1-1-1994

Family

University of the Pacific; McGeorge School of Law

Follow this and additional works at: https://scholarlycommons.pacific.edu/mlr

Recommended Citation
University of the Pacific; McGeorge School of Law, Family, 25 Pac. L. J. 691 (1994).
Available at: https://scholarlycommons.pacific.edu/mlr/vol25/iss2/26

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.
Family

Family; adult adoption

Family Code §§ 9300, 9306 (amended).
SB 970 (Rosenthal); 1993 STAT. Ch. 266

Under existing law, adults 1 may be adopted following certain adoption procedures. 2 Existing law also provides that the legal parent-child relationship between the adopted person and the birth parents 3 is severed once the adult is adopted. 4

1. See CAL. FAM. CODE § 6501 (West 1993) (defining an adult as a person who is 18 years old or older).
2. CAL. CIV. CODE § 230.10 (West Supp. 1993); see id. § 230.12 (West Supp. 1993) (prohibiting a person from adopting more than one adult per year, unless the adoptee is a sibling of another adoptee or is physically handicapped); id. § 230.20(a)-(g) (West Supp. 1993) (explaining the procedures for getting a court approved adoption of an adult, and obtaining spouse approval for such an adoption); Schaefer v. Sewall, 242 Cal. App. 2d 208, 218, 51 Cal. Rptr. 367, 376 (1966) (holding that an heir may move to set aside an adult adoption decree perpetrated by fraud so long as the adopting parent had the right to do so during that parent’s lifetime); see also CAL. PROB. CODE § 6152(a) (West 1991) (stating that adopted persons are included in terms of class gifts or relationships in accordance with the laws governing inheritance rights when dealing with intestate succession matters unless otherwise provided in the will or unless the relationship falls within California Probate Code § 6152(b); In re Zook, 62 Cal. 2d 492, 495, 399 P.2d 53, 55, 42 Cal. Rptr. 597, 600 (1965) (noting that an adult adoptee inherits from his adoptive parents just as a natural child would); In re Stanford, 49 Cal. 2d 120, 135, 315 P.2d 681, 689 (1957) (noting that state policy, as evidenced by the adoption statutes, is to give adoptees the same rights as natural children, including inheritance rights); Christopher H. Hall, Adoption as Precluding Testamentary Gift Under Natural Relative’s Will, 71 A.L.R.4th 374, 400 (1989) (explaining that, in cases where a court has precluded an adoptee from sharing in a testamentary gift of a natural relative, the court has found support for its decision in a state statute concerning the character of the legal relationship between an adoptee and the adoptee’s natural and adoptive parents, and the court has not made any reference to an adoptee’s right to receive property through either testacy or intestacy); K.M. Potraker, Adoption of Adult, 21 A.L.R. 3d 1012, 1034-35 (1968) (listing cases in which an adult adoptee has been considered a legal heir of an adoptive parent); cf. CAL. CIV. CODE § 224.21(a)-(d) (West Supp. 1993) (setting forth the conditions which must be met before a child is considered to be placed for adoption); Delaney v. First National Bank, 386 P.2d 711, 714-15 (N.M. 1963) (giving full faith and credit to a Colorado adult adoption, although New Mexico law would not have permitted such an adoption, since the adopting parent and the adoptee were less than 20 years apart in age).
4. CAL. FAM. CODE § 9306(a) (amended by Chapter 266); see CAL. CIV. CODE § 221.76 (West Supp. 1993) (providing that birth parents relinquish all rights and obligations towards a child when the child is adopted); id. § 230.16 (West Supp. 1993) (stating that the birth parents are relieved of all of their parental rights and duties once the adoptee is adopted); cf. DEL. CODE ANN. tit. 13, § 919(a)-(b) (1981) (stating that when an adoption decree is issued, the child will no longer be considered the child of his birth parents, and the adoptive parents will assume the role of the child’s parents). But see CAL. CIV. CODE § 229.50 (West Supp. 1993) (stating that a licensed agency may arrange for contact between an adult adoptee and his or her birth parent if a consent has been filed by each of them); but cf. Michels v. Weingartner, 848 P.2d 1010, 1011 (Kan. 1993) (holding that a natural father is still responsible for past due child support, even though a stepparent has adopted the child). See generally Pat O’Brien, A Right to Know Their Roots, NEWSDAY, May 25, 1993, at 77 (commending the Governor of New York for considering the proposal to change the adoption law so that adoptees can obtain information about their birth parents more easily); Larry Still, Judge Ponders Fate of Child

Selected 1993 Legislation
Chapter 266 expressly allows an adult stepparent of an adult to adopt that adult.\(^5\) Chapter 266 also provides that once the adoption has taken place, the legal parent-child relationship between the adult adoptee and the birth parent, who is the spouse of the stepparent, remains unaffected by the adoption.\(^6\)

\textit{APW}

\textbf{Family; child and spousal support}

Family Code § 4057 (amended).
SB 541 (Hart); 1993 STAT. Ch. 1156

Family Code § 4057.5 (new); § 4323 (amended).
SB 145 (Calderon); 1993 STAT. Ch. 935

---

\textit{Wanted by Mother, VANCOUVER SUN, June 25, 1993, at B3 (reporting the revocation of an adoption, despite the fact that the birth mother failed to follow the laws regarding adoption revocation).}

\textit{5. CAL. FAM. CODE § 9300(a) (amended by Chapter 266); see CAL. CIV. CODE § 220.20(a) (West Supp. 1993) (defining a stepparent adoption as when a stepparent adopts a child while one of the child's natural parents maintains custody over the child); id. § 227.40 (West Supp. 1993) (providing that when a stepparent adopts a child, the written consent of at least one birth parent's must be given in the presence of a state official); cf. IOWA CODE ANN. § 600.4(3)(a) (West 1981) (declaring that a stepparent of a child is qualified to adopt a person other than that stepparent's spouse); N.D. CENT. CODE § 14-15-11(5) (1991) (providing that no agency employee is required to conduct an investigation of the home or conditions prior to an adoption where the adoptee is an adult or the adopting person is a stepparent); OHIO REV. CODE ANN. § 3107.02(B)(3) (Anderson 1989) (stating that an adult may be adopted if the child, as a minor, has established a relationship with that child's stepparent and agrees to be adopted). See generally Barbara Dafoe, \textit{Dan Quayle Was Right; Harmful Effects of Divorce on Children}, ATLANTIC MONTHLY, Apr. 1993 (noting that unless a stepparent has adopted a stepchild, the stepparent has no legal obligation towards the stepchild once the stepparent and the birth parent divorce).}

\textit{6. CAL. FAM. CODE § 9306(b) (amended by Chapter 266); see CALIFORNIA SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 970, at 2 (May 18, 1993) (indicating that legislation is needed in order to preserve the parent-child relationship between a natural parent and that parent's adult child once that child is adopted by that parent's spouse who is not the child's biological parent); cf. IOWA CODE ANN. § 600.3(2)(a)-(b) (West 1981) (providing that a parent's rights need not be terminated prior to the filing of an adoption petition if the stepparent of the adoptee is the petitioner); MICH. COMP. LAWS ANN. § 710.66(1) (West 1993) (providing that where an adult adoptee has been adopted by a stepparent and the adult adoptee's parent, whose parental rights have been severed, wants to rescind the stepparent's adoption and restore his parental privileges, a rescission petition must be filed with the probate court in the county where the adoption took place). But see CAL. PROB. CODE § 6152(b) (West 1991) (stating that an adoptee is not considered a child of the adoptive parent for inheritance purposes, unless the adoptee, as a minor, lived with that adoptive parent or that parent's parent, brother, sister, or surviving spouse); but cf. Wilson v. Johnson, 389 S.W.2d 634, 636 (Ky. Ct. App. 1965) (holding that adult adoptees are not eligible to inherit their adoptive parent's property pursuant to a will when that adoptive parent uses the word "children").}
Family

Existing law provides a statewide uniform guideline for calculating child support.¹ Current law also states that the amount reached under the guideline is generally presumed correct, but may be rebutted by various factors.² Under prior law, the income of a parent’s subsequent spouse or nonmarital partner could be used to rebut the presumption that the amount of support was correct.³

Chapter 935 provides that the income of a subsequent spouse or nonmarital partner will not be considered, unless there is an extraordinary case where excluding such income would create an extreme and severe hardship.⁴

