McGeorge Law Review

Volume 7 | Issue 1 Article 21

1-1-1976

Domestic Relations

University of the Pacific; McGeorge School of Law

Domestic Relations

Domestic Relations; parent and child relationship

Civil Code §§195, 200, 215, 216, 230, 231, 4453 (repealed); Part 7 (commencing with §7000) (new); §§196, 196a, 197, 224 (amended); Evidence Code §661 (repealed); §§605, 621, 1310, 1311, 1312, 1313, 1315, 1316 (amended); Health and Safety Code Article 5 (commencing with §10440) (repealed); §§10450.5, 10456.5 (new); §§10450, 10456 (amended); Probate Code §§255, 256 (repealed); §255 (new); §1403 (amended).
SB 347 (Beilenson); STATS 1975, Ch 1244
Support: State Bar of California; California National Organization of Women

Eliminates all statutory references to "legitimacy" and "illegitimacy"; provides for criteria to determine and for a procedure to establish the parent and child relationship without regard to distinctions based on legitimacy; liberalizes the evidentiary rules governing the establishment of paternity; grants natural fathers the right to seek custody of their children when they are relinquished for adoption by the mothers; grants fathers and children who have an established parent and child relationship full reciprocal inheritance rights without regard to the marital status of the father and mother.

With certain exceptions, Chapter 1244 has incorporated into California law the provisions of the Uniform Parentage Act as approved by the National Conference of Commissioners on Uniform State Laws in 1973 [NATIONAL COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS OF THE ANNUAL CONFERENCE MEETING IN ITS EIGHTY-SECOND YEAR, JULY 26-AUGUST 2, 1973, Uniform Parentage Act, at 339-358 (hereinafter cited as National Uniform Parentage Act)]. Part 7 (commencing with §7000) has been added to the Civil Code and is designated the "Uniform Parentage Act." The major purpose of the Uniform Parentage Act is to provide for substantive legal equality of children regardless of the marital status of their parents. The rights and responsibilities of children in relation to their parents and of parents in relation to their children have been equalized without reference to the marital status of the parents, and each parent has been given equal rights and responsibilites without regard to sex.

Establishment of Parent and Child Relationship

In place of the previous distinction between "legitimate" and "illegitimate" as legal labels for children based upon the marital status of the child's parents, Chapter 1244 has substituted a legal concept called the "parent and child relationship." This relationship may exist between a child and his or her natural or adoptive parents. It is established between the natural mother and the child by proof that she gave birth to the child, and between adoptive parents and the child by proof of adoption [CAL. CIV. CODE §7003 (hereinafter all section number references will be to the Civil Code, unless otherwise specified)].

In the case of an alleged father there are two methods for determining the father and child relationship: (1) by proof of one of the criteria which establishes the presumption of the relationship; or (2) by a legal action which results in a judicial determination of the existence or nonexistence of the relationship. The first presumption, under Section 621 of the Evidence Code, declares that the issue of a wife who is cohabiting with her husband is *conclusively* presumed to be a child of the marriage if the husband is neither impotent nor sterile. The other pertinent presumptions are set forth in Civil Code Section 7004(a) and are *rebuttable* presumptions which establish a parent-child relationship. These presumptions arise if: (1) the man and the child's natural mother are or have been married to each other and the child is born during the marriage, within 300 days after the marriage is terminated by death or a judicial action, or within 300 days after a decree of separation has been entered; (2) the man and the natural mother attempted to marry each other by a solemnized ceremony in apparent compliance with law, although the attempted marriage has been or could be declared invalid, so long as the child is born during the attempted marriage or within 300 days after its termination (or, if the marriage is void *ab initio*, within 300 days after termination of cohabitation); (3) the man and the natural mother have married, or attempt to marry each other after the child's birth, provided that the man is named as the child's father on the birth certificate with his consent *or* he is obligated to support the child under a written *voluntary* promise or by court order; or (4) the man receives the child into his home and openly holds the child out as his natural child. The preceding presumptions, excepting the conclusive presumption established by Evidence Code Section 621, may be rebutted only by clear and convincing evidence, including, but not limited to, a court decree establishing paternity of the child by another man. If conflicting presumptions arise in a given case, Section 7004(b) pro-

vides that policy considerations and logic control the choice of presumptions to be followed.

