be considered with respect to the child along with all other prospective adoptive parents. The department or licensed adoption agency shall take into consideration any relevant factors that it deems necessary in determining which adoptive placement is in the child's best interest.

(d) The decision of the department or licensed adoption agency for the adoptive placement of the child shall be presumed to be in the child's best interest. This presumption may be rebutted in an action, brought by the foster parent or parents, by a preponderance of the evidence that foster care has been provided by the requesting foster parent or parents for more than four months, that the child has substantial emotional ties to the foster parent or parents, and that the adoptive placement of the child with someone other than the foster parent or parents would be seriously detrimental to the child's well-being.

(e) Subdivisions (c) and (d) do not apply to a child who has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

Comment. Section 8704 continues former Civil Code Section 222.20 without substantive change. In subdivision (a), the provision for return of physical custody to the department is new and is added for consistency with the first sentence of the subdivision. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (c), the reference to "prospective adoptive families" has been changed to the defined term "prospective adoptive parents." In subdivision (e), the former provision that "[t]his subdivision does not apply" to a child adjudged a dependent of the juvenile court has been changed to "[s]ubdivisions (c) and (d) do not apply." This is

consistent with former Civil Code Section 224n, the predecessor of former Civil Code Section 222.20.

See also Sections 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined), 8542 (“prospective adoptive parent” defined).

§ 8705. Consent to adoption of child of deceased parents

8705. (a) Where a child is in the custody of a public agency or licensed adoption agency, if it is established that the persons whose consent to the adoption is required by law are deceased, an action may be brought by the department or a licensed adoption agency requesting the court to make an order establishing that the requesting agency has the right to custody and control of the child and the authority to place the child for adoption. The department or agency bringing the action shall give notice in the form prescribed by the court to all known relatives of the child up to and including the third degree of lineal or collateral consanguinity.

(b) This section does not apply where a guardian of the person of the child has been appointed pursuant to nomination by a will.

Comment. Section 8705 continues former Civil Code Section 222.22 without substantive change. In the last sentence of subdivision (a), the reference to the “department” is new and has been added for consistency with the statement in the first sentence that an action may be brought by the department or an agency. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 8706. Medical report on child and biological parents

8706. (a) An agency may not place a child for adoption unless a written report on the child’s medical background and, if available, the medical background of the child’s biological parents so far as ascertainable, has been submitted to the prospective adoptive parents and they have acknowledged in writing the receipt of the report.

(b) The report on the child’s background shall contain all known diagnostic information, including current medical

reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

Comment. Section 8706 continues former Civil Code Section 222.26(a) without substantive change. See also Sections 8542 ("prospective adoptive parent" defined), 8608 (regulations concerning form and content of medical reports), 9202 (regulations concerning availability of medical reports).

For a comparable provision, see Section 8909 (medical report in intercountry adoption). For a related provision, see Section 8817 (medical report in independent adoption).

§ 8707. Photo-listing service

8707. (a) The department shall establish a statewide photo-listing service to serve all licensed adoption agencies in the state as a means of recruiting adoptive families. The department shall adopt regulations governing the operations of the photo-listing service and shall establish procedures for monitoring compliance with this section.

(b) The photo-listing service shall maintain a book that, except as provided in this section, contains a photograph and description of each child who has been legally freed for adoption and whose case plan goal is adoption. Registration of children with the photo-listing service and notification by the licensed adoption agency of changes in a child's photo-listing status shall be reflected in the book within 30 working days of receipt of the registration or notification.

(c) The photo-listing service shall be provided to all licensed adoption agencies, adoption support groups, and state, regional, and national photo-listings and exchanges requesting copies of the photo-listing service.

(d) All children legally freed for adoption whose case plan goal is adoption shall be photo-listed, unless deferred as provided in subdivision (e) or (f). Licensed adoption agencies shall send a recent photograph and description of each legally freed child to the photo-listing service within 15 working

days of the time a child is legally freed for adoption. When adoption has become the case plan goal for a particular child, the licensed adoption agency may photo-list that child before the child becomes legally freed for adoption.

(e) A child shall be deferred from the photo-listing service when the child's foster parents or other identified individuals who have applied to adopt the child are meeting the licensed adoption agency's requests for required documentation and are cooperating in the completion of a home study being conducted by the agency.

(f) A child who is 12 years old or older may be deferred from the photo-listing service if the child does not consent to being adopted.

(g) Within 15 working days following a one-year period in which a child is listed in the book, the licensed adoption agency shall submit a revised description and photograph of the child.

(h) Licensed adoption agencies shall notify the photo-listing service, by telephone, of any adoptive placements or of significant changes in a child's photo-listing status within two working days of the change.

(i) The department shall establish procedures for semiannual review of the photo-listing status of all legally freed children whose case plan goal is adoption, including those who are registered with the photo-listing service and those whose registration has been deferred.

Comment. Section 8707 restates former Civil Code Section 222.30 without substantive change. The order of some provisions in this section has been changed. See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

§ 8708. Placement preferences regarding racial, ethnic, and religious background

8708. Where a child is being considered for adoption, the following order of placement preferences regarding racial

background and ethnic identification shall be used, subject to this section and Section 8709, in determining the placement of the child:

(a) In the home of a relative.

(b) If a relative is not available, or if placement with available relatives is not in the child's best interest, with an adoptive family with the same racial background or ethnic identification as the child. If the child has a mixed racial or ethnic background, placement shall be made with a family of the racial or ethnic group with which the child has the more significant contacts.

(c) If placement cannot be made under the rules set forth in this section within 90 days from the time the child is relinquished for adoption or has been declared free from parental custody or control, the child is free for adoption with a family of a different racial background or ethnic identification where there is evidence of sensitivity to the child's race, ethnicity, and culture. The child's religious background shall also be considered in determining an appropriate placement. Unless it can be documented that a diligent search meeting the requirements of Section 8710 for a family meeting the placement criteria has been made, a child may not be placed for adoption with a family of a different racial background or ethnic identification pursuant to this subdivision.

Comment. Section 8708 continues former Civil Code Section 222.35 without substantive change. The cross-reference to Section 8709 in the introductory paragraph is new, but makes no substantive change.

§ 8709. Good cause not to follow rules in Section 8708

8709. A determination of good cause not to follow the rules provided in Section 8708 may be based on one or more of the following considerations:

(a) Request of the birth parent or parents.

(b) Extraordinary physical or emotional needs of the child.

(c) The child is legally free for adoption for a period exceeding 90 days, during which a diligent search was conducted, and no family meeting the placement preference criteria is available for placement. Documentation is necessary in order to make a finding of good cause under this subdivision.

(d) Application of the rules provided in Section 8708 would not be in the child's best interest.

Comment. Section 8709 restates former Civil Code Section 222.36 without substantive change. In subdivision (a), the reference to "birth" parent is new. See Section 8512 ("birth parent" defined). In subdivision (c), the documentation requirement has been limited to apply only to subdivision (c), as provided in former Civil Code Section 276.1(c).

§ 8710. Search for families meeting racial or ethnic criteria

8710. (a) The department shall adopt rules governing the diligent search required by subdivision (c) of Section 8708.

(b) Every public and private adoption agency shall maintain records for the placement of each child to show that a diligent search has been conducted for families meeting the criteria of Section 8708 and in accordance with the diligent search rules adopted by the department. In conducting a diligent search, each agency shall use all appropriate resources, as necessary, in a directed effort to recruit a family meeting the placement preference criteria through (1) the use of all appropriate intra-agency and interagency, state, regional, and national exchanges and listing books, (2) child-specific recruitment in electronic and printed media coverage, and (3) the use of agency contacts with parent groups to advocate for specific waiting children.

(c) Records of agencies maintained pursuant to this section may be reviewed upon request by the department.

Comment. Section 8710 continues former Civil Code Section 222.37 without substantive change. In subdivision (a), the requirement that the department adopt rules is drawn from the requirement in former Civil Code Section 222.37 that agencies follow the rules "which shall be

adopted by the department.” See also Section 8518 (“department” defined).

§ 8711. Applicability of racial or ethnic criteria

8711. Sections 8708 to 8710, inclusive, apply only in determining the placement of a child who has been relinquished for adoption or has been declared free from the custody and control of the birth parents.

Comment. Section 8711 continues former Civil Code Section 222.38 without substantive change. In subdivision (c), the reference to “birth” parents has been added for clarity. See Section 8512 (“birth parent” defined).

§ 8712. Investigation of prospective adoptive parents

8712. (a) The department or licensed adoption agency shall require each person filing an application for adoption to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The department or licensed adoption agency may also secure the person’s full criminal record, if any.

(b) The criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The department or licensed adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one

year, or if necessary for the placement of a special-needs child.

Comment. Section 8712 continues former Civil Code Section 222.40 without substantive change. See also Sections 8509 (“applicant” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined), 8542 (“prospective adoptive parent” defined), 8545 (“special-needs child” defined).

For comparable provisions, see Sections 8811 (investigation in independent adoption), 8908 (investigation in intercountry adoption). For a related provision, see Section 9001(a) (investigation in stepparent adoption).

§ 8713. Concealment or removal of child from county

8713. (a) In no event may a child who has been freed for adoption be removed from the county in which the child was placed, by any person who has not petitioned to adopt the child, without first obtaining the written consent of the department or licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court’s permission to the department or licensed adoption agency responsible for the child. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the department or licensed adoption agency responsible for the child. If the department or licensed adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for

hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(c) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the child's removal from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(3) Where written consent for the removal of the child is obtained from the department or licensed adoption agency responsible for the child.

(d) A violation of this section is a violation of Section 280 of the Penal Code.

(e) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

Comment. Section 8713 continues former Civil Code Section 222.50 without substantive change. In subdivision (a), "freed for adoption" has been substituted for the narrower "relinquished for adoption" so that the scope of this section will not be artificially limited. The prohibition of removal "for any period of time" has been omitted as surplus. The two

limitations on the exception provided in subdivision (c)(1) have been rephrased for clarity.

See also Sections 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For comparable provisions, see Sections 8803 (removal and concealment in independent adoption), 8910 (removal and concealment in intercountry adoption).

§ 8714. Adoption petition and order

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child’s name. The petition shall state the child’s sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child’s adopted name, but not the name the child had before adoption.

Comment. Section 8714 continues former Civil Code Sections 222.70 and 222.71 without substantive change. In subdivision (b), the reference to an “action” for adoption has been changed to “proceeding” for consistency with subdivision (d). The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

For comparable provisions, see Sections 8802 (petition for independent adoption), 8912 (petition for intercountry adoption), 9000 (petition for stepparent adoption).

§ 8715. Report of department or agency

8715. The department or licensed adoption agency, whichever is a party to or joins in the petition, shall submit a full report of the facts of the case to the court. The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

Comment. Section 8715 continues former Civil Code Section 222.75 without substantive change. The language of this provision has been revised to use the mandatory “shall” in place of the former statement that “it shall be the duty” to submit the report. See Section 12 (“shall” is mandatory). See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For related provisions, see Sections 8807 (report of department or agency in independent adoption), 8914 (report of department or agency in intercountry adoption), 9001 (report of county welfare department or probation officer in stepparent adoption).

§ 8716. Fee

8716. Where a petition is filed for the adoption of a child who has been placed for adoption by a licensed county adoption agency or the department, the agency or department may, at the time of filing a favorable report with the court, require the petitioners to pay to the agency, as agent of the state, or to the department, a fee of five hundred dollars (\$500). The agency or department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, if the child has been in the foster care of

the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

Comment. Section 8716 continues former Civil Code Section 222.72 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 8503 (“adoptive parent” defined), 8518 (“department” defined), 8542 (“prospective adoptive parent” defined), 8545 (“special-needs child” defined).

For related provisions, see Sections 8810 (fee for report in independent adoption), 9002 (fee for report in stepparent adoption).

§ 8717. Copy of report or findings to petitioner or attorney

8717. When any report or findings are submitted to the court by the department or licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner’s attorney in the proceeding, if the petitioner has an attorney of record, or to the petitioner.

Comment. Section 8717 continues former Civil Code Section 222.77 without substantive change. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For comparable provisions, see Sections 8821 (copy of report in independent adoption), 8915 (copy of report in intercountry adoption).

§ 8718. Appearance of prospective adoptive parents and child

8718. The prospective adoptive parents and the child proposed to be adopted shall appear before the court pursuant to Sections 8612 and 8613.

Comment. Section 8718 continues former Civil Code Sections 221.62 and 222.78 without substantive change. The reference to “prospective adoptive parents” has been substituted for “person or persons desiring to adopt a child.” This is not a substantive change. See Section 8542 (“prospective adoptive parent” defined).

For comparable provisions, see Sections 8823 (appearance in independent adoption), 8913 (appearance in intercountry adoption), 9007 (appearance in stepparent adoption).

§ 8719. Notice to department of motion to withdraw or dismiss petition

8719. If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action.

Comment. Section 8719 continues former Civil Code Section 222.80 without substantive change. The former reference to the “clerk of the court in which the proceeding is pending” has been shortened to the “court clerk” to eliminate surplus language. See also Section 8518 (“department” defined).

For related provisions, see Sections 8804 (notice of withdrawal or dismissal in independent adoption), 8916 (notice of withdrawal or dismissal in intercountry adoption), 9006 (notice of withdrawal or dismissal in stepparent adoption).

§ 8720. Unfavorable recommendation by department or agency

8720. (a) If the department or licensed adoption agency finds that the home of the petitioners is not suitable for the child or that the required agency consents are not available and the department or agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the department or agency recommends that the petition be denied, the clerk upon receipt of the report of the department or agency shall immediately refer it to the court for review.

(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the department or licensed adoption agency, the petitioners, and, if necessary, the birth parents, by certified mail, return receipt requested, to the address of each as shown in the proceeding.

(c) The department or licensed adoption agency shall appear to represent the child.

Comment. Section 8720 continues former Civil Code Section 222.90 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The reference to “county” clerk has been omitted. This is not a substan-

tive change. See also Sections 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For comparable provisions, see Sections 8822 (unfavorable recommendation in independent adoption), 8917 (unfavorable recommendation in intercountry adoption).

CHAPTER 3. INDEPENDENT ADOPTIONS

§ 8800. Legislative declaration concerning attorney-client relationship

8800. (a) The Legislature finds and declares that an attorney’s ability to effectively represent his or her client may be seriously impaired when conflict of interest deprives the client of the attorney’s undivided loyalty and effort. The Legislature further finds and declares that the relation between attorney and client is a fiduciary relation of the very highest character, and binds the attorney to the most conscientious fidelity.

(b) The Legislature finds that Rule 2-111(A)(2) of the State Bar Rules of Professional Conduct provides that an attorney shall not withdraw from employment until the attorney has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(c) The Legislature declares that in an independent adoption proceeding, whether or not written consent is obtained, multiple representation by an attorney should be avoided whenever a birth parent displays the slightest reason for the attorney to believe any controversy might arise. The Legislature finds and declares that it is the duty of the attorney when a conflict of interest occurs to withdraw promptly from any case, advise the parties to retain independent counsel, refrain from taking positions in opposition to any of these former clients, and thereafter

maintain an impartial, fair, and open attitude toward the new attorneys.

(d) Notwithstanding any other law, it is unethical for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an adoption unless a written consent is obtained from both parties. The written consent shall include all of the following:

(1) A notice to the birth parents, in the form specified in this section, of their right to have an independent attorney advise and represent them in the adoption proceeding and that the prospective adoptive parents may be required to pay the reasonable attorney's fees up to a maximum of five hundred dollars (\$500) for that representation, unless a higher fee is agreed to by the parties.

(2) A notice to the birth parents that they may waive their right to an independent attorney and may be represented by the attorney representing the prospective adoptive parents.

(3) A waiver by the birth parents of representation by an independent attorney.

(4) An agreement that the attorney representing the prospective adoptive parents shall represent the birth parents.

(e) Upon the petition or motion of any party, or upon motion of the court, the court may appoint an attorney to represent a child's birth parent or parents in negotiations or proceedings in connection with the child's adoption.

(f) The birth parent or parents may have an attorney, other than the attorney representing the interests of the prospective adoptive parents, to advise them fully of the adoption procedures and of their legal rights. The birth parent or parents also may retain an attorney to represent them in negotiations or proceedings in connection with the child's adoption. The court may award attorney's fees and costs for

just cause and based upon the ability of the parties to pay those fees and costs.

(g) In the initial communication between the attorney retained by or representing the prospective adoptive parents and the birth parents, or as soon thereafter as reasonable, but before any written consent for dual representation, the attorney shall advise the birth parents of their rights regarding an independent attorney and that it is possible to waive the independent attorney.

(h) The attorney retained by or representing the prospective adoptive parents shall inform the prospective adoptive parents in writing that the birth parent or parents can revoke consent to the adoption pursuant to Section 8814.5 and that any moneys expended in negotiations or proceedings in connection with the child's adoption are not reimbursable. The prospective adoptive parents shall sign a statement to indicate their understanding of this information.

(i) Any written consent to dual representation shall be filed with the court before the filing of the birth parent's consent to adoption.

Comment. Section 8800 continues former Civil Code Section 224.10 without substantive change. In subdivisions (f) and (g), references to "attorney" have been substituted for "counsel" for internal consistency. See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 450, § 2 (SB 255).

§ 8801. Selection of prospective adoptive parents; personal knowledge [operative until Jan. 1, 1995]

8801. (a) The selection of a prospective adoptive parent or parents shall be personally made by the child's birth parent or parents and may not be delegated to an agent. The act of selection by the birth parent or parents shall be based upon his, her, or their personal knowledge of the prospective adoptive parent or parents.

(b) “Personal knowledge” as used in this section includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal names, ages, religion, race or ethnicity, employment, whether other children or adults reside in their home, any health conditions curtailing their normal daily activities or reducing their normal life expectancies, and their general area of residence or, upon request, their address.

(c) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

Comment. Subdivision (a) of Section 8801 continues former Civil Code Section 224.20 without substantive change. Subdivision (b) continues former Civil Code Section 220.20(m) without substantive change. See also Sections 8512 (“birth parent” defined), 8542 (“prospective adoptive parent” defined).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 758, § 6.3 (SB 792).

§ 8801. Selection of prospective adoptive parents; personal knowledge [operative Jan. 1, 1995]

8801. (a) The selection of a prospective adoptive parent or parents shall be personally made by the child’s birth parent or parents and may not be delegated to an agent. The act of selection by the birth parent or parents shall be based upon his, her, or their personal knowledge of the prospective adoptive parent or parents.

(b) “Personal knowledge” as used in this section includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal names, ages, religion, race or ethnicity, length of current marriage and number of previous marriages, employment, whether other children or adults reside in their home, whether there are other children who do not reside in their home and the child support obligation for these children

and any failure to meet these obligations, any health conditions curtailing their normal daily activities or reducing their normal life expectancies, any convictions for crimes other than minor traffic violations, any removals of children from their care due to child abuse or neglect, and their general area of residence or, upon request, their address.

(c) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 6.4 (SB 792).

§ 8801.3. Placement for adoption

8801.3. A child shall not be considered to have been placed for adoption unless each of the following is true:

(a) Each birth parent placing the child for adoption has been advised of his or her rights, and if desired, has been counseled pursuant to Section 8801.5.

(b) The adoption service provider, each prospective adoptive parent, and each birth parent placing the child have signed an adoption placement agreement on a form prescribed by the department. The signing of the agreement shall satisfy all of the following requirements:

(1) Each birth parent shall have been advised of his or her rights at least 10 days before signing the agreement.

(2) The agreement may not be signed by either the birth parents or the prospective adoptive parents until the time of discharge of the birth mother from the hospital. However, if the birth mother remains hospitalized for a period longer than the hospitalization of the child, the agreement may be signed by all parties at the time of or after the child's discharge from the hospital but prior to the birth mother's discharge from the hospital if her competency to sign is verified by her attending physician and surgeon before she signs the agreement.

(3) The birth parents and prospective adoptive parents shall sign the agreement in the presence of an adoption service provider.

(4) The adoption service provider who witnesses the signatures shall keep the original of the adoption placement agreement and immediately forward it and supporting documentation as required by the department to the department or delegated county adoption agency.

(5) The child is not deemed to be placed for adoption with the prospective adoptive parents until the adoption placement agreement has been signed and witnessed.

(6) If the birth parent is not physically present in this state, the adoption placement agreement shall be signed before the adoption service provider who advised the birth parent of his or her rights or a notary or other person authorized to perform notarial acts in the state where the birth parent is present.

(c) The adoption placement agreement form shall include all of the following:

(1) A statement that the birth parent received the advisement of rights and the date upon which it was received.

(2) A statement that the birth parent understands that the placement is for the purpose of adoption and that if the birth parent takes no further action, on the 121st day after signing the adoption placement agreement, the agreement shall become a permanent and irrevocable consent to the adoption.

(3) A statement that the birth parent signs the agreement having personal knowledge of certain facts regarding the prospective adoptive parents as provided in Section 8801.

(4) A statement that the adoptive parents have been informed of the basic health and social history of the birth parents.

(5) A consent to the adoption that may be revoked as provided by Section 8814.5.

(d) The adoption placement agreement shall also meet the requirements of the Interstate Compact on the Placement of Children in Section 7901.

(e) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 7 (SB 792).

§ 8801.5. Duties of adoption service provider

8801.5. (a) Each birth parent placing a child for adoption shall be advised of his or her rights by an adoption service provider, or in the case of a birth parent who is neither a resident of, nor physically present in, this state, by a representative of an agency licensed or authorized to accept consents to adoption in the state in which the birth parent resides or is physically present for a purpose unrelated to an adoption.

(b) The birth parent shall be advised of his or her rights in a face-to-face meeting in which the birth parent may ask questions and have questions answered, as soon as possible and in no case later than 10 days before the signing of the adoption placement agreement as provided by Section 8801.3.

(c) The department shall prescribe the format and process for advising birth parents of their rights, the content of which shall include, but not be limited to, the following:

(1) The alternatives to adoption.

(2) The alternative types of adoption, including a description of the full procedures and timeframes involved in each type.

(3) The full rights and responsibilities of the birth parent with respect to adoption, including the need to keep the department informed of his or her current address in case of a medical emergency requiring contact and of providing a full health history.

(4) The right to separate legal counsel paid for by the prospective adoptive parents upon the request of the birth parent, as provided for by Section 8800.

(5) The right to a minimum of three separate counseling sessions, each to be held on different days, to be paid for by the prospective adoptive parents upon the request of the birth parents, as provided for by subdivision (d).

(d) Each person advised pursuant to this section shall be offered at least three separate counseling sessions, to be held on different days. Each counseling session shall be not less than 50 minutes in duration. The counseling may be provided by an adoption service provider or by a licensed psychotherapist, as defined by Section 1010 of the Evidence Code, as elected by the person.