---

1. CAL. CIV. CODE § 4721(a) (West Supp. 1993); see id. (explaining that the statewide uniform guideline is determined by using a formula: CS=K[HN-(H%)(TN)]; id. § 4721(b)(1)(A) (providing that CS represents the child support amount); id. § 4721(b)(1)(B) (providing that K represents the amount of income to be allocated for child support); id. § 4721(b)(1)(C) (providing that HN represents the high earner’s net monthly disposable income); id. § 4721(b)(1)(D) (providing that H% represents the approximate percentage of time that the high earner will have physical custody); id. § 4721(b)(1)(E) (providing that TN represents the total net monthly disposable income); see also § 4720(3)(A)-(L) (West Supp. 1993) (enumerating principles for courts to follow when implementing the guideline); cf. COLO. REV. STAT. § 14-10-115(14) (Supp. 1993); DEL. CODE ANN. tit. 13, § 514 (1981); FLA. STAT. ANN. § 61.30 (West Supp 1993); GA. CODE ANN. § 19-6-15 (Michie Supp. 1992) (describing the calculation of child support). See generally Karen Czapanskiy, Volunteers and Drafters: The Struggle for Parental Equality, 38 UCLA L. REV. 1415, 1472 (1991) (specifying that most child support formulas allocate support in respect to each parent’s income); Jane C. Murphy, Eroding the Myth of Discretionary Justice in Family Law: The Child Support Experiment, 70 N.C. L. REV. 209, 224 (1991) (providing that litigation of support payments should be quicker and less expensive when the courts use a formula).

2. CAL. FAM. CODE § 4057 (amended by Chapter 1156); see id. § 4057(b) (amended by Chapter 1156) (listing the following factors to be used to rebut the presumption that the amount reached is correct: (1) The parties have stipulated to a different amount of child support; (2) the sale of the family residence has been deferred and the rental value of the family residence where the child resides exceeds the mortgage payments, homeowner’s insurance and property taxes; (3) a parent’s subsequent spouse or nonmarital partner has income that helps meet that parent’s basic living expenses, thus increasing the parent’s disposable income available to spend on the children; (4) the parent being ordered to pay child support has an extremely high income and the amount of child support that result from the formula exceeds the needs of the children; (5) a party is not contributing to the needs of the child at a level commensurate with that party’s custodial time; and (6) application of the formula would be unjust or inappropriate due to special circumstances in the particular case); see also In re Marriage of Smith and Ostler, 223 Cal. App. 3d 33, 54, 272 Cal. Rptr. 560, 573 (1990) (stating that the amount of child support is in the discretion of the trial court and will not be changed by an appellate court unless, as a matter of law, an abuse of discretion is shown); cf. In re Marriage of Thornton, 802 P.2d 1194, 1195 (Colo. Ct. App. 1990) (holding that a trial court may not refuse to apply child support guidelines without making appropriate findings that a deviation is justified); In re Marriage of Ryswyk, 492 N.W.2d 728, 731 (Iowa Ct. App. 1992) (holding that there is a rebuttable presumption that the amount of child support calculated as a result of the guideline is correct).

3. 1992 Cal. Legis Serv. ch. 46, sec. 9, at 140 (enacting CAL. CIV. CODE § 4721).

4. CAL. FAM. CODE § 4057.5(a)(1)-(2) (enacted by Chapter 935); see id. § 4057.5(b) (enacted by Chapter 935) (providing that if a parent voluntarily quits work, or reduces the parent’s income it may be considered an extraordinary case); id. § 4057.5(c) (enacted by Chapter 935) (providing that discovery for the objective of determining income must be based on W2 and 1099 income tax forms subject to the discretion of the court); id. § 4057.5(d) (enacted by Chapter 935) (providing that if the income of the parent’s subsequent spouse or nonmarital partner is considered, the court will allow a hardship deduction based on the stepchildren of the party subject to the child support order); ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS

Selected 1993 Legislation
Family

Existing law provides there is a rebuttable presumption that there is a decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex. Chapter 935 provides that the income of a supporting spouse’s subsequent spouse or nonmarital partner will not be considered as a factor in calculating or modifying spousal support.

TLS

Family; ex parte orders

Family Code § 246 (new).
AB 1331 (Epple); 1993 STAT. Ch. 148

Existing law mandates the procedure and requirements for obtaining an ex parte temporary restraining order for incidents of domestic violence.
Family

Chapter 148 requires that these orders be issued or denied on the day the application is filed, or the following day if the application is filed too late in the first day to permit effective review.  

Family; family law

Civil Code §§ 25, 25.1, 25.5, 25.6, 25.7, 25.8, 25.9, 26, 27, 29, 33, 34, 34.5, 34.6, 34.7, 34.8, 34.9, 34.10, 35, 35a, 36, 36.1, 36.2, 37, 38, 39, 40, 41, 42, 64, 65, 196.5, 221.07, 222.10, 222.71, 224.30, 224.64, 226.23, 226.69, 227.20, 227.46, 227.50, 4100, 4200, 4202, 4203, 4204, 4206, 4208, 4210, 4213, 4216, 4357.5, 4359, 4370.5, 4372, 4373, 4384.5, 4390, 4390.3, 4602, 4612, 4700.11, 4702, 4760, 4761, 4762, 4763, 4764, 4765, 4766, 4767,

separation to: prevent a party from transferring or encumbering real or personal property; enjoin a person from contacting or assaulting a person; exclude a person from a family dwelling; determine the custody of minor children; or to determine the temporary use or possession of real or personal property; id. § 3600 (West Special Pamphlet 1993) (providing that the court may order what is necessary for support of the husband, wife, or child during the pendency of any proceeding for dissolution of marriage or for legal separation of the parties); id. § 5530 (West Special Pamphlet 1993) (providing that a temporary restraining order may be granted, with or without notice, for the purpose of preventing the recurrence of domestic violence); id. § 7700 (West Special Pamphlet 1993) (providing that the court may issue a temporary restraining order in the summons of a proceeding that seeks to establish a parent and child relationship that prohibits the parties from removing the child from the state).

3. Id. § 246 (enacted by Chapter 148); see ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1331, at 2 (May 12, 1993) (stating that the purpose of Chapter 148 is to allow victims of domestic violence to be able to rely on a temporary restraining order immediately, as they are often in danger and unprotected while waiting for their orders); cf. ARIZ. REV. STAT. ANN. § 13-3624 (1989) (providing that emergency orders of protection, written or orally, may be issued by a judge if a peace officer states that there are reasonable grounds to believe that the person is in immediate danger); KY. REV. STAT. ANN. § 403.740(1) (Baldwin Supp. 1992) (providing that the court may issue a protective order upon review of a petition showing that the petitioner is in immediate and present danger of domestic violence); MASS. GEN. LAWS ANN. ch. 209A, § 4 (West Supp. 1993) (stating that upon the filing of a complaint under this chapter, the court may issue a temporary restraining order, and may do so without notice if the plaintiff demonstrates a substantial likelihood of immediate danger); N.J. STAT. ANN. § 2C:25-28(a), (f) (West Supp. 1993) (mandating that a judge must be available to accept complaints and issue temporary restraining orders on weekends, holidays, and other times when the court is closed, and that such orders may be issued when necessary to protect the victim). See generally Chris Black, Judges Get More Calls on Domestic Abuse; New Law Spurs After-Hours Restraint Requests, BOSTON GLOBE, June 24, 1991, at 13 (reporting that a significant increase in requests for restraining orders occurred after a law was passed that required peace officers to inform victims of domestic violence of their right to an immediate protective order); Davan Maharaj & Lynn Smith, More Victims of Domestic Abuse Seeking Assistance; Violence: The Increase Is Part of an Escalation Seen Nationwide, According to the American Medical Assn., L.A. TIMES, June 22, 1992, at B1 (reporting that cases of domestic violence are increasing nationwide); Michele Salcedo, Dark Foreboding; How Kathy Germaine's Anxiety Hardened Into Fear, NEWSDAY, July 27, 1992, at 5 (stating that a murder victim had tried to get a protective order against her husband who had a history of violence, but was murdered by her husband a week later while waiting for a hearing to have the order issued).

