



1-1-1980

Domestic Relations

University of the Pacific; McGeorge School of Law

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



Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Domestic Relations*, 12 PAC. L. J. (1981).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol12/iss2/15>

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.

Domestic Relations

Domestic Relations; paternity—rebutting presumption by blood tests

Evidence Code §621 (amended).

AB 1981 (Stirling); STATS 1980, Ch 1310

(*Effective September 30, 1980*)

Support: Office of the Governor, Legal Affairs Unit; State Bar of California

Opposition: California District Attorneys Association

Prior to the enactment of Chapter 1310, a child born to a marriage where the wife was cohabiting with her husband was conclusively presumed to be a child of the marriage unless the husband was impotent or sterile.¹ No evidence rebutting this presumption could be admitted.² Chapter 1310, apparently designed to remove the inequities inherent in the conclusive presumption,³ allows the introduction of evidence based on blood tests administered pursuant to the Uniform Act on Blood Tests to Determine Paternity⁴ if the court finds that the conclusions of *all* the experts appointed by the court⁵ are that the husband is not the father of the child.⁶ In such a case, the question of paternity will be resolved according to the results of the test.⁷ Notice of motion for blood tests may be raised only by the husband and must be raised within two years of the child's birth.⁸ In addition, for cases that reach the court after September 30, 1980, Chapter 1310 requires that the notice of motion for the blood tests be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court.⁹ The provisions of Chapter 1310, however, do not apply to any case that has reached final judg-

1. See CAL. STATS. 1975, c. 1244, §13, at 3202.

2. See generally *Kusior v. Silver*, 54 Cal. 2d 603, 354 P.2d 657, 7 Cal. Rptr. 129 (1960); *People v. Thompson*, 89 Cal. App. 3d 193, 152 Cal. Rptr. 478 (1979); *County of San Diego v. Brown*, 80 Cal. App. 3d 297, 145 Cal. Rptr. 483 (1978).

3. See CAL. STATS. 1980, c. 1310, §2, at —; Ashby, *Bill Would Permit Husband to Question Paternity of Child*, L.A. DAILY J., September 18, 1980, at 1.

4. See CAL. EVID. CODE §621(b). See generally *id.* §§890-897 (Uniform Act on Blood Test to Determine Paternity).

5. See *id.* §893.

6. See *id.* §621(b).

7. See *id.*

8. See *id.*

9. See *id.*

ment of paternity on or before September 30, 1980.¹⁰

COMMENT

Traditionally, the conclusive presumption of paternity has been categorized as a legitimate use of the legislature's police power to enact laws that are reasonably necessary to promote public health, welfare, and safety.¹¹ The presumption of paternity provides a reasonable procedure whereby a legal father may be determined, thus upholding the sanctity and integrity of the family.¹² This determination has traditionally been made notwithstanding proof that the husband was not the biological father.¹³

By permitting the admission of blood test results into evidence, Chapter 1310 establishes a procedure whereby a husband may rebut the presumption of paternity with conclusive evidence to the contrary.¹⁴ The legislature in 1953, in adopting the Uniform Act on Blood Tests to Determine Paternity, had omitted a provision of the Uniform Act materially identical to Chapter 1310.¹⁵ This change in legislative policy may reflect recent judicial notice of advancements in blood testing procedures.¹⁶ The change may also indicate a legislative determination that justice in certain individual cases outweighs the state's interest in legitimizing children.¹⁷

10. *See id.*

11. *See* Kusior v. Silver, 54 Cal. 2d 603, 619, 354 P.2d 657, 668, 7 Cal. Rptr. 129, 140 (1980); People v. Thompson, 89 Cal. App. 3d 193, 202, 152 Cal. Rptr. 478, 484 (1979); County of San Diego v. Brown, 80 Cal. App. 3d 297, 303, 145 Cal. Rptr. 483, 486 (1978).

12. *See* 80 Cal. App. 3d at 303, 145 Cal. Rptr. at 486.

13. *See* 54 Cal. 2d at 619, 354 P.2d at 668, 7 Cal. Rptr. at 140; 89 Cal. App. 3d at 201-02, 152 Cal. Rptr. at 484; 80 Cal. App. 3d at 303, 145 Cal. Rptr. at 486.

14. *See* CAL. EVID. CODE §621(b).

15. *See* 89 Cal. App. 3d at 201, 152 Cal. Rptr. at 484.

16. *See* Cramer v. Morrison, 88 Cal. App. 3d 873, 879-83, 153 Cal. Rptr. 865, 868-71 (1979); Ashby, *Bill Would Permit Husband to Question Paternity of Child*, L.A. DAILY J., September 18, 1980, at 1.

17. *Compare* 54 Cal. 2d at 619, 354 P.2d at 668, 7 Cal. Rptr. at 140 and 89 Cal. App. 3d at 202, 152 Cal. Rptr. at 484 and 80 Cal. App. 3d at 303, 145 Cal. Rptr. at 488 with CAL. EVID. CODE §621. *See generally* Ashby, *Bill Would Permit Husband to Question Paternity of Child*, L.A. DAILY J., September 18, 1980, at 1.

Domestic Relations; child and spousal support

Civil Code §196 (repealed); §§196, 4382, 4801.6, 4801.7 (new); §§4555, 4700, 4701 (amended); Education Code §22005 (amended); Government Code §21201 (amended).