(e) The counselor owes a duty of care to the birth parent being counseled, similar to the duty of care established by a psychotherapist-patient relationship, regardless of who pays the fees of the counselor. No counselor shall have a contractual relationship with the adoptive parents, an attorney for the adoptive parents, or any other individual or an organization performing any type of services for the adoptive parents and for which the adoptive parents are paying a fee, except as relates to payment of the birth parents' fee.

(f) The advisement and counseling fees shall be paid by the prospective adoptive parents at the request of the birth parent.

(g) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 8 (SB 792).

§ 8801.7. Duties of adoption service provider

8801.7. (a) An adoption service provider shall also witness the signature of the adoption placement agreement and offer to interview the birth parent after the placement of the child with prospective adoptive parents. The interview shall occur within 10 working days after the placement of the child for adoption and shall include a consideration of any concerns or problems the birth parent has with the placement, a readvisement of the rights of the birth parent, and the taking of the health and social history of the birth parent, if not taken previously.

(b) The adoption service provider shall immediately notify the department or delegated county adoption agency if the

birth parent is not interviewed as provided in subdivision (a) or if there are any concerns regarding the placement. If the birth parent wishes to revoke the consent, the adoption service provider shall assist the birth parent in obtaining the return of the child.

(c) The adoption service provider owes a very high duty of care to the birth parent being advised, regardless of who pays the provider's fees. The duty of care specifically does not include a duty to investigate information provided by the birth parents, prospective adoptive parents, or their attorneys or agents. No adoption service provider shall have a contractual relationship with prospective adoptive parents, an attorney or representative for prospective adoptive parents, or any individual or organization providing services of any type to prospective adoptive parents for which the adoptive parents are paying a fee, except as relates to the payment of the fees for the advising and counseling of the birth parents.

(d) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 9 (SB 792).

§ 8802. Adoption petition and order [operative until Jan. 1, 1995]

8802. (a) A person desiring to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed or the validity of an adoption order or other order based on the petition.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

(f) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

Comment. Subdivisions (a)-(e) of Section 8802 continue former Civil Code Section 224.30 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (a), the reference to an "action" for adoption has been changed to "proceeding" for consistency with other provisions in this chapter. Language in former Civil Code Section 224.30(a), which dealt with retroactive application of the allegation required by what is now subdivision (b), has been omitted as obsolete. See also Section 8518 ("department" defined).

For comparable provisions, see Sections 8714 (petition for agency adoption), 8912 (petition for intercountry adoption), 9000 (petition for stepparent adoption).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 758, § 9.1 (SB 792).

§ 8802. Adoption petition and order [operative Jan. 1, 1995]

8802. (a) A grandparent, aunt, uncle, sibling, legal guardian who has been the child's legal guardian for more than three years, person named in the will of a deceased parent as an

intended adoptive parent where the child has no other parent, or person with whom a child has been placed for adoption, who desires to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides. If the child has been placed for adoption, a copy of the adoptive placement agreement shall be attached to the petition. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed or the validity of an adoption order or other order based on the petition.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

(f) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 9.2 (SB 792).

§ 8803. Concealment or removal of child from county

8803. (a) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the department or delegated county adoption agency responsible for the investigation of the proposed adoption. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the department or delegated county adoption agency. If the department or delegated county adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(b) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the child's removal from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(c) A violation of this section is a violation of Section 280 of the Penal Code.

(d) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

Comment. Section 8803 continues former Civil Code Section 224.33 without substantive change. The two limitations on the exception provided in subdivision (b)(1) have been rephrased for clarity. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

For comparable provisions, see Sections 8713 (removal and concealment in agency adoption), 8910 (removal and concealment in intercountry adoption).

§ 8804. Notice to department of motion to withdraw or dismiss petition [operative until Jan. 1, 1995]

8804. (a) If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action. The department or delegated county adoption agency shall file a full report with the court recommending a suitable plan for the child in every case where the petitioners move to withdraw the adoption petition or where the department or agency recommends that the adoption petition be denied and shall appear before the court for the purpose of representing the child.

(b) Notwithstanding the petitioners' withdrawal or dismissal, the court may retain jurisdiction over the child for the purpose of making any order for the child's custody that the court deems to be in the child's best interest.

(c) If a birth parent has refused to give the required consent, or the reason or cause for the withdrawal of the petition, or dismissal of the proceeding, is the withdrawal of the consent of the birth parent or parents, at the hearing the court shall order the child restored to the care and custody of the birth parent or parents.

(d) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

Comment. Subdivisions (a)-(c) of Section 8804 continue former Civil Code Section 224.36 without substantive change. The former reference to the “clerk of the court in which the proceeding is pending” has been shortened to the “court clerk” to eliminate surplus language. See also Sections 8512 (“birth parent” defined), 8515 (“delegated county adoption agency” defined), 8518 (“department” defined).

For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 8916 (notice of withdrawal or dismissal in intercountry adoption), 9006 (notice of withdrawal or dismissal in step-parent adoption).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 758, § 9.5 (SB 792).

§ 8804. Notice to department of motion to withdraw or dismiss petition [operative Jan. 1, 1995]

8804. (a) Whenever the petitioners move to withdraw the petition for the adoption or to dismiss the proceeding, the clerk of the court in which the proceeding is pending shall immediately notify the department at Sacramento of the action. The department or the delegated county adoption agency shall file a full report with the court recommending a suitable plan for the child in every case where the petitioners move to withdraw the petition for the adoption or where the department or delegated county adoption agency recommends that the petition for adoption be denied and shall appear before the court for the purpose of representing the child.

(b) Notwithstanding the withdrawal or dismissal of the petition, the court may retain jurisdiction over the child for the purposes of making any order for the child's custody that the court deems to be in the child's best interest.

(c) If a birth parent who did not place a child for adoption as specified in Section 8801.3 has refused to give the required consent, or a birth parent revokes consent as specified in Section 8814.5, the court shall order the child restored to the care and custody of the birth parent or parents.

(d) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 10 (SB 792).

§ 8805. Removal of child from home of petitioners

8805. At the hearing, if the court sustains the recommendation of the department or delegated county adoption agency that the child be removed from the home of the petitioners because the department or agency recommends denial or if the petitioners move to withdraw the petition or if the court dismisses the petition and does not return the child to the birth parents, the court shall commit the child to the care of the department or delegated county adoption agency, whichever made the recommendation, for the department or agency to arrange adoptive placement or to make a suitable plan. In those counties not served by a delegated county adoption agency, the county welfare department shall act as the agent of the department and shall provide care for the child in accordance with rules and regulations established by the department.

Comment. Section 8805 continues former Civil Code Section 224.37 without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

§ 8806. Duty of department or agency

8806. The department or delegated county adoption agency shall accept the consent of the birth parents to the adoption of the child by the petitioners and, before filing its report with the court, shall ascertain whether the child is a proper subject for adoption and whether the proposed home is suitable for the child.

Comment. Section 8806 continues former Civil Code Section 224.40 without substantive change. The language of this provision has been revised to use the mandatory “shall” in place of the former statement that “it shall be the duty” to accept the consent and to ascertain the stated matters. See Section 12 (“shall” is mandatory). See also Sections 8512 (“birth parent” defined), 8515 (“delegated county adoption agency” defined), 8518 (“department” defined).

§ 8807. Investigation of proposed independent adoption; report

8807. (a) Except as provided in subdivisions (b) and (c), within 180 days after the filing of the petition, the department or delegated county adoption agency shall investigate the proposed independent adoption and submit to the court a full report of the facts disclosed by its inquiry with a recommendation regarding the granting of the petition.

(b) In a case where the investigation establishes that there is a serious question concerning the suitability of the petitioners or the care provided the child or the availability of the consent to adoption, the report shall be filed immediately.

(c) In its discretion, the court may allow additional time for the filing of the report, after at least five days’ notice to the petitioner or petitioners and an opportunity for the petitioner or petitioners to be heard with respect to the request for additional time.

Comment. Section 8807 continues former Civil Code Section 224.42 without substantive change. The language of this provision has been revised to use the mandatory “shall” in place of the former statement that “it shall be the duty” to submit the report. See Section 12 (“shall” is mandatory). See also Sections 8515 (“delegated county adoption agency”

defined), 8518 (“department” defined), 8524 (“independent adoption” defined).

For related provisions, see Sections 8715 (report of department or agency in agency adoption), 8914 (report of department or agency in intercountry adoption), 9001 (report of county welfare department or probation officer in stepparent adoption).

§ 8808. Interview by department or agency [operative until Jan. 1, 1995]

8808. The department or a delegated county adoption agency shall interview the petitioners and all persons whose consent is required and whose addresses are known as soon as possible and, in the case of residents of this state, within 45 working days, excluding legal holidays, after the filing of the adoption petition. In order to facilitate these interviews, at the same time the petition is filed with the court, the petitioners shall file with the district office of the department or with the delegated county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and telephone numbers of all parties to be interviewed, if known.

This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

Comment. The first paragraph of Section 8808 continues without substantive change former Civil Code Section 224.44, except that the time requirement of 45 days has been substituted for the former 10-day requirement to correct an error. See 1992 Cal. Stat. ch. 1353, § 10. See also Sections 8515 (“delegated county adoption agency” defined), 8518 (“department” defined).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 758, § 10.5 (SB 792).

§ 8808. Interview by department or agency [operative Jan. 1, 1995]

8808. The department or delegated county adoption agency shall interview the petitioners and all persons from whom

consent is required and whose addresses are known as soon as possible and, in the case of residents of this state, within 45 working days, excluding legal holidays, after the filing of the adoption petition. The interview with the placing parent or parents shall include, but not be limited to, discussion of any concerns or problems that the parent has with the placement and, if the placing parent was not interviewed as provided in Section 8801.7, the content required in that interview. At the interview, the agency shall give the parent an opportunity to sign either a statement revoking the consent, or a waiver of the right to revoke consent, as provided in Section 8814.5. In order to facilitate these interviews, at the same time the petition is filed with the court, the petitioners shall file with the district office of the department or with the delegated county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and telephone numbers of all parties to be interviewed, if known.

This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 11 (SB 792).

§ 8810. Fee

8810. (a) Except as otherwise provided in this section, if a petition is filed under this chapter for the adoption of a child, the petitioner shall pay a fee to the department or delegated county adoption agency, as follows:

(1) For petitions filed from March 5, 1993, through June 30, 1993, five hundred dollars (\$500) before the filing of a favorable report in the court by the department of delegated county adoption agency.

(2) For petitions filed on and after July 1, 1993, one thousand two hundred fifty dollars (\$1,250).

The department or agency may defer, waive, or reduce the fee when in its judgment the payment would cause economic

hardship to the prospective adoptive parents and would be detrimental to the welfare of the adopted child.

(3) Where the adoption is interrupted prior to the filing of the report of the department or delegated county adoption agency, the adoption petition may be withdrawn and no adoption fee shall be assessed for any services rendered by the department or delegated county adoption agency, and any such fees already paid shall be refunded.

(b) Revenues produced by fees collected by the department pursuant to subdivision (a) shall be used, when appropriated by the Legislature, to fund only the direct costs associated with the state program for independent adoptions. Revenues produced by fees collected by the delegated county adoption agency pursuant to subdivision (a) shall be used by the county to fund the county program for independent adoptions.

(c) This section shall become operative on January 1, 1994, or upon such later date as the Family Code added by Chapter 162 of the Statutes of 1992 becomes operative.

(d) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

Note. This section was added by 1993 Cal. Stat. ch. 1158, § 2 (SB 1152).

§ 8811. Investigation of prospective adoptive parents

8811. (a) The department or delegated county adoption agency shall require each person filing an adoption petition to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The department or delegated county adoption agency may also secure the person's full criminal record, if any.

(b) The criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the petitioner shall be paid by the petitioner. The department or delegated county adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

Comment. Section 8811 continues former Civil Code Section 224.49 without substantive change. See also Sections 8515 (“delegated county adoption agency” defined), 8518 (“department” defined), 8542 (“prospective adoptive parent” defined).

For comparable provisions, see Sections 8712 (investigation in agency adoption, 8908 (investigation in intercountry adoption). For a related provision, see Section 9001(a) (investigation in stepparent adoption).

§ 8812. Request for fees and living expenses

8812. Any request by a birth parent or birth parents for payment by the prospective adoptive parents of attorney’s fees, medical fees and expenses, counseling fees, or living expenses of the birth mother shall be in writing. The birth parent or parents shall, by first-class mail or other agreed upon means to ensure receipt, provide the prospective adoptive parents written receipts for any money provided to the birth parent or birth parents. The prospective adoptive parents shall provide the receipts to the court when the accounting report required pursuant to Section 8610 is filed.

Note. This section was added by 1993 Cal. Stat. ch. 450, § 3 (SB 255).

§ 8813. Request for information on status of adoption

8813. At or before the time a consent to adoption is signed, the department or delegated county adoption agency shall advise the birth parent signing the consent, verbally and in writing, that the birth parent may, at any time in the future, request from the department or agency, all known information about the status of the child's adoption, except for personal, identifying information about the adoptive family. The birth parent shall be advised that this information includes, but is not limited to, all of the following:

- (a) Whether the child has been placed for adoption.
- (b) The approximate date that an adoption was completed.
- (c) If the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.

Comment. Section 8813 continues former Civil Code Section 224.61 without substantive change. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

For a comparable provision, see Section 8701 (information on status of agency adoption).

§ 8814. Consent of birth parents to adoption [operative until Jan. 1, 1995]

8814. (a) The consent of the birth parent or parents to the adoption by the petitioners shall be signed in the presence of an agent of the department or of a delegated county adoption agency on a form prescribed by the department and shall be filed with the clerk of the superior court in the county of the petitioner's residence.

(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child and when acknowledged before that agent, is prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.

(c) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts, and in that case the consent of the department or of the delegated county adoption agency is also necessary.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of minority.

(e) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

Comment. Subdivisions (a)-(d) of Section 8814 continue former Civil Code Section 224.62 without substantive change. The word "duly" formerly preceding "acknowledged" has been omitted as surplus. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

For related provisions, see Sections 8700 (consent to agency adoption), 9003 (consent to stepparent adoption).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 758, § 11.5 (SB 792).

§ 8814. Consent of birth parents to adoption [operative Jan. 1, 1995]

8814. (a) The consent of the birth parent or parents who did not place the child for adoption as described in Section 8801.3 to the adoption shall be signed in the presence of an agent of the department or of a delegated county adoption agency on a form prescribed by the department. The consent shall be filed with the clerk of the appropriate superior court.

(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child and when acknowledged before that agent, is prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.

(c) If the birth parent of a child to be adopted resides outside this state or is outside this state for an extended period

of time unrelated to the adoption at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts, and in that case the consent of the department or of the delegated county adoption agency is also necessary.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of minority.

(e) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 12 (SB 792).

§ 8814.5. Revocation and waiver

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 120 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents.

(2) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency or, if the parent is not physically present in California, then before a notary or other person authorized to perform notarial acts in the state in which the birth parent resides or is present for a purpose unrelated to an adoption. The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency. Within 10 working days of a request made after the department or delegated county adoption agency has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department or delegated county adoption agency shall

interview, at the department or agency office, any birth parent requesting to be interviewed.

(3) Allow the consent to become a permanent consent on the 121st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 120 days beginning on the date the consent was signed, whichever occurs first.

(c) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 13 (SB 792).

§ 8815. Motion or petition for withdrawal of consent [operative until Jan. 1, 1995]

8815. (a) Consent of a birth parent to the adoption of the child by the prospective adoptive parent or parents may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee for filing the petition. The motion or petition shall be in writing and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The court clerk shall set the matter for hearing and shall give notice thereof to the department, to the prospective adoptive parent or parents, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The department or delegated county adoption agency shall, before the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances and that withdrawal of the consent is in the child's best interest, the court shall approve the withdrawal of the consent. Otherwise, the court shall withhold its approval. Consideration of the child's best interest shall include, but is not limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent or parents, the extent of bonding or the potential to bond with the birth parent or parents, and the ability of the birth parent or parents to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.

(e) A court order granting or withholding approval of a withdrawal of consent to an adoption may be appealed in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

(f) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 15 (SB 792).

§ 8815. Motion or petition for withdrawal of consent [operative Jan. 1, 1995]

8815. (a) Once the revocable consent to adoption has become permanent as provided in Section 8814.5, the consent to the adoption by the prospective adoptive parents may not be withdrawn.

(b) Before the time when the revocable consent becomes permanent as provided in Section 8814.5, the birth parent or parents may request return of the child. In such a case the child shall immediately be returned to the birth parent or parents so requesting.

(c) If the person or persons with whom the child has been placed have concerns that the birth parent or parents requesting return of the child are unfit or present a danger of harm to the child, that person's or those persons' only option is to report their concerns to the investigating adoption agency and the appropriate child welfare agency. These concerns shall not be a basis for failure to immediately return the child.

(d) This section shall become operative on January 1, 1995.

Note. This section was added by 1993 Cal. Stat. ch. 758, § 16 (SB 792).

§ 8816. Consent of agency or department

8816. In an independent adoption where the consent of the birth parent or parents is not necessary, the department or delegated county adoption agency shall, before the hearing of the petition, file its consent to the adoption with the clerk of the court in which the petition is filed. The consent may not be given unless the child's welfare will be promoted by the adoption.

Comment. Section 8816 continues former Civil Code Section 224.66 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8524 ("independent adoption" defined).

§ 8817. Medical report on child and biological parents

8817. (a) A written report on the child's medical background, and if available, the medical background of the child's biological parents, so far as ascertainable, shall be

made by the department or delegated county adoption agency as part of the study required by Section 8806.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(c) The report shall be submitted to the prospective adoptive parents who shall acknowledge its receipt in writing.

Comment. Section 8817 continues former Civil Code Section 224.70(a) without substantive change. See also Sections 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8542 ("prospective adoptive parent" defined), 8608 (regulations concerning form and content of medical reports), 9202 (regulations concerning availability of medical reports).

For related provisions, see Sections 8706 (medical report in agency adoption), 8909 (medical report in intercountry adoption).

§ 8818. Statement to birth parents at time of consent

8818. (a) The department shall adopt a statement to be presented to the birth parents at the time the consent to adoption is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parent of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the child's best interest that the birth parents keep the department informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep an address current with the department in order to permit a response to inquiries concerning medical or social history.

(3) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to request the department to disclose the name and address of

the adoptee's birth parents. Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department.

(5) The consent will be filed in the office of the county clerk of the county in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the consent to adoption is signed, which shall provide as follows:

“Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

- YES
- NO
- UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE.”

Comment. Section 8818 continues former Civil Code Section 224.73 without substantive change. The statement concerning the requirements of Section 9203 has been revised to conform to the language of that section. For example, “petition” has been changed to “request.” See also

Sections 8512 (“birth parent” defined), 8518 (“department” defined), 8542 (“prospective adoptive parent” defined).

For a comparable provision, see Section 8702 (statement to birth parents in agency adoption).

§ 8819. Notice to birth parent on termination of parental rights

8819. When the parental rights of a birth parent are terminated pursuant to Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 or Part 4 (commencing with Section 7800) of Division 12, the department or delegated county adoption agency shall send a written notice to the birth parent, if the birth parent’s address is known, that contains the following statement:

“You are encouraged to keep the department or this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights.”

Comment. Section 8819 continues former Civil Code Section 224.76 without substantive change. The references to the Family Code sections are broader than the references in former law to former Civil Code Sections 232 and 7017. These are not substantive changes. The language of the required statement has been revised to refer to the department. This is consistent with other provisions of this section. See also Sections 8512 (“birth parent” defined), 8515 (“delegated county adoption agency” defined), 8518 (“department” defined).

For a comparable provision, see Section 8703 (notice of termination of parental rights in agency adoption).

§ 8820. Appeal from department or agency disapproval

8820. (a) The birth parent or parents or the petitioner may appeal in either of the following cases:

(1) If for a period of 180 days from the date of filing the adoption petition or upon the expiration of any extension of the period granted by the court, the department or delegated

county adoption agency fails or refuses to accept the consent of the birth parent or parents to the adoption.

(2) In a case where the consent of the department or delegated county adoption agency is required by this chapter, if the department or agency fails or refuses to file or give its consent to the adoption.

(b) The appeal shall be filed in the court in which the adoption petition is filed. The court clerk shall immediately notify the department or delegated county adoption agency of the appeal and the department or agency shall, within 10 days, file a report of its findings and the reasons for its failure or refusal to consent to the adoption or to accept the consent of the birth parent or parents.

(c) After the filing of the report by the department or delegated county adoption agency, the court may, if it deems that the welfare of the child will be promoted by that adoption, allow the signing of the consent by the birth parent or parents in open court or, if the appeal is from the refusal of the department or delegated county adoption agency to consent thereto, grant the petition without the consent.

Comment. Section 8820 continues former Civil Code Section 224.80 without substantive change. This section has been divided into subdivisions and reorganized. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (c), the reference to “findings” has been changed to “report” for internal consistency.

See also Sections 8512 (“birth parent” defined), 8515 (“delegated county adoption agency” defined), 8518 (“department” defined).

§ 8821. Copy of report or findings to petitioner or attorney

8821. When any report or findings are submitted to the court by the department or a delegated county adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner’s attorney in the proceeding, if the petitioner has an attorney of record, or to the petitioner.

Comment. Section 8821 continues former Civil Code Section 224.91 without substantive change. See also Sections 8515 (“delegated county adoption agency” defined), 8518 (“department” defined).

For comparable provisions, see Sections 8717 (copy of report in agency adoption), 8915 (copy of report in intercountry adoption).

§ 8822. Unfavorable recommendation by department or agency

8822. (a) If the findings of the department or delegated county adoption agency are that the home of the petitioners is not suitable for the child or that the required consents are not available and the department or agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the department or agency recommends that the petition be denied, the clerk upon receipt of the report of the department or agency shall immediately refer it to the court for review.

(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the department or delegated county adoption agency, the petitioners, and the birth parents by certified mail, return receipt requested, to the address of each as shown in the proceeding.

(c) The department or delegated county adoption agency shall appear to represent the child.

Comment. Section 8822 continues former Civil Code Section 224.93 without substantive change. The reference to the “county” clerk has been omitted. This is not a substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (b), reference to the department has been added for consistency with subdivisions (a) and (c). See also Sections 8512 (“birth parent” defined), 8515 (“delegated county adoption agency” defined), 8518 (“department” defined).

For comparable provisions, see Sections 8720 (unfavorable recommendation in agency adoption), 8917 (unfavorable recommendation in intercountry adoption).

§ 8823. Appearance of prospective adoptive parents and child

8823. The prospective adoptive parents and the child proposed to be adopted shall appear before the court pursuant to Sections 8612 and 8613.