Selected 1993 Legislation

695
Family

4768, 4769, 4770, 4771, 4772, 4773, 4774, 4775, 4776, 4777, 4778, 4778.5, 4779, 4780, 4781, 4782, 4783, 4784, 4785, 4786, 4787, 4788, 4789, 4790, 4791, 4792, 4793, 4800.6, 4800.8, 4801, 5110.740, 5127, 5152, 5157, 5158, 7004, 7009, 7020 (repealed); § 1799.98 (amended); Code of Civil Procedure §§ 545.5, 547.7, 548 (repealed); §§ 128, 527.6, 529, 583.161, 699.560, 704.114, 704.160, 917.7, 1219, (amended); Evidence Code §§ 895.5, 1037.7 (repealed); Family Code §§ 55, 57, 60, 70, 75, 240, 242, 270, 271, 272, 273, 274, 275, 901, 2030, 2031, 2035, 2036, 2036.5, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2045, 2501, 2580, 2628, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3022, 3040, 3041, 3042, 3043, 3044, 3101, 3110, 3111, 3112, 3113, 3115, 3156, 3157, 3158, 3159, 3160, 3161, 3162, 3170, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3181, 3182, 3183, 3805, 4005, 4050, 4051, 4052, 4053, 4054, 4058, 4059, 4060, 4061, 4062, 4063, 4064, 4066, 4067, 4068, 4100, 4101, 4102, 4103, 4104, 4105, 4502, 5000, 5001, 5005, 5500, 5501, 5505, 5510, 5511, 5512, 5513, 5514, 5515, 5516, 5517, 5518, 5519, 5520, 5530, 5531, 5550, 5551, 5552, 5555, 5560, 5561, 5562, 5563, 5604, 5605, 5606, 5620, 5655, 5700, 5701, 5702, 5703, 5750, 5751, 5752, 5753, 5755, 5756, 5800, 5801, 5802, 5803, 5804, 5805, 5806, 5807, 7200, 7710, 7711, 7720, 7721, 7722, 7730, 7731, 7740, 7741, 7742, 7743, 7750, 8815, 20000, 20001, 20002, 20003, 20004, 20005, 20006, 20007, 20008, 20009, 20010, 20011, 20012 (repealed); §§ 58, 63, 105, 110, 240, 242, 270, 271, 272, 273, 274, 275, 901, 2030, 2031, 2032, 2033, 2034, 2040, 2041, 2045, 2047, 2049, 2120, 2121, 2123, 2124, 2126, 2128, 2129, 2581, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3022, 3040, 3041, 3042, 3043, 3101, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3160, 3161, 3162, 3163, 3164, 3170, 3171, 3172, 3173, 3175, 3176, 3177, 3178, 3179, 3181, 3182, 3183, 3184, 3185, 3186, 3187, 3188, 3557, 4050, 4051, 4052, 4053, 4054, 4058, 4059, 4060, 4061, 4062, 4063, 4064, 4066, 4067, 4068, 4069, 4070, 4071, 4072, 4073, 4074, 4075, 4075, 4502, 4733, 6200, 6201, 6203, 6205, 6209, 6211, 6215, 6218, 6220, 6221, 6222, 6223, 6224, 6225, 6226, 6227, 6240, 6241, 6250, 6251, 6252, 6253, 6254, 6255, 6256, 6257, 6270, 6271, 6272, 6273, 6300, 6301, 6302, 6303, 6304, 6305, 6320, 6321, 6322, 6323, 6324, 6325, 6326, 6340, 6341, 6342, 6343, 6344, 6345, 6360, 6361, 6380, 6381, 6382, 6383, 6384, 6385, 6386, 6387, 6388, 7502, 7503, 7504, 7505, 7506, 7507, 7611.5, 7700, 7710, 7720,

Existing law prohibits domestic violence against specified persons.

1. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1500, at 1 (April 21, 1993).
2. See CAL. PENAL CODE § 13700(b) (West Supp. 1993) (defining domestic violence as abuse committed against an adult or an emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or an individual with whom the offender has had a child or is having a child, or with whom the offender has been engaged or dated); see also CAL. FAM. CODE § 6209 (enacted by Chapter 219) (stating that a former cohabitant is a person who formerly lived in the home on a regular basis); id. (enacted by Chapter 219) (defining a cohabitant as a person who normally lives in the home); People v. Holifield, 205 Cal. App. 3d 993, 1000, 252 Cal. Rptr. 729, 733-34 (1988) (defining cohabiting as a situation where an unrelated man and woman live together in a substantial relationship which is, at a minimum, a permanent relationship of sexual or amorous
Chapter 219 redefines domestic violence to include violence committed against children.4

1. People v. Cerrato, 30 Cal. App. 3d 180, 105 Cal. Rptr. 204 (1973) (holding that the defendant was not entitled to retrial where there was a reasonable basis for the trial court to conclude that the sexual assault was justified by the consent of the victim); People v. Hall, 217 Cal. App. 3d 578, 264 Cal. Rptr. 99 (1989) (holding that the witness was entitled to continue to testify despite the defendant's objections where the trial court had made findings that the witness was not biased and that the defendant had been given an opportunity to cross-examine the witness).

2. People v. Martinez, 30 Cal. App. 3d 986, 103 Cal. Rptr. 226 (1973) (holding that the defendant was not entitled to a new trial where the trial court had made findings that the defendant had been provided with an opportunity to present evidence in support of his defense).

3. CAL. PENAL CODE § 273.5(e) (amended by Chapter 219); see id. § 7 (West 1990) (providing that a person willfully inflicts bodily harm upon a spouse, cohabitant, or parent of the offender's child, resulting in a traumatic condition, then the offender is guilty of a felony); see also id. §§ 7 and 17(a) (West Supp. 1993) (defining a felony); id. § 273.5(c) (amended by Chapter 219) (defining a traumatic condition as a wound or external or internal injury to the body of either a serious or minor nature, resulting from physical force); People v. Gutierrez, 171 Cal. App. 3d 494, 217 Cal. Rptr. 616, 617 (1985) (upholding a conviction of a defendant who willfully and illegally inflicted corporal injury upon his spouse, causing a traumatic condition); cf. ALA. CODE § 30-6-2 (1992) (recognizing that individuals who abuse their children and spouses, as well as their victims, need to be treated); Alaska v. Nelles, 713 P.2d 806, 810 (Alaska Ct. App. 1986) (holding that under Alaska law, the trial court has the discretion to dismiss or prosecute a domestic violence case, and the defendant does not have a right to dismiss the case); People v. Torres, 182 A.D.2d 653, 654, 581 N.Y.S.2d 868, 869 (N.Y. App. Div. 1992) (holding that the evidence was not preserved for appellate review where the defendant failed to object to his laughter being admitted into evidence in the case charging him with beating his wife with an iron), appeal denied, 79 N.Y.2d 1055, 596 N.E.2d 421, 584 N.Y.S.2d 1023 (1992); Ohio v. Mintz, 598 N.E.2d 52, 55 (Ohio Ct. App. 1991) (noting that where there are no previous convictions of domestic violence or assault, the defendant will be charged with a misdemeanor for attempting domestic violence), appeal dismissed, 578 N.E.2d 823 (1991). See generally Lauren L. McFarlane, Note, Domestic Violence Victims v. Municipalities: Who Pays When the Police Will Not Respond?, 41 CASE W. RES. L. REV. 929 (1991) (discussing the enhanced problem of domestic violence when the police fail to respond, and discussing victims of domestic violence who bring actions against the police departments and municipalities for violation of their rights to equal protection and due process of law); Program to Curb Domestic Violence, N.Y. TIMES, Oct. 8, 1992, at B1 (reporting that Middlesex County, New Jersey, is attempting to utilize the Abused Women's Active Response Program, in which a woman living with a threat of domestic violence can press a panic button that is secretly relayed to police officers to inform them that the woman is in danger).

4. CAL. FAM. CODE § 6211(e) (enacted by Chapter 219); see id. § 6203 (enacted by Chapter 219) (explaining that abuse means any of the following: (1) The intentional or reckless act of causing or attempting to cause another person physical harm; (2) sexual assault; or (3) the act of putting a reasonable person in fear of imminent serious physical harm to oneself or another person); id. § 6211(a)-(f) (enacted by Chapter 219) (defining domestic violence as abuse against a wife, husband, ex-wife, ex-husband, cohabitant, former cohabitant, person with whom the accused has been engaged or dated, person with whom the accused has had a child, child of a party or who is the subject of a suit filed under the Uniform Parentage Act, or any person who has a blood relationship or is related by affinity to the accused within the second degree); In re Marilyn H., 5 Cal. 4th 295, 207, 851 P.2d 826, 835, 19 Cal. Rptr. 2d 544, 551 (1993) (reinforcing the idea that the state has a compelling interest in a child's welfare, and has an obligation to protect that interest); People v. Jones, 51 Cal. 3d 294, 300, 270 Cal. Rptr. 611, 613 (1990) (stating that according to statistics for 1988, there were approximately 22,000 reported cases of child sexual abuse); see also CAL. FAM. CODE § 6205 (enacted by Chapter 219) (providing that affinity, as applied to a married couple, means the relationship existing as a result of a marriage between the parties and the blood relationships of those parties); cf. Hall v. Van's Photo, Inc., 595 So. 2d 1368, 1370 (Ala. 1992) (recognizing that the purpose of providing immunity to people who report...
Under existing law, a person who has been harassed may obtain a temporary restraining order and an injunction against the harasser. Existing law requires that a petition for an injunction be heard by the court within fifteen days. Chapter 219 mandates that if an ex parte temporary restraining order is issued under the Family Code, the matter must be made returnable within twenty days.

suspected child abuse under the Child Abuse Reporting Act is to alleviate the problem of child abuse and neglect, and rejecting any challenge to the Act’s constitutionality; Hurst v. Capitell, 539 So. 2d 264, 266 (Ala. 1989) (creating an exception to the parental immunity doctrine by holding that the doctrine does not bar suits brought by minors against their parents for sexual abuse).

