

RESOLUTION 07-06-2018

DIGEST

Welfare & Institutions: Correction of Reference to Outdated Code Section

Amends Family Code section 6323 to update the citation to a code section that was repealed and replaced.

STATEMENT OF REASONS

The Problem: Section 6323 of the Family Code presently cites to a section of the Welfare and Institutions Code that has been repealed, and references the district attorney when the task of child support collection is now assigned to the Department of Child Support Services

The Solution: Legislation to amend Section 6323 to update the citations.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 6323 to read as follows:

- 1 § 6323
- 2 (a) Subject to Section 3064:
- 3 (1) The court may issue an ex parte order determining the temporary custody and
- 4 visitation of a minor child on the conditions the court determines to a party who has established a
- 5 parent and child relationship pursuant to paragraph (2). The parties shall inform the court if any
- 6 custody or visitation orders have already been issued in any other proceeding.
- 7 (2) (A) In making a determination of the best interests of the child and in order to limit
- 8 the child’s exposure to potential domestic violence and to ensure the safety of all family
- 9 members, if the party who has obtained the restraining order has established a parent and child
- 10 relationship and the other party has not established that relationship, the court may award
- 11 temporary sole legal and physical custody to the party to whom the restraining order was issued
- 12 and may make an order of no visitation to the other party pending the establishment of a parent
- 13 and child relationship between the child and the other party.
- 14 (B) A party may establish a parent and child relationship for purposes of subparagraph
- 15 (A) only by offering proof of any of the following:
- 16 (i) The party gave birth to the child.
- 17 (ii) The child is conclusively presumed to be a child of the marriage between the parties,
- 18 pursuant to Section 7540, or the party has been determined by a court to be a parent of the child,
- 19 pursuant to Section 7541.
- 20 (iii) Legal adoption or pending legal adoption of the child by the party.
- 21 (iv) The party has signed a valid voluntary declaration of paternity, which has been in
- 22 effect more than 60 days prior to the issuance of the restraining order, and that declaration has
- 23 not been rescinded or set aside.
- 24 (v) A determination made by the juvenile court that there is a parent and child
- 25 relationship between the party offering the proof and the child.
- 26 (vi) A determination of paternity made in a proceeding to determine custody or visitation
- 27 in a case brought by the Department of Child Support Services ~~district attorney~~ pursuant to

28 Family Code section 17400 et seq. Section 11350.1 of the Welfare and Institutions Code.

29 (vii) The party has been determined to be the parent of the child through a proceeding
30 under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

31 (viii) Both parties stipulate, in writing or on the record, for purposes of this proceeding,
32 that they are the parents of the child.

33 (b) (1) Except as provided in paragraph (2), the court shall not make a finding of
34 paternity in this proceeding, and any order issued pursuant to this section shall be without
35 prejudice in any other action brought to establish a parent and child relationship.

36 (2) The court may accept a stipulation of paternity by the parties and, if paternity is
37 uncontested, enter a judgment establishing paternity, subject to the set-aside provisions in
38 Section 7646.

39 (c) When making any order for custody or visitation pursuant to this section, the court's
40 order shall specify the time, day, place, and manner of transfer of the child for custody or
41 visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the
42 safety of all family members. Where the court finds a party is staying in a place designated as a
43 shelter for victims of domestic violence or other confidential location, the court's order for time,
44 day, place, and manner of transfer of the child for custody or visitation shall be designed to
45 prevent disclosure of the location of the shelter or other confidential location.

46 (d) When making an order for custody or visitation pursuant to this section, the court
47 shall consider whether the best interest of the child, based upon the circumstances of the case,
48 requires that any visitation or custody arrangement shall be limited to situations in which a third
49 person, specified by the court, is present, or whether visitation or custody shall be suspended or
50 denied.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 6323 to update the citation to a code section that was repealed and replaced. This resolution should be approved in principle because it removes reference to a repealed statute that allowed the court to rely on a determination of paternity through a district attorney proceeding.

Since Welfare and Institutions Code section 11350.1, referenced in Family Code section 6323, has been repealed and replaced, the reference to that statute should be removed.

Family Code section 6323 provides a mechanism for the court to establish temporary custody and visitation of a minor child based on who has established a parent-child relationship. The statute provides the court with several factors to determine the parent-child relationship, including a determination of paternity. Before it was repealed, Welfare and Institutions Code section 11350.01 allowed a court to rely on a determination of paternity by a district attorney in a court proceeding. Since the Legislature has instead given authority to the local Department of Child Support Services to determine or establish paternity through Family Code section 17400, the family court can now rely on a finding by the Department of Child Support Services to determine or establish paternity, which the proposed resolution provides.

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

FAMILY LAW SECTION – APPROVE IN PRINCIPLE

FLEXCOM approves the proposed amendments to correct references to citations and agencies, reflecting current practice.