Comment. Section 8823 continues former Civil Code Sections 221.62 and 224.95 without substantive change. The reference to “prospective adoptive parents” has been substituted for “person or persons desiring to adopt a child.” This is not a substantive change. See Section 8542 (“prospective adoptive parent” defined).

For comparable provisions, see Sections 8718 (appearance in agency adoption), 8913 (appearance in intercountry adoption), 9007 (appearance in stepparent adoption).

CHAPTER 4. INTERCOUNTRY ADOPTIONS

§ 8900. Adoption services exclusively by licensed adoption agencies

8900. Intercountry adoption services described in this chapter shall be exclusively provided by private adoption agencies licensed by the department specifically to provide these services.

Comment. Section 8900 continues former Civil Code Section 226.10 without substantive change. See also Sections 8518 (“department” defined), 8527 (“intercountry adoption” defined).

§ 8901. Department regulations

8901. The department shall adopt regulations to administer the intercountry adoption program.

Comment. Section 8901 continues former Civil Code Section 226.11 without change. See also Sections 8518 (“department” defined), 8527 (“intercountry adoption” defined).

§ 8902. Agency services

8902. For intercountry adoptions that will be finalized in this state, the licensed adoption agency shall provide all of the following services:

- (a) Assessment of the suitability of the applicant’s home.

(b) Placement of the foreign-born child in an approved home.

(c) Postplacement supervision.

(d) Submission to the court of a report on the intercountry adoptive placement with a recommendation regarding the granting of the petition.

(e) Services to applicants seeking to adopt related children living in foreign countries. The Legislature recognizes that these children have an impelling need for adoptive placement with their relatives.

Comment. Section 8902 continues former Civil Code Section 226.20 without substantive change. See also Sections 8509 (“applicant” defined), 8527 (“intercountry adoption” defined), 8530 (“licensed adoption agency” defined).

§ 8903. Care, custody, and control of child; Medi-Cal eligibility

8903. (a) For each intercountry adoption finalized in this state, the licensed adoption agency shall assume all responsibilities for the child including care, custody, and control as if the child had been relinquished for adoption in this state from the time the child left the child’s native country.

(b) Notwithstanding subdivision (a), if the child’s native country requires and has given full guardianship to the prospective adoptive parents, the prospective adoptive parents shall assume all responsibilities for the child including care, custody, control, and financial support.

(c) If the licensed adoption agency or prospective adoptive parents fail to meet the responsibilities under subdivision (a) or (b) and the child becomes a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code, the state shall assume responsibility for the cost of care for the child. When the child becomes a dependent of the court and if, for any reason, is ineligible for AFDC under Section 14005.1 of the Welfare and Institutions Code and loses Medi-

Cal eligibility, the child shall be deemed eligible for Medi-Cal under Section 14005.4 of the Welfare and Institutions Code and the State Director of Health Services has authority to provide payment for the medical services to the child that are necessary to meet the child's needs.

Comment. Section 8903 continues former Civil Code Section 226.21 without substantive change. See also Sections 8527 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined), 8542 ("prospective adoptive parent" defined).

§ 8904. Agency services for adoptions finalized in foreign country

8904. For an intercountry adoption that will be finalized in a foreign country, the licensed adoption agency shall provide all of the following services:

(a) Assessment of the suitability of the applicant's home.

(b) Certification to the Immigration and Naturalization Service that this state's intercountry adoption requirements have been met.

(c) Readoption services as required by the Immigration and Naturalization Service.

Comment. Section 8904 continues former Civil Code Section 226.23 without substantive change. See also Sections 8527 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined).

§ 8905. Agreements of licensed adoption agencies with other agencies

8905. Licensed adoption agencies may work only with domestic and foreign adoption agencies with whom they have written agreements that specify the responsibilities of each. The agreements may not violate any statute or regulation of the United States or of this state.

Comment. Section 8905 continues former Civil Code Section 226.25 without substantive change. See also Section 8530 ("licensed adoption agency" defined).

§ 8906. Agreement to share or transfer financial responsibility

8906. Nothing in this chapter may be construed to prohibit the licensed adoption agency from entering into an agreement with the prospective adoptive parents to share or transfer financial responsibility for the child.

Comment. Section 8906 continues former Civil Code Section 226.27 without substantive change. See also Sections 8530 (“licensed adoption agency” defined), 8542 (“prospective adoptive parent” defined).

§ 8907. Funding by fees

8907. The costs incurred by a licensed adoption agency pursuant to programs established by this chapter shall be funded by fees charged by the agency for services required by this chapter. The agency’s fee schedule is required to be approved by the department initially and whenever it is altered.

Comment. Section 8907 continues former Civil Code Section 226.28 without substantive change. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 8908. Investigation of prospective adoptive parents

8908. (a) A licensed adoption agency shall require each person filing an application for adoption to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The licensed adoption agency may also secure the person’s full criminal record, if any.

(b) The criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record

of the applicant shall be paid by the applicant. The licensed adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child.

Comment. Section 8908 continues former Civil Code Section 226.30 without substantive change. See also Section 8530 (“licensed adoption agency” defined).

For comparable provisions, see Sections 8712 (investigation in agency adoption, 8811 (investigation in independent adoption). For a related provision, see Section 9001(a) (investigation in stepparent adoption).

§ 8909. Medical report on child and biological parents

8909. (a) An agency may not place a child for adoption unless a written report on the child’s medical background and, if available, the medical background of the child’s biological parents, so far as ascertainable, has been submitted to the prospective adoptive parents and they have acknowledged in writing the receipt of the report.

(b) The report on the child’s background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child’s developmental history and family life.

Comment. Section 8909 continues former Civil Code Section 226.35(a) without substantive change. See also Sections 8518 (“department” defined), 8542 (“prospective adoptive parent” defined), 8608 (regulations concerning form and content of medical reports), 9202 (regulations concerning availability of medical reports).

For a comparable provision, see Section 8706 (medical report in agency adoption). For a related provision, see Section 8817 (medical report in independent adoption).

§ 8910. Concealment or removal of child from county

8910. (a) In no event may a child who has been placed for adoption be removed from the county in which the child was placed, by any person who has not petitioned to adopt the

child, without first obtaining the written consent of the licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the licensed adoption agency responsible for the child. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the licensed adoption agency responsible for the child. If the licensed adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(c) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the removal of the child

from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(3) Where written consent for the removal of the child is obtained from the licensed adoption agency responsible for the child.

(d) A violation of this section is a violation of Section 280 of the Penal Code.

(e) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

Comment. Section 8910 continues former Civil Code Section 226.40 without substantive change. The prohibition of removal "for any period of time" has been omitted as surplus. The two limitations on the exception provided in subdivision (c)(1) have been rephrased for clarity. See also Sections 8512 ("birth parent" defined), 8530 ("licensed adoption agency" defined).

For comparable provisions, see Sections 8713 (removal and concealment in agency adoption), 8803 (removal and concealment in independent adoption).

§ 8911. Petition to adopt within 30 days of placement

8911. As a condition of placement, the prospective adoptive parents shall file a petition to adopt the child under Section 8912 within 30 days of placement.

Comment. Section 8911 continues former Civil Code Section 226.50 without substantive change. See also Section 8542 ("prospective adoptive parent" defined).

§ 8912. Adoption petition; order

8912. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner

resides. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(c) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

Comment. Section 8912 continues former Civil Code Section 226.52 without substantive change. In subdivision (a), the reference to an "action" has been changed to "proceeding" for consistency with other sections. See also Section 8518 ("department" defined).

For comparable provisions, see Sections 8714 (petition for agency adoption), 8802 (petition for independent adoption), 9000 (petition for stepparent adoption).

§ 8913. Appearance of prospective adoptive parents and child

8913. The prospective adoptive parents and the child proposed to be adopted shall appear before the court pursuant to Sections 8612 and 8613.

Comment. Section 8913 continues former Civil Code Sections 221.62 and 226.55 without substantive change. The reference to "prospective adoptive parents" has been substituted for "person or persons desiring to adopt a child." This is not a substantive change. See Section 8542 ("prospective adoptive parent" defined).

For comparable provisions, see Sections 8718 (appearance in agency adoption), 8823 (appearance in independent adoption), 9007 (appearance in stepparent adoption).

§ 8914. Report to court

8914. If the licensed adoption agency is a party to or joins in the adoption petition, it shall submit a full report of the facts of the case to the court. The department may also submit a report.

Comment. Section 8914 continues former Civil Code Section 226.57 without substantive change. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For related provisions, see Sections 8715 (report of department or agency in agency adoption), 8807 (report of department or agency in independent adoption), 9001 (report of county welfare department or probation officer in stepparent adoption).

§ 8915. Copy of report or findings to petitioner or attorney

8915. When any report or findings are submitted to the court by a licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner’s attorney in the proceeding, if the petitioner has an attorney of record, or to the petitioner.

Comment. Section 8915 continues former Civil Code Section 226.59 without change. See also Section 8530 (“licensed adoption agency” defined).

For comparable provisions, see Sections 8717 (copy of report in agency adoption), 8821 (copy of report in independent adoption).

§ 8916. Notice to department of motion to withdraw or dismiss

8916. (a) If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action. The licensed adoption agency shall file a full report with the court recommending a suitable plan for the child in every case where the petitioners desire to withdraw the adoption petition or where the licensed adoption agency

recommends that the adoption petition be denied and shall appear before the court for the purpose of representing the child.

(b) Notwithstanding the petitioners' withdrawal or dismissal, the court may retain jurisdiction over the child for the purpose of making any order for the child's custody that the court deems to be in the child's best interest.

Comment. Section 8916 continues former Civil Code Section 226.60 without substantive change. In subdivision (a), the former reference to the "clerk of the court in which the proceeding is pending" has been shortened to the "court clerk" to eliminate surplus language. The reference to "orders" has been omitted as surplus. See Section 10 (singular includes plural). See also Sections 8518 ("department" defined), 8530 ("licensed adoption agency" defined).

For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 8804 (notice of withdrawal or dismissal in independent adoption), 9006 (notice of withdrawal or dismissal in stepparent adoption).

§ 8917. Unfavorable recommendation by licensed adoption agency

8917. (a) If the licensed adoption agency finds that the home of the petitioners is not suitable for the child or that the required agency consents are not available and the agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the agency recommends that the petition be denied, the clerk upon receipt of the report of the licensed adoption agency shall immediately refer it to the court for review.

(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the licensed adoption agency and the petitioners by certified mail, return receipt requested, to the address of each as shown in the proceeding.

(c) The licensed adoption agency shall appear to represent the child.

Comment. Section 8917 continues former Civil Code Section 226.64 without substantive change. The reference to the "county" clerk has been

omitted. This is not a substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 8530 (“licensed adoption agency” defined).

For comparable provisions, see Sections 8720 (unfavorable recommendation in agency adoption), 8822 (unfavorable recommendation in independent adoption).

§ 8918. Transfer of child to care of agency

8918. At the hearing, if the court sustains the recommendation that the child be removed from the home of the petitioners because the licensed adoption agency has recommended denial or the petitioners desire to withdraw the petition or the court dismisses the petition and does not return the child to the child’s parents, the court shall commit the child to the care of the licensed adoption agency for the agency to arrange adoptive placement or to make a suitable plan.

Comment. Section 8918 continues former Civil Code Section 226.66 without substantive change. See also Section 8530 (“licensed adoption agency” defined).

§ 8919. Readoption

8919. (a) Each state resident who adopts a child through an intercountry adoption that is finalized in a foreign country shall readopt the child in this state if it is required by the Immigration and Naturalization Service. The readoption shall include, but is not limited to, at least one postplacement in-home visit, the filing of the adoption petition pursuant to Section 8912, the intercountry adoption court report, accounting reports, and the final adoption order. No readoption order shall be granted unless the court receives a report from an adoption agency authorized to provide intercountry adoption services pursuant to Section 8900.

(b) Each state resident who adopts a child through an intercountry adoption that is finalized in a foreign country

may readopt the child in this state. The readoption shall meet the standards described in subdivision (a).

Comment. Section 8919 continues former Civil Code Section 226.69 without substantive change. The references to a “decree” in the former section have been replaced by “order” for consistency with other sections. See, e.g., Section 8912 (adoption order).

CHAPTER 5. STEPPARENT ADOPTIONS

§ 9000. Adoption petition; order

9000. (a) A stepparent desiring to adopt a child of the stepparent’s spouse may for that purpose file a petition in the county in which the petitioner resides.

(b) The caption of the adoption petition shall contain the names of the petitioners, but not the child’s name. The petition shall state the child’s sex and date of birth and the name the child had before adoption.

(c) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the child’s adopted name, but not the name the child had before adoption.

Comment. Section 9000 continues former Civil Code Section 227.10 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

For comparable provisions, see Sections 8714 (petition for agency adoption), 8802 (petition for independent adoption), 8912 (petition for intercountry adoption).

§ 9001. Investigation

9001. (a) The probation officer, qualified court investigator, or, at the option of the board of supervisors, the county welfare department in the county in which the adoption proceeding is pending shall make an investigation of each case of stepparent adoption. The court may not make an order of adoption until after the probation officer, qualified court investigator, or welfare department has filed its report and recommendation and they have been considered by the court.

(b) Unless ordered by the court, no home study may be required of the petitioner's home in a stepparent adoption. The agency conducting the investigation or any interested person may request the court to order a home study or the court may order a home study on its own motion.

(c) "Home study" as used in this section means a physical investigation of the premises where the child is residing.

Comment. Section 9001 continues former Civil Code Section 227.20 without substantive change. In subdivision (a), the reference to an "action" has been changed to "proceeding" for consistency with other sections. This is not a substantive change. See Section 110 ("proceeding" defined). See also Sections 8543 ("qualified court investigator" defined), 8548 ("stepparent adoption" defined).

For related provisions, see Sections 8712 (investigation in agency adoption), 8811 (investigation in independent adoption), 8908 (investigation in intercountry adoption). For other related provisions, see Sections 8715 (report of department or agency in agency adoption), 8807 (report of department or agency in independent adoption), 8914 (report of department or agency in intercountry adoption).

§ 9002. Cost of investigation

9002. In a stepparent adoption, the stepparent is liable for all reasonable costs incurred in connection with the stepparent adoption, including, but not limited to, costs incurred for the investigation required by Section 9001, up to a maximum of seven hundred dollars (\$700). The court, probation officer, qualified court investigator, or county welfare department may defer, waive, or reduce the fee if its payment would

cause economic hardship to the prospective adoptive parent detrimental to the welfare of the adopted child.

Comment. Section 9002 continues former Civil Code Section 227.30 without substantive change. The first part of the first sentence has been revised to use the defined term “stepparent adoption” and to delete the phrase “stepparent adopting a child of his or her spouse.” This is not a substantive change. See Section 8548 (“stepparent adoption” defined). Other language changes have been made for consistency with Sections 8716 and 8810. See also Sections 8542 (“prospective adoptive parent” defined), 8543 (“qualified court investigator” defined).

For related provisions, see Sections 8716 (fee for report in agency adoption), 8810 (fee for report in independent adoption).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 494, § 1 (AB 1430).

§ 9003. Consent of birth parents to adoption

9003. (a) In a stepparent adoption, the consent of either or both birth parents shall be signed in the presence of a county clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state. The county clerk, probation officer, qualified court investigator, or county welfare department staff member before whom the consent is signed shall immediately file the consent with the clerk of the court where the adoption petition is filed. The clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of that county.

(b) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts.

(c) The consent, when reciting that the person giving it is entitled to sole custody of the child and when acknowledged before the county clerk, probation officer, qualified court investigator, or county welfare department staff member, is prima facie evidence of the right of the person signing the

consent to the sole custody of the child and that person's sole right to consent.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of the minority.

Comment. Section 9003 continues former Civil Code Section 227.40 without substantive change. The first sentence of subdivision (a) has been revised to require consent of "birth parents" rather than "parents." This terminology is consistent with subdivision (d). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The word "duly" formerly preceding "acknowledged" has been omitted as surplus. See also Sections 8512 ("birth parent" defined), 8543 ("qualified court investigator" defined), 8548 ("stepparent adoption" defined).

For related provisions, see Sections 8700 (consent to agency adoption), 8814 (consent to independent adoption).

§ 9004. Consent form

9004. In a stepparent adoption, the form prescribed by the department for the consent of the birth parent shall contain substantially the following notice:

"Notice to the parent who gives the child for adoption: If you and your child lived together at any time as parent and child, the adoption of your child by a stepparent does not affect the child's right to inherit your property or the property of other blood relatives."

Comment. Section 9004 continues former Civil Code Section 227.44 without change. See also Sections 8512 ("birth parent" defined), 8518 ("department" defined), 8548 ("stepparent adoption" defined).

§ 9005. Motion or petition to withdraw consent

9005. (a) Consent of the birth parent to the adoption of the child by the stepparent may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is

pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee for filing the petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The court clerk shall set the matter for hearing and shall give notice thereof to the probation officer, qualified court investigator, or county welfare department, to the prospective adoptive parent, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The probation officer, qualified court investigator, or county welfare department shall, before the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances and that withdrawal of the consent is in the child's best interest, the court shall approve the withdrawal of the consent. Otherwise the court shall withhold its approval. Consideration of the child's best interest shall include, but is not limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent, the extent of bonding or the potential to bond with the birth parent, and the ability of the birth parent to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.

(e) A court order granting or withholding approval of a withdrawal of consent to an adoption may be appealed in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

Comment. Section 9005 continues former Civil Code Section 227.46 without substantive change. The introductory phrase “once given” in the former provision has been omitted as surplus. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (b), the phrase “persons to whose adoption of the child the consent was given” has been changed to “prospective adoptive parent.” See also Sections 8542 (“prospective adoptive parent” defined), 8543 (“qualified court investigator” defined).

For a comparable provision, see Section 8815 (motion or petition to withdraw consent in independent adoption).

§ 9006. Notice of withdrawal or dismissal; dismissal where consent refused

9006. (a) If the petitioner moves to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the probation officer, qualified court investigator, or county welfare department of the action.

(b) If a birth parent has refused to give the required consent, the adoption petition shall be dismissed.

Comment. Section 9006 continues former Civil Code Section 227.50 without substantive change. In subdivision (a), the former reference to the “clerk of the court in which the proceeding is pending” has been shortened to the “court clerk” to eliminate surplus language. See also Sections 8512 (“birth parent” defined), 8543 (“qualified court investigator” defined).

For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 8804 (notice of withdrawal or dismissal in independent adoption), 8916 (notice of withdrawal or dismissal in inter-country adoption).

§ 9007. Appearance of prospective adoptive parent and child

9007. The prospective adoptive parent and the child proposed to be adopted shall appear before the court pursuant to Sections 8612 and 8613.

Comment. Section 9007 continues former Civil Code Sections 221.62 and 227.60 without substantive change. The reference to “prospective adoptive parent” has been substituted for “person or persons desiring to adopt a child.” This is not a substantive change. See Section 8542 (“prospective adoptive parent” defined).

For comparable provisions, see Sections 8718 (appearance in agency adoption), 8823 (appearance in independent adoption), 8913 (appearance in intercountry adoption).

CHAPTER 6. VACATION OF ADOPTION

§ 9100. Petition to set aside adoption

9100. (a) If a child adopted pursuant to the law of this state shows evidence of a developmental disability or mental illness as a result of conditions existing before the adoption to an extent that the child cannot be relinquished to an adoption agency on the grounds that the child is considered unadoptable, and of which conditions the adoptive parents or parent had no knowledge or notice before the entry of the order of adoption, a petition setting forth those facts may be filed by the adoptive parents or parent with the court that granted the adoption petition. If these facts are proved to the satisfaction of the court, it may make an order setting aside the order of adoption.

(b) The petition shall be filed within five years after the entry of the order of adoption.

(c) The court clerk shall immediately notify the department at Sacramento of the petition. Within 60 days after the notice, the department shall file a full report with the court and shall appear before the court for the purpose of representing the adopted child.

Comment. Section 9100 continues former Civil Code Section 228.10 without substantive change. References to a “decree” of adoption have been omitted as surplus. See Section 100 (“order” includes decree, as appropriate). The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (c), the former reference to “clerk of the superior court of the county

wherein the action is brought” has been shortened to “court clerk” to eliminate surplus language and the “it shall be the duty” language has been replaced by “shall.” See Section 12 (“shall” is mandatory). See also Section 8518 (“department” defined).

§ 9101. Court order to county officer

9101. (a) If an order of adoption is set aside as provided in Section 9100, the court making the order shall direct the district attorney, the county counsel, or the county welfare department to take appropriate action under the Welfare and Institutions Code. The court may also make any order relative to the care, custody, or confinement of the child pending the proceeding the court sees fit.

(b) The county in which the proceeding for adoption was had is liable for the child’s support until the child is able to support himself or herself.

Comment. Section 9101 continues former Civil Code Section 228.13 without substantive change. The reference to a “decree” of adoption has been omitted as surplus. See Section 100 (“order” includes decree, as appropriate).

§ 9102. Limitation of actions

9102. (a) An action or proceeding of any kind to vacate, set aside, or otherwise nullify an order of adoption on the ground of any defect or irregularity of procedure in the adoption proceeding shall be commenced within three years after entry of the order.

(b) An action or proceeding of any kind to vacate, set aside, or otherwise nullify an order of adoption on any ground other than a defect or irregularity of procedure shall be commenced within five years after entry of the order.

Comment. Section 9102 continues former Civil Code Section 228.15 without substantive change. References to a “decree” of adoption have been omitted as surplus. See Section 100 (“order” includes decree, as appropriate).

CHAPTER 7. DISCLOSURE OF INFORMATION

§ 9200. Confidentiality of records; certificate of adoption

9200. (a) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition filed in the office of the county clerk pursuant to this part is not open to inspection by any person other than the parties to the proceeding and their attorneys and the department, except upon the written authority of the judge of the superior court. A judge of the superior court may not authorize anyone to inspect the petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, or power of attorney or deposition or any portion of any of these documents, except in exceptional circumstances and for good cause approaching the necessitous. The petitioner may be required to pay the expenses for preparing the copies of the documents to be inspected.

(b) Upon written request of any party to the proceeding and upon the order of any judge of the superior court, the county clerk shall not provide any documents referred to in this section for inspection or copying to any other person, unless the name of the child's birth parents or any information tending to identify the child's birth parents is deleted from the documents or copies thereof.

(c) Upon the request of the adoptive parents or the child, a county clerk may issue a certificate of adoption that states the date and place of adoption, the child's birth date, the names of the adoptive parents, and the name the child has taken. Unless the child has been adopted by a stepparent, the certificate shall not state the name of the child's birth parents.

Comment. Section 9200 continues former Civil Code Section 229.10 without substantive change. In subdivisions (a) and (b), references to the "action" have been changed to the "proceeding." See also Sections 8503

(“adoptive parent” defined), 8512 (“birth parent” defined), 8548 (“stepparent adoption” defined).

