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California's Mandatory Divorce Mediation Program

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REPORT OF THE ADVISORY PANEL
ON THE
CHILD ORIENTED DIVORCE ACT OF 1987

California's Mandatory Divorce Mediation Program

Special Report Submitted to
Senator Alan Robbins
April 1987
April 1987

Dear Members:

One-third of the current generation of children is expected to experience a parental divorce before the age of 18. It is extremely important that we examine methods to increase the number and quality of parental decisions relating to divorce reached by non-litigious methods in order to protect the interests of the children involved.

In March, 1986, I asked the Senate Office of Research (SOR) to evaluate the extent to which mandatory mediation of child custody and visitation disputes actually benefits children and to explore options to further remove these controversies from an adversarial setting. I also convened an advisory panel of professionals in the field of family law and mediation services to examine the issues and make recommendations for legislative action. Panel members included judges, private and public mediators, attorneys, psychologists, and therapists. The panel members voluntarily contributed a great deal of time and energy to this effort during the last few months. Their recommendations and findings are enclosed and will serve as the basis for a legislative package I plan to introduce for the 1987-88 Legislative Session. At my request, the panel will continue to meet through 1987 to resolve areas of controversy such as the establishment of absolute confidentiality in mediation proceedings.

I welcome any comments you may have regarding the optimal plan for resolving parental disputes in a divorce situation.

Sincerely,

ALAN ROBBINS
April 1987

The Honorable Alan Robbins
State Capitol
Room 5114
Sacramento, CA 95814

Dear Senator Robbins:

Your Advisory Panel on the California Child Oriented Divorce Act of 1987 transmits herewith its report recommending legislation relative to parental disputes on custody and visitation matters. This report recommends legislation which would strengthen the existing mandatory mediation program for resolving child custody and visitation disputes outside the courts and would strengthen Legislative policies relative to the child's best interests.

The Advisory Panel wishes to extend special thanks to the many people who voluntarily gave a great deal of time and energy in contributing materials and suggestions incorporated in this report.

Very truly yours,

Hugh McIsaac, Chairperson
Advisory Panel on the
California Child Oriented
Divorce Act of 1987

HM:LM:gd
Enclosure
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THE CHILD ORIENTED DIVORCE ACT OF 1987

(A Panel of Volunteers Convened By Honorable Alan Robbins To
Examine Mandatory Mediation of Child Custody Disputes)

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ACKNOWLEDGMENTS

The California Child Oriented Advisory Panel acknowledges with appreciation the participation of Elizabeth Friedman of Senator Alan Robbin's Office in the preparation of the recommendations made in this report. Also, the Panel acknowledges the following people for volunteering their time and contributing to the findings of the report relating to the mediation proceeding and its objectives.

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INTRODUCTION

After six years' experience, it is essential to analyze whether the expected benefits of California's mandatory child custody and visitation mediation services program have been realized. The goals of this report are to present to Honorable Alan Robbins the findings and recommendations of the California Child Oriented Divorce Act of 1987 Advisory Panel. Senator Robbins convened the Panel to examine the existing system and alternatives to that system in its entirety as it ultimately resolves child custody issues and recommend methods to increase the number and quality of those decisions reached by non-litigious methods to further protect the interests of the child.

Specifically reviewed by the Panel were:

1) The extent to which mandated mediation of disputed child custody and visitation cases is actually enforced;

2) The range of services provided and methods of implementation;

3) The cost benefits of the mediation process;

4) The various options that may be available which would further provide children with a setting and process that is not harmful to their psychological development; and

5) The extent to which the qualifications and training of mediators affect the mediation process.

The information presented here includes the observations and findings by Advisory Panel members as a result of deliberations held from July through November of 1986, and review of data collected by the Senate Office of Research (SOR), including information on various research studies and reports on divorce mediation, results of interviews made of conciliation court personnel, judges, attorneys, and clients in Los Angeles, Sacramento and Ventura counties, data on conciliation courts gathered through an informal survey of the mediation services programs in May of 1986, and observations of child custody mediation.
EXECUTIVE SUMMARY

Over one-third of the current generation of children will experience a parental divorce before the age of 18. In California, for Fiscal Year 1984-85, 164,652 family law petitions were filed. It is estimated that 19.0% or over 31,000 of these families required the services of California's mandatory child custody and visitation mediation program through conciliation court services. On a statewide basis mediation programs are achieving success with mandatory mediation, with rates exceeding 62% partial or full agreement, removing the controversy from an adversarial setting and reducing superior court costs of contested custody trials. Conciliation courts, however, are severely underfunded and understaffed.