AB 145 (McAlister); STATS 1980, Ch 173

(Effective June 13, 1980)

Support: Department of Finance; Department of Social Services; Office of the Governor, Legal Affairs Unit; Public Employees Retirement System; State Teachers Retirement System

AB 3050 (Moorhead); STATS 1980, Ch 866

Support: Department of Finance; Office of the Governor, Legal Affairs Unit

SB 1351 (Robbins); STATS 1980, Ch 1341

Support: California State Bar; Department of Social Services; National Organization for Women

Opposition: Family Law Judges; Judicial Council; Office of the Governor, Legal Affairs Unit

SB 1995 (M. Garcia); STATS 1980, Ch 237

Support: Attorney General of California; Office of the Governor, Legal Affairs Unit

Chapters 173, 237, 866, and 1341 make a number of significant changes in the law governing child and spousal support. Included are changes in the responsibility for child support as between parents,¹ changes in the procedures for assignment of wages in order to enforce court-ordered child² or spousal³ support, and changes in the types of moneys that are assignable for the purpose of enforcing court-ordered child or spousal support.⁴

Dissolution and Child Support

Under existing law, a final judgment dissolving a marriage pursuant to a joint petition for summary dissolution⁵ does not bar either party from instituting an action to set aside the judgment for fraud, duress, accident, or mistake.⁶ Chapter 1341 further provides that a court must set aside a final judgment made pursuant to a petition for summary dissolution⁷ as to all matters, except the status of the marriage, if the statutory requirements for summary dissolution⁸ have not been met.⁹ Prior to the enactment of Chapter 1341, if all the requirements for dis-

1. See CAL. CIV. CODE §§196, 4382.

2. See *id.* §§4700, 4701.

3. See *id.* §§4801.6, 4801.7.

4. See *id.* §4701; CAL. CIV. PROC. CODE §690.18; CAL. EDUC. CODE §22005; CAL. GOV'T CODE §21201.

5. See CAL. CIV. CODE §4553.

6. See *id.* §4555.

7. Letter from Legislative Representative Ralph Simoni to Bion Gregory (October 6, 1980) (stating that Cal. Civ. Code §4555(b) should refer to §4553 not §4453 as chaptered) (copy on file at the *Pacific Law Journal*).

8. See CAL. CIV. CODE §4550.

9. See *id.* §4555(b).

solution had been met and a divorce had become final, the father was primarily responsible for child support.¹⁰ Under the provisions of Chapter 1341, divorced parents are equally responsible for supporting their children.¹¹ In awarding child support, the earnings or earning capacity of each parent are to be taken into consideration.¹² Additionally, if requested by either parent, the court is to make findings of fact to determine the basis of the award.¹³ Also under prior law, some confusion existed as to whether a noncustodial parent's duty to pay child support continued if the custodial parent refused visitation or custodial rights to the noncustodial parent.¹⁴ Chapter 237 specifically states that refusal or failure by a custodial parent to implement the visitation or custodial rights of the noncustodial parent will not affect the noncustodial parent's duty to pay child support.¹⁵ Moreover, under existing law, if the parent paying support is behind in payment, upon a petition by the parent owed child support or by a specified county officer to whom child support is to be paid, the court is required to order the parent paying the support to assign a portion of his or her wages sufficient to cover support, including the amount in arrears.¹⁶ Assignment is made to the parent to whom support is owed or to a county or court officer.¹⁷ Prior to the enactment of Chapter 1341, however, the parent ordered to pay child support could fall behind in payments in an amount totaling *two months* of support before the parent to whom child support is owed could petition for wage assignment to enforce child support.¹⁸ Under Chapter 1341 the arrearage required before assignment is reduced to a sum equalling *one month* of support.¹⁹ Additionally, upon receiving the petition requesting assignment, and before any assignment of wages, prior law required a court hearing to determine that payment was in fact in arrears.²⁰ Chapter 1341 specifically deletes the requirement of a court hearing.²¹ It appears that ordering an assignment without a prior hearing is not a violation of due process because the parent against whom assignment is sought presumably has had the opportunity to be heard during the proceeding that rendered

10. See CAL. STATS. 1975, c. 1244, §2, at 3195 (amending CAL. CIV. CODE §196).

11. See CAL. CIV. CODE §196.

12. See *id.*

13. See *id.* §4700.

14. See *In re Marriage of Roesch*, 83 Cal. App. 3d 96, 103-04, 147 Cal. Rptr. 586, 591 (1978).

15. See CAL. CIV. CODE §4382.

16. See *id.* §4701(b)(1).

17. See *id.*

18. See CAL. STATS. 1975, c. 509, §1, at 1035 (amending CAL. CIV. CODE §4701).

19. Compare CAL. CIV. CODE §4701(b)(1) with CAL. STATS. 1975, c. 509, §1, at 1035.

20. See CAL. STATS. 1975, c. 509, §1, at 1036.

21. Compare CAL. CIV. CODE §4701(b) with CAL. STATS. 1975, c. 509, §1, at 1036.

the judgment for support.²²

Chapter 1341 also provides in cases of child support that at least 15 days prior to petitioning for assignment, the parent to whom child support is owed or the court officer or county officer designated by the court to receive child support payments is required to give written notice by certified mail or personal service to the defaulting parent of the intent to seek assignment.²³ Filing a petition with a false declaration of notice is punishable as contempt.²⁴ The petition, signed under penalty of perjury,²⁵ must state both the number of previous petitions filed and that 15 days' notice has been given.²⁶ If the petition for assignment is granted, the court need not give notice to the party owing child support before ordering an assignment of income.²⁷

Under Chapter 1341, the order of assignment does not become effective until ten days after service on the employer of the defaulting parent.²⁸ Within those ten days, the employer must deliver a copy of the order to the parent, who then has ten days to move to quash the order by stating under oath that there has been no default or that the amount alleged is not owed.²⁹ The court must then set a hearing for the motion to quash within 15 to 20 days.³⁰ The employer, however, is to continue to withhold wages pursuant to the support order until the motion to quash is granted.³¹

Under prior law, once an order of assignment became final, the parent owing child support could petition the court to terminate the assignment and the court could grant the petition once the parent had made 18 months of continuous and uninterrupted payment.³² Chapter 1341 provides that the petition to terminate the assignment may be granted once payments have become current provided that the assignment was established pursuant to the initial petition filed by the parent to whom support is owed.³³ If the assignment was granted pursuant to

22. See *Wyshak v. Wyshak*, 70 Cal. App. 3d 384, 388, 394, 138 Cal. Rptr. 811, 813, 817 (1977) (writ of execution for spousal support and levy on real property without prior notice to spouse owing support not a violation of due process); *In re Marriage of Crookshanks*, 41 Cal. App. 3d 475, 478, 116 Cal. Rptr. 10, 12 (1974) (writ of execution for child and spousal support upon parent owing support without prior hearing or notice not a violation of due process).