§ 9201. Information to public agencies and licensed adoption agencies

9201. Notwithstanding any other law, the department and any licensed adoption agency may furnish information relating to an adoption petition to the juvenile court, county welfare department, public welfare agency, or private welfare agency licensed by the department, if it is believed the child’s welfare will be promoted thereby.

Comment. Section 9201 continues former Civil Code Section 229.20 without substantive change. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 9202. Medical report

9202. (a) Notwithstanding any other law, the department or licensed adoption agency that made a medical report required by Section 8706, 8817, or 8909 shall provide a copy of the medical report, in the manner the department prescribes by regulation, to any of the following persons upon the person’s request:

(1) A person who has been adopted pursuant to this part and who has attained the age of 18 years or who presents a certified copy of the person’s marriage certificate.

(2) The adoptive parent of a person under the age of 18 years who has been adopted pursuant to this part.

(b) A person who is denied access to a medical report pursuant to regulations adopted pursuant to this section may petition the court for review of the reasonableness of the department’s or licensed adoption agency’s decision.

(c) The names and addresses of any persons contained in the report shall be removed unless the person requesting the report has previously received the information pursuant to subdivision (a) of Section 9203.

Comment. Section 9202 continues former Civil Code Section 229.30 without substantive change. This section has been substantially reorganized. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 8503 (“adoptive parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For related provision, see Section 8608 (regulations concerning form and content of medical reports).

§ 9203. Disclosure of identity of birth parents

9203. (a) The department or a licensed adoption agency shall do the following:

(1) Upon request of a person who has been adopted pursuant to this part and who has attained the age of 21 years, disclose the identity of the person’s birth parent or parents and their most current address shown in the records of the department or licensed adoption agency, if the birth parent or parents have indicated consent to the disclosure in writing; and upon request of the birth parent of a person who has been adopted pursuant to this part and who has attained the age of 21 years, disclose the adopted name of the adoptee and the adoptee’s most current address shown in the records of the department or licensed adoption agency, if the adult adoptee has indicated in writing, pursuant to the registration program developed by the department, that the adult adoptee wishes the adult adoptee’s name and address to be disclosed.

(2) Disclose the identity of a birth parent and the birth parent’s most current address shown in the records of the department or licensed adoption agency upon the request of the adoptive parent of a person under the age of 21 years who has been adopted pursuant to this part, upon the finding by the department or licensed adoption agency that a medical necessity or other extraordinary circumstances justify the disclosure.

(b) The department shall prescribe the form of the request required by this section. The form shall provide for an

affidavit to be executed by the requester that to the best of the requester's knowledge the requester is an adoptee, the adoptee's birth parent, or the adoptee's adoptive parent. The department may adopt regulations requiring any additional means of identification from a requester that it deems necessary. The request shall advise an adoptee that if the adoptee consents, the adoptee's adoptive parents will be notified of the filing of the request before the release of the name and address of the adoptee's birth parent.

(c) Subdivision (a) is not applicable if a birth parent or an adoptee has indicated that he or she does not wish his or her name or address to be disclosed.

(d) The department shall either respond to a request for information pursuant to this section or forward the request to a licensed adoption agency pursuant to subdivision (e) within 20 working days of its receipt of the request.

(e) The department may forward requests for information pursuant to this section to any licensed adoption agency that was a party to the adoption.

(f) Notwithstanding any other law, the department shall announce the availability of the present method of arranging contact among an adult adoptee, the adult adoptee's birth parents, and adoptive parents authorized by Section 9204 utilizing a means of communication appropriate to inform the public effectively.

(g) The department or licensed adoption agency may charge a reasonable fee in an amount the department establishes by regulation to cover the costs of processing requests for information made pursuant to subdivision (a). The revenue resulting from the fees so charged shall be utilized by the department or licensed adoption agency to increase existing staff as needed to process these requests. Fees received by the department shall be deposited in the Adoption Information

Fund. This revenue shall be in addition to any other funds appropriated in support of the state adoption program.

(h) The department or licensed adoption agency shall waive the fees authorized by this section for any person who is receiving public assistance pursuant to Part 3 (commencing with Section 11000) of Division 9 of the Welfare and Institutions Code.

(i) This section applies only to adoptions in which the relinquishment for or consent to adoption was signed on or after January 1, 1984.

Comment. Section 9203 continues former Civil Code Section 229.40 without substantive change. This section has been substantially reorganized. See also Sections 8503 (“adoptive parent” defined), 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 9204. Waiver of confidentiality of adoption records

9204. (a) Notwithstanding any other law, if an adult adoptee and the adult adoptee’s birth parents have each filed a written consent with the department or licensed adoption agency, the department or licensed adoption agency may arrange for contact between those persons. Neither the department nor a licensed adoption agency may solicit, directly or indirectly, the execution of a written consent.

(b) The written consent authorized by this section shall be in a form prescribed by the department.

Comment. Section 9204 continues former Civil Code Section 229.50 without substantive change. In the first sentence of subdivision (a), “licensed agency” has been changed to “licensed adoption agency” for internal consistency and for consistency with the defined term. See also Sections 8503 (“adoptive parent” defined), 8512 (“birth parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 9205. Request for contact with biological sibling

9205. (a) Notwithstanding any other law, the department or adoption agency that joined in the adoption petition shall release the names and addresses of biological siblings to one

another if both of the siblings have attained the age of 21 years and have filed the following with the department or agency:

(1) A current address.

(2) A written request for contact with any biological sibling whose existence is known to the person making the request.

(3) A written waiver of the person's rights with respect to the disclosure of the person's name and address to the sibling, if the person is an adoptee.

(b) Upon inquiry and proof that a person is the biological sibling of an adoptee who has filed a waiver pursuant to this section, the department or agency may advise the sibling that a waiver has been filed by the adoptee. The department or agency may charge a reasonable fee, not to exceed fifty dollars (\$50), for providing the service required by this section.

(c) An adoptee may revoke a waiver filed pursuant to this section by giving written notice of revocation to the department or agency.

(d) The department shall adopt a form for the request authorized by this section. The form shall provide for an affidavit to be executed by a person seeking to employ the procedure provided by this section that, to the best of the person's knowledge, the person is an adoptee or biological sibling of an adoptee. The form also shall contain a notice of an adoptee's rights pursuant to subdivision (c) and a statement that information will be disclosed only if there is a currently valid waiver on file with the department or agency. The department may adopt regulations requiring any additional means of identification from a person making a request pursuant to this section as it deems necessary, and for obtaining the consent of the birth parents of the adoptee and the sibling in order to make the disclosure authorized by this section in any case in which the sibling remained in the

custody and control of the birth parents until the age of 18 years.

(e) The department or agency may not solicit the execution of a waiver authorized by this section. However, the department shall announce the availability of the procedure authorized by this section, utilizing a means of communication appropriate to inform the public effectively.

Comment. Section 9205 continues former Civil Code Section 229.60 without substantive change. The provisions of subdivision (a) have been substantially revised. In subdivision (c), the reference to filing of a waiver has been substituted for the former reference to execution of a waiver. This is not a substantive change. In subdivision (e), the reference to the agency has been added. This is consistent with the remainder of this section and with Section 9204. See also Sections 8503 (“adoptive parent” defined), 8512 (“birth parent” defined), 8518 (“department” defined).

§ 9206. Release of letters, photographs, or other items of personal property

9206. (a) Notwithstanding any other law, the department or licensed adoption agency shall release any letters, photographs, or other items of personal property in its possession to an adoptee, birth parent, or adoptive parent, upon written request. The material may be requested by any of the following persons:

(1) The adoptee, if the adoptee has attained the age of 18 years.

(2) The adoptive parent or parents, on behalf of an adoptee under the age of 18 years, as long as instructions to the contrary have not been made by the depositor.

(3) The birth parent or parents.

(b) Notwithstanding any other law, all identifying names and addresses shall be deleted from the letters, photographs, or items of personal property before delivery to the requester.

(c) Letters, photographs, and other items of personal property deposited on or after January 1, 1985, shall be

accompanied by a release form or similar document signed by the person depositing the material, specifying to whom the material may be released. At its discretion, the department or licensed adoption agency may refuse for deposit items of personal property that, because of value or bulk, would pose storage problems.

(d) Notwithstanding subdivisions (a) and (b), only the following photographs deposited before January 1, 1985, shall be released:

(1) Photographs of the adoptee that have been requested by the adoptee.

(2) Photographs that have been deposited by the adoptee, the adoptive parent or parents, or the birth parent or parents, and for which there is a letter or other document on file indicating that person's consent to the release of the photographs.

(e) The department and licensed adoption agencies may charge a fee to cover the actual costs of any services required by this section in excess of normal postadoptive services provided by the department or agency. The department shall develop a fee schedule that shall be implemented by the department and licensed adoption agencies in assessing charges to the person who deposits the material or the person to whom the material is released. The fee may be waived by the department or licensed adoption agencies in cases in which it is established that a financial hardship exists.

(f) "Photograph" as used in this section means a photograph of the person depositing the photograph or the person making the request for the release.

Comment. Section 9206 continues former Civil Code Section 229.70 without substantive change. In subdivision (a), "or" has been substituted for "and" between the references to the department and the licensed adoption agency. These are not substantive changes. In subdivision (d), a reference to subdivision (b) has been added. This is not a substantive change. See also Sections 8503 ("adoptive parent" defined), 8512 ("birth

parent” defined), 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

PART 3 . ADOPTION OF ADULTS AND MARRIED MINORS

CHAPTER 1. GENERAL PROVISIONS

§ 9300. Adoption of adult or married minor

9300. (a) An adult may be adopted by another adult, including a stepparent, as provided in this part.

(b) A married minor may be adopted in the same manner as an adult under this part.

Comment. Section 9300 restates former Civil Code Section 230.10 without substantive change.

Note. This section includes amendments made by 1993 Cal. Stat. ch. 266, § 1 (SB 970).

§ 9301. Consent of spouse of prospective adoptive parent

9301. A married person who is not lawfully separated from the person’s spouse may not adopt an adult without the consent of the spouse, provided that the spouse is capable of giving that consent.

Comment. Section 9301 continues without substantive change the first sentence of the second paragraph of former Civil Code Section 230.20(a).

§ 9302. Consent of spouse of proposed adoptee

9302. (a) A married person who is not lawfully separated from the person’s spouse may not be adopted without the consent of the spouse, provided that the spouse is capable of giving that consent.

(b) The consent of the parents of the proposed adoptee, of the department, or of any other person is not required.

Comment. Section 9302 continues without substantive change the last two sentences of the second paragraph of former Civil Code Section

230.20(a) and supersedes the second paragraph of former Civil Code Section 230.20(c). A reference to “proposed adoptee” has been substituted for “the person to be adopted” to eliminate surplus language. This is consistent with other sections in this part. See, e.g., Sections 9321, 9326-9327. A reference to “birth” parents has been omitted. This is not a substantive change. See Section 8512 (“birth parent” defined). See also Section 8518 (“department” defined).

§ 9303. Adoption of more than one unrelated adult within one year

9303. (a) A person may not adopt more than one unrelated adult under this part within one year of the person’s adoption of an unrelated adult, unless the proposed adoptee is the biological sibling of a person previously adopted pursuant to this part or unless the proposed adoptee is disabled or physically handicapped.

(b) A person may not adopt an unrelated adult under this part within one year of an adoption of another person under this part by the prospective adoptive parent’s spouse, unless the proposed adoptee is a biological sibling of a person previously adopted pursuant to this part.

Comment. Section 9303 continues former Civil Code Section 230.12 without substantive change. A reference to “proposed adoptee” has been substituted for “the person to be adopted” to eliminate surplus language. This is consistent with other sections in this part. See, e.g., Sections 9321, 9326-9327. A reference to “biological sibling” has been substituted for “sibling by birth” for consistency with the language of Section 9205. The phrase “pursuant to this part” has been substituted for the former, narrower reference to “this section.” This is not a substantive change. See also Section 8542 (“prospective adoptive parent” defined).

§ 9304. Name of adopted person

9304. A person adopted pursuant to this part may take the family name of the adoptive parent.

Comment. Section 9304 continues the first sentence of former Civil Code Section 230.14 without substantive change. See also Section 8503 (“adoptive parent” defined).

For a comparable provision, see Section 8618 (name of adopted child).

§ 9305. Relationship of parent and child

9305. After adoption, the adoptee and the adoptive parent or parents shall sustain towards each other the legal relationship of parent and child and have all the rights and are subject to all the duties of that relationship.

Comment. Section 9305 continues the last sentence of former Civil Code Section 230.14 without substantive change. See also Section 8503 (“adoptive parent” defined).

For a comparable provision, see Section 8616 (relationship in adoption of unmarried minors).

§ 9306. Relief from parental duties of birth parents

9306. (a) Except as provided in subdivision (b), the birth parents of a person adopted pursuant to this part are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted person, and have no right over the adopted person.

(b) Where an adult is adopted by the spouse of a birth parent, the parental rights and responsibilities of that birth parent are not affected by the adoption.

Comment. Subdivision (a) of Section 9306 continues former Civil Code Section 230.16 without substantive change. The reference to “birth” parents has been added. This is consistent with Section 8617. See also Section 8512 (“birth parent” defined).

For a comparable provision, see Section 8617 (responsibility of birth parents of unmarried minors).

Note. This section includes amendments made by 1993 Cal. Stat. ch. 266, § 2 (SB 970).

§ 9307. Hearing open and public

9307. A hearing with regard to adoption under Chapter 2 (commencing with Section 9320) or termination of a parent and child relationship under Chapter 3 (commencing with Section 9340) may, in the discretion of the court, be open and public.

Comment. Section 9307 continues former Civil Code Section 230.20(d) without substantive change.

CHAPTER 2. PROCEDURE FOR ADULT ADOPTION

§ 9320. Adoption agreement

9320. (a) An adult may adopt another adult who is younger, except the spouse of the prospective adoptive parent, by an adoption agreement approved by the court, as provided in this chapter.

(b) The adoption agreement shall be in writing, executed by the prospective adoptive parent and the proposed adoptee, and shall state that the parties agree to assume toward each other the legal relationship of parent and child and to have all of the rights and be subject to all of the duties and responsibilities of that relationship.

Comment. Section 9320 continues the first paragraph of former Civil Code Section 230.20(a) without substantive change. The former language describing the court and the method of approving an adoption agreement has been omitted as surplus. References to “prospective adoptive parent” have been substituted for references to “person adopting” and “adopting person.” These are not substantive changes. See Section 8542 (“prospective adoptive parent” defined). A reference to “proposed adoptee” has been substituted for “the person to be adopted” to eliminate surplus language. This is consistent with other sections in this part. See, e.g., Sections 9321, 9326-9327.

§ 9321. Petition for approval of adoption

9321. (a) The prospective adoptive parent and the proposed adoptee may file in the county in which either person resides a petition for approval of the adoption agreement.

(b) The petition for approval of the adoption agreement shall state all of the following:

(1) The length and nature of the relationship between the prospective adoptive parent and the proposed adoptee.

(2) The degree of kinship, if any.

(3) The reason the adoption is sought.

(4) A statement as to why the adoption would be in the best interest of the prospective adoptive parent, the proposed adoptee, and the public.

(5) The names and addresses of any living birth parents or adult children of the proposed adoptee.

(6) Whether the prospective adoptive parent or the prospective adoptive parent's spouse has previously adopted any other adult and, if so, the name of the adult, together with the date and place of the adoption.

Comment. Subdivision (a) of Section 9321 continues the first sentence of former Civil Code Section 230.20(b) without substantive change. Subdivision (b) continues former Civil Code Section 230.20(f)(1) without substantive change. References to "prospective adoptive parent" have been substituted for references to "adopting person" and "person seeking to adopt." These are not substantive changes. See Section 8542 ("prospective adoptive parent" defined). In subdivision (a), "proposed adoptee" has been substituted for "person to be adopted" to eliminate surplus language and to conform with the remainder of the section. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 8512 ("birth parent" defined).

§ 9322. Setting matter for hearing

9322. When the petition for approval of the adoption agreement is filed, the court clerk shall set the matter for hearing.

Comment. Section 9322 restates without substantive change the first part of the second sentence of former Civil Code Section 230.20(b).

§ 9323. Notice to and appearance by interested persons

9323. The court may require notice of the time and place of the hearing to be served on any other interested person and any interested person may appear and object to the proposed adoption.

Comment. Section 9323 continues the third sentence of former Civil Code Section 230.20(b) without substantive change. A reference to "prospective adoptive parent" has been substituted for "adopting person." This is not a substantive change. See Section 8542 ("prospective

adoptive parent” defined). A reference to “proposed adoptee” has been substituted for “person to be adopted” to eliminate surplus language. This is consistent with other sections in this part. See, e.g., Sections 9321, 9326-9327.

§ 9324. Appearance by prospective adoptive parent and proposed adoptee

9324. Both the prospective adoptive parent and the proposed adoptee shall appear at the hearing in person, unless an appearance is impossible, in which event an appearance may be made for either or both of the persons by counsel, empowered in writing to make the appearance.

Comment. Section 9324 continues the last part of the second sentence of former Civil Code Section 230.20(b) without change. A reference to “prospective adoptive parent” has been substituted for “person adopting.” This is not a substantive change. See Section 8542 (“prospective adoptive parent” defined). A reference to “proposed adoptee” has been substituted for “person to be adopted” to eliminate surplus language. This is consistent with other sections in this part. See, e.g., Sections 9321, 9326-9327.

§ 9325. Court’s discretion to require report

9325. No investigation or report to the court by any public officer or agency is required, but the court may require the county probation officer or the department to investigate the circumstances of the proposed adoption and report thereon, with recommendations, to the court before the hearing.

Comment. Section 9325 continues the last sentence of former Civil Code Section 230.20(b) without change. See also Section 8518 (“department” defined).

§ 9326. Notice of hearing for developmentally disabled adult

9326. The prospective adoptive parent shall mail or personally serve notice of the hearing and a copy of the petition to the director of the regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, and to any living birth parents

or adult children of the proposed adoptee, at least 30 days before the day of the hearing on an adoption petition in any case in which both of the following conditions exist:

(a) The proposed adoptee is an adult with developmental disabilities.

(b) The prospective adoptive parent is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or is a spouse or employee of a provider.

Comment. Section 9326 continues former Civil Code Section 230.20(e) without substantive change. A reference to “prospective adoptive parent” has been substituted for “person seeking to adopt.” This is not a substantive change. See Section 8542 (“prospective adoptive parent” defined). See also Section 8512 (“birth parent” defined).

§ 9327. Report concerning person with developmental disability

9327. If the prospective adoptive parent is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities, or is a spouse or employee of a provider, and seeks to adopt an unrelated adult with developmental disabilities, the regional center for the developmentally disabled notified pursuant to Section 9326 shall file a written report with the court regarding the suitability of the proposed adoption in meeting the needs of the proposed adoptee and regarding any known previous adoption by the prospective adoptive parent.

Comment. Section 9327 continues former Civil Code Section 230.20(f)(2) without substantive change. References to “prospective adoptive parent” have been substituted for references to “person seeking to adopt” and “the petitioner.” These are not substantive changes. See Section 8542 (“prospective adoptive parent” defined).

§ 9328. Hearing and order

9328. (a) At the hearing the court shall examine the parties, or the counsel of any party not present in person.

(b) If the court is satisfied that the adoption will be in the best interests of the persons seeking the adoption and in the public interest and that there is no reason why the petition should not be granted, the court shall approve the adoption agreement and make an order of adoption declaring that the person adopted is the child of the adoptive parent. Otherwise, the court shall withhold approval of the agreement and deny the petition.

(c) In determining whether or not the adoption of any person pursuant to this part is in the best interests of the persons seeking the adoption or the public interest, the court may consider evidence, oral or written, whether or not it is in conformity with the Evidence Code.

Comment. Section 9328 continues the first and last paragraphs of former Civil Code Section 230.20(c) without substantive change. In subdivision (b), “persons seeking the adoption” has been substituted for “parties” to conform with subdivision (c). The defined term “adoptive parent” has been substituted for “person adopting [the child].” This is not a substantive change. See Section 8503 (“adoptive parent” defined). In subdivision (c), a reference to this part has been substituted for the former reference to this subdivision. This is not a substantive change.

CHAPTER 3. PROCEDURE FOR TERMINATING ADULT ADOPTION

§ 9340. Petition to terminate relationship of parent and child

9340. (a) Any person who has been adopted under this part may, upon written notice to the adoptive parent, file a petition to terminate the relationship of parent and child. The petition shall state the name and address of the petitioner, the name and address of the adoptive parent, the date and place of the adoption, and the circumstances upon which the petition is based.

(b) If the adoptive parent consents in writing to the termination, an order terminating the relationship of parent and child may be issued by the court without further notice.

(c) If the adoptive parent does not consent in writing to the termination, a written response shall be filed within 30 days of the date of mailing of the notice, and the matter shall be set for hearing. The court may require an investigation by the county probation officer or the department.

Comment. Section 9340 continues former Civil Code Section 230.20(g) without substantive change. In subdivision (a), a reference to this part has been substituted for the former reference to this section. This is not a substantive change. A reference to the “verified” response has been omitted as surplus. See Section 212 (pleadings to be verified). See also Sections 8503 (“adoptive parent” defined), 8518 (“department” defined).

DIVISION 20. PILOT PROJECTS

PART 1. FAMILY LAW PILOT PROJECTS

CHAPTER 1. GENERAL PROVISIONS

§ 20000. Legislative declaration

20000. (a) The Legislature finds and declares the following:

(1) Child and spousal support are serious legal obligations. In addition, children are frequently left in limbo while their parents engage in protracted litigation concerning custody and visitation. The current system for obtaining child and spousal support orders is suffering because the family courts are unduly burdened with heavy case loads and personnel insufficient to meet the needs of increased demands on the courts.

(2) There is a compelling state interest in the development of a child and spousal support system that is cost-effective and accessible to families with middle or low incomes.

(3) There is a compelling state interest in first implementing such a system on a small scale.

(4) There is a compelling state interest in the development of a speedy, conflict-reducing method of resolving custody and visitation disputes.

(b) Therefore, it is the intent of the Legislature in enacting this part to provide a means for experimenting with and evaluating procedural innovations with significant potential to improve the California child and spousal support systems, and the system for mediation, evaluation, and litigation of custody and visitation disputes.

Comment. Section 20000 continues former Civil Code Section 4760 without substantive change.

§ 20001. Pilot projects in Santa Clara and San Mateo Counties

20001. The Superior Courts of the Counties of Santa Clara and San Mateo may conduct pilot projects pursuant to this part. Chapter 2 (commencing with Section 20010) shall govern the San Mateo County Pilot Project, and Chapter 3 (commencing with Section 20030) shall govern the Santa Clara County Pilot Project.

