

First Supplement to Memorandum 91-27

Subject: Study F-1000.1 - Staff Working Draft of First Portion of the Family Code

Attached is a staff working draft of the first portion of the new Family Code. The draft is described in the letter of transmittal that follows the cover of the draft.

We do not plan to discuss the substance of the draft at the April meeting of the Commission. To avoid the expense of producing and sending out copies of the draft, we have not sent copies of the draft to persons who receive meeting materials on the Family Code project. We are providing you with a copy of the draft for consideration in connection with Memorandum 91-27. In that memorandum, the staff presents the question of how widely the draft should be distributed for review and comment and other related matters. We believe that it will be useful to have a copy of the staff working draft in your hands at the time you read that memorandum.

The staff working draft is a preliminary, tentative version of a significant portion of the new Family Code. The staff is now working on an additional portion of the new code that will deal with support. We already have determined that some provisions will need to be transferred from the attached staff working draft into the support division. Also, the staff will be checking the working draft and will be making technical and other improvements in it. We also will need to revise the staff working draft in light of the measures that will be enacted by the 1991 session of the Legislature.

The staff believes that the Commission should review any comments the Family Law Section of the State Bar may have on this portion of the new code before the Commission makes a recommendation. The draft is not intended to make any significant changes in existing law. In light of this intention, we doubt that it would be useful for the Commission to review this portion before the Commission has received the comments of the State Bar Section.

Because the volume of material that needs to be reviewed by the State Bar Family Law Section is so substantial, the staff would like to provide the attached staff working draft for review by the State Bar Family Law Section at this time. This will permit the State Bar Section to begin its work on this project. As working drafts of additional portions of the new code are produced, copies can be provided to the State Bar Section for review and comment. The Commission itself can review the staff working draft, together with the State Bar Section comments, after the State Bar Section comments are received.

The other option available to the Commission is to commence a section by section review of the staff working draft without the benefit of the comments of the State Bar Section. The staff does not believe that this option would be a worthwhile use of Commission meeting time. It would still be necessary to review the draft again when the comments of the State Bar Section are available.

Accordingly, the staff requests that the Commission approve the distribution of the attached staff working draft to the State Bar Family Law Section for review and comment. The distribution would be made as soon after the April meeting as copies can be produced for distribution. The staff proposes that the Commission set September 1, 1991, as the deadline for receiving comments on the staff working draft. This would allow the State Bar Family Law Section more than four months within which to review the staff working draft. We believe that this will allow sufficient time for the Section to review the working draft and prepare its comments.

The extent to which the staff working draft would be made available to others for informational purposes or for review and comment is discussed in Memorandum 91-27.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

California Law Revision Commission

Staff Working Draft of a portion of the Family Code

April 1991

Note: This is a staff working draft of a portion of the Family Code. It has not been reviewed by the Commission. Accordingly, this staff working draft does not represent or reflect the opinions, conclusions, or recommendations of the Law Revision Commission. The staff working draft is being distributed so that interested persons can review it and make their views known to the Commission. Any comments sent to the Commission will become 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 1992 session of the Legislature.

Comments on this staff working draft should be received by the Commission not later than **September 1, 1991.**

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April 15, 1991

To: Persons interested in Family Code project

Pursuant to a legislative directive, the Law Revision Commission is preparing a new Family Code. The Commission tentatively plans to submit a portion of the new code to the Legislature in 1992 for enactment.

This "staff working draft" has been prepared by the Commission's staff. It covers only a portion of the new Family Code. The draft has not been reviewed by the Commission. Accordingly, it does not represent or reflect the opinions, conclusions, or recommendations of the Commission.

Despite the tentative nature of the staff draft, it is being distributed at this time so that interested persons and organizations will have an opportunity to review it and provide their comments and suggestions. The comments sent to the Commission will be taken into consideration when the Commission reviews the staff draft.

The Commission's staff is now reviewing and making technical corrections and other revisions in the draft. The organization of the draft may need revision as further work on the new code progresses. It may be necessary to add additional statutory provisions to the draft, and some provisions of the draft may be moved into portions of the Family Code not yet drafted.

The Commission does not plan to propose any major changes in existing law in the new Family Code. The Commission is preparing the new code in order to reorganize and collect into one code the various scattered provisions of existing family law. Existing provisions dealing with similar matters will be collected together in one part of the new code. The new code will break up into manageable sections the long sections found in existing law. Nevertheless, with a few exceptions noted in the Comments to the sections of the draft, this draft continues existing statutory language with no substantive change.

The Commission will be indebted to those who are willing to review and comment on this draft. Your comments should be in the hands of the Commission not later than September 1, 1991, if they are to be considered when the Commission reviews this draft.

Sincerely,

John H. DeMouly
Executive Secretary

FAMILY CODE

- Division 1. Preliminary Provisions and Definitions (§§ 1 – 140)
- Division 2. General Provisions (§§ 200 – 275)
- Division 3. Solemnization of Marriage (§§ 300 – 594)
- Division 4. Husband and Wife (§§ 700 – 1621)
- Division 5. Parent and Child Relationship (§§ 1700 – 1887)
- Division 6. Provisions Common to Nullity and Dissolution Proceedings (§§ 1900 – 2003)
- Division 7. Judicial Determination of Void or Voidable Marriage (§§ 2220 – 2255)
- Division 8. Dissolution of Marriage (§§ 2300 – 2453)
- Division 9. Division of Community Estate (§§ 2500 – 2660)
- Division 10. Custody of Children (§§ 3000 – 3424)
- Division 11. Support [*Reserved for future use*] (§§ 3500 – 5499)
- Division 12. Prevention of Domestic Violence (§§ 5500 – 5807)
- Division 13. Enforcement of Judgments (§§ 6000 – 6295)
- Division 14. Conciliation Proceedings (§§ 6400 – 6452)
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[Reserved for future use]

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[Reserved for future use]

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PART 1. PRELIMINARY PROVISIONS

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§ 1. Title of code

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

Comment. Section 1 is comparable to portions of Sections 1 and 21 of the Civil Code.

§ 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.

Comment. Section 2 is the same as Section 2(a) of the Probate Code and is comparable to Section 5 of the Civil Code. See also Gov't Code §§ 9604 (reference made in statute, charter, or ordinance to provisions of one statute carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments), 9605 (construction of amended statutory provision).

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 so construed as to effectuate the general purpose to make uniform the law in those states which enact that provision.

Comment. Section 3 is the same as Section 2(b) of the Probate Code. Some of the provisions of this code are the same as or similar to provisions of uniform acts. Section 3 provides a rule for interpretation of these provisions. Provisions of the Family Code drawn from uniform acts include:

Uniform Premarital Agreement Act (§§ 1600-1617).

Uniform Parentage Act (§§ 1700-1840).

Uniform Act on Blood Tests to Determine Paternity (§§ 1880-1887).

Uniform Divorce Recognition Act (§§ 2450-2453).

Uniform Child Custody Jurisdiction Act (§§ 3400-3425).

See also Sections 3300-3310 (Interstate Compact on Placement of Children).

Section 3 supersedes former Civil Code Sections 5003 and 5301.

§ 4. Construction of 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 any provision of this code.

(b) "Old law" means the applicable law in effect before the operative date of the new law.

(c) "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 any 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 any 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 any 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 provides general transitional rules applicable to changes in the Family Code. The section is drawn from Section 3 of the Probate Code. The section applies both to the act which enacted the Family Code and to any subsequent act which changes the code, whether the change is effectuated by amendment, addition, or repeal of a provision of the code.

The rules stated in Section 4 are general provisions that apply absent a special rule stated in the new law. Special rules may defer or accelerate application of the new law despite the general rules stated in Section 4. 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 the 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 the provisions of this code.

Comment. Section 5 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 4.

§ 6. Certified mail sufficient compliance with requirement of use of registered mail

6. If a notice or other communication is required by this code to be mailed by registered mail, the mailing of the notice or other communication by certified mail is deemed to be sufficient compliance with the requirements of law.

Comment. Section 6 is the same in substance as Section 17 of the Civil Code.

§ 7. Construction of code

7. Unless the provision or context otherwise requires, these general provisions and rules of construction govern the construction of this code.

Comment. Section 7 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 6. See also the Comment to Section 2.

§ 8. Reference to statute includes amendments and additions

8. Whenever a reference is made to any portion of this code or to any other law, the reference applies to all amendments and additions heretofore or hereafter made.

Comment. Section 8 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 7. The rule stated in Section 8 applies unless the provision or context otherwise requires. See Section 7. See also Gov't Code § 9604 (reference made in statute, charter, or ordinance to provisions of one statute carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments).

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

9. 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 9 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 8. For a comparable provision, see Civil Code § 14(6).

§ 10. Construction of tenses

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

Comment. Section 10 is comparable to a portion of Section 14 of the Civil Code and is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 9. The rule stated in Section 10 applies unless the provision or context otherwise requires. See Section 7.

§ 11. Construction of singular and plural

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

Comment. Section 11 is comparable to a portion of Civil Code Section 14 and is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 10. The rule stated in Section 11 applies unless the provision or context otherwise requires. See Section 7.

§ 12. Construction of terms “husband” and “wife”

12. As used in the Family Law Act, other than in Division 3 (commencing with Section 300), the terms “husband” and “wife” refer to persons who are lawfully married to each other and to persons who were previously lawfully married to each other.

Comment. Section 12 continues former Civil Code Section 4350.5 without substantive change. “Family Law Act” is defined in Section 85. The rule stated in Section 12 applies unless the provision or context otherwise requires. See Section 7.

§ 13. Meaning of “shall” and “may”

13. “Shall” is mandatory and “may” is permissive.

Comment. Section 13 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 12. The inclusion of Section 13 in the Family Code makes it unnecessary to continue the special provision to the same effect that formerly was found in Code of Civil Procedure Section 1732 (Family Conciliation Court Law), now Part 1 (commencing with Section 6400) of Division 14 of the Family Code.

§ 14. Severability of provisions

14. If any provision or clause of this code or application thereof 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 14 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 11.

PART 2. DEFINITIONS

- § 50. Application of definitions
- § 55. “Abuse”
- § 57. “Affinity”
- § 60. “Cohabitant”; “former cohabitant”
- § 65. “Community property”
- § 67. “County”
- § 70. “Domestic violence”
- § 75. “Domestic violence prevention order”
- § 80. “Employee pension benefit plan”
- § 85. “Family Law Act”
- § 90. “Family or household member”
- § 95. “Income and expense declaration”
- § 100. “Joint custody”
- § 105. “Joint legal custody”
- § 110. “Joint physical custody”
- § 115. “Property declaration”
- § 125. “Quasi-community property”
- § 130. “Separate property”
- § 135. “Sole legal custody”
- § 140. “Sole physical custody”

§ 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 a standard provision found in recently enacted codes. See, e.g., Prob. Code § 20. The introductory portion of Section 50 recognizes that the context of a particular section may require that a word or phrase used in that section be given a meaning different from the definition provided in this part. See also Sections 12 (construction of terms "husband" and "wife"), 13 (meaning of "shall" and "may").

Note: Should there be a general definition of "judgment" to include a court order or decree or of "order" to include a judgment or decree? In some sections, only the word "judgment" is used; in others, the phrase judgment, order, or decree is used; in others, only the word "order" is used. There appears to be no reason for the different phrases used. Should "judgment" be used uniformly in place of "decree" and "order"?

§ 55. "Abuse"

55. "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or sexual assault, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

Comment. Section 55 continues subdivision (a) of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change except that the scope of the former provision has been expanded by Section 55 to cover the entire Family Code. The former provision was limited to former Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure (the former Domestic Violence Prevention Act), now Division 12 (commencing with Section 5500) of the Family Code.

§ 57. "Affinity"

57. "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 57 duplicates subdivision 9 of Section 17 of the Code of Civil Procedure.

§ 60. "Cohabitant"; "former cohabitant"

60. "Cohabitant" means a person who regularly resides in the household. "Former cohabitant" means a person who formerly regularly resided in the household.

Comment. Section 60 continues subdivision (c) of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change except that the scope of the former provision has been expanded by Section 60 to cover the entire Family Code. The former provision was limited to former Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure (the former Domestic Violence Prevention Act), now Division 12 (commencing with Section 5500) of the Family Code.

§ 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 included for drafting convenience. See also Section 751 (respective interests of spouses in community property during marriage).

§ 67. "County"

"County" includes city and county.

Comment. Section 67 duplicates a portion of Civil Code Section 14.

§ 70. "Domestic violence"

70. "Domestic violence" is abuse perpetrated against any of the following:

(a) A spouse, former spouse, cohabitant, former cohabitant, any other adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has had a dating or engagement relationship.

(b) A person who is the parent of a child and the presumption applies that the male parent is the father of any child of the female parent pursuant to the Uniform Parentage Act (Part 1 (commencing with Section 1700) of Division 5).

Comment. Section 70 continues subdivision (b) of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change except that the scope of the former provision has been expanded by Section 70 to cover the entire Family Code. The former provision was limited to former Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure (the former Domestic Violence Prevention Act), now Division 12 (commencing with Section 5500) of the Family Code. However, other provisions formerly found in the Civil Code adopted the definition of domestic violence in former Section 542 by reference. See, e.g., former Civil Code Sections 4600.1, 4607, 4607.2, and 4608.1. The definition also appeared to apply to the term "domestic violence" used in former Civil Code Section 4351.6. See also Sections 55 (defining "abuse"), 60 (defining "cohabitant" and "former cohabitant"), 75 (defining "domestic violence prevention order").

§ 75. "Domestic violence prevention order"

75. "Domestic violence prevention order" means any of the following:

(a) An order made pursuant to subdivision (a), (b), or (c) of Section 1800 (ex parte order under Uniform Parentage Act).

(b) An order described in subdivision (a), (b), or (c) of Section 1800 made pursuant to Section 1810 (order after notice and hearing under Uniform Parentage Act).

(c) An order included in the judgment pursuant to Section 1840 (Uniform Parentage Act).

(d) An order made pursuant to subdivision (b), (c), or (d) of Section 1900 (order in pending nullity or dissolution proceeding).

(e) An order made pursuant to Section 1910 (order in judgment in nullity or dissolution proceeding).

(f) An order described in paragraph (1), (2), or (3) of subdivision (a) of Section 5550 made pursuant to subdivision (a) or (b) of Section 5550 (ex parte order under Domestic Violence Prevention Law).

(g) An order issued under Part 5 (commencing with Section 5600) of Division 12 (ex parte emergency protective order under Domestic Violence Prevention Law).

(h) An order described in paragraph (1), (2), or (3) of subdivision (a) of Section 5550 made pursuant to subdivision (a) or (b) of Section 5750 (order after notice and hearing made under Domestic Violence Prevention Law).

Comment. Section 75 is a new provision included for drafting convenience. The term "domestic violence prevention order" is used in Sections 3101, 3110.5, 3177, 3192, and 5518.

§ 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 former Civil Code Section 4363.3 without substantive change except that the term "employee pension benefit plan" is defined for the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act). For a special definition of "employee benefit plan" as used in Section 755, see that section.

§ 85. "Family Law Act"

85. "Family Law Act" means the following provisions of this code:

- (a) Division 1 (commencing with Section 1).
- (b) Division 2 (commencing with Section 200).
- (c) Division 3 (commencing with Section 300).
- (d) Division 4 (commencing with Section 700).
- (e) Division 5 (commencing with Section 1700).
- (f) Division 6 (commencing with Section 1900).
- (g) Division 7 (commencing with Section 2200).
- (h) Division 8 (commencing with Section 2300).
- (i) Division 9 (commencing with Section 2500).
- (j) Division 10 (commencing with Section 3000).
- (k) Division 11 (commencing with Section 3500).
- (l) Division 12 (commencing with Section 5500).
- (m) Division 13 (commencing with Section 6000).
- (n) Division 14 (commencing with Section 6400).

Comment. Section 85 is a new provision that is included for convenience. The provision supersedes former Civil Code Section 4000, which provided that former Part 5 (commencing with former Section 4000) of the Civil Code "shall be known and may be cited as 'The Family Law Act'." Many of the provisions listed in Section 85 formerly were found in former Part 5 (commencing with former Section 4000) of the Civil Code, but other provisions not

formerly found in former Part 5 are also included within "the Family Law Act" as defined in Section 85. Not included as part of the Family Law Act are portions of the Family Code not yet drafted: Divisions 15 (Minors), 16 (Adoption), and 17 (Juvenile Court Law).

§ 90. "Family or household member"

90. "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any person who regularly resides in the household, or who, within the previous six months, regularly resided in the household.

Comment. Section 90, which is a new definition that covers the entire Family Code, is the same as subdivision (a)(3) of Penal Code Section 12028.5. The section also is the same as subdivision (c) of former Code of Civil Procedure Section 542 (as that section existed prior to its amendment by 1990 Cal. Stat. ch. 752 § 2).

Note: Should "family or household member" be defined to adopt language used in subdivision (b)(1) of former Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2), now Section 70(a)? The 1990 amendment made revisions to substitute "cohabitant" and "former cohabitant" for the language "any other person who regularly resides in the household, or who within the last six months regularly resided in the household," which was used in former Section 542 prior to the 1990 amendment of the section.

§ 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 generalizes the third sentence of subdivision (a) of former Civil Code Section 4357.5. Former Section 4357.5 applied only to expedited support orders, whereas Section 95 applies to the entire Family Code.

§ 100. "Joint custody"

100. "Joint custody" means joint physical custody and joint legal custody.

Comment. Section 100 continues subdivision (d)(1) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 100 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act). See also Sections 105 ("joint legal custody" defined), 110 ("joint physical custody" defined).

§ 105. "Joint legal custody"

105. "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 105 continues subdivision (d)(5) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 105 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

§ 110. "Joint physical custody"

110. "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 110 continues subdivision (d)(3) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 110 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

§ 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 also Section 95 (income and expense declaration).

§ 125. "Quasi-community property"

125. "Quasi-community property" means all real or personal property, wherever situated, heretofore or hereafter acquired 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 former Civil Code Section 4803 without substantive change except that the scope of the former provision has been expanded by Section 125 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

By defining "quasi-community property" to include all property, wherever situated, which would have been treated as community property had the acquiring spouse been domiciled in California at the time of acquisition, Section 125 insures that the division of marital property upon judgment of nullity or upon dissolution of the marriage or legal separation 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 772, 773, and 781 is not quasi-community property. For background on former Civil Code Section 4803, see *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969).

§ 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 included for drafting convenience.

§ 135. "Sole legal custody"

135. "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 135 continues subdivision (d)(4) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 135 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

§ 140. "Sole physical custody"

140. "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 140 continues subdivision (d)(2) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 140 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

DIVISION 2. GENERAL PROVISIONS

- Part 1. Jurisdiction of courts
- Part 2. General procedural provisions
- Part 3. Temporary restraining order in summons
- Part 4. Temporary restraining orders and support orders made without notice
- Part 5. Employee pension plan benefit as party
- Part 6. Provisions for attorney's fees and costs

PART 1. JURISDICTION OF COURTS

- § 200. Jurisdiction of court in proceedings under Family Law Act
- § 201. Order or judgment not enforceable against employee pension benefit plan unless plan joined as party to proceeding
- § 202. Jurisdiction over property of spouse where service by publication

§ 200. Jurisdiction of court in proceedings under Family Law Act

200. In proceedings under the Family Law Act, the superior court has jurisdiction to inquire into and render any judgment and make such orders as are appropriate concerning the following:

- (a) The status of the marriage.
- (b) The custody and support of minor children of the marriage and children for whom support is authorized under [Civil Code Section 206].
- (c) The support of either party.
- (d) The settlement of the property rights of the parties.
- (e) The award of attorneys' fees and costs.

Comment. Section 200 continues the first portion of former Civil Code Section 4351 without substantive change. The substance of the remainder of former Section 4351 is continued in Section 201. See also Section 85 ("Family Law Act" defined).

§ 201. Order or judgment not enforceable against employee pension benefit plan unless plan joined as party to proceeding

201. An order or judgment under Section 200 is not enforceable against an employee pension benefit plan unless the plan has been joined as a party to the proceeding.

Comment. Section 201 continues the last portion of former Civil Code Section 4351 without substantive change. The substance of the remainder of former Section 4351 is continued in Section 200. See also Sections 80 ("employee pension benefit plan" defined), 250-260 (employee pension benefit plan as party). A judgment for support may be enforced against an employee pension benefit plan regardless of whether the plan has been joined as a party. See Section 6103.

§ 202. Jurisdiction over property of spouse where service by publication

202. When service of summons is made pursuant to Section 415.50 of the Code of Civil Procedure upon a spouse in a proceeding under the Family Law Act, the court, without the aid of attachment thereof or the appointment of a receiver, shall have and may exercise the same jurisdiction over all of the following:

(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 in a proceeding under the Family Law Act 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 in a proceeding under the Family Law Act who is personally served with process within this state.

Comment. Section 202 continues former Civil Code Section 4813 without substantive change. See also Sections 65 ("community property" defined), 85 ("Family Law Act" defined), 125 ("quasi-community property" defined).

PART 2. GENERAL PROCEDURAL PROVISIONS

§ 210. Rules of practice and procedure

§ 211. Responsive pleading

§ 212. Responding party request for affirmative relief alternative to moving party's requested relief

§ 213. Appearance in opposition to order made during pendency of objection to jurisdiction not a general appearance

§ 214. Joinder of interested person and employee pension benefit plan as parties

§ 215. Private trial

§ 216. Evidence collected by eavesdropping

§ 217. Payment of obligation directly to creditor

§ 218. Assignment of rights to reimbursement under health plan

§ 219. Appeal of bifurcated issue

§ 220. Service of notice prerequisite to validity of modification of judgment or subsequent order

§ 210. Rules of practice and procedure

210. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under the Family Law Act.

Comment. Section 210 continues former Civil Code Section 4001 without substantive change. See also Section 85 ("Family Law Act" defined). For other provisions relating to Judicial Council rules, see, e.g., Sections 214, 219, 256, 1908, 2321, 2331. For provisions relating to Judicial Council forms, see, e.g., 95, 115, 252, 2250, 2401, 2402, 3417, 5512, 5519, 6295. See also Sections 2400 (adjusting maximum amounts of allowable debts and accounts for purposes of summary dissolution to reflect change in value of dollar), 1406 (summary dissolution brochure), 3153 (guidelines for determining eligibility for county payment of counsel), 3161 (uniform standards of practice for mediation), 6416 (training program), 6450-6452 (duties in connection with statewide coordination of family mediation and conciliation services). See also Welfare and Institutions Code §§ 11475.3 (report concerning computer compatible family law forms), 11475.5 (publication describing procedures for collection and payment of child and spousal support).

Note: Should this provision be expanded to apply to the entire Family Code?

§ 211. Responsive pleading

211. In proceedings under the Family Law Act, a responsive pleading, if any, shall be filed and served upon the other party within 30 days of the date of the service upon the respondent of a copy of the petition and summons.

Comment. Section 211 continues former Civil Code Section 4355 without substantive change. See also Section 85 ("Family Law Act" defined).

§ 212. Responding party's request for affirmative relief alternative to moving party's requested relief

212. In a proceeding under the Family Law Act, 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.

Comment. Section 212 continues former Civil Code Section 4355.6 without substantive change. The introductory phrase limiting the scope of Section 212 to a proceeding under the Family Law Act has been added to make clear the provision only applies to proceedings under that act. See also Section 85 ("Family Law Act" defined).

Note: What is the meaning of the phrase "or on a modification thereof" which is used in Section 212?

The scope of application of existing Civil Code Section 4355.6 is unclear. Should Section 212 be limited to proceedings under the Family Law Act (as provided in the section) or should it apply to the entire Family Code? For example, should Section 212 apply to a hearing on an order to show cause under the Domestic Violence Prevention Law (now compiled in the Code of Civil Procedure, but proposed to be compiled in the Family Code) or should the Family Law Act be defined to include the Domestic Violence Prevention Law?

§ 213. Appearance in opposition to order made during pendency of objection to jurisdiction not a general appearance

213. (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 proceedings under the Family Law Act 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 213 continues former Civil Code Section 4356 without substantive change. The section enables the respondent to contest pendente lite orders in family law proceedings without prejudicing the respondent's right to litigate the in personam jurisdiction of the court by special appearance pursuant to Code of Civil Procedure Section 418.10. For background on former Civil Code Section 4356, see *Recommendation Relating to Special Appearance in Family Law Proceedings*, 17 Cal. L. Revision Comm'n Reports 243 (1984). See also Section 85 ("Family Law Act" defined).

Note: Should Section 213 apply to the entire Family Code?

§ 214. Joinder of interested person and employee pension benefit plan as parties

214. (a) Subject to subdivision (b), the court may order that a person who claims an interest in a proceeding under the Family Law Act be joined as a party to the proceeding in accordance with rules adopted by the Judicial Council pursuant to Section 210.

(b) An employee pension benefit plan may be joined as a party to a proceeding under the Family Law Act only in accordance with Part 5 (commencing with Section 250).

Comment. Section 214 continues former Civil Code Section 4363 without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 85 ("Family Law Act" defined).

Note: Should Section 214 apply to the entire Family Code?

§ 215. Private trial

215. 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 the proceeding under the Family Law Act to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

Comment. Section 215 continues former Civil Code Section 4360 without substantive change. See also Section 85 ("Family Law Act" defined).

Note: Should Section 215 be expanded apply to any proceeding under the Family Code? If so, the substance of the special provision for hearings in adoption proceedings (Civil Code Section 226m which REQUIRES hearings to be held in private) should be retained in expanded Section 215. See also Section 1743 (Uniform Parentage Act). There may be other provisions dealing with private trials in the provisions to be compiled in the Family Code.

§ 216. Evidence collected by eavesdropping

216. (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 in a proceeding for dissolution of the marriage or legal separation or for a declaration of void or voidable marriage.

(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 216 continues former Civil Code Section 4361 without substantive change.

Note: Should Section 216 have broader scope, as for example in a child custody or adoption proceeding?

§ 217. Payment of obligation directly to creditor

217. (a) In any proceeding under the Family Law Act, upon a determination that payment of an obligation of a party would benefit either party or a minor child, 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 217 continues former Civil Code Section 4358 without substantive change. See also Section 85 ("Family Law Act" defined).

Note: Should Section 217 apply to the entire Family Code?

§ 218. Assignment of rights to reimbursement under health plan

218. (a) In any proceeding under the Family Law Act, 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, except that the rights assigned shall 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.

(b) The order made pursuant to this section 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.

(c) The court shall notify the health plan of the order made pursuant to this section and shall instruct the health plan to assist the party seeking reimbursement by providing information and forms necessary to receive reimbursement.

(d) For the purposes of this section, a health plan 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 218 continues former Civil Code Section 4358.5 without substantive change. See also Section 85 ("Family Law Act" defined).

Note: Should Section 218 apply to the entire Family Code? What is the relationship of Section 218 and Civil Code Sections 4726 and 4726.1?

§ 219. Appeal of bifurcated issue

219. Notwithstanding any other provision of law, in any proceeding brought under the Family Law Act in which the superior 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 superior court which heard the issue or issues certifies that the appeal is appropriate. Certification by the superior court shall be in accordance with rules promulgated by the Judicial Council.

Comment. Section 219 continues former Civil Code Section 4365 without substantive change. See also Section 85 ("Family Law Act" defined). The provision of former Section 4365 that required the Judicial Council to establish rules for certification by July 1, 1989, has been omitted as obsolete. See also Section 210 (rules of the Judicial Council).

Note: Should Section 219 be broadened in scope to apply to the entire Family Code?

§ 220. Service of notice prerequisite to validity of modification of judgment or subsequent order

220. After the entry of a judgment decreeing the dissolution of the marriage or the legal separation of the parties, or after a declaration of void or voidable marriage, or after a permanent order in any other proceeding in which there was at issue the custody, support, maintenance, or education of a minor child, no modification of the judgment, order, or decree, 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 manner as the notice is otherwise permitted by law to be served, upon the party himself or herself. For the purposes of this section, service upon the attorney of record is not sufficient.

Comment. Section 220 continues former Civil Code Section 4809 without change.

Note: Does Section 220 apply only to proceedings under the Family Law Act or to other proceedings as well, whether or not under the Family Code?

PART 3. TEMPORARY RESTRAINING ORDER IN SUMMONS

§ 235. Application of part

§ 236. Temporary restraining order in summons

§ 237. Enforcement of order

§ 238. Order not evidence of proscribed conduct

§ 239. Modification or revocation of order; other orders

§ 235. Application of part

235. This part applies to the following:

(a) An action for dissolution of marriage, legal separation, or annulment of marriage.

(b) An action under Part 1 (commencing with Section 1700) of Division 5.

Comment. Section 235 continues the introductory portion of subdivision (a) and the introductory portion of subdivision (b) of Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

§ 236. Temporary restraining order in summons

236. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) 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.

(2) 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 prior to 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 action.

(3) 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 minor child or children.

(b) The summons shall state on its face that the order required by subdivision (a) is enforceable in any place in this state by any of the following:

- (1) Any law enforcement agency that has received mailed notice of the order.
- (2) Any other law enforcement agency that has received the order.
- (3) Any officer who has been shown the order.

Comment. Section 236 continues portions of subdivisions (a) and (b) of Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

Note: Should the following (which would be added by Assembly Bill 436 of the 1991-92 Regular Session, be added to paragraph (2) of subdivision (a) of Section 236:

Nothing in this paragraph shall adversely affect 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.

§ 237. Enforcement of order

237. (a) Upon the filing of the petition in the proceeding 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 both 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 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 in the summons is punishable as provided in Section 273.6 of the Penal Code.

Comment. Section 237 continues portions of subdivisions (a) and (b) of Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

§ 238. Order not evidence of proscribed conduct

238. The automatic granting of the 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 238 continues the last paragraph of subdivision (a) and the last paragraph of subdivision (b) of Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

§ 239. Modification or revocation of order; other orders

239. 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 239 continues the second to last paragraph of subdivision (a) and the second to last paragraph of subdivision (b) of Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

**PART 4. TEMPORARY RESTRAINING ORDERS
AND SUPPORT ORDERS MADE WITHOUT NOTICE**

§ 240. Application of provisions of this part

§ 241. Granting temporary restraining order without notice

§ 242. Order to show cause

§ 243. Readiness for hearing; continuance; counter-affidavits

§ 244. Precedence for hearing and trial

§ 240. Application of provisions of this part

240. Except as otherwise provided, the provisions of this part apply to orders under:

(a) Chapter 6 (commencing with Section 1800) of Part 1 of Division 5 (Uniform Parentage Act).

(b) Chapter 1 (commencing with Section 1900) of Part 1 of Division 6 (ex parte protective orders in proceedings for dissolution or for judgment of nullity of marriage).

(c) [Civil Code Section 4357] (spousal and child support during pendency of proceeding).

(d) Part 3 (commencing with Section 5530) and Part 4 (commencing with Section 5550) of Division 12 (Domestic Violence Prevention Law).

Comment. Section 240 is a new provision drawn from a provision formerly found in Code of Civil Procedure Section 527 and from the provision of former Code of Civil Procedure Section 545 (as amended by Cal. Stat. 1990 ch. 752 § 3) that the order may be granted in the manner provided in Section 527 of the Code of Civil Procedure. The provisions of this part supersede the provisions of Code of Civil Procedure Section 527 insofar as that section formerly applied to orders under Sections 545 and 546 of the Code of Civil Procedure or under Section 4357, 4359, or 7020 of the Civil Code. See also Chapter X (commencing with Section XXXX) of Part X of Division 11 (expedited support order).

Note: The relevant provisions of Code of Civil Procedure Section 527 are moved into or duplicated in this part.

§ 241. Granting temporary restraining order without notice

241. No order described in Section 240 shall be granted without notice to the opposite party unless the applicant or the applicant's attorney, when applying for the order, certifies to the court under oath one of the following:

(a) Within a reasonable time prior to the application, he or she informed the opposing party or the opposing party's attorney at what time and where the application would be made.

(b) He or she in good faith attempted to inform the opposing party and the opposing party's attorney but was unable to so inform the opposing party or the opposing party's attorney, specifying the efforts made to contact them.

(c) For reasons specified, he or she should not be required to so inform the opposing party or the opposing party's attorney.

Comment. Section 241 continues without substantive change provisions formerly found in Code of Civil Procedure Section 527. As to the application of Section 241, see Section 240.

§ 242. Order to show cause

242. (a) Except as provided in subdivision (b) if a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will admit of, but not later than 15 days or, if good cause appears to the court, 20 days from the date of the order.

(b) In cases under Chapter 1 (commencing with Section 1900) of Part 1 of Division 6, 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.

Comment. Section 242 continues without substantive change provisions formerly found in Code of Civil Procedure Section 527. As to the application of Section 242, see Section 240.

Note: Note that Section 242 overlaps and is to some extent inconsistent with Section 5551 (service on defendant where temporary restraining order granted under Domestic Violence Prevention Law without notice) and Section 1802 (service on defendant where temporary restraining order granted under Uniform Parentage Act without notice). Also no comparable provision is found in Chapter 1 (commencing with Section 1900) of Part 1 of Division 6 (ex parte protective orders in proceedings for dissolution or for judgment of nullity of marriage). Section 242 is limited to temporary restraining orders: Should Section 242 apply to orders under Chapter X (commencing with Section XXXX) (spousal and child support during pendency of proceeding)? Should Sections 1802 and 5551 of the draft of the Family Code be omitted? Should a specific provision like Sections 1802 and 5551 of the draft of the Family Code be made applicable to an

ex parte order described in Section 1900? Note that Sections 1802 and 5551 are not consistent. Should a uniform general provision be provided in Section 242 to apply to all orders covered by Section 240?

§ 243. Readiness for hearing; continuance; counter-affidavits

243. (a) When the matter first comes up for hearing, the party who obtained the temporary restraining order must be ready to proceed and must have served on the opposite party, at least two days prior to the hearing, a copy of the application and of any affidavits to be used in the application and a copy of the points and authorities in support of the application. If the party who obtained the temporary restraining order fails to comply with this subdivision, the court shall dissolve the temporary restraining order.

(b) The opposing party is entitled, as of course, to one continuance for a reasonable period, if he or she desires it, to enable him or her to meet the application for the restraining order. The defendant 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 prior to the hearing, the applicant is not entitled to a continuance on account of the affidavits.

Comment. Section 243 duplicates a portion of Code of Civil Procedure Section 527 that applies to temporary restraining orders. As to the application of Section 243, see Section 240.

Note: Should Section 243 apply to all orders described in Section 240, not merely “temporary restraining orders?”

§ 244. Precedence for hearing and trial

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

Comment. Section 244 duplicates a portion of Code of Civil Procedure Section 527 that applies to temporary restraining orders. As to the application of Section 244, see Section 240.

Note: Should this preference be retained? Does it need revision?

Subdivision (j) of Code of Civil Procedure Section 527.6 and subdivision (b) of Section 529 require revision to reflect the renumbering of the provisions referred to in those sections.

PART 5. EMPLOYEE PENSION BENEFIT PLAN AS PARTY

§ 250. Application and order for joinder of plan

§ 251. Pleading of party requesting joinder

§ 252. Service upon trustee, administrator, or agent of plan

§ 253. Notice of appearance and responsive pleading by plan

§ 254. Plan need not pay filing fees

§ 255. Entry of default of plan

- § 256. Provisions governing proceeding in which plan has been joined
- § 257. Notice to plan of proposed property settlement; response by plan
- § 258. Appearance by plan at hearing
- § 259. Order affecting plan made at hearing not attended by plan
- § 260. Motion to set aside or modify order

§ 250. Application and order for joinder of plan

250. Upon written application by a party to a proceeding under the Family Law Act, 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 which is or may be subject to disposition by the court.

Comment. Section 250 continues the first sentence of subdivision (a) of former Civil Code Section 4363.1 without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 85 ("Family Law Act" defined).

§ 251. Pleading of party requesting joinder

251. Upon entry of the order under Section 250, 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 251 continues the second sentence of subdivision (a) of former Civil Code Section 4363.1 without substantive change.

§ 252. Service upon trustee, administrator, or agent of plan

252. (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 his or her capacity as trustee or administrator, or upon an agent designated by the plan for service of process in his or her 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 252 continues the third, fourth, fifth, and sixth sentences of subdivision (a) of former Civil Code Section 4363.1 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

§ 253. Notice of appearance and responsive pleading by plan

253. (a) The employee pension benefit plan shall file and serve 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 253 continues the first sentence of subdivision (b) of former Civil Code Section 4363.1 without substantive change. Subdivision (b) continues subdivision (b) of former Civil Code Section 4363.2 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

§ 254. Plan need not pay filing fees

254. 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 254 continues the second sentence of subdivision (b) of former Civil Code Section 4363.1 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

§ 255. Entry of default of plan

255. 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 255 continues subdivision (c) of former Civil Code Section 4363.1 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

§ 256. Provisions governing proceeding in which plan has been joined

256. (a) This part 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 part and except as otherwise provided by rules adopted by the Judicial Council pursuant to Section 210, 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 part.

Comment. Section 256 continues subdivision (a) of former Civil Code Section 4363.2 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

§ 257. Notice to plan of proposed property settlement; response by plan

257. Either party or their representatives may notify the employee pension benefit plan of any proposed property settlement as it concerns the plan prior to the interlocutory hearing. If so notified, the plan may stipulate to the proposed settlement or advise the representative that it will contest the proposed settlement.

Comment. Section 257 continues subdivision (c) of former Civil Code Section 4363.2 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

Note: What is the meaning of “interlocutory hearing” in the first sentence of Section 257? Should the following be substituted for the first sentence of Section 257: “Either party or their representatives may notify the employee pension benefit plan of any proposed property settlement as it concerns the plan prior to any hearing at which the proposed property settlement will be a matter before the court.”?

