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Domestic Relations Review of Selected 1972 California Legislation

University of the Pacific; McGeorge School of Law

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Domestic Relations

Domestic Relations; separate property

Civil Code §5126 (amended).
SB 1412 (Holmdahl); STATS 1972, Ch 905

Pursuant to Civil Code §5126, all money or other property 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 it is received in specified situations. Prior to Chapter 905, such property received by the injured person in the following situations was the separate property of that person: (1) after the rendition of a decree of legal separation or a final judgment of dissolution; (2) when the wife, if she is the injured person, is living separate from her husband; (3) after the rendition of an interlocutory decree of dissolution and while the injured person and his spouse are living separate and apart.

Chapter 905 amends §5126 to provide that such property received while either spouse, if he or she is the injured person, is living separate from the other spouse, is separate property, and such property received after the rendition of an interlocutory decree of dissolution is separate property, whether or not the injured person and spouse are living separate and apart.

COMMENT

Chapter 905, in one respect, is in accord with the 1971 amendments to Civil Code Sections 5118 and 5119. Prior to the 1971 amendment, §5118 provided that the earnings and accumulations of the wife, and of her minor children living with her or in her custody, are her separate property while she is living separate from her husband [CAL. STATS. 1969, c. 1608, §8, at 3340]. Section 5119 provided that the earnings and accumulations of either spouse after the rendition of a decree of legal separation are that spouse's separate property, and the earnings and accumulations of the husband while living separate and apart after the rendition of an interlocutory judgment of dissolution are his separate property [CAL. STATS. 1969, c. 1608, §8, at 3340]. Thus,
the husband's earnings and accumulations were his separate property only while living separate and apart after an interlocutory decree, or after a decree of legal separation, while the wife had only to be living separate and apart. In 1971, Chapter 1699 amended Sections 5118 and 5119 to provide that 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 [CAL. STATS. 1971, c. 1699, at 3639-40].

However, in another respect, Chapter 905 is not in accord with these 1971 amendments. Chapter 905 provides that personal injury awards received after the rendition of an interlocutory decree of dissolution are separate property regardless of whether or not the parties are living apart. This provision should be distinguished from the provisions of §§5118 and 5119 which provide that earnings and accumulations of a spouse are separate property after an interlocutory decree of dissolution or decree of legal separation only if the parties are living separate and apart.

See Generally:
1) 4 Witkin, SUMMARY OF CALIFORNIA LAW, Community Property §5 (7th ed. 1960); §§7, 7A-7G (Supp. 1969).

Domestic Relations; residence of wife, child

Civil Code §5101 (amended); Government Code §244 (amended).
AB 566 (Waxman); STATS 1972, Ch 1071

Section 5101 of the Civil Code has been amended to delete the requirement that a wife must conform to her husband's choice of a reasonable place or mode of living.

Government Code §244(d) has been amended with regard to an unmarried minor's residence. It now provides that the minor's residence is that of the parent with whom he lives. Previously, his residence was that of the father during his life and after his death the residence of the mother, unless his parents were separated.

Government Code §244(e) has been amended to give a wife the right to retain her own legal residence in California, notwithstanding the legal residence or domicile of her husband. This section formerly provided that the residence of the husband was the residence of the wife, unless they were separated.

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COMMENT

It does not appear that any of the above changes will have significant practical effect. The importance of residence in divorce actions was substantially diminished by the Family Law Act of 1970, as Civil Code §4531 provides that in dissolution proceedings, neither the domicile nor residence of the husband shall be deemed to be that of the wife. Other code sections already control residence requirements in many instances; e.g., Education Code §25505.1 (residence for junior college attendance), Elections Code §14290 (residence of wife for election purposes), Welfare and Institutions Code §17.1 (residence of a minor).

See Generally:
1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1965 CODE LEGISLATION 126.
3) 2 Witkin, CALIFORNIA PROCEDURE, Provisional Remedies §141 (1970).

Domestic Relations; preage marriage counseling

Code of Civil Procedure §1744.2 (amended).
AB 500 (Hayes); STATS 1972, Ch 727

Section 1744.2 of the Code of Civil Procedure has been amended to give conciliation counselors, in counties with populations of 1,000,000 or more, the power to make recommendations relating to preage marriages.