5. See CAL. CIV. PROC. CODE § 527.6(b) (amended by Chapter 219) (defining harassment as routinely acting in a knowing and willful manner towards another person which seriously alarms, annoys, or harasses that person, and causes that person to experience significant emotional distress for no justifiable reason).

6. See Gray v. Bybee, 60 Cal. App. 2d 564, 571 (1943) (holding that the purpose of a temporary restraining order is to maintain the status quo until a determination of the merits of the pending action).

7. See CAL. CIV. PROC. CODE § 525 (West 1979) (defining an injunction as a writ or order mandating that a person refrain from doing a certain act).

8. Id. § 527.6(a) (amended by Chapter 219); see id. § 527 (West Supp. 1993) (setting out the requirements for issuance of a temporary restraining order); id. § 527.6(j) (amended by Chapter 219) (stating that any person who violates a temporary restraining order will be subjected to punishment under Penal Code § 273.6); CAL. PENAL CODE § 273.6(a) (amended by Chapter 219) (providing that any person who intentionally violates a protective or temporary restraining order, or an injunction, is guilty of a misdemeanor and subjected to imprisonment in a county jail for up to a year, a fine of up to $1,000, or both); People v. Hernandez, 46 Cal. 3d 194, 199, 757 P.2d 1013, 1015, 249 Cal. Rptr. 850, 852 (1988) (stating that the trial court dismissed charges of corporal injury on a cohabitant where it was uncertain whether the defendant and the victim were cohabitants and whether a restraining order was in place at the time of the alleged assault); Caldwell v. Coppola, 219 Cal. App. 3d 859, 861, 268 Cal. Rptr. 453, 454 (1990) (holding that a person protected by a temporary restraining order cannot serve the alleged harasser since such a person is a party to the suit); cf. Oregon v. Hart, 708 P.2d 1137, 1137 (Or. 1985) (holding that a person who has violated a restraining order under the Abuse Prevention Act is not permitted a jury trial); Nearing v. Weaver, 670 P.2d 137, 138 (Or. 1983) (noting that the Abuse Prevention Act mandates the arrest of a person who is suspected of violating a temporary restraining order). See generally Sandy Shore, First, the Chickens Died; Then Denver Woman’s Life Careened to Horror; Domestic Violence: Stephanie Sund Got a Restraining Order to Protect Herself From Jeff Thomas. He Was Not Deterred; He Shot Her as She Ran to the Police Station for Help, Order in Hand, L.A. TIMES, May 16, 1993, at A4 (reporting that a former live-in boyfriend, who repeatedly abused and harassed his ex-girlfriend, shot her as she fled to police headquarters, clutching a restraining order against the assailant).

9. CAL. CIV. PROC. CODE § 527.6(d) (amended by Chapter 219).

10. See CAL. FAM. CODE § 241 (amended by Chapter 219) (requiring notice to the respondent unless it can be shown that great or irreparable injury will result to the applicant before a hearing with notice can be held).

11. See id. § 242 (enacted by Chapter 219); § 244 (West 1993) (providing that on the date the temporary restraining order is returnable, the court shall conduct a hearing regarding issuance of a permanent order, and the hearing shall take precedence, with certain exceptions, over all other matters on the calendar).

12. Id. § 242(a) (enacted by Chapter 219); see id. § 240(a)-(d) (enacted by Chapter 219) (stating that the section of the Family Code concerning ex parte temporary restraining orders is applicable to the following matters: (1) Dissolution or nullification of marriage, or legal separation of a married couple; (2) assets deposited to assure child support payments in the future; (3) prevention of domestic violence; and (4) the Uniform Parentage Act); id. § 242(a) (enacted by Chapter 219) (providing that a matter involving an order, requiring that grounds be established as to why a permanent order should not be issued, may be heard within 25 days from its issuance if the respondent shows good cause to the court); id. § 242(b) (enacted by Chapter 219) (providing that if the matter is not heard within the allotted time period, a hearing may be held, although the order will be

Selected 1993 Legislation 699
Existing law provides that both parents are equally obligated to support their child or children. Chapter 219 includes certain eligible adult children in laws regarding child support.

---

unenforceable unless it is re-issued).
13. See CAL. CIV. CODE § 241(e) (West 1982) (defining a parent as a biological or adoptive parent of a child).
14. See CAL. FAM. CODE § 150 (amended by Chapter 219) (referring to support as a support obligation owed to a child, spouse, or family).
15. See CAL. CIV. CODE § 241(d) (West 1982) (defining a child as a son or daughter who has not reached the age of majority, or a son or daughter of any age who is not capable of earning a living and lacks sufficient means).
16. Id. §§ 196, 242 (West Supp. 1993); see CAL. FAM. CODE § 4053(b) (enacted by Chapter 219) (stating that a child’s mother and father are mutually obligated to support that child); Herma Hill Kay, An Appraisal of California’s No-Fault Divorce Law, 75 CAL. L. REV. 291, 306 (1987) (noting that a mother and father of a child are equally responsible for supporting that child); cf. ALA. CODE § 12-15-9 (1986) (providing that if someone other than a child’s parents is granted custody of that child, the court may order the parents to pay a reasonable amount of money to cover some or all of the support and treatment of that child); id. § 26-17-3 (1986) (noting that a parent-child relationship exists regardless of whether or not the parents are married to one another); IOWA CODE § 600B.1 (Supp. 1993) (stating that a parent is responsible for that parent’s illegitimate child’s maintenance, support, education, and funeral expenses); KY. REV. STAT. ANN. § 405.440 (Baldwin 1990) (setting forth the items to be included in a notice of a monthly support obligation served upon an individual obligated to support a child); N.H. REV. STAT. ANN. § 458-C:2(II) (1992) (defining “child support obligation” as that amount that the parent is ordered to pay to the other parent in child support). But see Richards v. Gibson, 90 Cal. App. 3d 877, 881, 153 Cal. Rptr. 561, 564 (1979) (providing that the custodial parent of a minor child is primarily responsible for the child’s support and education, unless a court order states otherwise), Carr v. Marshman, 147 Cal. App. 3d 1117, 195 Cal. Rptr. 603 (1983).
17. CAL. FAM. CODE §§ 213(b)(3), 215, 2023(a), 2334(b), 2623(a)-(b), 3555, 3623, 3902, 3930, 4010 (amended by Chapter 219); see id. § 58 (enacted by Chapter 219) (defining a child for whom support may be ordered as a child under the age of 18 or a child who is authorized to receive support pursuant to California Family Code §§ 3587, 3901 and 3910); id. § 3587 (West 1993) (authorizing a court to make appropriate orders to effectuate the stipulation of the parents to pay for the support of a child beyond the age of 18 years); id. § 3901 (amended by Chapter 219) (providing that a child’s parent is obligated to support the child until that child either finishes high school or reaches 19 years of age, as long as that child is not married, 18 years of age, a full-time high school student, or not capable of supporting himself); id. § 3910 (West 1993) (stating the duty of parents to maintain an incapacitated child of any age); Rebensdorf v. Rebensdorf, 169 Cal. App. 3d 138, 144, 215 Cal. Rptr. 76, 80 (1985) (suggesting that the court consider the following factors in deciding whether parents are obligated to give their child a high school education: (1) Whether the adult child is attending school full time; (2) whether the adult child is making progress toward graduating; and (3) the surrounding circumstances as to why the adult child failed to graduate from high school before reaching majority); Kurtis J. Kearl, Note, Turpin v. Sortini, Recognizing the Unsupportable Cause of Action for Wrongful Life, 71 CAL. L. REV. 1278, 1290-91 (1983) (stating that parents are obligated to support an adult child if that child is not capable of supporting himself after reaching the age of majority); cf. Ex parte Jones, 592 So. 2d 608, 609 (Ala. 1991) (affirming that a father of an illegitimate child may be required to pay for an adult child’s college education); Ex parte Brewington, 445 So. 2d 294, 296 (Ala. 1984) (stating that a non-custodial parent is obligated to support that parent’s adult child when the child is not capable of supporting himself due to a mental or physical handicap); Bayliss v. Bayliss, 550 So. 2d 984, 986 (Ala. Civ. App. 1989) (holding that a parent has no legal obligation to support an adult child, unless that child suffers from a physical or mental disability, or the obligor parent has agreed otherwise); Parent Cannot Seek to Reduce Voluntary Obligation to Pay Tuition; Peterson v. Peterson, Supreme Court, IA Part 18, Justice D. Saxe, N.Y. LAW JOURNAL, Nov. 19, 1992, at 21 (stating that a parent may contractually agree to support an adult child). But see Jones v. Jones, 179 Cal. App. 3d 1011, 1013, 225 Cal. Rptr. 95, 96 (1986) (holding that a parent is not obligated to pay for an adult child’s college education if the child is neither physically nor mentally handicapped).
Chapter 219 further mandates that the Judicial Council conduct research on the effectiveness of current Family Law so that future public policy can be molded accordingly.\textsuperscript{18}