§ 258. Appearance by plan at hearing

258. 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 258 continues the first two sentences of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

§ 259. Order affecting plan made at hearing not attended by plan

259. (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 259 continues the third and fourth sentences of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

§ 260. Motion to set aside or modify order

260. (a) At any hearing on a motion to set aside or modify an order pursuant to Section 259, 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 260 continue subdivision (e) of former Civil Code Section 4363.2 without substantive change. Subdivision (c) continues the last sentence of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Sections 65 ("community property" defined), 80 ("employee pension benefit plan" defined), 125 ("quasi-community property" defined).

PART 6. PROVISIONS FOR ATTORNEYS' FEES AND COSTS

§ 270. Costs and attorney fees during pendency of proceeding

§ 271. Notice of application for order

§ 272. Attorneys' fees for enforcement of support order

§ 273. Award of attorneys' fees and costs to be just and reasonable under relative circumstances of parties

§ 274. Award of attorneys' fees and costs based on conduct of party or attorney

§ 275. Order for direct payment to attorney

§ 270. Costs and attorney fees during pendency of proceeding

270. (a) During the pendency of any proceeding under the Family Law Act, the court may order any party, except a governmental entity, to pay the amount reasonably necessary for the cost of maintaining or defending the proceeding and for attorneys' fees. From time to time and before entry of judgment, the court may augment or modify the original award for costs and attorneys' fees 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) For services rendered or costs incurred after the entry of judgment, the court may award the costs and attorneys' fees 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.

(c) Attorneys' fees and costs within the provisions of this section may be awarded for legal services rendered or costs incurred prior, as well as subsequent, to the commencement of the proceeding.

(d) Any order for a party who is not the husband or wife of another party to the proceedings to pay attorneys' 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 270 continues subdivision (a) of former Civil Code Section 4370 without substantive change. See also Section 85 ("Family Law Act" defined).

§ 271. Notice of application for order

271. (a) Except as provided in subdivision (b), during the pendency of a proceeding under the Family Law Act, an application for a temporary order making, augmenting, or modifying an award of attorneys' 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 any of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time prior to 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 271 continues subdivision (b) of former Civil Code Section 4370 without substantive change. See also Section 85 ("Family Law Act" defined).

§ 272. Attorneys' fees for enforcement of support order

272. Notwithstanding any other provision of law, absent good cause to the contrary, the court, upon determining an ability to pay, shall award reasonable attorneys' fees to:

(a) A custodial parent in an action to enforce an existing order for child support.

(b) A supported spouse in an action to enforce an existing order for spousal support.

Comment. Section 272 continues subdivisions (c) and (d) of former Civil Code Section 4370 without substantive change.

§ 273. Award of attorneys' fees and costs to be just and reasonable under relative circumstances of parties

273. (a) The court may make an award of attorneys' fees and costs under the Family Law Act where the making of the award, and the amount of the award, is 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 adequately present his or her case, taking into consideration to the extent relevant the circumstances of the respective parties described in [subdivision (a) of Section 4801]. The fact that the party requesting an award of attorneys' fees and costs has resources from which he or she could pay his or her own attorneys' 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 from any type of property, whether community or separate, principal or income.

Comment. Section 273 continues former Civil Code Section 4370.5 (as amended by 1990 Cal. Stat. ch. 893 § 1) without substantive change. See also Sections 65 ("community property" defined), 85 ("Family Law Act" defined), 125 ("quasi-community property" defined), 130 ("separate property" defined).

Subdivision (a) of Section 273 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. This authorization overruled language in the cases holding, for example, that the court may 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 Civil Code Section 4370.5, see *Recommendation Relating to Litigation Expenses in Family Law Proceedings*, 18 Cal. L. Revision Comm'n Reports 351 (1986).

§ 274. Award of attorneys' fees and costs based on conduct of party or attorney

274. (a) Notwithstanding Sections 270 to 273, inclusive, the court may base an award of attorneys' 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 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 abilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden upon the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorneys' fees and costs is not required to demonstrate any financial need for the award.

(b) An award of 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 fees and costs as a sanction pursuant to this section shall be 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 274 continues Civil Code Section 4370.6 (as enacted by 1990 Cal. Stat. ch. 893 § 2) without substantive change. See also Section 65 ("community property" defined).

§ 275. Order for direct payment to attorney

275. (a) When the court orders one of the parties to pay costs and attorneys' fees for the benefit of the other party, those costs and fees 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 costs and fees may be enforced directly by the attorney in his or her 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 on 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 by the former attorney 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. Upon the filing of the motion, the enforcement of the order by the former attorney shall be stayed until the court has acted upon the motion.

Comment. Section 275 continues former Civil Code Section 4371 without substantive change.

Division 2. General Provisions

DIVISION 3. SOLEMNIZATION OF MARRIAGE

Part 1. Validity of marriage

Part 2. Authentication of marriage

Part 3. Premarital examination

PART 1. VALIDITY OF MARRIAGE

§ 300. Marriage relation; consent, license, and solemnization

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

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

§ 303. Consent of superior court

§ 304. Proof of consent and solemnization

§ 305. Validity of foreign marriages

§ 306. Action to have validity of marriage determined

§ 300. Marriage relation; consent, license, and solemnization

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 will not constitute marriage; it must be followed by the issuance of a license and solemnization as authorized by this code, except as provided by Chapter 4 (commencing with Section 500) of Part 2.

Comment. Section 300 continues former Civil Code Section 4100 without substantive change.

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

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

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

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

302. (a) 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 clerk issuing the marriage license as provided in Article 1 (commencing with Section 360) of Chapter 2 of Part 2:

(1) The consent in writing of the parents of each person who is underage, or of one of the parents or the guardian of each such person.

(2) After such showing as the superior court may require, an order of the court granting permission to the underage person to marry.

(b) As part of the order under subdivision (a), the court shall require the parties to the prospective marriage of a person under the age of 18 years 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 such 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 302 continues subdivisions (b) and (c) of former Civil Code Section 4101 without substantive change. See also Section 303 (order of superior court granting permission to minor to marry).

§ 303. Consent of superior court

303. If it appears to the satisfaction of the superior court by verified 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 superior 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.

§ 304. Proof of consent and solemnization

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

Comment. Section 304 is the same as former Civil Code Section 4103.

§ 305. Validity of foreign marriages

305. A marriage contracted without this state, which would be valid by the laws of the jurisdiction in which the marriage was contracted, is valid in this state.

Comment. Section 305 continues former Civil Code Section 4104 without substantive change.

§ 306. Action to have validity of marriage determined

306. 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 in the superior court, to have the validity of the marriage determined and declared.

Comment. Section 306 continues former Civil Code Section 4212 without substantive change.

PART 2. AUTHENTICATION OF MARRIAGE

Chapter 1. Procedural requirements generally

Chapter 2. Marriage license, informational brochure, and certificate of registry

Chapter 3. Solemnization of marriage

Chapter 4. Confidential marriage

CHAPTER 1. PROCEDURAL REQUIREMENTS GENERALLY

§ 350. Procedural requirements; effect of noncompliance

§ 351. Requirements for marriage of members of religious society or denomination

§ 350. Procedural requirements; effect of noncompliance

350. Marriage must be licensed, solemnized, authenticated, and the certificate of registry of marriage filed as provided in this part; but noncompliance with the provisions of this part by others than a party to a marriage does not invalidate the marriage.

Comment. Section 350 continues former Civil Code Section 4200 without substantive change.

§ 351. Requirements for marriage of members of religious society or denomination

351. This part, so far as it relates to the solemnizing of marriages, 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 entering the marriage make, sign, and endorse upon, 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 signature and place of residence of two witnesses to the ceremony.

(3) The religious society or denomination of the parties married, 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 entering 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 filed with the local registrar of marriages of the county in which the license was issued within four days after the ceremony.

Comment. Section 351 continues former Civil Code Section 4216 without substantive change.

**CHAPTER 2. MARRIAGE LICENSE, INFORMATIONAL BROCHURE,
AND CERTIFICATE OF REGISTRY**

Article 1. Marriage license

Article 2. Informational brochure

Article 3. Certificate of registry

Article 1. Marriage License

§ 360. Marriage license required

§ 361. Contents of license

§ 362. Denial of license

§ 363. Underage applicant

§ 364. Requiring proof of facts

§ 365. Forms

§ 366. Expiration of license

§ 367. Duties of county clerk and county recorder

§ 360. Marriage license required

360. All persons about to be joined in marriage, or about to declare a marriage pursuant to Section 465, shall first obtain a marriage license from a county clerk.

Comment. Section 360 continues the first portion of subdivision (a) of former Civil Code Section 4201 without substantive change.

§ 361. Contents of license

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

(a) The identity of the parties.

(b) The parties' real and full names, and places of residence.

(c) The parties' ages.

Comment. Section 361 continues last portion of subdivision (a) of former Civil Code Section 4201 without substantive change.

§ 362. Denial of license

362. No marriage license shall be granted when either of the parties who are applying for the license is an imbecile, is insane, or is, at the time of making the application for the license, under the influence of an intoxicating liquor or narcotic drug.

Comment. Section 362 continues the first sentence of subdivision (b) of former Civil Code Section 4201 without substantive change.

Note: Should the reference to a person who is an "imbecile" or is "insane" be changed in Section 362?

§ 363. Underage applicant

363. If a person applying for the 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 consents or court orders, provided for in Section 303, are filed by the clerk.

Comment. Section 363 continues the second sentence of subdivision (b) of former Civil Code Section 4201 without substantive change.

§ 364. Requiring proof of facts

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

(b) For the purpose of ascertaining all the facts mentioned or required in this article, at the time the license is applied for, the clerk may, if he or she deems it necessary in order to satisfy himself or herself as to matters enumerated in this article, examine the

applicants for a license on oath. The examination shall be reduced to writing by the clerk and be subscribed by the applicants. If necessary, the clerk may request additional documentary proof as to the accuracy of the facts stated.

(c) Applicants for a license pursuant to this article shall not be required to state, for any purpose, their race or color.

Comment. Section 364 continues the third, fourth, and fifth sentences of subdivision (b) of former Civil Code Section 4201 without substantive change.

§ 365. Forms

365. (a) The forms for the application for license to marry 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 article.

(b) The application for license to marry form shall include an affidavit on the back which the bride and groom shall sign, affirming that they have received the brochure provided for in Section 370.

(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 365 continues subdivisions (c) and (d) of former Civil Code Section 4201 without substantive change.

§ 366. Expiration of license

366. A license issued pursuant to this article expires 90 days after its issuance and the calendar date of expiration shall be clearly noted on the face of the license.

Comment. Section 366 continues the first sentence of former Civil Code Section 4204 without substantive change.

§ 367. Duties of county clerk and county recorder

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

(b) Not later than 60 days after the date of issuance, the county recorder shall notify those parties whose certificates have not been filed of that fact and that the license will automatically expire on the date shown on the face of the license. The county recorder shall also notify the license holders of the obligation of the person marrying them to return the certificate of registry and endorsed license to the recorder's office within four days after the ceremony.

Comment. Section 367 continues the second paragraph of former Civil Code Section 4204 without substantive change.

Article 2. Informational Brochure

§ 370. Informational brochure

§ 370. Informational brochure

370. (a) The State Department of Health Services shall prepare and publish a brochure which shall:

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

(2) Provide information to applicants concerning acquired immune deficiency syndrome (AIDS) and informing them of 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 all applicants for a marriage license, including applicants for a confidential marriage license and notary publics receiving a confidential marriage license pursuant to Section 504.

(c) Each notary public authorizing a confidential marriage under Section 504 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 370 continues former Civil Code Section 4201.5 without substantive change.

Article 3. Certificate of Registry

§ 400. Certificate of registry; preparation and filing

§ 401. Replacement of lost certificate

§ 400. Certificate of registry; preparation and filing

400. (a) All persons about to be joined in marriage must obtain from the county clerk of the county in which the license is issued, in addition to the marriage license therefor provided for in Article 1 (commencing with Section 360), a certificate of registry of marriage as provided in Division 9 (commencing with Section 10000) of the Health and Safety Code containing the items listed in that division.

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

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

(d) The certificate of registry of marriage shall be filed by the person performing the ceremony with the county recorder of the county in which the license was issued within four days after the ceremony.

Comment. Section 400 continues former Civil Code Section 4202 without substantive change.

§ 401. Replacement of lost certificate

401. (a) If a certificate of registry of marriage is lost or destroyed subsequent to the marriage ceremony but before filing with the county recorder, the person solemnizing the marriage, in order to comply with Section 400, shall obtain a duplicate certificate of registry of marriage by filing an affidavit setting forth the facts with the county clerk of the county in which the license was issued.

(b) The fee for issuing the duplicate license and certificate is five dollars (\$5).

Comment. Section 401 continues former Civil Code Section 4203 without substantive change.

Note: Subdivision (a) of Section 401 applies only to a duplicate certificate of registry but subdivision (b) provides a fee for issuing the duplicate license and certificate of registry.

CHAPTER 3. SOLEMNIZATION OF MARRIAGE

Article 1. Persons authorized to solemnize

Article 2. Solemnization

Article 1. Persons Authorized to Solemnize

§ 450. Persons authorized to solemnize

§ 451. Commissioner of civil marriages; deputies

§ 452. Officials of nonprofit religious institutions

§ 450. Persons authorized to solemnize

450. (a) Marriage may be solemnized by any of the following who is of the age of 18 years or over:

(1) 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.

(2) A judge or magistrate of the United States.

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

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

(b) As used in this section, "judge or magistrate of the United States" means any of the following:

(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 450 continues former Civil Code Section 4205 without substantive change. See also Section 452 (official of nonprofit religious institution licensed by county to solemnize marriages).

§ 451. Commissioner of civil marriages; deputies

451. (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 such other duties as the commissioner may direct.

Comment. Section 451 continues former Civil Code Section 4205.1 without substantive change.

§ 452. Officials of nonprofit religious institutions

452. In addition to the persons permitted to solemnize marriages under Section 450, 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 452 continues former Civil Code Section 4205.5 without substantive change.

Article 2. Solemnization

§ 460. Essential element of solemnization

§ 461. Determining correctness of facts stated in license

§ 462. Certificate of registry required

§ 463. Return of license and statement to local registrar

§ 464. Issuance of marriage certificate

§ 465. Unrecorded marriage; filing license and certificate of declaration of marriage

§ 460. Essential element of solemnization

460. (a) No particular form for the ceremony of marriage is required for solemnization of the marriage, but the parties must declare, in the presence of the person solemnizing the marriage, 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 460 continues former Civil Code Section 4206 without substantive change. Subdivision (b) continues former Civil Code Section 4206.5 without substantive change.

§ 461. Determining correctness of facts stated in license

461. 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 that 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 461 continues former Civil Code Section 4207 without substantive change.

§ 462. Certificate of registry required

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

- (a) The fact, time and, place of solemnization.
- (b) The names and places of residence of one or more witnesses to the ceremony.
- (c) A statement of the official position of the person solemnizing the marriage, or of the denomination of which that person is a priest, minister, or member of the clergy thereof. The person solemnizing the marriage shall also type or print his or her name and address.

Comment. Section 462 continues subdivision (a) former Civil Code Section 4208 without substantive change.

§ 463. Return of license and statement to local registrar

463. The person solemnizing the marriage shall return the marriage license, endorsed as required in Section 462, to the local registrar of marriages of the county in which the license was issued within four days after the ceremony.

Comment. Section 463 continues subdivision (b) former Civil Code Section 4208 without substantive change.

§ 464. Issuance of marriage certificate

464. The person solemnizing a marriage must, at the request of, and for either party, issue a marriage certificate showing the facts specified in Section 462.

Comment. Section 464 continues former Civil Code Section 4209 without substantive change.

§ 465. Unrecorded marriage; filing license and certificate of declaration of marriage

465. 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 filed in the manner specified in subdivision (b) of Section 351.

Comment. Section 465 continues former Civil Code Section 4210 without substantive change. The phrase "previously contracted" has been substituted for "heretofore contracted."

CHAPTER 4. CONFIDENTIAL MARRIAGE

Article 1. General provisions

Article 2. Approval of notaries to authorize confidential marriage

Article 3. Records of confidential marriages

Article 1. General Provisions

§ 500. Validity of confidential marriage

§ 501. Requirements for confidential marriage generally

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

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

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

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

§ 506. Preparation and filing of marriage certificate

§ 507. Delivery of copy of certificate to parties

§ 508. Application for certified copy of certificate

§ 509. Issuance of certified copy of certificate

§ 510. Replacement of lost certificate

§ 500. Validity of confidential marriage

500. All marriages that have heretofore been, or that may hereafter be, consummated under the provisions of this chapter are hereby declared to be valid.

Comment. Section 500 continues former Civil Code Section 4214 without substantive change.

§ 501. Requirements for confidential marriage generally

501. 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 Article 1 (commencing with Section 450) of Chapter 3, without the necessity of first obtaining health certificates.

Comment. Section 501 continues first sentence of subdivision (a) of former Civil Code Section 4213 without substantive change. The phrase "pursuant to this chapter" has been added.

Note: Is it correct to add "pursuant to this chapter" to Section 501? In other words, is the need for health certificates dispensed with only in the case of a confidential marriage or can applicants for marriage avoid the need for health certificates by stating that they meet the requirements of Section 501?

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

502. (a) Except as provided in Section 503, 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.

(b) A license issued pursuant to this section is valid only for a period of 90 days after its issuance and may only be used in the county in which it is issued.

(c) The license shall be presented to the person performing the ceremony.

Comment. Section 502 continues second, third, and fourth sentences of subdivision (a) of former Civil Code Section 4213 without substantive change.

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

503. 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 performing the ceremony 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 503 continues former Civil Code Section 4213.1 without substantive change.

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

504. (a) 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 Article 2 (commencing with Section 550) 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.

(b) A confidential marriage license issued by the county clerk to a notary public 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 subdivision (b) of former Civil Code Section 4213 without substantive change.

§ 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 performing 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 370.

(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 third paragraph of subdivision (a) and subdivision (i) of former Civil Code Section 4213 without substantive change.

§ 506. Preparation and filing of marriage certificate

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

(b) The certificate shall be filed by the person performing the ceremony with the office of the county clerk in the county in which the license was issued within four days after the performance of the ceremony.

Comment. Section 506 continues fifth and sixth sentences of subdivision (a) of former Civil Code Section 4213 without substantive change.

§ 507. Delivery of copy of certificate to parties

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

Comment. Section 507 continues first sentence of the second paragraph of subdivision (a) of former Civil Code Section 4213 without substantive change.

§ 508. Application for certified copy of certificate

508. The person performing the ceremony 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 performing the marriage to the county clerk.

Comment. Section 508 continues second sentence of the second paragraph of subdivision (a) of former Civil Code Section 4213 without substantive change.

§ 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 his or her 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 subdivision (g) of former Civil Code Section 4213 without substantive change.

§ 510. Replacement of lost certificate

510. If a certificate furnished pursuant to this chapter is lost, damaged, or destroyed after the performance of the marriage and before it is filed, the county clerk may issue a replacement upon the payment of a fee of five dollars (\$5).

Comment. Section 510 continues subdivision (h) of former Civil Code Section 4213 without substantive change.

Article 2. Approval of Notaries to Authorize Confidential Marriages

§ 550. Only approved notary may authorize confidential marriage

§ 551. Application by notary for approval to authorize confidential marriages

§ 552. Required course of instruction before approval

§ 553. Approval valid one year; renewal

§ 554. List of notaries approved to authorize confidential marriages

§ 555. Suspending or revoking approval of notary

§ 556. Fees; use of money received

§ 550. Only approved notary may authorize confidential marriage

550. (a) No notary public shall authorize a confidential marriage pursuant to this chapter unless he or she 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 550 continues subdivision (c)(1) and subdivision (d) of former Civil Code Section 4213 without substantive change.

§ 551. Application by notary for approval to authorize confidential marriages

551. (a) An application for approval to authorize confidential marriages pursuant to this chapter 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 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 556.

Comment. Section 551 continues subdivision (c)(2) of former Civil Code Section 4213 without substantive change. Subdivision (c) of Section 551 is drawn from the first sentence of subdivision (c)(3) of former Section 4213.

§ 552. Required course of instruction before approval

552. No approval shall be granted pursuant to this article 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 552 continues subdivision (c)(5) of former Civil Code Section 4213 without substantive change.

§ 553. Approval valid one year; renewal

553. An approval to authorize confidential marriages pursuant to this article 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 556.

Comment. The first sentence of Section 553 continues the second sentence of paragraph (3) of subdivision (c) of former Civil Code Section 4213 without substantive change. The second sentence is drawn from the third sentence of the same paragraph.

§ 554. List of notaries approved to authorize confidential marriages

554. (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 article to keep current the information required in paragraphs (1), (3), (4), and (5) of subdivision (b) of Section 551. This information shall be used by the county clerk to update the list required to be maintained by this section.

Comment. Section 554 continues subdivision (c)(6) of former Civil Code Section 4213 without substantive change.

§ 555. Suspending or revoking approval of notary

555. (a) If, after an approval to authorize confidential marriages is granted pursuant to this article, 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 article is alleged to have violated a provision of this part, 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 his or her defense. If the county clerk determines that the notary public has violated a provision of this part, the county clerk may place the notary public on probation or suspend or revoke his or her registration. 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 555 continues paragraphs (4) and (7) of subdivision (c) of former Civil Code Section 4213 without substantive change.

Note: Should the last clause relating to retaining fees be made applicable to subdivision (b) as well as subdivision (a) of Section 555?

§ 556. Fees; use of money received

556. (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 article 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 article.

Comment. Section 556 continues the first, third, and fourth sentences of subdivision (c)(3) of former Civil Code Section 4213 without substantive change.

Article 3. Records of Confidential Marriages

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

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

570. (a) Except as provided in subdivision (b), the county clerk shall maintain the confidential marriage certificate filed pursuant to Section 506 as a permanent record which shall not be open to public inspection except upon order of the superior 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 assure 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 superior 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 570 continues the last sentence of the first paragraph of subdivision (a) former Civil Code Section 4213 without substantive change. Subdivision (b) continues former Civil Code Section 4213.2 without substantive change. Subdivision (c) continues subdivision (f) of former Civil Code Section 4213 without substantive change. Subdivision (d) continues subdivision (e) of former Civil Code Section 4213 without substantive change.

PART 3. PREMARITAL EXAMINATION

- § 580. Physician's certificate required as prerequisite to obtaining marriage license
- § 581. Statement in certificate concerning standard serological test
- § 582. Statement concerning rubella
- § 583. Statement that HIV test was offered
- § 584. Capacity to consent to examinations and tests
- § 585. Information to be provided to laboratory
- § 586. Laboratory statement
- § 587. Certificate forms from other states
- § 588. Certificate forms from armed forces
- § 589. Standard serological test; approved laboratory; checking accuracy of tests
- § 590. Submission of laboratory reports or records; destruction of copies of old reports
- § 591. Court waiver of examination and test requirements; confidential proceedings; no court fee required
- § 592. Filing, preservation, and destruction of certificate forms and court orders
- § 593. Prohibited acts and criminal penalty
- § 594. Confidential documents; criminal penalty for unlawful disclosure

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

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

Comment. Section 580 continues the first portion of the first sentence of subdivision (a) of former Civil Code Section 4300 without substantive change. See also Sections 501, 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 prior to the date of issuance of the license, and that, in the opinion of the physician, 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 the last portion of the first sentence of subdivision (a) of former Civil Code Section 4300 without substantive change. 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 subdivision (b) of former Civil Code Section 4300 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 Division 1 of the Health and Safety Code.

Comment. Section 583 continues subdivisions (c) and (d) of former Civil Code Section 4300 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 the State of California is validly able to give consent to any examinations and tests required by this part.

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

§ 585. Information to be provided to laboratory

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

Comment. Section 585 continues the second sentence of subdivision (e) of former Civil Code Section 4300 without substantive change.

§ 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 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.

§ 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 of California if the examinations and tests were performed not more than 30 days prior to 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 prior to issuance of the marriage license.

Comment. Subdivision (a) of Section 587 continues the first sentence of the first paragraph of former Civil Code Section 4303 without substantive change. Subdivision (b) continues the second paragraph of former 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 prior to the issuance of the marriage license.

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

§ 589. Standard serological test; approved laboratory; checking accuracy of tests

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 district in the state.

Comment. Section 589 continues former Civil Code Section 4304 without substantive change.

Note: What is the meaning of the phrase "from any district in the state" in Section 589? Is this phrase necessary?

§ 590. Submission of laboratory reports or records; destruction of copies of old reports

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; confidential proceedings; no court fee required

591. (a) The judge of the superior court in the county in which the 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 certificate or certificates have 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 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 order of the court shall be filed by the licensing authority in lieu of the certificate form.

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

Comment. Section 591 continues former Civil Code Section 4306 without substantive change. See also Section 501 (marriage without need to first obtain health certificate).

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

592. The certificate forms and the court orders 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, 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 the provisions of this part is guilty of a misdemeanor.

Comment. Section 593 continues former Civil Code Section 4308 without substantive change.

§ 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.

DIVISION 4. HUSBAND AND WIFE

- Part 1. General provisions
- Part 2. Characterization of marital property
- Part 3. Liability of marital property
- Part 4. Management and control of marital property
- Part 8. Marital agreements

PART 1. GENERAL PROVISIONS

- Chapter 1. Definitions
- Chapter 2. Relation of husband and wife
- Chapter 3. Property Rights

CHAPTER 1. DEFINITIONS

§ 700. Real property defined

§ 700. Real property defined

700. As used in this division, real property does include, and personal property does not include, a leasehold interest in real property.

Comment. Section 700 continues the last sentence of former Civil Code Section 5110, but the coverage of the definition is expanded to cover the entire division.

CHAPTER 2. RELATION OF HUSBAND AND WIFE

- § 720. Mutual obligations
- § 721. Contracts with each other and third parties
- § 722. Methods of dissolution
- § 723. Tribal marriages and divorces

§ 720. Mutual obligations

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

Comment. Section 720 is the same as former Civil Code Section 5100.

§ 721. Contracts with each other and third parties

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

(b) Except as provided in Sections 143, 144, and 146 of the Probate Code, in transactions between themselves, a husband and wife are subject to the general rules which control the actions of persons occupying confidential relations with each other.

Comment. Section 721 is the same as former Civil Code Section 5103. See also Code of Civil Procedure Sections 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). For background on former Civil Code Section 5103, see *Recommendation Relating to Revision of Wills and Intestate Succession Law*, 17 Cal. L. Revision Comm'n Reports 537 (1984); 18 Cal. L. Revision Comm'n Reports 78 (1986); *Recommendation Proposing The Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986).

Note: The relationship of Section 721 and Section 1110 (duty of good faith) needs to be reviewed. One statement should be provided to state the duty of a husband and wife in transactions between themselves. Is subdivision (b) of Section 721 the only limit on marital agreements between spouses during the marriage? See also Section 1500 (marital property agreements).

§ 722. Methods of dissolution

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

(a) The death of one of the parties.

(b) The judgment of a court of competent jurisdiction decreeing a dissolution of the marriage.

(c) A judgment of nullity.

Comment. Section 722 continues former Civil Code Section 4350 without substantive change.

§ 723. Tribal marriages and divorces

723. 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 prior to 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 such tribe, band, or group as marriage, is deemed a valid marriage under the laws of this state. In the case of such marriages and for such purpose 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 such tribe, band, or group as a dissolution of marriage, is deemed a valid divorce under the laws of this state.

Comment. Section 723 is the same as former Civil Code Section 5138.

CHAPTER 3. PROPERTY RIGHTS

§ 750. Methods of holding property

§ 751. Interests of spouses in community property

§ 752. Separate property

§ 753. Excluding one spouse from separate property dwelling of other spouse

§ 754. Effect of recording notice of pendency of proceeding

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

§ 750. Methods of holding property

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

Comment. Section 750 is the same as former Civil Code Section 5104. See also Section 65 ("community property" defined). See also Code of Civil Procedure Sections 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. This section shall be construed as defining the respective interests and rights of husband and wife in community property.

Comment. Section 751 is the same as former Civil Code Section 5105. See also Section 65 ("community property" defined). See also Code of Civil Procedure Sections 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).

Note: Should the second sentence of Section 751 be retained? It appears unnecessary and to add nothing to the first sentence.

§ 752. Separate property

752. Except as otherwise provided in Sections 753 and 754, neither husband nor wife has any interest in the separate property of the other.

Comment. Section 752 is the same as the first portion of subdivision (a) of former Civil Code Section 5102. See also Section 130 ("separate property" defined). See also Code of Civil Procedure Sections 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).

Note: Should the introductory clause read: "Except as otherwise provided by statute,"?

§ 753. Excluding one spouse from separate property dwelling of other spouse

753. (a) Notwithstanding Section 752, except as provided in subdivision (b) and in Chapter 1 (commencing with Section 1900) of Part 1 of Division 6, neither spouse may be excluded from the other's dwelling.

(b) In a proceeding for dissolution of the marriage or legal separation or for a judgment of nullity of the marriage, upon application of either party in the manner provided by Part 4 (commencing with Section 240) of Division 2, the court may order the temporary exclusion of either party from the family dwelling or from the dwelling of the other until the final determination of the proceeding, upon a showing that the party to be excluded has assaulted or threatens to assault the other party, or any other person under the care, custody, or control of the other party, or a minor child of the parties or of the other party, and that physical or emotional harm would otherwise result to the other party or any other person under the care, custody, or control of the other party, or to a minor child of the parties or of either party, or, upon application and hearing, the court may order such temporary exclusion of either party upon a showing that physical or emotional harm would otherwise result.

Comment. Section 753 is the same in substance as the last portion of subdivision (a) of former Civil Code Section 5102.

Note: Is subdivision (b) of Section 753 necessary or can the general provisions in Sections 1900 to 1908 be revised to cover the situation covered by subdivision (b) of

Section 753? If subdivision (b) is omitted, Section 5550(a)(2) should be revised to delete the reference to Section 753 if that reference has been retained in Section 5550.

§ 754. Effect of recording notice of pendency of proceeding

754. If notice of the pendency of a proceeding for dissolution of the marriage or legal separation or for a judgment of nullity of the marriage 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 is the same as subdivision (b) of former Civil Code Section 5102. See also Section 700 (real property includes leasehold interests in real property).

Section 754 provides a means of restraining transfer or encumbrance of the dwelling that is the separate property of a spouse during the pendency of separation, annulment, or dissolution proceedings. The restraint applies to involuntary as well as voluntary dispositions of the dwelling, such as pursuant to writ of execution. As to the authority of the court to restrain transfer during pendency of the proceedings, see Section 1900(a). A community property dwelling may not be transferred or encumbered without joinder or consent of both spouses. See [Sections 5125 and 5127]. For background on former Civil Code Section 5102, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2630 (1980).

Note: What is the effect of a transfer or encumbrance after the notice of pendency of proceeding has been recorded? Is a purported transfer, encumbrance, gift, or creditor's levy VOID if made without "joinder" of both spouses?

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

755. (a) As used in this section, the terms "participant," "beneficiary," "employee benefit plan," "employer," "fiduciary," and "administrator" 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 Section 751 and Chapter 2 (commencing with Section 1150) of Part 4, if payment or refund is made to a participant or his or her 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 Section 751 and Chapter 2 (commencing with Section 1150) of Part 4, 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 is the same as former Civil Code Section 5106.

Note: The definition now found in subdivision (a) of Section 755 formerly appeared in what is now subdivision (b) of Section 755. Should the definition also apply to which is now subdivision (c) of Section 755? The federal statute needs to be checked to make sure the definition in subdivision (a) applies to the portion of the federal statute referred to in subdivision (c) of Section 755.

PART 2. CHARACTERIZATION OF MARITAL PROPERTY

- Chapter 1. Community property
- Chapter 2. Separate property
- Chapter 3. Damages for injuries to married person
- Chapter 4. Presumptions concerning nature of property
- Chapter 5. Transmutation of property

CHAPTER 1. COMMUNITY PROPERTY

§ 760. Community property

§ 761. Property in certain revocable trusts as 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 marriage while domiciled in this state is community property.

Comment. Section 760 continues the substance of former Civil Code Section 687 and the first portion of former Section 5110, and extends the definition of community property to include real property situated outside this state. The phrase "except as otherwise provided by statute" has been substituted for the reference to the specific statutory provisions that were listed in former Section 5110.

The effect of including out-of-state real property in the definition is that California courts treat it as community for all purposes, including management and control and division at dissolution. The treatment given such property by the courts of the state in which the property is located will depend upon the applicable choice of law rules of the state.

Section 760 states the basic rule that all property acquired during marriage is community unless it comes within a specified exception. See also Sections 65 ("community property" defined), 800-804 (presumptions concerning nature of property), 850-853 (transmutation of property), 1500-1617 (marital property agreements).

The major exceptions to the basic community property rule are those relating to separate property. See, e.g., Sections 130 ("separate property" defined), 770 (separate property of wife), 771 (separate property of husband), 772 (while living separate and apart), 773 (after judgment of legal separation), 781 (personal injury damages). Section 760 is not an exclusive statement of property classified as community. See, e.g., Sections 761 (property transferred to trust), 780 (damages for personal injury to married person as community property).

§ 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 is the same as former Civil Code Section 5110.150. 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 5125 and 5127 (joinder or consent) and Sections 5110.710-5110.740 (transmutation)].

Although 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), 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 [Civil Code § 5120.010 et seq.; 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).

For background on former Civil Code Section 5110.150, see *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986).

CHAPTER 2. SEPARATE PROPERTY

§ 770. Separate property of wife

§ 771. Separate property of husband

§ 772. Earnings and accumulations while living separate and apart

§ 773. Earnings and accumulations after judgment of legal separation

§ 774. Recording inventory of separate personal property

§ 770. Separate property of wife

770. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

Comment. Section 770 is the same as former Civil Code Section 5107.

Note: Probate Code Section 32 defines "devise" as follows: "when used as a noun, means a disposition of real or personal property by will, and, when used as a verb, means to dispose of real or personal property by will." "Devise" now covers personal as well as real property. The concept of a bequest of personal property has been eliminated. Should "bequest" be omitted from Section 770?

§ 771. Separate property of husband

771. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits

thereof, is his separate property. The husband may, without the consent of his wife, convey his separate property.

Comment. Section 771 is the same as former Civil Code Section 5108.

Note: Probate Code Section 32 defines "devise" as follows: "when used as a noun, means a disposition of real or personal property by will, and, when used as a verb, means to dispose of real or personal property by will." "Devise" now covers personal as well as real property. The concept of a bequest of personal property has been eliminated. Should "bequest" be omitted from Section 771?

§ 772. Earnings and accumulations while living separate and apart

772. 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 772 is the same as former Civil Code Section 5118.

§ 773. Earnings and accumulations after judgment of legal separation

773. 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 773 continues former Civil Code Section 5119 without substantive change except that "entry of a judgment" has been substituted for "rendition of a judgment."

§ 774. Recording inventory of separate personal property

774. (a) A full and complete inventory of the separate personal property of either spouse may be made out and signed by the spouse, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property, and recorded in the office of the recorder of the county in which the parties reside.

(b) The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the party filing the inventory.

Comment. Section 774 is the same as former Civil Code Sections 5114 and 5115. See also Section 700 (personal property does not include a leasehold interest in real property).

Note: Should Section 774 be retained? The provisions of this section go back to 1872. Is any use made of the procedure provided by this section? Does the filing of the inventory create a presumption (affecting the burden of proof or the burden of producing evidence?) that the property is separate property? If so, why should a spouse be able to reverse the presumption that all property acquired during marriage is community property merely by filing the inventory in the recorder's office? Or does the section apply only to property that actually is separate property? If so, what purpose does the section serve? Does a person dealing with a spouse have to check to see if there is an inventory recorded by the other spouse before engaging in a transaction? Does the filing of the inventory affect the right of, or burden of proof of, a creditor of the nonfiling spouse to reach the property? Must a person extending credit

to one spouse only check for a recorded inventory by the other spouse in order to preserve the right to resort to assets listed in the inventory?

CHAPTER 3. DAMAGES FOR INJURIES TO MARRIED PERSON

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

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

§ 782. Injuries to married person by spouse

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

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

780. Except as provided in Section 781 and subject to 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 drawn from subdivision (b)(4) of former Civil Code Section 4800. See also Code of Civil Procedure Section 370 (right of married person to sue without spouse being joined as a party).

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

5126. (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 such 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 legal separation or a judgment of dissolution of a marriage.

(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 spouse's personal injuries from his or her separate property or from the community property, he or she is entitled to reimbursement of his or her separate property or the community property for those expenses from the separate property received by his or her spouse 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 his or her spouse of that marriage in satisfaction of a judgment for damages for personal injuries to such spouse, or pursuant to an agreement for the settlement or compromise of a claim for such damages, is the separate property of the injured spouse.

(d) Subdivision (a) applies retroactively to any case where the property rights of the marriage have not been finally adjudicated by a judgment of dissolution or legal separation.

Comment. Section 781 is the same as former Civil Code Section 5126, except that the phrase "entry of a judgment of legal separation" has been substituted in subdivision (a)(1) of Section 781 for the phrase "rendition of a decree of legal separation" which was used in former Section 5126.

Note: Subdivision (d) of Section 781 appears to be obsolete and, if so, need not be continued.

§ 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 his or her spouse, the community property may not be used to discharge the liability of the tortfeasor spouse to the injured spouse or his or her liability to make contribution to a joint tortfeasor until the separate property of the tortfeasor spouse, not exempt from execution, 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 is the same as former Civil Code Section 5113.