Section one of this Report provides an overview of the existing mandatory child custody and mediation services program. Recommendations are made in section two which focus on strengthening the existing mandatory mediation process and establishing uniformity in program implementation.

Section three presents several changes to current law which would remove the win/lose concept of family law proceedings, facilitate self-determination by parents on parental rights and responsibilities, establish more positive symbols in our society about families in transition, and more closely reflect the needs of the child.

Two recommendations relating to regulation of mediators and additional services needed by divorcing families are addressed in section four of this Report.
RECOMMENDATIONS

• GOAL OF MEDIATION

The Panel recommends that current law be amended to clarify that the goal of child custody and visitation mediation is to promote the best interests of the child and that the purpose of such proceeding is not to mediate financial disputes. The Panel also recommends that uniform standards of practice be promulgated which provide guidelines to mediators on their role in a mediation proceeding.

• ABSOLUTE CONFIDENTIALITY IN MEDIATION

The Panel recommends that the Legislature conduct a comprehensive study that will supply it with the information necessary to determine whether establishment of absolute confidentiality on a statewide basis would further the best interests of the child and promote the integrity of the mediation process.

• EVALUATION OF CASES

The Panel recognized that the court must be provided additional information regarding the family in order to make a final decision on custody. This Panel recommends that superior courts be required to order a family evaluation prior to entering a final order of custody or visitation when the parties fail to reach an agreement in mediation. This recommendation presumes that adequate funding for staffing evaluation units would be provided by the Legislature.

• ROLE OF INVESTIGATORS AND EVALUATORS

In order to further clarify that the goal of mediation is to assist parents to reach a custody agreement through a neutral third party and to assure that qualified court personnel are involved in the mediation process, the recommendation of this Panel is to define the roles of investigators and evaluators, as distinguished from mediators, and establish minimum qualifications for investigators and evaluators. Mediators would still be allowed to evaluate and investigate a case but only those cases which they had not mediated. Investigators would be precluded from mediating or evaluating a case.

• CHANGES IN PROCEDURE

Procedural changes in current law are recommended which will expand access to mediation prior to filing for a divorce or separation, diminish potential exclusion of unmarried liti-
gants from mediation, and assure that parents are fully informed about the terms of the custody and visitation agreement reported to the court.

● MEDIATION AS AN ALTERNATIVE TO LITIGATION

The expansion of child custody and visitation mediation has been limited by the unavailability of statewide empirical data. The Panel recommends that the Judicial Council, which is charged with the administration of a grant program relating to family law matters, conduct research proposed in this Report.

● DOMESTIC VIOLENCE CASES

In order to promote effective mediation of custody and visitation agreements in cases in which there is a history of domestic violence, the Panel recommends that training be provided to mediators, evaluators, judges, and other court personnel. The Panel considered excluding these cases from mediation but concluded that such exclusion would diminish the possibility of a fair settlement of the dispute.

● "CUSTODY" OF THE CHILD

Current law sets forth the desired policy regarding preferences for custodial arrangements in Sections 4600 and 4600.5 of the Civil Code without establishing a legal preference for joint custody. The established policy is frequent and continuing contact with both parents. The Legislature should not change this policy without conducting further research on the effects on children of the various custodial arrangements. However, the Panel recommends amendments to current law relating to "custody" which would focus on the child's right to parental contact, establish simplified modification of custody, when parents agree, without the necessity of showing a change of circumstances, and encourage parents who must move to consider the best interests of the child or children involved. The Panel also recommends a sweeping change in language in order to remove negative symbols in the law about families undergoing divorce. Specifically, the terms "custody" and "visitation" would be replaced with the terms "parental rights and responsibilities."

● LINKING CUSTODY AND SUPPORT

There are a number of issues identified by the Panel linking custody and child support which impact the psychological, emotional, and physical stability of children, but they have
not been adequately addressed by researchers. The Panel recommends that the Legislature conduct a comprehensive study on issues which link child custody and visitation to child support in order to formulate a comprehensive policy on the extent to which financial considerations should be joined to the custody determination.

- **FUNDS FOR CHILD'S COUNSEL**

The Panel recommends that a fund for the child's counsel for cases where the court determines that there are insufficient funds to pay for counsel for the child be created.

- **CONTINUOUS ACCESS TO ONE'S CHILD**

The Panel concluded that the law should encourage parents to allow each other continuous access to their child or children. The vigorous approach of making intentional concealment of a child tortious conduct was suggested. Specifically, a cause of action is recommended for compensatory and punitive damages against a parent who denies the other parent access to a child on a prolonged basis. All equitable defenses may be raised.