23. See CAL. CIV. CODE §4701(b)(2).

24. See *id.* See generally CAL. CIV. PROC. CODE §1209 (definition of contempt).

25. See CAL. CIV. CODE §4701(b)(1).

26. See *id.* §4701(b)(1), (2).

27. See *id.*

28. See *id.* §4701(b)(4).

29. See *id.* §4701(b)(5), (6).

30. See *id.* §4701(b)(6).

31. See *id.* §4701(b)(7).

32. See CAL. STATS. 1975, c. 509, §1, at 1037.

33. See CAL. CIV. CODE §4701(b)(10)(A).

a second petition filed within 24 months of the first, Chapter 1341 provides that termination of the assignment may be granted only after the parent paying support makes 12 months of full payment.³⁴ In addition, if the assignment was established after three or more petitions within 48 months, the termination of the assignment may be granted only after 18 months of full payment.³⁵

Spousal Support

While prior law established provisions for enforcement of court-ordered child support through assignment of wages, no provision existed for enforcement of court-ordered *spousal* support through wage assignment.³⁶ Under Chapter 866, in cases of court-ordered spousal support, upon a showing of good cause, the court may order an assignment of salary or wages sufficient to cover the court-ordered support.³⁷ Assignment will be to the county clerk or other court or county officer designated by the court to receive payments.³⁸ The court order of assignment is binding upon existing and future employers, but may be modified or revoked at any time.³⁹ Moreover, an order of assignment for spousal support shall have priority against any other attachment, execution, or other assignment, except court-ordered assignments for child support.⁴⁰

If the whereabouts of the defaulting party or the identity of the party's employer is unknown, upon a declaration or an affidavit to that effect by the party to whom support is owed, the district attorney must contact the central registry maintained by the Department of Justice to determine the last known address of the absent party or the name and address of the absent party's last known employer.⁴¹ The district attorney must transmit the requested information to the court, which will then order the party ordered to pay spousal support to show cause why an assignment order should not be issued.⁴²

If within the previous 24 months the party ordered to pay spousal support has fallen behind in payments in an amount equalling two

34. *See id.* §4701(b)(10)(B).

35. *See id.* §4701(b)(10)(C).

36. *Compare id.* §4801.6 with CAL. STATS. 1975, c. 509, §1, at 1035 (amending CAL. CIV. CODE §4701).

37. *See* CAL. CIV. CODE §4801.6(a).

38. *See id.*

39. *See id.*

40. *See id.* §4801.6(a), (b). *See generally id.* §4701 (court-ordered assignments for spousal support).

41. *See id.* §4801.6(e). *See generally* CAL. WELF. & INST. CODE §11478.5 (establishment of central registry).

42. *See* CAL. CIV. CODE §4801.6(e).

months' support, the person to whom spousal support has been ordered to have been paid may petition the court to order the defaulting party to assign a portion of the defaulting party's salary or wages sufficient to cover the court-ordered support.⁴³ Before any wage assignment will be ordered, the court is required to determine that spousal support payments are in fact in arrears.⁴⁴ If the payments are found to meet the arrearage requirement, assignment will be made either to the person to whom support has been ordered to have been paid or to the county officer designated by the court to receive payments.⁴⁵ Upon a petition by the defaulting party, once the party has made 18 months of continuous full payments pursuant to an assignment order, the court will terminate the assignment.⁴⁶ Moreover, if the person ordered to be paid support changes his or her address, that person must notify the court and the employer of the party ordered to pay support of the change within a reasonable period of time.⁴⁷ In instances in which support payments have been ordered to be made to a county officer designated by the court, the party to whom support has been ordered to be paid must also notify that officer.⁴⁸ Notice is to be made by any form of mail requiring a return receipt.⁴⁹ If the person ordered to be paid support fails to notify the employer or county officer of a change in address, and due to that failure the employer or county officer is unable to deliver the payments for three months, the employer or county officer is to make no further payments pursuant to the assignment and must return all undeliverable payments to the party ordered to pay support.⁵⁰

Additionally, when the party entitled to receive court-ordered spousal support is a welfare recipient, support payments must be made to the county clerk, court officer, or county officer designated by the court to receive the payments.⁵¹ If the party to receive support is not on welfare, the court, at its discretion, may still order payments to be made to the court clerk or designated court or county officer.⁵² In instances when payments have been ordered to be made to a court clerk, court officer, or county officer, the district attorney is to appear on behalf of the party to receive support in any proceeding to enforce the order.⁵³

43. *See id.* §4801.6(b).

44. *See id.*

45. *See id.*

46. *See id.*

47. *See id.*

48. *See id.*

49. *See id.*

50. *See id.*

51. *See id.* §4801.7(a).

52. *See id.* §4801.7(b).

53. *See id.* §4801.7(a), (b).

Prior to the enactment of Chapters 173 and 1341, in cases of court-ordered child support, all money held, controlled, or in the process of distribution by any public trust, public corporation, or any agency of the state or subdivisions thereof, for pension or retirement purposes or for the payment of disability, death, annuity, or any other benefit, or as any other return on contributions, was unassignable and exempt from any execution, attachment, or garnishment.⁵⁴ Money held in private retirement plans, such as union retirement plans or profit-sharing plans designed for purposes of retirement, pension, disability, or death benefits was also exempt.⁵⁵ Chapters 173 and 1341 provide that once any of this money becomes payable, it is no longer exempt from execution, attachment, garnishment, or assignment for purposes of enforcing court-ordered child and spousal support, with the exception that benefits falling under statutory provisions for unemployment insurance and workers' compensation are exempt.⁵⁶

In summary, when child support payments are delinquent, Chapter 237 makes it clear that a noncustodial parent's duty of support is not affected by the custodial parent's failure to implement custodial or visitation rights.⁵⁷ Also, in instances when child support payments are delinquent, the legislature has endeavored to enable those receiving support to obtain the payments as quickly as possible, with the least amount of expense to the taxpayers and to the parent seeking enforcement and with the least amount of trauma to the children and parents involved.⁵⁸ Moreover, when spousal support payments are delinquent, Chapter 866 establishes procedures for assignment of wages.⁵⁹ Finally, Chapters 173 and 1341 represent an attempt by the legislature to reduce the number of persons having to depend on welfare payments because of the nonpayment of spousal or child support.⁶⁰

54. See CAL. STATS. 1978, c. 494, §1, at 1626 (amending CAL. CIV. PROC. CODE §690.18); CAL. STATS. 1976, c. 1010, §2, at 2925 (amending CAL. EDUC. CODE §22005); CAL. STATS. 1945, c. 123, §1, at 601 (enacting CAL. GOV'T CODE §21201). Compare CAL. CIV. CODE §4701 with CAL. STATS. 1975, c. 509, §1, at 1037-38. See generally 7 PAC. L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 324 (1976) (exemption from execution).