§ 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 his or her 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 is the same as former Civil Code Section 5112. See also Code of Civil Procedure Section 370 (right of married person to sue without spouse being joined as a party).

CHAPTER 4. PRESUMPTIONS CONCERNING NATURE OF PROPERTY

§ 800. Effect of presumptions

§ 801. Community property presumption

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

§ 803. Gift presumptions

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

§ 800. Effect of presumptions

800. (a) The presumptions established by this chapter are presumptions affecting the burden of proof.

(b) The presumptions established by this chapter are rebuttable by tracing the property to a different source or by proof of a transmutation of the character of the property.

Comment. Section 800 codifies the rule that the statutory presumptions as to the character of marital property are rebuttable presumptions affecting the burden of proof. They may be rebutted by tracing the property to a contrary source (e.g., Sections 770 and 771) or by proof of a contrary agreement of the spouses. See, e.g., Lichtig, *Characterization of Property*, in 1 California Marital Dissolution Practice § 7.13 (Cal. Cont. Ed. Bar 1981). See also Sections 850-853 (transmutation of property), 1500-1617 (marital property agreements).

Note: Section 800 is a new provision. This provision was recommended by the Law Revision Commission in 1983. See *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984). However, the this provision was not enacted, because concern was raised about other provisions of the recommended legislation. Should Section 800 be added to existing law?

§ 801. Community property presumption

801. Except as otherwise provided by statute, property of a married person is presumed to be community property.

Comment. Section 801 codifies the case law community property presumption, rebuttable by agreement or by tracing to a separate property source. See, e.g., *Haldeman v. Haldeman*, 202 Cal. App. 2d 498, 21 Cal. Rptr. 75 (1962); *Lynam v. Vorwerk*, 13 Cal. App. 507, 110 P. 355 (1910); See v. See, 64 Cal.2d 778, 415 P.2d 776, 51 Cal. Rptr 888 (1966). The effect of the basic community property presumption is to impose the burden of proof on the person seeking to show that property of a married person is separate property. See Section 800. An exception to the general community property presumption created by Section 801 may be found in Section 803 (gift presumptions). See also Probate Code Section 5305 (presumption that married persons hold their funds in deposit account as community 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 his or her death if the marriage during which the property was acquired was terminated by dissolution of marriage more than four years prior to the death.

Comment. Section 802 is the same as former Civil Code Section 5111.

§ 803. Gift presumptions

803. The following presumptions apply to property acquired by a married person during marriage by gift from the person's spouse:

(a) Except as provided in subdivision (b), the property is presumed to be community property.

(b) Clothing, wearing apparel, jewelry, and other tangible articles of a personal nature, used solely or principally by the person, are presumed to be the person's separate property except to the extent they are substantial in value taking into account the circumstances of the marriage.

Comment. Section 803 qualifies the general rule that property acquired by a spouse by gift during marriage is separate property. See Sections 770 (separate property of wife) and 771 (separate property of husband). Notwithstanding this general rule, under Section 803, interspousal "gifts" are presumed to be separate or community, depending on the kind of property given.

Subdivision (b) provides an exception to the general rule stated in subdivision (a). Under subdivision (b), 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 becomes separate property of the spouse receiving the gift. The formal requirements that otherwise must be satisfied for a transmutation of property do not apply to such a gift. See Section 852(c). However, under subdivision (b), the gift of an automobile, for example, would not create a presumption that the property is separate, since the automobile is not an article of a personal nature within the meaning of the section.

The presumptions established by Section 803 can be rebutted by proof that the parties intended to make a transmutation of the character of the property. For limitations on transmutation, see Section 852 (form of transmutation).

Note: Section 803 is a new provision. This provision was recommended by the Law Revision Commission in 1983. See Recommendation Relating to Marital Property Presumptions and Transmutations, 17 Cal. L. Revision Comm'n Reports 205 (1984). The provision implements subdivision (c) of Section 852 which was enacted. Section 803 was not enacted because concern was raised about other provisions of the legislation recommended in 1983. Should Section 803 be added to existing law?

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

804. Notwithstanding any other provision of this chapter, whenever any real or personal property, or any interest therein or encumbrance thereon, was acquired prior to 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, unless a different intention is expressed in the instrument, the presumption is that the property is the community property of the husband and wife.

Comment. Section 804 continues a portion of former Civil Code Section 5110 without substantive change.

CHAPTER 5. TRANSMUTATION OF PROPERTY

§ 850. Transmutation of property by agreement or transfer

§ 851. Fraudulent transfers laws apply

§ 852. Form of transmutation

§ 853. Effect of will

§ 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 is the same as former Civil Code Section 5110.710. Section 850 codifies 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 to 853, inclusive, 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 [5103]. The characterization of community and separate property may be affected by a general marital property agreement, antenuptial or otherwise, as well as by a transmutation of specific property. For background on former Civil Code Section 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 is the same as former Civil Code Section 5110.720. Section 851 codified prior existing 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). For background on former Civil Code Section 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 such a transmutation shall continue to apply.

Comment. Section 852 is the same as former Civil Code Section 5110.730. 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 Civil Code §§ 1091 and 1624 (statute of frauds), 1213-1217 (effect of recording). This overruled existing case law. See, e.g., *Woods v. Security First Nat'l Bank*, 46 Cal. 2d 697, 701, 299 P.2d 657, 659 (1956). Section 852 also overruled prior existing law that permitted oral transmutation of personal property; however, transmutation by gift of certain personal property is recognized. For background on former Civil Code Section 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. Effect of will

853. 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.

Comment. Section 853 is the same as former Civil Code Section 5110.740.

Section 853 reversed the former 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 Civil Code Section 5110.740, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984).

PART 3. LIABILITY OF MARITAL PROPERTY

- Chapter 1. Definitions
- Chapter 2. General rules of liability
- Chapter 3. Reimbursement
- Chapter 4. Transitional provisions
- Chapter 5. Liability for death or injury

CHAPTER 1. DEFINITIONS

- § 900. Application of definitions
- § 901. Community property
- § 902. Debt
- § 903. Time debt incurred

§ 900. Application of definitions

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

Comment. Section 900 is the same as former Civil Code Section 5120.010. Section 900 limits the application of the definitions, which have specialized uses. See, e.g., Section 901 and Comment thereto ("community property" defined). For background on former Civil Code Section 5120.010, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

§ 901. Community property

901. "Community property" includes:

(a) Real property situated in another state that would be community property if situated in this state.

(b) Quasi-community property.

Comment. Section 901 is the same as former Civil Code Section 5120.020. See also Sections 700 (real property includes leasehold interests in real property), 912 (liability of quasi-community property).

Subdivision (a) of Section 901 treats real property situated in another jurisdiction as community property for the purpose of liability for debts. Such property is already treated as community property for purposes of division at dissolution of marriage or legal separation. 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). This provision does not expand the jurisdiction of a California court to control real property located in another state beyond the constitutional limits on its jurisdiction. Although a California court may not affect title to such property, it may effectuate rights in the property by appropriate orders to parties subject to the personal jurisdiction of the court, such as orders for reimbursement or conveyance.

Subdivision (b) is intended to help implement the policy of Section [5120.120] (liability of quasi-community property) that quasi-community property is treated as community rather than separate for purposes of this chapter.

For background on former Civil Code Section 5120.020, 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 is the same as former Civil Code Section 5120.030. For background on former Civil Code Section 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 is the same as former Civil Code Section 5120.040.

CHAPTER 2. GENERAL RULES OF LIABILITY

§ 910. Community property liable for debt of either spouse

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

§ 912. Liability of quasi-community property

§ 913. Liability of separate property

§ 914. Liability for necessities

§ 915. Liability for support obligation

§ 916. Liability after property division

§ 910. Community property liable for debt of either spouse

910. (a) Except as otherwise expressly provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) For purposes of this section, "during marriage" does not include the period during which the spouses are living separate and apart prior to a judgment for dissolution of marriage or a judgment for legal separation.

Comment. Section 910 is the same as subdivision (a) and (c) of former Civil Code Section 5120.110. Section 910 makes clear that the community property 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 community property. However, special procedural provisions may apply. See, e.g., Code Civ. Proc. § 706.109 (wage garnishment). For rules governing liability after division of the

community property, see Section [5120.160]. See also Code of Civil Procedure Section 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 property 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 [5125(d)] (spouse operating or managing business) or Financial Code Section 851 (one spouse bank account) or 3051 (conservatorship) remains liable for the debts of the other spouse. For an express statutory exception from liability of community property, see Section 911 (premarital debts). 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 Section 703.070 of the Code of Civil Procedure 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 which are not liable for child support under Sections 910 and 911. Although Section 703.070 of the Code of Civil Procedure requires the court to take into account property which 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 Civil Code Section 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 community property, 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 subdivision (b) of former Civil Code Section 5120.110 without substantive change. See also the Comment to Section 910.

The second sentence of subdivision (a) of Section 911 codifies 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 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 community property (such as the earnings of the other spouse or other community property income), 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.

§ 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 is the same as former Civil Code Section 5120.120. For background on former Civil Code Section 5120.110, 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 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 is the same as former Civil Code Section 5120.130. For an exception to the rule of subdivision (b), see Section 914 (liability for necessities). For background on former Civil Code Section 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 the provisions of 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 [Civil Code Section 5131], 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 community property 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 is the same as former Civil Code Section 5120.140. 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 necessities 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 [5132] (support obligation while spouses live together) but does not require exhaustion of community property before separate property of a nondebtor spouse can be reached. But see subdivision (b) (reimbursement).

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 [5131], 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 decreeing the 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).

Subdivision (a)(2) also abolishes the "station in life" test of cases such as *Wisnom v. McCarthy*, 48 Cal. App. 697, 192 P. 337 (1920) (maid necessary because of economic and social position of spouses), in determining what is a necessary of life; 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 necessary required to sustain life).

For general provisions governing reimbursement, see Section 920. For background on former Civil Code Section 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 whether a court order for support is made or modified before or during marriage and regardless whether any installment payment on the obligation accrues before or during marriage.

(b) If community property 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 is entitled to reimbursement from the person in the amount of the separate income, not exceeding the community property 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 is the same as former Civil Code Section 5120.150.

Subdivision (a) of Section 915 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 property of the marriage is liable for the support obligation, other than the earnings of the non-obligor spouse. See Section 911 (liability of community property). Subdivision (a) also applies to an extramarital support obligation of a spouse that arises during the marriage.

Subdivision (b) codifies 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 prescribes 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, 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. This codifies 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 Civil Code Section 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 9 (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 is the same as former Civil Code Section 5120.160, except that the reference in the former section to former Civil Code Section 4800 has been replaced in Section 916 by a reference to Division 9 (commencing with Section 2500). In addition to the provisions that were included in former Section 4800, Division 9 also includes provisions that were not included in former Section 4800.

Section 916 prescribes rules of liability of former community and quasi-community 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. Former law on this point was not clear. The debtor in such a case will have a right of reimbursement against the former spouse pursuant to subdivision (b).

Paragraph (2) and (3) of subdivision (a) 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 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. Former law on this point was not clear. 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 Civil Code Section 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. General provisions

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

(a) The right arises regardless which spouse applies the property to the satisfaction of the debt, regardless whether the property is applied to the satisfaction of the debt voluntarily or involuntarily, and regardless 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 9 (commencing with Section 2500) or in proceedings upon the death of a spouse.

Comment. Section 920 is the same as former Civil Code Section 5120.210, except that the reference in the former section to former Civil Code Section 4800 has been replaced in Section 920 by a reference to Division 9 (commencing with Section 2500). In addition to the provisions that were included in former Section 4800, Division 9 also includes provisions that were not included in former Section 4800.

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 Civil Code Section 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

§ 931. Reimbursement rights

§ 930. Enforcement of debts

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

Comment. Section 930 continues former Civil Code Section 5120.320 without substantive change and former Civil Code Section 5120.310 insofar as that section applied to former Section 5120.320. 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 Civil Code Sections 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 whether satisfied before, on, or after January 1, 1985.

Comment. Section 931 continues subdivision (a) of former Civil Code Section 5120.330 without substantive change and former Civil Code Section 5120.310 insofar as that section applied to former Section 5120.330(a). Section 931 makes clear that reimbursement rights provided in this part apply to debts satisfied before as well as after the operative date of former Section 5120.330.

Subdivision (b) of former Section 5120.330 is omitted as obsolete. For background on former Civil Code Section 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. 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 he or she 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 property 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 property.

(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 community property or 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 is the same as former Civil Code Section 5122. Subdivision (c) of Section 1000 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). For background on former Civil Code Section 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. MANAGEMENT AND CONTROL OF MARITAL PROPERTY

Chapter 1. Definitions and general provisions

Chapter 2. Community personal property

Chapter 3. Community real property

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

Article 2. General Provisions

Article 1. Definitions

§1100. Definitions

§ 1100. Definitions

1100. Unless the provision or context otherwise requires, as used in this part:

(a) "Disposition" includes, but is not limited to, a transfer, conveyance, sale, gift, encumbrance, or lease.

(b) "Management and control" includes disposition.

(c) "Property means real and personal property and any interest therein.

Comment. Section 1100 is new. Subdivision (a) makes clear that the term "disposition" is used in a broad sense and is not limited to a sale of the property. Subdivision (b) is included for drafting convenience. Subdivision (c) reflects the fact that real and personal property are

treated the same in this part except in special cases. A reference to community property means any interest in the property, including the interest of either spouse in the property.

Article 2. General Provisions

§1110. Duty of good faith

§1111. Claims for breach of duty

§1112. Court ordered accounting and determination of rights in property

§1113. Addition of name of spouse to community property

§1114. Limitation of action

§1115. Dispensing with the requirement that other spouse consent

§1116. Independent action authorized

§1117. Where married person has conservator or lacks capacity

§1118. Agency

§ 1110. Duty of good faith

1110. (a) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property in accordance with the general rules which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the property has been divided by the parties or by a court. This duty includes the obligation to make full disclosure, upon request, to the other spouse of the existence of assets in which the community has an interest and debts for which the community may be liable.

(b) The case law defining the standard of care applicable to Section 721, but not the case law applicable to former Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code (as repealed by Chapter 820 of the Statutes of 1986) or Division 9 (commencing with Section 15000) of the Probate Code, applies to this section. In no case shall this standard be interpreted to be less than that of good faith in confidential relations nor as high as that established by former Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code (as repealed by Chapter 820 of the Statutes of 1986) or Division 9 (commencing with Section 15000) of the Probate Code.

Comment. Section 1110 is the same as subdivision (e) of former Civil Code Section 5125. For background on former Civil Code Section 5125, see *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).

Note: Subdivision (b) of Section 1110 leaves a great deal to be desired as a clear statement of the duty to act in good faith. Can a better statement be developed? See also the Note to Section 721.

§ 1111. Claims for breach of duty

1111. A spouse has a claim against the other spouse for a breach of the duty imposed by this part that results in substantial impairment to the claimant spouse's present undivided one-half interest in the community estate.

Comment. Section 1111 is the same in substance as subdivision (a) of former Civil Code Section 5125.1.

Note: Does the word "present" add anything to Section 1111? Should the word be omitted or should more precise language be substituted for it?

§ 1112. Court ordered accounting and determination of rights in property

1112. 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.

Comment. Section 1112 is the same as subdivision (b) of former Civil Code Section 5125.1.

§ 1113. Addition of name of spouse to community property

1113. 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:

- (a) A partnership interest held by the other spouse as a general partner.
- (b) An interest in a professional corporation or professional association.
- (c) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.
- (d) Any other property, if the revision would adversely affect the rights of a third person.

Comment. Section 1113 is the same as subdivision (c) of former Civil Code Section 5125.1.

§ 1114. Limitation of action

1114. (a) Except as provided in subdivision (b), an action under Section 1111 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.

(b) An action may be commenced under this article upon the death of a spouse or in conjunction with a proceeding for dissolution of the marriage or legal separation or for a judgment of nullity of the marriage, without regard to the time limitations set forth in subdivision (a).

(c) The defense of laches may be raised in any action brought under this article.

(d) Except as to actions authorized by subdivision (b), remedies under Section 1111 apply only to transactions or events occurring on or after July 1, 1987.

Comment. Section 1114 is the same as subdivision (d) of former Civil Code Section 5125.1.

§ 1115. Dispensing with the requirement that other spouse consent

1115. 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:

(a) The proposed transaction is in the best interest of the community.

(b) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.

Comment. Section 1115 is the same as subdivision (e) of former Civil Code Section 5125.1.

Note: Section 1115 is inconsistent with Section 1117. Is Section 1115 an exception to Section 1117? If so, should this exception (Section 1115) be retained or should it be repealed? In what proceeding is the motion provided for in Section 1115 to be made?

§ 1116. Independent action authorized

1116. An action may be brought under this article without filing a proceeding for dissolution of the marriage or legal separation or for a judgment of nullity of the marriage, or may be brought in conjunction with such a proceeding, or upon the death of a spouse.

Comment. Section 1116 continues subdivision (f) of former Civil Code Section 5125.1 without substantive change.

§ 1117. Where married person has conservator or lacks capacity

1117. 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.

Comment. Section 1117 is the same as subdivision (a) of former Civil Code Section 5128. Subdivisions (b) and (c) of former Section 5128 were elaborations of subdivision (a) and are not continued because they are unnecessary. See Section 1100 ("management and control" includes disposition).

Section 1117 makes provisions of the Probate Code applicable:

(1) Where one or both spouses has a conservator of the estate or lacks 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 has a conservator of the estate or lacks legal capacity for a transaction requiring joinder or consent under Section 1151, 1152, or 1201. See, e.g., Prob. Code § 3071. See also Prob. Code § 3012 (legal capacity).

For background on former Civil Code Section 5128, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

§ 1118. Agency

1118. A spouse may act by duly authorized agent in the management and control of community property, and may appoint the other spouse to act as agent.

Comment. Section 1118 generalizes a provision of former Section 5127 (real property joinder requirement may be satisfied by duly authorized agent). Language is added to make clear that one spouse may appoint the other spouse to act as an agent. See also Civil Code Sections 2400-2513 (powers of attorney).

CHAPTER 2. COMMUNITY PERSONAL PROPERTY

§1150. Management and control

§1151. Gifts of community personal property

§1152. Disposition or encumbrance of family dwelling or household goods

§1153. Community property business

§ 1150. Management and control

1150. Except as otherwise provided by statute, either spouse has the management and control of the community personal property.

Comment. Section 1150 is the same in substance as subdivision (a) of former Civil Code Section 5125. The introductory clause ("Except as otherwise provided by statute") has been substituted for the listing of specific statutory provisions found in former Section 5125. Section 1150 omits the language found in former Section 5125 "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." The omitted language is either obsolete or unnecessary. See Section 1100 (defining "management and control" to include disposition).

For exceptions to the rule stated in Section 1150, see Sections 761 (property in certain revocable trusts), 1151 (gifts of community personal property without a valuable consideration), 1152 (disposition or encumbrance of family dwelling or household goods), 1153 (community property business), and 1117 (one or both spouses lacking capacity or having conservator). See also Section 700 (personal property does not include a leasehold interest in real property). See also Prob. Code §§ 5100-5407 (multiple-party account held by financial institution).

For background on former Civil Code Section 5125, see *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).

Note: Should "Except as otherwise provided by statute," be substituted in Section 1150 for an introductory clause which attempts to list all exceptions and qualifications of the rule stated in Section 1150? Existing Section 5125(a) purports to list all the exceptions to the rule stated in what is now Section 1150.

Should the provisions of existing Section 5125(a) that are omitted from Section 1150 as obsolete or unnecessary be continued in Section 1150?

§ 1151. Gifts of community personal property

1151. A spouse may not make a gift of community personal property, or dispose of community personal property without a valuable consideration, without the written consent of the other spouse.

Comment. Section 1151 is the same as subdivision (b) of former Civil Code Section 5125. See also Section 700 (personal property does not include a leasehold interest in real property). For background on former Civil Code Section 5125, see *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).

Note: Should there be a provision permitting a married person to make a unilateral gift of community personal property if usual or moderate under the circumstances of the marriage? See also the Note to Section 1153.

§ 1152. Disposition or encumbrance of family dwelling or household goods

1152. 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.

Comment. Section 1152 is the same as subdivision (c) of former Civil Code Section 5125. See also Section 700 (personal property does not include a leasehold interest in real property). For background on former Civil Code Section 5125, see *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).

Note: Should a spouse be permitted to sell household goods and effects without the written consent of the person's spouse?

§ 1153. Community property business

1153. (a) Except as provided in Sections 1151 and 1152 and in Chapter 3 (commencing with Section 1200), 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. A change of the form of a business is not subject to the requirement of written notice.

(b) Remedies for the failure by a managing spouse to give prior written notice as required by this section are only as specified in Article 2 (commencing with Section

1110) of Chapter 1. A failure to give prior written notice shall not adversely affect the validity of a transaction nor of any interest transferred.

Comment. Section 1153 continues subdivision (d) of former Civil Code Section 5125 without substantive change. See also Section 700 (personal property does not include a leasehold interest in real property). For background on former Civil Code Section 5125, see *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).

Note: Does the exception for Section 1151 in the introductory clause of Section 1153 mean that the operator of a community property business may not (without the WRITTEN consent of the other spouse) make a small contribution or gift to the girl scouts, little league, or similar organization as a means of promoting the good will of the business?

CHAPTER 3. COMMUNITY REAL PROPERTY

§1200. Management and control

§1201. Requirement that spouse join in lease, transfer, or encumbrance

§1202. Limitation of actions

§ 1200. Management and control

1200. Except as otherwise provided by statute, either spouse has the management and control of the community real property.

Comment. Section 1200 is the same in substance as the introductory portion of the first sentence of former Civil Code Section 5127. The introductory clause ("Except as otherwise provided by statute") has been substituted for the listing of specific statutory provisions found in former Section 5127. Section 1200 omits the language found in former Section 5127 "whether acquired prior to or on or after January 1, 1975." The omitted language is obsolete and unnecessary.

For exceptions to the rule stated in Section 1200, see Sections 761 (property in certain revocable trusts) and 1117 (one or both spouses lacking capacity or having conservator). See also Section 700 (real property includes leasehold interests in real property).

Note: Should the provision "Except as otherwise provided by statute," be substituted in Section 1200 for an introductory clause which attempts to list all exceptions and qualifications of the rule stated in Section 1200? Existing Section 5127 (introductory portion) purports to list all the exceptions to the rule stated in what is now Section 1200.

Do we need to retain the phrase "whether acquired prior to or on or after January 1, 1975" at the end of Section 1200 or is this phrase obsolete and unnecessary?

§ 1201. Requirement that spouse join in lease, transfer, or encumbrance

1201. (a) Except as otherwise provided in this section, both spouses must join in executing any instrument by which community real property or an interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.

(b) This section does not apply to a lease, mortgage, conveyance, or transfer of real property, or of an interest in real property, between husband and wife.

(c) 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, is presumed to be valid if executed prior to January 1, 1975.

(d) 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, is presumed to be valid if executed on or after January 1, 1975.

Comment. Section 1201 continues the last portion of the first sentence of former Civil Code Section 5127 without substantive change. The clause "either personally or by duly authorized agent," which was included in former Section 5127 has been omitted as unnecessary in view of the general provision of Section 1118 which permits a spouse to act by duly authorized agent in the management and control of community property.

§ 1202. Limitation of actions

1202. No action to avoid an instrument mentioned in this chapter, affecting 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 the instrument in the recorder's office in the county in which the land is situate.

Comment. Section 1202 continues a portion of the second sentence of former Civil Code Section 5127 without substantive change. The portion of the second sentence relating to an instrument executed by the husband alone is omitted as obsolete.

PART 8. MARITAL AGREEMENTS

Chapter 1. General provisions

Chapter 2. Uniform premarital agreement act

Chapter 3. Agreements between husband and wife

CHAPTER 1. GENERAL PROVISIONS

§1500. Effect of premarital and other marital property agreements

§1501. Agreements by minors

§1502. Recording of agreements

§1503. Law applicable to premarital agreements made before January 1, 1986

§ 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 is the same as former Civil Code Section 5200. See also Sections 1600-1617 (premarital agreements), Probate Code Sections 140-147 (surviving spouse's waiver of rights).

Note: Does the "other marital property agreement" have to be in writing? Does it have to be signed by both parties? Any other requirements, such as independent

counsel? How does Section 1500 relate to “transmutations” and the statutory requirements for transmutations? It would be desirable to draft a statute covering marital property agreements made DURING the marriage. In this connection, see Probate Code Sections 140-147. See also Probate Code Section 150. See also Section 721 and the Comment to that section.

§ 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 is the same as former Civil Code Section 5201.

§ 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 is the same as former Civil Code Section 5202. 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 part 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 prior to January 1, 1986.

Comment. Section 1503 is the same as former Civil Code Section 5203 except that “this part” is substituted for “this chapter.”

CHAPTER 2. UNIFORM PREMARITAL AGREEMENT ACT

Article 1. Preliminary provisions

Article 2. Premarital agreements

Article 1. Preliminary Provisions

§1600. Short title

§1601. Application of chapter

§ 1600. Short title

1600. This chapter shall be known and may be cited as the Uniform Premarital Agreement Act.

Comment. Section 1600 is the same as former Civil Code Section 5300. 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 is the same as former Civil Code Section 5302. 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

§1611. Formalities; consideration

§1612. Subject matter of premarital agreement

§1613. Agreement becomes effective upon marriage

§1614. Amendment; revocation

§1615. Enforcement

§1616. Effect of void marriage

§1617. Limitation of actions

§ 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 is the same as former Civil Code Section 5310. 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 is the same as former Civil Code Section 5311. 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 is the same as former Civil Code Section 5312. Section 1612 is the same in substance as Section 3 of the Uniform Premarital Agreement Act (1983) except that Section 1612 omits a provision of the uniform act which specifically provides 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 is the same as former Civil Code Section 5313. 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 is the same as former Civil Code Section 5314. 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) He or she was not provided a fair and reasonable disclosure of the property or financial obligations of the other party.

(B) He or she 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) He or she 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 is the same as former Civil Code Section 5315. Section 1615 is the same in substance as subsections (a) and (c) of Section 6 of the Uniform Premarital Agreement Act (1983). 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 is the same as former Civil Code Section 5316. 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 is the same as former Civil Code Section 5317. 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

§1621. Separation agreement; provisions for spousal and child support

§ 1620. Restrictions on contract altering spouses' legal relations

1620. Except as provided in Sections 1621 [Civil Code Section 4811, or subdivision (b) of Civil Code Section 4801], 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 portion of former Civil Code Section 4802 without change.

Note: Section 2620 is a completely inadequate statement of the extent to which a husband and wife may make an agreement during marriage affecting their property. A much more detailed statute in the Probate Code governs agreements affecting rights upon the death of one of the spouses.

§ 1621. Separation agreement; provisions for spousal and child support

1621. Subject to [Section 4811], 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 a sufficient consideration for the agreement.

Comment. Section 1621 continues the last portion of former Civil Code Section 4802 without substantive change.

Division 4. Husband and Wife

DIVISION 5. PARENT AND CHILD RELATIONSHIP

Part 1. Uniform Parentage Act

Part 2. Issue of wife cohabiting with her husband

Part 3. Blood tests to determine paternity

PART 1. UNIFORM PARENTAGE ACT

Chapter 1. General provisions

Chapter 2. Establishing parent and child relationship

Chapter 3. Jurisdiction and venue

Chapter 4. Determination of parent and child relationship

Chapter 5. Termination of parental rights in adoption proceeding

Chapter 6. Protective and temporary custody orders

CHAPTER 1. GENERAL PROVISIONS

§1700. Short title

§1701. "Parent and child relationship" defined

§1702. Relationship not dependent on marriage

§1703. Submission of child's birth certificate to court; check to determine if child is missing person

§1704. Pendente lite relief of custody or grant of visitation rights

§ 1700. Short title

1700. This part shall be known and may be cited as the "Uniform Parentage Act."

Comment. Section 1700 is the same as former Civil Code Section 7000. Section 1700 is similar to Section 27 of the Uniform Parentage Act (1973). See also Sections 3 (construction of provisions drawn from uniform acts) and 14 (severability of provisions).

§ 1701. "Parent and child relationship" defined

1701. As used in this part, "parent and child relationship" means the legal relationship existing between a child and his or her natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Comment. Section 1701 is the same as former Civil Code Section 7001. Section 1701 is the same in substance as Section 1 of the Uniform Parentage Act (1973). Compare Code Civ. Proc. § 377 (right to maintain wrongful death action).

§ 1702. Relationship not dependent on marriage

1702. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Comment. Section 1702 is the same as former Civil Code Section 7002. Section 1702 is the same as Section 2 of the Uniform Parentage Act (1973).

§ 1703. Submission of child's birth certificate to court; check to determine if child is missing person

1703. Section 3140 is applicable to proceedings pursuant to this part.

Comment. Section 1703 continues former Civil Code Section 7017.6 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

§ 1704. Pendente lite relief of custody or grant of visitation rights

1704. A court may order pendente lite relief consisting of an award of custody pursuant to Section 3021, or the granting of reasonable visitation rights pursuant to Section 3100, if the court finds both of the following:

(a) Based on the tests authorized by Section 1851, a parent-child relationship exists pursuant to Section 1850.

(b) The award of custody or the granting of visitation rights would be in the best interests of the child.

Comment. Section 1704 continues former Civil Code Section 7004.5 without substantive change. The reference found in former Section 7004.5 to former Civil Code Section 4600 has been replaced in Section 1704 by a reference to the portion of former Section 4600 that authorized the court to make a custody order during the pendency of a proceeding where there is at issue the custody of a minor child. No provision comparable to Section 1704 is found in the Uniform Parentage Act (1973).

Note: What relationship does Section 1885 (rebuttable presumption of paternity based on paternity index) have to the standard set out in Section 1704 which refers to Section 1850 (conclusive presumption of paternity).

CHAPTER 2. ESTABLISHING PARENT AND CHILD RELATIONSHIP

§1710. Methods of establishing

§1711. Presumption of paternity

§1712. Nature of paternity presumptions

§1713. Artificial insemination

§1714. Promise to furnish support

§ 1710. Methods of establishing

1710. 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 1710 is the same as former Civil Code Section 7003. Section 1710 is the same in substance as Section 3 of the Uniform Parentage Act (1973), except that Section 1710 omits the Uniform Act reference to the Revised Uniform Adoption Act.

§ 1711. Presumption of paternity

1711. A man is presumed to be the natural father of a child if he meets the conditions as set forth in Part 2 (commencing with Section 1850) 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 decree 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:

(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; or

(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:

(1) With his consent, he is named as the child's father on the child's birth certificate, or

(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 1711 continues subdivision (a) of former Civil Code Section 7004 without substantive change. Section 1711 is the same in substance as subsection (a) of Section 4 of the Uniform Parentage Act (1973) with some additions and omissions. As to the nature of the presumption created, see Section 1712.

§ 1712. Nature of paternity presumptions

1712. (a) Except as provided in Part 2 (commencing with Section 1850), a presumption under Section 1711 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 1711 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 1711 is rebutted by a judgment establishing paternity of the child by another man.

Comment. Section 1712 continues subdivision (b) of former Civil Code Section 7004 without substantive change. "Judgment" has been substituted for "decree" in subdivision (c). Section 1712 is similar to subsection (b) of Section 4 of the Uniform Parentage Act (1973).

§ 1713. Artificial insemination

1713. (a) If, under the supervision of a licensed physician 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 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'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 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 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 1713 is the same as former Civil Code Section 7005. Section 1713 is similar to Section 5 of the Uniform Parentage Act (1973).

§ 1714. Promise to furnish support

1714. (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 1732, 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 1714 continues without change former Civil Code Section 7016, but the former reference to subdivision (d) of former Section 7006 (which should have been a reference to subdivision (e) of former Section 7006) has been corrected to refer to what is now Section 1732. Section 1714 is the same in substance as Section 22 of the Uniform Parentage Act (1973).

CHAPTER 3. JURISDICTION AND VENUE

§1720. Jurisdiction; venue

§ 1720. Jurisdiction; venue

1720. (a) The superior court has jurisdiction of an action brought under this part.

(b) 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.

(c) The action 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 1720 is the same as subdivisions (a), (b), and (c) of former Civil Code Section 7007. Section 1720 is the same in substance as portions of Section 8 of the Uniform Parentage Act (1973). See also Code Civ. Proc. § 395 (venue in proceeding under this division to determine parental relation).

Note: Section 395 of the Code of Civil Procedure provides in part:

In a proceeding to determine parental relation under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code . . . , the county in which the child resides is the proper county for the trial of the action."

Should this language be deleted from Section 395 because it is inconsistent with subdivision (c) of Section 1720?

CHAPTER 4. DETERMINATION OF PARENT AND CHILD RELATIONSHIP

Article 1. Determination of father and child relationship

Article 2. Determination of mother and child relationship

Article 1. Determination of Father and Child Relationship

- §1730. Persons who may bring action; when action may be brought
- §1731. Action by man not a presumed father to establish that he is natural father of child
- §1732. Agreement between alleged father or mother or child does not bar action
- §1733. Action before birth of child
- §1734. Action by district attorney
- §1735. Parties
- §1736. Effect of judgment determining existence or nonexistence of parent and child relationship
- §1737. Other provisions of judgment
- §1737.5. Factors court to consider in determining amount and period of support
- §1738. Change of name of child
- §1739. Issuance of new birth certificate
- §1740. Award of attorney fees and other costs
- §1741. Enforcement of judgment
- §1742. Modification of judgment
- §1743. Confidentiality of hearings and records

§ 1730. Persons who may bring action; when action may be brought

1730. (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 1711, 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 1711.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 1711 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 1711.

(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 1711 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 1762 if a proceeding has been filed under Chapter 5 (commencing with Section 1760). The parental rights of the alleged natural father shall be determined as set forth in Section 1764.

Comment. Section 1730 continues subdivisions (a), (b), and (c) of former Civil Code Section 7006 without substantive change. Section 1730 is similar to subsections (a), (b), and (c) of Section 6 of the Uniform Parentage Act (1973).

§ 1731. Action by man not a presumed father to establish that he is natural father of child

1731. Except as to cases coming within the provisions of Part 2 (commencing with Section 1850), 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 1711, 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 1766 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 1731 is the same as subdivision (d) of former Civil Code Section 7006. No comparable provision is found in the Uniform Parentage Act (1973).

§ 1732. Agreement between alleged father or mother or child does not bar action

1732. 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 1732 is the same as subdivision (e) of former Civil Code Section 7006. Section 1732 is similar to subsection (d) of Section 6 of the Uniform Parentage Act (1973).

§ 1733. Action before birth of child

1733. An action under this chapter may be brought before the birth of the child.

Comment. Section 1733 is the same as subdivision (f) of former Civil Code Section 7006. Section 1733 is a substitute for subsection (e) of Section 6 of the Uniform Parentage Act (1973).

§ 1734. Action by district attorney

1734. The district attorney may, at his or her discretion, bring an action under this chapter in any case in which the district attorney believes it to be appropriate.

Comment. Section 1734 is the same as subdivision (g) of former Civil Code Section 7006. No comparable provision is found in the Uniform Parentage Act (1973).

§ 1735. Parties

1735. (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 1711, 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 1766 and an opportunity to be heard.

(c) The court may align the parties.

Comment. Section 1735 is the same as former Civil Code Section 7008. Section 1735 is similar to Section 9 of the Uniform Parentage Act (1973).

§ 1736. Effect of judgment determining existence or nonexistence of parent and child relationship

1736. 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 1736 is the same as subdivision (a) of former Civil Code Section 7010 (added by 1990 Cal. Stat. ch. 1493 § 30, which becomes operative January 1, 1993). Section 1736 is similar to subsection (a) of Section 15 of the Uniform Parentage Act (1973).

§ 1737. Other provisions of judgment

1737. (a) 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.

(b) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts.

Comment. Section 1737 is the same as subdivisions (c) and (d) of former Civil Code Section 7010 (added by 1990 Cal. Stat. ch. 1493 § 30, which becomes operative on January 1, 1993). Subdivision (a) of Section 1737 is the same as subsection (c) of Section 15 of the Uniform Parentage Act (1973).

Note: Section 7010 of the Civil Code (as set out below) is superseded as of January 1, 1993, by another Section 7010 (added to the Civil Code by 1990 Cal. Stat. ch. 1493

§ 30) which is set out as Section 1737 above. Section 7010 (as set out below) was amended by 1990 Cal. Stat. ch. 1493 § 29 to add the following provision:

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

If the subdivision (e) set out above is revised to delete the expiration date or to extend the repeal date, then Section 1737 (as set out above) should read as follows (with any further revisions made in the act that repeals the expiration date or extends the repeal date):

1737. (a) 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.

(b) The judgment or order may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the action:

(1) Three years.

(2) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to subdivision (c).

(3) The date of separation of the parties until the date of the filing of the action.

(c) In circumstances where paternity has not been legally established or the parties were married but separated before the child's date of birth, the court shall not award child support under subdivision (b), under any circumstances, unless the father has received a copy of the birth certificate as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to subdivision (b) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support laws in effect for each period.

(d) Subdivisions (b) and (c) apply only apply to a child born on or after January 1, 1989.

If the subdivision (e) set out above is revised to delete the expiration date or to extend the repeal date, then subdivision (b) of Section 1737 should be omitted and replaced by a new Section 1737.5 to read as follows (with any further revisions made in the act that repeals the expiration date or extends the repeal date):

§ 1737.5. Factors court to consider in determining amount and period of support

1737.5. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including, but not limited to, all of the following:

(1) Any agreements made between the parents before the date of the filing of the action.

(2) Any previous payments made for the support of the child by the parent from whom support is sought.

(3) Any bad faith on the part of either parent.