COMMENT

Section 1747 of the Code of Civil Procedure provides that all communications from parties to the judge, commissioner, or counselor in a conciliation proceeding shall be deemed to be official information within §1040 of the Evidence Code. This means that a conciliation counselor cannot be forced to divulge such confidential information. Since the conciliation counselor previously did not have the specific power to make recommendations relating to preage marriages, the question arose as to whether or not the counselor could be compelled to divulge information received in a preage counseling session. By specifically authorizing the conciliation counselor to make recommendations with regard to preage marriages, there can no longer be any question that information received in the course of preage marriage counseling will be official information within §1040 and the counselor cannot be compelled to divulge such information.

See Generally:
In order to correct any certificate of birth, death, or marriage already registered, Section 10400 of the Health and Safety Code provides for the filing of an affidavit with the state or local registrar when the facts are not stated correctly in such certificate. The affidavit must state the changes necessary to make the record correct. Section 10400.5 has been added to provide that §10400 is only applicable to birth certificates in the absence of conflicting information relative to parentage on the originally registered certificate of birth. Section 10009 has been added to provide that “absence of conflicting information relative to parentage” includes entries such as “unknown,” “not given,” “refused to state,” or “obviously fictitious names.”

Section 10441 concerns the issuance of a new birth certificate when a child has been legitimated by the subsequent marriage of his parents and the parents have filed an affidavit of that fact with the State Registrar. This section has been amended to provide that a new birth certificate will not be issued on the basis of this affidavit if there is conflicting information on the original birth certificate.

Section 10450 has been amended to require the issuance of a new birth certificate when the facts of parentage, including the nonpaternity as well as the paternity, of a child have been established by judicial decree. The provisions regarding issuance of a new birth certificate based on acknowledgement of paternity by affidavit have been deleted from this section and are now provided for by the new article 6.5 (commencing with §10455).

Article 6.5 pertains to amendment of a birth record after parental acknowledgement of paternity, by affidavit. This area was previously covered by §10450. The most important difference between the old and the new law is that a new birth certificate can now be established only in the absence of conflicting information on the originally registered certificate of birth.

COMMENT

Section 10004 of the Health and Safety Code provides that a birth certificate is not complete and correct if it does not contain all of the required items of information or contain a satisfactory account of their
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omission. This section was construed, however, to allow leaving the father’s name blank if the information received from the mother of an illegitimate child was insufficient to warrant placing the name of the reputed father on the birth certificate [See 1 Ops. ATT’Y GEN. 277 (1943)]. Section 10125 of the Health and Safety Code, which contains the prescribed content of the birth certificate, was amended in 1971 to conform with this interpretation by adding “if known” to the statement requiring inclusion of certain items [See CAL. STATS. 1971, c. 578, §10, at 1139]. By restricting the amendment of birth records by affidavit only to cases in which there is no conflicting information relative to parentage, this legislation will force many birth certificate changes to be court ordered, rather than simply by affidavit. In fact, it seems that the only changes with regard to parentage that can be made without a court order will be in those cases where the father’s name is originally left blank.

See Generally:

Domestic Relations; amendment of birth certificates—adoption petitions

SB 574 (Grunsky); STATS 1972, Ch 602

Article 8 (commencing with §10470) has been added to the Health and Safety Code to provide for amendment of the birth record of a person born in this state whose name has been changed by order of any court of this state, another state, District of Columbia, or any territory of the United States. This article requires the State Registrar to review the amendment for acceptance for filing, and if accepted, to file the amendment with the original birth certificate and note the amendment on the certificate. Formerly, a person whose name had been changed had no way to amend his birth record (with the exception of a minor child pursuant to §§10460-10462 of the Health and Safety Code).

Section 10617 provides that a five dollar fee must be paid by the applicant for the establishment of an amended record of birth pursuant to this article, and Section 10472 requires the State Registrar to furnish a certified copy of the newly amended birth record without additional cost.

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Section 26860 of the Government Code, relating to filing fees for an adoption petition, has been amended by Chapter 602 to clarify the language of that section to specify that a separate five dollar fee must be paid for each individual being adopted.

Chapter 602 becomes operative on the first day of the month following the effective date of this act, or January 1, 1973, whichever is later.

