

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

## Inheritance From or Through Child Born Out of Wedlock

March 1995

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN September 8, 1995.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## INHERITANCE FROM OR THROUGH CHILD BORN OUT OF WEDLOCK

With one exception, if a child is born out of wedlock, neither a natural parent nor a relative of that parent may inherit from or through the child on the basis of the parent and child relationship between that parent and the child unless the parent or a relative of the parent acknowledged and contributed to the care or support of the child.<sup>1</sup> The exception permits a brother or sister of the child or the issue of that brother or sister to inherit from the child notwithstanding failure of the parent or relative to acknowledge and support the child.<sup>2</sup>

The exception creates an undesirable risk that the estate of a deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime and of whose existence the decedent was unaware. This is illustrated by *Estate of Corcoran*.<sup>3</sup> In the *Corcoran* case, the father had an out-of-wedlock daughter, Hazel, in 1922. The father did not acknowledge or support her. In 1931, the father married another woman. He had two children of that marriage, Thomas and Monica. Hazel died in 1989. Thomas, Hazel's half-brother, claimed a right to inherit from Hazel. There was no evidence that Hazel had known of Thomas' existence. Had Hazel made a will, she would not have provided for him. Although the court held the half-brother would inherit in preference to Hazel's cousins, it appears Hazel would have wanted her estate go to her cousins.<sup>4</sup>

Intestate succession law provides for a distribution that the average decedent probably would have wanted if an intention had been expressed by will.<sup>5</sup> It is unlikely an out-of-wedlock child would include siblings in a will in circumstances where the parent or relative never acknowledged, supported, or cared for the out-of-wedlock child.

The Law Revision Commission recommends that the statutory exception for siblings of an out-of-wedlock child be deleted.<sup>6</sup> This would impose on siblings and

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1. Prob. Code § 6452. Section 6452 is satisfied if the parent acknowledged the child and a relative of the parent provided the support, or vice versa.

2. *Id.*

3. 7 Cal. App. 4th 1099, 9 Cal. Rptr. 475 (1992).

4. Attorney Chilton Lee of Palo Alto reports a case where the decedent was born out of wedlock and was raised by her mother, aunt, and grandmother. When she died, inheritance was claimed by an alleged half-sibling who had been born out of wedlock to a different mother. The half-siblings did not know each other. Letter from Chilton Lee to California Law Revision Commission (Oct. 22, 1993) (on file in office of Law Revision Commission).

5. Niles, *Probate Reform in California*, 31 Hastings L.J. 185, 200 (1979).

6. The prohibition against inheriting from a deceased out-of-wedlock child could be limited to half siblings, since that is the usual fact situation, and presents the greatest likelihood that the decedent would have had no familial contact with them during lifetime. Cf. Prob. Code § 6451(b). However, the likelihood of an out-of-wedlock child not acknowledged or supported by the parent but having wholeblood siblings is remote. For this reason, the exception is not worth preserving for wholeblood siblings. Deleting the exception in its entirety will make the statute clearer and easier to understand and apply.

their issue the same standard for inheriting as other relatives of the out-of-wedlock child.<sup>7</sup>

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7. It will also minimize the opportunity for fraudulent claims against the estate of the out-of-wedlock child by strangers.

## PROPOSED LEGISLATION

### **Prob. Code § 6452 (amended). Effect of birth out of wedlock**

**SECTION 1.** Section 6452 of the Probate Code is amended to read:

6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent, ~~except for a brother or sister of the child or the issue of that brother or sister,~~ inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

- (a) The parent or a relative of the parent acknowledged the child.
- (b) The parent or a relative of the parent contributed to the support or the care of the child.

**Comment.** Section 6452 is amended to delete the "except" clause. This makes siblings of a child born out of wedlock and their issue subject to the same requirements under Section 6452 as other relatives of the out-of-wedlock child. This changes the rule in *Estate of Corcoran*, 7 Cal. App. 4th 1099, 9 Cal. Rptr. 2d 475 (1992).