(4) Any undue delay in seeking to establish an order for child support, the reasons for the undue delay, and whether either parent has been prejudiced as a result of the delay.

(5) Any other factors deemed relevant by the court.

Comment. Section 1737.5 is the same as subdivision (d) of former Civil Code Section 7010 without substantive change. Section 1737.5 is similar to subdivision (e) of Section 15 of the Uniform Parentage Act (1973).

§ 1738. Change of name of child

1738. The superior court has jurisdiction 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 1736, upon application in accordance with Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure. The procedure for a change of name 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 1738 is the same as subdivision (d) of former Civil Code Section 7007. No comparable provision is found in the Uniform Parentage Act (1973). See also Section 1739 (issuance of new birth certificate).

§ 1739. Issuance of new birth certificate

1739. 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 1739 is the same as subdivision (b) of former Civil Code Section 7010 (added by 1990 Cal. Stat. ch. 1493 § 30, which becomes operative on January 1, 1993). Section 1739 is similar to subsection (b) of Section 15 of the Uniform Parentage Act (1973). See also Section 1738 (jurisdiction and proceedings to change name of child).

§ 1740. Award of attorney fees and other costs

1740. 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 1740 is the same as former Civil Code Section 7011. Section 1740 is the same as the first sentence of Section 16 of the Uniform Parentage Act (1973).

§ 1741. Enforcement of judgment

1741. (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 1741 continues former Civil Code Section 7012 without substantive change. Section 1741 is the same in substance as Section 17 of the Uniform Parentage Act (1973).

§ 1742. Modification of judgment

1742. 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 a decree of adoption may be modified under [Section 228.10 or 228.15 of the Civil Code].

Comment. Section 1742 is the same as former Civil Code Section 7013 (as amended by 1990 Cal. Stat. ch. 1363 § 8, which becomes operative on July 1, 1991). Section 1742 is similar to Section 18 of the Uniform Parentage Act (1973).

§ 1743. Confidentiality of hearings and records

1743. (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 1743 is the same as former Civil Code Section 7014. Section 1743 is similar to Section 20 of the Uniform Parentage Act (1973).

Article 2. Determination of Mother and Child Relationship

§1750. Action to determine mother and child relationship

§ 1750. Action to determine mother and child relationship

1750. Any interested party 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 1750 is the same as former Civil Code Section 7015. Section 1750 is the same as Section 21 of the Uniform Parentage Act (1973).

Note: Should "person" be substituted for "party" in Section 1750?

CHAPTER 5. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDING

§1760. Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is a legitimate child

§1761. Relinquishment or consent by father; notice to and rights of mother

§1762. Proceeding to terminate parental rights of father

§1763. Effort to identify natural father

§1764. Notice to man identified as possible natural father; determination and order concerning his parental rights

§1765. Order terminating parental rights of unknown natural father

§1766. Manner of giving notice; order dispensing with notice

§1767. Setting for hearing; preference for trial

§1768. Continuance of hearing

§1769. Appeal from order requiring or dispensing with father's consent

§1770. No filing fee

§ 1760. Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is a legitimate child

1760. If a mother relinquishes for, consents to, or proposes to relinquish for or consent to the adoption of a child who has (1) a presumed father under Section 1711

or (2) a father as to whom the child is a legitimate child under prior 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 [Chapter 2 (commencing with Section 220.10) of Title 2 of Part 3 of Division 1 of the Civil Code], 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 or consented to the adoption of the child.

Comment. Section 1760 is the same as subdivision (a)(1) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991) without substantive change. Section 1760 is similar to Section 24 of the Uniform Parentage Act (1973).

Note: Should "the law" be substituted for "prior law" in clause (2) of the introductory portion of Section 1760?

§ 1761. Relinquishment or consent by father; notice to and rights of mother

1761. If a father relinquishes or consents to, or proposes to relinquish a child for adoption, the mother shall be given notice of the adoption proceeding and have the rights provided under [Chapter 2 (commencing with Section 220.10) of Title 2 of Part 3 of Division 1 of the Civil Code], unless the mother's relationship to the child has been previously terminated by a court or the mother has voluntarily relinquished or consented to the adoption of the child.

Comment. Section 1761 is the same as subdivision (a)(2) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991). No comparable provision is found in the Uniform Parentage Act (1973).

Note: Does Section 1761, which is not found in the Uniform Act, add anything to the requirements of the California Adoption Law? If Section 1761 is retained, should the introductory clause of Section 1761 be revised to read: "If a father relinquishes, consents to, or proposes to relinquish for or consent to the adoption of a child,?" This substitution would conform Section 1761 to the language used in Sections 1760 and 1762.

§ 1762. Proceeding to terminate parental rights of father

1762. If a mother relinquishes for, 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 1711 or (2) a father as to whom the child is a legitimate child under prior 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 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 in the superior court to terminate the parental rights of the father, unless:

(a) The father's relationship to the child has been previously terminated or determined not to exist by a court; or

(b) The father has been served as prescribed in Section 1766 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 1730 within 30 days of service of the notice or the birth of the child, whichever is later.

Comment. Section 1762 is the same as subdivision (b) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991). Section 1762 replaces subsection (a) of Section 25 of the Uniform Parentage Act (1973).

Note: Should "the law" be substituted for "prior law" in clause (2) of the introductory portion of Section 1762?

§ 1763. Effort to identify natural father

1763. (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 1763 continues subdivision (c) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991) without substantive change. Section 1763 is similar to subsection (b) of Section 25 of the Uniform Parentage Act (1973).

§ 1764. Notice to man identified as possible natural father; determination and order concerning his parental rights

1764. (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 1766, 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 1730 to declare the existence of the father and child relationship within 30 days of serving 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.

(c) Section 4600 does not apply to the proceeding under this chapter.

(d) Nothing in this chapter changes the rights of a presumed father under Section 1711.

Comment. Section 1764 is the same as subdivision (d) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991). Section 1764 replaces subsection (c) of Section 25 of the Uniform Parentage Act (1973).

§ 1765. Order terminating parental rights of unknown natural father

1765. 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 1765 is the same as subdivision (e) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991) without substantive change. Section 1765 is the same as the first sentence of subsection (d) of Section 25 of the Uniform Parentage Act (1973).

§ 1766. Manner of giving notice; order dispensing with notice

1766. (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 provisions of 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 are unknown or cannot be ascertained, the court may issue an order dispensing with notice to that person.

Comment. Section 1766 is the same as subdivision (f) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991). Section 1766 is similar to subsection (e) of Section 25 of the Uniform Parentage Act (1973).

§ 1767. Setting for hearing; preference for trial

1767. (a) Notwithstanding any other provision of law, an action to terminate the parental rights of a father of a child as specified in this chapter 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 3 (commencing with Section 3200) of Division 10.

Comment. Section 1767 is the same as subdivision (a) and the first sentence of subdivision (b) of former Civil Code Section 7017.2. No comparable provision is found in the Uniform Parentage Act (1973).

§ 1768. Continuance of hearing

1768. (a) The court may continue the proceedings for not more than 30 days as necessary to appoint counsel and to enable counsel to adequately prepare for the case 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 1768 continues the second sentence of subdivision (b) and subdivision (c) of former Civil Code Section 7017.2 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

§ 1769. Appeal from order requiring or dispensing with father's consent

1769. 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 1769 is the same as subdivision (g) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991). Section 1769 replaces the second sentence of subdivision (d) of Section 25 of the Uniform Parentage Act (1973).

§ 1770. No filing fee

1770. There shall be no filing fee charged for a petition filed pursuant to Section 1762.

Comment. Section 1770 is the same as former Civil Code Section 7017.1. No comparable provision is found in the Uniform Parentage Act (1973).

CHAPTER 6. PROTECTIVE AND TEMPORARY CUSTODY ORDERS

Article 1. Ex parte orders

Article 2. Orders issuable after notice and hearing

Article 3. Required statements in order

Article 4. Registration and enforcement of orders

Article 5. Protective orders included in judgment

Article 1. Ex Parte Orders

§1800. Ex parte protective and temporary custody orders

§1801. Limitation on issuance of mutual restraining order

§1802. Service on defendant where temporary restraining order granted without notice

§ 1800. Ex parte protective and temporary custody orders

1800. During the pendency of a proceeding under this part, upon application in the manner provided by Part 4 (commencing with Section 240) of Division 2, the superior court may issue ex parte orders doing any one or more of the following:

(a) Enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or disturbing the peace of the other party or the minor child.

(b) Excluding one party from the dwelling of the party who has care, custody and control of the child upon a showing of both of the following:

(1) The party to be excluded has assaulted or threatens to assault the other party or the minor child.

(2) Physical or emotional harm would otherwise result to the party or the minor child.

(c) Enjoining a party from specified behavior which the court determines is necessary to effectuate orders under subdivision (a) or (b).

(d) Determining the temporary custody of a minor child who is the subject of a proceeding under this part and the right of a party to visit the minor child upon such conditions as the court may determine.

Comment. Section 1800 continues the first sentence of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) with the addition of "telephoning" in subdivision (a). No comparable provision is found in the Uniform Parentage Act (1973). See also Section 1811 (order after notice and a hearing excluding one party from dwelling upon a showing only that physical or emotional harm would otherwise result to the other party or the minor child).

§ 1801. Limitation on issuance of mutual restraining order

1801. A mutual restraining order specified in subdivision (a) of Section 1800 may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence specified in subdivision (a) of Section 1800.

Comment. Section 1801 is the same as subdivision (f) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

§ 1802. Service on defendant where temporary restraining order granted without notice

1802. If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the 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 the temporary restraining order is granted. The court may on motion of the plaintiff or on its own motion shorten the time for service on the defendant of the order to show cause.

Comment. Section 1802 is the same as the second and third sentences of subdivision (a) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

Article 2. Orders Issuable After Notice and Hearing

§1810. Protective, temporary custody, and restitution orders

§1811. Order excluding party from dwelling upon a showing only that physical or emotional harm would otherwise result

§1812. Duration of restraining order granted after notice and hearing

§ 1810. Protective, temporary custody, and restitution orders

1810. (a) The court may issue, after notice and a hearing, any of the orders set forth in Section 1800.

(b) Upon notice and a hearing, the court may also issue any of the following orders:

(1) An order that restitution be paid to the plaintiff 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 or any actual physical injuries sustained therefrom.

(2) An order that restitution be paid by the plaintiff for out-of-pocket expenses incurred by a party as a result of any order issued ex parte which is found by the court to have been issued upon facts shown at a noticed hearing to be insufficient to support the order.

(3) An order requiring the defendant to pay any public or private agency for the reasonable cost of providing services to the plaintiff required as a direct result of the abuse inflicted by the defendant or any injuries sustained therefrom.

(c) An order for restitution under subdivision (b) shall not include damages for pain and suffering.

Comment. Subdivision (a) of Section 1810 is the same as the first sentence of subdivision (b) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

Subdivisions (b) and (c) are the same as the same as the fourth and fifth sentences of subdivision (b) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

§ 1811. Order excluding party from dwelling upon a showing only that physical or emotional harm would otherwise result

1811. After notice and a hearing, the court may order the exclusion of one party from the common dwelling of both parties or from the dwelling of the party who has care, custody, and control of the minor child upon a showing only that physical or emotional harm would otherwise result to the party or the minor child.

Comment. Section 1811 is the same as the second sentence of subdivision (b) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

§ 1812. Duration of restraining order granted after notice and hearing

1812. A restraining order granted after notice and a hearing pursuant to this article shall remain in effect, in the discretion of the court, not to exceed three years, except as provided in Section 1840, unless otherwise terminated by the court, extended by mutual consent of the parties, or extended by further order of the court on the motion of a party.

Comment. Section 1812 is the same as the third sentence of subdivision (b) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

Article 3. Required Statements in Order

§1820. Statement of date of expiration

§1821. Notice to defendant in temporary restraining order

§ 1820. Statement of date of expiration

1820. An order issued pursuant to this chapter shall state on its face the date of expiration of the order.

Comment. Section 1820 continues subdivision (c) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) without substantive change. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 1902(a).

§ 1821. Notice to defendant in temporary restraining order

1821. The temporary restraining order shall state on its face a notice in substantially the following form:

“NOTICE TO DEFENDANT: 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 1821 continues subdivision (d) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) without substantive change. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 1902(b).

Article 4. Registration and Enforcement of Orders

§1830. Transmittal to local law enforcement agency

§1831. Law enforcement agency to make information concerning order available to law enforcement officers

§1832. Service of restraining order against domestic violence by law enforcement officer

§1833. Criminal penalty for violation of order

§ 1830. Transmittal to local law enforcement agency

1830. The court shall order the party who obtained the order or the attorney for the party to deliver or the clerk to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to this chapter, by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the party or the attorney for the party, having jurisdiction over the residence of the party who has care, custody, and control of the minor child and such other locations where the court determines that acts of domestic violence against the party and the minor child are likely to occur.

Comment. Section 1830 is the same as the first sentence of subdivision (e) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). For comparable provisions, see Sections 1903, 5800.

§ 1831. Law enforcement agency to make information concerning order available to law enforcement officers

1831. 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 pursuant to this chapter.

Comment. Section 1831 is the same as the second sentence of subdivision (e) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). For comparable provisions, see Sections 1904, 5801.

§ 1832. Service of restraining order against domestic violence by law enforcement officer

1832. (a) A restraining order against domestic violence issued pursuant to subdivision (a), (b), or (c) of Section 1800 may, upon the request of the moving party, be served upon the responding party by a law enforcement officer who is present at the scene of reported domestic violence involving the parties to the action.

(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.

Comment. Section 1832 is the same as subdivision (g) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). For comparable provisions, see Sections 1906, 5802.

§ 1833. Criminal penalty for violation of order

1833. A willful and knowing violation of an order granted pursuant to this chapter is a crime punishable under Section 273.6 of the Penal Code.

Comment. Section 1833 is the same as subdivision (h) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). For comparable provisions, see Sections 1907, 5807.

Article 5. Protective Orders Included in Judgment

§1840. Protective orders included in judgment entered under this part

§ 1840. Protective orders included in judgment entered under this part

1840. (a) A judgment entered under this part may include any orders issued pursuant to subdivisions (a), (b), or (c) of Section 1800.

(b) If an order is included in the judgment pursuant to subdivision (a), the judgment shall state on its face both of the following:

(1) Which provisions of the judgment are the orders.

(2) 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 hearing.

(c) The judgments, or orders, or extensions thereof shall be transmitted to law enforcement agencies in the manner provided by Section 1830.

(d) A willful and knowing violation of an order included in the judgment pursuant to subdivision (a) is a crime punishable under Section 273.6 of the Penal Code.

Comment. Section 1840 is the same as former Civil Code Section 7021. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 1910.

PART 2. ISSUE OF WIFE COHABITING WITH HER HUSBAND

§1850. Conclusive presumption concerning child of marriage

§1851. Use of blood tests to determine paternity

§ 1850. Conclusive presumption concerning child of marriage

1850. Except as provided in Section 1851, the issue 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 1850 is the same as subdivision (a) of former Evidence Code Section 621 (as amended by 1990 Cal. Stat. ch. 543 § 2).

Note: Should "child" be substituted for "issue" in Section 1850?

§ 1851. Use of blood tests to determine paternity

1851. (a) Notwithstanding Section 1850, if the court finds that the conclusions of all the experts, as disclosed by the evidence based on blood tests performed pursuant to Part 3 (commencing with Section 1880), 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 1711 and 1712.

(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 the provisions of Section 1713.

(3) A case in which the wife, with the consent of the husband, conceived by means of a surgical procedure.

Comment. Section 1851 restates without substantive change subdivisions (b) to (h), inclusive, of former Evidence Code Section 621 (as amended by 1990 Cal. Stat. ch. 543 § 2). The provision of former Section 621 that made what is now subdivision (d) of Section

1851 not applicable to a case pending before the court on September 30, 1980, has been omitted as obsolete.

PART 3. BLOOD TESTS TO DETERMINE PATERNITY

§1880. Short title

§1881. Order for blood tests in civil actions involving paternity

§1882. Tests made by experts

§1883. Compensation of experts

§1884. Effect of test results

§1885. Rebuttable presumption of paternity; paternity index of 100 or more

§1886. Limitation on application in criminal matters

§1887. Right to produce other expert evidence

§ 1880. Short title

1880. This part may be cited as the Uniform Act on Blood Tests to Determine Paternity.

Comment. Section 1880 is the same as former Evidence Code Section 890. Section 1880 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) and 14 (severability of provisions).

§ 1881. Order for blood tests in civil actions involving paternity

1881. In a civil action 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 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 1881 is the same as former Evidence Code Section 892. Section 1881 is similar to Section 1 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 1882. Tests made by experts

1882. 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 such experts shall be determined by the court.

Comment. Section 1882 is the same as former Evidence Code Section 893. Section 1882 is the same as Section 2 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 1883. Compensation of experts

1883. 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 such proportions and at such times as it shall prescribe, 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.

Comment. Section 1883 is the same as former Evidence Code Section 894. Section 1883 is similar to the first three sentences of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 1884. Effect of test results

1884. (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 the provisions of Section 352 of the Evidence Code, shall be submitted upon all the evidence, including evidence based upon the tests.

Comment. Section 1884 is the same as former Evidence Code Section 895. Section 1884 is similar to Section 4 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 1885. Rebuttable presumption of paternity; paternity index of 100 or more

1885. (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 only be rebutted by a preponderance of the evidence.

(b) As used in this section:

(1) "Genetic markers" mean separate identifiable genes or complexes of genes generally isolated as a result of blood typing, at least seven of which are normally tested in a paternity determination.

(2) "Paternity index" means the commonly accepted indicator used for denoting the existence of paternity. It represents the mathematically computed probability that the putative father is the true father of the child, as opposed to any other man of similar ethnic background. The paternity index, computed using results of various paternity tests following accepted statistical principles for the computation of probability, 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 1885 is the same as former Evidence Code Section 895.5.

§ 1886. Limitation on application in criminal matters

1886. 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 the provisions of Section 1884; otherwise, the case shall be submitted for determination upon all the evidence.

Comment. Section 1886 is the same as former Evidence Code Section 896. Section 1886 is similar to Section 6 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 1887. Right to produce other expert evidence

1887. Nothing in this part prevents a party to a action 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, their fees shall be paid by the party calling them and only ordinary witness fees shall be taxed as costs in the action.

Comment. Section 1887 is the same as former Evidence Code Section 897. The last portion of Section 1887 is similar to the last sentence of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952).

DIVISION 6. PROVISIONS COMMON TO NULLITY AND DISSOLUTION PROCEEDINGS

- Part 1. Restraining and protective orders
- Part 2. Notice to insurance carriers
- Part 3. Restoration of wife's former name

PART 1. RESTRAINING AND PROTECTIVE ORDERS

- Chapter 1. Ex parte orders
- Chapter 2. Judgment

CHAPTER 1. EX PARTE ORDERS

- §1900. Ex parte protective orders during pendency of proceeding; purposes of order
- §1901. Limitation on issuance of mutual restraining order
- §1902. Required statements in order
- §1903. Transmittal to local law enforcement agency
- §1904. Law enforcement agency to make information concerning order available to law enforcement officers
- §1905. Enforcement of order
- §1906. Service of restraining order against domestic violence by law enforcement officer
- §1907. Penalty for violation of restraining order against domestic violence
- §1908. Judicial Council forms and instructions

§ 1900. Ex parte protective orders during pendency of proceeding; purposes of order

1900. During the pendency of any proceeding under Division 7 (commencing with Section 2200) (proceeding for judgment of nullity of marriage) or Division 8 (commencing with Section 2300) (proceeding for dissolution of marriage), upon application of either party in the manner provided by Part 4 (commencing with Section 240) of Division 2, the superior court may issue ex parte orders doing any one or more of the following:

(a) Restraining a 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) Enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of the other party, and, in the discretion of the court, upon a showing of good cause, other named family and household members.

(c) Excluding one party from the family dwelling or from the dwelling of the other for the period of time and upon the conditions the court determines, regardless of which party holds legal or equitable title or is the lessee of the dwelling, upon a showing, as provided in Section 753, of both of the following:

(1) The party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, or control of the other party, or any minor child of the parties or of the other party.

(2) Physical or emotional harm would otherwise result to the other party or any person under the care, custody, or control of the other party, or to any minor child of the parties or of the other party.

(d) Enjoining a party from specified behavior which the court determines is necessary to effectuate orders under subdivision (b) or (c).

(e) Determining the temporary custody of any minor children of the marriage, and the right of a party to visit the minor children upon the conditions the court determines.

(f) 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 pendency of the order.

Comment. Section 1900 continues the first paragraph of subdivision (a) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For general provisions relating to temporary restraining orders, See Sections 240-244. See also Sections 3100, 3101 (visitation rights). For comparable provisions, see Sections 1800, 5550.

Note: See the Note under Section 242. Should a provision comparable to Section 5551 (service on defendant where temporary restraining order granted under Domestic Violence Prevention Law without notice) and Section 1802 (service on defendant where temporary restraining order granted under Uniform Parentage Act without notice) be made applicable to an ex parte order described in Section 1900?

§ 1901. Limitation on issuance of mutual restraining order

1901. A mutual restraining order specified in subdivision (b) of Section 1900 may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence specified in that subdivision.

Comment. Section 1901 continues the second paragraph of subdivision (a) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For a comparable provision, see Section 1801.

§ 1902. Required statements in order

1902. (a) An order issued pursuant to this chapter shall include on its face all of the following:

(1) A statement of the date of expiration of the order.

(2) The following statement: "This order shall be enforced by all law enforcement officers."

(3) The following statement: "This order is effective when made. The law enforcement agency shall enforce it immediately upon 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.”

(b) The temporary restraining order specified in subdivision (b) of Section 1900 shall also state on its face a notice in substantially the following form:

“NOTICE TO PETITIONER/RESPONDENT: 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. Paragraph (1) of subdivision (a) of Section 1902 continues the third paragraph of subdivision (a) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. Paragraph (2) of subdivision (a) is new and is drawn from former Code of Civil Procedure Section 552 (Domestic Violence Prevention Act). Paragraph (3) of subdivision (a) supersedes the first sentence of subdivision (c) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1), and uses language taken from the official Judicial Council form for restraining orders in place of the similar language used in former Section 4359. See Temporary Restraining Orders (Family Law) Judicial Council Form 1285.05 (Rev. July 1, 1987). For a provision comparable to subdivision (a)(1), see Section 1820.

Subdivision (b) continues subdivision (d) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For a provision comparable to subdivision (b), see Section 1821.

Note: Should the provisions of Section 1902 relating to enforcement of the order by law enforcement officers be limited to orders set forth in subdivisions (b), (c), and (d) of Section 1900?

§ 1903. Transmittal to local law enforcement agency

1903. The court shall order the party who obtained the order or the attorney for that party to deliver or the clerk to mail a copy of any order, or extension, modification or termination thereof, granted pursuant to this part, by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the party or the attorney for the party, having jurisdiction over the residence of the party and other locations where the court determines that acts of domestic violence against the party are likely to occur.

Comment. Section 1903 continues the first sentence of the first paragraph of subdivision (b) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For comparable provisions, see Sections 1830, 5800.

Note: Should Section 1903 apply only to orders set forth in subdivisions (b), (c), and (d) of Section 1900?

§ 1904. Law enforcement agency to make information concerning order available to law enforcement officers

1904. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current

status of an order issued pursuant to this part to any law enforcement officer responding to the scene of reported domestic violence.

Comment. Section 1904 continues the second sentence of the first paragraph of subdivision (b) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For comparable provisions, see Sections 1831, 5801.

Note: Should Section 1904 apply to any order issued pursuant to "this part," which would include an order included in a judgment under Section 1910?

§ 1905. Enforcement of order

1905. (a) Notwithstanding Section 1903, subject to subdivision (b), an order issued pursuant to this chapter is enforceable in any place in this state.

(b) An order issued pursuant to this chapter 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 1903 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 1905 continues the second paragraph of subdivision (b) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change.

Note: Should Section 1905 apply to an order issued pursuant to "this part," thereby including an order in the judgment pursuant to Section 1910? Should there be a comparable provision included in the comparable provisions of other divisions that provide for a protective order against domestic violence?

§ 1906. Service of restraining order against domestic violence by law enforcement officer

1906. (a) A restraining order against domestic violence issued pursuant to subdivision (b), (c), or (d) of Section 1900 may, upon the request of the moving party, be served upon the responding party by a law enforcement officer who is present at the scene of reported domestic violence involving the parties to the action.

(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.

Comment. Section 1906 continues subdivision (e) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For comparable provisions, see Sections 1832, 5802.

§ 1907. Penalty for violation of restraining order against domestic violence

1907. A willful and knowing violation of any order granted pursuant to subdivision (b), (c), or (d) of Section 1900 is a misdemeanor punishable under Section 273.6 of the Penal Code.

Comment. Section 1907 continues the second sentence of subdivision (c) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For comparable provisions, see Sections 1833, 5807.

Note: Why does the criminal penalty apply only to violation of an order granted pursuant to subdivision (b), (c), or (d) of Section 1900? The Judicial Council form for the order states: "Violation of these temporary restraining orders is a misdemeanor, punishable by a \$1000 fine, six months in jail, or both." The actual order made on the Judicial Council form is not limited to the subdivisions listed above; it covers all of the subdivisions now found in Section 1900. Should "crime" be substituted for "misdemeanor" in Section 1907?

§ 1908. Judicial Council forms and instructions

1908. The Judicial Council shall promulgate forms and instructions for applications for orders and orders granted pursuant to this part.

Comment. Section 1908 continues the fourth paragraph of subdivision (a) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For comparable provisions, see Sections 5519, 6295. See also Section 210 and the Comment to that section.

Note: Is Section 1908 necessary in view of Section 210 (general provision that Judicial Council may provide by rule for the practice and procedure under the Family Law Act)? Note that Section 1908 is mandatory ("shall promulgate") and specifically mentions not only "forms" and "orders" but also "instructions for applications for orders."

CHAPTER 2. JUDGMENT

§1910. Protective orders included in judgment

§1911. Notice concerning effect of judgment on will, insurance, and other matters

§ 1910. Protective orders included in judgment

1910. (a) A judgment entered in a proceeding under Division 7 (commencing with Section 2200) (proceeding for judgment of nullity of marriage) or Division 8 (commencing with Section 2300) (proceeding for dissolution of marriage) may include any orders issued pursuant to subdivisions (b), (c), and (d) of Section 1900.

(b) If an order is included in the judgment pursuant to subdivision (a), the judgment shall state on its face both of the following:

(1) Which provisions of the judgment are the orders.

(2) 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 hearing.

(c) The judgments, or orders, or extensions thereof, shall be transmitted to law enforcement agencies in the manner provided by Section 1903.

(d) A willful and knowing violation of an order included in the judgment pursuant to subdivision (a) is a misdemeanor punishable under Section 273.6 of the Penal Code.

Comment. Section 1910 continues former Civil Code Sections 4458 and 4516 with two revisions:

(1) The former provisions applied to "this part," thus apparently applying to the entire Family Law Act. Section 1910 is limited to a judgment in a marriage dissolution or nullity proceeding. But see Section 1840.

(2) Section 1910 includes the orders set forth in subdivision (c) of Section 1900, whereas the former sections did not specifically include those orders although they did include an order set forth in subdivision (d) of Section 1900.

For a comparable provision, see Section 1840.

Note: Should "crime" be substituted for "misdemeanor" in Section 1910?

§ 1911. Notice concerning effect of judgment on will, insurance, and other matters

1911. Every judgment declaring a marriage a nullity or dissolving a marriage shall contain the following notice:

Notice. Please review your will, insurance policies, retirement benefit plans, and other matters that you may want to change in view of the dissolution or annulment of your marriage. Ending your marriage may automatically change a disposition made by your will to your former spouse.

Comment. Section 1911 is the same as former Civil Code Section 4352. See also Prob. Code § 6122 and the Comment thereto. For background on former Civil Code Section 4352, see *Tentative Recommendation Relating to Wills and Intestate Succession*, 16 Cal. L. Revision Comm'n Reports 2301, 2485 (1982).

PART 2. NOTICE TO INSURANCE CARRIERS

§1920. Notice of pending proceeding

§1921. Notice of entry and requirements of judgment

§1922. Manner of giving notice

§1923. Policyholder to furnish other party with name and address of insurer

§ 1920. Notice of pending proceeding

1920. Upon filing of a petition for dissolution of marriage, nullity of marriage, or for legal separation, 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 1920 continues subdivision (a) of former Civil Code Section 4366 (added by 1990 Cal. Stat. ch. 1493 § 4) without substantive change.

§ 1921. Notice of entry and requirements of judgment

1921. Upon the entry of an order or judgment in an action for dissolution of marriage, nullity of marriage, or for legal separation requiring a party to maintain existing health, life, or disability insurance coverage for a spouse or children or after an order or judgment in one of those proceedings 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 1921 continues subdivision (b) of former Civil Code Section 4366 (added by 1990 Cal. Stat. ch. 1493 § 4) without substantive change.

§ 1922. Manner of giving notice

1922. Notice pursuant to this part may be sent by regular 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 1922 continues subdivision (c) of former Civil Code Section 4366 (added by 1990 Cal. Stat. ch. 1493 § 4) without substantive change.

§ 1923. Policyholder to furnish other party with name and address of insurer

1923. 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 1923 continues subdivision (d) of former Civil Code Section 4366 (added by 1990 Cal. Stat. ch. 1493 § 4) without substantive change.

PART 3. RESTORATION OF WIFE'S FORMER NAME

§2000. Restoration of wife's former name

§2001. Restoration not to be denied for any reason other than fraud

§2002. Common law right to change name not limited

§2003. Prohibition against refusing to do business with or to provide service to woman using former name

§ 2000. Restoration of wife's former name

2000. In any proceeding under the Family Law Act, except an action for legal separation, 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 2000 continues subdivision (a) of former Civil Code Section 4362 and subdivision (a) of former Civil Code Section 4457 without substantive change.

§ 2001. Restoration not to be denied for any reason other than fraud

2001. The restoration of a former name or birth name requested under Section 2000 shall not be denied (1) on the basis that the wife has custody of a minor child who bears a different name or (2) for any other reason other than fraud.

Comment. Section 2001 continues subdivision (c) of former Civil Code Section 4362 and subdivision (c) of former Civil Code Section 4457 without substantive change.

§ 2002. Common law right to change name not limited

2002. Nothing in the Family Law Act shall be construed to abrogate the common law right of any person to change one's name.

Comment. Section 2002 continues subdivision (b) of former Civil Code Section 4362 and subdivision (b) of former Civil Code Section 4457 without substantive change.

Note: Should Section 2002 apply to "this code" instead of merely "the Family Law Act"?

§ 2003. Prohibition against refusing to do business with or to provide service to woman using former name

2003. No person engaged in a trade or business of any kind or in the provision of a service of any kind shall do any of the following:

(a) Refuse to do business with a woman, or refuse to provide the service to a woman, regardless of her marital status, because she has chosen to use or regularly uses her birth name or former name.

(b) Impose as a condition of doing business with a woman, or as a condition of providing the service to a woman, a requirement that the woman, regardless of her marital status, use a name other than her birth name or former name if she has chosen to use or regularly uses her birth name or former name.

Comment. Section 2003 continues subdivision (d) of former Civil Code Section 4362 and subdivision (d) of former Civil Code Section 4457 without substantive change.

Division 6. Nullity and Dissolution Proceedings

**DIVISION 7. JUDICIAL DETERMINATION
OF VOID OR VOIDABLE MARRIAGE**

- Part 1. Void Marriage
Part 2. Voidable Marriage
Part 3. Procedural Provisions

PART 1. VOID MARRIAGE

- §2200. Incestuous marriages
§2201. Bigamous and polygamous marriages

§ 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 is the same as former Civil Code Section 4400.

§ 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 declared a nullity prior to 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 space 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.

Note: Should "period" be substituted for "space" in subdivision (a)(2)(i) of Section 2201?

PART 2. VOIDABLE MARRIAGE

- §2210. Grounds for adjudging marriage a nullity
§2211. Limitations of actions
§2212. Effect of judgment of nullity

§ 2210. Grounds for adjudging marriage a 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 (i) 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 (ii) 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 of actions

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 who was of unsound mind, 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. For background on former Civil Code Section 4426, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

§ 2212. Effect of judgment of nullity

2212. (a) The effect of a judgment of nullity is to restore the parties to the status of unmarried persons.

(b) A judgment of nullity is conclusive only as to the parties to the proceeding and those claiming under them.

Comment. Subdivision (a) of Section 2212 is the same as former Civil Code Section 4429. Subdivision (b) is the same as former Civil Code Section 4451.

PART 3. PROCEDURAL PROVISIONS

§2250. Petition for judgment of nullity; filing and service

§2251. Status of putative spouse; division of quasi-marital property

§2252. Liability of quasi-marital property for debts

§2253. Custody of children

§2254. Support of putative spouse

§2255. Attorney's fees and costs

§ 2250. Petition for judgment of nullity; filing and service

2250. (a) A proceeding based on void or voidable marriage is commenced by filing in the superior court 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. See also Sections 2000-2003 (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 9 (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 subsequent to the judgment.

Comment. Section 2251 continues the first three sentences of former Civil Code Section 4452 without substantive change except that the provision of the former section referring to former Civil Code Section 4800 has been expanded to include all of Division 9 (commencing with Section 2500) of the Family Code.

§ 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 4452, 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 Civil Code Section 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 division, custody of the children shall be determined according to Section 3020 to 3022, inclusive, and Chapter 2 (commencing with Section 3040) of Part 2 of Division 10.

Comment. Section 2253 continues former Civil Code Section 4454 without substantive change.

§ 2254. Support of putative spouse

2254. The court may, during the pendency of a proceeding to have a marriage adjudged a nullity or upon judgment, 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 Part 6 (commencing with Section 270) of Division 2 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 except that a reference of all of Part 6 (commencing with Section 270) has been substituted for the former more limited reference to former Civil Code Section 4370.

Note: Is it necessary to that the party applying for attorney's fees be found innocent of fraud or wrongdoing in a proceeding to have the marriage adjudged void?

Division 7. Void or Voidable Marriage

DIVISION 8. DISSOLUTION OF MARRIAGE

Part 1. General provisions

Part 2. Uniform Divorce Recognition Act

PART 1. GENERAL PROVISIONS

Chapter 1. Effect of dissolution

Chapter 2. Grounds for dissolution or legal separation

Chapter 3. Residence requirements

Chapter 4. General procedural provisions

Chapter 5. Summary dissolution

CHAPTER 1. EFFECT OF DISSOLUTION

§2300. Effect of dissolution

§ 2300. Effect of dissolution

2300. The effect of a judgment of dissolution of marriage is to restore the parties to the state of unmarried persons.

Comment. Section 2300 continues former Civil Code Section 4501 without substantive change.

Note: Should “final judgment” be substituted for “judgment” in Section 2300?

CHAPTER 2. GROUNDS FOR DISSOLUTION OR LEGAL SEPARATION

§2310. Grounds for dissolution or legal separation

§2311. Irreconcilable differences defined

§2312. Proof required for dissolution on grounds of incurable insanity

§2313. Duty of support not affected by dissolution on grounds of insanity

§ 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.

§ 2311. Irreconcilable differences defined

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 substantive 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 is the same as subdivision (a) of former Civil Code Section 4510.

§ 2313. Duty of support not affected by dissolution on grounds of insanity

2313. No dissolution 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 subdivision (b) of former Civil Code Section 4510 without substantive change.

Note: Should the phrase "or require a bond therefor" be omitted from Section 2313, since the support order will be enforceable in the same manner as any other support order? If necessary the following sentence could be added to Section 2313: "The support order may be enforced in the same manner as any other spousal support order."

CHAPTER 3. RESIDENCE REQUIREMENTS

§2320. Residence requirement for dissolution judgment

§2321. Conversion of separation proceeding to dissolution proceeding

§2322. Separate domicile or residence

§ 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 subdivision (a) of former Civil Code Section 4530 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 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 his or her 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 subdivision (b) of former Civil Code Section 4530 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
- § 2330.5. Financial declaration not required in certain default cases
- § 2331. Service on other spouse
- § 2332. Representation of insane spouse by guardian, conservator, or guardian ad litem
- § 2333. Court finding and order where grounds is irreconcilable differences
- § 2334. Continuance for reconciliation
- § 2335. Evidence of specific acts of misconduct
- § 2336. Proof required for default
- § 2337. Severance and grant of early trial on issue of dissolution status
- § 2338. Decisions; judgments
- § 2339. Waiting period before dissolution judgment becomes final
- § 2340. Statement in judgment of date marriage terminates
- § 2341. Effect of appeal or motion for new trial
- § 2342. Calculating permissible date of entry of judgment where joint petition for summary dissolution is revoked
- § 2343. Court may retain jurisdiction over date of termination or order termination at future specified date
- § 2344. Effect of death of either party after entry of judgment
- § 2345. Consent of parties to legal separation
- § 2346. Entry of judgment nunc pro tunc
- § 2347. Legal separation judgment does not bar subsequent dissolution judgment

§ 2330. Petition

2330. (a) A proceeding for dissolution of marriage or for legal separation is commenced by filing in the superior court 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, the petition shall set forth among other matters, as nearly as can be ascertained, the following facts:

- (1) The state of county 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 first sentence of former Civil Code Section 4503 without substantive change. Subdivision (b) continues former Code of Civil Procedure Section 429.10 without substantive change.

Note: Should subdivision (b) apply in a proceeding for legal separation?

§ 2330.5. Financial declaration 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 decree of dissolution is entered by default, the filing of a financial declaration in connection therewith shall not be required.

Comment. Section 2330.5 continues former Civil Code Section 4364 without substantive change.