55. See CAL. CIV. PROC. CODE §690.18(d); CAL. STATS. 1978, c. 494, §1, at 1626. See generally 10 PAC. L.J., REVIEW OF SELECTED 1978 CALIFORNIA LEGISLATION 355 (1979) (exemption from execution—pensions).

56. See CAL. CIV. CODE §4701(i)(2); CAL. CIV. PROC. CODE §690.18(b), (c), (d). See generally CAL. EDUC. CODE §22005; CAL. GOV'T CODE §21201; CAL. LAB. CODE §§3201-6149; CAL. UNEMP. INS. CODE §§1-12152.

57. See CAL. CIV. CODE §4382.

58. See CAL. STATS. 1980, c. 173, §6, at —; Sacramento Bee, April 29, 1980, at 10B, col. 1-2 (editorial on SB 1351—child support).

59. See CAL. CIV. CODE §4801.6.

60. See CAL. STATS. 1980, c. 173, §6, at —; Sacramento Bee, April 29, 1980, at 10B, col. 1-2 (editorial on SB 1351—child support).

Domestic Relations; agreement for entry of paternity and support judgments

Welfare and Institutions Code §11476.1 (amended).

AB 2115 (McAlister); STATS 1980, Ch 682

Support: California District Attorneys Association; Office of the Governor, Legal Affairs Unit

Under prior statutory law, when the district attorney had undertaken enforcement of child support, he or she was authorized to enter into an agreement with a noncustodial parent, on behalf of the minor child, for the entry of a judgment determining paternity, when applicable, and for periodic child support payments.¹ This law was ruled unconstitutional by the California Court of Appeal on the grounds that it did not protect the noncustodial parent's due process rights of notice and a hearing, nor did it address the manner in which the parent would be permitted to waive those rights.² Chapter 682, in an apparent attempt to make this provision constitutional, adds certain requirements that must be fulfilled *before* a judgment may be entered pursuant to an agreement between the district attorney and a noncustodial parent.³

Specifically, either the judge of the court in which judgment is to be entered or the parent's legal counsel, if represented, must advise the noncustodial parent of his or her rights concerning the agreement for entry of judgment and of the consequences of signing or not signing the agreement.⁴ If the noncustodial parent is represented, the attorney must sign a certificate stating that the attorney has examined the proposed judgment, advised the client, and that the client has agreed to the entry of judgment.⁵ Alternatively, if the noncustodial parent has been advised by a judge, the judge must make a finding that the parent appeared before the judge and willingly, knowingly, and intelligently waived his or her due process rights in agreeing to the entry of judgment.⁶ The agreement for entry of judgment may be executed prior to the birth of the child in question and may include a provision that the judgment not be entered until after the child's birth.⁷ The agreement

1. See CAL. STATS. 1975, c. 924, §13.5, at 2037.

2. See *County of Ventura v. Castro*, 93 Cal. App. 3d 462, 469, 156 Cal. Rptr. 66, 70 (1979).

3. Compare CAL. WELF. & INST. CODE §11476.1 with CAL. STATS. 1975, c. 924, §13.5, at 2037.

4. See CAL. WELF. & INST. CODE §11476.1(b)(1), (2).

5. See *id.* §11476.1(b)(1).

6. See *id.* §11476.1(b)(2).

7. See *id.* §11476.1(a).

and the certificate of the parent's counsel or the finding of the court, will be filed by the clerk.⁸ Any judgment entered pursuant to Chapter 682 may be modified or revoked, including a modification making support payments payable to a different person.⁹

In any case arising pursuant to Chapter 682, the district attorney may request the clerk to set a hearing, which must be held within ten days of receipt of the request.¹⁰ The district attorney may issue a subpoena requiring the person who signed the agreement for entry of judgment to attend the hearing.¹¹ Additionally, the district attorney must cause to be served upon the signer of the agreement for entry of judgment a copy of the judgment as entered,¹² and, if judgment includes an order for child support, a notice stating that the court has continuing authority to order an increase or decrease in child support payments and that the signer has the right to request the court to decrease or eliminate payments.¹³ Moreover, presence of the signer at the hearing and proof of noncompliance with the support order will constitute prima facie evidence of contempt of court if the judge determines that the noncustodial parent has willingly, knowingly, and intelligently waived his or her due process rights in agreeing to the entry of judgment.¹⁴

If the noncustodial parent is the defendant in a criminal action for willfully failing to provide for his or her child,¹⁵ the court may suspend the proceedings or the issuance of sentence in the criminal action if the parent appears before the court in which the criminal action is pending and has entered into an agreement for entry of judgment under this chapter.¹⁶ Suspension of proceedings or of sentencing will not limit later institution of a civil or criminal action, nor will it limit the use of any other procedures available to enforce a judgment entered pursuant to Chapter 682.¹⁷ The provisions of the Chapter do not apply to any case when a civil action has been commenced.¹⁸

8. *See id.* §11476.1(c).

9. *See id.* §11476.1(f). *See generally* CAL. CIV. CODE §4700 (modification or revocation of child support order).

10. *See* CAL. WELF. & INST. CODE §11476.1(d).

11. *See id.*

12. *See id.* §11476.1(e)(1) (attorney must file proof of service). *See generally* CAL. CIV. PROC. CODE §§415.10, 415.20, 415.30, 415.40 (manner of service).

13. *See* CAL. WELF. & INST. CODE §11476.1(e)(2). *See generally* CAL. CIV. CODE §4700 (modification or revocation of child support order).