The husband of a woman who has received artificial insemination by a licensed physician is treated in law as if he were the natural father of the child thereby conceived, provided he has consented to such artificial insemination (§7005(a)). Pursuant to this section, the husband's written consent and certification of the spouse's signature and physician's statement must be filed with the State Department of Health. The donor of semen is specifically *not* to be regarded as the natural father of such a child.

The second method for determination of the parent and child relationship with respect to an alleged father is a legal action. When there is a presumed father by reason of marriage or attempted marriage of the natural parents, the action may be brought by the child, the natural mother, or the man presumed to be the father (§7006(a)). For the purpose of declaring the existence of the relationship, the action may be brought at any time; for declaring the *non-existence* of the relationship, it may be brought only within a reasonable time after the party bringing the action obtained knowledge of relevant facts. Furthermore, such an action may be brought before the birth of the child, if otherwise appropriate. When there is a presumed father based on receipt of the child into the father's home, any interested party may bring an action at *any* time for the purpose of determining the existence or non-existence of the relationship (§7006(b)). When there is no presumed father under Section 7004 or if the child's presumed father is deceased, an action to determine the existence of a relationship may be brought by the child, the State Department of Health, the mother, the man alleged or alleging to be the father, the personal representatives of the child, the mother or alleged father, or by the respective parents of a mother or alleged father who is deceased or a minor (§7006(c)). The district attorney may also bring an action in any case in which he or she believes that the interests of justice will be served thereby (§7006(f)).

Under Section 7008 the child must be made a party to the action, and, if the child is a minor, he or she must be represented by a guardian ad litem appointed by the court. The child's interest is isolated from the interests of the parents by a provision that the mother or father may not represent the child as guardian or otherwise. The mother, presumed father, and alleged father may be made parties and must be given notice and an opportunity to be heard. The child's interests are also protected by Section 7006(2)(d), which provides that no agreement between ei-

ther an alleged or presumed father and the mother or child will bar such an action.

Section 7007 provides that a person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts for the purpose of an action brought regarding a child who *may* have been conceived by that act of intercourse. The action is to be brought in the superior court of the county in which the child resides or is found, or, if the alleged father is deceased, the county in which probate proceedings of his estate have been or could have been commenced. Under Section 7010, judgments establishing the existence or non-existence of the parent-child relationship, issued as a result of legal action under this Act, are determinative for all purposes except criminal non-support cases. The judgment may contain any appropriate provisions concerning the duty of support, custody and guardianship, and visitation privileges.

Section 7012 provides for enforcement of obligations of the father, provides for support payments to be made to the mother or other appropriate persons or agencies, and declares that wilful failure to obey the judgment or order is an act of civil contempt of the court for which all remedies for the enforcement of judgments apply. Section 7013 gives the court continuing jurisdiction to modify a judgment or order. Section 7015 provides that an action to determine the existence or nonexistence of a *mother* and child relationship may be brought by any interested party and that, insofar as practicable, the provisions applicable to the father and child relationship apply.

Under Section 7014 any hearing or trial under the Uniform Parentage Act may be closed to the public, and all records, other than the final judgment, are subject to inspection only upon order of the court for good cause shown. In addition, Section 7016 provides that a written promise to support a child from a presumed or alleged father does not require consideration, and may, upon the promisor's request, be kept confidential by court order. The court may also designate an intermediary to process payments to assure the confidentiality of the source.

Adoptions

Sections 224 and 7017 provide for parental rights relating to adoption procedures. These sections provide that a child having a presumed father may not be adopted without the consent of both parents except under certain circumstances. The exceptions apply when the parent has (1) failed to pay support or to communiate with the child for one years, (2) been judicially deprived of custody and control, (3) voluntarily sur-

rendered the right to custody and control in another judicial proceeding, (4) deserted the child, or (5) previously consented to adoption of the child. In addition, if a mother relinquishes a child for adoption and there is a presumed father, the father *must* be given notice and has the same right to object which a legitimate father possesses under previous law (Chapter 2, commencing with §221), unless one of the above exceptions applies (§701(a)).