- **RETROACTIVE CHILD SUPPORT**

The Panel supports legislation which would allow a court to award retroactive child support to the date of birth of a child and permit equitable defenses to be raised.

- **POST DIVORCE COUNSELING INSURANCE**

Changes to current law are recommended to provide insurance coverage for counseling services or other family therapy for children and parents following dissolution of a marriage.

- **REGULATION OF MEDIATORS**

The Panel recommends that the Senate Business and Professions Committee, or another committee, be requested to hold hearings on the feasibility of regulating child custody mediators.

- **SENATE OFFICE OF RESEARCH STUDY**

The Panel recommends that the Senate Office of Research conduct a study on the feasibility of establishing a pilot program offering a wide range of professional services to families going through divorce. In addition, the feasibility of establishing an Office of Support Determination and Enforcement in every county should be examined. The results of the study would be provided by December 31, 1988, and include recommendations for legislation.
I. DEVELOPMENT OF THE MEDIATION SERVICES PROGRAM

California's experience with mandatory mediation of custody and visitation disputes dates back more than ten years. In 1976, mediation of child custody and visitation disputes was mandatory in San Francisco, Sacramento and Los Angeles counties. They found mandatory mediation to be cost effective and satisfactory to the users. For example, in 1978, the Los Angeles Conciliation Court, the largest jurisdiction offering public sector mediation, handled 747 of 1,431 disputed child custody cases saving at least 374 days of court time and generating a net savings to the court of over $175,000. A one year follow-up of the first 200 cases mediated showed that only 14% of the cases returned to the court.2

In 1979, the California Senate Subcommittee on the Administration of Justice published a two-year study of mediation. The Subcommittee's report became the basis for Senate Bill 961 (Ch. 48, Stats. 1980), the legislation which established mandatory mediation of contested custody and visitation matters within the Superior Courts. Virtually all the provisions of the original bill were enacted. Senate Bill 961, carried by Senator Alan Sieroty, became effective January 1, 1981.

SB 961's primary impact was to require the mediation of contested child custody and visitation matters prior to or concurrent with the setting of the matter for hearing in order to develop an agreement which assured the child or children close and continuous contact with both parents. Funding was provided by authorizing specified increases in various filing and marriage fees. The law does not require the parents to reach a settlement during mediation and thus preserves individual choice and due process.4
In 1984, SB 961 was amended twice. Assemblymember Klehs carried legislation addressing the need for conciliation court mediators to have knowledge of child abuse and domestic violence. That same year, Assemblymember Farr carried Assembly Bill 2445 (Ch. 893, 1984) establishing the responsibility for statewide coordination of family and mediation conciliation services within the Judicial Council. The bill specifically required the Council to administer a training program for court personnel involving family law proceedings and a research grant program in the area of family law. Monies from the General Fund were appropriated in the bill, and it authorized the collection of funds from specified sources for continued program support. The Council estimates that there are over one million dollars in funds accumulated for implementation of AB 2445. This Report contains several recommendations for utilization of these funds.

The most recent amendment to conciliation court law was carried by Assemblymember McAlister in AB 100 (Ch. 361, 1985). It permitted court staff to recommend that counsel be appointed to represent the minor child or children in custody and visitation disputes.

Conciliation Court Profile

On a statewide basis mediation programs are achieving success with mandatory mediation, with rates exceeding 62% partial or full agreement, thereby removing the controversy from an adversarial setting and reducing superior court costs of contested custody trials. The success of mandatory mediation becomes critically important when the following divorce statistics are considered. One-third of the current generation of children is expected to experience a parental divorce before the age of 18. In California, for Fiscal Year 1984-85, 164,652 family law peti-
tions were filed. It is estimated that 19.0% or over 31,000 of these families required the services of California's mandatory child custody and visitation mediation program through conciliation court services. (Appendix 1). Of 58 counties offering these services, 43 have their own conciliation court office or provide services through the probation department. Fifteen counties contract for mediation services.

Some counties are finding that there are financial incentives for allocating resources to mediation. For example, in Los Angeles County, the current Superior Court cost for a family law matter is $441 per hour, while the cost of mediation per hour averages $28.08. In 1985, the cost in Alameda county for one day of a Superior Court hearing involving a custody or visitation dispute was estimated at $9,000 compared to $561 for mediation. These two counties have also shown a commitment to hiring needed mediation staff. For Fiscal Year 1984/85, the Los Angeles Conciliation Court had 21 professional full-time mediators which handled 5,043 cases. Alameda County employed 18 full-time staff to mediate 2,758 cases and to handle 75 evaluations. These statistics mean that parents in these counties can spend an average of six hours in mediation, while couples in understaffed counties may have as little as one hour in mediation of a custody issue prior to the court hearing.