14. *See* CAL. WELF. & INST. CODE §11476.1(d). *See generally* CAL. CIV. PROC. CODE §1209.5.

15. *See generally* CAL. PENAL CODE §270.

16. *See* CAL. WELF. & INST. CODE §11476.1(h).

17. *See id.*

18. *See id.* §11476.1(i).

Domestic Relations; adoption, foster care

Civil Code §232.6 (new); §§224m, 224s (amended); Welfare and Institutions Code §§396, 397, 398 (new); §11212 (amended).

AB 3070 (Egeland); STATS 1980, Ch 1229

Support: Department of Finance; Department of Social Services

Existing law provides procedures whereby parents may relinquish their child to a licensed adoption agency for adoption.¹ Also under existing law, the relinquishment is of no effect until a certified copy of the relinquishment is filed with the Department of Social Services.² Chapter 1229 provides that upon the filing of the relinquishment all parental rights and responsibilities regarding the child are terminated.³

Under prior law, a child could not be placed for adoption by an agency unless the agency had submitted a written report to the prospective adopting parents on the child's medical background.⁴ Chapter 1229 broadens the scope of this report by requiring the inclusion of all diagnostic information that might be known, including current medical reports, psychological evaluations, scholastic information, and all known information regarding the child's developmental history and family life.⁵

Further, with regard to foster care, Chapter 1229 recognizes that children have the right to a normal home life, and that reunification with a child's natural parent or parents, or with another alternative permanent living situation such as adoption or guardianship, is more suitable to a child's well being than is foster care.⁶ Chapter 1229 therefore establishes that it is the policy of the legislature that the current practice of moving foster children from one foster home to another should be discontinued.⁷ Chapter 1229, in an attempt to carry out the legislature's policy, provides for the establishment by the State Department of Social Services of a foster care information system.⁸

Finally, prior to the enactment of Chapter 1229, if a child died while under foster care, reimbursement to the foster parents from the state for burial plot and funeral expenses could not exceed \$650.⁹ Chapter 1229

1. *See* CAL. CIV. CODE §224m.

2. *See id.*

3. *See id.*

4. *See* CAL. STATS. 1978, c. 429, §21, at 1339 (amending CAL. CIV. CODE §224s).

5. *See* CAL. CIV. CODE §224s.

6. *See* CAL. WELF. & INST. CODE §396.

7. *See id.*

8. *See id.* §§397, 398 (Chapter 1229, however, sets no guidelines for establishment of the information system).

9. *See* CAL. STATS. 1974, c. 334, §1, at 664 (amending CAL. WELF. & INST. CODE §11212).

removes the \$650 limit and allows parents to be reimbursed in an amount equal to the level of reimbursement allowed by the State Board of Control for burial costs and funeral expenses¹⁰ under its Victims of Crimes program.¹¹ Under existing law, at the foster parent's request, the state will pay burial costs and funeral expenses directly to the funeral home and burial plot owner.¹² Under Chapter 1229, the state now will also make direct payment if the child's death is due to alleged criminal negligence or other alleged criminal action on the part of the foster parents.¹³

10. See CAL. GOV'T CODE §§13961(d)(2), 13965.

11. Compare CAL. WELF. & INST. CODE §11212 with CAL. STATS. 1974, c. 334, §1, at 664. See generally CAL. GOV'T CODE §§13959-13969.1 (Victims of Crimes program).

12. See CAL. WELF. & INST. CODE §11212.

13. Compare *id.* with CAL. STATS. 1974, c. 334, §1, at 664.

Domestic Relations; default dissolutions—notice, proof, transfers of venue

Civil Code §§4511, 4530 (amended); Code of Civil Procedure §§397.5, 585 (amended).

SB 1698 (Wilson); STATS 1980, Ch 367

Support: Office of the Governor, Legal Affairs Unit

SB 1933 (Mills); STATS 1980, Ch 234

Support: Office of the Governor, Legal Affairs Unit

Chapters 234 and 367 streamline and simplify marriage dissolution procedures by eliminating burdensome appearance¹ and notice requirements² and by allowing discretionary changes in venue of proceedings prior to a final decree.³ Specifically, existing law allows a person to file an action for legal separation prior to fulfilling the residence requirements for dissolution, and subsequently to amend the pleadings to request a dissolution decree once the residency requirements have been met.⁴ Prior to the enactment of Chapter 234, notice of the amendment had to be given to the other party pursuant to the rules of the Judicial Council, whether that party had appeared or not.⁵ Chapter 234 continues this practice when the other party has appeared

1. See Senator Bob Wilson, Press Release, July 9, 1980. Compare CAL. CIV. CODE §4511(b) and CAL. CIV. PROC. CODE §585(d) with CAL. STATS. 1973, c. 312, §1, at 729 (amending CAL. CIV. PROC. CODE §585) and CAL. STATS. 1969, c. 1609, §15, at 3355 (amending CAL. CIV. CODE §4511).

2. Compare CAL. CIV. CODE §4530(b) with CAL. STATS. 1969, c. 1608, §8, at 3329.

3. Compare CAL. CIV. PROC. CODE §397.5 with CAL. STATS. 1971, c. 1210, §7, at 2328.

4. See CAL. CIV. CODE §4530(b).

5. See CAL. STATS. 1969, c. 1608, §8, at 3329. See generally CAL. CIV. PROC. CODE §§415.10-415.50; CAL. RULES OF COURT, Rule 1216 (manner of service of summons).

in the proceeding;⁶ however, when the other party has *not* appeared and the intent to amend the petition or responsive pleading was stated in the initial pleading in accordance with rules adopted by the Judicial Council, notice of the amendment may be given to the nonappearing party by personal service or by mail at his or her last known address.⁷

Prior law allowed discretionary transfers of venue of *only* post-final judgment enforcement or modification actions under the Family Law Act when both parties had left the county rendering the decree and when justice and the convenience of the parties would be served.⁸ Chapter 234 allows this discretionary transfer of *any* proceeding under the Family Law Act to the county of residence of either party when both parties have left the county rendering the decree.⁹