Comment. Section 20001 continues former Civil Code Section 4761 without substantive change.

§ 20002. Duration of projects

20002. The duration of the pilot projects shall be two years.

Comment. Section 20002 continues former Civil Code Sections 4762 and 4780 without substantive change.

CHAPTER 2. SAN MATEO COUNTY PILOT PROJECT**§ 20010. Application of San Mateo County Pilot Project**

20010. The San Mateo County Pilot Project shall apply to hearings on motions for temporary child support, temporary spousal support, and temporary health insurance issuable in proceedings under this code, where at least one party is unrepresented by counsel.

Comment. Section 20010 continues former Civil Code Section 4763 without substantive change. A reference to motions for temporary support or health insurance in “proceedings under this code” has been substituted for the former reference to proceedings under “this part,” (meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code) and references to proceedings under Civil Code Section 7000 *et seq.* (Uniform Parentage Act) and former Code of Civil Procedure Section 540 *et seq.* (Domestic Violence Prevention Act). These are not substantive changes, since all the proceedings formerly referred to are contained in the Family Code.

§ 20011. Motions for temporary orders

20011. Motions for temporary orders under this chapter shall be heard as soon as practicable, consistent with the rules governing other civil actions.

Comment. Section 20011 continues former Civil Code Section 4764 without substantive change. The reference to “this chapter” corrects what appears to have been an incorrect reference in the former Civil Code section.

§ 20012. Family Law Evaluator

20012. The court shall appoint a Family Law Evaluator, who shall be available to assist parties. By local rule the superior court may designate the duties of the Family Law Evaluator, which may include, but are not limited to, the following:

(a) Requiring litigants in actions which involve temporary child support, temporary spousal support, and temporary maintenance of health insurance in which at least one litigant is unrepresented, to meet with the Family Law Evaluator prior to the support hearing.

(b) Preparing support schedules based on standardized formulae accessed through existing up-to-date computer technology.

(c) Drafting stipulations to include all issues agreed to by the parties.

(d) Prior to, or at, any hearing pursuant to this chapter, reviewing the paperwork by the court, advising the judge whether or not the matter is ready to proceed, and making a recommendation to the court regarding child support, spousal support, and health insurance.

(e) Assisting the clerk in maintaining records.

(f) Preparing a formal order consistent with the court’s announced oral order, unless one of the parties is represented by an attorney.

(g) Assisting the court with research and any other responsibilities which will enable the court to be responsive to the litigants' needs.

Comment. Section 20012 continues former Civil Code Section 4765 without substantive change.

§ 20013. No fee

20013. The court shall provide the Family Law Evaluator at no cost to the parties.

Comment. Section 20013 continues former Civil Code Section 4766 without change.

§ 20014. Notice of requirement; service

20014. The clerk shall stamp all moving papers in which a party is not represented by counsel with a notice of a requirement to see the Family Law Evaluator. The unrepresented party shall serve the stamped pleadings on the other party.

Comment. Section 20014 continues former Civil Code Section 4767 without change.

§ 20015. Adoption of protocol for access to hearing

20015. The court shall adopt a protocol wherein all litigants, both unrepresented by counsel and represented by counsel, have ultimate access to a hearing before the court.

Comment. Section 20015 continues former Civil Code Section 4768 without change.

§ 20016. Booklet

20016. The court may elect to publish a low-cost booklet describing this program.

Comment. Section 20016 continues former Civil Code Section 4769 without change.

§ 20017. Qualifications of family law evaluator

20017. The Family Law Evaluator shall be an attorney, licensed to practice in this state.

Comment. Section 20017 continues former Civil Code Section 4770 without change.

§ 20018. Compliance with statewide uniform guideline

20018. Orders for temporary support issued pursuant to this chapter shall comply with the statewide uniform guideline set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 and shall be based on the economic evidence supplied by the parties or otherwise available to the court.

Comment. Section 20018 continues former Civil Code Section 4771 without substantive change. Language has been revised to conform to terminology of the statewide uniform guideline. The reference to “this chapter” corrects what appears to have been an incorrect reference in the former Civil Code section.

§ 20019. Mediation

20019. Where it appears from a party’s application for an order under this chapter or otherwise in the proceedings that the custody of, or visitation with, a minor child is contested, the court shall set those issues for mediation pursuant to Section 3170. The pendency of the mediation proceedings shall not delay a hearing on any other matter for which a temporary order is required, including child support, and a separate hearing, if required, shall be scheduled respecting the custody and visitation issues following mediation in accordance with Section 3170. However, the court may grant a continuance for good cause shown.

Comment. Section 20019 continues former Civil Code Section 4772 without substantive change. The reference to “this chapter” corrects what appears to have been an incorrect reference in the former Civil Code section. References to Section 3170 have been substituted for broader references to former Civil Code Section 4607. These are not substantive changes.

§ 20020. Submission of documents

20020. In a contested proceeding for temporary child or spousal support under this chapter, both the moving party and the responding party shall provide all of the following documents to the Family Law Evaluator, and to the court at the time of the hearing:

(a) Copies of the last two federal and state income tax returns filed.

(b) Paycheck stubs for all paychecks received in the four months immediately prior to the hearing.

Comment. Section 20020 continues former Civil Code Section 4773 without change. The reference to “this chapter” corrects what appears to have been an incorrect reference in the former Civil Code section.

§ 20021. Failure to submit documents

20021. A party who fails to submit documents to the court as required by Section 20020 may, in the court’s discretion, not be granted the relief requested, or the court may impose evidentiary sanctions.

Comment. Section 20021 continues former Civil Code Section 4774 without substantive change. A reference to Section 20020 has been substituted for the former reference to “this section.” This is not a substantive change, since Section 20020 is the section requiring the submission of documents.

§ 20022. Review and examination of tax return

20022. The tax return submitted pursuant to Section 20020 may be reviewed by the other party. A party may be examined by the other party as to the contents of the tax return.

Comment. Section 20022 continues former Civil Code Section 4775 without substantive change. A reference to Section 20020 has been substituted for the former reference to “this section.” This is not a substantive change, since Section 20020 is the section requiring the submission of the tax return.

§ 20023. Services provided by district attorney

20023. (a) Except as provided in subdivision (c):

(1) Nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a district attorney pursuant to Section 11475.5 of the Welfare and Institutions Code.

(2) The court shall not hear or enter any order under this chapter in a matter involving such a child.

(b) Any order entered contrary to the provisions of subdivision (a) is void and without legal effect.

(c) For purposes of enabling a custodial parent receiving assistance under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code to participate in a pilot project authorized by this chapter, the district attorney, upon the request of the custodial parent, may execute a limited waiver of the obligation or representation under Section 11475.1 of the Welfare and Institutions Code. These limited waivers shall be signed by both the district attorney and custodial parent and shall only permit the custodial parent to participate in the proceedings under this chapter. It is not the intent of the Legislature in enacting this section to limit the duties of district attorneys with respect to seeking child support payments or to in any way limit or supersede other provisions of this code respecting temporary child support.

Comment. Section 20023 continues former Civil Code Section 4776 without substantive change. In the second sentence of subdivision (c), the reference to “this chapter” corrects what appears to have been an incorrect reference in the former Civil Code section. In the last sentence of subdivision (c), a reference to “this code” has been substituted for the narrower reference to “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). This is not a substantive change. See also Section 20010 (application of San Mateo County Pilot Project).

§ 20024. Costs; donations

20024. (a) The costs of the Family Law Evaluator, any staff necessary to assist the Family Law Evaluator, and the cost of the booklet describing the program, if any, shall be borne by an increase and an equalization of filing fees in San Mateo County to one hundred fifty dollars (\$150) for all petitions for marital dissolution, annulment, and legal separation, and all first papers on behalf of respondents in proceedings for martial dissolution, annulment, and legal separation. Alternatively, the costs associated with this pilot program may be paid from other funding sources.

(b) A donation of computers, printers, software, and other equipment shall be solicited from existing hardware and software providers.

(c) This section shall be repealed on July 1, 1994, unless a later enacted statute, which is enacted before July 1, 1994, deletes or extends that date.

Comment. Section 20024 continues former Civil Code Section 4777 without substantive change. The reference to “proceedings” for dissolution, annulment, and legal separation has been substituted for the former reference to “actions.” This is not a substantive change. See Section 110 (“proceedings” defined) & Comment.

Note. This section includes revisions made by 1993 Cal. Stat. ch. 876, § 27.5 (SB 1068).

§ 20025. Study and report

20025. (a) The presiding judge of the San Mateo County Superior Court, in conjunction with judges of the family law court and with attorneys practicing therein selected by the presiding judge, shall conduct a study of the effectiveness of the San Mateo Pilot Project in making the California child support system more equitable, responsive, cost-effective, and accessible, particularly to those with middle and low incomes, and shall make a report of findings to the Legislature on or before July 1, 1994.

(b) The satisfaction of participating parties shall be determined by requiring litigants entering the pilot project to fill out a simple exit poll. The response of at least 70 percent of those questionnaires shall be analyzed by the Senate Office of Research to decide whether the program has been deemed satisfactory by the participants.

Comment. Section 20025 continues former Civil Code Section 4778 without change.

§ 20026. Project estimates

20026. (a) It is estimated that under the pilot project authorized by this chapter, approximately 2,200 litigants will be served annually and that the following savings will occur:

(1) The program would save 520 hours, or 65 days, of court time per year.

(2) There would be a concomitant saving of time by litigants due to the expedited proceedings and, in addition, there would be a saving to litigants of wages that would otherwise be lost due to time off from work.

(b) The estimated costs of the pilot project are as follows:

(1) The salaries of the Family Law Evaluator and any staff necessary for the evaluator to carry out his or her functions.

(2) The cost of a booklet, if any, describing the program.

(c) There would be no cost for the following:

(1) Computers, printers, or other equipment. This equipment is already available in the family law department.

(2) Training for the Family Law Evaluator or his or her staff. They will be trained by already existing judicial personnel.

Comment. Section 20026 continues former Civil Code Section 4778.5 without change.

CHAPTER 3. SANTA CLARA COUNTY PILOT PROJECT

§ 20030. Santa Clara County pilot project

20030. The Superior Court of the County of Santa Clara may conduct a pilot project pursuant to this chapter.

Comment. Section 20030 continues former Civil Code Section 4779 without substantive change.

§ 20031. Application of Santa Clara County Pilot Project

20031. The pilot project applies to all hearings, for temporary or permanent child or spousal support, modifications thereof, health insurance, custody, or visitation in a proceeding for dissolution of marriage, nullity of marriage, legal separation of the parties, exclusive custody, or pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

Comment. Section 20031 continues former Civil Code Section 4781 without substantive change. A reference to a proceeding for “dissolution of marriage, nullity of marriage, legal separation of the parties, [and] exclusive custody” has been substituted for the former reference to a proceeding under “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Civil Code Section 4000) of Division 4). This is not a substantive change.

§ 20032. Hearing and procedure; tax returns

20032. (a) Each and every hearing in a proceeding described in Section 20031 in which child or spousal support is at issue, including related contempt matters, shall be set by the clerk of the court for hearing within 30 days of filing.

(b) At any hearing in which child or spousal support is at issue, each party, both moving and responding, shall bring to the hearing, copies of the last two federal and state income tax returns filed by the party and pay stubs from the last four full months immediately preceding the hearing received by the party, and shall serve those documents on the opposing party at least five days in advance of the hearing date. Willful

failure to comply with these requirements or any of the requirements of this pilot project may result in a citation for contempt under Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure, or in the court's discretion, the court may refuse to grant relief requested or may impose evidentiary sanctions on a party who fails to submit these documents. The clerk shall cause to be placed on the face sheet of any moving papers for child or spousal support at the time of filing, a notice informing the parties of the requirements of this section. The notice shall also inform the parties that prior to the hearing, they must meet with the Attorney-Mediator pursuant to Section 20034. That meeting may occur in advance of the hearing dates by agreement of the parties, or on the day of the hearing.

(c) No continuance of any hearing involving child or spousal support shall be granted by a court without an order setting an interim support level unless the parties stipulate otherwise or the court finds good cause therefor.

Comment. Section 20032 continues former Civil Code Section 4782 without substantive change. In subdivision (a), a reference to "a proceeding described in Section 20031" has been substituted for the former references to "this part," meaning the former Family Law Act (former Part 5 (commencing with former Civil Code Section 4000) of Division 4) and to former Civil Code Section 7000 *et seq.* (Uniform Parentage Act). This is not a substantive change. See Section 20031 & Comment.

§ 20033. Local rule

20033. The court may pass a local rule that suspends the use of the Income and Expense Declaration mandated by California Rule of Court 1285.50 in some or all proceedings during the pendency of the pilot project, provided that substitute forms are developed and adopted to solicit substantially the same information in a simplified format. The court may, notwithstanding the adoption of a local form, require the use of the Income and Expense Declaration

mandated by California Rule of Court 1285.50 in appropriate cases on the motion of either party or on the court's own motion.

Comment. Section 20033 continues former Civil Code Section 4783 without substantive change.

§ 20034. Attorney-Mediator

20034. (a) An attorney, known as an Attorney-Mediator, shall be hired to assist the court in resolving child and spousal support disputes, to develop community outreach programs, and to undertake other duties as assigned by the court.

(b) The Attorney-Mediator shall be an attorney, licensed to practice in this state, with mediation or litigation experience, or both, in the field of family law.

(c) By local rule, the superior court may designate the duties of the Attorney-Mediator, which may include, but are not limited to, the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Preparing support schedules based on statutory guidelines accessed through existing up-to-date computer technology.

(3) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 20031.

(4) If the parties are unable to resolve issues with the assistance of the Attorney-Mediator, prior to or at the hearing, and at the request of the court, the Attorney-Mediator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed.

(5) Assisting the clerk in maintaining records.

(6) Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.

(7) Serving as a special master to hearing proceedings and making findings to the court unless he or she has served as a mediator in that case.

(8) Assisting the court with research and any other responsibilities which will enable the court to be responsive to the litigants' needs.

(9) Developing programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to Family Court. These programs shall specifically include information concerning underutilized legislation, such as expedited temporary support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9), modification of support orders (Article 3 (commencing with Section 3680) of Chapter 6 of Part 1 of Division 9) and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children.

(d) The court shall develop a protocol wherein all litigants, both unrepresented by counsel and represented by counsel, have ultimate access to a hearing before the court.

Comment. Section 20034 continues former Civil Code Section 4784 without substantive change.

§ 20035. Compliance with statewide uniform guideline

20035. Orders for temporary support issued pursuant to this chapter shall comply with the statewide uniform guideline set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 and shall be based on the economic evidence supplied by the parties or otherwise available to the court.

Comment. Section 20035 continues former Civil Code Section 4785 without substantive change. Language has been revised to conform to terminology of the statewide uniform guideline. The reference to “this chapter” corrects what appears to have been an incorrect reference in the former Civil Code section.

§ 20036. Exemption from pilot project

20036. Upon motion by either party or on the court’s own motion, any proceeding that would otherwise fall within this pilot project may by judicial order be exempted from its requirements.

Comment. Section 20036 continues former Civil Code Section 4786 without substantive change.

§ 20037. Services provided by district attorney

20037. (a) Except as provided in subdivision (c):

(1) Nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(2) The court shall not hear or enter any order under this chapter in a matter involving such a child.

(b) Any order entered contrary to subdivision (a) is void and without legal effect.

(c) For purposes of enabling a custodial parent receiving assistance under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code to participate in a pilot project authorized by this chapter, the district attorney, upon the request of the custodial parent, may execute a limited waiver of the obligation of representation under Section 11475.1 of the Welfare and Institutions Code. These limited waivers shall be signed by both the district attorney and custodial parent and shall only permit the custodial parent to participate in the proceedings under this chapter. It is not the intent of the Legislature in enacting this section to limit the duties of district attorneys with respect to

seeking child support payments or to in any way limit or supersede other provisions of this code respecting temporary child support.

Comment. Section 20037 continues former Civil Code Section 4787 without substantive change. In subdivision (c), a reference to “this code” has been substituted for the narrower reference to “this part,” meaning the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). This is not a substantive change.

§ 20038. Mediation

20038. (a) In any case where either party has filed a motion regarding a custody or visitation dispute and has not yet scheduled an appointment for the mediation orientation class by the time of the hearing on the order to show cause, the court shall order all parties to go to Family Court Services that day to schedule an appointment. The mediation orientation shall be scheduled within 14 days. Mediation orientation shall be conducted by Family Court Services and shall include general information on the effect of separation and dissolution on children and parents, the developmental and emotional needs of children in those circumstances, time-sharing considerations and various options concerning legal and physical custody of children, the effect of exposure to domestic violence and extreme conflict on children and parents, the nature of the mediation process and other Family Court Services procedures, and related community resources.

(b) After the mediation orientation, the parties may elect to utilize private mental health professionals, in which case the parties or the court may modify the fast track time guidelines provided for in this section.

(c) If, after orientation, either party requests mediation, and both parties complete Family Court Services mediation petitions, an appointment shall be scheduled within four weeks after both petitions are submitted and both parties shall attend the mediation as scheduled.

(d) At the mediation, if the parties agree to all of the issues regarding custody or visitation, the mediator shall memorialize the agreement in writing, and shall mail copies of the document to the attorneys and parents. Unless written objections to the agreement are sent to Family Court Services within 20 days of mailing the agreement, it will be submitted to the court and become a court order. A copy of the order shall be sent with proof of service to the parties and attorneys by the Family Court.

(e) If mediation is completed and there are remaining disputes, the mediator shall write a memorandum of any partial agreement and shall outline the remaining disputes which shall be sent to the attorneys and parties acting in propria persona. The mediator shall refer the parties to the Early Resolution Project. The parties shall meet and confer within 14 days of the referral to determine if a solution can be formulated. If there are remaining issues to be settled after the meeting, an early resolution judicial conference shall be scheduled within 30 days of the request of either party.

(f) At the early resolution conference, the judge may take stipulations resolving the issues of custody or visitation. The judge may also request the staff of Family Court Services to provide assessments and expedited evaluations to be held on the same day as the conference, in which case the judge, upon stipulation of the parties, may also order a hearing as soon as the same day on the issues. The judge may also order counseling, a mental health special master, psychological testing, or an extended evaluation by Family Court Services or a private evaluator on some or all issues.

(g) When the court at the early resolution judicial conference orders an extended evaluation, the parties shall complete all paperwork, submit deposits to Family Court Services, or both, within five days of the early resolution

judicial conference. An evaluator shall be assigned to the case within 10 days thereafter.

(h) Evaluation shall be completed within 60 days of assignment to the evaluator, and the evaluator shall submit a report and recommendations which include a proposed order resolving all disputed issues. This report shall be served by certified mail on the attorneys of record, or on the parties if they are appearing in propria persona. If there are objections to the proposed order, the parties shall file written objections, meet with the evaluator within 30 days of service of the report, and serve a copy of the order on Family Court Services within the 30-day period. If a stipulation is reached, it shall be filed with the court. If a dispute remains, a judicial settlement conference shall be scheduled within 14 days of the meeting with the evaluator. Parties, counsel, and the evaluator shall be present at this judicial settlement conference. If there is no resolution at this settlement conference, a trial shall be set within 30 days from the settlement conference by the settlement conference judge. If no objections are filed, Family Court Services shall file the proposed order with the court, and it shall become the court's order.

(i) For good cause shown, all deadlines in this section may be altered by the court.

Comment. Section 20038 continues former Civil Code Section 4788 without substantive change.

§ 20039. Costs

20039. (a) The costs of the pilot project shall be borne by an equalization of filing fees in Santa Clara County for all petitions for marital dissolution, annulment, and legal separation, and all first papers on behalf of respondents in proceedings for marital dissolution, annulment, and legal separation and by equalization of filing fees for motions and responsive pleadings.

(b) A donation of computers, printers, software, and other equipment shall be solicited from existing hardware and software providers.

(c) The court shall administer funds for the various components of the pilot program.

(d) This section shall be repealed on July 1, 1994, unless a later enacted statute, which is enacted before July 1, 1994, deletes or extends that date.

Comment. Section 20039 continues former Civil Code Section 4789 without substantive change. The reference to “proceedings” for dissolution, annulment, and legal separation has been substituted for the former reference to “actions.” This is not a substantive change.

Note. This section includes revisions made by 1993 Cal. Stat. ch. 876, § 27.6 (SB 1068).

§ 20040. Booklet

20040. The court may elect to publish a low-cost booklet describing the program.

Comment. Section 20040 continues former Civil Code Section 4790 without change.

§ 20041. Centralization of programs

20041. The court shall centralize, augment, and coordinate all presently existing programs under the court’s supervision that relate to children, including, but not limited to, mental health special masters, appointment of attorneys for children, supervised visitation, and other supporting personnel.

Comment. Section 20041 continues former Civil Code Section 4791 without substantive change.

§ 20042. Study and report

20042. (a) The presiding judge of the Santa Clara County Superior Court, in conjunction with judges of the family law court and with attorneys practicing therein selected by the presiding judge, shall conduct a study of the effectiveness of the Santa Clara County Pilot Project in making the California

child and spousal support system more equitable, responsive, cost-effective, and accessible, particularly to those with middle and low incomes, and the effectiveness of the pilot project in expediting resolution and reducing conflict in custody and visitation disputes, and shall make a report of its findings to the Legislature on or before July 1, 1994.

(b) The satisfaction of participating parties shall be determined by requiring litigants entering the pilot project to fill out a simple exit poll. The response of at least 70 percent of those questionnaires shall be analyzed by the Senate Office of Research to determine whether the program has been deemed satisfactory by the participants.

Comment. Section 20042 continues former Civil Code Section 4792 without change.

§ 20043. Project estimates

20043. (a) It is estimated for Santa Clara County's participation in the pilot project authorized by this chapter, that 4,000 litigants will be served annually, and that the following savings will occur:

(1) With an estimated 20 percent reduction in the use of court time over the current system, the county would save approximately 178 hours per year of court time, or approximately 22 workdays per year.

(2) With an estimated cost savings in incomes of judges, court reporters, clerks, bailiffs, and sheriffs, the project is expected to save approximately twenty thousand dollars (\$20,000) per year. Cases involving child support obligations which the district attorney's office was required to handle in one participating county, for the 1989-90 fiscal year, number 2,461. The average time spent on a typical child support order is approximately five hours. There is a potential of 12,500 man-hours per year that could be saved, resulting in a savings of three hundred sixty-seven thousand eight hundred seventy-five dollars (\$367,875) per year in attorney salaries alone.

This does not take into consideration costs for documents, filing, and other district attorney personnel.

(3) The average savings personally to litigants who otherwise would require private representation would be from fifty dollars (\$50) to two hundred fifty dollars (\$250) per hour of court time and other preparation work.