Domestic Relations; setting aside adoptions

Civil Code §§227b, 227c (amended); §227b (repealed); §227b (new).
SB 593 (Zenovich); STATS 1972, Ch 380

Section 227b of the Civil Code concerns the setting aside of a decree of adoption. As amended, the section allows the adopting parents or parent to file a petition to set aside the adoption if the child shows evidence of a mental deficiency or mental illness (rather than when the child shows evidence of being feeble-minded, epileptic or insane), as a result of conditions prior to the adoption, to such an extent that the child is considered unadoptable, and of which conditions the adopting parents or parent had no knowledge or notice prior to the entry of the decree. This amended section is to be repealed when the Reorganization Plan No. 1 of 1970 becomes operative, and it will be reenacted on that operative date with the additional change that the Department of Health, rather than the Department of Social Welfare, will be responsible, for filing a report with the court and appearing before the court to represent the adopted child.

Section 227c has been amended to provide that the county in which the adoption proceedings were held shall be liable for support of the child until he is able to support himself. It is no longer necessary that such child be declared sane or restored to capacity as well as be able to support himself. This section has also been amended to provide that the county counsel or the county department of social welfare, in addition to the district attorney, may be directed by the court to take appropriate proceedings with regard to the child after the decree of adoption has been set aside. The provision of §227c which allowed a psychopathic probation officer or any suitable person to institute such proceedings has been deleted.

COMMENT

It appears that the only substantive change in Section 227b is the
elimination of epilepsy as a basis for setting aside an adoption. The new terms “mental deficiency or mental illness” appear to encompass feeble-mindedness and insanity as required by Section 227b prior to amendment. “Insane” and “mentally ill” have been considered synonymous, with “mentally ill” the more modern term [See 27 Cal. Jur. 2d, Insanity and Incompetent Persons §§1-9 (1956); Cal. Stats. 1965, c. 391, repealed; Cal. Stats. 1968, c. 798, §7, at 1544]. Feeblemindedness, mental retardation, and mental deficiency are treated as equivalent [See Cal. Welf. & Inst. Code §6500; 27 Cal. Jur. 2d, cited supra]. Furthermore, Section 6500 of the Welfare and Institutions Code states that wherever, in any provision or statute heretofore or hereafter enacted, the term “feebleminded” is used, it shall be construed to refer to and mean “mentally retarded,” as defined in Section 6500. Therefore, it appears that the use of the new terminology is simply a modernization of the code section to conform with current phraseology.

It remains to be seen whether courts will construe the phrase “to such an extent that the child is considered unadoptable,” as constituting a substantive change of the basis upon which a decree of adoption may be set aside.

See Generally:

Domestic Relations; adoption investigations

Civil Code §227a (amended).
AB 695 (MacDonald); Stats 1972, Ch 1132

The amendment to Section 227a of the Civil Code allows the county board of supervisors, at its option, to authorize either the county welfare department or the county probation officer to make the required investigation of stepparent adoptions. Previously, the county probation officer was the sole authority designated to conduct this investigation.

See Generally:

Domestic Relations; child custody and guardianship

Civil Code §4600 (amended); Probate Code §1408 (amended).
AB 662 (Dunlap); Stats 1972, Ch 1007

Section 4600 of the Civil Code has been amended to delete the pref-
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derence given a mother, as opposed to the father, in child custody pro-
cceedings. Section 4600 now provides that custody shall go to either
parent according to the best interests of the child. Formerly, other
things being equal, the court was required to give preference to the
mother in cases involving a child of tender years.

Section 1408 of the Probate Code has been amended to provide
that between parents claiming guardianship adversely to each other,
neither is entitled to priority. Formerly, other things being equal,
preference was given to the mother for a child of tender years, and to
the father if the child was of an age to require education and prepara-
tion for labor and business.

COMMENT

"It is not open to question, and indeed it is universally recognized,
that the mother is the natural custodian of her young. This view pro-
cceeds on the well known fact that there is no satisfactory substitute for
a mother's love" [Washburn v. Washburn, 49 Cal. 2d 581, 122 P.2d
96 (1942)].

The above quotation reflects an attitude which has prevailed among
courts in California for many years [See CONTINUING EDUCATION OF
THE BAR, THE CALIFORNIA FAMILY LAWYER §§15.11, 15.12 (1961)].
Whether this revision will significantly change this attitude remains to
be seen.

See Generally:
1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, Parent and Child §§23, 26 (7th ed.