Finally, prior to the enactment of Chapter 367, statutory law was unclear regarding whether proof of grounds for dissolution would be allowed by affidavit.¹⁰ In *In re Marriage of McKim*,¹¹ the California Supreme Court held that the petitioner in a default dissolution proceeding was required, except in special circumstances, to appear in person and to testify in court as to the grounds for dissolution.¹² This ruling was criticized as a misinterpretation of legislative intent.¹³ In an apparent response, Chapter 367 retains present statutory law allowing the petitioner to prove his or her allegations by affidavit,¹⁴ and repeals the prior statutory exceptions of dissolution, annulment, separate maintenance, and child custody cases from the general statutory grant of judicial discretion to allow proof by affidavit.¹⁵ Moreover, Chapter 367 now only requires personal testimony by the petitioner when (1) it appears that reconciliation is a reasonable possibility, (2) a proposed custody order is not in the child's best interests, (3) a proposed child support order is inadequate, or (4) justice would be served.¹⁶

6. See CAL. CIV. CODE §4530(b).

7. See *id.*

8. See CAL. STATS. 1971, c. 12, §7, at 2328.

9. See CAL. CIV. PROC. CODE §397.5.

10. Compare CAL. STATS. 1973, c. 312, §1, at 729 with CAL. STATS. 1969, c. 1609, §15, at 3355.

11. 6 Cal. 3d 673, 493 P.2d 868, 100 Cal. Rptr. 140 (1972).

12. See *id.* at 682, 493 P.2d at 874, 100 Cal. Rptr. at 146. See generally 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Husband and Wife* §108 (8th ed. 1974).

13. See *In re Marriage of McKim*, 6 Cal. 3d 673, 683-86, 493 P.2d 868, 874-76, 100 Cal. Rptr. 140, 146-48 (1972) (Mosk, J., dissenting); Comment, *In re Marriage of McKim—Playacting and the New Family Law Act*, 4 SW. U.L. REV. 325 (1972). See generally Comment, *Irreconcilable Differences: California Courts Respond to No-Fault Dissolutions*, 7 LOY. L.A.L. REV. 453 (1974).

14. See CAL. CIV. CODE §4511(a).

15. Compare CAL. CIV. PROC. CODE §585(d) with CAL. STATS. 1973, c. 312, §1, at 729.

16. See CAL. CIV. CODE §4511(b).

Domestic Relations; summary dissolution of marriage

Civil Code §§4550, 4555 (amended).

AB 2277 (Hannigan); STATS 1980, Ch 627

Support: Office of the Governor, Legal Affairs Unit; Department of Finance

In 1978, the legislature enacted provisions for the summary dissolution of marriage.¹ A marriage may be dissolved under this procedure when 12 separate conditions exist at the time of filing.² Apparently, certain requisites for a summary dissolution were found to be excessively restrictive and also failed to provide the desired judicial economy that was possible in connection with an uncontested divorce.³ In response, Chapter 627 modifies a number of the prerequisites for a summary dissolution.⁴

With the enactment of Chapter 627, the length of the marriage now may be no more than five years in duration at the time the petition is filed.⁵ Prior law limited the procedure to marriages no more than two years in duration.⁶ In addition, under prior law, summary dissolution was available when there were no *minor* children of the parties born or adopted during the marriage and the wife, to her knowledge, was not pregnant.⁷ Chapter 627 changes this to require that no children have been born to the parties *before or* during the marriage or adopted during the marriage and the wife is not pregnant.⁸ Child is not defined for summary dissolution purposes,⁹ so it is not clear whether the omission of the word "minor" is critical.¹⁰ It appears, however, since the requirement is expanded to include that there be no children born before the marriage as well as during the marriage, that the literal language

1. See CAL. CIV. CODE §§4550-4556. See generally 10 PAC. L.J., REVIEW OF SELECTED 1978 CALIFORNIA LEGISLATION 442 (1979) (summary dissolution of marriage).

2. See CAL. CIV. CODE §4550 (conditions involving jurisdiction; length of marriage; lack of children; limited property interests; agreement by the parties that they have irreconcilable differences, desire a dissolution, have read the summary dissolution brochure, and waive their right to spousal support, right to appeal, right to request findings of fact and conclusions of law, and right to move for a new trial).

3. See Senator Lou Cusanovich, Your Legislator at Work, A Weekly Column, March 13, 1980.

4. Compare CAL. CIV. CODE §4550(c), (d), (f), (g) with CAL. STATS. 1978, c. 508, §2, at 1655 (enacting CAL. CIV. CODE §4550).

5. See CAL. CIV. CODE §4550(d).

6. See CAL. STATS. 1978, c. 508, §2, at 1655.

7. See *id.*

8. See CAL. CIV. CODE §4550(c).

9. See *id.* §§4550-4556.

10. See, e.g., *id.* §§221 (child defined in a variety of ways for groups of sections), 241(d) (child defined as a son or daughter under the age of 18 or son or daughter of whatever age, who is incapacitated from earning a living and is without sufficient means), 265, art. 2(a) (child defined as person by reason of minority legally subject to parental, guardianship, or similar control).

possibly may include sons or daughters 18 years of age or older.¹¹

Prior to the enactment of Chapter 627, further prerequisites to the availability of the summary judgment procedure were that (1) the unpaid obligations incurred by either or both parties after the date of their marriage, excluding automobile debts, could not exceed \$2,000, (2) the total fair market value of community property assets, excluding encumbrances and automobiles, had to be less than \$5,000, and (3) neither party could have separate property assets, excluding encumbrances and automobiles, that exceeded \$5,000.¹² Chapter 627 provides that unpaid obligations must not exceed \$3,000¹³ and that the fair market value of both community and separate property assets must not exceed \$10,000.¹⁴ In addition, Chapter 627 allows these amounts to be adjusted every two years to reflect any change in the value of the dollar.¹⁵ Adjustment will occur on January 1 of each odd-numbered year beginning with January 1, 1983, and will be based on the percentage change in the California Consumer Price Index.¹⁶ The amounts will be computed and published by the Judicial Council.¹⁷

Finally, existing law authorizes the court to set aside a final summary dissolution judgment on specified grounds including fraud, duress, accident, or mistake.¹⁸ In addition, Chapter 627 provides that the court will set aside a final judgment as to all matters except the status of the marriage upon proof that at the time the petition was filed, the parties failed to meet jurisdictional requirements.¹⁹

11. *See id.* §4550(c).