If the child relinquished by the mother for adoption does not have a presumed father, but does have an alleged father who has not in writing denied paternity, waived his right to notice, or voluntarily consented to the adoption, the mother, person, or agency having custody of the child shall file a petition to terminate the parental rights of the alleged father. Pursuant to Civil Code Section 7017(f), every person identified as the natural father or possible natural father must be given notice of the proceeding. However, if such a father cannot be located or his whereabouts cannot be ascertained, the court may issue an order dispensing with notice to that person. If a man identified as a father or a possible father fails to appear, or when appearing fails to claim custodial rights, his parental rights are terminated.

If the alleged father appears and claims custodial rights, the court is to determine the child's parentage and the alleged father's right to and fitness for custody. However, Section 7017(d) also states that the court *shall* issue an order providing that only the mother's consent is required for the adoption unless the alleged father can prove that he is a presumed father under Section 7004(a) (i.e. either that there was some marital relation or attempted marital relation between himself and the mother, or that he has previously received the child into his home and held him or her out as his natural child). If the court, after inquiry, is unable to identify any possible natural father, and no one has appeared claiming to be the natural father and requesting custodial rights, the court is authorized to terminate the unknown natural father's parental rights.

Probate

The Uniform Parentage Act as approved by the National Conference did not incorporate probate provisions. Chapter 1244 incorporates into the California Probate Code provisions which determine the rights of succession on the basis of the existence of a parent and child relationship, rather than on the marital status of the parents. Previously, Section 225 of the Probate Code permitted an illegitimate child to inherit only from and through his or her mother. If the child's father had ac-

knowledged him or her in writing, the child could inherit from the father, but could not inherit through the father unless the child's parents had married after the child's birth and the father had acknowledged the child.

Section 255 of the Probate Code has been rewritten by Chapter 1244 to provide that a child may inherit both from *and* through either parent so long as each is a presumed parent under Section 7004(a) or have had their parentage determined in a court action under Part 7 (commencing with §700) of the Civil Code. In addition, the new law provides that the child's issue may inherit through the deceased child and also that the parents, and all who would take an intestate share through them, may succeed to the child's estate. For purposes of succession under this section, the existence of a parent and child relationship must have been established prior to the death of the decedent, and, where applicable, prior to the child's death.

Evidence

Changes in the Evidence Code as enacted by Chapter 1244 are designed to conform to the Uniform Parentage Act by substituting the term "parent and child relationship" for all references to legitimacy. These changes occur mainly in exceptions to the hearsay rule whereby evidence of a parent and child relationship may be introduced from prior statements of a declarant who is unavailable as a witness, from family books, charts, portraits, and the like, from church records, and from other specified sources. The only substantive change in the Evidence Code made by Chapter 1244 is that the chapter has added the exception of sterility (discussed *supra*) to the conclusive presumption that children of spouses who are living together are children of the marriage.

COMMENT

Although a number of minor changes were made, the California version of the Uniform Parentage Act is substantially similar to the act approved by the National Conference of Commissioners on Uniform State Laws in 1973 in the Parentage Act with two exceptions. The first exception is that Chapter 1244 contains only one legal procedure for litigating paternity issues—the formal court action. The national Uniform Parentage Act contains an additional procedure—an informal pretrial hearing agreed to by the parties—where it was hoped by the Commissioners that many actions would be resolved, in order to "greatly reduce the current high cost and inefficiency of paternity litigation" [National

Uniform Parentage Act, *supra*, at 337 (Commissioners' Prefatory Notes)]. Under this procedure, if the parties refuse to attend an informal hearing or if the hearing does not result in settlement, the action proceeds to a formal civil trial. The National Uniform Parentage Act also seeks to protect the mother from perjured testimony at the trial by not allowing evidence which relates to an identified man having sexual access to the mother at a time not related to the time of conception, or to an unidentified man having such access at any time. This type of evidence is permitted at the informal hearing. Chapter 1244 does not incorporate the informal hearing procedure and does not limit admission at trial of evidence related to the mother's sexual accessability.