On a statewide basis, however, conciliation courts are severely underfunded and understaffed. Information provided by the Commission of State Mandates on the cost of mediation indicates that for Fiscal Year 1984/85 alone, the net cost to counties of divorce mediation was $3.3 million. (Appendix 2). Underfunded programs can be expected to adjust their services downward. A few courts have increased the level of fees allowed by statute to fund mediation services or they limit the number of hours offered to families gratuitously.
The lack of funding not only affects the level of services provided to families but also accounts for overworked mediation staff. For example, a 1985 informal survey on caseload analysis of a subcommittee of the California Chapter of the Association of Family Conciliation Court (AFCC) indicated that the minimum time for a mediation referral averaged 2.5 hours for programs limiting their services to mediation and 2.4 hours for programs offering other services such as pre-age marriage interviews, stepparent adoptions, out-of-county courtesy evaluations, and follow-up services. The AFCC found that the ideal number of hours desired for mediation were twice the minimum provided.\textsuperscript{12}

Staffing patterns in counties handling similar workloads vary widely and demonstrate the severe understaffing in some counties. For example, Orange County which has twice the population of Alameda County, twice the number of domestic family law filings, and a substantially greater workload, had only six full-time mediators and one investigator in 1985.\textsuperscript{13} A couple there typically receives between one and two hours of a mediator's time. Similarly, San Bernardino handled 1,723 cases with only six full time mediators, while Santa Clara handled 1,305 cases with ten full-time mediators. At least eighteen counties have less than one person dedicated to the mediation program or contract for services.\textsuperscript{14}

Other information indicated that when investigations or evaluations of families are necessary as part of the mediation process, the prohibitive costs to clients in some counties limit their use. The minimum cost of an evaluation in Los Angeles, for example, is $500.\textsuperscript{15} Some smaller counties do not enforce hiring standards for mediators. For example, Nevada and Modoc had no standards for hiring mediators. Tulare and Humboldt counties required a Bachelor's degree and no experience, as opposed to a Master's degree and two years required by statute.\textsuperscript{16}
II. THE MEDIATION PROCEEDING AND ITS OBJECTIVES

In order to realize the expected benefits of the mandatory child custody and visitation mediation services program, several recommendations are made in this section which would strengthen the existing mandatory mediation process and establish uniformity in program implementation.

Recommendation §1- GOAL OF MEDIATION

Under current law the purpose of the mediation proceeding is to reduce the acrimony that may exist between the parties involved in a divorce and to develop an agreement which will assure the child or children close and continuous contact with the parents (Section 4607 of the Civil Code). The law should be amended to clarify: 1) that the goal of mediation is to promote the best interests of the child and takes priority over the settlement goal and 2) that the purpose of such proceeding is not to mediate financial issues. This will assure that mediation focuses on the custody dispute. In order to accomplish this, it is also necessary to promulgate uniform standards of practice which provide guidelines to mediators on their role in a mediation proceeding.

Implementation

1. Amend Civil Code Sections 4351.5 and 4607(a) to clarify that the goal of mediation is to further the best interest of the child. (Attachment 1, Pages 2 and 7).

2. Amend Civil Code Section 4607(e) to clarify that current law does not provide for the mediation of financial disputes. (Attachment 1, Page 8).

3. Add a new section, Civil Code Section 4607.1, to establish standards of practice for mediators consistent with the goals of mediation. (Attachment 1, Page 10).

Findings

Mediation is a process by which participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate
their needs. It is a task-directed and goal-oriented process which focuses on the future and provides an alternative to litigation. In contrast to litigation, it tends to diffuse hostilities by promoting cooperation through a structured process.

Consistent with these goals, under current law (Section 4607 of the Civil Code), the purpose of the mediation proceeding is to reduce the acrimony that may exist between the parties involved in a divorce and to develop an agreement which assures the child or children close and continuous contact with the parents. However, the Panel concluded that the law should be amended to indicate that the best interests of the child take priority over the settlement goal.

Current law also sets out the discretionary powers that mediators should have. For example, current law empowers mediators to interview the child or children involved in a controversy in order to assess the needs and interests of children and to recommend restraining orders when necessary to protect the well-being of the children. However, information provided on the San Diego County program indicates that some mediators are negotiating agreements regarding financial issues at a conference scheduled to discuss custody. The majority of the Panel members agreed that it is necessary to amend the law to prohibit this practice until more data is available about the appropriateness of linking custody and financial issues.