12. *See* CAL. STATS. 1978, c. 508, §2, at 1655.

13. *See* CAL. CIV. CODE §4550(f).

14. *See id.* §4550(g).

15. *See id.* §4550.

16. *See id.*

17. *See id.*

18. *See id.* §4555. *See generally* CAL. CIV. PROC. CODE §473 (includes inadvertence, surprise, and excusable neglect).

19. *See* CAL. CIV. CODE §4555(b). *See generally id.* §§4530, 4531, 4550(a); 1 B. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §169 (2d ed. 1970); Keefe, *Residency Requirements for Divorce*, 62 A.B.A.J. 922 (1976).

Domestic Relations; domestic violence

Civil Code §§4359, 4458, 7020, 7021 (amended); Code of Civil Procedure §§527.6, 542, 546, 547, 550 (amended); Penal Code §§1000.6, 1000.7, 1000.8, 1000.9 (amended).

SB 1845 (Presley); STATS 1980, Ch 1158

Support: Attorney General of California; Department of Social Services; Office of the Governor, Legal Affairs Unit

Opposition: California Attorneys for Criminal Justice

Under existing law, defendants charged with acts of domestic violence, who meet specified criteria, may be diverted from the criminal justice system to a treatment or rehabilitation program.¹ Before the defendant is eligible for this diversion program, however, the act of domestic violence must be charged as, or reduced to, a misdemeanor.² Chapter 1158 now provides that a person charged with assault with a deadly weapon or with force likely to produce great bodily injury,³ or spouse beating⁴ is not eligible for diversion.⁵ In addition, in special proceedings involving domestic violence, prior law defined domestic violence as the infliction of corporal injury resulting in a traumatic condition upon a family or household member.⁶ Chapter 1158 redefines domestic violence as intentionally or recklessly causing bodily injury to a family or household member *or* placing a family or household member in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.⁷ Further, children are now excluded from the definition of family or household member,⁸ thereby denying eligibility for diversion to those persons who abuse children.⁹

Existing law states that if the prosecuting attorney determines that the defendant is before the court on an accusatory pleading for an act of domestic violence charged as, or reduced to, a misdemeanor, and that as a result the defendant is eligible for diversion, the prosecutor must notify the defendant and the defendant's attorney of that determination in a writing containing specific information about the guidelines for the diversion program.¹⁰ Chapter 1158 requires that a clear statement be included in the writing to inform the defendant that under the diversion program, he or she may be enjoined from contacting the victim, and will be enjoined from annoying, molesting, attacking, striking, threatening, harassing, sexually assaulting, battering, or disturbing the peace of the victim for the period of the diversion.¹¹ Further, should

1. See CAL. PENAL CODE §§1000.6-1000.11. See generally 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 471 (1980).

2. See CAL. PENAL CODE §1000.6(a); 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 471, 471 (1980).

3. See CAL. PENAL CODE §245(a).

4. See *id.* §273.5.

5. See *id.* §1000.6(a).

6. See CAL. STATS. 1979, c. 913, §1, at — (enacting CAL. PENAL CODE §1000.6(d)). See generally CAL. PENAL CODE §§1000.6-1000.11.

7. See CAL. PENAL CODE §1000.6(d).

8. See *id.* §1000.6(e).

9. Compare *id.* §1000.6(a), (d) with *id.* §1000.6(e).

10. See *id.* §1000.7(a).

11. See *id.* §1000.7(a)(4).

the defendant consent to the guidelines laid down by the program, and waive his or her right to a speedy trial, the court is to refer the case to the probation department where an investigation will be made to determine the following: (1) whether the defendant would benefit by education, treatment, or rehabilitation; (2) which community programs the defendant would benefit from; and (3) which of those programs would accept the defendant.¹² Factors to be taken into consideration by the probation department when making this determination are the defendant's age, employment and service records, educational background, community and family ties, prior incidents of violence, treatment history, if any, demonstrable motivation, and any other mitigating factors.¹³ In addition, the probation department's findings and recommendations are to be reported to the court.¹⁴

At the hearing to determine the defendant's eligibility for diversion, Chapter 1158 requires that the court consider the nature and extent of the injury inflicted upon the victim, any prior incidents of domestic violence by the defendant, and any factors that would adversely influence the likelihood of successful completion of the diversion program.¹⁵ The court must set forth in writing, or state on the record, all reasons for granting or denying diversion; the court's decision is final and not subject to appeal.¹⁶ If, in the opinion of the prosecuting attorney, the divertee is performing unsatisfactorily, is not benefiting from counseling, or is convicted of any offense involving violence, existing law provides for the reinstitution of criminal proceedings after a hearing before the court.¹⁷ Chapter 1158 adds that the court or probation department may also evaluate the divertee's suitability for the diversion program, and further, that the probation officer may request, or the court may move *sua sponte* for a hearing on this evaluation.¹⁸ Previously, only the court could initiate the hearing proceedings.¹⁹

Currently, under the Domestic Violence Prevention Act²⁰ and the Uniform Parentage Act,²¹ temporary restraining orders are granted without notice to the restrained party to prevent the recurrence of domestic violence²² and to protect the parent with custody of the children

12. *See id.* §1000.7(b).

13. *See id.*

14. *See id.*

15. *See id.* §1000.8(a).

16. *See id.* §1000.8.

17. *See id.* §1000.9.

18. *See id.*

19. *See* CAL. STATS. 1979, c. 913, §1, at — (enacting CAL. PENAL CODE §1000.9).