The second exception relates to evidence provisions generally. The Commissioners considered evidence requirements of great significance in their deliberations over the proposed Act. They not only set out differing sets of requirements as noted in the preceding paragraph, but they listed specific types of evidence which were to be admissable. The most controversial evidence provision permits the admission of blood test results which are inconclusive as to the non-paternity of the alleged father. The Commissioners proposed these test results be weighed in accordance with evidence, if available, of the statistical probability of the alleged father's paternity [National Uniform Parentage Act, *supra*, §12, Comment at 348]. The California Act does not delineate evidence requirements.

Two possible constitutional issues, mentioned by the Commissioners in their notes to the National Uniform Parentage Act and incorporated into Chapter 1244, concern (1) the establishment of jurisdiction over the alleged father, and (2) due process rights of the unknown natural father. The jurisdiction provision, adopted verbatim by the California Uniform Parentage Act (§7007(b)), provides that "a person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse." A possible rationale for this provision would be that the performance of sexual intercourse by an individual is the performance within the state of an act which gives rise to the cause of action. This rationale is delineated in the Second Restatement of Conflict of Laws to cover situations in which the act which serves as the basis of jurisdiction gives rise to a cause of action which is not in tort, with the proviso that such jurisdiction cannot be upheld if the nature of the act and the individual's relationship to the state makes the exercise of such jurisdiction unreasonable [RESTATEMENT (SECOND) CONFLICT OF LAWS §36(2) (1969)].

The act of sexual intercourse as a basis of jurisdiction may be an impermissable extension of this theory.

The second constitutional issue discussed by the Commissioners relates to the due process rights of unknown natural fathers or natural fathers who are either non-locatable or whose whereabouts are non-ascertainable, and whose parental rights are terminated when the mother unilaterally relinquishes the child for adoption. The California Uniform Parentage Act provides that if the name of the father is unknown or his whereabouts are not ascertainable, the notice to him of the hearing may be dispensed with. Notwithstanding this lack of notice, all of his parental rights may be terminated. Whether this procedure is sufficient to satisfy due process requirements of notice may be open to challenge in light of the decision in *Stanley v. Illinois* [405 U.S. 645 (1972)], which acknowledged the constitutional rights of unwed fathers to the custody of their natural children [*Id.* at 655]. In *Stanley*, the Court held that as a matter of due process, an unwed father was entitled to

> "a hearing on his fitness as a parent before his children were taken from him, and that by denying him a hearing and extending it to all other parents whose custody of their children is challenged was a denial of equal protection of the law" [*Id.* at 649].

Proponents of the Act, however, urge that the interests of the child and of the adoptive parents require timely and final termination of the natural father's parental rights and maintain that the notice provisions offer adequate constitutional protection for the father combined with practical considerations and fairness for the child and other interested parties.

An additional constitutional consideration stems from the amendment of Evidence Code Section 621, stating that the issue of a wife who is cohabiting with her husband is *conclusively* presumed to be a child of the marriage, if the husband is neither impotent nor sterile. A conclusive presumption differs from a rebuttable presumption in that evidence of facts and circumstances in a given case may not be introduced to contradict it [WITKIN, CALIFORNIA EVIDENCE, *Conclusive Presumptions* §296 (2d ed. 1966)]. This particular presumption, Evidence Code Section 621, has been upheld by the California Supreme Court as a *substantive rule of law* which cannot be said to be unconstitutional unless it transcends the power of the legislature. The court felt the presumption was justified as an expression of social policy relating to the family, in which it was felt the state has a legitimate interest [Kusior v. Silver, 54 Cal. 2d 603, 619, 7 Cal. Rptr. 129, 139, 140, 354 P.2d 657, 667, 668 (1960)]. However, in a series of recent cases, the

United States Supreme Court has overturned several conclusive presumptions, stating that, "[s]tatutes creating permanent irrebuttable presumptions have long been disfavored under the due process clauses of the fifth and fourteenth amendments" [Vlandis v. Kline, 412 U.S. 441, 446 (1973)]. In *Stanley v. Illinois* [405 U.S. 645 (1972)], the Court overturned a conclusive presumption that unwed fathers were unfit for custody and declared that "[t]he Constitution recognizes higher value than speed and efficiency" [*Id.* at 656]. It therefore seems possible that the retention of the *conclusive* presumption raised by Evidence Code Section 621 will be subject to constitutional attack on the grounds that due process does not permit adjudication of rights without the opportunity to introduce factual evidence contrary to the presumption.