Note: What is the meaning of "financial declaration"? The terminology generally used is "income and expense declarations" and "property declaration." See, e.g., former Civil Code Sections 4357.5(a)(third paragraph), 4700.1 and 4700.2. See the definitions of these terms in Sections 95 and 115 of the staff draft of the Family Code. Should there be general provisions relating to income and expense declarations and should Section 2330.5 be included in those general provisions? Where should the general provisions relating to income and expense declarations be compiled? Should these general provisions be compiled in the chapter on general procedural provisions or in the general provisions relating to support? Note that Section 2330.5 is broader than support; it would apply to property disposition and attorney fees as well as support.

§ 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 is the same as the second sentence of former Civil Code Section 4503.

§ 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.

(d) As used in this section, "guardian or conservator" 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 subdivisions (c) and (d) of former Civil Code Section 4510 without substantive change. For background on former Civil Code Section 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.

Comment. Section 2333 continues the first sentence of subdivision (a) of former Civil Code Section 4508 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 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, support, maintenance, and education of the minor children of the marriage, attorney 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, and the court may enter a judgment of dissolution of the marriage or legal separation.

Comment. Section 2334 continues the second, third, and fourth sentences of subdivision (a) of former Civil Code Section 4508 without substantive change.

§ 2335. Evidence of specific acts of misconduct

2335. In a pleading or proceeding for dissolution of marriage or legal separation under the Family Law Act, including depositions and discovery proceedings, evidence of specific acts of misconduct is improper and inadmissible, except where child custody is in issue and the evidence is relevant to that issue.

Comment. Section 2335 continues former Civil Code Section 4509 without substantive change. See also Section 85 ("Family Law Act" defined).

§ 2336. Proof required for default

2336. (a) No judgment of dissolution or of legal separation 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 interests 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 he or she understands that proof will be by affidavit and that he or she will not appear before the court unless so ordered by the court.

Comment. Section 2336 continues former Civil Code Section 4511 without substantive change.

§ 2337. Severance and grant of early trial on issue of dissolution status

2337. (a) In a proceeding for dissolution of marriage under the Family Law Act, 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 his or her 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 prior to the division of the parties' community property results in a taxable event to either of the parties by reason of the ultimate division of their community property, 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 he or she 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 his or her estate shall, at his or her 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 his or her 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 his or her 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 he or she 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. See also Section 85 ("Family Law Act" defined).

§ 2338. Decisions; judgments

2338. (a) In a proceeding for dissolution of the marriage, 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 shall be entered declaring that the parties are entitled to have their marriage dissolved. 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. The word "proceeding" has been substituted for "action."

Note: Should the requirement of subdivision (a) of Section 2338 be retained?

§ 2339. Waiting period before dissolution judgment becomes final

2339. (a) Subject to subdivision (b), no judgment entered pursuant to Section 2338 is final 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 continues the first sentence of subdivision (a) former Civil Code Section 4514 without substantive change.

§ 2340. Statement in judgment of date marriage terminates

2340. A judgment of dissolution 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 subdivision (a) of former Civil Code Section 4514 without substantive change.

§ 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 third sentence of subdivision (a) of former Civil Code Section 4514 without substantive change. Subdivision (b) continues subdivision (b) of former Civil Code Section 4514 without substantive change.

§ 2342. Calculating permissible date of entry of judgment 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 permissible date of entry of judgment pursuant to Section 2339 shall be calculated by deducting the period of time which has elapsed from the date of the filing the joint petition to the date of the filing of the revocation.

Comment. Section 2342 continues subdivision (c) of former Civil Code Section 4514 without substantive change.

Note: Section 2342 appears to contemplate that the court will enter a "final judgment" when the time specified in Sections 2339-2342 has run. However, the scheme of those provisions appears to be that the judgment is entered and becomes final when the time runs without further action by the court. Should Section 2344 be revised to read:

§ 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 the filing the joint petition to the date of the filing of the revocation.

§ 2343. Court may retain jurisdiction over date of termination or order 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 subdivision (e) of former Civil Code Section 4514 without substantive change.

§ 2344. Effect of death of either party after entry of judgment

2344. (a) The death of either party after the entry of the judgment does not impair the power of the court to enter final judgment.

(b) The entry of final judgment under subdivision (a) does not validate a marriage by either party before the entry of the final judgment, nor does it constitute a defense in a criminal prosecution against either party.

Comment. Section 2344 continues subdivision (d) of former Civil Code Section 4514 without substantive change.

Note: Section 2344 appears to contemplate that the court will enter a "final judgment" when the time specified in Sections 2339-2342 has run. However, the scheme of those provisions appears to be that the judgment is entered and becomes final when the time runs without further action by the court. Should Section 2344 be revised to read:

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 2342, inclusive.

(b) Subdivision (a) does not validate a marriage by either party before the judgment becomes final if the marriage takes place before the death of the other party, nor does it constitute a defense in a criminal prosecution against either party.

§ 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 subdivision (b) of former Civil Code Section 4508 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 all of the following appear to the satisfaction of the court:

(1) No appeal is to be taken in the proceeding.

(2) No motion is to be 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 prior to trial in the matter, prior to the date of an uncontested judgment hearing in the matter, or prior to 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.

§ 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 second sentence of subdivision (b) of former Civil Code Section 4508 without substantive change.

CHAPTER 5. SUMMARY DISSOLUTION

§2400. Conditions necessary at commencement of proceeding

§2401. Joint petition

§2402. Revocation of joint petition and termination of proceeding

§2403. Entry of final judgment

§2404. Effect of entry of final judgment

§2405. Action to set aside final judgment

§2406. Brochure describing summary dissolution proceedings

§ 2400. Conditions necessary at commencement of proceeding

2400. (a) A marriage may be dissolved by the summary dissolution procedure specified in this chapter when 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 wheresoever 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 final judgment of dissolution of marriage, 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 of each odd-numbered year, 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 (as amended by 1990 Cal. Stat. ch. 1493 § 5) without substantive change.

§ 2401. Joint petition

2401. (a) A proceeding for summary dissolution of the marriage shall be commenced by filing in the superior court 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.

§ 2402. Revocation of joint petition and termination of proceeding

2402. (a) At any time prior to the filing of application for final judgment, 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 his or her last known address.

Comment. Section 2402 is the same as former Civil Code Section 4552.

§ 2403. Entry of final judgment

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 final judgment dissolving the marriage. The final judgment restores to the parties the status of single persons, and either party may marry after the entry of the final judgment. The clerk shall send a notice of entry of final judgment to each of the parties at his or her last known address.

Comment. Section 2403 continues former Civil Code Section 4553 without substantive change.

§ 2404. Effect of entry of final judgment

2404. Entry of the final judgment 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 final judgment

2405. (a) A final judgment made pursuant to Section 2403 does not prejudice nor bar the rights of either of the parties to institute an action to set aside the final 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 final judgment made 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 final 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 final 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 final judgment dissolving the marriage is entered.

(8) Such other matters as the Judicial Council considers appropriate.

Comment. Section 2406 continues former Civil Code Section 4556 without substantive change.

Note: The Judicial Council should review this section to determine any revisions needed to make it consistent with the brochure prepared by the Judicial Council.

PART 2. UNIFORM DIVORCE RECOGNITION ACT

§2450. Short title

§2451. Effect of foreign divorce of parties domiciled in this state

§2452. Prima facie evidence of domicile

§2453. Full faith and credit limitation

§ 2450. Short title

2450. This part may be cited as the Uniform Divorce Recognition Act.

Comment. Section 2450 continues former Civil Code Section 5000 without substantive change. See also Sections 3 (construction of provisions drawn from uniform act), 14 (severability of provisions).

§ 2451. Effect of foreign divorce of parties domiciled in this state

2451. 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 2451 is the same as former Civil Code Section 5001.

§ 2452. Prima facie evidence of domicile

2452. 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 prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his or her departure therefrom, or (b) at all times after his departure from this state and until his 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 2452 is the same as former Civil Code Section 5002. The word "hereafter" which is used in Section 2452 is to be construed as of the time former Section 5002 was enacted. See Section 2 (provision to be construed as a restatement and continuation and not as a new enactment).

§ 2453. Full faith and credit limitation

2453. The application of this part 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 2453 is the same as former Civil Code Section 5004. See also Section 14 (severability of provisions).

Division 8. Dissolution of Marriage

DIVISION 9. DIVISION OF COMMUNITY ESTATE

- Part 1. Definitions
- Part 2. General provisions
- Part 3. Presumption concerning property held in joint form
- Part 4. Special rules for division of community estate
- Part 5. Retirement plan benefits
- Part 6. Debts and liabilities
- Part 7. Reimbursements
- Part 8. Jointly held separate property
- Part 9. Real property located in another state

PART 1. DEFINITIONS

- §2500. Application of definitions
- §2501. "Community estate"
- §2502. "Separate property"

§ 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 a standard provision found in recently enacted codes. See, e.g., Prob. Code § 20. The introductory portion of Section 2500 recognizes that the context of a particular section may require that a phrase used in that section be given a meaning different from the definition provided in this part.

§ 2501. "Community estate"

2501. "Community estate" includes both the community and quasi-community assets and liabilities of the parties.

Comment. Section 2501 continues the substance of the third paragraph of subdivision (a) of former Civil Code Section 4800 except that the scope of the provision has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. Formerly, the definition applied only to the provisions in former Section 4800. See also Section 125 ("quasi-community property" defined).

§ 2502. "Separate property"

2502. "Separate property" does not include quasi-community property.

Comment. Section 2502 continues former Civil Code Section 4804 without substantive change. See also Section 125 ("quasi-community property" defined).

PART 2. GENERAL PROVISIONS

- §2550. Division of community estate equally
- §2551. Characterization of liabilities as separate or community and confirming or assigning them to parties
- §2552. Valuation date for assets and liabilities
- §2553. Orders necessary to carry out purposes of this division
- §2554. Arbitration where parties do not voluntarily agree to division
- §2555. Revision of property disposition on appeal
- §2556. Continuing jurisdiction to award community property or debts

§ 2550. Division of community estate equally

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, the court shall, either in its judgment of dissolution of the marriage, in its judgment decreeing the 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 the first sentence of subdivision (a) of former Civil Code Section 4800 except that the scope of the provision has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. Formerly, the definition applied only to the provisions in former Section 4800. "Community estate" is defined in Section 2501. See also Sections 2650 (division of jointly held separate property), 2554 (use of arbitration where parties do not voluntarily agree to division), 2660 (real property located in another state).

§ 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 subdivision (a) of former Civil Code Section 4800 without substantive change.

§ 2552. Valuation date for assets and liabilities

2552. (a) For the purpose of division of property upon dissolution of marriage or legal separation, 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 prior to trial to accomplish an equal division of the community estate of the parties in an equitable manner.

Comment. Section 2552 continues the second sentence of subdivision (a) of former Civil Code Section 4800 without substantive change.

§ 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 subdivision (f) of former Civil Code Section 4800 without substantive change except that the scope of the former provision has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. The former provision applied only to the provisions of former Section 4800.

§ 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 property and quasi-community property of the parties, the issue of the character, the value, and the division of the property 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 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 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 change except that the scope of the "notwithstanding" clause at the beginning of the section has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. The "notwithstanding" clause of former Section 4800.9 included only the provisions of former Section 4800.

Note: Should this section apply only if "the total value of the community property *AND QUASI-COMMUNITY PROPERTY* in controversy in the opinion of the court does not exceed fifty thousand dollars (\$50,000)"?

§ 2555. Revision of property disposition on appeal

2555. The disposition of the community and quasi-community property, 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 change.

Note: Can the appellate court revise an arbitration award under Section 2554?

§ 2556. Continuing jurisdiction to award community property or debts

2556. In an action for legal separation or dissolution or annulment of a marriage, the court has continuing jurisdiction to award community property or community debts to the parties that has not been previously awarded by a judgment therein. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community asset or debt omitted or not awarded by the judgment. In these cases, the court shall equally divide the omitted or unawarded community asset or debt, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or debt.

Comment. Section 2556 continues former Civil Code Section 4353 without substantive change.

Note: Should Section 2556 apply to quasi-community property? Why does this section apply in "annulment" proceedings but most of the other provisions of this division apply only in proceedings for dissolution or legal separation? See, for example, Section 2550.

**PART 3. PRESUMPTION CONCERNING
PROPERTY HELD IN JOINT FORM**

§2580. Community property presumption for property held in joint form

§ 2580. Community property presumption for property held in joint form

2580. (a) For the purpose of division of property upon dissolution of marriage or legal separation:

(1) Property acquired by the parties during marriage on or after January 1, 1984, and before January 1, 1987, in joint tenancy form is presumed to be community property.

(2) Property acquired by the parties during marriage on or after January 1, 1987, in joint form, including property held in tenancy in common, joint tenancy, tenancy by the entirety, or as community property is presumed to be community property.

(b) The presumptions under subdivision (a) are presumptions affecting the burden of proof and may be rebutted by either of the following:

(1) 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.

(2) Proof that the parties have made a written agreement that the property is separate property.

(c) Nothing in this section affects the character of property acquired by married persons that is not described in subdivision (a).

Comment. Subdivision (a)(1) of Section 2580 continues the first sentence of subdivision (b) of former Civil Code Section 4800.1 (as enacted by 1983 Cal. Stat. ch. 342 § 1) with the addition of language that recognizes the constitutional limitations on the application of Section 2580. See the discussion that follows. Subdivision (a)(2) continues the first sentence of subdivision (b) of former Civil Code Section 4800.1 (as amended by 1986 Cal. Stat. ch. 539 § 1) without substantive change. Subdivision (b) of Section 2580 continues the last portion of subdivision (b) of former Civil Code Section 4800.1 without change. See also Section 2650 (division of jointly held separate property).

Under Section 2580, all property held in joint form by the spouses is presumed to be community absent a written agreement otherwise; and under Section 2640, all community property is divided subject to a right of reimbursement for separate property contributions absent an express agreement otherwise. These sections were enacted to remedy the rank injustice in former law that resulted from the following two factors:

(1) The Supreme Court's interpretation in the *Lucas* case of the community property presumption for a joint tenancy single-family residence under former law 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 ago filed a joint tenancy deed may 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, 30, 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)).

The community property presumptions created by subdivision (a) of Section 2580 are applicable in dissolution and legal separation proceedings only. 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 2580 in such a case, is the value of the property at the time of its conversion to joint or community property form.

Subdivision (b) of Section 2580 requires a writing to rebut the community property presumption. To permit 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 his or her community property rights only upon mature consideration.

Section 2580 does not affect the validity of an oral agreement for any purpose other than division of property at dissolution of marriage, and for purposes of division it, 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 as a rule 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.

Subdivision (a) of former Civil Code Section 4800.1, which sought to justify the application of Section 4800.1 without regard to the date the property was acquired, has not been continued. Instead, language has been added to Section 2580 to recognize that the section cannot constitutionally be applied to property described in subdivision (a) prior to the date of acquisition specified in paragraph (1) or (2) of subdivision (a), whichever is applicable. See, e.g., *In re Marriage of Delgado*, 176 Cal. App. 3d 666, 222 Cal. Rptr. 119 (1986). See also *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985); *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr. 396 (1990); *In re Marriage of Bankovich*, 203 Cal. App. 3d 49, 249 Cal. Rptr. 713 (1988); *In re Marriage of Columbo*, 197 Cal. App. 3d 572, 242 Cal. Rptr. 100 (1987).

Subdivision (c) of Section 2580 is new and makes clear that the law concerning property not described in subdivision (a) is not affected by Section 2580. Accordingly, the character of the interest in property acquired in joint tenancy form by the parties before January 1, 1984, is not determined under or affected by Section 2580. Likewise, the character of the interest in property acquired by the parties before January 1, 1987, and held in tenancy in common, tenancy by the entirety, or as community property is not determined under or affected by Section 2580.

For background on former Civil Code Section 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. Revision 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

§2601. Awarding asset to one party to effect substantially equal division

§2602. Award or offset of amount deliberately misappropriated by party

§2603. Community estate personal injury damages

§2604. Award where community estate less than \$5,000 and one party cannot be located

§ 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 portion of subdivision (b) of former Civil Code Section 4800 without substantive change.

§ 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 subdivision (b)(1) of former Civil Code Section 4800 without substantive change.

§ 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 subdivision (b)(2) of former Civil Code Section 4800 without substantive change.

§ 2603. Community estate personal injury damages

2603. (a) As used in this section, "community estate personal injury damages" means all money or other property received or to be received by a person in satisfaction of a judgment for damages for his or her 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 defined 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 property 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 subdivision (b)(4) of former Civil Code Section 4800 without substantive change.

§ 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 such conditions as the court deems proper in its judgment decreeing the dissolution of the marriage or in its judgment decreeing the legal separation of the parties.

Comment. Section 2604 continues subdivision (b)(3) of former Civil Code Section 4800 without substantive change.

PART 5. RETIREMENT PLAN BENEFITS

§2610. Division of retirement plan benefits

§ 2610. Division of retirement plan benefits

2610. The court shall make whatever orders are necessary or appropriate to assure that each party receives his or her 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:

(a) Order the division of any retirement benefits payable upon or after the death of either party in a manner consistent with the provisions of this division.

(b) 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.

(c) 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 the Government Code.

(d) 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.

Comment. Section 2610 continues former Civil Code Section 4800.8 without change except that the reference in subdivision (a) has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. Formerly, the reference was to the provisions of former Civil Code Section 4800.

PART 6. DEBTS AND LIABILITIES

§2620. Confirmation or division of debts of community estate

§2621. Debts incurred before marriage

§2622. Debts incurred after marriage but before separation

§2623. Debts incurred after separation but before judgment

§2624. Debts incurred after entry of judgment

§2625. Separate debts

§2626. Reimbursement for debts paid after separation but prior to trial

§2627. Educational loans and tort liability

§2628. Notice in judgment that creditor may be able to collect debt or obligation notwithstanding its being assigned to other party

§ 2620. Confirmation or division of debts of community estate

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 portion of subdivision (c) of former Civil Code Section 4800 without substantive change. See also Sections 2551 (characterizing liabilities as separate or community by court and confirming or assigning them 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 subdivision (c)(1) of former Civil Code Section 4800 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 prior to the date of separation shall be divided as set forth in Sections 2550 to 2552, inclusive, and 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 subdivision (c)(2) of former Civil Code Section 4800 without substantive change.

§ 2623. Debts incurred after separation but before judgment

2623. Debts incurred by either spouse after the date of separation but before entry of a judgment of dissolution or legal separation 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 minor children of the marriage, 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 minor children of the marriage shall be confirmed without offset to the spouse who incurred the debt.

Comment. Section 2623 continues subdivision (c)(3) of former Civil Code Section 4800 without substantive change.

§ 2624. Debts incurred after entry of judgment

2624. Debts incurred by either spouse after entry of a judgment of dissolution but prior to termination of the parties' marital status or after entry of a judgment of legal separation shall be confirmed without offset to the spouse who incurred the debt.

Comment. Section 2624 continues subdivision (c)(4) of former Civil Code Section 4800 without 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 subdivision (d) of former Civil Code Section 4800 without change.

§ 2626. Reimbursement for debts paid after separation but prior to trial

2626. The court has jurisdiction to order reimbursement in cases it deems appropriate for debts paid after separation but prior to trial.

Comment. Section 2626 continues subdivision (e) of former Civil Code Section 4800 without 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 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 subdivision (b)(5) of former Civil Code Section 4800 without change.

§ 2628. Notice in judgment that creditor may be able to collect debt or obligation notwithstanding its being assigned to other party

2628. The judgment of dissolution of marriage, or the judgment of legal separation, shall contain the following notice: "A debt or obligation may be assigned to one party as part of the division of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party."

Comment. Section 2628 continues former Civil Code Section 4800.6 without change.

PART 7. REIMBURSEMENTS

§2640. Separate property contributions to acquisition of property

§2641. Community contributions for education or training

§ 2640. Separate property contributions to acquisition of property

2640. (a) As used in this section, "contributions to the acquisition of the property" 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 community estate property acquired on or after January 1, 1984, by the parties during marriage unless a party has made a written waiver of the right to reimbursement or signed a writing that has the effect of a waiver, the party shall be reimbursed for his or her 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 with two additions:

(1) Language is added to make clear that the section applies to quasi-community property as well as to community property. The language of former Section 4800.2 referred only to "community property," but the courts construed the section to apply to quasi-community property as well. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990).

(2) Language is added that limits reimbursement to cases where the property was "acquired on or after January 1, 1984, by the parties during marriage." This addition codifies a case law rule, based on impairment of vested rights without due process, that the section cannot constitutionally be applied to a case where the property was acquired prior to the effective date of the section. See, e.g., *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr. 396 (1990); *In re Marriage of Cairo*, 204 Cal. App. 3d 1255, 251 Cal. Rptr. 731 (1988); *In re Marriage of Bankovich*, 203 Cal. App. 3d 49, 249 Cal. Rptr. 713 (1988).

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, 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 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 Civil Code Section 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) As used in this section, "community contributions to education or training" means payments made with community property for education or training or for the repayment of a loan incurred for education or training.

(b) Subject to the limitations provided in this section, upon dissolution of marriage or legal separation:

(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 4801].

(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 except that the reference in subdivision (b)(2) has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. Formerly, the reference was to the provisions of former Civil Code Section 4800.

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).

Subdivision (a) does not detail the expenditures that might be included within the concept of "community contributions." These expenditures would at least include 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.

Subdivision (c) is intended to permit the court to avoid the requirements 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 might be inappropriate to require reimbursement. Subdivision (c)(1). If both parties receive education or training at community expense, it may be appropriate to allow no 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 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 could be improper. Subdivision (c)(3). Absent the education or training, support might be necessary to maintain the party or to permit the party to obtain education or training.

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 Civil Code Section 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, 209 Cal. Rptr. 354, 691 P.2d 1020 (1984).

Note: Should Section 2641 cover quasi-community contributions also? Suppose one spouse works to put the other through school in a noncommunity property state and the parties to the marriage move to California shortly thereafter and then one files for marriage dissolution? The language of former Section 4800.2 (reimbursement for separate property contributions to acquire community property) referred only to "community property," but the courts construed the section to apply to quasi-community property as well. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990) ("California's marital property laws are designed to provide for uniform treatment of quasi-community and community property where 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 section 4800 (equal division of 'community estate' consisting of community and quasi-community property) and section 4800.5 (power to order conveyance of out-of-state property)").

PART 8. JOINTLY HELD SEPARATE PROPERTY

§2650. Division of jointly held separate property

§ 2650. Division of jointly held separate property

2650. In a proceeding for division of the community property and the quasi-community property, 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 property and quasi-community property.

Comment. Section 2650 continues former Civil Code Section 4800.4 without substantive change. This section applies regardless of when the property was acquired. Subdivision (b) of former Section 4800.4, 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).

Section 2650 reversed the former rule that the court in a dissolution or separation proceeding had no jurisdiction over property of the parties other than community or quasi-community property. The section 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. It 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 200 (jurisdiction of court). It 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 to divide property in a proceeding for dissolution or legal separation. 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 202 (jurisdiction where service is by publication). The jurisdiction of the court 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 community property. 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 (division of community estate "[e]xcept upon the written agreement of the parties").

For background on former Civil Code Section 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. 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 such conveyances or take such 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 he or she would have received if the conveyances had been executed or other actions taken.

Comment. Section 2660 continues former Civil Code Section 4800.5 except that a reference to "this division" has been substituted for the references to former 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 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 jurisdiction in personam 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 jurisdiction in personam 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 such other actions—such as selling the property and including the proceeds in the property division—as 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 Civil Code Section 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 10. CUSTODY OF CHILDREN

- Part 1. General provisions
- Part 2. Right to custody of minor child
- Part 3. Freedom from parental custody and control
- Part 4. Interstate compact on the placement of children
- Part 5. Priorities for foster care placement
- Part 6. Uniform Child Custody Jurisdiction Act

PART 1. GENERAL PROVISIONS

- §3000. Right of parent to custody, services, and earnings of unmarried minor child
- §3001. Right of parent to determine residence of child
- §3002. Payment of earnings to minor
- §3003. Parent may relinquish control and earnings of child
- §3004. Parent cannot control property of child
- §3005. Allowance to parent from property of child
- §3006. When parental authority ceases
- §3007. Remedy for abuse of parental authority
- §3008. Order for support where custodial parent receiving assistance pursuant to Burton-Miller Act

§ 3000. Right of parent to custody, services, and earnings of unmarried minor child

3000. (a) The mother of an unmarried minor child is entitled to its custody, services, and earnings.

(b) The father of the child, if presumed to be the father under Section 1711, is equally entitled to the custody, services, and earnings of the unmarried minor.

(c) If either the father or mother is dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the unmarried minor.

Comment. Section 3000 is the same as former Civil Code Section 197.

§ 3001. Right of parent to determine residence of child

3001. 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 which would prejudice the rights or welfare of the child.

Comment. Section 3001 continues former Civil Code Section 213 without substantive change. The word "court" is substituted for "proper Court." See also Section 3063 (order restraining removal of child from state): Prob. Code § 2352 (guardian may fix residence of minor ward).

§ 3002. Payment of earnings to minor

3002. The employer of a minor shall pay the earnings of the minor to the minor unless the parent or guardian entitled to the earnings gives the employer notice that the parent or guardian claims the earnings.

Comment. Section 3002 restates the substance of former Civil Code Section 212 except that former Section 212 provided that the employer "may" (rather than "shall") pay the

earnings to the minor. See also Prob. Code § 2601 (unless otherwise ordered by court, earnings of minor ward are not part of guardianship estate and are subject to control of ward).

§ 3003. Parent may relinquish control and earnings of child

3003. 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 such relinquishment.

Comment. Section 3003 continues former Civil Code Section 211 without substantive change.

§ 3004. Parent cannot control property of child

3004. The parent, as such, has no control over the property of the child.

Comment. Section 3004 is the same as former Civil Code Section 202.

§ 3005. Allowance to parent from property of child

3005. The court may direct an allowance to be made to the parent of a child, out of the child's property, for the child's past or future support and education, on such conditions as may be proper, whenever such direction is for the benefit of the child.

Comment. Section 3005 continues former Civil Code Section 201 without substantive change.

§ 3006. When parental authority ceases

3006. The authority of a parent ceases upon 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 majority.

Comment. Section 3006 continues former Civil Code Section 204 without substantive change. See also Section 3203 (effect of declaration of freedom from parental custody and control).

Note: Section 3006 fails to recognize that a declaration of freedom from parental custody and control under Part 3 (commencing with Section 3200) terminates all parental rights and responsibilities with regard to the child. See Section 3203. Should this be recognized in Section 3006?

§ 3007. Remedy for abuse of parental authority

3007. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its 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 3007 is the same as former Civil Code Section 203.

Note: Is existing Section 203, continued as new Section 3007, obsolete in view of the detailed provisions relating to obtaining a declaration of freedom from parental

custody and control? See Part 3 (commencing with Section 3200). (Existing Section 203 was enacted in 1872.)

§ 3008. Order for support where custodial parent receiving assistance pursuant to Burton-Miller Act

3008. An order awarding custody to a parent who is receiving, or in the opinion of the court is likely to receive, assistance pursuant to the Burton-Miller Act (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 [Section 4700 or 4702, and Chapter 2 (commencing with Section 4720) of Title 5 of Part 5 of Division 4], 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 3008 is the same as former Civil Code Section 4600.2.

PART 2. RIGHT TO CUSTODY OF MINOR CHILD

- Chapter 1. General provisions
- Chapter 2. Matters to be considered in awarding custody
- Chapter 3. Temporary custody order during pendency of proceeding
- Chapter 4. Joint custody
- Chapter 5. Visitation rights
- Chapter 6. Custody investigation and report
- Chapter 7. Action for exclusive custody
- Chapter 8. Location of missing party or child
- Chapter 9. Check to determine whether child is missing person
- Chapter 10. Appointment of counsel to represent child
- Chapter 11. Mediation of contested visitation or custody issues
- Chapter 12. Counseling of parents and child

CHAPTER 1. GENERAL PROVISIONS

- §3020. Legislative findings and declarations
- §3021. Authority of court to make custody order
- §3022. Factors considered in determining best interest of child
- §3023. Preference for trial on issue of custody
- §3024. Notice to other parent of change of residence of child
- §3025. Parental access to records
- §3026. Family reunification services
- §3027. Monetary sanction for false accusation of child abuse or neglect

§ 3020. Legislative findings and declarations

3020. The Legislature finds and declares that it is the public policy of this state to assure minor children of 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 set forth in Section 3022.

Comment. Section 3020 is the same as the first sentence of subdivision (a) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1).

§ 3021. Authority of court to make custody order

3021. In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper.

Comment. Section 3021 is the same as the second sentence of subdivision (a) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1).

Note: Is Section 3021 superseded by the general provisions governing ex parte and noticed motion custody orders?

§ 3022. Factors considered in determining best interest of child

3022. In making a determination of the best interest of the child in any proceeding under this code, 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 5501.

(c) The nature and amount of contact with both parents.

Comment. Section 3022 is the same as former Civil Code Section 4608 (as amended by 1990 Cal. Stat. ch. 610 § 3) except that former Section 4608 applied only to proceedings under the Family Law Act. See also Sections 3040 (order of preference in awarding custody), 3041 (additional requirements for custody award to nonparent), 3042 (consideration of wishes of child in custody case), 3043 (nomination of guardian by parent), 3044 (parent convicted under certain Penal Code provisions), 3080 (presumption for joint custody where parents agree to joint custody).

Note: If Section 3022 is to apply to all proceedings "under this code," should the section be moved to the part of the new Family Code containing "general provisions"? Existing Section 4608 is now compiled in the title on custody of children.

§ 3023. Preference for trial on issue of custody

3023. (a) In any case in which a contested issue of 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) In any case in which there is more than one contested issue and one of the issues is of 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 is the same as former Civil Code Section 4600.6.

§ 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 he or she 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 prior to 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 prior to 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 subdivision (m) of former Civil Code Section 4600.5 without substantive change. See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

Note: Section 3024 continues without substantive change a provision found in the existing section relating to joint custody. However, the existing provision is not by its terms limited to joint custody orders, and Section 3024 applies to any custody order, not just a joint 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 is the same as subdivision (l) of former Civil Code Section 4600.5.

Note: Section 3025 continues without substantive change a provision found in the existing section relating to joint custody. However, the existing provision is not by its terms limited to joint custody orders, and Section 3025 applies to any custody order, not just a joint custody order.

§ 3026. Family reunification services

3026. In accordance with Section 16507 of the Welfare and Institutions Code, family reunification services shall not be ordered as part of a child custody or visitation rights proceeding brought under the Family Law Act.

Comment. Section 3026 is the same as former Civil Code Section 4609 without substantive change. For the provisions that constitute the Family Law Act, see Section 120.

Note: Should something be substituted for "Family Law Act" in the text of Section 3026? Do recent amendments to Section 16507 permit family reunification services to be ordered in some situations in proceedings brought under the Family Law Act? Should Section 3026 be revised to read:

3026. Except as provided in Section 16507 of the Welfare and Institutions Code, family reunification services shall not be ordered as a part of a child custody or visitation rights proceeding brought under this code.

§ 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 under this division was 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) Upon 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 upon 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 (as added by 1990 Cal. Stat. ch. 297 § 1) without substantive change.

Note: Should Section 3027 apply to a child custody proceeding "under this code" rather than being limited to one under "this division"?

**CHAPTER 2. MATTERS TO BE
CONSIDERED IN AWARDING CUSTODY**

§3040. Order of preference in awarding custody

§3041. Additional requirements for custody award to nonparent

§3042. Wishes of child

§3043. Nomination of guardian by parent

§3044. Parent convicted under Penal Code provisions

§ 3040. Order of preference in awarding custody

3040. (a) Custody should be awarded in the following order of preference according to the best interests of the child pursuant to Section 3022:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order for 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 3022, 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 which is in the best interests of the child.

Comment. Section 3040 continues subdivisions (b) and (d) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1) without substantive change. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the plural). See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 3041. Additional requirements for custody award to nonparent

3041. Before making an order awarding custody to a person or persons other than a parent, without the consent of the parents, the court shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests 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 subdivision (c) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1) without substantive change.

§ 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 award of custody or modification thereof.

Comment. Section 3042 is the same as the third sentence of subdivision (a) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1).

§ 3043. Nomination of guardian by parent

3043. In determining the person or persons to whom custody should be awarded 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 is the same as the last sentence of subdivision (a) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1). 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 Civil Code Section 4600, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

§ 3044. Parent convicted under Penal Code provisions

3044. No parent shall be awarded 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 3044 is the same as former Civil Code Section 4610. See also Section 3100(b) (visitation limited to situations in which third person present).

**CHAPTER 3. TEMPORARY CUSTODY
ORDER DURING PENDENCY OF PROCEEDING**

§3060. Petition for temporary custody order

§3061. Order for temporary custody in accordance with agreement or understanding of parties

§3062. Ex parte order and order to show cause

§3063. Order restraining removal of child from state

§3064. Limitation on ex parte order granting or modifying custody order

§ 3060. Petition for temporary custody order

3060. In any proceeding under Division 7 (commencing with Section 2200) (proceeding for judgment of nullity of marriage) or Division 8 (commencing with Section 2300) (proceeding for dissolution of marriage) where there are minor children of the marriage, and in any action for exclusive custody under Section 3120, 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 thereafter.

Comment. Section 3060 is the same as subdivision (a) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2). 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).

§ 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 awarding temporary custody in accordance with the agreement or understanding, or in accordance with any stipulation of the parties.

Comment. Section 3061 is the same as subdivision (b) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2).

§ 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 is the same as subdivisions (c) and (d) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2). The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the 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 is the same as the first sentence of subdivision (e) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2). 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 is the same as the second and third sentences of subdivision (e) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2). See also Section 70 ("domestic violence" defined).

CHAPTER 4. JOINT CUSTODY

§3080. Presumption for joint custody where parents agree to joint custody

§3081. Award of joint custody absent agreement of parents

§3082. Statement by court of reasons for grant or denial of joint custody request

§3083. Content and effect of joint legal custody order

§3084. Content of joint physical custody order

§3085. Awarding joint legal custody without joint physical custody

§3086. Order may specify one parent as primary caretaker of child

§3087. Modification or termination of joint custody order

§3088. Modification to make custody order a joint custody order

§3089. Consultation with conciliation court

§ 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 interests of a minor child, subject to Section 3022, where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage.

Comment. Section 3080 is the same as subdivision (a) of former Civil Code Section 4600.5. See Section 100 ("joint custody" defined). See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 3081. Award of joint custody absent agreement of parents

3081. Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases, subject to Section 3022. For the purpose of assisting the court in making a determination whether an award of 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 is the same as subdivision (b) of former Civil Code Section 4600.5. See Section 100 ("joint custody" defined). See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 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 interests of the child is not sufficient to satisfy the requirements of this section.

Comment. Section 3082 continues subdivision (c) of former Civil Code Section 4600.5 without substantive change. See also Sections 100 ("joint custody" defined), 110 ("joint physical custody" defined).

§ 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 is the same as subdivision (e) of former Civil Code Section 4600.5. See also Section 105 ("joint legal custody" defined).

§ 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 is the same as subdivision (f) of former Civil Code Section 4600.5. See also Section 110 ("joint physical custody" defined).

§ 3085. Awarding joint legal custody without joint physical custody

3085. In making an order for custody with respect to both parents, the court may award joint legal custody without awarding joint physical custody.

Comment. Section 3085 is the same as subdivision (g) of former Civil Code Section 4600.5. See also Sections 105 ("joint legal custody" defined), 110 ("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 is the same as subdivision (h) of former Civil Code Section 4600.5. See also Sections 105 ("joint legal custody" defined), 110 ("joint physical custody" defined).

§ 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 interests of the child require 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 subdivision (i) of former Civil Code Section 4600.5 without substantive change. See also Section 100 ("joint custody" defined).

§ 3088. Modification to make custody order a joint custody order

3088. An order for the custody of a minor child of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in

Sections 3403 and 3414, be modified at any time to an order of joint custody in accordance with this chapter.

Comment. Section 3088 is the same as subdivision (j) of former Civil Code Section 4600.5. See also Section 100 ("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 is the same as subdivision (k) of former Civil Code Section 4600.5.

CHAPTER 5. VISITATION RIGHTS

§3100. Visitation rights generally

§3101. Determination of visitation rights of stepparent or grandparent in marriage dissolution or nullity proceeding

§3102. Visitation rights where father or mother of unmarried minor is deceased

§ 3100. Visitation rights generally

3100. (a) Subject to Chapter 11 (commencing with Section 3155), in making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall order reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interests 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) In making an award authorizing visitation pursuant to this section, if an order has been directed to a parent pursuant to subdivision (b), (c), or (d) of Section 1900 during the pendency of the proceeding or pursuant to Section 1910, the court shall consider whether the best interests of the child require that any visitation granted to 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 the name of a person to the court that he or she deems suitable to be present during visitation.

Comment. Subdivision (a) of Section 3100 continues former Civil Code Section 4601 without substantive change. Mediation of the custody or visitation issue is required by Chapter 11 (commencing with Section 3155). See also Section 3131 (action by district attorney where child taken or detained in violation of visitation order).

Subdivision (b) is the same as former Civil Code Section 4601.5. See also Section 3044 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child).

§ 3101. Determination of visitation rights of stepparent or grandparent in marriage dissolution or nullity proceeding

3101. (a) In a proceeding under Section 2250 or 2330, the superior court has jurisdiction to award reasonable visitation rights to any of the following persons if visitation by the person is determined to be in the best interests of the minor child:

(1) 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.

(2) A person who is a grandparent of a minor child of a party to the marriage.