20. CAL. CIV. PROC. CODE §§540-553.

21. CAL. CIV. CODE §§7000-7020.

22. *See* CAL. CIV. PROC. CODE §§540, 545.

and the children from being contacted, molested, attacked, struck, threatened, sexually assaulted, battered, or having their peace disturbed by the other parent.²³ Under prior law, the court could order the defendant to show cause why the temporary restraining order should not be dissolved.²⁴ However, Chapter 1158 now states that when a temporary restraining order is granted without notice cause must "be shown why the order should not be granted."²⁵ Chapter 1158 further provides that the date of expiration of all temporary restraining orders included in a judgment entered under the Family Law Act or the Uniform Parentage Act is one year after the date judgment is rendered, whereas under prior law it was one year after the date judgment was entered.²⁶ Under existing law, when a temporary restraining order or injunction is issued to prohibit harassment, a copy of the order may be given to all law enforcement agencies within the discretion of the court and as requested by the plaintiff.²⁷ Prior to the enactment of Chapter 1158, in some circumstances it was discretionary with the law enforcement agencies whether or not to make this information available to law enforcement officers responding to the scene of a reported harassment;²⁸ Chapter 1158 now provides that they *must* make the information available to the law enforcement officers.²⁹ Finally, Chapter 1158 also redefines "family or household member" under the Domestic Violence Prevention Act to exclude the requirement of sexual relations with a family or household member for any person not related within the second degree who is living, or who has lived within the last six months, regularly in the household.³⁰

23. See CAL. CIV. CODE §7020; 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 465, 469-70 (1980).

24. See CAL. STATS. 1979, c. 795, §5, at — (enacting CAL. CIV. CODE §7020); *id.* §10, at — (enacting CAL. CIV. PROC. CODE §546).

25. See CAL. CIV. CODE §7020; CAL. CIV. PROC. CODE §546.

26. See CAL. CIV. CODE §§4458, 7021; CAL. STATS. 1979, c. 795, §2, at — (enacting CAL. CIV. CODE §4458); *id.* §6, at — (enacting CAL. CIV. CODE §7021); 4 B. WITKIN, CALIFORNIA PROCEDURE, *Judgment* §42 (2d ed. 1971).

27. See CAL. CIV. CODE §7020(d); CAL. CIV. PROC. CODE §527.6(g).

28. See CAL. STATS. 1979, c. 795, §8, at — (amending CAL. CIV. PROC. CODE §527.6).

29. See CAL. CIV. CODE §7020(d); CAL. CIV. PROC. CODE §527.6(g).

30. Compare CAL. CIV. PROC. CODE §542(c) with CAL. STATS. 1979, c. 795, §10, at —.

Domestic Relations; domestic violence centers

Government Code §§26840.7, 26840.8 (new); Welfare and Institutions Code §18291 (repealed); §§18291, 18294-18298, 18305-18307 (new); §§18290, 18293 (amended); California Statutes 1977, Chapter 892, Sections 2, 3 (repealed).

AB 1946 (Moore); STATS 1980, Ch 538

(Effective July 16, 1980)

Support: Commission on the Status of Women; Department of Finance; Department of Social Services; Women in Politics
SB 1246 (Presley); STATS 1980, Ch 146

(Effective June 3, 1980)

Support: Commission on the Status of Women; Department of Finance; Department of Social Services; Southern California Commission on Battered Women; Women in Politics

In response to the increasing need to reduce domestic violence, prior legislation provided for the establishment and state funding, on a demonstration basis, of four to six statewide pilot Domestic Violence Project Centers.¹ Chapters 146 and 538 provide for the continuation of these existing centers and for the establishment of new domestic violence programs to provide certain required basic services² to victims of domestic violence,³ including handicapped victims,⁴ and to their children.⁵

Prior to the enactment of Chapter 538 domestic violence programs required approval and establishment by the State Department of Health.⁶ Under Chapter 538, upon approval by the local county board of supervisors, a county may establish programs which provide the basic services required by this statute,⁷ with priority for funding given to agencies and organizations whose primary function is to administer domestic violence programs.⁸ Prior to approval of any program, the board must consult with an individual or a group possessing expertise in the area of domestic violence and in the operation of domestic violence programs.⁹

Prior statutory law provided for the financing of domestic violence programs through state funds.¹⁰ Chapter 146 provides for financing through funds acquired by an additional eight dollar fee collected at the time of issuance of a marriage license.¹¹ The fees are to be depos-

1. See CAL. STATS. 1977, c. 892, §1, at 2671 (enacting CAL. WELF. & INST. CODE §18290). See generally *id.* §1, at 2671-74 (enacting CAL. WELF. & INST. CODE §§18290-18303); 9 PAC. L.J., REVIEW OF SELECTED 1977 CALIFORNIA LEGISLATION 492 (1978) (domestic violence).

2. See CAL. WELF. & INST. CODE §18294(a)-(h).

3. See generally *id.* §18291(a) (definition of domestic violence).

4. See *id.* §18293.

5. See *id.* §§18290, 18293; CAL. STATS. 1980, c. 146, §15.5, at —.

6. See CAL. STATS. 1977, c. 892, §1, at 2671.

7. See CAL. WELF. & INST. CODE §§18293, 18304.

8. See *id.* §18293.

9. See *id.*

10. See CAL. STATS. 1977, c. 892, §2, at 2674.

11. See CAL. WELF. & INST. CODE §18305. See generally CAL. GOV'T CODE §§26840-26840.8 (marriage license and certificate fees).

ited in the county domestic violence programs special fund from which the county treasurer is to make annual or more frequent disbursements to fund approved programs.¹² If, however, a county's board of supervisors adopts a domestic violence program which requires an accumulation of funds for its implementation, Chapter 538 allows the county to carry over money deposited in the special fund for up to three years.¹³ Under Chapter 146, adjacent counties may combine their funds to establish one or more programs.¹⁴ Furthermore, counties that do not establish domestic violence programs must deposit their fees in the General Fund of the State Treasury.¹⁵ Money that has been deposited in the General Fund will be used to finance domestic violence programs in counties where the revenue from marriage licensing fees does not exceed \$2000 per year.¹⁶

By supporting a network of domestic violence programs throughout the state, funded by fees collected at the time of issuance of marriage licenses, the legislature is apparently continuing its attempt to provide aid to victims of domestic violence and to clarify the problems, causes, and cures of domestic violence.¹⁷

12. *See* CAL. WELF. & INST. CODE §18305.

13. *See id.* §18307.

14. *See id.* §18304.

15. *See id.* §18305.

16. *See id.*

17. *See id.* §18290; CAL. STATS. 1980, c. 146, §17, at —.