See Generally:

1) NATIONAL COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS OF THE ANNUAL CONFERENCE MEETING IN ITS EIGHTY-SECOND YEAR, July 26-August 2, 1973, 339-358, Uniform Parentage Act.
2) Vlandis v. Kline, 412 U.S. 441 (1973) (discusses a line of cases turning on analysis of conclusive presumptions).
3) H. KRAUSE, ILLEGITIMACY: LAW AND SOCIAL POLICY (1971).
4) Krause, *Equal Protection for the Illegitimate*, 65 MICH. L. REV. 477 (1967).

Domestic Relations; relatives' responsibility

Welfare and Institutions Code Article 8 (commencing with §12350) (repealed); Article 8 (commencing with §12350) (new).
SB 46 (Dills); STATS 1975, Ch 1136
Support: National Association of Social Workers; County of Sacramento; Jewish Public Affairs Committee of California; California Citizens Against the Double Taxation

Chapter 1136 has repealed the provisions of the Welfare and Institutions Code which previously required the adult children of a recipient of aid to the aged under the state portion of the Supplemental Security Income Program to make a monthly contribution to the state in support or their aged parent [*Former* §§12350-12361, CAL. STATS. 1973, c. 1216, §37, at 2912-15]. These provisions have been replaced with a prohibition upon (1) the imposition of a relatives' support requirement, (2) any liability of relatives for medical and hospital care rendered to recipients of aid, and (3) any threats of legal action by a county or by a city and county against a relative for any support payment.

The portion of the Welfare and Institutions Code which has been repealed by Chapter 1136 was a portion of the Welfare Reform Act of 1971 and was entitled the "Relatives' Responsibility Act." It authorized the Director of the Department of Benefit Payments to set contribution

levels subject to ceilings imposed by state law which varied according to income level and the number of dependents in the adult child's family, and to collect the monthly contribution. The repeal of these provisions will result in a loss of support income directly received by some aged recipients under former Welfare and Institutions Code Section 2352. This section provided that in some cases a relative's contribution could be passed along in part to the recipient parent when the recipient did not claim the $20 per month unearned income he or she was permitted before suffering a reduction in benefits.

COMMENT

The Relatives' Responsibility Act with its increased contribution levels and enforcement provisions under the Welfare Reform Act of 1971 [CAL. STATS. 1971, c. 378, §1, at 1168] was a controversial law. Court challenges and legislative efforts to amend and repeal the law questioned whether it violated the due process rights of the contributing adult children, what constituted appropriate support ceilings, and whether the detrimental effect on family relationships outweighed fiscal benefits to the state. In 1971 two cases [County of San Mateo v. Boss, 3 Cal. 3d 962, 92 Cal. Rptr. 294, 479 P.2d 654 (1971); Carleson v. Super. Ct. of Sacramento County, 23 Cal. App. 3d 1068, 100 Cal. Rptr. 635 (1971)] challenged the relatives' responsibility provisions on equal protection grounds. The provisions were upheld, and in 1972 the legislature passed Senate Bill 42 [1972 Regular Session] which as introduced would have repealed the Act and as later amended would have merely lowered the support ceilings. The urgency clause of this legislation stated: "A recent court decision has indicated that the new contribution scale which went into effect October 1, 1971, has had a cruel impact on the elderly, and caused financial hardship on adult children, particularly those of lower income required by the act to pay increased support to their parents. To provide relief as quickly as possible, this act must go into effect immediately" [JOURNAL OF THE CALIFORNIA SENATE 1248 (1972 Reg. Sess.)]. However former Governor Reagan vetoed the legislation and the veto was not over-ridden. In 1973 the California Supreme Court upheld the constitutionality of the Relatives' Responsibility Act in *Swoap v. Superior Court of Sacramento County* [10 Cal. 3d 490, 516 P.2d 840, 111 Cal. Rptr. 136 (1973)], but the dissent stressed the detrimental social effects of the Act [*Id.* at 511, 516 P.2d at 854, 111 Cal. Rptr. at 150]. In 1973 the legislature passed Assembly Bill 57 [1973 Regular Session] which also would have repealed the Act, and again former Governor Reagan vetoed the legislation. Later

in 1973, however, former Governor Reagan did sign Assembly Bill 134 [CAL. STATS. 1973, c. 1216, §37, at 2912-15 (implementing takeover of the adult aid program by the federal government)] which contained provisions reducing the contribution maximums and providing for state administration of the responsibility law.