The Panel also concluded that there is a need for the adoption of a uniform code of standards for family mediators which will provide guidelines on the role of mediation, and will be consistent with the accepted goal of mediation. Standards adopted by the California Society of Clinical Social Work and The Task Force on Mediation Section of Family Law of the American Bar Association should be considered.
Recommendation #2- CONFIDENTIALITY IN MEDIATION

Conduct a comprehensive study that will supply the Legislature with the information necessary to determine whether establishment of absolute confidentiality on a statewide basis would further the best interests of the child and promote the integrity of the mediation process.

Implementation

Finance a study from funds collected to conduct research in the area of family law as specified in Section 5183 of the Civil Code. (Attachment 2).

Findings

After six years' experience with mandatory mediation there are still active debates over what should be the best public mediation policy. Ethical considerations are raised such as how much influence a court mediator should be allowed and how much pressure to mediate is acceptable. There is also debate over the possibility that couples are being denied their right to representation and a fair trial when they are diverted into a mediation program that gives the mediator decision-making power.

The section in the California mandatory mediation statute which has raised the controversies, is the local rule allowance of partial confidentiality of the mediation proceedings, Subsection 4607(e) of the Civil Code. Under the statute, there are a wide range of possible differences in the ability of the mediator to maintain the confidentiality of the mediation session. Mediators maintain strict confidentiality or they may: be authorized to make a limited recommendation to the court, have no limit upon the recommendation they make, be required to make a recommendation, or make a recommendation only at their discretion. To whom the mediator makes the recommendation is another variable. The recommendations may be made to the judge, to the custody investigator who makes a recommendation to the judge, and/or to the
couple's attorneys. The Panel focused on this issue and concluded that a policy of strict confidentiality should be promoted on a statewide basis. However, serious concerns were raised regarding the unavailability of data which would indicate that a statewide policy is necessary or desirable since many counties currently permit mediators to make recommendations to the court. The concerns prompted the Panel to recommend that the issue be studied further.

Mediation Policies

The Panel considered the historical development of the mediation process and its evolvement into two approaches which include mediation, evaluation, and recommendation phases. The first approach is the conciliation model which originated in the Los Angeles court and the second approach is the family court services model.

Under the conciliation court model, the court separates the mediation and evaluation phases of the mediation proceeding and provides for complete confidentiality of mediation. According to Hugh McIsaac, Director of the Los Angeles Conciliation Court, the court's intention is to protect the family from unwarranted intrusion by the mediator and to emphasize self-determination. Mediators are foreclosed from making recommendations to the court under the premise that the trust and confidentiality gained in mediation is lost when a mediator is allowed to make recommendations to the court.17 Necessary evaluation or investigations are conducted by a separate office or unit.

The family court services model, on the other hand, combines mediation and evaluation, often permitting the mediator to also "evaluate" the same case. Recommendations by the mediator to the court on temporary orders and permanent custody and visitation
arrangements when parties cannot reach their own agreement may be permitted. The philosophy of some courts using this model is that it encourages economic efficiency by avoiding the cost of separate evaluation and furnishes the court with all the relevant information needed to resolve the case in court.\textsuperscript{18} This increased "efficiency" may be in doubt since the Los Angeles Court has the lowest court staffing to population and filing ratio of any county in the state and yet achieves a comparable diversion of custody trials in comparison with those counties who practice a nonconfidentiality model.

**Problems the Panel Found with the Statute**

Since the enactment of SB 961, attorneys and private mediators have raised concerns regarding the lack of confidentiality of communications made in mediation in some courts. The original version of SB 961 provided that no report would be made to the court if mediation was not successful. The bill was amended to permit, by local rule, reports and recommendations following unsuccessful mediation.

The statute, Civil Code Subsections 4607(c) and (e), state:

\(\text{(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.}\)

\(\text{(e) The mediator may, consistent with local rules, render a recommendation to the court as to the custody or visitation of the child or children.}\)

"Official information," as referred to in Section 1040 of the California Evidence Code, cannot be disclosed if an authorized official refuses disclosure. However, the evidentiary privilege
has also been used to permit disclosure of information provided in mediation proceedings. For example, The California Court of Appeals held in, In re Marriage of Rosson, 178 Cal. App. 3d 1984 (1986), that the privilege belongs to the court, not the parties, and by adoption of written local rules permitting the mediator to make recommendations to the court as to custody or visitation of children, the court may choose to waive the privilege. The opinion stated that although Civil Code Section 4607(c) established a confidentiality rule, Subsection (e) provides for an exception to this rule. It also stated that the Evidence Code Section 1040 makes certain information "official" and gives the "public entity a privilege to refuse to disclose it." By analogy, according to the court, the official information privilege does not preclude disclosure of information provided to the court by the mediator as an arm of the court if received pursuant to a local court rule. This case basically presents the argument that no confidentiality privilege is lost when none exists. The issue that concerned this Panel, however, is whether the integrity of the mediation process is compromised when partial or no confidentiality is promoted.