(b) The satisfaction of participating parties will be determined by requiring the litigants using the pilot project to fill out a simple exit poll. The response of at least 70 percent of those questionnaires will be analyzed to decide whether the program has been deemed satisfactory by the participants.

(c) The estimated cost of the program is as follows:

(1) The estimated salary for an Attorney-Mediator is sixty thousand dollars (\$60,000) to sixty-five thousand dollars (\$65,000) per year, plus an additional 25 percent of salary to cover the costs of benefits for that position. In addition, there may be other costs connected with this position for support staff at the court.

(2) The costs of exit polling and any informational materials to be handed out to the public by the Attorney-Mediator is undetermined and cannot be estimated.

(d) The estimated income to cover the costs of this program will be as follows:

(1) There are approximately 10,000 dissolution of marriage petitions filed in Santa Clara County each year. Of those cases, approximately one-third of them have responses filed. At the present time, it costs one hundred sixty-five dollars (\$165) to have a petition for dissolution of marriage filed and one hundred twenty-seven dollars (\$127) to have a response filed, for a cost differential of thirty-eight dollars (\$38). By equalizing the response fee with the petition fee, income generated would be approximately one hundred twenty-five thousand four hundred dollars (\$125,400) per year. This does not include the cost of fourteen dollars (\$14) for each

responsive declaration filed to a motion or order to show cause, the annual number of which is significantly greater than 3,300. It is estimated that an additional fifty thousand dollars (\$50,000) per year could be generated by equalizing the responsive fees to a motion or order to show cause with the filing of those motions. These fees generated would more than offset the costs of the program.

(2) It is also anticipated that the Attorney-Mediator will develop public information and outreach programs which will be paid for by any excess revenue generated from the pilot project and ultimately will result in savings to the public and the court. The public will save by not having to pay attorneys for certain information regarding child support matters, and the court will save by not having to educate the public from the bench, thus expediting the handling of support and custody cases.

(e) The cost of computers, printers, and other equipment will be defrayed by contributions.

Comment. Section 20043 continues former Civil Code Section 4793 without change.

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COMMENTS TO 1993 CONFORMING REVISIONS AND REPEALS

Note. Assembly Bill 1500 (1993 Cal. Stat. ch. 219) makes revisions in existing codes to conform them to the new Family Code. These amendments, additions, and repeals were enacted with a January 1, 1994, operative date, the same as the Family Code. See 1992 Cal. Stat. ch. 163, § 161. Additional Commission-recommended conforming revisions were included in Senate Bill 1068 (1993 Cal. Stat. ch. 876).

The following are comments to 1993 amendments, additions, and repeals related to the Family Code. Thus, a comment in this report to a section for which there is a 1992 comment supersedes the 1992 comment.

CIVIL CODE

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

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

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

Comment. Former Section 64 is continued without substantive change in Family Code Sections 7120-7123 and 7140. See Comments to these sections.

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

Comment. Former Section 65 is continued without substantive change in Family Code Sections 7130-7135 and 7143. See Comments to these sections.

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

Comment. Former Section 196.5 is continued without substantive change in Family Code Sections 3901 and 4000. See Fam. Code §§ 3901, 4000, & Comments.

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

Comment. Former Section 220.15 was continued in Family Code Section 8620, but Section 8620 was repealed before it became operative. See 1993 Cal. Stat. ch. 758, § 5.

Civ. Code § 220.20 (repealed). Definitions

Comment. Except as otherwise noted, the definitions in former Section 220.20 are continued without substantive change in Family Code Sections 8500-8548. The substance of subdivision (a) of the former provision pertaining to the duties of the adoption service provider is omitted as surplus. This is not a substantive change. See Family Code Sections 8801.5 (duties of adoption service provider) and 8801.7 (duties of adoption service provider). The definition of “personal knowledge” in former Section 220.20(m) is continued in Family Code Section 8801(b) without substantive change.

Civ. Code § 221.05 (repealed). Regulations

Comment. Former Section 221.05 is continued without change in Family Code Section 8621.

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

Comment. Former Section 221.07 is continued without substantive change in Family Code Section 8622.

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

Comment. Former Section 222.10 is continued in Family Code Section 8700 without substantive change.

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

Comment. Former Section 222.71 is continued without substantive change in Family Code Section 8714(a).

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

Comment. Former Section 224.21 is continued in Family Code Section 8801.3 without substantive change.

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

Comment. Former Section 224.24 is continued in Family Code Section 8801.5 without substantive change.

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

Comment. Former Section 224.26 is continued in Family Code Section 8801.7 without substantive change.

Civ. Code § 224.30 (repealed). Adoption petition

Comment. Former Section 224.30 is continued without substantive change in Family Code Section 8802.

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

Comment. Former Section 224.36 is continued without substantive change in Family Code Section 8804.

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

Comment. Former Section 224.44 is continued without substantive change in Family Code Section 8808.

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

Comment. Former Section 224.62 is continued without substantive change in Family Code Section 8814.

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

Comment. Former Section 224.63 is continued without substantive change in Family Code Section 8814.5.

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

Comment. Former Section 224.64 is continued in Family Code Section 8815 without substantive change.

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

Comment. Former Section 226.23 is continued in Family Code Section 8904 without substantive change.

Civ. Code § 226.69 (repealed). Readoption

Comment. Former Section 226.69 is continued in Family Code Section 8919 without substantive change.

Civ. Code § 227.20 (repealed). Investigation

Comment. Former Section 227.20 is continued without substantive change in Family Code Section 9001.

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

Comment. Former Section 227.30 is continued without substantive change in Family Code Section 9002.

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

Comment. Former Section 227.40 is continued without substantive change in Family Code Section 9003.

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

Comment. Former Section 227.46 is continued without substantive change in Family Code Section 9005.

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

Comment. Former Section 227.50 is continued without substantive change in Family Code Section 9006.

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

Comment. Former Section 233 is continued without substantive change in Family Code Sections 7806, 7841, 7845, 7850-7852. See the Comments to these sections.

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

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

Civ. Code § 4100 (repealed). Marriage relation

Comment. Former Section 4100 is continued without substantive change in Family Code Section 300.

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

Comment. Former Section 4200 is continued without substantive change in Family Code Section 306.

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

Comment. Former Section 4202 is restated without substantive change in Family Code Section 359.

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

Comment. Former Section 4203 is restated without substantive change in Family Code Section 360.

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

Comment. Former Section 4204 is restated without substantive change in Family Code Sections 356-357.

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

Comment. Former Section 4206 is continued without substantive change in Family Code Section 420(a).

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

Comment. Former Section 4208 is continued without substantive change in Family Code Sections 422-423.

Civ. Code § 4210 (repealed). Unrecorded marriage

Comment. Former Section 4210 is continued without substantive change in Family Code Section 425.

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

Comment. Former Section 4213 is restated without substantive change in Family Code Sections 500-536. See Fam. Code §§ 500-536 Comments.

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

Comment. Former Section 4216 is continued without substantive change in Family Code Section 307.

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

Comment. Former Section 4357.5 is continued without substantive change in Family Code Sections 3620-3634 and related sections.

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

Comment. Former Section 4359 is continued without substantive change in Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

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

Comment. Former Section 4370.5 is continued in Family Code Section 2032 without substantive change.

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

Comment. Former Section 4372 is continued in Family Code Section 2033 without substantive change.

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

Comment. Former Section 4373 is continued in Family Code Section 2034 without substantive change.

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

Comment. Former Section 4384.5 is continued in Family Code Section 4502 without substantive change.

Civ. Code § 4390 (repealed). Definitions

Comment. Former Section 4390 is continued without substantive change in Family Code Sections 5200-5220 and related sections.

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

Comment. Former Section 4390.3 is continued without substantive change in Family Code Sections 5208, 5230-5231, and 5260.

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

Comment. Former Chapter 6 (commencing with Section 4395) of Title 1.5 of Part 5 of Division 4 of the Civil Code is continued without substantive change in Chapter 9 (commencing with Section 3830) of Part 1 of Division 9 of the Family Code.

Civ. Code § 4602 (repealed). Custody investigation

Comment. Former Section 4602 is continued without substantive change in Chapter 6 (commencing with Section 3110) of Part 2 of Division 8 of the Family Code.

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

Comment. Former Civil Code Section 4612 is continued in Family Code Section 3031 without substantive change.

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

Comment. Former Section 4700.11 is continued without substantive change in Family Code Sections 4720-4733.

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

Comment. Former Section 4702 is continued without substantive change in Family Code Sections 4200-4203.

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

Comment. Former Section 4720 is continued without substantive change in Family Code Sections 4050-4054.

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

Comment. Former Section 4721 is continued without substantive change in Family Code Sections 4055-4069.

Civ. Code § 4722 (repealed). Hardship exemptions

Comment. Former Section 4722 is continued without substantive change in Family Code Sections 4070-4073.

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

Comment. Sections 4760-4793 are continued without substantive change in the following sections:

<i>Civil Code</i>	<i>Family Code</i>	<i>Civil Code</i>	<i>Family Code</i>
4760	20000	4773	20020
4761	20001	4774	20021
4762	20002	4775	20022
4763	20010	4776	20023
4764	20011	4777	20024
4765	20012	4778	20025
4766	20013	4778.5	20026
4767	20014	4779	20030
4768	20015	4780	20002
4769	20016	4781	20031
4770	20017	4782	20032
4771	20018	4783	20033
4772	20019	4784	20034

<i>Civil Code</i>	<i>Family Code</i>	<i>Civil Code</i>	<i>Family Code</i>
4785	20035	4790	20040
4786	20036	4791	20041
4787	20037	4792	20042
4788	20038	4793	20043
4789	20039		

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

Comment. Former Section 4800.6 is continued in Family Code Section 2628 without substantive change.

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

Comment. Former Section 4800.8 is continued in Family Code Section 2610 without substantive change. See Fam. Code § 2610 Comment.

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

Comment. Former Section 4800.10 is continued in Family Code Sections 2100-2113 without substantive change.

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

Comment. Former Section 4800.11 is continued in Family Code Sections 2120-2129 without substantive change.

Civ. Code § 4801 (repealed). Spousal support

Comment. Former Section 4801 is continued without substantive change in Family Code Sections 4330-4339 and related provisions.

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

Comment. Former Section 5110.740 is continued without substantive change in Family Code Section 853.

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

Comment. Former Section 5127 is continued in Family Code Section 1102 without substantive change.

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

Comment. Former Section 5152 is continued in Family Code Section 3403 without substantive change.

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

Comment. Former Section 5157 is continued in Family Code Section 3408 without substantive change.

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

Comment. Former Section 5158 is continued in Family Code Section 3409 without substantive change.

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

Comment. Former Section 7004 is continued in Family Code Sections 7611, 7611.5, and 7612 without substantive change.

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

Comment. Former Civil Code Section 7009 is continued in Family Code Section 3031 without substantive change. Section 3031 is applicable to custody and visitation determined in an action pursuant to the Uniform Parentage Act. See Sections 3021 (application of Part 2 of custody division), 7604 (pendente lite relief of custody or grant of visitation rights).

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

Comment. Former Section 7020 is continued without substantive change in Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

CODE OF CIVIL PROCEDURE

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

Comment. Subdivision (e) of Section 128 is amended to substitute a reference to the Family Code provision defining “domestic violence.” See Fam. Code § 6211 (“domestic violence” defined) & Comment.

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

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

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

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

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

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

Comment. Former Section 545.5 is continued in Family Code Section 6305 without substantive change.

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

Comment. Former Section 547.7 is continued without substantive change in Family Code Section 3031. Section 3031 is applicable to custody and visitation determined in a proceeding brought pursuant to the Domestic Violence Prevention Act. See Sections 3021 (application of Part 2 of custody division), 6223 (matters to be considered when custody or visitation order issued pursuant to Domestic Violence Prevention Act).

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

Comment. Former Section 548 is continued in Family Code Section 6345 without substantive change. See Fam. Code § 6345 Comment.

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

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

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

Comment. Subdivision (c) of Section 699.560 is amended to substitute a reference to the Family Code section that replaced the former Civil Code section.

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

Comment. Section 704.114 is amended to conform to the terminology of the Family Code. See Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). The section has also been divided into subdivisions and revised for clarity. See Section 706.011 (“earnings assignment order for support” defined).

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

Comment. Section 704.160 is amended to substitute references to “earnings assignment order for support” and the Family Code section defining the term. These are not substantive changes.

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

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

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

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

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

Comment. Former Section 1699 is continued in Family Code Section 4853 without substantive change.

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

Comment. Subdivision (b) of Section 2032 is amended to substitute the new reference to the Uniform Act on Blood Tests To Determine Paternity in the Family Code.

EDUCATION CODE

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

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

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

Comment. Section 22253.5 is amended to substitute a reference to the Family Code section that replaced former Civil Code Section 5125.1.

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

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

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

Comment. Section 22401.7 is amended to substitute a reference to the Family Code section that replaced former Civil Code Section 5125.1.

EVIDENCE CODE

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

Comment. Former Section 621.1 was without substantive change continued in Family Code Sections 20100-20104 (paternity pilot projects). See 1993 Cal. Stat. ch. 219, § 211. Family Code Sections 20100-20104 have been superseded by Family Code Sections 7570-7577. See 1993 Cal. Stat. ch. 1240.

Evid. Code § 895.5 (repealed). Paternity index

Comment. Former Section 895.5 is continued without change in Family Code Section 7555.

Evid. Code § 1037.7 (repealed). Definitions

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

Evid. Code § 1037.7 (added). Definitions

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

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

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

GOVERNMENT CODE

Gov't Code § 6159 (technical amendment). Acceptance of credit cards by public agencies

Comment. Subdivision (b)(4) of Section 6159 is amended to refer to family support for consistency with the Family Code. See, e.g., Fam. Code § 4501 (enforcement of family support order).

Gov't Code § 21215 (technical amendment). Dissolution and legal separation; accounts for accumulated contributions and service credits

Comment. Subdivision (b) of Section 21215 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

Gov't Code § 26833.5 (amended). No fees for certified copies of specified orders

Comment. Section 26833.5 is amended to substitute references to the Family Code provisions that replaced the former provisions in the Civil Code and Code of Civil Procedure. The references to restraining orders included in a judgment have been added.

Gov't Code § 26840.3 (amended). Fee increase to support family conciliation court and mediation services

Comment. Section 26840.3 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Gov't Code § 26841 (amended). Increase of filing fees for protective order application or response

Comment. Section 26841 is amended to substitute a reference to “protective order, as defined in Section 6218 of the Family Code” for the references to former provisions in the Civil Code and Code of Civil Procedure. This is not a substantive change.

Gov't Code § 68085 (amended). Establishment and expenditure of Trial Court Trust Fund

Comment. Section 68085 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Gov't Code § 75050 (technical amendment). Judges' retirement benefits

Comment. Subdivision (b) of Section 75050 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

HEALTH AND SAFETY CODE

Health & Safety Code § 10605 (technical amendment). Certified copies

Comment. Subdivision (c) of Section 10605 is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5183.

PENAL CODE

Penal Code § 273.5 (technical amendment). Willful injury to spouse or others

Comment. Subdivision (d) of Section 273.5 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 7004.

Penal Code § 273.6 (technical amendment). Willful violation of court order

Comment. Subdivision (a) of Section 273.6 is amended to substitute a reference to the Family Code for the references to the former provisions in the Civil Code and Code of Civil Procedure. The specific description of the orders to which this section is applicable have been omitted. This is not a substantive change, since Section 6218 of the Family Code describes substantially the same orders.

Penal Code § 360 (technical amendment). Solemnizing marriage without license

Comment. Section 360 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Penal Code § 977 (technical amendment). Appearance in misdemeanors

Comment. Section 977 is amended to substitute a reference to the Family Code provision that replaced the relevant part of former Code of

Civil Procedure Section 542. The Family Code provision is substantively the same as the former Code of Civil Procedure section, but makes explicit the coverage of children of the parties. See Fam. Code § 6211 (“domestic violence” defined).

Penal Code § 1377 (technical amendment). Compromise of misdemeanors

Comment. Section 1377 is amended to substitute references to the Family Code provision that replaced former Code of Civil Procedure Section 542(b). The Family Code provision is substantively the same as the former Code of Civil Procedure section, but makes explicit the coverage of children of the parties. See Fam. Code § 6211 (“domestic violence” defined).

Penal Code § 11167 (technical amendment). Report

Comment. Section 11167 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

Penal Code § 11170 (technical amendment). Indexed reports

Comment. Subdivision (b)(3) of Section 11170 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Penal Code § 12025.5 (amended). Penalties for use of firearms in commission of felony

Comment. Section 12025.5 is amended to substitute a reference to the Domestic Violence Prevention Act for a list of orders pursuant to specific Civil Code sections. This is not a substantive change, since each of the orders formerly referred to is contained in the cross-reference to the Domestic Violence Prevention Act. See Sections 6221 (applicability of Division 10), 6305 (conditions for issuance of mutual order). The word “mutual” has been substituted for “reciprocal” to conform to the terminology of the Family Code provisions.

Penal Code § 14152 (technical amendment). Referrals by district attorney to community conflict resolution program

Comment. Section 14152 is amended to substitute references to the Family Code sections that replaced the former provisions in the Civil Code and Code of Civil Procedure. The reference to a “protective order” has been substituted for references to provisions for specific orders in the Civil Code and Code of Civil Procedure. This is not a substantive change, since “protective order” is defined to include these orders.

PROBATE CODE

Prob. Code § 3072 (technical amendment). Joinder or consent by conservator

Comment. Subdivision (b) of Section 3072 is amended to correct a cross-reference.

Prob. Code § 3073 (technical amendment). Manner of joinder or consent

Comment. Subdivision (a) of Section 3073 is amended to correct cross-references.

Prob. Code § 5022 (technical amendment). Written consent to nonprobate transfer of community property not transmutation

Comment. Subdivision (b) of Section 5022 is amended to substitute the reference to the Family Code section that replaced the former Civil Code section.

Prob. Code § 5030 (technical amendment). Written consent revocable during marriage

Comment. Subdivision (b) of Section 5030 is amended to substitute the reference to the Family Code sections that replaced the former Civil Code section.

Prob. Code § 5305 (technical amendment). Presumption that married persons hold funds in deposit account as community property

Comment. Subdivision (b) of Section 5305 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

REVENUE AND TAXATION CODE

Rev. & Taxation Code § 19001 (repealed). Child support delinquency

Comment. Former Section 19001 (as amended by 1993 Cal. Stat. ch. 219, § 225) is superseded by Section 19271 (as added by 1993 Cal. Stat. ch. 31, § 26, and amended by 1993 Cal. Stat. ch. 878, § 8).

WELFARE AND INSTITUTIONS CODE

Welf. & Inst. Code § 304 (technical amendment). Exclusive jurisdiction of juvenile court over custody of dependent child

Comment. Section 304 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. The reference to Family Code Section 6218 is broader than the former reference. Section 6218 includes an order restraining specific acts of abuse, excluding a party from a dwelling, and restraining additional behavior necessary to enforce the first two orders. The former reference did not include the order restraining additional behavior.

Welf. & Inst. Code § 361.5 (technical amendment). Child welfare services; reunification of family; adoption assessments

Comment. Subdivision (b)(2) of Section 361.5 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

Welf. & Inst. Code § 362.4 (amended). Protective orders on termination of juvenile court jurisdiction

Comment. Section 362.4 is amended to substitute the new reference to the Uniform Parentage Act. The reference to Family Code Section 6218 is broader than the former reference. Section 6218 includes an order restraining specific acts, excluding a party from a dwelling, and restraining additional behavior necessary to enforce the first two orders. The former reference did not include the order restraining additional behavior.

Welf. & Inst. Code § 366.2 (technical amendment). Status review hearings

Comment. Subdivision (e) of Section 366.2 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

Welf. & Inst. Code § 11476.1 (technical amendment). Agreements with noncustodial parents

Comment. Subdivisions (c), (f), and (g) of Section 11476.1 are amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Welf. & Inst. Code § 11478 (technical amendment). Cooperation of agencies

Comment. Section 11478 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 4604 and 4605 and former Code of Civil Procedure Section 1650. A reference to the Uniform Reciprocal Enforcement of Support Act, now in the Family Code, has been substituted for the reference to former Code of Civil Procedure Section 1650, which merely provided the short title for the uniform act. The substituted reference in Section 11478 includes the entire uniform act.

Welf. & Inst. Code § 11478.1 (technical amendment). Confidentiality of records

Comment. Subdivision (a) of Section 11478.1 is amended to substitute references to the provisions of the Family Code that replaced former Section 1650 of the Code of Civil Procedure. A reference to the Uniform Reciprocal Enforcement of Support Act, now in the Family Code, has been substituted for the reference to former Code of Civil Procedure Section 1650, which merely provided the short title for the uniform act. The substituted reference in Section 11478.1 includes the entire uniform act.

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

Comment. Subdivision (b) of Section 11478.5 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Sections 4604 and 4605.

DISPOSITION OF EXISTING LAW

Note. This table shows the disposition of sections in the Civil Code, Code of Civil Procedure, Evidence Code, and Probate Code, in effect on December 31, 1993, that are repealed in connection with the Family Code legislation. Unless otherwise indicated, all dispositions are to the Family Code, as enacted by 1992 Cal. Stat. ch. 162 (operative Jan. 1, 1994), and amended by 1993 Cal. Stat. chs. 219 and 876. For further detail, see the Comment to the appropriate section in this report, *supra*.