Legislative efforts to repeal this Act were successful in 1975 with the enactment of Chapter 1136. The primary author of this legislation, Senator Ralph Dills, claimed that loss of income to the state would be minimal when collection costs were offset against sums collected [Sacramento Bee, May 8, 1975, at A9, col. 1]. He also cited Department of Benefit Payments estimates indicating that under the recent system of state collection only one out of every six potentially liable adult children actually contributed under the Act. In addition Senator Dills claimed that the state agencies collecting the contributions under the law resorted to illegal acts (such as sending threatening letters to elderly welfare recipients to obtain the names of their children) in their collection efforts [*Id.*]. Consequently the Relatives' Responsibility Act has not only been repealed by Chapter 1136, but an *express* provision has been enacted forbidding the imposition of relatives' responsibility or any collection effort for support contributions under this chapter by any city or county.

See Generally:
1) Lopes, *Filial Support and Family Solidarity*, 6 PAC. L.J. 508 (1975).
2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 432 (1973).

Domestic Relations; dissolution of marriage

Civil Code §4359 (amended).
SB 1194 (Stevens); STATS 1975, Ch 497
Support: State Bar of California

Section 4359 of the Civil Code has been amended by Chapter 497 to grant specific authority to superior court judges to issue *ex parte* orders to restrain a party to a dissolution proceeding from molesting or disturbing the peace of any persons who are in the custody of the other party. Previous law granted judges the authority to issue such an *ex parte* order to protect the other party in the dissolution proceeding, but did not include a grant of authority for judges to issue such orders for the protection of the persons under the care, custody, and control of the protected party—usually the minor children of the marriage being dissolved. Chapter 497, by extending this authority, should assist in the protection of children whose parents are involved in dissolution proceedings.

Domestic Relations; use of names by women

Civil Code §§4362, 4457 (amended); Code of Civil Procedure §1279.5 (amended).
SB 555 (Marks); STATS 1975, Ch 1070
Opposition: Attorney General

Under prior law, a court, in a dissolution proceeding or a proceeding to declare a marriage void or voidable, was *permitted*, pursuant to Civil Code Sections 4362 and 4457, to restore the birth name or former name of the wife. Chapter 1070 has amended these sections to *require* a court in such proceedings to restore the birth or former name of the wife upon her request. In addition, Chapter 1070 has amended these sections to provide that the restoration of a wife's birth or former name may not be denied because the wife has custody of a minor child who bears a different name, or for any other reason exclusive of fraud. These latter provisions come in the aftermath of *In re Marriage of Banks* [42 Cal. App. 3d 631, 117 Cal. Rptr. 37 (1974)], where the court held that the mere fact that the wife took custody of minor children in an action for dissolution of the marriage was insufficient to support the denial of the wife's request to change her name [*Id.* at 638, 117 Cal. Rptr. at 42].

Finally Chapter 1070 has amended Civil Code Sections 4362 and 4457, and Code of Civil Procedure Section 1279.5, to prohibit any person engaged in any trade or business, or in the provision of any service, from refusing to do business or provide a service, or to impose as a condition of doing business or providing a service, a requirement that a woman use any name other than her birth name or former name if she has chosen to use such a name, regardless of her marital status. Many retail businesses will not grant credit, for example, to a married woman in her own name even if she has a steady job and an excellent credit rating in her married name [Comment, *The Discredited American Woman: Sex Discrimination in Consumer Credit*, 6 U.C.D. L. REV. 61, 64 (1973)]. A violation of this provision could result in an award to a successful plaintiff of compensatory damages pursuant to Civil Code Section 3333, or injunctive relief pursuant to Civil Code Section 3422.

See Generally:
1) Hughes, *And Then There Were Two*, 23 HAST. L.J. 233 (1971) (a woman's right to her name).