The Panel found that there are advantages to giving the mediator the power to make recommendations. The mediator can be in a good position to make an informed recommendation as to what kind of arrangement would be most acceptable and fair. A fringe benefit of this is can be that the court can save the time and expense of doing a totally separate custody investigation. If the parents are aware of the mediator's power and know that the mediator's recommendation is almost always followed by the court, they may feel less like taking the issue to court.

There are also many disadvantages in allowing mediators to make a recommendation. How a couple and their attorneys see mediation may be altered by their perception of the mediator's powers.
When the mediator is able to make recommendations to the court, the couple may try to use the mediator as a surrogate judge--presenting their case to the mediator, trying to win him or her over--rather than focusing on their own ability to resolve the problem. Divorcing parents may choose not to be candid in mediation knowing that relevant confidences revealed can be used later against them. It is also tempting for a mediator to begin evaluating a situation and directing the couple before it is clear the the parents themselves cannot resolve the conflict, and therefore result in the development of agreements with which the couple is dissatisfied.

Opponents of the mediator's making recommendations stress that both a flawed mediation and a flawed evaluation results. They argue that a mediator does not have access to all the information required to make a proper evaluation, even for a recommendation on a temporary child custody or visitation order. The mediator is making judgments about the family in a highly unusual and stressful situation. Often the person who has the most at risk acts out of character and without a sound evaluation, the mediator/evaluation may make a recommendation not in the best interest of the child. Proponents of absolute confidentiality believe that information, if required by a child custody evaluation, should be developed by an evaluation outside the mediation process and then either shared with the family in mediation or introduced at trial. Evaluations avoid compromising the mediator as a neutral third party and also avoid the announcement of a "winner" in custody hearings resulting when the mediator's recommendation is given directly to the court.

Conclusion

A majority of Panel members concluded that absolute confidentiality is consistent with the role and authority of the mediator as
a neutral third party. However, other members recommended that data should be collected which would provide the Legislature with information to determine whether the absence of a statewide policy is prejudicial to the parties and children involved in the dispute, or would contribute to greater parental satisfaction with the process, thereby achieving cost-savings to the courts and reducing relitigation rates.
Recommendation #3- EVALUATION OF CASES

Require superior courts to order a family evaluation prior to entering a final order of custody or visitation when the parties fail to reach an agreement.

Implementation

Add Subsection 4607(h) requiring superior courts to make family evaluators available and to order family evaluations when parties fail to reach an agreement in mediation. Add Subsection 9 to Section 4607 of the Civil Code requiring the Judicial Council to make recommendations to the Legislature on an appropriate funding level for establishing evaluation units. (Attachment 1, Pages 9 and 15).

Findings

This Panel recognizes that while the mediation process must remain neutral, the court must be provided additional information regarding the family in order to make a final decision on custody. Also, when parents are so hostile to one another that they cannot reach their own agreement on custody and visitation, an assessment of the family should be made in order to assure the development of a parenting plan which meets the child's psychological, emotional, and social needs. An evaluation which provides the court with relevant information on the family will also cut down on costly court proceedings.

This recommendation presumes that adequate funding for evaluation would be provided by the Legislature as a result of recommendations on funding to be made by the Judicial Council.
Recommendation #4- ROLE OF INVESTIGATORS AND EVALUATORS

In order to further clarify that the goal of mediation is to assist parents to reach a custody agreement through a neutral third party and assure that qualified court personnel are involved in the mediation process, the recommendation of this Panel is to:

1. Define the roles of mediators, investigators and evaluators;
2. Establish minimum qualifications for investigators and evaluators; and
3. Allow mediators to evaluate and investigate cases which they have not mediated, but preclude investigators from mediating or evaluating a case.

Implementation

1. Amend Civil Code Section 4602 in order to demarcate the roles and duties of mediators, investigators, evaluators, and other mental health professionals involved in mediation of child custody disputes. (Attachment 1, Pages 5-7).

2. Amend Code of Civil Procedure Section 1745, setting minimum qualifications for family evaluators which are equivalent to mediators. (Attachment 1, Pages 12 and 13).

3. Add Section 1745.1 to the Code of Civil Procedure, setting minimum qualifications for family investigators. (Attachment 1, Page 14)

4. Amend Section 1744 of the Code of Civil Procedure reflecting changes to duties of supervising counselors (Attachment 1, Pages 10-12).