(b) There is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interests of a minor child if the parties to the marriage agree that the grandparent should not be awarded visitation rights.

(c) Visitation rights granted to a stepparent or grandparent pursuant to this section shall not conflict with any visitation or custodial right of a natural or adoptive parent who is not a party to the proceeding.

(d) In making an award of visitation pursuant to this section, if a domestic violence prevention order has been directed to a stepparent or grandparent during the pendency of the proceeding, the court shall consider whether the best interests of the child require that any visitation by that stepparent or grandparent should be denied.

Comment. Section 3101 continues subdivisions (a), (b), (j), (k), and (l) of former Civil Code Section 4351.5 without substantive change. Mediation of the visitation issue is required by Chapter 11 (commencing with Section 3155). See also Section 75 ("domestic violence prevention order" defined).

§ 3102. Visitation rights where father or mother of unmarried minor child is deceased

3102. (a) If either the father or mother of an unmarried minor child is deceased, the children, parents, and the grandparents of the deceased father or mother may be granted reasonable visitation rights to the minor child during the child's minority by the superior court upon a finding that the visitation rights would be in the best interests of the minor child.

(b) In granting visitation rights to a person other than the parents of the deceased father or mother, the court shall consider the amount of personal contact between the person and the minor child prior to the application for the order granting the person visitation rights.

(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 prior to the adoption of the child automatically terminate upon the adoption of the child by a person other than a stepparent or grandparent.

Comment. Section 3102 continues former Civil Code Section 197.5 without substantive change.

CHAPTER 6. CUSTODY INVESTIGATION AND REPORT

§ 3110. Custody investigation and report

§ 3110.5. Separate meetings where history of domestic violence or domestic violence prevention order

§ 3111. Repayment of county for investigation or visitation work

§ 3112. Recommendation for appointment of counsel for minor child

§ 3110. Custody investigation and report

3110. In a proceeding under the Family Law Act, when so directed by the court, the probation officer or domestic relations investigator shall conduct a custody investigation and file a written confidential report on it. The report may be considered by the court and shall be made available only to the parties or their attorneys at least 10 days before any hearing regarding the custody of a child. The report may be received in evidence upon stipulation of all interested parties.

Comment. Section 3110 is the same as the first paragraph of former Civil Code Section 4602. As to the provisions included in the Family Law Act, see Section 85. See also Section 3081 (investigation concerning whether joint custody award would be appropriate). The provisions of this chapter supersede former Code of Civil Procedure Section 263.

Note: Should Section 3110 apply to any proceeding "under this code"?

SECTION 4602 WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ADD "COURT APPOINTED EVALUATOR" TO WHAT IS NOW SECTION 3110.

§ 3110.5. Separate meetings where history of domestic violence or domestic violence prevention order

3110.5. Where there has been a history of domestic violence between the parties, or where a domestic violence prevention order is in effect, at the request of the party alleging domestic violence or protected by the order, the parties shall meet with the probation officer, domestic relations investigator, or court appointed evaluator separately at separate times.

Comment. Section 3110.5 continues the second paragraph of former Civil Code Section 4602 (as amended by 1991 Cal. Stat. ch. [AB 162]) without substantive change. See also Sections 70 ("domestic violence" defined), 75 (domestic violence prevention order" defined).

NOTE: SECTION 4602 WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ADD WHAT IS NOW SECTION 3110.5.

§ 3111. Repayment of county for investigation or visitation work

3111. When the probation officer or domestic relations 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 make inquiry into the financial condition of the parent, guardian, or other person charged with the support and maintenance of the minor, and if the court finds the parent, guardian, or other

person able, in whole or in part, to pay the expense of the investigation, report, and recommendation, the court may make an order requiring that parent, guardian, or other person to repay to the county that part, or all, of the expense of investigation, report, and recommendation as, in the opinion of the court, is proper. The repayment shall be made to the county officer designated by the board of supervisors, who shall keep suitable accounts of these expenses and repayments and shall deposit these collections in the county treasury.

Comment. Section 3111 is the same as the second paragraph of former Civil Code Section 4602.

NOTE: SECTION 4602 WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ADD "COURT APPOINTED EVALUATOR" TO WHAT IS NOW SECTION 3111.

§ 3112. Recommendation for appointment of counsel for minor child

3112. Nothing in this chapter prohibits the probation officer or domestic relations 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 such a recommendation, the probation officer or domestic relations investigator shall inform the court of the reasons why it would be in the best interests of the minor child to have counsel appointed.

Comment. Section 3112 is the same as the last paragraph of former Civil Code Section 4602. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the plural).

NOTE: SECTION 4602 WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ADD "COURT APPOINTED EVALUATOR" TO WHAT IS NOW SECTION 3112.

CHAPTER 7. ACTION FOR EXCLUSIVE CUSTODY

§3120. Independent action for exclusive custody

§ 3120. Independent action for exclusive custody

3120. Without filing a petition for dissolution or legal separation, 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 interests of the children. The order may be modified or revoked at any time thereafter as the natural rights of the parties and the best interests of the children may require.

Comment. Section 3120 continues former Civil Code Section 4603 without substantive change.

Note: Should the proceeding under this chapter be referred to as a "proceeding" instead of as an "action"? If this change is made, Section 3060 will require revision.

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

§3131. Action by district attorney where child taken or detained in violation of custody or visitation order

§3132. District attorney acts on behalf of court

§3133. Temporary custody order upon request of district attorney

§3134. Payment of district attorney's expenses

§ 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 is the same as subdivision (a) of former Civil Code Section 4604.

§ 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 (a) to locate and return the child and the person who violated the order and (b) 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 subdivision (b) of former Civil Code Section 4604 without substantive change. The words "and the child" have been omitted in the phrase "the person who violated the order and the child" which appeared in former Civil Code Section 4604.

§ 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 is the same as first sentence of subdivision (c) of former Civil Code Section 4604.

§ 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 interests of the child to place temporary sole physical custody in any of the persons 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 second and third sentences of subdivision (c) of former Civil Code Section 4604 without substantive change.

§ 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 State 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 such liability and shall transmit all recovered funds to the state.

Comment. Section 3134 is the same as former Civil Code Section 4605.

**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. 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), prior to 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 Welf. & Inst. Code § 11478.5 (California Parent Locator Service).

CHAPTER 10. APPOINTMENT OF COUNSEL TO REPRESENT CHILD

§3150. Appointment of private counsel to represent child in custody or visitation proceeding

§3151. Rights and duties of appointed counsel

§3152. Release to counsel of reports and files of child protective agency

§3153. Compensation of appointed counsel

§ 3150. Appointment of private counsel to represent child in custody or visitation proceeding

3150. (a) In an initial or subsequent proceeding under the Family Law Act where there is in issue the custody of or visitation with a minor child, the court may, if it determines it would be in the best interests of the minor child, appoint private counsel to represent the interests of the minor child.

(b) Counsel, upon entering an appearance on behalf of a minor pursuant to this chapter, shall continue to represent that minor unless relieved by the court upon the substitution of other counsel by the court or for cause.

Comment. Section 3150 is the same as subdivisions (a) and (b) of former Civil Code Section 4606 (as amended by 1990 Cal. Stat. ch. 754 § 1). See Section 85 ("Family Law Act" defined).

Note: Should Section 3150 apply in any proceeding "under this code" or in any proceeding involving custody or, or visitation with, a minor 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 his or her own witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to adequately represent the child.

(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 subdivisions (c) and (d) of former Civil Code Section 4606 (as amended by 1990 Cal. Stat. ch. 754 § 1) without substantive change.

Note: Is the phrase “upon application to the court” in subdivision (b)(6) necessary since the rights listed in the subdivision exist only “when ordered by the court”? See the introductory portion of subdivision (b). Should counsel have some or all of these rights even though there is no court order granting the right?

§ 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 is the same as subdivision (e) former Civil Code Section 4606 (as amended by 1990 Cal. Stat. ch. 754 § 1). 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 such proportions as 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 subdivisions (f) and (g) of former Civil Code Section 4606 (as amended by 1990 Cal. Stat. ch. 754 § 1) without substantive change.

CHAPTER 11. MEDIATION OF CONTESTED VISITATION OR CUSTODY ISSUES

Article 1. General provisions

Article 2. Mediation where issuance or modification of custody or visitation order requested

Article 3. Mediation of stepparent or grandparent visitation

Article 1. General Provisions

§3155. Mediator to be available; qualifications of mediator

§3156. Confidentiality of mediation proceeding

§3157. Assessment of needs and interests of child

§3158. Exclusion of counsel from mediation proceeding

§3159. Recommendations to court

§3160. Agreement reached by parties as result of mediation

§3161. Uniform standards of practice for mediation

§3162. Local court rules

Article 1. General Provisions

§ 3155. Mediator to be available; qualifications of mediator

3155. Each superior court shall make available a mediator. 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. In order to provide mediation services, the court is not required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 6415.

Comment. Section 3155 continues subdivision (b) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) and the last sentence of subdivision (c) of former Civil Code Section 4351.5. See also Section 6416 (continuing instruction programs in domestic violence).

§ 3156. Confidentiality of mediation proceeding

3156. Mediation proceedings under this chapter shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this chapter are deemed to be official information within the meaning of Section 1040 of the Evidence Code.

Comment. Section 3156 continues subdivision (d) of former Civil Code Section 4351.5 and subdivision (c) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change. See also Section 6419 (destruction of records of child custody or visitation mediation).

§ 3157. Assessment of needs and interests of child

3157. In mediation proceedings under 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 when the mediator considers the interview appropriate or necessary.

Comment. Section 3157 continues the second sentence of subdivision (e) of former Civil Code Section 4351.5 and second sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change.

The word “child” is substituted for the phrase “child or children” which was used in former Section 4607. This is not a substantive change. See Section 11 (singular includes the plural).

§ 3158. Exclusion of counsel from mediation proceeding

3158. The mediator has authority to exclude counsel from participation in the mediation proceedings under this chapter where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary.

Comment. Section 3158 continues the first sentence of subdivision (e) of former Civil Code Section 4351.5 and first sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change.

§ 3159. Recommendations to court

3159. (a) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child.

(b) The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceedings, recommend to the court that an investigation be conducted, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. If the mediation is pursuant to Article 2 (commencing with Section 3170), the investigation shall be conducted pursuant to Chapter 6 (commencing with Section 3110).

(c) The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determining of the controversy, to protect the well-being of the child involved in the controversy.

Comment. Section 3159 continues the first three sentences of subdivision (f) of Civil Code Section 4351.5 and the first three sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change except that the provision of subdivision (b) that the mediator may recommend to the court that “other action be taken” to assist the parties to effect a resolution of the controversy formerly applied only to mediation proceedings under what is now Article 2 (commencing with Section 3170).

NOTE: AB 162 OF THE 1991-92 REGULAR SESSION WOULD AMEND SECTION 4607 TO DELETE FROM SUBDIVISION (c) OF SECTION 3159 the word “mutual”.

§ 3160. Agreement reached by parties as result of mediation

3160. (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 prior to its being reported to the court.

(b) No agreement shall be confirmed or otherwise incorporated in an order of the court unless each party, in person or by his or her counsel of record, has affirmed and assented to the agreement in open court or by written stipulation. The agreement also

may be so confirmed or incorporated if a party fails to appear at a noticed hearing on the issue involved in the agreement.

Comment. Section 3160 continues the fourth, sixth, and seventh sentences of subdivision (f) of former Civil Code Section 4351.5 and the fourth, sixth, and seventh sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1). See also Section 6419 (destruction of records of child custody or visitation mediation).

§ 3161. Uniform standards of practice for mediation

3161. (a) The Legislature finds and declares that the mediation of cases involving custody and visitation concerning children should be governed by uniform standards of practice, which shall be 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 interests 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 adopt the standards by January 1, 1991, and at that time, shall offer training with respect to the standards to mediators.

Comment. Section 3161 is the same as former Civil Code Section 4607.1. See also Sections 6419 (destruction of records of child custody or visitation mediation), 6450 (statewide coordination of family mediation and conciliation services).

Note: Should subdivision (d) of Section 3161 be continued or should it be omitted as obsolete? Should the entire section be omitted as obsolete, the rules having been adopted by the Judicial Council? Should the section be revised to take into account mediation of stepparent and grandparent visitation?

§ 3162. Local court rules

3162. Courts shall develop local rules to respond to requests for a change of mediators or to general problems relating to mediation.

Comment. Section 3162 is the same as subdivision (g) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1).

Article 2. Mediation Where Issuance or Modification of Custody or Visitation Order Requested

§3170. Mediation required

§3171. Mediation of dispute concerning existing order

§3172. Purpose of mediation proceeding

§3173. Mediation available even where paternity is at issue

§3174. Recommendations that counsel be appointed for minor child

§3175. Agreements reached by parties as result of mediation

§3176. Separate mediation permitted where history of domestic violence

§3177. Separate mediation where domestic violence prevention order

§ 3170. Mediation required

3170. In a proceeding where the custody of, or visitation with, a minor child is at issue (including but not limited to a proceeding where a temporary custody order is sought) and it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of the child that either or both these issues are contested, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing.

Comment. Section 3170 continues the substance of the first sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) except that the reference in the former provision to cases where the custody or visitation issue or both issues are contested “as provided in Section 4600, 4600.1, or 4601” has been omitted as unnecessary. The word “child” is substituted for the phrase “child or children.” This is not a substantive change. See Section 11 (singular includes the plural).

§ 3171. Mediation of dispute concerning existing order

3171. Upon the adoption of a resolution by the board of supervisors authorizing the procedure, a petition also may be filed pursuant to this chapter for the mediation of a dispute relating to an existing order for custody or visitation. 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 3171 continues the second sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change.

§ 3172. Purpose of mediation proceeding

3172. The purpose of the mediation proceeding is to reduce acrimony which may exist between the parties and to develop an agreement assuring the child such close and continuing contact with both parents as is in the best interests of the child. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute that is in the best interests of the child, consistent with the considerations required by Section 3022.

Comment. Section 3172 continues the third and fourth sentences of subdivision (a) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change. The word “child” is substituted for the phrase “child or children.” This is not a substantive change. See Section 11 (singular includes the plural).

§ 3173. Mediation available even where paternity is at issue

3173. Mediation shall not be denied to the parties on the basis that paternity is an issue in a proceeding before the court.

Comment. Section 3173 is the same as the fifth sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1).

§ 3174. Recommendations that counsel be appointed for minor child

3174. 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 such a recommendation, the mediator shall inform the court of the reasons why it would be in the best interests of the minor child to have counsel appointed.

Comment. Section 3174 continues subdivision (f) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change. The word “child” is substituted for the phrase “child or children.” This is not a substantive change. See Section 11 (singular includes the plural).

§ 3175. Agreements reached by parties as result of mediation

3175. (a) An agreement reached by the parties as a result of mediation shall be limited to the resolution of issues relating to parenting plans, custody, or visitation, or a combination thereof.

(b) The custody or visitation agreement may be modified at any time at the discretion of the court, subject to the provisions of 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 3175 continues the fifth and eighth sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change.

Note: Should a broader reference be included in subdivision (b) of Section 3175? Should the reference be “to this code”?

§ 3176. Separate mediation permitted where history of domestic violence

3176. The mediator has the authority to meet with the parties separately when a request for separate mediation is made by one of the parties in any proceeding where there has been a history of domestic violence.

Comment. Section 3176 continues the third sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change. See also Section 70 (“domestic violence” defined).

NOTE: SECTION 3176 SHOULD BE OMITTED IF SECTION 3177 IS REVISED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ELIMINATE THE NEED FOR SECTION 3176. SEE THE NOTE TO SECTION 3177.

§ 3177. Separate mediation where domestic violence prevention order

3177. (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 and a domestic violence prevention order is in effect, at the request of the party protected by the order

the parties shall meet with the mediator appointed pursuant to this chapter separately at separate times.

(b) Any intake form that an agency charged with providing family court services may require the parties to complete prior to the commencement of mediation shall include a provision which indicates that at the request of the party protected by the order the parties shall meet with the mediator appointed pursuant to this chapter separately at separate times.

(c) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

Comment. Section 3177 is the same in substance as former Civil Code Section 4607.2 (as amended by 1990 Cal. Stat. ch. 994 § 2). See also Sections 70 ("domestic violence" defined), 75 ("domestic violence prevention order" defined).

Note: Should subdivision (c) of Section 3177 be omitted as obsolete or should Section 3177 be omitted as repealed?

Compare Section 3177 with Section 3111.5. Note that either a history or domestic violence OR a domestic violence prevention order being in effect is sufficient under Section 3111.5, whereas both are required under Section 3177. Should Section 3177 be revised to conform in this respect to Section 3111.5?

NOTE: THIS SECTION (CIVIL CODE SECTION 4607.2) WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION.

Article 3. Mediation of Stepparent or Grandparent Visitation

§3180. Mediation where stepparent or grandparent visitation order requested in dissolution or nullity proceeding

§3181. Agreement reached by parties as result of mediation

§3182. Hearing on visitation rights

§3183. Notice of mediation or hearing

§ 3180. Mediation where stepparent or grandparent visitation order requested in dissolution or nullity proceeding

3180. (a) If a stepparent or grandparent has petitioned or otherwise applied for an order of reasonable visitation rights pursuant to Section 3101 or 3102, the court shall set the matter of visitation rights for mediation. The purpose of the mediation is to effect a settlement of the issue of visitation rights of all parties that is in the best interests of the child.

(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 any settlement reached by the other parties during mediation or to require a hearing on the matter.

Comment. Subdivision (a) of Section 3180 is the same as the first two sentences of subdivision (c) of former Civil Code Section 4351.5. Subdivision (b) is the same as subdivision (g) of former Civil Code Section 4351.5.

§ 3181. Agreement reached by parties as result of mediation

3181. (a) An agreement reached by the parties as a result of mediation shall be limited to the resolution of issues relating to visitation.

(b) The agreement may be modified at any time at the discretion of the court, subject to the provisions of Sections 3101 and 3102.

Comment. Section 3181 is the same as the fifth and eighth sentences of subdivision (f) of former Civil Code Section 4351.5.

§ 3182. Hearing on visitation rights

3182. If the issue of visitation rights of all parties is not settled by agreement of all parties who participate in mediation, the mediator shall so inform the court in writing and the court shall set the matter of visitation rights for hearing. Each natural or adoptive parent and the stepparent or grandparent seeking visitation rights shall be given an opportunity to appear and be heard on that issue.

Comment. Section 3182 is the same as subdivision (h) of former Civil Code Section 4351.5.

§ 3183. Notice of mediation or hearing

3183. Notice of mediation and of any hearing to be held pursuant to this article shall be given to the stepparent or grandparent seeking visitation rights, to each of the parents of the child, and to each counsel of record of each of the parties to any proceeding under Section 2250 or 2330 with regard to their marriage. The notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address of each of the parents and his or her counsel.

Comment. Section 3183 continues subdivision (i) of former Civil Code Section 4351.5 without substantive change.

CHAPTER 12. COUNSELING OF PARENTS AND CHILD

§3190. Order requiring counseling

§3191. Purpose of counseling

§3192. Separate counseling where protective order against domestic violence

§ 3190. Order requiring counseling

3190. (a) In a proceeding under the Family Law Act where custody of, or visitation with, a minor child is at issue, the court may require the parents of the child who are involved in the 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 six months 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 interests of the child.

(2) The counseling is in the best interests of the child.

(b) The court shall fix the cost and shall order the entire cost of the services to be borne by the parties in such proportion as the court deems reasonable.

(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 interests 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 the provisions of this chapter.

Comment. Section 3190 continues the first paragraph of subdivision (a) of former Civil Code Section 4608.1 without substantive change. See also Section 85 ("Family Law Act" defined).

Note: Should "under this code" be substituted for "under the Family Law Act" in Section 3190?

§ 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 visitation or custody, and to improve the quality of parenting skills of each parent.

Comment. Section 3191 is the same as the second paragraph of subdivision (a) of former Civil Code Section 4608.1.

§ 3192. Separate counseling where protective order against domestic violence

3192. (a) In a proceeding in which counseling is ordered pursuant to this chapter, where there has been a history of domestic violence between the parties and a domestic violence prevention order is in effect, at the request of the party protected by the order the parties shall meet with the mental health professional, or attend other community programs or services, separately at separate times.

(b) This section shall only be operative until January 1, 1992.

Comment. Section 3192 is the same as subdivision (b) of former Civil Code Section 4608.1. See also Sections 70 ("domestic violence" defined), 75 ("domestic violence prevention order" defined).

Note: Should subdivision (b) of section 3192 be omitted as obsolete or should Section 3192 be omitted as repealed? AB 162 of the 1991-92 Regular Session would delete subdivision (b).

Compare Section 3192 with Section 3111.5. Note that either a history or domestic violence OR a domestic violence prevention order being in effect is sufficient under Section 3111.5, whereas both are required under Section 3192. Should Section 3192 be revised to conform in this respect to Section 3111.5? See also the Note to Section 3177.

Subdivision (a) of Section 3192 would be revised by AB 162 of the 1991-92 Regular Session.

PART 3. FREEDOM FROM PARENTAL CUSTODY AND CONTROL

Chapter 1. General provisions

Chapter 2. Circumstances where proceeding may be brought

Chapter 3. Procedure

CHAPTER 1. GENERAL PROVISIONS

§3200. Purpose of part

§3201. Liberal construction

§3202. Proceeding to declare minor free from parental custody and control

§3203. Effect of declaration

§3204. Appointment of person to act on child's behalf; further notice

§3205. Persons entitled to inspect petitions, reports, and records

§3206. No filing fee

§3207. Nonapplication of certain other statutory provisions in proceeding under this part

§3208. Child adjudged to be dependent child after January 1, 1989

Note: The proceeding under this part is designated as a "proceeding" rather than as "an action." Under former law, the proceeding was generally referred to as an "action."

The word "child" is used consistently in this part. Formerly, the word "child" and "minor" were used interchangeably. Nevertheless, only a minor child (one under 18 years of age) can be declared free from the custody and control of either or both of his or her parents. See Sections 3202 and 3220.

§ 3200. Purpose of part

3200. The purpose of this part is to serve the welfare and best interests 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 3200 continues the first sentence of former Civil Code Section 232.6 without substantive change.

§ 3201. Liberal construction

3201. The provisions of this part shall be liberally construed to serve and protect the interests and welfare of the child.

Comment. Section 3201 continues the first sentence of former Civil Code Section 232.5 without substantive change.

§ 3202. Proceeding to declare minor free from parental custody and control

3202. 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 of his or her parents.

Comment. Section 3202 continues a portion of the introductory portion of subdivision (a) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change. See also Section 3220.

§ 3203. Effect of declaration

3203. 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 3203 continues the second sentence of former Civil Code Section 232.6 without substantive change.

§ 3204. Appointment of person to act on child's behalf; further notice

3204. 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 3204 continues the substance of former Civil Code Section 237.

§ 3205. Persons entitled to inspect petitions, reports, and records

3205. (a) Any petition filed in a superior court proceeding under this part and any 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 of the superior court.

(b) In a proceeding before the court of appeal or Supreme Court to review a judgment or order entered in a superior court proceeding under this part, the superior 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, whenever it is believed that the welfare of the child will be promoted thereby, the superior 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 3205 continue former Civil Code Section 233.5 without substantive change. Subdivision (c) continues former Civil Code Section 233.6 without substantive change.

Note: Should “if the court determines” be substituted for “whenever it is believed” in subdivision (c) of Section 3205 to make clear whether a court order is required and who makes the determination to furnish the information?

§ 3206. No filing fee

3206. There shall be no filing fee charged for a proceeding brought under this part.

Comment. Section 3206 continues the second sentence of former Civil Code Section 233 without substantive change.

Note: Does Section 3206 mean that no filing fee is charged for filing any paper in a proceeding under this part or does it mean that no filing fee is charged for filing a petition under this part?

§ 3207. Nonapplication of certain other statutory provisions in proceeding under this part

3207. Sections 3020, 3021, 3040 to 3043, inclusive, and 3409 do not apply in a proceeding under this part.

Comment. Section 3207 continues subdivision (d) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

§ 3208. Child adjudged to be dependent child after January 1, 1989

3208. 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, Section 366.26 of the Welfare and Institutions Code and Sections 221.20 and 222.10 of the Civil Code and Chapter 5 (commencing with Section 1760) of Part 8 of Division 4 of this code provide the exclusive means for the termination of parental rights.

Comment. Section 3208 continues subdivision (e) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

**CHAPTER 2. CIRCUMSTANCES
WHERE PROCEEDING MAY BE BROUGHT**

§3220. Proceeding to declare minor free from parental custody and control

§3221. Clear and convincing evidence

§3222. Abandoned child

§3223. Neglected or cruelly treated child

§3224. Child whose parents under disability because of use of alcohol or controlled substance or being morally depraved

§3225. Child whose parent convicted of felony

§3226. Child whose parent declared to be developmentally disabled or mentally ill

§3227. Child whose parent is mentally disabled

§3228. Child in supervised out-of-home placement for one year period

§3229. Child found to be dependent child and reunification services not to be provided

§ 3220. Proceeding to declare minor free from parental custody and control

3220. 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 of his or her parents if the child comes within any of the descriptions set out in this chapter.

Comment. Section 3220 continues a portion of the introductory portion of subdivision (a) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change. This section limits a proceeding under this chapter to case where the child (1) is under the age of 18 and (2) comes within any of the descriptions set out in this chapter.

§ 3221. Clear and convincing evidence

3221. A finding pursuant to this chapter shall be supported by clear and convincing evidence.

Comment. Section 3221 is the same as a portion of subdivision (c) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5).

§ 3222. Abandoned child

3222. (a) A proceeding under this part may be brought where the child has been left without provision for the child's identification by his or her parent or parents or by others or has been left by both of his or her parents or his or her 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.

Comment. Section 3222 continues subdivision (a)(1) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

§ 3223. Neglected or cruelly treated child

3223. (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 prior to 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 3223 continues subdivision (a)(2) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

§ 3224. Child whose parents under disability because of use of alcohol or controlled substance or being morally deprived

3224. (a) As used in this section, "disability" means any physical or mental incapacity which renders the parent or parents unable to adequately care for and control the child.

(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 (i) 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 (ii) are morally deprived.

(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 prior to 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 3224 continues subdivision (a)(3) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

§ 3225. Child whose parent convicted of felony

3225. 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 3225 continues subdivision (a)(4) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

§ 3226. Child whose parent declared to be developmentally disabled or mentally ill

3226. 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 3226 continues subdivision (a)(5) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

§ 3227. Child whose parent is mentally disabled

3227. (a) As used in this section, "mentally disabled" means that a parent or parents suffer a mental incapacity or disorder which renders the parent or parents unable to adequately care for and control the child.

(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:

(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; or

(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 3260), whether or not a request for the appointment is made by the parent.

Comment. Section 3227 continues subdivision (a)(6) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

§ 3228. Child in supervised out-of-home placement for one year period

3228. (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 3228 continues subdivision (a)(7) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

§ 3229. Child found to be dependent child and reunification services not to be provided

3229. 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 3229 continues subdivision (a)(8) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

CHAPTER 3. PROCEDURE

Article 1. Authorized petitioners

Article 2. Venue

Article 3. Investigation and report

Article 4. Appointment of Counsel

Article 5. Time for hearing; continuance

Article 6. Notice of proceeding and attendance at hearing

Article 7. Hearing and subsequent proceedings

Article 1. Authorized Petitioners

§3230. Petition by private or public adoption agency or state or county agency

§3231. Right of interested person to file petition

§ 3230. Petition by private or public adoption agency or state or county agency

3230. (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 of his or her 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 3240 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 verified 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 3230 is the same as former Civil Code Section 232.9. See also Section 3231 (any interested person may file petition).

Note: Subdivision (d) refers to a “verified” petition. Should there be a general requirement that all petitions under the Family Code be verified?

§ 3231. Right of interested person to file petition

3231. 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 of his or her parents.

Comment. Section 3231 is the same as a portion of the first sentence of former Civil Code Section 233.

Article 2. Venue

§3240. Venue

§ 3240. Venue

3240. The petition shall be filed in the superior court of:

(a) The county in which a minor described in Chapter 2 (commencing with Section 3220) resides or is found; or

(b) The county in which any of the acts which are set forth in Chapter 2 (commencing with Section 3220) are alleged to have occurred.

Comment. Section 3240 is the same as a portion of the first sentence of former Civil Code Section 233.

Article 3. Investigation and Report

§3250. Investigation of circumstances of child

§3251. Report and recommendations to court

§ 3250. Investigation of circumstances of child

3250. Upon the filing of a petition under Section 3231, the clerk of the court shall, in accordance with the direction of the court, immediately notify the juvenile probation officer, 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 3220).

Comment. Section 3250 continues the third sentence of former Civil Code Section 233 without substantive change. Section 3250 does not require the notice and investigation if the petition is filed under Section 3230 (petition by licensed private or public adoption agency or state or county agency).

Note: Under existing practice, is the investigation and report required when the petition is filed by a licensed private or public adoption agency or state or county agency? If so, the introductory clause of Section 3250 should be revised to conform to existing practice.

§ 3251. Report and recommendations to court

3251. (a) The juvenile probation officer 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 interests 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 his or her 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 his or her 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 satisfies 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 3251 is the same as the last portion of former Civil Code Section 233.

Article 4. Appointment of Counsel

§3260. Procedure for appointment of counsel

§3261. Appointment to protect interests of child

§3262. Appointment of counsel for parent

§3263. Compensation and expenses of private appointed counsel

§3264. Continuance

§ 3260. Procedure for appointment of counsel

3260. 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 his or her parent.

Comment. Section 3260 continues the introductory portion, the second sentence of subdivision (b), and the first sentence of subdivision (c) of former Civil Code Section 237.5 without substantive change. See also Sections 3227(e) (mandatory appointment of counsel for mentally disabled parent), 3295 (appointment of counsel for indigent appellant).

§ 3261. Appointment to protect interests of child

3261. 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 3261 continues subdivision (a) of former Civil Code Section 237.5 without substantive change. The section has been reworded to make it more concise.

§ 3262. Appointment of counsel for parent

3262. If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless such representation is knowingly and intelligently waived.

Comment. Section 3262 continues the first sentence of subdivision (b) of former Civil Code Section 237.5 without substantive change.

§ 3263. Compensation and expenses of private appointed counsel

3263. 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 such proportions as 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 3263 continues the second, third, and fourth sentences of subdivision (c) of former Civil Code Section 237.5 without substantive change.

§ 3264. Continuance

3264. 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 3264 continues subdivision (d) of former Civil Code Section 237.5 without substantive change. For a general provision on continuances, see Section 3271.

Article 5. Time for Hearing; Continuance

§3270. Time for hearing; precedence over other matters; continuance

§3271. Continuance of hearing

§ 3270. Time for hearing; precedence over other matters; continuance

3270. (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 3264 or Section 3271.

Comment. Section 3270 continues subdivisions (a) and (b) of former Civil Code Section 232.3 with the addition of a reference in subdivision (c) to Section 3271.

Note: What is the meaning of the language in subdivision (b) “after filing notification therefor”? Is there an inconsistency between the requirement of subdivision (b) that service be “in the manner prescribed by law for service of civil process” and the provisions of Article 6 (commencing with Section 3280)?

§ 3271. Continuance of hearing

3271. (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 3271 continues subdivision (c) of former Civil Code Section 232.3 without substantive change. See also Section 3264 (continuance for not to exceed 30 days as necessary to appoint counsel and to enable counsel to become acquainted with the case).

Article 6. Notice of Proceeding and Attendance at Hearing

§3280. Citation requiring attendance at hearing

§3281. Service of citation on parents or relatives

§3282. Service on parent who cannot be found or whose residence is unknown

§3283. Failure to comply with citation as contempt

§3284. Admission of public to proceeding

§ 3280. Citation requiring attendance at hearing

3280. (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, 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 3280 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 drawn from the last portion of subdivision (b) of former Civil Code Section 232.3.

§ 3281. Service of citation on parents or relatives

3281. (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 notice shall also advise the person or persons of the rights and procedures set forth in Article 4 (commencing with Section 3260). 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 his or her child for the purpose of adoption, or has signed a consent for adoption as provided in Sections 222.10, 224.62, or 227.40 of the Civil Code, 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 3281 is the same as the subdivision (a) of former Civil Code Section 235 (as amended by 1990 Cal. Stat. ch. 1363 § 6).

§ 3282. Service on parent who cannot be found or whose residence is unknown

3282. (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 3281, 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 his or her

place of residence. When publication is ordered, service of a copy of the citation in the manner provided for in Section 3281 is equivalent to publication and deposit in the post office.

(d) If one or both of the parents of the child is unknown or if the name of either or both of the child's parents is uncertain, that fact shall be set forth in the affidavit and the court shall order the citation to be directed to either the father or the mother, or both, of the child, naming and otherwise describing the child, and to all persons claiming to be the father or mother 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 3281, whichever event shall first occur.

Comment. Section 3282 continues subdivision (b) of former Civil Code Section 235 (as amended by 1990 Cal. Stat. ch. 1363 § 6) without substantive change.

Note: Why does subdivision (b) of Section 3282 REQUIRE the father or mother to appear whereas Section 3281 advises that they MAY appear at the time and place stated in the citation? Compare Section 3280 which requires attendance of a person having custody or control of the minor or of a person with whom the minor is.

§ 3283. Failure to comply with citation as contempt

3283. If a person personally served with a citation within this state as provided in this part 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 3283 is the same as former Civil Code Section 236.

§ 3284. Admission of public to proceeding

3284. (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 3284 continues former Civil Code Section 235.5 without substantive change.

Article 7. Hearing and Subsequent Proceedings

§3290. Wishes and best interest of child

§3291. Hearing in chambers to determine wishes of child

§3292. Testimony of child in chambers

§3293. Appointment of guardian or referral for adoption

§3294. Conclusiveness of order or judgment

§3295. Appointment of counsel for indigent appellant; free copy of transcripts

§ 3290. Wishes and best interest of child

3290. 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 interests of the child.

Comment. Section 3290 continues the substance of the second sentence of former Civil Code Section 232.5 and supersedes the first sentence of subdivision (b) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5).

§ 3291. Hearing in chambers to determine wishes of child

3291. (a) Except as otherwise provided in this section, if the child subject of the petition is 10 years old 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 his or her parent or parents.

(3) The child's preference as to custody, according to Section 3020 and Chapter 2 (commencing with Section 3040).

(b) The court shall inform the child of his or her right to attend the hearing. However, counsel for the child may waive the in camera hearing 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 3291 is the same as the second paragraph of former Civil Code Section 234. See also Section 3354 (minor's right to make statement in connection with priorities for foster care placement).

§ 3292. Testimony of child in chambers

3292. (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 his or her 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 3292 continue the last portion of subdivision (b) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363

§ 5) without substantive change. Subdivision (c) continues a portion of subdivision (c) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5).

§ 3293. Appointment of guardian or referral for adoption

3293. (a) If the court, by order or judgment, declares a child free from the custody and control of both parents under the provisions of 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 3293 continues former Civil Code Section 239 without substantive change.

§ 3294. Conclusiveness of order or judgment

3294. (a) An order and judgment of the court declaring a child free from the custody and control of a parent or parents under the provisions of this part is conclusive and binding upon the child, upon the parent or parents, and upon all other persons who have been served with citation 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 3294 continues former Civil Code Section 238 without substantive change. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control).

§ 3295. Appointment of counsel for indigent appellant; free copy of transcripts

3295. (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 3295 continues former Civil Code Section 237.7 without substantive change. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control)

PART 4. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

§3300. Adoption of compact

§3301. Provisions of compact

§3302. Financial responsibility for child placed pursuant to compact

§3303. "Appropriate public authorities" defined

§3304. "Appropriate authority in receiving state" defined

§3305. Agreements with party states; approval of financial obligations

§3306. Requirements for visitation, inspection, or supervision in another state

§3307. Application of law restricting out-of-state placements

§3308. Placement of delinquent children in institution in another state

§3309. Appointment of compact administrator

§3310. Refusal to grant approval of placement in violation of state law

3300. Adoption of compact

3300. The Interstate Compact on Placement of Children as set forth in Section 3301 is hereby adopted and entered into with all other jurisdictions joining there in.

Comment. Section 3300 is the same as former Civil Code Section 264.

§ 3301. Provisions of compact

3301. The provisions of the interstate compact referred to in Section 3300 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, 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) Prior to 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 such 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, such 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. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such 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. Such 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 such 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) hereof.

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, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction, and
2. 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 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 parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his 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 such jurisdiction when such 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 such 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 prior to 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 3301 is the same as former Civil Code Section 265.

§ 3302. Financial responsibility for child placed pursuant to compact

3302. Financial responsibility for a child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of 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 3302 is the same as former Civil Code Section 266.

§ 3303. “Appropriate public authorities” defined

3303. As used in Article 3 of the Interstate Compact on the Placement of Children, the phrase “appropriate public authorities” 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 3303 continues former Civil Code Section 267 without substantive change.

§ 3304. “Appropriate authority in receiving state” defined

3304. As used in paragraph (a) of Article 5 of the Interstate Compact on the Placement of Children, the phrase “appropriate authority in receiving state” with reference to this state means the State Department of Social Services.

Comment. Section 3304 is the same as former Civil Code Section 268.

§ 3305. Agreements with party states; approval of financial obligations

3305. 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 3305 is the same as former Civil Code Section 269.

§ 3306. Requirements for visitation, inspection, or supervision in another state

3306. 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 3306 is the same as former Civil Code Section 270.

§ 3307. Application of law restricting out-of-state placements

3307. 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 3307 is the same as former Civil Code Section 271.