Domestic Relations; developmentally disabled adults

Health and Safety Code §38062.1 (new); §§416.19, 416.95, 38001, 38003, 38004, 38053, 38054.2, 38058, 38060, 38062, 38063,

38103, 38104, 38106, 38110, 38120, 38121, 38122, 38123, 38200, 38201, 38205, 38255 (amended); Probate Code §1461.5 (amended); Welfare and Institutions Code §§6500, 6500.1, 7518, 10053.8 (amended).
AB 1421 (Lanterman); STATS 1975, Ch 694
Support: American Association on Mental Deficiency

Pursuant to the provisions of the Lanterman Developmental Disabilities Services Act [CAL. HEALTH & SAFETY CODE §38000 *et seq.*], an adult is considered to be developmentally disabled if he or she suffers from a developmental disability which originated prior to the age of 18 and is expected to continue indefinitely, and which constitutes a substantial handicap to the individual (§38003(h)). Prior to the enactment of Chapter 694, a developmental disability was defined as a disability which was attributable to mental retardation, cerebral palsy, epilepsy, or any other neurological handicapping condition closely related to mental retardation [CAL. STATS. 1973, c. 546, §16, at 1053]. Chapter 694 has amended Section 38003 of the Health and Safety Code to provide that developmental disabilities now additionally include *any* disability which is closely related to mental retardation or which requires treatment similar to that for mental retardation. In addition, persons disabled by autism are now covered by provisions relating to the developmentally disabled.

Provisions for the care and treatment of developmentally disabled persons are included in the Lanterman Developmental Disabilities Services Act [CAL. HEALTH & SAFETY CODE §38000 *et seq.*], and Chapter 694 has been enacted to revise several of these provisions. Section 416.95 of the Health and Safety Code and Section 1461.5 of the Probate Code have been amended to provide that any developmentally disabled person has a right to counsel in proceedings for the imposition of a guardianship or conservatorship, and that the court must appoint counsel to represent the proposed ward or conservatee in the proceedings if he or she is unable to afford an attorney. This change brings the provisions applicable to developmentally disabled persons into conformity with provisions of the Welfare and Institutions Code for imposition of a guardianship or conservatorship for persons gravely disabled and subject to involuntary commitment to mental health facilities pursuant to the Lanterman-Petris-Short Act (hereinafter referred to as the LPS Act) [CAL. WELF. & INST. CODE §5365; *see also* REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION, this volume at 333 (Civil Procedure; mentally disordered persons)].

Section 6500.1 of the Welfare and Institutions Code has been amended by Chapter 694 to provide that any order for commitment of developmentally disabled person expires automatically at the end of one year, though a new petition may be filed to extend the period of hospitalization. This parallels the procedures of the LPS Act for commitment of a gravely disabled person, which provide that LPS Act conservatorships require annual judicial review. This section now also specifically provides that any mentally retarded person has the right to counsel (court appointed if necessary) in all proceedings for commitment to a state hospital.

Furthermore, whenever a developmentally disabled person needs medical or dental treatment and has no parent, guardian, or conservator to consent to such treatment, the director of the regional center or a physician appointed by him or her in control of the developmentally disabled person may give the necessary consent. Prior to the enactment of Chapter 694, the director of the regional center was then required to initiate proceedings for the appointment of a guardian or conservator. The enactment of Chapter 694 makes the initiation of such proceedings optional rather than mandatory [CAL. HEALTH & SAFETY CODE §38110].

Amended Section 38104 of the Health and Safety Code also permits any pregnant woman, irrespective of developmental disability status, to receive genetic counseling services at regional centers if it is determined that the woman has a high risk of delivering a defective or handicapped infant due to a genetic disorder.

An additional change has been made by the amendment of Section 38120 of the Health and Safety Code, which provides the right to a hearing by writ of habeas corpus to patients in a state hospital. The amendment to this section made by Chapter 694 extends this right to patients in community care facilities as well as those in state hospitals.

Finally, Chapter 694 amends Section 38004 of the Health and Safety Code to provide that developmentally disabled persons may be released from state hospitals and put under the authority of a regional center for provisional placement in community care facilities or nursing homes. This placement is to be for a period not exceeding six months and during such a period of provisional placement, the developmentally disabled person has an automatic right of return to the state hospital.

See Generally:

1) 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 361 (1974) (prior legislation in this area).
2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 438 (1973) (rights of developmentally disabled persons).