Domestic Relations; temporary child support

Civil Code §4357 (amended).
AB 1175 (Hayes); STATS 1972, Ch 738

Civil Code §4357 previously allowed the court to issue temporary
orders for child support during the pendency of a dissolution [CAL.
CIV. CODE §4500 et seq.] or custody proceeding [CAL. CIV. CODE
§4600 et seq.]. This section has been amended to allow such order in
any proceeding where child support is at issue [CAL. CIV. CODE §4700
et seq.].

COMMENT

This legislation was prompted by an attorney who complained to the
author of AB 1175 that she was unable to obtain present support for a
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child whose mother had died and whose father refused to support the child. An action was brought pursuant to Civil Code §4703 (order for support), but the court would not issue a temporary child support order, since neither Civil Code §4700 nor Civil Code §4357 made provision for such support “during the pendency of the action” [Letter from V. Betty Doheny to Assemblyman James Hayes, Feb. 14, 1972].

See Generally:

Domestic Relations; child support payments

Civil Code §§242, 4702 (amended).
AB 1920 (Hayes); STATS 1972, Ch 1167
Support: State Bar of California

Prior to amendment, §4702(b) of the Civil Code provided that in any proceeding where a court makes or has made an order requiring payment of child support to a parent having custody of any minor children of the marriage, the court could direct that the payments be made to the county clerk, probation officer or other officer of the court or county officer designated by the court for such purpose, and could direct the district attorney to appear on behalf of such minor children in any action to enforce such order. This section has been amended to apply in any proceeding where a court makes, or has made, an order requiring payment of child support to the person having custody of any minor children of the marriage. The effect of this change is to make the provisions of §4702(b) applicable to persons who have physical custody, but are not the parents of the child.

Chapter 1167 also amends §242 of the Civil Code to correct an obsolete cross-reference to §175, which was superseded by §5131 in 1969 [CAL. STATS. 1969, c. 1608, §8, at 3343].

See Generally:
1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, Parent and Child §59 (Supp. 1969).

Domestic Relations; child support

Civil Code §4700 (amended); Code of Civil Procedure §§395, 397.5, 1681, 1769 (amended); Welfare and Institutions Code §11476 (amended).

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Enacts the Family Responsibility Act of 1972 which makes various changes regarding child support and related proceedings.

Section 4700 of the Civil Code has been amended to provide that child support payments shall be made prior to payment of any debts owed to creditors. It also provides that an order for modification or revocation of child support may include an award of attorney fees and court costs to the prevailing party.

Section 395 of the Code of Civil Procedure has been amended by Chapter 1118 to provide for venue in a proceeding to determine a parental relationship [CAL. CIV. CODE §231] and in a proceeding to enforce support for an illegitimate child [CAL. CIV. CODE §196(a)]. Section 395 now provides that the county in which the child resides is the proper county for such an action. Formerly, under §395, such actions came under the general rule which provides that the defendant's county of residence is the proper county for trial of the action.

Chapter 1117 also amended §395 with regard to venue in proceedings pursuant to Sections 196(a) and 231 of the Civil Code. Chapter 1117 provided that venue in these proceedings would be the county in which the child resides or in which the defendant resides. Since this amendment appears to be in conflict with the amendment made by Chapter 1118, the later chapter should prevail as a more recent expression of legislative intent [See CAL. GOV'T CODE §9605; 45 CAL. JUR. 2d, Statutes §§79-81 (1958)].

Section 1681 of the Code of Civil Procedure has been amended to allow the plaintiff, upon moving to a county other than where the original support order was issued, to initiate a support judgment enforcement action in the new county of residence. Pursuant to §1681, as amended, the prosecuting attorney and court of the new county of residence shall have the same powers and duties as the prosecuting attorney and court in the original county.

Section 1769 of the Code of Civil Procedure concerns child or spousal support payments during the pendency of conciliation proceedings (§1730 et seq.). This section has been amended to allow the court to take into consideration the recommendations of a financial referee, when available, to determine the amount of support.

Section 11476 of the Welfare and Institutions Code concerns the county welfare department's power to deal with an absent parent. This section allows them to make a contractual agreement with such
parent to provide for child support. Section 11476 has been amended to provide that any such agreement which is not consistent with a court order for support obtained by the district attorney is null and void to the extent that it is not consistent.

**COMMENT**

The Family Responsibility Act of 1972 is consistent with prior Family Law Act changes in that it eases the institution and enforcement of support actions. The amendment of §4700 of the Civil Code establishes the priority of court-ordered child support payments over other debts. The change allowing the award of attorney fees and court costs may make a spouse less reticent about bringing a suit for modification or revocation of child support and also render an attorney more willing to take such a case.