\textbf{Family; family preservation services}

Welfare and Institutions Code § 16500.8 (new); §§ 16500.5, 16500.7, 16501.1 (amended).

AB 776 (Hannigan); 1993 STAT. Ch. 1006

Existing law states that, in order to encourage the continuity of the family unit,\textsuperscript{2} services are to be provided through a family preservation program\textsuperscript{2} to families\textsuperscript{3} whose children are at imminent risk of out-of-home placement.

---


\begin{enumerate}
\item See \textit{CAL. WELF. \\ & INST. CODE} § 300 (West Supp. 1993) (declaring that the intent of the Legislature, in enacting a code provision which places abused or neglected children under the jurisdiction of the court, is that the protection of children shall focus on preservation of the family whenever possible); \textit{id.} § 4242(a) (West Supp. 1993) (defining families of persons with serious mental disorders as the children, spouses, siblings, parents, grandparents, and grandchildren of such persons); \textit{id.} § 18291 (West 1991) (defining family member, in the domestic violence context, as any adult person who regularly resides in the household and has sexual relations with another family or household member); \textit{In re Joanna Y.}, 8 Cal. App. 4th 433, 438, 10 Cal. Rptr. 2d 422, 424 (1992) (describing the legal and societal preference for reunification of children with their natural families); Adoption of Kay C., 228 Cal. App. 3d 741, 748-49, 278 Cal. Rptr. 907, 911 (1991) (describing the fundamental liberty interest of natural parents and natural children in the family unit).

\item See \textit{CAL. WELF. \\ & INST. CODE} § 16500.5(b)(2)(3) (amended by Chapter 1006) (describing services which may be part of a family preservation program, including counseling, mental health, and substance abuse treatment, parenting, homemaking, respite, transportation, and family support services); \textit{id.} § 16501(j) (West Supp. 1993) (defining family preservation services as services intended to avoid or limit out-of-home placement of children); Mary Lee Allen, \textit{A Guide to the Adoption Assistance and Child Welfare Act of 1980, in FOSTER CHILDREN IN THE COURTS} 575, 591-92 (Mark Hardin ed., 1983) (describing congressional deliberations prior to passage of the federal Adoption Assistance Act, which outlined a necessary range of core services based on testimony regarding successful preventive and reunification programs, including homemaker services, day care, transportation, therapy, emergency caretakers and shelters, respite care, and consumer education (quoting H.R. REP. NO. 136, 96th Cong., 1st Sess. 46-47, 49 (1979)); Mark Hardin, \textit{Establishing A Core of Services for Families Subject to State Intervention} (A.B.A. Center on Children and the Law, Wash. D.C.), 1992, at 39 (describing the distinctive aspects of family preservation services as being highly concentrated, short-term, delivered in-home, and highly flexible); \textit{cf.} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, § 13711 (defining family preservation services for purposes of amendments to the Social Security Act for appropriating federal funds to qualified state family preservation programs); ILL. ANN. STAT. ch. 325, para. 5/8.2 (Smith-Hurd 1993) (including services to maintain an adoptive placement within the definition of family preservation services).
\end{enumerate}
placement and who would receive AFDC-FC funds if placed out of their homes. Chapter 1006 defines family preservation services, and in so

3. See In re Sara C., 8 Cal. App. 4th 964, 976, 11 Cal. Rptr. 2d 414, 420 (1992) (finding that a biological father, who is neither the presumed father nor was prevented by the mother from becoming the presumed father, has no automatic right to reunification services when his child is placed in foster care); In re Jodi B., 227 Cal. App. 3d 1322, 1326-29, 278 Cal. Rptr. 242, 245-46 (1991) (examining various statutory definitions of parent, and holding that a stepparent is not entitled to reunification services); In re Jamie G., 196 Cal. App. 3d 675, 679, 241 Cal. Rptr. 869, 872 (1987) (denying reunification rights to the de facto parents of a child in foster care), cert. denied, 488 U.S. 835 (1988).

4. See CAL. WELF. & INST. CODE §§ 11400-11409 (West 1991 & Supp. 1993) (setting forth the eligibility and placement requirements for receipt of federal Aid to Families with Dependent Children-Foster Care [AFDC-FC] funds); see also id. § 11450(d) (West Supp. 1993) (describing the process for computing the amount of grants under AFDC-FC programs); id. §§ 15150-15154 (West 1991) (describing the process for payment of state and federal grants by states to counties for public assistance); cf. Mary McGrory, Defending Mommy Dearest, WASH. POST, July 25, 1993, at C1 (describing an Illinois bill which would prohibit persons who have physically or sexually abused their child from receiving family preservation funds without a court hearing).

5. CAL. WELF. & INST. CODE § 16500.5(a)(1)(A) (amended by Chapter 1006); see Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified at 42 U.S.C. §§ 620-628, 670-679a (1988 & Supp. II 1990)) (providing, at 42 U.S.C. § 671(a)(15), that a state which receives AFDC-FC funds must have a plan which makes reasonable efforts to prevent or shorten the duration of the out-of-home placement); CAL. WELF. & INST. CODE § 16500.5(b)(3)(A)-(F) (amended by Chapter 1006) (describing the statutory classifications under which families qualify for family preservation services, including having children who are abused or neglected, disobedient, truant or engaging in criminal activity, or who are severely emotionally disturbed); Suter v. Artist M., 112 S. Ct. 1360, 1369-70 n.15 (1992) (finding that Congress intended the states to have broad discretion in deciding how to implement family reunification requirements for receipt of federal AFDC-FC funds); S. REP. NO. 96-336, 96th Cong., 2d Sess. 3 (1980) reprinted in 1980 U.S.C.C.A.N. 1450, 1452 (declaring that one of the major features of the Adoption Assistance and Child Welfare Act of 1980 was to alter the structure of law by de-emphasizing foster care placements and encouraging permanent placement for children by providing services, either to return children to their homes, or to place them in adoptive homes); 45 C.F.R. §§ 1356.21(b), (d)(4), 1357.15(c)(2) (1992) (listing various reunification services which may satisfy the "reasonable efforts" requirement of 42 U.S.C. § 671(a)(15); see also CAL. WELF. & INST. CODE §§ 11401, 11402 (West Supp. 1993) (describing conditions and facilities required for eligibility for AFDC-FC funding); cf. COLO. REV. STAT. § 19-1-116 (Supp. 1993) (authorizing the appointment of a Placement Alternatives Commission to prepare a plan for provision of services designed to prevent or reduce out-of-home placements); ILL. ANN. STAT. ch. 325, para. 5/8.2 (Smith-Hurd 1993) (providing for the development of a service plan upon obtaining credible evidence of abuse or neglect, which must identify available family preservation services); M.E. REV. STAT. ANN. tit. 22, § 4041 (West 1992) (setting forth the family reunification responsibilities of the Department of Human Services and of the parents of children ordered into custody of the Department); N.Y. SOC. SERV. LAW § 384-b(1)(a)(iii) (McKinney 1992) (declaring the need to preserve or reunite families as the state’s first obligation); OHIO REV. CODE ANN. §2151.01(C) (Anderson 1990) (explaining that one of the purposes of the Juvenile Court section of Ohio law is to avoid the separation of children from parents, except when necessary for the welfare of the child or in the interests of public safety). See generally Allen, supra note 2, at 575; Barbara L. Atwell, "A Lost Generation": The Battle for Private Enforcement of the Adoption Assistance and Child Welfare Act of 1980, 60 U. CIN. L. REV. 593 (1992) (asserting the need for private enforcement of the Adoption Assistance and Child Welfare Act against states which do not comply with the federal framework for foster care systems); Debra Ratterman, et al., Reasonable Efforts to Prevent Foster Placement, 1987 A.B.A. NAT’L LEGAL RESOURCE CTR. FOR CHILD ADVOCACY AND PROTECTION (providing guidance to states which must meet the reasonable efforts standard of 42 U.S.C. § 671(a)(15) in order to receive federal AFDC-FC funding).
Family

doing, expands the guidelines for determination of eligibility to receive family preservation services.  