Findings

The Panel agreed that in addition to the expertise that a skilled mediator has to offer, the expertise of other professionals is often necessary to fully assess the optimal parenting plan for the child or children involved in a divorce. Three types of information may be required:
1. Specific data to clarify factual disputes.

2. Evaluations to determine the optimal plan for the child's placement. These usually involve home visits, interviews, and child's assessment regarding his/her relationship to the parents, and assessment of parenting styles.

3. Mental health assessment to evaluate the psychological needs of the child and psychological capacity of the parents.

Considering the need by the court for various types of information, the questions addressed by the Panel were: 1) whether it is necessary to demarcate the differences between a child custody investigation (§4602 of the Civil Code), as opposed to mediation and evaluation; and 2) whether the current practice of permitting a mediator to investigate, mediate, and evaluate a case should be curtailed.

Subsection (b) and (e) of Civil Code Section 4607 state:

(b) Each superior court shall make available a mediator. Such mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court...

(e) ...The mediator may, in cases where the parties have not reached agreement, as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues...

The Panel found that these two subsections combined have permitted mediators to mediate a case and subsequently make an investigation or evaluation. The current practice in some counties is for the courts to send out a probation officer or other court
personnel to conduct a "Section 4602 investigation" or child custody investigation pursuant to Subsection (e). The statute uses the terms "domestic relation investigator" and "probation officer" in reference to this function, but does not define child custody investigation. Subsection (b) of Civil Code Section 4607, on the other hand, permits probation department personnel to serve as mediators. As a result, a mediator can perform the function of a child custody investigator in addition to the mediator role for the same case.

In addition to investigating the family, where the mediator is allowed to make a recommendation on child custody to the court pursuant to local rule, current practice also permits the use of mediators to evaluate families. The evaluation can range from psychological testing, if pathology is suspected, to an evaluation of family interaction and family systems. Subsequently, in some counties, the investigative and evaluation roles of the mental health professionals is undertaken by the mediator who, when mediation fails, will make a custody recommendation to the court.

The result is great diversity in the evaluator procedures statewide ranging from the person who has mediated the case subsequently making an evaluation and/or investigation to an evaluation being kept totally separate from the mediator and investigative functions. This Panel concluded that there is a need to demarcate between the fact-finding roles of an investigator, facilitator role of a mediator, and analytical role of a mental health evaluator in order to preserve the integrity of the mediation process.

Mediators must meet specified qualifications set forth in the Code of Civil Procedure §1745, but there are no standards qualifications for investigators and evaluators. The following recom-
mendment sets forth minimum qualifications for each, commensurate with the level of responsibilities. It was decided by the Panel that current practice to permit investigators to mediate should be curtailed. Consequently, the Panel concluded the qualifications of an investigator should require a Bachelor's degree in a social or behavioral science (Section 1745.1 of the Code of Civil Procedure, Attachment 1, Page 14), while the mediator and evaluator must possess a Master's degree in psychology, social work, marriage, family, and child counseling, or other behavioral science and two years experience in counseling or psychotherapy. These are the current standards. The recommendation would change current law to prevent the substitution of experience for the educational requirements. It would not be effective until 1990, thereby allowing existing mediators the time to meet the education requirements proposed. The recommendation provides the necessary flexibility to permit mediators to serve as family evaluators, but prohibits the person who has mediated a case from serving as the family evaluator for the same case. (Subsection 1745(c) of the Code of Civil Procedure, Attachment 1, Page 13).
Recommendation #5- CHANGES IN PROCEDURE

Make procedural changes in current law in order to expand access to mediation and ensure that the parents are fully informed about the terms of the custody and visitation agreement.

Implementation

Amend Civil Code Section 4607(e) and add Subsection (h) to Civil Code Section 4607 (Attachment 1, Pages 8 and 9).

Findings

In its deliberations the Panel determined that there are three procedural problems with the mediation proceedings (see Appendix 3 for description of mediation proceeding). First, in some courts such as in Ventura County, mediation is not always available prior to filing for a petition for dissolution even when parties desire to mediate a custody disagreement. In fact, some courts do not permit parties to stipulate to mediation, and do not mediate the case unless the court refers the parties to mediation. Although it is recognized that court congestion or understaffing attribute to the establishment of these policies, the Panel determined that greater access to mediation proceedings, and subsequent resolution to the dispute outside of the courts, would ultimately result in cost savings to the congested courts and would remove the dispute from the adversarial setting.