CIVIL CODE

Civil Code	Family Code	Civil Code	Family Code
25	6500	34.6 (1st ¶, 1st snt., 1st pt.)	6920
25.1	6502	34.6 (1st ¶, 1st snt., 2d pt.)	6922 (a)
25.5	Omitted	34.6 (1st ¶, 1st snt., last pt.)	6901
25.6 (pt.)	7002 (a)	34.6 (1st ¶, 1st snt., pt.)	6902
25.6 (pt.)	7050 (e)(1)	34.6 (1st ¶, last snt.)	6921
25.7 (pt.)	7002 (b)	34.6 (2d ¶, 1st pt.)	6920
25.7 (pt.)	7050 (e)(1)	34.6 (2d ¶, last pt.)	6922 (b)
25.8 (1st pt.)	6903	34.6 (last ¶)	6922 (c)
25.8 (2d pt.)	6902	34.7 (1st snt., 1st pt.)	6920
25.8 (last pt.)	6901	34.7 (1st snt., last pt.)	6926 (a)
25.8	6910	34.7 (2d snt.)	6921
25.9 (a)(1st snt., 1st pt.)	6920	34.7 (last snt., 1st pt.)	6920
25.9 (a)(1st snt., last pt.)	6924 (b)	34.7 (last snt., last pt.)	6926 (b)
25.9 (a)(2d snt.)	6921	34.8 (1st snt., 1st pt.)	6920
25.9 (a)(3d snt.)	6920	34.8 (1st snt., last pt.)	6927
25.9 (a)(4th snt.)	6924 (c)	34.8 (2d snt.)	6921
25.9 (a)(last snt.)	6924 (d)	34.8 (last snt.)	6920
25.9 (b)	6924 (e)	34.9 (a)(1st snt., 1st pt.)	6920
25.9 (c)	6924 (a)(1)	34.9 (a)(1st snt., last pt.)	6928 (b)
25.9 (d)	6924 (a)(2)	34.9 (a)(2d snt.)	6921
25.9 (e)	6924 (a)(3)	34.9 (a)(last snt.)	6920
25.9 (f)	6924 (f)	34.9 (b)	6928 (c)
26	6500	34.9 (c)	6928 (a)
27	6501	34.10 (a)(1st snt., 1st pt.)	6920
29 (1st pt.)	CC 43.1	34.10 (a)(1st snt., last pt.)	6929 (b)
29 (last pt.)	CCP 340.4	34.10 (a)(last snt.)	6921
33	6701	34.10 (b)(1st pt.)	6920
34	6700	34.10 (b)(last pt.)	6929 (d)
34.5 (1st ¶, 1st snt., 1st pt.)	6920	34.10 (c)(1st ¶)	6929 (c)
34.5 (1st ¶, 1st snt., 2d pt.)	6925 (a)	34.10 (c)(last ¶)	6929 (d)
34.5 (1st ¶, 1st snt., last pt.)	6921	34.10 (d)	6929 (a)(1)
34.5 (1st ¶, last snt.)	6920	34.10 (e)	6929 (a)(2)
34.5 (last ¶)	6925 (b)	34.10 (f)	6929 (a)(3)

Civil Code	Family Code	Civil Code	Family Code
34.10 (g)	6929 (e)	67	7111
35	6710	68	7142
35a	6713	69 (1st ¶, 1st snt.)	7130 (a)
36 (a)(intro.)	6712 (intro.)	69 (1st ¶, last snt.)	7135
36 (a)(intro.)	6751 (a)	69 (last ¶, 1st snt.)	7131
36 (a)(1)	6712 (a)-(c)	69 (last ¶, last snt.)	7133
36 (a)(2)(A)(1st pt.)	6750 (a)	69 (last ¶, last snt.)	7134
36 (a)(2)(A)(2d pt.)	6750 (b)	69 (last ¶, last snt.)	7143
36 (a)(2)(A)(last pt.)	6751 (a)	70	7110
36 (a)(2)(B)	6750 (a)		
36 (a)(3)(1st pt.)	6750 (c)	196 (a)	3900
36 (a)(3)(last pt.)	6751 (a)	196 (b)	Omitted
36 (b)(1st pt.)	6751 (b)	196a (1st snt.)	3900
36 (b)(last pt.)	6751 (c)	196a (last snt.)	4000
36.1	6752	196.5 (1st ¶, 1st snt.)	3901 (a)
36.2	6753	196.5 (1st ¶, last snt)	4000
37	6711	196.5 (last ¶, 1st snt.)	Omitted
38	CC 38	196.5 (last snt.)	3901 (b)
39	CC 39	197 (pt.)	3010
40	CC 40	197 (pt.)	7500
41 (pt.)	CC 41	197.5	3102
41 (pt.)	6600	201	3902
42	6601	202	7502
60	7000	203	7507
61 (1st snt.)	Omitted	204	7505
61 (2d-last snt.)	7001	205	3952
62	7002	206 (1st snt., pt.)	3910 (a)
63	7050	206 (1st snt., pt.)	4400
63.1	7051	206 (2d snt.)	4401
63.2	7052	206 (last snt.)	Omitted
64 (a)	7120	206.5 (1st snt., 1st pt.)	4410
64 (b)(1)(1st snt.)	7121 (a)	206.5 (1st snt., 2d pt.)	4411
64 (b)(1)(2d snt.)	7121 (b)	206.5 (2d-3d snt.)	4412
64 (b)(1)(3d snt.)	7122 (a)	206.5 (last snt.)	4414 (a)
64 (b)(1)(last snt.)	7121 (c)	206.5 (1st snt., last pt.)	4410
64 (b)(2)	7121 (b)	206.5 (last ¶)	4414 (b)
64 (c)(1st snt.)	7122 (b)	206.6	4413
64 (c)(last snt.)	7140	206.7	Omitted
64 (d)	7123 (a)	207	3950
64 (e)	7123 (b)	208	3951
64 (f)	7122 (c)	208.5	3930
65 (a)	7132(a)	210	7506
65 (b)(1)(1st pt.)	7133 (a)	211	7504
65 (b)(1)(last pt.)	7133 (c)	212	7503
65 (b)(2)	7133 (b)	213	7501
65 (c)(1st snt.)	7130 (b)		
65 (c)(2d-last snt.)	7132 (b)	220.10	Omitted
65 (d)(1st snt.)	7134	220.15	Omitted
65 (d)(2d-last snt.)	7143	220.20 (intro.)	8500
65 (e)	7135	220.20 (a)	8503
66	7141	220.20 (b)	8506

Civil Code	Family Code	Civil Code	Family Code
220.20 (c)	8509	222.26 (a)	8706
220.20 (d)	8512	222.26 (b)	8608
220.20 (e)	8600	222.30	8707
220.20 (f)	8515	222.35	8708
220.20 (g)	8518	222.36	8709
220.20 (h)	8521	222.37	8710
220.20 (i)	8524	222.38	8711
220.20 (j)	8527	222.40	8712
220.20 (k)	8530	222.50	8713
220.20 (l)	8533	222.70	8714
220.20 (m)	8801 (b)	222.71	8714 (a)
220.20 (n)	Omitted	222.72	8716
220.20 (o)	8539	222.75	8715
220.20 (p)	8542	222.77	8717
220.20 (q)	8545	222.78	8718
220.20 (r)	8548	222.80	8719
221.05	8621	222.90	8720
221.07	8622	224.10	8800
221.10	8600	224.10 (d)	270
221.12	8601	224.20	8801 (a)
221.13	8602	224.21	8801.3
221.14	8603	224.24	8801.5
221.20 (1st ¶, 1st-3d snt.)	8604	224.26	8801.7
221.20 (1st ¶, 4th snt.)	8605	224.30	8802
221.20 (1st ¶, last snt.)	8606	224.33	8803
221.20 (a)-(c)	8606	224.36	8804
221.30	8607	224.37	8805
221.40	8609	224.40	8806
221.50	8610	224.42	8807
221.60	8611	224.44	8808
221.62	8718	224.49	8811
221.62	8823	224.50	Omitted
221.62	8913	224.61	8813
221.62	9007	224.62	8814
221.63 (a)	8612 (a)	224.63	8814.5
221.63 (b)	8612 (b)	224.64	8815
221.63 (c)(1st pt.)	8612 (c)	224.66	8816
221.63 (c)(last pt.)	8616	224.70 (a)	8817
221.65	8613	224.70 (b)	8608
221.70	8614	224.73	8818
221.72	8615	224.76	8819
221.74 (1st snt.)	8618	224.80	8820
221.74 (last snt.)	8616	224.91	8821
221.76	8617	224.93	8822
221.80	8619	224.95	8823
222.10	8700	226.10	8900
222.13	8701	226.11	8901
222.15	8702	226.20	8902
222.18	8703	226.21	8903
222.20	8704	226.23	8904
222.22	8705	226.25	8905

Civil Code	Family Code	Civil Code	Family Code
226.27	8906	230.20 (f)(1)	9321 (b)
226.28	8907	230.20 (f)(2)	9327
226.30	8908	230.20 (g)	9340
226.35 (a)	8909		
226.35 (b)	8608	232 (a)(intro.)	7820
226.40	8910	232 (a)(intro., pt.)	7802
226.50	8911	232 (a)(1)	7822
226.52	8912	232 (a)(2)	7823
226.55	8913	232 (a)(3)	7824
226.57	8914	232 (a)(4)	7825
226.59	8915	232 (a)(5)	7826
226.60	8916	232 (a)(6)	7827
226.64	8917	232 (a)(7)	7828
226.66	8918	232 (a)(8)	7829
226.69	8919	232 (b)(1st snt.)	7890
227.10	9000	232 (b)(2d-last ¶)	7892 (a)-(b), (d)
227.20	9001	232 (c)	7821
227.30	9002	232 (c)	7892 (c)
227.40	9003	232 (d)	7807
227.44	9004	232 (e)	7808
227.46	9005	232.3 (a)-(b)	7870
227.50	9006	232.3 (c)	7871
227.60	9007	232.5 (1st snt.)	7801
228.10	9100	232.5 (last snt.)	7890
228.13	9101	232.6 (1st snt.)	7800
228.15	9102	232.6 (last snt.)	7803
229.10	9200	232.9	7840
229.20	9201	233 (a)(1st snt., 1st & last pt.)	7841
229.30	9202	233 (a)(1st snt., 2d pt.)	7845
229.40	9203	233 (a)(2d snt.)	7806
229.50	9204	233 (a)(3d snt.)	7850
229.60	9205	233 (a)(1st ¶, last snt.-end)	7851
229.70	9206	233 (b)	7852
230.10	9300	233.5 (1st ¶)	7805 (a)
230.12	9303	233.5 (last ¶)	7805 (b)
230.14 (1st snt.)	9304	233.6	7805 (c)
230.14 (last snt.)	9305	234 (1st ¶)	7880
230.16	9306	234 (2d ¶)	7891
230.20 (a)(1st ¶)	9320	234 (a)-(c)	7891
230.20 (a)(last ¶, 1st snt.)	9301	235 (a)	7881
230.20 (a)(last ¶, 2d-last snt.)	9302	235 (b)	7882
230.20 (b)(1st snt.)	9321 (a)	235.5	7884
230.20 (b)(2d snt., 1st pt.)	9322	236	7883
230.20 (b)(2d snt., last pt.)	9324	237	7804
230.20 (b)(3d snt.)	9323	237.5 (intro.)	7860
230.20 (b)(last snt.)	9325	237.5 (a)	7861
230.20 (c)(1st ¶)	9328	237.5 (b)(1st snt.)	7862
230.20 (c)(2d ¶)	9302	237.5 (b)(last snt.)	7860
230.20 (c)(last ¶)	9328	237.5 (c)(1st snt.)	7860
230.20 (d)	9307	237.5 (c)(2d-last snt.)	7863
230.20 (e)	9326	237.5 (d)	7864

Civil Code	Family Code	Civil Code	Family Code
237.7	7895	4101 (b)	302
238	7894	4101 (c)	304
239	7893	4102	303
		4103	305
241 (a)	Omitted	4104	308
241 (b)	3550 (a)(2)	4200	306
241 (c)	3550 (a)(1)	4201 (a)(1st pt.)	350
241 (d)(1st pt.)	Omitted	4201 (a)(last pt.)	351
241 (d)(last pt.)	3910 (a)	4201 (b)(1st snt.)	352
241 (e)	Omitted	4201 (b)(2d snt.)	353
242 (pt.)	3900	4201 (b)(3d-last snt.)	354
242 (pt.)	3910 (a)	4201 (c)-(d)	355
242 (pt.)	4300	4201.5	358
242 (pt.)	4400	4202	359
244	3550 (b)	4203	360
245	200	4204 (1st snt.)	356
247 (pt.)	3651	4204 (last ¶)	357
247 (pt.)	4405	4205	400
248(1st snt., pt.)	4000	4205.1	401
248 (pt.)	4002	4205.5	402
248 (pt.)	4303	4206	420 (a)
248 (pt.)	4403	4206.5	420 (b)
249	3554	4207	421
250	3551	4208 (a)	422
251	4402	4208 (b)	423
252	Omitted	4209	424
253	Omitted	4210	425
254	Omitted	4212	309
		4213 (a)(1st ¶, 1st snt.)	500
264	7900	4213 (a)(1st ¶, 2d snt.)	501
265	7901	4213 (a)(1st ¶, 3d snt.)	504
266	7902	4213 (a)(1st ¶, 4th-6th snt.)	506
267	7903	4213 (a)(1st ¶, last snt.)	511 (a)
268	7904	4213 (a)(2d ¶, 1st snt.)	507
269	7905	4213 (a)(2d ¶, last snt.)	508
270	7906	4213 (a)(last ¶)	505
271	7907	4213 (b)(1st-2d snt.)	503
272	7908	4213 (b)(last snt.)	504
273	7909	4213 (c)(1)	530 (a)
274	7910	4213 (c)(2)	531 (a)-(b)
		4213 (c)(3)(1st snt., 1st pt.)	531 (c)
275	7950	4213 (c)(3)(1st snt., last pt.)	536 (a)
275.1	7951	4213 (c)(3)(2d snt.)	533
275.2	7952	4213 (c)(3)(3d snt.)	536 (b)
275.3	7953	4213 (c)(3)(last snt.)	536 (c)
275.4	7954	4213 (c)(4)	535 (a)
		4213 (c)(5)	532
4000	Omitted	4213 (c)(6)	534
4001	211	4213 (c)(7)	535 (b)
4100	300	4213 (d)	530 (b)
4101 (a)	301	4213 (e)	511 (d)

Civil Code	Family Code	Civil Code	Family Code
4213 (f)	511 (c)	4351.6 (a)-(d)	6303
4213 (g)	509	4351.6 (e)	Omitted
4213 (h)	510	4352	2024
4213 (i)	505 (e)	4353	2556
4213.1	502	4355	2020
4213.2	511 (b)	4355.6	213
4214	Omitted	4356	2012
4216	307	4357 (a)(1st snt.)	3600
4300 (a)(1st pt.)	580	4357 (a)(2d snt.)	3604
4300 (a)(last pt.)	581	4357 (a)(last snt.)	3603
4300 (b)	582	4357 (b)(1st snt.)	3601
4300 (c)	583 (a)	4357 (b)(last snt.)	3602
4300 (d)	583 (b)	4357.5 (a)(1st ¶)	3621
4300 (e)(1st snt.)	584	4357.5 (a)(2d ¶)	3620
4300 (e)(last snt.)	585	4357.5 (a)(last ¶)	95
4301	586	4357.5 (b)(1st ¶)	3622
4303 (1st ¶, 1st snt.)	587 (a)	4357.5 (b)(2d ¶, 1st snt.)	3630 (a)
4303 (1st ¶, last snt.)	588	4357.5 (b)(2d ¶, last snt.)	3624 (a)
4303 (last ¶)	587 (b)	4357.5 (b)(last ¶)	3624 (c)
4304	589	4357.5 (c)	3624 (b)
4305	590	4357.5 (d)	3625
4306	591	4357.5 (e)(1st snt.)	3626
4307	592	4357.5 (e)(2d snt.)	3627
4308	593	4357.5 (e)(last snt.)	3628
4309	594	4357.5 (f)	3623
4350	310	4357.5 (g)	3629
4350.5	11	4357.5 (h)	3630 (b)
4351 (1st pt.)	2010	4357.5 (i)(1st snt.)	3631
4351 (last pt.)	2060 (b)	4357.5 (i)(last snt.)	3632
4351.5 (a)	3101 (a)	4357.5 (j)	3633
4351.5 (b)	3103 (a)	4357.5 (k)	3634
4351.5 (c)(1st snt.)	3171 (a)	4358	2023
4351.5 (c)(2d snt.)	3161 (c)	4358.5 (1st ¶)	3781
4351.5 (c)(last snt.)	3164 (b)	4358.5 (2d ¶)	3782
4351.5 (d)	3177	4358.5 (last ¶)	3780
4351.5 (e)(1st snt.)	3182 (a)	4359 (a)(intro.)	2045
4351.5 (e)(last snt.)	3180 (a)	4359 (a)(1)	2045 (a)
4351.5 (f)(1st-3d snt.)	3183	4359 (a)(2)	6320
4351.5 (f)(4th snt.)	3186	4359 (a)(3)	6321
4351.5 (f)(5th snt.)	3178 (b)	4359 (a)(4)	6323
4351.5 (f)(6th-7th snt.)	3186	4359 (a)(5)	6324
4351.5 (f)(last snt.)	3179	4359 (a)(6)	6322
4351.5 (g)	3171 (b)	4359 (a)(2d ¶)	6305
4351.5 (h)	3185	4359 (a)(3d ¶)	6224
4351.5 (i)	3176	4359 (a)(last ¶)	6226
4351.5 (j)(pt.)	3101 (c)	4359 (b)(1st ¶, 1st snt.)	6380
4351.5 (j)(pt.)	3103 (e)	4359 (b)(1st ¶, last snt.)	6382
4351.5 (k)	3103 (d)	4359 (b)(last ¶)	6381
4351.5 (l)(pt.)	3101 (b)	4359 (c)(1st snt.)	6224
4351.5 (l)(pt.)	3103 (b)	4359 (c)(last snt.)	6388
		4359 (d)	6302

Civil Code	Family Code	Civil Code	Family Code
4359 (e)	6383 (a)-(b)	4384.5 (1st snt.)	4502
4360	214	4384.5 (last snt.)	CCP 683.130 (e)
4361	2022	4385	4500
4362 (a)	2080	4390 (intro.)	5200
4362 (b)	2082	4390 (a)	5202
4362 (c)	2081	4390 (b)	5204
4362 (d)	CCP 1279.6	4390 (c)	5206
4363	2021	4390 (d)	5210
4363.1 (a)(1st snt.)	2060 (a)	4390 (e)	5212
4363.1 (a)(2d snt.)	2061	4390 (f)	5214
4363.1 (a)(last pt.)	2062	4390 (g)	5216
4363.1 (b)(1st snt.)	2063 (a)	4390 (h)	150
4363.1 (b)(last snt.)	2064	4390 (i)	5220
4363.1 (c)	2065	4390.1	5244
4363.2 (a)	2070	4390.2	5239
4363.2 (b)	2063 (b)	4390.3 (a)(1st snt.)	5208
4363.2 (c)	2071	4390.3 (a)	5230
4363.2 (d)(1st ¶, 1st snt.)	2072	4390.3 (b)	5231
4363.2 (d)(1st ¶, 2d snt.)	2072	4390.3 (c)	5260
4363.2 (d)(1st ¶, 3d snt.)	2073 (a)-(b)	4390.4	5261
4363.2 (d)(1st ¶, last snt.)	2073 (c)	4390.5 (a)(1st ¶, 1st snt.)	5250
4363.2 (d)(last ¶)	2074 (c)	4390.5 (a)(1st ¶, last snt.)	5251
4363.2 (e)(1st snt.)	2074 (a)	4390.5 (a)(last ¶)	5252 (a)
4363.2 (e)(last snt.)	2074 (b)	4390.5 (b)	5252 (c)
4363.3	80	4390.5 (c)(1st snt.)	5253
4364	2330.5	4390.5 (c)(last snt.)	5208
4365 (a)	2025	4390.5 (d)-(e)	5252 (b)
4365 (b)	Omitted	4390.6	5280
4366 (a)	2050	4390.7 (a)	5281
4366 (b)	2051	4390.7 (b)	5282
4366 (c)	2052	4390.7 (c)	5231
4366 (d)	2053	4390.8 (a)(1st-2d snt.)	5233
4370 (a)	2030, 270	4390.8 (a)(last snt.)	5232
4370 (b)	2031	4390.8 (b)	5234
4370 (c)-(d)	3557, 273	4390.9 (a)-(c)	5270
4370.5	2032	4390.9 (d)	5272
4370.6	271, 274	4390.10 (a)	5235
4371	272, 275	4390.10 (b)	5241
4372	2033	4390.10 (c)	5242
4373	2034	4390.11	5271
4380	290	4390.12 (a)	5238
4381	2026	4390.12 (b)	5243
4382	3556	4390.13	5237
4383 (a)(1st snt.)	5100	4390.14	5240
4383 (a)(2d snt.)	5101	4390.15	5295
4383 (a)(3d snt.)	5103 (a)	4390.16 (a), (c)	5283
4383 (a)(last snt.)	5103 (b)	4390.16 (b)	5236
4383 (b)	5104	4390.17	5290
4383 (c)	5103 (c)	4390.18	3555
4384 (1st snt.)	291	4390.19	5245
4384 (last snt.)	5102	4395	3830

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4400	2200	4531	2322
4401	2201	4550	2400
4425	2210	4551	2401
4426	2211	4552	2402
4429	2212 (a)	4553	2403
4450	2250	4554	2404
4451	2212 (b)	4555	2405
4452 (1st-3d snt.)	2251	4556	2406
4452 (last snt.)	2252		
4454	2253	4600 (a)(1st ¶)	3020
4455	2254	4600 (a)(last ¶, 1st snt.)	3022
4456	2255	4600 (a)(last ¶, 2d snt.)	3042
4457 (a)	2080	4600 (a)(last snt.)	3043
4457 (b)	2082	4600 (b)	3040 (a)
4457 (c)	2081	4600 (c)	3041
4457 (d)	CCP 1279.6	4600 (d)	3040 (b)
4458 (1st snt.)	6360	4600.1 (a)	3060
4458 (2d snt.)	6361	4600.1 (b)	3061
4458 (3d snt.)	6380	4600.1 (c)-(d)	3062
4458 (last snt.)	6388	4600.1 (e)(1st snt.)	3063
		4600.1 (e)(2d snt.-end)	3064
4501	2300	4600.2	3029
4503 (1st snt.)	2330 (a)	4600.5 (a)	3080
4503 (last snt.)	2331	4600.5 (b)	3081
4506	2310	4600.5 (c)	3082
4507	2311	4600.5 (d)(1)	3002
4508 (a)(1st snt.)	2333	4600.5 (d)(2)	3007
4508 (a)(2d snt.-end)	2334	4600.5 (d)(3)	3004
4508 (b)(1st snt.)	2345	4600.5 (d)(4)	3006
4508 (b)(last snt.)	2347	4600.5 (d)(5)	3003
4509	2335	4600.5 (e)	3083
4510 (a)	2312	4600.5 (f)	3084
4510 (b)	2313	4600.5 (g)	3085
4510 (c)-(d)	2332	4600.5 (h)	3086
4511	2336	4600.5 (i)	3087
4512	2338	4600.5 (j)	3088
4513	2346	4600.5 (k)	3089
4514 (a)(1st snt.)	2339	4600.5 (l)	3025
4514 (a)(2d snt.)	2340	4600.5 (m)	3024
4514 (a)(last snt.)	2341 (a)	4600.6	3023
4514 (b)	2341 (b)	4601	3100 (a)
4514 (c)	2342	4601.5	3100 (b)
4514 (d)	2344	4602 (1st ¶)	3111
4514 (e)	2343	4602 (2d ¶)	3113
4515	2337	4602 (3d ¶)	3112
4516 (1st snt.)	6360	4602 (last ¶)	3114
4516 (2d snt.)	6361	4603	3120
4516 (3d snt.)	6380	4604 (a)	3130
4516 (last snt.)	6388	4604 (b)	3131
4530 (a)	2320	4604 (c)(1st snt.)	3132
4530 (b)	2321	4604 (c)(2d snt.-end)	3133