The modifications relating to venue make it easier to initiate different types of support actions. For example, the change in §1681 of the Code of Civil Procedure makes it less difficult for a spouse who has moved to another county to enforce an existing support judgment by allowing her to use the courts within her new county of residence, rather than being forced to bring the action in her former county.

See Generally:


**Domestic Relations; child support—assignment of wages**

Civil Code §4071 (amended).

AB 501 (Hayes); Stats 1972, Ch 802

Section 4701 of the Civil Code authorizes the court, in any proceeding where either or both parents have been ordered to pay support for a minor child, to order either or both parents to assign to an officer of the court that portion of their wages or salary as will be sufficient to pay the amount ordered. This section also provides that such an assignment made pursuant to the court order has priority over any other attachment, execution or assignment unless otherwise ordered by the court. Section 4701 has been amended to provide that such order shall operate as an assignment and be binding upon the employer.
COMMENT

It seems that under the prior wording of §4701, there were questions with regard to the enforcement of the order to assign and with regard to the employer's obligations pursuant to this section.

Labor Code §300 requires an assignment of wages to be signed by the husband or wife of the assignor, as well as by the assignor. By providing that the order shall operate as an assignment, no further action is required by the parties.

Prior to amendment, §4701 provided that the order to assign was binding upon an employer. Although this would seem to require the employer to pay the wages pursuant to this order, its priority as against executions or other assignments was not clear since §4701 stated that any such assignment made pursuant to court order shall have priority. By providing that the order shall operate as an assignment, the employer appears to be required to assign the wages according to the stated priority.

See Generally:
1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 56.

Domestic Relations; AFDC payments

Welfare and Institutions Code §11457 (amended).
SB 373 (Way); STATS 1972, Ch 146
Support: Madera County District Attorney's Office, California Rural Legal Assistance
Opposition: California Department of Social Welfare

Section 11457 of the Welfare and Institutions Code has been amended to provide that money from absent parents for support of a needy child, when collected by, or paid through, any public officer or agency, shall either be transmitted directly to the needy family provided aid, to be used for the support of the needy child, or transmitted to the county department providing aid to be used for the support of the child. Formerly, money from absent parents had to be transmitted to the county department providing aid.

Domestic Relations; responsible relative's contributions

Welfare and Institutions Code §§12101.2, 12101.3 (new).
AB 661 (Biddle); STATS 1972, Ch 625

Section 12101.2 has been added to the Welfare and Institutions Code.
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to provide that notwithstanding the provisions of §12101 (infra), when a responsible relative reaches age 60, he shall be permitted a flat 50 percent allowance for the cost of personal income taxes, disability insurance taxes and social security taxes, expenses necessary to produce the income, including the cost of transportation to and from work, meals eaten at work, and union dues, and the cost of tools, equipment and uniforms.

This allowance is permitted before determination of such individual's liability to contribute to the support of a parent under the Responsible Relative's Act [CAL. WELF. & INST. CODE §12100 et seq.]. In contrast, §12101 continues to provide a similar 25 percent allowance for all other persons. Thus, the net effect of the change made by Chapter 952 is that when a responsible relative reaches the age of 60, his income allowance increases from 25 to 50 percent.

Section 12101.3 has also been added and contains two new provisions concerning responsible relative's payments: (1) when there is more than one responsible relative in a family, liability shall be prorated among such relatives in direct proportion to the maximum levels established according to net income under the relative's contribution scale [CAL. WELF. & INST. CODE §12101]; (2) the maximum amount which may be collected from a responsible relative shall be the actual monetary grant paid to the responsible relative's parent pursuant to Welfare and Institutions Code §§12150 and 12151.

COMMENT

Section 12101.3 resolves the question of whether or not the county can collect more than the amount of a recipient's grant, and whether the term "grant" can be construed to include medical and social costs incurred by the county on behalf of the welfare recipient. This section prevents the county from collecting from any responsible relative (or from brothers and sisters collectively) a sum greater than the amount of the grants to his (their) parent(s), and by establishing the maximum amount collectible as the actual monetary grant, the term "grant" cannot be construed to include medical or social costs.