Existing law provides that any county which conducts a family preservation program, may claim a portion of the state’s share of that county’s AFDC-FC funds in advance. These funds are to be expended for children declared dependents of the courts as a result of neglect or abuse. Chapter 1006 adds to the portion of AFDC-FC funds which a county may claim, those funds to be expended for children declared dependents of the court as a result of disobedience, truancy, or criminal behavior.

Existing law contains a non-exclusive list of services which may be provided under a family preservation program. Chapter 1006 adds family support services to that list.

Existing law provides that a family preservation program will be deemed successful if it meets specified standards, aimed at avoiding or

---

6. CAL. WELF. & INST. CODE § 16500.5(a)(1)(A)(i)-(III) (amended by Chapter 1006); see id. § 16500.5(a)(1)(A)(ii)-(III) (expanding the scope of the family preservation program to include children who would spend longer periods of time in out-of-home placement, or would be placed in a more restrictive out-of-home placement, without the provision of family preservation services).

7. See id. § 16500.5(b)(1)(A)(ii) (amended by Chapter 1006) (allowing for a claim of up to 25% of the state’s projected share of AFDC-FC funds to be spent for abused or neglected children). Each program year’s projection is based on AFDC-FC expenditures for the previous five years. Id. § 16500.5(b)(1)(A)(iv) (amended by Chapter 1006).

8. Id. § 16500.5(c)(1)(A)(iii) (amended by Chapter 1006); see id. §§ 300, 301, 360, 361, 364 (West Supp 1993) (describing the statutory processes for determining and protecting children subject to abuse or neglect); id. § 16500.5(c)(1)(A)(iii) (amended by Chapter 1006) (providing that the amount of the projected share is to be based upon AFDC-FC funds spent for children subject to California Welfare and Institutions Code §§ 300, 301, 360, 361, and 364). But see LEGISLATIVE ANALYST’S OFFICE, STATE OF CALIFORNIA, CHILD ABUSE AND NEGLECT IN CALIFORNIA 48-49 (Jan. 1991) (finding that the programs which permit counties to divert a portion of their AFDC-FC funds to family preservation services are effective for some families, but are probably too expensive to be cost-effective for a large number of families).

9. CAL. WELF. & INST. CODE § 16500(c)(1)(A)(iii) (amended by Chapter 1006); see id. §§ 601, 602 (West 1984) (describing the statutory processes for determining and protecting children who are disobedient, truant, or engaging in criminal activity); id. § 16500(c)(1)(A)(iii) (amended by Chapter 1006) (providing that the amount of the projected share is to be based upon AFDC-FC funds spent for children subject to California Welfare and Institutions Code §§ 601, 602, 726, and 727).

10. Id. § 16500.5(b)(2) (amended by Chapter 1006).

11. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, § 13711 (defining family support services as community-based services designed to increase parenting skills, create a stable family environment, and enhance child development); CAL. WELF. & INST. CODE § 4512(h) (West Supp. 1993) (defining family support services for purposes of the Lanterman Developmental Disabilities Services Act [California Welfare and Institutions Code §§ 4500-4519] as services provided to a developmentally disabled child and the child’s family to assist the family in its endeavors to reside together); see also id. § 16501(g)-(h) (West Supp. 1993) (defining family maintenance and family reunification services).

12. CAL. WELF. & INST. CODE § 16500.5(c)(2) (amended by Chapter 1006); see id. § 16500.5(b) (amended by Chapter 1006) (finding that California’s family preservation programs conform to recent federal initiatives found at Public Law 103-66). See generally LEGISLATIVE ANALYST’S OFFICE, supra note 8, at 9 (describing the role of family maintenance and family reunification programs in the overall Child Welfare Services Program of the State of California).

Selected 1993 Legislation 703
reducing the length of stay in out-of-home placement. Chapter 1006 adds two standards to the list of criteria for success.

Existing law provides that a county which has been operating a family preservation program for three consecutive years may request a permanent transfer of General Fund money from out-of-home placement services to family preservation services for children declared dependent of the court as a result of abuse or neglect. Chapter 1006 provides that, if a county served children declared dependent of the state as a result of disobedience, truancy, criminal activity, or severe emotional disturbance during the three year period prior to the request for permanent funds, the county may continue to serve such children after the permanent transfer.

Chapter 1006 also permits a county to apply for a supplemental permanent

13. CAL. WELF. & INST. CODE § 16500.5(b)(7)(A)-(C) (amended by Chapter 1006); see id. (defining success based on percentages of children who remain at home six months, one year, or two years after termination of services, and based on a 50% decrease in the length of stay in out-of-home placements of children who receive services versus children who do not); ASSEMBLY COMMITTEE ON HUMAN SERVICES, COMMITTEE ANALYSIS OF AB 776, at 3 (April 14, 1993) (reporting that Contra Costa County claims a $2.6 million savings in fiscal year 1991-92, San Diego County a $2.5 million savings as of February 1993, Santa Clara County a $1.5 million savings, and Sacramento County an annualized $3.8 million savings because of family preservation services). Counties also report success in the percentages of children who remain in the home after family preservation services are terminated. Id.; see also Katherine Ames, et al., Fostering the Family, NEWSWEEK, June 22, 1992, at 64 (describing several examples of successful family preservation programs across the country); Robert Keough, Experts Question Program Budgeting, 11 B. BUS. J., No. 50, Feb. 3, 1992, at § 1, p. 1 (describing the budgetary pressures forcing municipalities to move away from foster care and toward family preservation services). But see LEGISLATIVE ANALYST’S OFFICE, supra note 8, at 25 (asserting that although four out of five children who complete the Family Reunification Program return to their families, the growth in foster care exceeds reunifications; for example, in 1985-86, about 22% of children in foster care were reunited with their parents, but the percentage was below 18% in 1988-89); Elizabeth Bartholet, Parental Rights That Wrong Children, SACRAMENTO BEE, July 17, 1993, at B7 (asserting that family preservation program supporters are gauging success in terms of numbers of biological families which are kept intact, without taking into account the potential harm done to children who are left in abusive family situations); Mona Charen, Priority 1: Take Care of Children, ATLANTA J. AND CONST., July 6, 1993, at A7 (claiming that family preservation services, which count victories only in terms of the number of out-of-home placements avoided, are actually leaving many children in harmful and sometimes fatal family situations); Celia W. Dugger, Program to Preserve Families Draws Child-Welfare Debate, N.Y. TIMES, Aug. 6, 1993, at A1 (describing recent studies which suggest that, despite claims of success, family preservation programs are at best benign).

14. CAL. WELF. & INST. CODE § 16500.5(e)(6)(A)-(B) (amended by Chapter 1006); see id. (adding the criteria that: (1) Families become able to resolve their own problems, utilize services, and advocate for their children; and (2) family functioning becomes enhanced by building on family strengths).

15. See id. §§ 15150-15154 (West 1991) (describing the payment of state and federal grants to counties by states).

16. Id. § 16500.7(a)(1) (amended by Chapter 1006); see id. §§ 300, 301, 361, 364 (West Supp. 1993) (describing the statutory processes for determination and protection of children subject to abuse or neglect).

17. See CAL. GOV’T CODE § 7572.5 (West Supp. 1993) (describing the process of evaluation and assessment for determining whether out-of-home placement is appropriate for a severely emotionally disturbed child); CAL. WELF. & INST. CODE §§ 601, 602 (West 1984) (describing the statutory processes for identifying and protecting children who are disobedient, truant, or engaging in criminal activity).