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4604.5	3140	4700.1 (b)(last ¶, 1st snt.)	3683 (b)
4605	3134	4700.1 (b)(last ¶, 2d snt.)	3683 (c)
4606 (a)-(b)	3150	4700.1 (b)(last ¶, 3d snt.-end)	3684 (a)
4606 (c)-(d)	3151	4700.1 (c)(1st snt.)	3685 (a)
4606 (e)	3152	4700.1 (c)(2d snt.)	3685 (b)
4606 (f)-(g)	3153	4700.1 (c)(last snt.)	3693
4607 (a)(1st snt.)	3170, 3175	4700.1 (d)(1st ¶)	3682
4607 (a)(2d snt.)	3173	4700.1 (d)(2d ¶, 1st snt.)	3687 (a)
4607 (a)(3d snt.)	3161	4700.1 (d)(2d ¶, last snt.)	3687 (c)
4607 (a)(4th snt.)	3180 (b)	4700.1 (d)(3d ¶)	3688
4607 (a)(last snt.)	3172	4700.1 (d)(last ¶)	3689 (a)-(b)
4607 (b)(1st snt.)	3160	4700.1 (e)(1st-2d snt.)	3690
4607 (b)(2d snt.)	3164 (a)	4700.1 (e)(last snt.)	3681
4607 (b)(3d snt.)	3160	4700.1 (f)	4010
4607 (b)(last snt.)	3164 (b)	4700.1 (g)	3691 (a)
4607 (c)	3177	4700.1 (h)	3692
4607 (d)(1st snt.)	3182 (a)	4700.1 (i)	3693
4607 (d)(2d snt.)	3180 (a)	4700.1 (j)	3694
4607 (d)(last snt.)	3181	4700.1 (k)	3684 (b)
4607 (e)(1st-3d snt.)	3183	4700.2 (a)	3660
4607 (e)(4th snt.)	3186	4700.2 (b)(1st ¶)	3664 (a)
4607 (e)(5th snt.)	3178 (a)	4700.2 (b)(last ¶, 1st snt.)	3662
4607 (e)(6th-7th snt.)	3186	4700.2 (b)(last ¶, 2d snt.)	3663
4607 (e)(last snt.)	3179	4700.2 (b)(last ¶, 3d snt.)	3666
4607 (f)	3184	4700.2 (b)(last ¶, last snt.)	3668
4607 (g)	3163	4700.2 (c)	3665
4607.1	3162	4700.2 (d)	3664 (b)
4607.2	3181	4700.2 (e)	3667
4608	3011	4700.3	3686
4608.1 (a)(1st ¶)	3190	4700.5	4004
4608.1 (a)(last ¶)	3191	4700.7	3552
4608.1 (b)	3192	4700.9 (1st snt.)	3587
4609	3026	4700.9 (last snt.)	4500
4610	3030	4700.10 (a)	3800
4611	3027	4700.10 (b)(1st snt.)	3801 (a)
4612	3031	4700.10 (b)(2d snt.)	3801 (b)
		4700.10 (b)(3d snt.)	3801 (c)
4700 (a)(1st snt.)	4001	4700.10 (b)(4th snt.-end)	3802 (a)-(b)
4700 (a)(2d snt.)	Omitted	4700.10 (c)(1st snt.)	3802 (a)
4700 (a)(3d snt.)	4012	4700.10 (c)(2d snt., 1st pt.)	3803
4700 (a)(4th snt.)	4011	4700.10 (c)(2d snt., last pt.)	3804
4700 (a)(5th snt.)	3651 (a)-(b)	4700.10 (c)(last snt.)	Omitted
4700 (a)(6th snt.)	3653	4700.10 (d)	3806
4700 (a)(6th snt.)	4009	4700.10 (e)(1)	3807
4700 (a)(last snt.)	3652	4700.10 (e)(2)	3808
4700 (b)	3028, 270	4700.10 (f)	3809
4700 (c)	4007	4700.10 (g)	3810
4700 (d)	4013	4700.11 (a)	4722
4700 (e)	Omitted	4700.11 (b)	4723 (a)-(b)
4700.1 (a)	3680	4700.11 (c)	4724
4700.1 (b)(1st ¶)	3683 (a)	4700.11 (d)	4726

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4700.11 (e)	4725	4710 (a)(4th snt.)	4562
4700.11 (f)	4730	4710 (a)(last snt.)	4561
4700.11 (g)	4723 (c)	4710 (b)(1st-3d snt.)	4570
4700.11 (h)(1st & 2d snt.)	4731	4710 (b)(4th snt.)	4571
4700.11 (h)(last snt.)	4727	4710 (b)(last snt.)	4572
4700.11 (i)	4728	4710 (c)	4563
4700.11 (j)	4732	4710 (d)	4560 (b)
4700.11 (k)	4721	4710 (e)(1st & 2d snt.)	4565
4700.11 (l)	4729	4710 (e)(3d snt.)	4566
4700.11 (m)	4720	4710 (e)(4th snt.)	4567
4700.11 (n)	4733	4710 (e)(last snt.)	4567
4701.1 (a)(1)(1st snt.)	4610 (a)	4710 (f)(1st & 2d snt.)	4550
4701.1 (a)(1)(2d snt.)	4610 (b)	4710 (f)(last snt.)	4573
4701.1 (a)(1)(3d snt.)	4616	4710 (g)	4551
4701.1 (a)(1)(4th snt.-end)	4617	4720 (a)(1)(1st snt.)	4050
4701.1 (a)(2)-(3)	4630	4720 (a)(1)(2d snt.)	4051
4701.1 (a)(4)(intro.)	4612 (intro.)	4720 (a)(2)	4052
4701.1 (a)(4)(A)-(I)	4612 (a)-(i)	4720 (a)(3)	4053
4701.1 (a)(4)(2d ¶)	4611	4720 (b)-(d)	4054
4701.1 (a)(4)(last ¶)	4631	4721 (a)-(b)	4055
4701.1(a)(4)(pt.)	4632	4721 (c)	4056
4701.1 (b)	4613	4721 (d)-(e)	4057
4701.1 (c)(1st-2d snt.)	4614	4721 (f)	4058
4701.1 (c)(last snt.)	4615	4721 (g)	4059
4701.1 (d)	4620	4721 (h)	4060
4701.1 (e)	4603	4721 (i)	4061
4701.1 (f)(intro.)	4640 (intro.)	4721 (j)	4062
4701.1 (f)(1)-(2)	4640 (a)-(b)	4721 (k)	4063
4701.1 (f)(last ¶)	4641	4721 (l)	4064
4701.1 (g)	4602	4721 (m)-(o)	4065
4701.1 (h)	4604	4721 (p)	4066
4701.1 (i)	4600	4721 (q)	4067
4701.2	Omitted	4721 (r)	4068
4702 (a)	4200	4721 (s)	4069
4702 (b)	4201	4722 (intro.)	4070
4702 (c)	4202	4722 (a)-(b)	4071
4702 (d)	4203	4722 (c)	4072
4703	4000	4722 (d)	4073
4704	Omitted	4726 (a)(1)-(2)	3751 (a)(2)-(b)
4704.5 (1st snt.)	3901 (a)	4726 (a)(3)	3750
4704.5 (1st ¶, last snt.)	4000	4726 (b)-(c)	3752
4704.5 (2d ¶, 1st snt.)	Omitted	4726 (d)	3753
4704.5 (last snt.)	3901 (b)	4726.1 (a)(1)(1st snt.)	3761 (a)
4705	4504	4726.1 (a)(1)(last snt.)	3760 (c)
4706	4006	4726.1 (a)(2)	3762
4707	4003	4726.1 (b)	3763
4708	4503	4726.1 (c)	3761 (b)
4709	4505	4726.1 (d)	3764
4710 (intro.)	4554	4726.1 (e)	3765
4710 (a)(1st & 2d snt.)	4560 (a)	4726.1 (f)	3766
4710 (a)(3d snt.)	4561	4726.1 (g)	3768

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4726.1 (h)-(i)	3767	4800 (a)(1st ¶, 1st snt.)	2550
4726.1 (j)	3766	4800 (a)(1st ¶, last snt.)	2552
4726.1 (k)	3770	4800 (a)(2d ¶)	2551
4726.1 (l)	3769	4800 (a)(last ¶)	63
4726.1 (m)	3760 (a)	4800 (b)(intro.)	2600
4726.1 (n)	3772	4800 (b)(1)	2601
4726.1 (o)	3771	4800 (b)(2)	2602
4726.1 (p)	3760 (b)	4800 (b)(3)	2604
4731	4074	4800 (b)(4)	2603
4732	4075	4800 (b)(4)(last snt.)	780
		4800 (b)(5)	2627
4750	4700	4800 (c)(intro.)	2620
4752 (a)-(c)	4701	4800 (c)(1)	2621
4752 (d)	Omitted	4800 (c)(2)	2622
		4800 (c)(3)	2623
4760	20000	4800 (c)(4)	2624
4761	20001	4800 (d)	2625
4762	20002	4800 (e)	2626
4763	20010	4800 (f)	2553
4764	20011	4800.1 (a)	2580
4765	20012	4800.1 (b)	2581
4766	20013	4800.2	2640
4767	20014	4800.3	2641
4768	20015	4800.4 (a)	2650
4769	20016	4800.4 (b)	Omitted
4770	20017	4800.5	2660
4771	20018	4800.6	2024
4772	20019	4800.8	2610
4773	20020	4800.9	2554
4774	20021	4800.10	2100-2113
4775	20022	4800.11	2120-2129
4776	20023	4801 (a)(1st snt.)	4330
4777	20024	4801 (a)(2d snt.)	4320 (intro.)
4778	20025	4801 (a)(1)-(10)	4320 (a)-(j)
4778.5	20026	4801 (a)(last ¶, 1st snt.)	4332
4779	20030	4801 (a)(last ¶, 2d snt.)	4339
4780	20002	4801 (a)(last ¶, 3d snt.)	3651 (a)-(b)
4781	20031	4801 (a)(last ¶, 4th snt.)	4333
4782	20032	4801 (a)(last ¶, last snt., 1st pt.)	3654
4783	20033	4801 (a)(last ¶, last snt., last pt.)	3653
4784	20034	4801 (b)	4337
4785	20035	4801 (c)	4334
4786	20036	4801 (d)(1st ¶, 1st snt.)	4335
4787	20037	4801 (d)(1st ¶, last snt.)	4336 (a)
4788	20038	4801 (d)(2d ¶, 1st-3d snt.)	4336 (b)
4789	20039	4801 (d)(2d ¶, last snt.)	4336 (c)
4790	20040	4801 (d)(last ¶)	4336 (d)
4791	20041	4801 (e)-(g)	4331
4792	20042	4801.1 (a)	3660
4793	20043	4801.1 (b)(1st ¶)	3664 (a)

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4801.1 (b)(last ¶, 1st snt.)	3662	4811 (d)(1st ¶, last pt.)	92
4801.1 (b)(last ¶, 2d snt.)	3663	4811 (d)(last ¶, 1st snt., 1st pt.)	92
4801.1 (b)(last ¶, 3d snt.)	3666	4811 (d)(last ¶, 1st snt., last pt.)	4501
4801.1 (b)(last ¶, last snt.)	3668	4811 (d)(last snt.)	Omitted
4801.1 (c)	3665	4812	3592
4801.1 (d)	3664 (b)	4813	2011
4801.1 (e)	3667		
4801.4	4360	5000	2090
4801.5	4323	5001	2091
4801.7 (a)	4350	5002	2092
4801.7 (b)	4351	5003	3
4801.7 (c)	4351	5004	2093
4801.7 (d)	4352		
4801.9 (a)	3680	5100	720
4801.9 (b)(1st ¶)	3683 (a)	5102 (a)(1st pt.)	752
4801.9 (b)(last ¶, 1st snt.)	3683 (b)	5102 (a)(2d pt.)	753
4801.9 (b)(last ¶, 2d snt.)	3683 (c)	5102 (a)(3d pt.)	6321
4801.9 (b)(last ¶, 3d snt.-end)	3684 (a)	5102 (a)(last pt.)	6340
4801.9 (c)(1st snt.)	3685 (a)	5102 (b)	754
4801.9 (c)(2d snt.)	3685 (b)	5103	721
4801.9 (c)(last snt.)	3693	5104	750
4801.9 (d)(1st ¶)	3682	5105 (1st snt.)	751
4801.9 (d)(2d ¶, 1st snt.)	3687 (b)	5105 (last snt.)	Omitted
4801.9 (d)(2d ¶, last snt.)	3687 (c)	5106	755
4801.9 (d)(3d ¶)	3688 (a)-(c)	5107	770
4801.9 (d)(last ¶)	3689 (a)-(b)	5108	770
4801.9 (e)(1st-2d snt.)	3690	5110 (1st ¶, 1st snt., 1st pt.)	760
4801.9 (e)(last snt.)	3681	5110 (1st ¶, 1st snt., last pt.-end)	803
4801.9 (f)	3691 (b)	5110 (2d ¶)	Omitted
4801.9 (g)	3692	5110 (last ¶)	700
4801.9 (h)	3693	5110.150	761
4801.9 (i)	3694	5110.710	850
4802 (1st pt.)	1620	5110.720	851
4802 (last pt.)	3580	5110.730	852
4803	125	5110.740	853
4804 (pt.)	2502	5111	802
4804 (pt.)	3515	5112	783
4805	4338	5113	782
4806 (1st snt.)	4321	5114	Omitted
4806 (last snt.)	4322	5115	Omitted
4807	4008	5118	771
4809	215	5119	772
4810	2555	5120.010	900
4811 (a)(1st-2d snt.)	3585	5120.020 (a)	760
4811 (a)(last snt.)	3651 (a)-(b), (d)	5120.020 (b)	63
4811 (b)(1st-2d snt.)	3590	5120.030	902
4811 (b)(last snt. pt.)	3591	5120.040	903
4811 (b)(last snt. pt.)	3651 (a)-(c)	5120.110 (a)	910
4811 (c)(pt.)	3593	5120.110 (b)	911
4811 (c)(pt.)	3651 (e)	5120.110 (c)	910
4811 (d)(1st ¶)	3586	5120.120	912

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5120.130	913	5182	1851
5120.140	914	5183	1852
5120.150	915		
5120.160	916	5200	1500
5120.210	920	5201	1501
5120.310	930, 931	5202	1502
5120.320	930	5203	1503
5120.330 (a)	931	5300	1600
5120.330 (b)	Omitted	5301	3
5122	1000	5302	1601
5125	1100	5310	1610
5125.1	1101	5311	1611
5126	781	5312	1612
5126 (a)(last ¶)	Omitted	5313	1613
5127	1102	5314	1614
5128	1103	5315	1615
5131	4302	5316	1616
5132 (1st snt.)	4301	5317	1617
5138	295		
		7000	7600
5150 (1)(a)-(h)	3401 (a)	7001	7601
5150 (1)(i)	3	7002	7602
5150 (2)	3401 (b)	7003	7610
5151	3402	7004 (a)	7611
5152	3403	7004 (b)	7611.5
5153	3404	7004 (c)	7612
5154	3405	7004.5	7604
5155	3406	7005	7613
5156	3407	7006 (a)-(c)	7630
5157	3408	7006 (d)	7631
5158	3409	7006 (e)	7632
5159	3410	7006 (f)	7633
5160	3411	7006 (g)	7634
5161	3412	7007 (a)	200
5162	3413	7007 (b)-(c)	7620
5163	3414	7007 (d)	7638
5163.5	3415	7008	7635
5164	3416	7010 (a)	7636
5165	3417	7010 (b)	7639
5166	3418	7010 (c)	7637
5167	3419	7010 (d)	Omitted
5168	3420	7010 (e)	Omitted
5169	3421	7011	7640
5170	3422	7012	7641
5171	3423	7013	7642
5172	3424	7014	7643
5173	3425	7015	7650
5174	3400	7016	7614
		7017 (a)(1)	7660
5180	Omitted	7017 (a)(2)	7661
5181	1850 (a)-(d)	7017 (b)	7662

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7017 (c)	7663	7020 (a)(2d snt.)	242 (a)
7017 (d)	7664	7020 (a)(last snt.)	243 (e)
7017 (e)	7665	7020 (b)(1st-2d snt.)	6340
7017 (f)	7666	7020 (b)(3d snt.)	6345
7017 (g)	7669	7020 (b)(4th-last snt.)	6342
7017.1	7670	7020 (c)	6224
7017.2 (a)	7667 (a)	7020 (d)	6302
7017.2 (b)(1st snt.)	7667 (b)	7020 (e)(1st snt.)	6380
7017.2 (b)(last snt.)	7668 (a)	7020 (e)(last snt.)	6382
7017.2 (c)	7668 (b)-(d)	7020 (f)	6305
7017.6	7603	7020 (g)	6383
7018	13	7020 (h)	6388
7020 (a)(1)	6320	7021 (1st snt.)	6360
7020 (a)(2)	6321	7021 (2d snt.)	6361
7020 (a)(3)	6322	7021 (2d snt.)	6380
7020 (a)(4)	6323	7021 (last snt.)	6388

CODE OF CIVIL PROCEDURE

Code Civ. Proc.	Family Code	Code Civ. Proc.	Family Code
263 (1st-3d ¶)	3111	545 (1st snt.)	6300
263 (4th ¶)	3115	545 (2d-3d snt.)	6301
263 (last ¶)	3116	545 (4th snt.)	6300, 240
		545 (last snt.)	6225
412.21 (a)(1st snt.), (a)(1)-(3)	2040	545.5	6305
412.21 (a)(2d snt.)	233 (a)	546 (a)(1st ¶, 1st snt.)	6320-6325
412.21 (a)(5th ¶)	233 (b)	546 (a)(1st ¶, 2d snt)	242 (a)
412.21 (a)(6th ¶, 1st snt.)	232	546 (a)(1st ¶, last snt.)	243 (e)
412.21 (a)(6th ¶, 2d & 3d snt.)	233 (c)	546 (a)(2d ¶ & 3d ¶)	6302
412.21 (a)(7th ¶)	235	546 (a)(last ¶)	6321
412.21 (a)(last ¶)	234	546 (b)(1st ¶, 1st snt.)	6241
412.21 (b)(1st ¶, 1st snt.)	7700	546 (b)(1st ¶, 2d snt.)	6250 (a)
412.21 (b)(1st ¶, last snt., 1st pt.)	233 (a)	546 (b)(1st ¶, 3d snt.)	6252 (a)-(b)
412.21 (b)(1st ¶, last snt., last pt.)	7700	546 (b)(1st ¶, last snt.)	6255
412.21 (b)(2d ¶)	233 (b)	546 (b)(2d ¶, 1st snt.)	6251
412.21 (b)(3d ¶, 1st snt.)	232	546 (b)(2d ¶, 2d snt.)	6270
412.21 (b)(3d ¶, 2d & 3d snt.)	233 (c)	546 (b)(2d ¶, 3d snt.-end)	6253
412.21 (b)(4th ¶)	235	546 (b)(3d ¶, 1st snt.)	6226
412.21 (b)(last ¶)	234	546 (b)(3d ¶, last snt.)	6253
429.10	2330 (b)	546 (b)(4th ¶)	6273
		546 (b)(5th ¶)	6271
540	6220	546 (b)(6th ¶)	6256
541	6200	546 (b)(7th ¶)	6254
542 (intro.)	6201	546 (b)(last ¶)	6272
542 (a)	6203	546 (c)(1st ¶, 1st snt.)	6250 (b)
542 (b)	6211	546 (c)(1st ¶, 2d snt.)	6252 (c)
542 (c)	6209	546 (c)(1st ¶, 3d snt.)	6256
542 (d)	6218	546 (c)(1st ¶, last snt.)	6255
543	6226	546 (c)(2d ¶, 1st snt.)	6251

Code Civ. Proc.	Family Code	Code Civ. Proc.	Family Code
546 (c)(2d ¶, 2d snt.)	6270	1678	4829
546 (c)(2d ¶, 3d snt.-end)	6253	1679	4830
546 (c)(3d ¶)	6257	1680	4831
546 (c)(4th ¶, 1st snt.)	6226	1681	4832
546 (c)(4th ¶, last snt.)	6253	1682	4833
546 (c)(5th ¶)	6273	1683	4834
546 (c)(6th ¶)	6271	1684	4835
546 (c)(7th ¶)	6254	1685	4836
546 (c)(last ¶)	6272	1686	4837
546.5	6222	1687	4838
547 (a)	6340	1688	4839
547 (b)	6341	1689	4840
547 (c)	6342	1690	4841
547 (d)	6343	1691	4842
547 (e)	6344	1692	4843
547.5	6223	1693	4844
548	6345	1694	4845
549	6227	1695	4846
550 (a)(1st ¶, 1st snt.)	6380	1696	4847
550 (a)(1st ¶, last snt.)	6387	1697	4848
550 (a)(last ¶, 1st snt.)	6382	1698	4849
550 (a)(last ¶, 2d snt.-end)	6383	1698.1	4850
550 (b)-(d)	6385	1698.2	4851
550 (e)	6384 (a)	1698.3	4852
550 (f)	6304	1699	4853
550 (g)	6384 (b)	1699.4	4854
550 (h)	6383		
551	6388	1730	1801
552	6224	1731	1800
553	6386	1732	12
		1733	1802
1650	4800	1740	1810
1651	3	1741	1811
1652	4801	1742	1812
1653 (a)-(p)	4802	1743	1813
1653(k)	155	1744	1814
1654	4803	1745	1815
1655	4804	1745.5	1816
1655.5	4805	1746	1817
1656	13	1747	1818
1660	4810	1748	1819
1661	4811	1749	1820
1670	4820	1760	1830
1671	4821	1761	1831
1672	4822	1762	1832
1672.5	200	1763	1833
1673	4824	1764	1834
1674	4825	1765	1835
1675	4826	1766	1836
1676	4827	1767	1837
1677	4828	1768	1838

Code Civ. Proc.	Family Code	Code Civ. Proc.	Family Code
1769	1839	1771	1841
1770	1840	1772	1842

EVIDENCE CODE

Evid. Code	Family Code	Evid. Code	Family Code
621 (a)	7540	893	7552
621 (b)-(h)	7541	894	7553
		895	7554
890	7550	895.5	7555
891	3	896	7556
892	7551	897	7557

PROBATE CODE

Prob. Code	Family Code	Prob. Code	Family Code
3301 (pt.)	6911	3302	6602
3301 (pt.)	6950		

SESSION LAWS

Statute	Family Code	Statute	Family Code
1991 Cal. Stat. ch. 1141, § 4	4552	1991 Cal. Stat. ch. 1141, § 5	4553