The responsible relative's contributions under the Old Age Security (OAS) program have been considered recently in both the courts and in the Legislature. This consideration seems to have been prompted in part by the Welfare Reform Act of 1971 [CAL. STATS. 1971, c. 578, at 1168], which substantially raised the contribution scale of responsible relatives.

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One bill this year attempted to delete entirely the responsible relative provisions of the OAS program [S.B. 42, 1972 Regular Session, as introduced, January 11, 1972]. This bill was subsequently amended to merely reduce the relative's contribution scale to the level at which it was prior to the Welfare Reform Act of 1971 [See also A.B. 498, 1972 Regular Session; A.B. 667, 1972 Regular Session]. The Governor vetoed this legislation on June 21 and the Legislature failed to override his veto.

Two recent California cases have focused a great deal of attention on the responsible relative's liability [County of San Mateo v. Boss, 3 Cal. 3d 962, 479 P.2d 654, 92 Cal. Rptr. 294 (1971) (hereinafter cited as Boss); Carleson v. Superior Court of Sacramento County, 23 Cal. App. 3d 1068, 100 Cal. Rptr. 635 (1972), hearing granted, July 6, 1972 (Sac. 7948) (hereinafter cited as Carleson)]. In both of these cases the responsible relative provisions of the OAS program were attacked on the basis of a denial of equal protection.

In Boss, the court found that “the imposition of liability under sections 12100 and 12101 is to charge the adult children of recipients of aid to the aged with a disproportionate share of the costs of providing for such aid. Therefore, the imposition of liability under those sections is constitutional only to the extent that there is a rational basis supporting the classification thereby established” [Boss at 969, 479 P.2d at 658, 92 Cal. Rptr. at 298]. The County of San Mateo claimed the defendant Boss had a duty imposed on him by California Civil Code §206 which provides in part, “It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability.” The court, however, held that a person can qualify to receive aid to the aged and yet not be so destitute that his children will owe him a duty of care under Civil Code §206 [Boss at 970, 479 P.2d at 659, 92 Cal. Rptr. at 299]. The court concluded in this case, that the defendant owed his mother neither a statutory nor a common law duty of support, hence there was no rational basis supporting the classification and the imposition of liability pursuant to Sections 12100 and 12101 constituted a denial of equal protection of the laws [Boss at 971, 479 P.2d at 659, 92 Cal. Rptr. at 299].

The court refused to hold the imposition of liability under Sections 12100 and 12101 to be unconstitutional in all cases and refused to express any opinion as to whether Civil Code §206 provided a sufficient basis for rational classification. “What we say here is at least
where the adult child owes the recipient of welfare assistance no duty of support under Civil Code §206, the state may not, consistent with equal protection, charge the adult with an unequally large portion of the costs of providing such welfare assistance” [Boss at 971, 479 P.2d at 659, 660, 92 Cal. Rptr. at 299, 300].

It is interesting to note that Civil Code §206 was amended in 1971 to add, “A person who is receiving aid to the aged shall be deemed to be a person in need who is unable to maintain himself by work” [CAL. STATS. 1971, c. 578, §3, at 1137].

Carleson is a class action seeking to enjoin state officials from requiring adult children to contribute to their parent’s support. The California Supreme Court has agreed to review this Third District Court of Appeals case [hearing granted, July 6, 1972 (Sac. 7948)].

Notwithstanding Boss, the majority opinion in Carleson upheld the constitutionality of the responsible relative’s provisions. The majority felt that the Elizabethan Poor Laws furnished a basis for a widely established public policy of filial support and this in turn furnished a rational basis for the classification made by the OAS law. The fact that the law originated in the British Parliament rather than British common law courts was found to be relatively unimportant [Carleson at 1083, 100 Cal. Rptr. at 643]. The court noted however, “Affluent children have affluent parents or can afford to support their dependent parents. Thus the sharply intensified contribution scale enacted by the 1971 California Legislature strikes most aggressively and harshly at adult children occupying the lower end of the income scale. The enforced shift of subsistence funds from one generation to the other distributes economic desolation between the generations. It galls family relationships. It injects guilt and shame into elderly citizens who have made their contributions to society and have become dependent through life’s vicissitudes” [Carleson at 1076, 1077, 100 Cal. Rptr. at 638, 639].