18. CAL. WELF. & INST. CODE § 16500.7(a)(2) (amended by Chapter 1006).
transfer of funds in order to serve additional populations not served in the prior three year period.\textsuperscript{19}

Chapter 1006 requires the Department of Social Services\textsuperscript{20} to seek permanent federal funding for family preservation services.\textsuperscript{21} If funding is not obtained prior to January 1, 1997, the provision for permanent transfer of AFDC-FC funds from out-of-home placement programs to family preservation services becomes inoperative.\textsuperscript{22} Chapter 1006 further requires the Department of Social Services to seek federal funds for the family preservation program to supplement the amounts transferred from AFDC-FC funds.\textsuperscript{23}

Existing law establishes a time frame for completion of a written case plan.\textsuperscript{24} Chapter 1006 modifies one of the determinants for completion of the case plan.\textsuperscript{25}

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} § 16500.7(a)(3) (amended by Chapter 1006).
\item See \textit{id.} §§ 10550-10618 (West 1991 & Supp. 1993) (defining the organization, powers, and duties of the State Department of Social Services).
\item \textit{Id.} § 16500.7(f)(2) (amended by Chapter 1006).
\item \textit{Id.} § 16500.7(f)(3) (amended by Chapter 1006); see \textit{id.} (providing that if this section becomes inoperative on January 1, 1997, it is subsequently repealed as of January 1, 1998, unless a statute is enacted deleting or extending such dates).
\item \textit{Id.} § 16500.8 (enacted by Chapter 1006); see \textit{id.} § 16500.8(a)(1)-(4) (enacted by Chapter 1006) (describing potential sources for additional federal funding, including AFDC and child welfare aid programs, foster care and adoption assistance aid programs, and medical assistance programs).
\item \textit{Id.} § 16501.1(d) (amended by Chapter 1006); see \textit{id.} § 356 (West Supp. 1993) (requiring a hearing to determine whether a minor is subject to the jurisdiction of the juvenile court); \textit{id.} § 16501.1(b) (amended by Chapter 1006) (requiring that a case plan document the preplacement needs of the family, the services provided, and efforts made to prevent out-of-home placement); \textit{id.} § 16501.1(d) (amended by Chapter 1006) (requiring completion of the case plan by the first occurrence of either: (1) Within 30 days of initial removal of the child from the home; (2) within 30 days of an in-person response if the child is not removed from the home; or (3) by the date of the jurisdictional hearing pursuant to California Welfare and Institutions Code § 356).
\item \textit{Id.} § 16501.1(d) (amended by Chapter 1006); see \textit{id.} § 358 (West Supp. 1993) (requiring that after the court has determined that a minor is subject to the jurisdiction of the juvenile court pursuant to California Welfare and Institutions Code § 356, it must hear evidence on the proper disposition of the minor).
\end{enumerate}
\end{footnotesize}
Family; independent adoption

Family Code § 8812 (new); § 8800 (amended).
SB 255 (Boatwright); 1993 STAT. Ch. 450

Under existing law, it is unethical for an attorney to represent both the prospective adoptive parents and the birth parents of a child in negotiations or any proceedings in connection with an adoption unless a written consent is received from both parties.¹

Chapter 450 requires that an attorney representing the prospective adoptive parents in an independent adoption² must inform them in writing that the birth parents can change their minds and that any money expended in connection with negotiations surrounding the adoption are not

¹. CAL. FAM. CODE § 8800(d) (amended by Chapter 450). See generally Pamela K. Strom Amlung, Comment, Conflicts of Interest in Independent Adoptions: Pitfalls for the Unwary, 59 U. CIN. L. REV. 169 (1990) (discussing the potential problems arising from the representation of both the birth and prospective adoptive parents by the same attorney in an independent adoption and noting that such difficulties may be overcome; further noting that it is important that the attorney ensure that the birth mother have an opportunity to make a free, choice, uninfluenced by the attorney or the potential adoptive parents).

². See Sharon Fast Gustafson, Regulating Adoption Intermediaries: Ensuring that the Solutions are no Worse than the Problem, 3 GEO. J. LEGAL ETHICS 837, 842 (1990) (defining independent adoption as an adoption arranged without the assistance of an adoption agency, usually through a facilitator such as an attorney and noting that their are two types of independent adoption: (1) Direct placement, in which the birth parents and adoptive parents know of each other prior to the adoption and arrange the adoption without any intermediary; and (2) private placement, in which the birth parents and adoptive parents are brought together by an adoption intermediary); id. at 851-54 (discussing the value of independent adoption and noting that independent adoptions are usually more open, thereby increasing the ease with which an adoptee can later trace his or her birth parents, independent adoptions increase a child’s chance of being adopted and allow the birth mother some choice in deciding who will parent her child).
reimbursable. Chapter 450 also requires that the prospective adoptive parents sign a statement indicating that they understand this information.

Existing law provides that prospective adoptive parents must file with the court a full accounting report of all disbursements made, or alleged to be made, on their behalf in connection with the adoption proceedings.

Chapter 450 provides that any request by the birth parents for payment by the prospective adoptive parents of various fees and expenses must be in writing. The birth parents must provide the prospective adoptive parents with written receipts which are to be provided to the court when the accounting report is filed.

JLM

---

3. CAL. FAM. CODE § 8800(h) (amended by Chapter 450); see In re Zachariah, 6 Cal. App. 4th 1025, 1037, 8 Cal. Rptr. 2d 423, 434 (1992) (granting the adoptive parents custody of a child who was the subject of an independent adoption when the birth mother changed her mind, but noting that this was because the birth mother had no remedy in the California courts and might be successful should she bring a suit in Oregon courts); In re Timothy W., 223 Cal. App. 3d 437, 441, 272 Cal. Rptr. 906, 907 (1990) (holding that in California, when a natural mother refuses consent to an independent adoption within a reasonable time after placing the child with prospective adoptive parents, the court must grant custody to the birth mother); id. (noting that six months is always a reasonable time in which the mother may change her mind and refuse to go through with the adoption); In re Baby Boy M., 221 Cal. App. 3d 475, 487, 272 Cal. Rptr. 27, 34 (1990) (granting a teenage mother custody of her child when she decided she did not wish to go through with an independent adoption but the prospective adoptive parents refused to surrender the infant); H.M.G. v. Goforth, 606 N.E.2d 874, 876 (Ind. 1993) (holding that where pre-birth consent is given for adoption, it is voidable and such consent must be ratified by a post-birth act which manifests a present intention to give the child up for adoption); see also SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 255, at 2 (May 11, 1993) (noting that SB 255 is based upon two non-controversial portions of the 1991 SB 717, which was unsuccessful); SENATE FLOOR, ANALYSIS OF SB 717 at 2-3 (May 6, 1991) (reporting that the average cost of an independent adoption is $8000, but couples in California can spend as much as $25,000 in such proceedings, depending upon medical complications and how early in the pregnancy they begin to help the mother); id. (noting that there were approximately 3,000 independent adoptions in California in 1990 as opposed to 2,000 agency adoptions and that this difference is due largely to the perception that agency adoptions take too long); id. (suggesting that SB 255 was inspired by a Walnut Creek couple who spent $8,000 on an independent adoption that fell through and found that they had no legal recourse).

4. CAL. FAM. CODE § 8800(h) (amended by Chapter 450); see SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 255, at 2 (Aug. 23, 1993) (suggesting that the purpose of SB 255 is to ensure that prospective adoptive parents are sufficiently advised of the risks involved in independent adoptions); Sharon Fast Gustafson, Regulating Adoption Intermediaries: Ensuring that the Solutions are no Worse than the Problem, U. CIN. L. REV. 837, 865 (1990) (advising that independent adoption should be regulated only so far as the regulation provides a direct benefit to both of the adoption parties).

5. CAL. FAM. CODE § 8610 (West 1994).

6. Id. § 8812 (enacted by Chapter 450); see id. (stating that the request may be for attorney’s, medical and counseling fees, or the living expenses of the birth mother).

7. Id. § 8812 (enacted by Chapter 450); see SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 255, at 2 (Aug. 23, 1993) (noting that SB 255 demands an accounting through requiring documentation and receipts of all money requested by the birth parents which provides protection for both the birth and adoptive families).