§ 3308. Placement of delinquent children in institution in another state

3308. A court having jurisdiction to place delinquent children may place such a 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 3308 is the same as former Civil Code Section 272.

§ 3309. Appointment of compact administrator

3309. As used in Article 7 of the Interstate Compact on the Placement of Children, the term "executive head" means the Governor. The Governor shall appoint a compact administrator in accordance with the terms of Article 7 of the compact.

Comment. Section 3309 is the same as former Civil Code Section 273.

§ 3310. Refusal to grant approval of placement in violation of state law

3310. 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 224.20 of the Civil Code or Section 273 of the Penal Code.

Comment. Section 3310 is the same as former Civil Code Section 274 (as amended by 1990 Cal. Stat. ch. 1363 § 7).

PART 5. PRIORITIES FOR FOSTER CARE PLACEMENT

§3350. Order of placement preference

§3351. Considerations constituting good cause not to follow rules

§3352. Records showing diligent search conducted

§3353. Placing child for period not intended to exceed 30 days

§3354. Minor's right to make statement

§ 3350. Order of placement preference

3350. (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 interests 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 3350 continues former Civil Code Section 275 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

§ 3351. Considerations constituting good cause not to follow rules

3351. A determination of good cause not to follow the rules set forth in Section 3350 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 3351 continues former Civil Code Section 275.1 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

§ 3352. Records showing diligent search conducted

3352. (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 3352 continues former Civil Code Section 275.2 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

§ 3353. Placing child for period not intended to exceed 30 days

3353. 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 3353 continues former Civil Code Section 275.3 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

§ 3354. Minor's right to make statement

3354. 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 3354 continues former Civil Code Section 275.4 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

PART 6. UNIFORM CHILD CUSTODY JURISDICTION ACT

§3400. Short title

§3401. Purposes of act

§3402. Definitions

§3403. Jurisdictional requirements

§3404. Notice and opportunity to be heard

§3405. Notice to person outside this state; submission to jurisdiction

§3406. Simultaneous proceedings in other states

§3407. Inconvenient forum

§3408. Jurisdiction declined by reason of conduct

§3409. Information to be provided to court

§3410. Additional parties

§3411. Appearance of parties and child

§3412. Binding force and res judicata effect of custody decree

§3413. Recognition of out-of-state custody decree

§3414. Modification of custody decree of another state

§3415. Submission of child's birth certificate to court; check to determine if child is missing person

§3416. Filing and enforcement of custody decree of another state

§3417. Registry of out-of-state custody decrees and proceedings

- §3418. Certified copy of custody decree
- §3419. Taking testimony in another state
- §3420. Hearings and studies in another state; orders to appear
- §3421. Assistance to courts of other states
- §3422. Preservation of records; forwarding to another state
- §3423. Request for court records of another state
- §3424. International application
- §3425. Calendar priority

§ 3400. Short title

3400. This part may be cited as the Uniform Child Custody Jurisdiction Act.

Comment. Section 3400 is the same as former Civil Code Section 5174. See also Sections 3 (construction of provision drawn from uniform act), 14 (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.

(9) To make uniform the law of those states which enact it.

(b) This part shall be construed to promote the general purposes stated in this section.

Comment. Section 3401 continues former Civil Code Section 5150 without substantive change.

§ 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 legal separation, 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 his or her 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 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 (i) is the home state of the child at the time of commencement of the proceeding, or (ii) 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 (i) the child and the child's parents, or the child and at least one contestant, have a significant connection with this state, and (ii) 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 (i) the child has been abandoned or (ii) 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.

(4) (i) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), and (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, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under 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 is the same as former Civil Code Section 5152.

§ 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 is the same as former Civil Code Section 5153.

§ 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 is the same as former Civil Code Section 5154.

§ 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 is the same as former Civil Code Section 5155.

§ 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 assuring 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 his or her 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 it 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 such request is made within a reasonable time after such 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 such 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.

Comment. Section 3408 is the same as former Civil Code Section 5157.

§ 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. In this pleading or affidavit, every party shall further declare under oath as to each of the following whether he or she:

(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 he obtained information during this proceeding.

Comment. Section 3409 is the same as former Civil Code Section 5158. See also Section 3060 (temporary custody order).

§ 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 his or her 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 is the same as former Civil Code Section 5159.

§ 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 he 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 such party to secure his or her 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 is the same as former Civil Code Section 5160.

§ 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 the provisions of this part.

Comment. Section 3412 is the same as former Civil Code Section 5161.

§ 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 is the same as former Civil Code Section 5162.

§ 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 it 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 is the same as former Civil Code Section 5163.

§ 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 is the same as former Civil Code Section 5163.5.

Note: Section 3415 is the same as Section 6003.

§ 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 attorneys' fees, incurred by the party entitled to the custody or that party's witnesses.

Comment. Section 3416 is the same as former Civil Code Section 5164.

§ 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 (as amended by 1990 Cal. Stat. ch. 1493 § 28) 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 is the same as former Civil Code Section 5166.

§ 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 is the same as former Civil Code Section 5167.

§ 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 is the same as former Civil Code Section 5168.

§ 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 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 such person to secure his or her appearance with the child in the other state.

Comment. Section 3421 is the same as former Civil Code Section 5169.

§ 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 is the same as former Civil Code Section 5170.

§ 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 is the same as former Civil Code Section 5171.

§ 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 is the same as former Civil Code Section 5172.

§ 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 is the same as former Civil Code Section 5173.

Division 11. Support

DIVISION 11. SUPPORT

[Reserved for future use]

(§§ 3500 - 5499)

Division 11. Support

DIVISION 12. PREVENTION OF DOMESTIC VIOLENCE

- Part 1. Definitions
- Part 2. General provisions
- Part 3. Temporary restraining orders
- Part 4. Orders issuable ex parte
- Part 5. Emergency protective orders
- Part 6. Orders issuable after notice and hearing
- Part 7. Registration and enforcement of orders

PART 1. DEFINITIONS

- §5500 Application of definitions
- §5505 "Protective order"

§ 5500. Application of definitions

5500. The definitions in this part govern the construction of this division.

Comment. Section 5500 continues the introductory clause of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change. For additional definitions of words and phrases used in this division, see, e.g., Sections 55 ("abuse"), 60 ("cohabitant; former cohabitant"), 70 ("domestic violence"); 90 ("family or household member").

§ 5505. "Protective order"

5505. "Protective order" means an order issued by the court to the restrained party not to do any of the following: (1) contact, (2) molest, (3) attack, (4) strike, (5) threaten, (6) sexually assault, (7) batter, (8) telephone, or (9) disturb the peace of the person described in Section 70.

Comment. Section 5505 continues subdivision (d) of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change.

Note: The "person described in Section 70" has be substituted for "person described in this part" in Section 5505? Should "person protected by the order" be substituted for "person described in Section 70?"

PART 2. GENERAL PROVISIONS

- §5510. Short title
- §5511. Purposes of this division
- §5512. Fees
- §5513. Order limiting visitation to situations in which third person is present
- §5514. Requirement for mutual restraining order
- §5515. Required statement and notice on order
- §5516. Explicit statement of address not required
- §5517. Remedies in addition to other remedies
- §5518. Support person for victim of domestic violence
- §5519. Judicial Council forms and instructions

§ 5510. Short title

5510. This division may be cited as the Domestic Violence Prevention Law.

Comment. Section 5510 continues former Code of Civil Procedure Section 541 with the substitution of “Law” for “Act.”

§ 5511. Purposes of this division

5511. The purposes of this division are to prevent the recurrence of acts of violence and sexual abuse against a spouse, former spouse, cohabitant, former cohabitant, any other adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has had a child or has had a dating or engagement relationship, 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 5511 continues former Code of Civil Procedure Section 540 (as amended by 1990 Cal. Stat. ch. 752 § 1) without substantive change.

§ 5512. Fees

5512. (a) There is no filing fee for a petition or response relating to a protective order, restraining order, or a permanent injunction restraining violence or threats of violence in an action brought pursuant to this division.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order obtained under this section 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 proceedings in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner shall not be 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 5519.

(d) In conjunction with a hearing pursuant to this division, the court may issue an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order obtained under this section.

Comment. Section 5512 continues former Code of Civil Procedure Section 546.5 (as amended by 1990 Cal. Stat. ch. 752 § 4) without substantive change.

Note: Should “in a proceeding under this division” be substituted in subdivision (a) of Section 5512 for “in an action brought pursuant to this division”?

Should “order obtained under this division” be substituted for “order obtained under this section” in subdivisions (b) and (d) of Section 5512?

§ 5513. Order limiting visitation to situations in which third person is present

5513. In making an award of temporary custody of a child pursuant to this division, if an order described in paragraph (1), (2), or (3) of subdivision (a) of Section 5550 has been directed to a parent of the child, the court shall consider whether the best interests of the child require that the visitation granted to that parent with respect to the child shall be limited to situations in which a third person, specified by the court, is present. A parent may submit to the court the name of a person that he or she deems suitable to be present during visitation. The determination of the best interests of the child pursuant to this section shall include the considerations specified in Section 3022. The court shall also consider in its deliberations the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order.

Comment. Section 5513 continues former Code of Civil Procedure Section 547.5 without substantive change.

§ 5514. Requirement for mutual restraining order

5514. A mutual restraining order enjoining the parties from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or disturbing the peace of the other party, and, in the discretion of the court upon a showing of good cause, other named persons described in subdivision (a) of Section 70, may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence.

Comment. Section 5514 continues former Code of Civil Procedure Section 545.5 (as added by 1990 Cal. Stat. ch. 935 § 4) without substantive change. The word “telephoning” has been added to conform to Section 5505. The reference to “other named persons described in subdivision (a) of Section 70” has been substituted for “other named family and household members” to conform to the revision of former Code of Civil Procedure Section 542 by 1990 Cal. Stat. ch. 752 § 2, which eliminated the use of the phrase “family and household members” in the former Domestic Violence Prevention Act and replaced it with the listing of the persons described in subdivision (a) of Section 70.

§ 5515. Required statement and notice on order

5515. An order issued pursuant to this division shall state on its face the date of expiration of the order and a notice in substantially the following form:

“NOTICE: These orders shall be enforced by all law enforcement officers in the State of California.”

Comment. Section 5515 continues former Code of Civil Procedure Section 552 without substantive change.

Note: Should the information required by Section 1902 be included in an order issued pursuant to this division? Should Section 5515 be limited to a “protective” order? See Section 5505 (“protective order” defined).

§ 5516. Explicit statement of address not required

5516. The petition, the temporary order, and the order after the hearing is valid and enforceable without explicitly stating the address of the applicant or the applicant's place of residence, school, employment, the place where his or her child is provided child care services, or his or her child's school.

Comment. Section 5516 continues the last sentence of former Code of Civil Procedure Section 545 (as amended by 1990 Cal. Stat. ch. 752 § 3) without substantive change.

§ 5517. Remedies in addition to other remedies

5517. The remedies provided in this division are in addition to any other remedies, either civil or criminal, which may be available to the petitioner.

Comment. Section 5517 continues former Code of Civil Procedure Section 549 without substantive change. "Petitioner" has been substituted for "plaintiff" to conform to the revisions made in the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752.

§ 5518. Support person for victim of domestic violence

5518. (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 in the proceedings specified in this section.

(b) The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other person must be present in close proximity. The support person is not present as a legal advisor and shall not give legal advice.

(c) A support person may accompany either party to any proceeding to obtain a domestic violence prevention order. 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 his or her attorney.

(d) Notwithstanding any other provision of law to the contrary, if a court has issued a domestic violence prevention order, a support person may accompany a party protected by the domestic violence prevention order during a mediation session held pursuant to an action or proceeding under this code. 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, 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.

(e) A support person may accompany a party in a proceeding subject to this section 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 his or her attorney.

(f) Nothing in this section precludes a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the party protected by the order.

Comment. Section 5518 continues former Civil Code Section 4351.6 (added by 1990 Cal. Stat. ch. 994 § 1) with the changes noted below.

Section 5518 applies in any case where a domestic violence prevention order has been issued. See Section 75 (defining “domestic violence prevention order”). Former Section 4351.6 included a listing of statutory provisions that may have been less inclusive than those listed in Section 75.

Under subdivision (d) of Section 5518, if a court has issued a domestic violence prevention order, a support person may accompany a party protected by the order during a mediation session held pursuant to an action or proceeding under this code. The former Civil Code section applied only to a mediation session held pursuant to an action or proceeding under the Family Law Act.

Subdivision (e) of former Section 4351.6 has been omitted from Section 5518 because that subdivision merely duplicated a provision which is continued in subdivision (b) of Section 5518.

Insofar as former Section 4351.6 applied to Section 527.6 of the Code of Civil Procedure, the substance of the former section is continued in substance in new subdivision (f) of Section 527.6.

Note: Subdivision (e) of Section 5518 authorizes a support person to accompany a party “in a proceeding subject to this section.” Should “in any proceeding under this code” be substituted for this phrase? Does this provision apply only to a proceeding to obtain a domestic violence protective order?

§ 5519. Judicial Council forms and instructions

5519. The Judicial Council shall prescribe the form of the orders and any other documents required by this division and shall promulgate instructions for applications for orders under this division.

Comment. Section 5519 continues without substantive change former Code of Civil Procedure Section 543 and provisions of subdivisions (b) and (c) of Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) that required the Judicial Council to prescribe forms.

Note: Is Section 5519 necessary in view of Section 210 (general provision that Judicial Council may provide by rule for the practice and procedure under the Family Law Act (which should be expanded to cover entire Family Code)? Note that Section 5519 is mandatory (“shall prescribe”)? Also compare language of Section 5519 with the language used in a comparable provision (Section 1908). Note that Section 5519 is referred to in Section 5512(c)(2).

PART 3. TEMPORARY RESTRAINING ORDERS

§5530. Issuance upon affidavit which shows reasonable proof of past act or acts of abuse

§5531. Persons who may be granted temporary restraining order

§ 5530. Issuance upon affidavit which shows reasonable proof of past act or acts of abuse

5530. A temporary restraining order may be granted pursuant to this division with or without notice to restrain any person upon an affidavit which, to the satisfaction of the court, shows reasonable proof of a past act or acts of abuse for the purpose of preventing a recurrence of domestic violence and assuring a period of separation of the persons involved. The order may be granted in the manner provided in Sections 240 to 244, inclusive.

Comment. Section 5530 continues the first and fourth sentences of former Code of Civil Procedure Section 545 (as amended by 1990 Cal. Stat. ch. 752 § 3) without substantive change. For general provisions relating to the granting of a temporary restraining order, see Sections 240-244.

§ 5531. Persons who may be granted temporary restraining order

5531. (a) A temporary restraining order may be granted pursuant to this division to any person described in Section 70.

(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 legal separation, nullity of marriage, or dissolution of marriage has not been filed.

Comment. Section 5531 continues the second and third sentences of former Code of Civil Procedure Section 545 (as amended by 1990 Cal. Stat. ch. 752 § 3) without substantive change. See also Section 55 ("abuse" defined).

PART 4. ORDERS ISSUABLE EX PARTE

§5550. Types of orders that may be issued ex parte

§5551. Service on respondent where temporary restraining order granted without notice

§5552. Requirement for issuance of order excluding party from residence or dwelling

§ 5550. Types of orders that may be issued ex parte

5550. (a) Subject to subdivision (b), upon application in the manner provided in Part 4 (commencing with Section 240) of Division 2, the court may issue ex parte orders under this division doing any one or more of the following:

(1) Enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or disturbing the peace of the other party, and, in the discretion of the court, upon a showing of good cause, other named family and household members.

(2) Excluding one party from the family dwelling or from the dwelling of the other for the period of time and upon the conditions the court determines, regardless of

which party holds legal or equitable title or is the lessee of the dwelling, upon a showing, as provided in Section 753, of both of the following:

(A) The party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, or control of the other party, or a minor child of the parties or of the other party.

(B) Physical or emotional harm would otherwise result to the other party or a person under the care, custody, or control of the other party, or to a minor child of the parties or of the other party.

(3) Enjoining a party from specified behavior which the court determines is necessary to effectuate orders under paragraphs (1) or (2).

(4) Determining the temporary custody of any minor children of the marriage, and the right of a party to visit the minor children upon such conditions as the court may determine.

(5) 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 pendency of the order.

(b) In the case of a nonmarital relationship between the petitioner and the respondent, the court may issue ex parte any of the orders set forth in paragraphs (1), (2), and (3) of subdivision (a), and where there is a minor child of the petitioner and the respondent an order determining the temporary custody of the child.

Comment. Section 5550 continues the first sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) with the changes noted below. For general provisions relating to temporary restraining orders, see Sections 240-244.

Section 5550 sets out in detail the orders that were incorporated by the reference in former Section 546 to the orders set forth in “subdivision (a) of Section 4359 of the Civil Code” except that Section 5550 omits the order set forth in paragraph (1) of the first paragraph of subdivision (a) of former Civil Code Section 4359 (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 him or her to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures”). The order set forth in paragraph (1) of the first paragraph of subdivision (a) of former Civil Code Section 4359 has been omitted because the order does not relate to abuse or domestic violence.

After notice and hearing, an order described in paragraph (2) of subdivision (a) of Section 5550 may be obtained upon a lesser showing that is required by that paragraph. See Section 5751 (requirement for issuance of order, after notice and hearing, excluding party from dwelling).

Section 5550 adds a specific reference to “telephoning” in subdivision (a)(1) to conform to Section 5505. The terms “petitioner” and “respondent” are used in Section 5550 to conform to the revisions of the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752.

Note: Should the language in the introductory portion of subdivision (a)(2) “as provided in Section 753” be omitted as unnecessary?

§ 5551. Service on respondent where temporary restraining order granted without notice

5551. If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the 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 the temporary restraining order is granted. The court may on motion of the petitioner or on its own motion shorten the time for service on the respondent of the order to show cause.

Comment. Section 5551 continues the substance of the second and third sentences of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) but the phrase “should not be granted” has been substituted for the phrase “should not be dissolved” which was used in former Section 546. This substitution is consistent with the relevant provision formerly found in the third paragraph of subdivision (a) of Section 527, now found in Section 242. The phrase “shall not be granted” is drawn from subdivision (a) of former Civil Code Section 7020 (Uniform Parentage Act), now Section 1802. “Petitioner” and “respondent” have been substituted for “plaintiff” and “defendant” to conform to the revisions of the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752.

Note: Should Section 5551 be retained? See Note under Section 242. Note that the last sentence of Section 5551 is not found in the general provisions relating to restraining orders. If Section 5551 is to be retained, should Section 5551 and Section 1802 (Uniform Parentage Act) be conformed?

Can a more descriptive phrase describing the order granted after hearing be inserted in the phrase “why the order should not be granted” which appears in Section 5551?

§ 5552. Requirement for issuance of order excluding party from residence or dwelling

5552. The court may issue an ex parte order pursuant to Section 5550 excluding one party from a residence or dwelling only when the affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the petitioner has a right under color of law to possession of the premises or that the order is one authorized under subdivision (b) of Section 753.

Comment. Section 5552 continues the fifth sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. “Petitioner” has been substituted for “plaintiff” to conform to the revisions of the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752. The reference to Section 753(b) has been added. See Section 753(b) (order in marriage dissolution or nullity proceeding for temporary exclusion of either party from family dwelling or from dwelling of the other party).

PART 5. EMERGENCY PROTECTIVE ORDERS

Chapter 1. General provisions

Chapter 2. Emergency protective order where danger of domestic violence

Chapter 3. Emergency protective order where child in danger of abuse

CHAPTER 1. GENERAL PROVISIONS

§5600. Application of provisions of this article

§5601. Designation of judge or court officer to orally issue ex parte emergency protective order when court is not in session

§5602. Reducing order to writing and signing order

§5603. Expiration of order

§5604. Officer to carry copies of order

§5605. Service, filing, and delivery of copy of order

§5606. Enforcement of order

§ 5600. Application of provisions of this chapter

5600. Except to the extent otherwise provided, the provisions of this chapter apply to emergency protective orders issued under this part.

Comment. Section 5600 is a new provision that is included for drafting convenience. See also Section 5505 (defining “protective order”).

§ 5601. Designation of judge or court officer to orally issue ex parte emergency protective order when court is not in session

5601. The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session.

Comment. Section 5601 continues the first sentence of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

§ 5602. Reducing order to writing and signing order

5602. The officer requesting the emergency protective order shall reduce it to writing and shall sign the order.

Comment. Section 5602 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

§ 5603. Expiration of order

5603. An emergency protective order expires not later than the close of judicial business on the second day of judicial business following the day of its issue.

Comment. Section 5603 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

§ 5604. Officer to carry copies of order

5604. The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

Comment. Section 5604 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

§ 5605. Service, filing, and delivery of copy of order

5605. (a) The officer who requested the emergency protective order shall do both of the following:

(1) Serve the order upon the restrained party if the restrained party can reasonably be located.

(2) File a copy of the order with the court as soon as practicable after issuance.

(b) If the emergency protective order is issued under Chapter 2 (commencing with Section 5650), the officer who requested the order shall give a copy of the order to the protected party.

(c) If the emergency protective order is issued under Chapter 3 (commencing with Section 5700), the officer who requested the order shall give a copy of the order to a parent or legal guardian of the endangered child who is not a restrained party, if he or she can be reasonably located, or to a person having temporary custody of the endangered child.

Comment. Subdivision (a) of Section 5605 continues the substance of a requirement of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5). Subdivision (b) continues the substance of a requirement of subdivision (b) of former Code of Civil Procedure Section 546. Subdivision (c) continues the substance of a requirement of subdivision (c) of former Code of Civil Procedure Section 546.

§ 5606. Enforcement of order

5606. (a) A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to Chapter 2 (commencing with Section 5650) or Chapter 3 (commencing with Section 5700).

(b) A peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2 of the Penal Code, shall use every reasonable means to enforce an emergency protective order issued pursuant to Chapter 2 (commencing with Section 5650).

(c) An officer acting in good faith to enforce an emergency protective order under this section is not civilly or criminally liable.

Comment. Subdivision (a) of Section 5606 continues the substance of a requirement of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5). Subdivision (b) continues the substance of a requirement of subdivision (b) of former Code of Civil Procedure Section 546. Subdivision

(c) continues the substance of a provision of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546.

CHAPTER 2. EMERGENCY PROTECTIVE ORDER WHERE DANGER OF DOMESTIC VIOLENCE

§5650. Issuance of ex parte emergency protective order where danger of domestic violence

§5651. Finding required to issue order

§5652. Contents of order

§ 5650. Issuance of ex parte emergency protective order where danger of domestic violence

5650. (a) A judge, commissioner, or referee designated pursuant to Section 5601 may issue an ex parte emergency protective order under this chapter when a police or sheriff's officer or a peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2 of the Penal Code, asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence, based upon the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) The order issued under this chapter may consist of any of the orders set forth in paragraphs (1), (2), and (3) of subdivision (a) of Section 5550, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought.

(c) An order under this chapter shall be issued without prejudice to any party.

Comment. Section 5650 continues the second, third, and fourth sentences of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. The language of former Section 546 has been revised to omit the reference to "family or household member," since the former definition of "family or household member" was deleted by the 1990 amendment to former Code of Civil Procedure Section 542 (amended by 1990 Cal. Stat. ch. 752 § 2). See Sections 55 ("abuse" defined), 70 ("domestic violence" defined), 5505 ("protective order" defined).

§ 5651. Finding required to issue order

5651. An order may be issued under this chapter only upon a finding by the judge, commissioner, or referee that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The availability of an order under this chapter is not affected by the fact that the endangered person has vacated the household to avoid abuse.

Comment. The first sentence of Section 5651 continues the fifth sentence of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. The second sentence continues a provision of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935

§ 5) without substantive change. See also Sections 55 (“abuse” defined), 70 (“domestic violence” defined), 5505 (“protective order” defined).

§ 5652. Contents of order

5652. (a) An order issued under this chapter shall include all of the following:

- (1) A statement of the grounds asserted for the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the district or county in which the endangered person resides.

(4) The following statement, which shall be printed in English and Spanish: “To the Protected Party: 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, when it opens. 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 he or she may assist you in making your application. To the Restrained Party: This order will last until the date noted above. The protected party may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application.”

(b) The temporary restraining order shall set forth on its face a notice in substantially the following form:

“NOTICE TO RESPONDENT: 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 5652 continues the fourth sentence of subdivision (a) and portions of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. “Respondent” has been substituted for “defendant” to conform to the revisions made to the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752.

CHAPTER 3. EMERGENCY PROTECTIVE ORDER WHERE CHILD IN DANGER OF ABUSE

§5700. Issuance of ex parte order where child in danger of abuse

§5701. Finding required to issue order

§5702. Contents of order

§5703. Application for more permanent restraining order

§ 5700. Issuance of ex parte order where child in danger of abuse

5700. (a) A judge, commissioner, or referee designated pursuant to Section 5601 may issue an ex parte emergency protective order under this chapter when a police or sheriff’s officer asserts reasonable grounds to believe that a child is in immediate and

present danger of abuse by a family or household member, based upon an allegation of a recent incident of abuse or threat of abuse by that family or household member.

(b) The order issued under this chapter may consist of any of the orders authorized in Section 213.5 of the Welfare and Institutions Code, and may include 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 legal guardian of the endangered child who is not a restrained party.

(c) An order under this chapter shall be issued without prejudice to any party.

Comment. Subdivision (a) of Section 5700 continues the first sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. Subdivision (b) continues the second sentence of the first paragraph of subdivision (c) of former Section 546 without substantive change. Subdivision (c) continues the last sentence of the first paragraph of subdivision (c) of former Section 546 without substantive change. See also Sections 55 (“abuse” defined), 90 (“family or household member” defined).

Note: Is the new definition of “family or household member” in Section 90 adequate? Should the new definition be retained or should family or household member as used in subdivision (a) Section 5700 be undefined? See the Note to Section 90. Note that the term “family or household” used in subdivision (b) of Section 5700 is undefined.

§ 5701. Finding required to issue order

5701. An order may be issued under this chapter only upon a finding by the judge, commissioner, or referee that reasonable grounds have been asserted to believe that a child is in immediate and present danger of abuse and that an emergency protective order is necessary to prevent the occurrence or recurrence of abuse. The availability of an order under this chapter is not affected by the endangered child’s leaving the household to avoid abuse.

Comment. Section 5701 continues the first sentence of the second paragraph and the second to last paragraph of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. See also Section 55 (“abuse” defined).

Note: Note that the word “household” used in Section 5701 is not defined.

§ 5702. Contents of order

5702. An order issued under this chapter 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 child resides.

(d) The following statement, which shall be printed in English and Spanish: “This order will last only until the date and time noted above. A more permanent restraining order under Section 213.5 of the Welfare and Institutions Code may be applied for from the court, at the address noted above, when it opens. The advice of an attorney

may be sought in connection with the application for a more permanent restraining order.”

Comment. Section 5702 continues portions of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

§ 5703. Application for more permanent restraining order

5703. The parent or legal guardian of the endangered child who is not a restrained party, or a person having temporary custody of the endangered child, may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code when the court opens.

Comment. Section 5703 continues a portion of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

PART 6. ORDERS ISSUABLE AFTER NOTICE AND HEARING

§5750. Order issuable under Section 5550

§5751. Order excluding party from dwelling

§5752. Order that presumed natural father pay child support

§5753. Order for restitution for loss of earnings and out-of-pocket expenses

§5754. Order to participate in counseling

§5755. Order for payment of attorneys' fees and costs

§5756. Duration of restraining order granted after notice and hearing

§ 5750. Order issuable under Section 5550

5750. (a) Subject to subdivision (b), the court may issue, after notice and a hearing, any of the orders set forth in subdivision (a) of Section 5550.

(b) In the case of a nonmarital relationship between the petitioner and the respondent, the court may issue, after notice and a hearing, any of the orders set forth in paragraphs (1), (2), (3) and (5) of subdivision (a) of Section 5550 and where there is a minor child of the petitioner and the respondent an order determining the temporary custody of the child.

Comment. Section 5750 continues the first sentence of subdivision (a)(1) and the first sentence of subdivision (a)(2) of former Code of Civil Procedure 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change except that subdivision (a) of Section 5750 makes clear that the court may issue, after notice and a hearing, an order set forth in paragraph (3) of subdivision (a) of Section 5550. See also Section 5751 (required finding for issuance, after notice and a hearing, of an order excluding one party from dwelling).

§ 5751. Order excluding party from dwelling

5751. After notice and a hearing, the court may order the exclusion of one party from the common dwelling of both parties or from the dwelling of the other party on a finding only that physical or emotional harm would otherwise result to the other party

or a person under the care, custody, or control of the other party or to a minor child of the parties or of the other party.

Comment. Section 5751 continues the second sentence of subdivision (a)(1) and the second sentence of subdivision (a)(2) of former Code of Civil Procedure Section 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change. If an order excluding a party from the dwelling is issued ex parte, an additional finding is required. See Section 5550(a)(2)(A).

§ 5752. Order that presumed natural father pay child support

5752. (a) Where there exists a presumption that the respondent is the natural father of a minor child, pursuant to Section 1711, and the child is in the custody of the petitioner, the court, after notice and a hearing, 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 Part 1 (commencing with Section 1700) of Division 5.

(b) An order made pursuant to this section shall be without prejudice in an action brought pursuant to Part 1 (commencing with Section 1700) of Division 5.

Comment. Section 5752 continues subdivision (b) of former Code of Civil Procedure Section 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change.

§ 5753. Order for restitution for loss of earnings and out-of-pocket expenses

5753. The court may issue, after notice and a hearing, any of the following orders:

(a) An order that restitution be paid to the family or household member 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 therefrom.

(b) An order that restitution be paid by petitioner for out-of-pocket expenses incurred by a party as a result of any order issued ex parte which is found by the court to have been issued upon facts shown at a noticed hearing to be insufficient to support the order.

(c) An order requiring that the respondent shall pay any public or private agency for the reasonable cost of providing services to a family or household member required as a direct result of the abuse inflicted by the respondent or any actual injuries sustained therefrom.

Comment. Section 5753 continues subdivision (c) of former Code of Civil Procedure Section 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change. "Petitioner" and "respondent" have been substituted for "plaintiff" and "defendant" to conform to the revisions made in the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752.

§ 5754. Order to participate in counseling

5754. (a) Subject to subdivision (d), the court may issue, after notice and a hearing, 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 and a protective order is in effect, at the request of the party protected by the order, the parties shall participate in counseling separately and at separate times.

(c) The court shall fix the costs and shall order the entire cost of the services to be borne by the parties in the proportion as the court deems reasonable.

(d) Prior to issuing the court order requiring counseling, the court shall find that the financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.

Comment. Section 5754 continues subdivision (d) of former Code of Civil Procedure Section 547 with the revisions that were made by the amendment of Section 547 made by 1990 Cal. Stat. ch. 752 § 5. The amendment to subdivision (d) of former Section 547 made by 1990 Cal. Stat. ch. 752 § 5, was chaptered out by later enacted 1990 Cal. Stat. ch. 1180 § 1, which did not include the revisions made to subdivision (d) by 1990 Cal. Stat. ch. 752 § 5. The reference in former Section 547 to the statutory provision defining "domestic violence" has been omitted as unnecessary in view of the definition of that term, for the purposes of this division, in Section 70.

§ 5755. Order for payment of attorneys' fees and costs

5755. The court may issue, after notice and a hearing, an order for the payment of attorneys' fees and costs of the prevailing party.

Comment. Section 5755 continues subdivision (e) of former Code of Civil Procedure Section 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change.

§ 5756. Duration of restraining order granted after notice and hearing

5756. A restraining order granted after notice and a hearing pursuant to this division, in the discretion of the court, shall 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 any party.

Comment. Section 5756 continues former Code of Civil Procedure Section 548 without substantive change.

PART 7. REGISTRATION AND ENFORCEMENT OF ORDERS

§5800. Transmittal to local law enforcement agency

§5801. Law enforcement agency to make information concerning order available to law enforcement officers

§5802. Service of restraining order against domestic violence by law enforcement officer

§5803. When personal service not required

§5804. Notice to Department of Justice

§5805. Appointment of counsel to represent petitioner in enforcement proceeding; order that respondent pay petitioner's attorneys' fees and costs

§5806. Clerk to provide party with copies of order

§5807. Criminal penalty for violation of order

§ 5800. Transmittal to local law enforcement agency

5800. The court shall order the petitioner or the attorney for the petitioner to deliver a copy of any order, or extension, modification, or termination thereof granted pursuant to this division, by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner and such other locations where the court determines that acts of domestic violence against the petitioner are likely to occur.

Comment. Section 5800 continues the first sentence of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 1180 § 2) without substantive change. The word "petitioner" is substituted for "plaintiff" to conform to the revisions made to the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 1830 and 1903.

§ 5801. Law enforcement agency to make information concerning order available to law enforcement officers

5801. 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 pursuant to this division.

Comment. Section 5801 continues the second sentence of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 1180 § 2) without substantive change. For comparable provisions, see Sections 1831 and 1904.

§ 5802. Service of restraining order against domestic violence by law enforcement officer

5802. (a) A restraining order against domestic violence issued pursuant to this division may, upon request of the petitioner, be served upon the respondent by any law enforcement officer who is present at the scene of reported domestic violence involving the parties to the action.

(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 shall be a rebuttable presumption that the proof of service was signed on the date of service.

Comment. Subdivisions (a) and (b) of Section 5802 continue the third and fourth sentences of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 1180 § 2) without substantive change. Subdivision (c) is a new provision that is the same as subdivision (g) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 752 § 6). The addition of subdivision (g) to former Section 550 by 1990 Cal. Stat. ch. 752 was chaptered out by the amendment to Section 550 made by 1990 Cal. Stat. ch. 1180. For comparable provisions, see Sections 1832 and 1906.

§ 5803. When personal service not required

5803. (a) If a person named in an order issued pursuant to this division 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 that order from the court, no additional proof of service is required for enforcement of that order.

(b) The judicial forms for temporary orders and orders after hearing 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 ARE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED.”

Comment. Section 5803 is a new provision that is the same in substance as subdivisions (e) and (f) of former Code of Civil Procedure Section 550 which were added to Section 550 by 1990 Cal. Stat. ch. 752 § 6. However, these new subdivisions were chaptered out by the amendment to Section 550 made by 1990 Cal. Stat. ch. 1180 § 2. The phrase “order issued pursuant to this division” has been substituted for “order issued pursuant to this section” (used in 1990 Cal. Stat. ch. 752) to make the scope of Section 5803 clear.

§ 5804. Notice to Department of Justice

5804. (a) Upon receipt of an order predicated on paragraph (1), (2), or (3) of subdivision (a) of Section 5550 and the subsequent proof of service thereof, the local law enforcement agency having jurisdiction over the residence of the plaintiff shall immediately notify the Department of Justice regarding the name, race, and date of birth of the person who is restrained, the date of the issuance of the order, and the duration of the order or its expiration date.

(b) Failure to provide the Department of Justice with the race and date of birth of the person who is restrained, or to include the race and date of birth of the person who is restrained in the order, does not invalidate the order.

(c) If a modification, extension, or termination of the order described in subdivision (a) is issued, the court shall immediately notify the Department of Justice.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, an employee of a local law enforcement agency or the Department of Justice, acting within the scope of his or her employment, if a person described in subdivision (g) of Section 12021 of the Penal Code unlawfully obtains, receives, purchases, or otherwise acquires 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 5804 continues subdivisions (b), (c), and (d) of former Code of Civil Procedure Section 550 (as amended by Cal. Stat. 1990 ch. 1180 § 2) without substantive change. Subdivision (a) has been revised to make clear that it applies to an order predicated on paragraph (3) of subdivision (a) of Section 5550. This conforms subdivision (a) of Section 5804 to Sections 5805 and 5807. See also Penal Code § 12021(g) (criminal penalty for person who acquires firearm knowing that he or she is subject to restraining order against domestic violence).

Note: The immunity under subdivision (d) of Section 5804 does not extend to a failure of the local law enforcement agency employee to notify the Department of Justice. Should immunity be provided in this case?

§ 5805. Appointment of counsel to represent petitioner in enforcement proceeding; order that respondent pay petitioner's attorneys' fees and costs

5805. (a) The court may, in its discretion, appoint counsel to represent the petitioner in a proceeding to enforce the terms of an order issued pursuant to this division in accordance with the terms of paragraph (1), (2) or (3) of subdivision (a) of Section 5550.

(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 attorneys' fees and costs incurred by the petitioner.

Comment. Section 5805 continues former Code of Civil Procedure Section 553 without substantive change. "Petitioner" and "respondent" have been substituted for "plaintiff" and "defendant" to conform to the revisions made to the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752.

§ 5806. Clerk to provide party with copies of order

5806. The court shall order the county clerk to provide, without cost, to a party five certified, stamped, and endorsed copies of any order, extension, modification, or termination thereof granted pursuant to this division.

Comment. Section 5806 is a new provision that continues subdivision (b) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 752 § 6) without substantive change. However, this new provision was chaptered out by the amendment to Section 550 made by 1990 Cal. Stat. ch. 1180 § 2.

Note: Should Section 5806 be added to existing law?

§ 5807. Criminal penalty for violation of order

5807. A willful and knowing violation of an order authorized in this division granted in accordance with the terms of paragraph (1), (2) or (3) of subdivision (a) of Section 5550 is a crime punishable under Section 273.6 of the Penal Code.

Comment. Section 5807 continues former Code of Civil Procedure Section 551 (as amended by 1990 Cal. Stat. ch. 752 § 7) without substantive change. For comparable provisions, see Sections 1833 and 1907.