The dissent in Carleson felt that Boss was very explicit and that the court, being bound by this decision, had only to decide whether or not Civil Code §206, as amended in 1971, provided a “pre-existing duty of support” furnishing a rational basis for the classification established by Sections 12100 and 12101 [Carleson at 1087, 100 Cal. Rptr. at 646]. The dissent found that since the code sections involved were all part of the Welfare Reform Act of 1971, “It is manifest that a duty created by the same statute and at the same time as the classification, cannot ‘preexist’ and thereby breath constitutional validity into a statute which,
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as applied to adult children of OAS recipients has been held unconstitutional" [Carleson at 1088, 100 Cal. Rptr. at 647].

Domestic Relations; out-of-home care for needy disabled

Welfare and Institutions Code §13702 (new).
SB 926 (Burgener); STATS 1972, Ch 712

Chapter 6 (commencing with Section 13500) of the Welfare and Institutions Code provides for aid to the needy disabled. Section 13702 has been added to this chapter to provide that notwithstanding Section 11010 (disregard of certain voluntary contributions or grants), in determining the amount of aid payable under this chapter, no consideration shall be given to voluntary contributions or grants from other public sources, private agencies, friends or relatives, to or on behalf of a recipient in a non-medical out-of-home care facility, when such grants or contributions meet specified conditions.

The conditions are: (1) the county department of social welfare determines that adequate care for the recipient is not available in the community within the state-established maximum aid; (2) the county department determines the amount for which adequate care for the recipient is available; and (3) the total amount of the contributions or grants does not exceed the difference between the state-established maximum and the amount determined as necessary for the adequate care of the recipient.

COMMENT

Chapter 6.5 (commencing with Section 13900) of the Welfare and Institutions Code provides for nonmedical out-of-home care for the needy disabled. State aid on behalf of such recipients is limited to $300 (Section 13931). Supplementation beyond $70 per month was considered to be income by a regulation of the State Department of Social Welfare and, accordingly, resulted in a diminished state contribution [CAL. ADMIN. CODE Title 22, §44-111.422c].

Thus, in areas where $370 (state-established maximum plus allowable supplement) was insufficient to provide adequate care in an out-of-home care facility, recipients with friends or relatives who could supplement to a greater extent were inhibited from doing so. Chapter 712 has in effect repealed the $70 supplementation limit and allows contributions or grants to equal the difference between the state established maximum and the amount determined as necessary for the adequate care of the recipient.

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Welfare and Institutions Code §11253 (repealed); §11253 (new).
AB 734 (Bagley); STATS 1972, Ch 24
(Effective March 14, 1972)

Chapter 24 repeals Welfare and Institutions Code §11253 and reinstates the same code section in order to insure that the change in the age of majority in California [CAL. STATS. 1971, c. 1748, at 3736] does not terminate aid to full-time students between 18 and 21 under the Aid to Families with Dependent Children program.

COMMENT

Chapter 1748 of the Statutes of 1971 has been interpreted by the State Department of Social Welfare to eliminate Aid to Families with Dependent Children eligibility for dependent children at age 18, although federal law, in accordance with an underlying policy to afford indigent children an opportunity to obtain a high school or college education, provides that such eligibility may continue to age 21 [See A.B. 734, §2, 1972 Regular Session, as introduced, March 7, 1972]. This act was passed to insure that aid to thousands of full-time students who are making satisfactory progress in their studies is not terminated [A.B. 734, CAL. STATS. 1972, c. 24, §3].

It should be noted that the necessity for this legislation may have been eliminated since Welfare and Institutions Code §11253 was not specifically amended by Chapter 1748 of the Statutes of 1971, and Section 1 of Chapter 1748, which attempted to lower the age of majority generally, “wherever the term 21 years of age or similar phrase regarding such age appears,” has been held unconstitutional and repealed [Scott v. Superior Court, 27 Cal. App. 3d 292, 103 Cal. Rptr. 683 (1972); A.B. 686, CAL. STATS 1972, c. 579, §62].

Domestic Relations; mentally retarded persons

AB 1861 (Lanterman); STATS 1972, Ch 1081

Chapter 1081 has been enacted to amend Section 38105 of the Health and Safety Code to permit the conservator of a mentally retarded person, as well as the parent or guardian, to give the approval required in order to place the retarded person in a regional center for the mentally retarded.