Selected 1993 Legislation
Family; paternity

Family Code §§ 20100, 20101, 20102, 20103, 20104 (repealed); §§ 7570, 7571, 7572, 7573, 7574, 7575, 7576, 7577 (new).
AB 1277 (Archie-Hudson); 1993 STAT. Ch. 1240

Existing law allows the mother, the child or the presumed father\(^1\) to bring a court action for the purpose of establishing paternity.\(^2\) Prior law created a pilot program in three counties whereby paternity could be established when the mother and the presumed father executed a declaration administered by the hospital where the child was born.\(^3\)

Chapter 1240 implements the program statewide, permitting paternity to be voluntarily acknowledged by the execution of a declaration\(^4\) by the mother and the presumed father administered at all hospitals and clinics.\(^5\)

---

1. *See CAL. CIV. CODE § 7004(a)(1)-(5) (West Supp. 1993)* (setting forth conditions that establish fatherhood by a rebuttable presumption); *CAL. EVID. CODE § 621(a) (West Supp. 1993)* (stating that a husband, who is not impotent or sterile, living with his wife, is conclusively presumed to be the father of any child to which the wife gives birth); id. § 621(h) (West Supp. 1993) (providing that the meaning of presumed father is the same as set forth in California Civil Code § 7004).

2. *CAL. CIV. CODE § 7006 (West Supp. 1993); see CAL. CIV. CODE § 7004(a)(1)-(4) (West 1983)* (setting forth the conditions for determining if a man is the natural father of a child).

3. 1993 Cal. Legis. Serv. ch. 849, sec. 2, at 1411-13 (enacting *CAL. EVID. CODE § 621.1*).

4. *See CAL. FAM. CODE § 7574(a)-(i) (setting forth the required content of the declaration in order for it to establish a conclusive presumption of paternity).*

5. *Id. § 7571 (enacted by Chapter 1240); see id. § 7571(a) (enacted by Chapter 1240) (providing that upon any live birth, the hospital will attempt to provide a declaration to the natural mother and the man identified by her to be the natural father, and if completed, the person responsible for registering the birth will file the declaration). Chapter 1240 requires the District Attorney to pay $10 to the filing hospital, clinic, or other place of birth for each declaration. See id. § 7576(a) (enacted by Chapter 1240) (providing that declarations not filed at the place of birth may be registered at the State Office of Vital Statistics any time after the child is born); see OFFICE OF CHILD SUPPORT ENFORCEMENT, 14 CHILD SUPPORT REPORT, NO. 8 at 1-2 (1992) (copy on file with the Pacific Law Journal) (discussing the success of Virginia’s voluntary paternity acknowledgement program); OFFICE OF CHILD SUPPORT ENFORCEMENT, 13 CHILD SUPPORT REPORT, NO. 10 at 1-3 (1991) (copy on file with the Pacific Law Journal) (discussing both the effectiveness and the benefits of obtaining voluntary paternity acknowledgements during the time immediately following the child’s birth); SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1277, at 3 (Aug. 17, 1993) (expressing the need for voluntary establishment of paternity to reduce the great amount of time and money spent on the process of determining paternity by judicial proceedings, and to encourage paternity to be established in more cases); Report on Washington State Voluntary Paternity Acknowledgment Process (Mar. 12, 1993) (copy on file with the Pacific Law Journal) (describing the success of the Washington voluntary paternity program which has resulted in acknowledgment of paternity by the fathers of approximately 40% of the children born out of wedlock in the state). The number of paternities established voluntarily has risen from 2,042 to 10,197 in three years. Id.; Memorandum from the Harry W. Wiggins, Commonwealth of Virginia Department of Social Services to Larry D. Jackson (October 30, 1991) (copy on file with the Pacific Law Journal) (reporting statistics on the cost effectiveness of the state voluntary paternity program which saved a total of $115,280 for the four participating hospitals); cf. VA. CODE ANN. § 20-49.1 (Michie Supp. 1993) (providing that a parent child relationship between a child and a man may be established by the execution of a written statement); WASH. REV. CODE ANN. § 70.58.080 (West 1992) (requiring that the person who delivers a child to an unwed mother shall provide the
Family

Paternity established by execution of a declaration creates a rebuttable presumption of paternity which may be challenged within three years of the execution of the declaration. Chapter 1240 exempts any health care provider from liability for a negligent act pertaining to the accuracy of the information.

SMK

Family; visitation rights for grandparents

Family Code § 3104 (new); § 3103 (amended).
SB 306 (Lockyer); 1993 STAT. Ch. 832

Under existing law, the court has jurisdiction to award visitation rights to a grandparent if the court determines that such visitation is in the best interest of the child.

1. CAL. FAM. CODE § 3103(a) (amended by Chapter 832); see id. § 3021 (West Special Pamphlet 1993) (discussing the court’s power in proceedings in which the custody of a child is at issue); id. § 3022 (West Special Pamphlet 1993) (enumerating the factors the court must consider in determining the best interest of a child); cf. COLO. REV. STAT. § 19-1-117 (Supp. 1993); CONN. GEN. STAT. ANN. § 46b-59 (West 1986) (permitting visitation to anyone); IDAHO CODE § 32-1008 (1983); NEV. REV. STAT. § 125A.330 (1993) (permitting visitation for relatives); N.J. STAT. ANN. 9:2-7.1 (West 1993) (granting grandparents visitation rights); State ex rel. Grant v. Keegan, 836 P.2d 167, 169 (Or. 1992) (holding that a statute permitting a grandparent to obtain visitation rights did not apply to the paternal grandfather of a child adopted by the mother’s husband after the father’s death). See generally Miriam B. Chaloff, 49 Grandparents’ Statutory Visitation Rights and the Rights of Adoptive Parents, 49 BROOK. L. REV. 149, 149 (1982) (reporting that most states with grandparent visitation statutes only allow a visitation action to be brought when a parent has died and the parents of the deceased wish to continue their relationship with the child); Judith L. Shandling, The Constitutional Constraints on Grandparents’ Visitation Rights, 86 COLUM. L. REV. 118, 118 (1986) (arguing that parental rights limit the situations which grandparents may constitutionally be granted visitation rights); ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 306, at 2 (Feb. 17, 1993) (stating that in California 500,000 children are raised by their grandparents and that most of the grandparents do not have custody or legal guardianship over these children).

Selected 1993 Legislation
Chapter 832 provides that the court may grant visitation rights\(^2\) to a grandparent if the grandparent petitions the court.\(^3\) Chapter 832 also provides that a petition may not be filed while the natural or adoptive parents are married unless certain circumstances exist.\(^4\) Chapter 832 further provides that a grandparent must provide notice of the petition to each of the child’s parents, any stepparent, and any person who has physical custody of the child.\(^5\) A visitation order issued to a grandparent shall not create a basis of change for the residence of the child.\(^6\) Under Chapter 832, the court has the discretion to appropriate the percentage of visitation awarded to the grandparent between the parents, for the calculation of child support.\(^7\) Chapter 832 also provides that the court has the discretion to order a parent or a grandparent to pay the other for support\(^8\) of the child.\(^9\)

---

2. *See* CAL. FAM. CODE § 3104(e) (enacted by Chapter 832) (providing that there is a rebuttable presumption against awarding visitation rights to grandparent if the parents of the child agree that the grandparent should be denied visitation rights). *See generally* Michael J. Minerva, Jr., *Grandparent Visitation: The Parental Privacy Right to Raise Their “Bundle of Joy,”* 18 FLA. ST. U. L. REV. 533, 533 (1991) (analogizing parental rights to a “bundle of sticks” and examining how Florida courts take “sticks” away from single parents).

3. *CAL. FAM. CODE* § 3104(a) (enacted by Chapter 832); *see id.* (stating that the court must: (1) Find that there is a preexisting relationship between the grandparent and the grandchild, demonstrating that visitation would be in the best interest of the child; and (2) balance the interest of a grandparent’s interest in having visitation rights against the parent’s right to exercise their parental authority); *id.* § 3104(g) (enacted by Chapter 832) (stating that visitation rights may not be awarded if the award would conflict with a right of custody or visitation of a birth parent who is not a party to the petition proceeding).

4. *Id.* § 3104(b) (amended by Chapter 832).

5. *Id.* § 3103(c) (amended by Chapter 832); *see id.* (requiring notice to be given by certified mail, return receipt requested, postage prepaid to the person’s last known address); *In re* Massengill, 601 N.E.2d 206, 209 (Ohio Ct. App. 1991) (refusing to make joinder of grandparents mandatory in a dependency proceeding on the basis of insufficient visitation rights); *In re Steven C.,* 486 N.W.2d 572, 575 (Wis. Ct. App. 1992) (holding that paternal grandparents had to be notified and given an opportunity to be heard under the Uniform Child Custody Jurisdiction Act).

6. *CAL. FAM. CODE* § 3103(f) (amended by Chapter 832); *see id.* (stating that a visitation order shall be one of the factors considered when ordering a change of residence).

7. *Id.* § 3103(g)(1) (amended by Chapter 832).

8. *See id.* § 3103(g)(2) (amended by Chapter 832) (defining support).

9. *Id.*