DIVISION 13. ENFORCEMENT OF JUDGMENTS, ORDERS, AND DECREES

Part 1. General provisions

Part 2. Enforcement by writ of execution

Part 3. Earnings assignment order for support

PART 1. GENERAL PROVISIONS

§6000. Methods of enforcement

§6001. Effect of lack of diligence in seeking enforcement

§6002. Renewal of judgment for support

§6003. Enforcement of support judgment, order, or decree not entered pursuant to the Family Law Act

§6004. Effect of reconciliation of parties

§6005. Effect of failure to implement custody or visitation rights

Note: Should the provisions of Part 1 (commencing with section 6000) and Part 2 (commencing with Section 6100) be revised so that references to “child support” or “child or spousal support” include “family support” as well? For example, should Sections 6002 and 6103 be expanded to permit renewal of a judgment for “family support”? See, e.g., Section 6218 (defining “support”, for the purposes of an earnings assignment order for support, to refer to “an obligation owing on behalf of a child, spouse, or family.”)

Numerous provisions refer to a judgment, order, or decree. Should there be a general definition of “judgment” to include a court order or decree or of “order” to include a judgment or decree? In some sections, only the word “judgment” is used; in others, the phrase judgment, order, or decree is used. There appears to be no reason for the different phrases used.

§ 6000. Methods of enforcement

6000. A judgment, order, or decree of the court made or entered pursuant to the Family Law Act 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 6000 continues former Civil Code Section 4380 without substantive change. For provisions permitting enforcement of support orders by writ of execution without prior court approval, see Sections 6100, 6101. Section 6000 is limited to a judgment, order, or decree made or entered pursuant to the “Family Law Act.” See Section 85 (listing sections of the Family Code that constitute the Family Law Act). See also Code Civ. Proc. §§ 1209 to 1222 (contempt of court). For background on former Civil Code Section 4380, see *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm’n Reports 701, 747 (1973).

Note: Should Section 6000 apply to any order made under the Family Code? Are the phrases “of the court” and “by the court” necessary or should they be omitted?

§ 6001. Effect of lack of diligence in seeking enforcement

6001. The lack of diligence for more than the period specified in Part 2 (commencing with Section 6100) in seeking enforcement of a judgment, order, or decree of the court made, entered, or enforceable pursuant to the Family Law Act that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment, order, or decree under Section 6000.

Comment. Section 6001 continues the first sentence of former Civil Code Section 4384 without substantive change. Section 6001 is limited to a judgment, order, or decree made, entered, or enforceable pursuant to the “Family Law Act.” See Section 85 (listing sections of the Family Code that constitute the Family Law Act).

Nothing in Section 6001 precludes the court from permitting enforcement after 10 years 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. Sections 6000-6005 provide an exception to the general provisions governing time for enforcement and renewal of judgments provided by Sections 683.010-683.220 of the Code of Civil Procedure. See Code Civ. Proc. § 683.310. For background on former Civil Code Section 4384, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001, 2617 (1980).

Note: Is the phrase “of the court” necessary?

§ 6002. Renewal of judgment for support

6002. A party may renew a judgment for child or spousal support by filing an application for renewal of the judgment in the manner specified in Article 2 (commencing with Section 683.110) of Chapter 3 of Title 9 of Part 2 of the Code of Civil Procedure. Notwithstanding subdivision (b) of Section 683.110 of the Code of Civil Procedure, the judgment shall not be renewed if the application is filed within five years from the time the judgment was previously renewed.

Comment. Section 6002 continues former Civil Code Section 4384.5 without substantive change.

Note: Do we need to retain the second sentence of Section 6002?

§ 6003. Enforcement of support judgment, order, or decree not entered pursuant to the Family Law Act

6003. A judgment, order, or decree for child or spousal support made, entered, or enforceable in this state is enforceable under this part whether or not the judgment, order, or decree was made or entered pursuant to the Family Law Act.

Comment. Section 6003 continues former Civil Code Section 4385 without substantive change. See Section 85 (listing sections of the Family Code that constitute the Family Law Act). Section 6003 makes clear that any child or spousal support judgment, order, or decree is enforceable under this part if it is made, entered, or enforceable in this state. The judgment need not be one that is made or entered pursuant to the Family Law Act. Accordingly, for example, a foreign support judgment that has been registered in this state is enforceable under this part. See Code Civ. Proc. § 1699 (registered foreign support order treated in the same

manner as a support order issued by a court of this state). In addition, Section 6003 eliminates any question concerning the enforceability under this part of a child or spousal support order made or entered in this state in a case where it is not clear whether the order was made or entered under the Family Law Act. See, e.g., Civil Code §§ 241-254 (civil liability for support). For background on former Civil Code Section 4385, see 16 Cal. L. Revision Comm'n Reports 2143 (1982).

Note: What about a “family support” order? See Section 6100.

§ 6004. Effect of reconciliation of parties

6004. 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 under the Family Law Act.

Comment. Section 6004 continues former Civil Code Section 4381 without substantive change. Section 6004 applies only to a court order under the “Family Law Act.” See Section 85 (listing sections of the Family Code that constitute the Family Law Act).

§ 6005. Effect of failure to implement custody or visitation rights

6005. 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 6005 continues former Civil Code Section 4382 without substantive change.

PART 2. ENFORCEMENT BY WRIT OF EXECUTION

§6100. Enforcement of child or family support without prior court approval

§6101. Enforcement of spousal support without prior court approval

§6102. Period for enforcement of installment payments

§6103. Enforcement of support against employee pension benefit plan

§6104. Application for writ

§ 6100. Enforcement of child or family support without prior court approval

6100. A judgment, order, or decree for the payment of child support or family support may be enforced by a writ of execution without prior court approval until five years after the child reaches the age of majority and, thereafter, for amounts that are not more than 10 years overdue on the date of the application for the writ.

Comment. Section 6100 continues the first sentence of subdivision (a) of former Civil Code Section 4383 without substantive change. The former reference to Section 4380, now Section 6000, has been omitted as unnecessary.

Section 6100 permits enforcement of child and family support judgments by execution without the necessity of obtaining prior court approval under Section 6000, so long as the amounts sought to be collected are not more than 10 years overdue. See Sections 6000, 6001, 6101, 6102 (court approval required before amounts due more than 10 years may be enforced). See also Section 6003 (judgments enforceable under this part).

For background on former Civil Code Section 4383, see *Recommendation Relating to the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2616 (1980).

Note: Do we need a definition of “family support”? Can the judgment be enforced for five years after the child reaches the age of majority even though the amounts are more than 10 years overdue on the date of the application for the writ? See also the Note to Section 6103. See also the definition of “support” in Section 6218.

§ 6101. Enforcement of spousal support without prior court approval

6101. A judgment, order, or decree for the payment of spousal support may be enforced by a writ of execution without prior court approval for amounts that are not more than 10 years overdue on the date of the application for the writ.

Comment. Section 6101 continues the second sentence of subdivision (a) of former Civil Code Section 4383 without substantive change.

§ 6102. Period for enforcement of installment payments

6102. In the case of a judgment, order, or decree for the payment of money in installments, the period specified pursuant to this part runs as to each installment from the date the installment became due.

Comment. Section 6102 continues the second sentence of former Civil Code Section 4384 without substantive change.

§ 6103. Enforcement of support against employee pension benefit plan

6103. (a) Notwithstanding Section 201, a judgment, order, or decree for the payment of child or spousal support may be enforced against an employee pension benefit plan regardless of whether the plan has been joined as a party to a proceeding under the Family Law Act.

(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 a judgment, order, or decree for the payment of child 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 a judgment, order, or decree for the payment of child support or family 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 6103 continue the third and fourth sentences of subdivision (a) of former Civil Code Section 4383 without substantive change. Subdivision (c) continues subdivision (c) of former Civil Code Section 4383 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

Note: Should Section 6103 also apply to “family support”? Or is “family support” included in the phrase “child or spousal support”? Note that subdivision (b) of Section

6103 states the duration of an execution lien for a judgment for the payment of “child or spousal support” whereas subdivision (c) refers to a judgment for the payment of “child support or family support” and refers to the date the execution lien expires “under subdivision (b).”

§ 6104. Application for writ

6104. (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 6100 to 6103, 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 6104 continues subdivision (b) of former Civil Code Section 4383 without substantive change. Section 6104 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.

Note: Subdivision (b) of Section 6104 requires that the affidavit be filed “in the action”? Would “in the proceeding” be more precise? Should some proceedings under the Family Code be designated as “actions” and others as “proceedings”?

PART 3. EARNINGS ASSIGNMENT ORDER FOR SUPPORT

Chapter 1. Definitions

Chapter 2. General provisions

Chapter 3. Support orders issued or modified before July 1, 1990

Chapter 4. Stay of service of assignment order

Chapter 5. Motion to quash assignment order

Chapter 6. Information concerning address and employment of obligor

Chapter 7. Prohibited practices

Chapter 8. Judicial council forms

CHAPTER 1. DEFINITIONS

§6200. Application of definitions

§6202. “Assignment order”

§6204. “Due date of support payments”

§6206. “Earnings”

§6208. “Earnings assignment order for support”

§6210. “Employer”

§6212. "IV-D Case"

§6214. "Obligee"; "assigned obligee"

§6216. "Obligor"

§6218. "Support"

§6220. Timely payment"

§ 6200. Application of definitions

6200. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 6200 continues the introductory clause of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

§ 6202. "Assignment order"

6202. "Assignment order" has the same meaning as "earnings assignment order for support."

Comment. Section 6202 supersedes subdivision (a) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change. See also Section 6208 (defining "earnings assignment order for support").

Note: All provisions, including those in the Code of Civil Procedure, will need to be conformed to use the language "earnings assignment order for support" rather than "wage assignment order" or similar language.

§ 6204. "Due date of support payments"

6204. "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 6204 continues subdivision (b) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

§ 6206. "Earnings"

6206. "Earnings," to the extent that these earnings 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, includes:

(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 of 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) Any other payments or credits due or becoming due as a result of an enforceable obligation.

Comment. Section 6206 continues subdivision (c) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

Note: All provisions, including those in the Code of Civil Procedure, will need to be conformed to use the language “earnings assignment order for support” rather than “wage assignment order” or similar language. See CCP § 706.011(g) (“wage assignment for support” defined).

§ 6208. “Earnings assignment order for support”

6208. “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 be due in the future.

Comment. Section 6208 is a new provision.

§ 6210. “Employer”

6210. “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 6206.

Comment. Section 6210 continues subdivision (d) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

§ 6212. “IV-D Case”

6212. “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 6212 continues subdivision (e) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

§ 6214. “Obligee”; “assigned obligee”

6214. “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 6212 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 6214 continues subdivision (f) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

§ 6216. “Obligor”

6216. “Obligor” means a person owing a duty of support.

Comment. Section 6216 continues subdivision (g) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

§ 6218. “Support”

6218. “Support” refers to an obligation owing on behalf of a child, spouse, or family, and where appropriate also refers to past due support or arrearage.

Comment. Section 6218 continues subdivision (h) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

§ 6220. “Timely payment”

6220. “Timely payment” means receipt of support payments by the obligee or assigned obligee within five days of the due date.

Comment. Section 6220 continues subdivision (i) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

CHAPTER 2. GENERAL PROVISIONS

§6230. Support order must include earnings assignment order

§6231. Order binds existing and future employers

§6232. Manner of service on employer

§6233. Commencement of withholding by employer

§6234. Delivery of copy of order and statement of rights to obligor

§6235. Employer to withhold and forward support

§6236. Consolidated check by employer

§6237. Support paid through designated county officer

§6238. Obligee’s notice of change of address

§6239. Priorities where order includes both current support and arrearages

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§6241. Termination of order

§6242. Penalty for employer failing to comply with order

§6243. Service of order creates lien

§6244. Priority of order over attachment, execution, or other assignment

§6245. Application of part to district attorney

§6246. Use of other civil and criminal remedies not limited

§ 6230. Support order must include earnings assignment order

6230. (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 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 the amount ordered by the court for support.

(b) Upon the filing and service of a notice of motion or order to show cause with the supporting application, an obligee may request the court to issue an earnings assignment order for support to enforce an existing support order or to modify an existing assignment order.

Comment. Section 6230 continues subdivision (a) of former Civil Code Section 4390.3 (as amended by 1990 Cal. Stat. ch. 411 § 2) without substantive change. The introductory clause of the first sentence of former Section 4390.3 which made the provision now found in subdivision (a) of Section 6230 applicable on and after July 1, 1990, has been omitted as unnecessary. As to obtaining an assignment order where the support order was issued or modified before July 1, 1990, see subdivision (b) of Section 6230.

Note: Subdivision (b) of Section 6230 appears to be directed at a support order made before July 1, 1990. Under subdivision (a) of Section 6230, an assignment order must be issued if a support order is made on or after July 1, 1990, is modified; subdivision (b) is unnecessary for this purpose. Insofar as subdivision (b) applies to the issuance of an assignment order to enforce an existing support order made before July 1, 1990, what does the subdivision add to the procedure provided in Chapter 3 (commencing with Section 6250)? Should subdivision (b) be limited to modifying an existing assignment order? See also the Note to Section 6251.

§ 6231. Order binds existing and future employers

6231. Unless stayed pursuant to Chapter 4 (commencing with Section 6260), 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 6232 and 6233.

Comment. Section 6231 continues the substance of subdivision (b) of former Civil Code Section 4390.3 (as amended by 1990 Cal. Stat. ch. 411 § 2) and subdivision (c) of former Civil Code Section 4390.7.

§ 6232. Manner of service on employer

6232. 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 6232 continues the third sentence of subdivision (a) of former Civil Code Section 4390.8 without substantive change.

§ 6233. Commencement of withholding by employer

6233. Unless the order states a later date, the employer shall commence withholding pursuant to the assignment order from all earnings payable to the employee 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.

Comment. Section 6233 continues the first two sentences of subdivision (a) of former Civil Code Section 4390.8 without substantive change. The introductory clause is new and recognizes that the order itself may provide for a later effective date.

§ 6234. Delivery of copy of order and statement of rights to obligor

6234. 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 6234 continues subdivision (b) of former Civil Code Section 4390.8 without substantive change. See also Section 6295 (Judicial Council to prepare form for written statement of the obligor's rights).

Note: The written statement of the obligor's rights under the law to move to quash the assignment order is included in the Judicial Council form for the assignment order. In recognition of this fact, Section 6234 could be simplified by revising it to read: "The employer shall deliver a copy of the assignment order to the obligor within 10 days of service of the assignment order on the employer." See also Section 6295 (forms to be prepared by Judicial Council).

§ 6235. Employer to withhold and forward support

6235. The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order. The employer shall send the amounts withheld to the obligee within 10 days of the date the obligor is paid. 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 6235 continues subdivision (a) of former Civil Code Section 4390.10 without substantive change.

§ 6236. Consolidated check by employer

6236. 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 6236 continues subdivision (b) of former Civil Code Section 4390.16 without substantive change.

§ 6237. Support paid through designated county officer

6237. Where support is ordered to be paid through the county officer designated by the court on behalf of a minor 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 6237 continues former Civil Code Section 4390.18 without substantive change.

§ 6238. Obligee's notice of change of address

6238. (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 6238 continues former Civil Code Section 4390.13 without substantive change.

§ 6239. Priorities where order includes both current support and arrearages

6239. 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 6239 continues subdivision (a) of former Civil Code Section 4390.12 without substantive change.

§ 6240. Manner of computing arrearages of support payments

6240. 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 6234.

Comment. Section 6240 continues former Civil Code Section 4390.2 without substantive change.

Note: What is the purpose of Section 6240? It is not clear how Section 6240 applies to Section 6239. Is Section 6240 directed toward the duty of the employer to withhold or is it directed toward the court? Why is the date the obligor has been given notice of the assignment order selected as the controlling date?

§ 6241. Termination of order

6241. 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 exists:

(a) With regards to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regards 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 6260, to terminate the assignment order. This subdivision does not apply if there has been more than one application for an assignment order.

(d) The termination of the stay of an assignment order under Section 6261 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 6261.

Comment. Section 6241 continues former Civil Code Section 4390.14 (as amended by 1990 Cal. Stat. ch. 411 § 4) without substantive change.

Note: What is the meaning of the second sentence of subdivision (c) of Section 6241?

§ 6242. Penalty for employer failing to comply with order

6242. (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 part 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 1209 of the Code of Civil Procedure.

Comment. Section 6242 continues subdivision (b) of former Civil Code Section 4390.10 without substantive change. See also Section 6290 (civil penalty for using an assignment order as grounds for refusing to hire or for discharging or taking disciplinary action against employee).

§ 6243. Service of order creates lien

6243. 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 6243 continues subdivision (c) of former Civil Code Section 4390.10 without substantive change.

§ 6244. Priority of order over attachment, execution, or other assignment

6244. Unless otherwise ordered by the court, an assignment order has priority as against any attachment, execution, or other assignment.

Comment. Section 6244 continues subdivision (b) of former Civil Code Section 4390.12 without substantive change.

§ 6245. Application of part to district attorney

6245. A reference to the district attorney in this part applies only when the district attorney is otherwise ordered or required to act pursuant to law. Nothing in this part shall be deemed to mandate additional enforcement or collection duties upon the district attorney beyond those otherwise imposed by law.

Comment. Section 6245 continues former Civil Code Section 4390.1 without substantive change. The reference to “existing” law has been omitted, so that this part will apply to all enforcement or collection duties otherwise imposed on the district attorney by law.

§ 6246. Use of other civil and criminal remedies not limited

6246. Nothing in this part limits the authority of the district attorney to utilize any other civil and criminal remedies to enforce support obligations, regardless of whether or not the minor child or the obligee who is the parent, guardian, or other person entitled to receive payment is the recipient of welfare moneys.

Comment. Section 6246 continues former Civil Code Section 4390.19 without substantive change.

**CHAPTER 3. SUPPORT ORDERS
ISSUED OR MODIFIED BEFORE JULY 1, 1990**

§6250. Chapter applies to support orders first issued or modified before July 1, 1990

§6251. Procedures available for obtaining assignment order

§6252. Application for order under this chapter

§6253. Issuance of assignment order

§ 6250. Chapter applies to support orders first issued or modified before July 1, 1990

6250. For a support order first issued or modified before July 1, 1990, this chapter 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 6250 continues the first sentence of subdivision (a) of former Civil Code Section 4390.5 without substantive change.

§ 6251. Procedures available for obtaining assignment order

6251. The obligee seeking issuance of an assignment order to enforce a support order described in Section 6250 may use the procedure set forth in this chapter by filing an application under Section 6252, or by notice of motion or order to show cause, or pursuant to subdivision (b) of Section 6230.

Comment. Section 6251 continues the second sentence of subdivision (a) of former Civil Code Section 4390.5 without substantive change.

Note: The meaning of Section 6251 is unclear. For example, does the requirement of subdivision (a) of Section 6252 apply if the assignment order is sought pursuant to subdivision (b) of Section 6230? See also the Note to Section 6230. A possible solution would be to delete Section 6251 and to revise subdivision (b) of Section 6230 to limit that subdivision to modification of an assignment order.

§ 6252. Application for order under this chapter

6252. (a) An assignment order under this chapter 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 obligor'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 prior to 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 6252 continues the third sentence of subdivision (a) of former Civil Code Section 4390.5 without substantive change. Subdivision (b) continues subdivisions (d) and (e) of former Civil Code Section 4390.5 without substantive change. Subdivision (c) continues subdivision (b) of former Civil Code Section 4390.5 without substantive change.

Note: The meaning of subdivision (a) is unclear. Is issuance of an order under this chapter limited to the case where the obligor is in default for one month? This is a requirement in the form developed by the Judicial Council. See *Ex Parte Application for Wage Assignment For Support Ordered Before July 1, 1990 (Family Law) Form Adopted by Rule 1285.65 Judicial Council of California 1285.65 (Rev. July 1, 1990)*. If so, what effect does the additional language ("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" have? Note that the assignment order is issued *ex parte* (Section 6253). Note that service of the assignment order on the employer can be stayed if the obligee "has a history of uninterrupted, full, and timely payment of previously ordered support in the preceding 12 months." Does subdivision (b) of Section 6230 permit the issuance of an assignment order when the obligor is not in default for one month? It appears that the phrase "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" should be deleted from subdivision (a) of Section 6252 and the procedure in this chapter should be limited to cases where the obligor is at least one month in default. If it is desired to issue assignment orders in cases other than where the obligor is at least one month in default, the cases should be identified and provided for in provisions apart from this chapter.

§ 6253. Issuance of assignment order

6253. 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 the amount ordered by the court for support.

Comment. Section 6253 continues subdivision (c) of former Civil Code Section 4390.5 without substantive change. The last sentence of subdivision (c) of former Section 4390.5 is omitted as unnecessary. The requirement of subdivision (c) of former Section 4390.5 that the order be one “requiring the obligor to assign to the obligee” has been omitted and Section 6253 is based on the concept that the assignment order itself operates without any need for the obligor to make an assignment to the obligee. There was no actual requirement in former law that the obligor make an assignment to the obligee.

Note: Other provisions, including those in the Code of Civil Procedure, will need to be revised to reflect the concept that the assignment order itself operates to require the employer to withhold earnings for support without the need for the obligor to make an assignment to the obligee.

CHAPTER 4. STAY OF SERVICE OF ASSIGNMENT ORDER

§6260. Finding of good cause required to stay order

§6261. Termination of stay

§ 6260. Finding of good cause required to stay order

6260. (a) The court may order that service of the assignment order be stayed only if the court makes a finding of good cause to stay service of the order.

(b) Good cause to stay service of the assignment order is limited to any of the following:

(1) The obligor has a history of uninterrupted, full, and timely payment of previously ordered support during the preceding 12 months. If the obligor has not been subject to an order of support for 12 months prior to the issuance of the assignment order, the obligor may qualify for good cause under this paragraph if the obligor posts with the clerk of the court a cash bond or cash in an amount equal to three months' support. The court may not find good cause to stay service of the assignment order under this paragraph if the obligor owes an arrearage for prior support.

(2) The obligor proves and the court finds, by clear and convincing evidence, that service of the assignment order would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that the stay ordered under this paragraph will automatically terminate.

(3) The parties sign a written agreement which provides for an alternative arrangement to ensure payment of the support obligation as ordered other than through the immediate service of an assignment order. The written agreement may include an agreement relating to the staying of the service of an assignment order. In a case where support is ordered to be paid through a county officer designated for that purpose, an agreement between the parties which includes the staying of the service of an assignment order shall include the agreement of the district attorney. The signing of an agreement pursuant to this paragraph does not preclude the party from seeking an

assignment order in accordance with the procedures set forth in Section 6261 upon violation of the agreement.

(4) The employer or district attorney has been 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 district attorney of a change of address.

Comment. Section 6260 continues subdivision (c) of former Civil Code Section 4390.3 (as amended by 1990 Cal. Stat. ch. 411 § 2) without substantive change.

§ 6261. Termination of stay

6261. (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 6260, 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 6261 continues former Civil Code Section 4390.4 without substantive change.

CHAPTER 5. MOTION TO QUASH ASSIGNMENT ORDER

§6270. Grounds for motion of quash

§6271. Filing motion and notice of motion to quash; setting for hearing; service on obligor

§6272. Modification of order to reflect correct or allowable amount

§ 6270. Grounds for motion of quash

6270. (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 subdivision (b) of Section 1673 of Title 15 of the United States Code.

(b) If an assignment order is sought under Chapter 3 (commencing with Section 6250), the party ordered to pay support may also move to quash the service of the order based upon Section 6260.

(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 6270 continues subdivisions (a), (b) and (c) of former Civil Code Section 4390.9 (as amended by 1990 Cal. Stat. ch. 411 § 3) without substantive change. The reference to the time for making the motion which appeared in subdivision (a) of former Civil Code Section 4390.9 has been omitted as unnecessary, because this provision duplicated a provision of former Civil Code Section 4390.11, now Family Code Section 6271.

§ 6271. Filing motion and notice of motion to quash; setting for hearing; service on obligor

6271. (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 prior to the date of the hearing.

Comment. Section 6271 continues former Civil Code Section 4390.11 without substantive change. In subdivision (a), the phrase "service on the obligor of notice of the order" which was used in the former provision has been replaced by "delivery of the copy of the assignment order to the obligor." This revision makes subdivision (a) consistent with Section 6234 (delivery of copy of assignment order to obligor).

§ 6272. Modification of order to reflect correct or allowable amount

6272. 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 or quash 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 6272 continues subdivision (d) of former Civil Code Section 4390.9 (as amended by 1990 Cal. Stat. ch. 411 § 3) without substantive change.

**CHAPTER 6. INFORMATION CONCERNING
ADDRESS AND EMPLOYMENT OF OBLIGOR**

§6280. Use of California parent locator service

§6281. Obligor to inform obligee of change of employment

§6282. Employer to notify obligee when obligor leaves employment

§6283. Employer to provide information to district attorney

§ 6280. Use of California parent locator service

6280. If the obligee making the application under this part 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 6280 continues former Civil Code Section 4390.6 without substantive change.

§ 6281. Obligor to inform obligee of change of employment

6281. An assignment order required or authorized by this part 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 6281 continues subdivision (a) of former Civil Code Section 4390.7 without substantive change.

§ 6282. Employer to notify obligee when obligor leaves employment

6282. 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 that the obligor has left employment by first-class mail, postage prepaid, to the last known address of the obligee.

Comment. Section 6282 continues subdivision (b) of former Civil Code Section 4390.7 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 6214 ("obligee" defined).

§ 6283. Employer to provide information to district attorney

6283. The employer shall cooperate with and provide relevant employment and income information to the district attorney for the purpose of establishing, modifying, or enforcing the support obligation. The employer shall incur no liability for providing this information to the district attorney.

Comment. Section 6283 continues subdivision (a) of former Civil Code Section 4390.16 without substantive change.

CHAPTER 7. PROHIBITED PRACTICES

§6290. Assignment not grounds for refusal to hire, discharge, or disciplinary action

§ 6290. Assignment not grounds for refusal to hire, discharge, or disciplinary action

6290. No employer shall use an assignment order authorized by this part 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 6290 continues former Civil Code Section 4390.17 without substantive change. See also Section 6242 (penalty for employer failing to comply with order).

Note: Is a separate action necessary to collect the civil penalty provided for in Section 6290 or may the penalty be collected in a contempt proceeding under Section 6242?

CHAPTER 8. JUDICIAL COUNCIL FORMS

§6295. Forms to implement statute

§ 6295. Forms to implement statute

6295. The Judicial Council shall prescribe forms necessary to carry out the requirements of this part, 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 6230, 6252, and 6261.
- (e) The notice form required under Section 6252.
- (f) Revised judgment and assignment order forms as necessary.

Comment. Section 6295 continues former Civil Code Section 4390.15 without substantive change.

Division 13. Enforcement of Judgments

DIVISION 14. CONCILIATION PROCEEDINGS

Part 1. Conciliation court law

Part 2. Statewide coordination of family mediation and conciliation services

PART 1. CONCILIATION COURT LAW

Chapter 1. General provisions

Chapter 2. Family conciliation courts

Chapter 3. Proceedings for conciliation

CHAPTER 1. GENERAL PROVISIONS

§6400. Purposes of part

§6401. Short title

§6402. Applicability of part

§ 6400. Purposes of part

6400. 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 6400 continues former Code of Civil Procedure Section 1730 without substantive change.

§ 6401. Short title

6401. This part may be cited as the Family Conciliation Court Law.

Comment. Section 6401 continues former Code of Civil Procedure Section 1731 without substantive change.

§ 6402. Applicability of part

6402. (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 6402 continues former Code of Civil Procedure Section 1733 without substantive change.

CHAPTER 2. FAMILY CONCILIATION COURTS

§6410. Jurisdiction; court to be known as "family conciliation court"

§6411. Assignment of judges; number of sessions

§6412. Transfer of cases

§6413. Substitute judge

§6414. Appointment of supervising counselor, secretary, and other assistants

§6415. Qualifications of supervising and associate counselors

§6416. Continuing instruction programs

§6417. Probation officers; duties

§6418. Confidentiality of hearings, conferences, and papers

§6419. Destruction of records

§6420. Agreement between counties for joint family conciliation court services

§ 6410. Jurisdiction; court to be known as “family conciliation court”

6410. 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 6410 continues former Code of Civil Procedure Section 1740 without substantive change.

§ 6411. Assignment of judges; number of sessions

6411. 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 6411 continues former Code of Civil Procedure Section 1741 without substantive change.

§ 6412. Transfer of cases

6412. (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 insure 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 6412 continues former Code of Civil Procedure Section 1742 without substantive change.

§ 6413. Substitute judge

6413. (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 6413 continues former Code of Civil Procedure Section 1743 without substantive change.

§ 6414. Appointment of supervising counselor, secretary, and other assistants

6414. (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 such supervision in connection with the exercise of his or her jurisdiction as the judge of the family conciliation court may direct.

(3) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the family conciliation court may direct.

(4) Hold such hearings in all family conciliation court cases as may be required by the judge of the family conciliation court, and make such investigations as may be required by the court to carry out the intent of this part.

(5) Make recommendations relating to preage marriages.

(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, such 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 6414 continues former Code of Civil Procedure Section 1744 without substantive change.

§ 6415. Qualifications of supervising and associate counselors

6415. (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 masters 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' 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 6415 continues former Code of Civil Procedure Section 1745 without substantive change. The provision of subdivision (c) of former Section 1745 that provided that the provisions of the section must be met by all counselors of conciliation not later than January 1, 1984, has been omitted as obsolete.

§ 6416. Continuing instruction programs

6416. (a) Supervising and associate counselors and mediators described in Section 3155 shall participate in such 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, 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 6416 continues former Code of Civil Procedure Section 1745.5 without substantive change.

§ 6417. Probation officers; duties

6417. The probation officer in every county shall do all of the following:

- (a) Give such assistance to the family conciliation court as 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 6417 continues former Code of Civil Procedure Section 1746 without substantive change.

§ 6418. Confidentiality of hearings, conferences, and papers

6418. (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 his 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 6418 continues former Code of Civil Procedure Section 1747 without substantive change. The reference to Section 124 of the Code of Civil Procedure which appeared in former Section 1747 has been omitted as unnecessary.

§ 6419. Destruction of records

6419. (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 of child custody or visitation mediation may be destroyed under subdivision (a) when the minor or minors involved are 18 years of age.

(c) In his or her 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 6419 continues former Code of Civil Procedure Section 1748 without substantive change.

§ 6420. Agreement between counties for joint family conciliation court services

6420. (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 for which he or she is 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 such other matters as 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 6420 continues former Code of Civil Procedure Section 1749 without substantive change.

CHAPTER 3. PROCEEDINGS FOR CONCILIATION

§6430. Jurisdiction of family conciliation court

§6431. Petition; right to file; purpose

- §6432. Caption of petition
- §6433. Contents of petition
- §6434. Blank forms; assistance in preparing and presenting petition; references; coextensive jurisdiction in instances of domestic violence
- §6435. Fees
- §6436. Hearing; time; place; notice; citation; witnesses
- §6437. Time and place of hearings
- §6438. Informal hearings; aid of specialists or experts
- §6439. Orders; duration; reconciliation agreement; temporary support
- §6440. Stay of right to file other proceeding; effect of pendency of other proceeding on conciliation proceeding
- §6441. Other pending proceeding involving minor child; transfer to family conciliation court
- §6442. Transfer where no minor child involved in other proceedings

§ 6430. Jurisdiction of family conciliation court

6430. (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 the dissolution or annulment of the marriage 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 6430 continues former Code of Civil Procedure Section 1760 without substantive change. See also Sections 3155-3183 (mediation of contested visitation or custody issues), 3190-3192 (counseling of parents and child).

§ 6431. Petition; right to file; purpose

6431. Prior to the filing of a proceeding for determination of custody or visitation rights, dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, 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 6431 continues former Code of Civil Procedure Section 1761 without substantive change. See also Sections 3155-3183 (mediation of contested visitation or custody issues), 3190-3192 (counseling of parents and child).

§ 6432. Caption of petition

6432. 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 _____ (Petitioner) And concerning _____ and _____, Respondents	}	Petition for Conciliation (Under the Family Conciliation Court Law)
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To the Family Conciliation Court:

Comment. Section 6432 continues former Code of Civil Procedure Section 1762 without change.

§ 6433. Contents of petition

6433. 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 6433 continues former Code of Civil Procedure Section 1763 without substantive change.

§ 6434. Blank forms; assistance in preparing and presenting petition; references; coextensive jurisdiction in instances of domestic violence

6434. (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 attaches 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 6434 continues former Code of Civil Procedure Section 1764 without substantive change.

§ 6435. Fees

6435. No fee shall be charged by any officer for filing the petition.

Comment. Section 6435 continues former Code of Civil Procedure Section 1765 without change.

§ 6436. Hearing; time; place; notice; citation; witnesses

6436. (a) The court shall fix a reasonable time and place for hearing on the petition. The court shall cause such notice of the filing of the petition and of the time and place of the hearing as it deems necessary to be given to the respondents.

(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 6436 continues former Code of Civil Procedure Section 1766 without substantive change.

§ 6437. Time and place of hearings

6437. (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, prior to the hearing, objects to any different time or place.

Comment. Section 6437 continues former Code of Civil Procedure Section 1767 without substantive change.

§ 6438. Informal hearings; aid of specialists or experts

6438. (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 6438 continues former Code of Civil Procedure Section 1768 without substantive change.

§ 6439. Orders; duration; reconciliation agreement; temporary support

6439. (a) At or after the hearing, the court may make such orders in respect to the conduct of the spouses or parents and the subject matter of the controversy as 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 revoked at any time except as to an amount that accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke.

Comment. Section 6439 continues former Code of Civil Procedure Section 1769 without substantive change.

§ 6440. Stay of right to file other proceeding; effect of pendency of other proceeding on conciliation proceeding

6440. (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, legal separation, or judgment of nullity of a voidable marriage.

(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, legal separation, or a judgment of nullity of a voidable marriage, or a proceeding to determine custody or visitation of the minor child or children.

(c) The pendency of a proceeding for dissolution of marriage, legal separation, or declaration of nullity, 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 6440 continues former Code of Civil Procedure Section 1770 without substantive change. See also Sections 3155-3183 (mediation of contested visitation or custody issues), 3190-3192 (counseling of parents and child).

§ 6441. Other pending proceeding involving minor child; transfer to family conciliation court

6441. If a petition for dissolution of marriage, legal separation, or declaration of nullity of a voidable marriage is filed in the superior court, 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 the provisions of 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 6441 continues former Code of Civil Procedure Section 1771 without substantive change.

§ 6442. Transfer where no minor child involved in other proceedings

6442. (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, legal separation, or judgment of nullity of a voidable marriage, 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 6442 continues former Code of Civil Procedure Section 1772 without substantive change.

**PART 2. STATEWIDE COORDINATION
OF FAMILY MEDIATION AND CONCILIATION SERVICES**

§6450. Judicial Council duties

§6451. Advisory committee

§6452. Funds

§ 6450. Judicial Council duties

6450. 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 actions brought pursuant to the Family Law Act, 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 insure that a child support order is adequate.

(3) The development of methods to insure 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 6452. The training shall include, but not be limited to, the order of preference for custody of minor children set forth in Chapter 2 (commencing with Section 3040) of Part 2 of Division 10 and the meaning of the custody arrangements described in Section 3020 and in Chapter 2 (commencing with Section 3040) and Chapter 4 (commencing with Section 3080) of Part 2 of Division 10.

Comment. Section 6450 continues former Civil Code Section 5181 without substantive change except subdivision (a) has been expanded to cover all mediation and conciliation proceedings under this code. See also Sections 3155-3183 (mediation of contested visitation or custody issues), 3190-3192 (counseling of parents and child).

§ 6451. Advisory committee

6451. 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 6450, 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 6451 continues former Civil Code Section 5182 without substantive change.

§ 6452. Funds

6452. 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 6452 continues former Civil Code Section 5183 without substantive change.

Division 14. Conciliation Proceedings

Division 15. Minors

DIVISION 15. MINORS

[Reserved for future use]

(§§ 6500 - 7499)

Division 15. Minors

Division 16. Adoption

DIVISION 16. ADOPTION

[Reserved for future use]

(§§ 7500 - 8500)

Division 16. Adoption

Disposition Table for Existing Sections

DISPOSITION TABLE FOR EXISTING SECTIONS

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Disposition Table for Existing Sections

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(b)	6252(c)	4458	1910
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4800.4	2650	5118	772
4800.5	2660	5119	773
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(part)	1621	5120.110(a)	910
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4804	2505	(c)	910
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5002	2452	5120.210	920
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(b)	754	5122	1000
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5152	3403	5316	1616
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5155	3406	7001	1701
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5157	3408	7003	1710
5158	3409	7004(a)	1711
5159	3410	(b)	1712
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5161	3412	7005	1713
5162	3413	7006(a),(b),(c)	1730
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(b)(part)	1812
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541	5510	(b)	5752
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(a)	55	(d)	5754
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(b)(part)	5603	1741	6411
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(b)(part)	5605	1743	6413
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(b)(part)	5652	1746	6417
(c)(part)	5602	1747	6418
(c)(part)	5603	1748	6419
(c)(part)	5604	1749	6420

Disposition Table for Existing Sections

<i>Code Civ. Proc. Sec.</i>	<i>New Code Sec.</i>	<i>Evid. Code Sec.</i>	<i>New Code Sec.</i>
1760	6430	621(a)	1850
1761	6431	621(b)-(h)	1851
1762	6432	890	1880
1763	6433	892	1881
1764	6434	893	1882
1765	6435	894	1883
1766	6436	895	1884
1767	6437	895.5	1885
1768	6438	896	1886
1769	6439	897	1887
1770	6440		
1771	6441		
1772	6442		