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Section 38121 provides for proceedings regarding the judicial review of mentally retarded adults for release from state hospitals. Prior to amendment, this section provided that if, in any such proceeding, the court finds that the adult is mentally retarded and has no parent, guardian or conservator, the superior court shall order the appropriate regional center or the Department of Public Health to initiate, or cause to be initiated, proceedings for the appointment of a guardian or conservator for such mentally retarded adult. Section 38121 has been amended to require that such adult must also be found to be in need of a guardian or conservator before such proceeding must be initiated.

Section 38150 has been amended to permit any adult mentally retarded person, who is competent to do so, to apply for and receive any services provided by a regional center.

Chapter 1081 also incorporates the departmental name changes made by Reorganization Plan No. 1 of 1970.

**Domestic Relations; mentally retarded persons—medical treatment**

Health and Safety Code §38109 (new); Welfare and Institutions Code §5325 (repealed); §5325 (amended); §§5325, 7518 (new). AB 1873 (Lanterman); Stats 1972, Ch 1055

Section 38109 has been added to the Health and Safety Code and Section 7518 has been added to the Welfare and Institutions Code to authorize, under specified circumstances, the medical director of a state hospital or the person in charge of a regional center for the mentally retarded to give consent to medical, dental or surgical treatment on behalf of a mentally retarded person who is a patient in a state hospital or who is placed in an out-of-home placement by the regional center. The medical director or person in charge of the regional center may give such consent if: (a) the retardate's parent, guardian or conservator who is legally authorized to consent to such treatment does not respond within a reasonable time to a request for such treatment; or (b) the retardate has no parent, guardian or conservator who is legally authorized to consent to such treatment.

In cases where there is no person legally authorized to consent, the medical director or person in charge of the regional center shall immediately after consenting to such treatment, initiate proceedings for the appointment of a guardian or conservator who will be legally authorized to consent to medical, dental or surgical services. If the mentally retarded person is an adult and has neither a guardian or con-
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Prior to amendment, Section 5325 prescribed specified rights, including the right to refuse shock treatment or lobotomy, for each person detained for evaluation or treatment under the provisions of Part 1, Division 5 of the Welfare and Institutions Code (the Lanterman-Petris-Short Act). Section 5325 has been amended to additionally give these rights to each person admitted as a voluntary patient to a state hospital, a private mental institution or a county psychiatric hospital, and each mentally retarded person committed to a state hospital pursuant to Article 5 (commencing with Section 6500) of the Welfare and Institutions Code.

Domestic Relations; release of mental health records

Welfare and Institutions Code §5328 (repealed); §5328 (new); §§5328, 5328.9 (amended).
AB 1958 (Ketchum); Stats 1972, Ch 1058

Section 5328 of the Welfare and Institutions Code provides that information and records of individuals treated within the mental health system are confidential and may be disclosed only under specified conditions. Chapter 1058 has amended Section 5328 to allow the patient, with the approval of the physician in charge of the patient, to designate persons to whom information or records may be released. When a patient's hospital records are required by an employer to whom the patient has applied for employment, Section 5328.9 allows the patient to request his records be sent to a qualified physician or psychiatrist representing the patient’s prospective employer. The records shall not be released if the physician or administrative officer responsible for the patient deems the release contrary to the best interests of the patient. In such case the physician or administrative officer shall notify the patient within five days. In the event the disclosure of the patient's records to the patient himself would not serve the patients best interests, the physician or administrative officer must render formal notice of his decision to the superior court of the county in which the patient resides. The court may then disclose the information as necessary to the administration of justice [Section 5328(f)].

COMMENT

Prior to the enactment of Chapter 1058, there was no provision to

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permit the patient to authorize the release of information contained in his record to a prospective employer. Section 5328(b) authorized the physician in charge of the patient to release the records with the patient's permission. But if the patient requested that the physician release the information, and the physician did not respond, the patient could not obtain the records for a prospective employer.

**Domestic Relations; destruction of welfare records**

Welfare and Institutions Code §10851.5 (new); §11476 (amended). AB 802 (Bagley); STATS 1972, Ch 566

The addition of §10851.5 to the Welfare and Institutions Code allows the board of supervisors of a county to authorize destruction of case narratives over three years old which are contained in any case file, active or inactive, after audit by the State Department of Social Welfare. This code section expands the authority granted in §10851, which allows destruction of a case history or any part thereof only after being inactive for five years.

Chapter 566 also amends §11476 of the Welfare and Institutions Code to require, immediately upon receipt of the application for Aid to Families with Dependent Children, notification to an absent parent by certified rather than registered mail.