The second problem relates to unmarried litigants. Unwed parents may be prevented from participating in mediation proceedings when paternity is an issue in the proceedings. The Panel concludes that mediation should be equally available to all parties, regardless of their marital status. Since the paternity issue will ultimately be resolved by the courts, it would not harm the parties to attempt to mediate a custody or visitation agreement pending conclusion of the proceedings. The law should reflect the legislative intent not to exclude parties who want to mediate from using this system to resolve conflicts.
The third problem relates to the agreement reached. At a conference of delegates of the State Bar in September of 1986, delegates found that written agreements are not necessarily presented before the court. According to the delegates, requiring all courts to approve a written agreement would provide a realistic and practical safeguard to assure that the parties concur with the terms of any agreement that may be reported to the court by a mediator and that they understand the nature and effect of the agreement. The Panel concurs with this concept.
Recommendation #6 - MEDIATION AS AN ALTERNATIVE TO LITIGATION

The Legislature should promote mandatory mediation of child custody and visitation disputes, but conduct research which will: 1) assess the effectiveness of the court-connected mediation system in facilitating self-determination of the custody decision; 2) assess the extent to which mandatory mediation should be directive; 3) examine, through interviews with children and other research methods, the psychological effect of joint custody arrangements on the adjustment of children and the extent to which public custody mediation promotes joint custody arrangements; and 4) determine which factors contribute to parental hostilities as a result of the breakup of the marriage and how mediators can address those factors in the context of mediation.

Implementation

Request the Judicial Council to conduct research with funds accumulated for statewide coordination and implementation of mediation programs, Section 5183 of the Civil Code. (Attachment 4).

Findings

The usefulness of mediation for divorcing couples has been greatly promoted in recent years. As early as 1981, one study published by Stephen Bahr which involved California, Connecticut, Minnesota, Canada, and Australia concluded:

Although the data have limitations, their strength is that mediation has been successful under a variety of conditions in several different states and counties. Whether mediation is very brief (2 hours) or rather lengthy (12 hours), it is economically efficient, resolves some disputes that would otherwise go to trial, and appears to improve post-divorce adjustment and compliance with settlements.21

In the United States, there are over 189 alternative dispute resolution programs and over 300 providers of divorce mediation.22 Its success in resolution of divorce and custody issues has resulted in selected expansion by some courts into areas of support enforcement, juvenile delinquency, and dependency cases.23

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A. California's Mandatory Mediation Program

There are data which substantiate the effectiveness of mandatory child custody and visitation mediation in California in reducing the number of contested custody trials, achieving satisfaction by users, and reducing litigation rates and legal costs.

1. Reduction of Contested Custody Trials

Self-reporting data from the conciliation courts indicate that mediation programs are achieving success with mandatory mediation, with rates exceeding 62% partial or full agreement. Successful mediation includes partial agreements, agreements on all issues in dispute, and temporary agreements set for review at a future time. Empirical data about agreement rates is more equivocal than the self-reported method. In divorce mediation, a cross study of the rate of "settlement" has been found to be between 22% and 97%.

In addition to achieving the noted agreement rates, some counties have been successful in significantly reducing the number of contested custody trials. In the Los Angeles Superior Court, of over 43,000 divorces per year, a survey conducted in October, November, and December of 1982, indicated that 62% of all divorcing couples reached an agreement on custody and visitation on their own, 27% reached agreement with the assistance of attorneys, and 11% or approximately 4,700, were referred to public mediation. Approximately 60% of all couples had children under the age of 18. Approximately 2% of the total, or 860 divorcing couples in Los Angeles end up in court over a custody or visitation dispute. According to Hugh McIsaac, Director of the Los Angeles Conciliation Court, this represents a 75% reduction in the number of expected contested custody trials at the inception of the mediation process, i.e., 2% as opposed to 11%.
The court also achieved an estimated annual savings in 1982 of between $990,000 and $1,140,000. For Fiscal Year 1984/85, 5,043 cases were handled with a 68% agreement rate. "Amicable agreements" were reached by the parties and diverted from the judicial system.

2. Reaction of Users

Dr. Jessica Pearson conducted a study beginning in 1981 of the reactions of parents to the mediation process in Los Angeles County. Nearly 370 individuals were asked to complete a questionnaire while waiting for mediation. A three month follow-up interview and a final interview approximately 13-15 months later were also conducted. At the end of the fifteen month period, mandatory mediation continued to be favored over litigation.

a. Characteristics of Disputants

Pearson's study found that the Los Angeles Conciliation Court serves a heterogeneous population that resembles the population of Los Angeles County: about one-half Anglos, one-fourth Black and one-fourth Hispanic. The range of educational levels was diverse: about 10% had not completed high school, 20% graduated from high school but did not continue, 40% received some college or trade school education and 30% had graduated from college.

b. Perceptions About Mediation

On the average, clients reported receiving three hours of mediation and were somewhat confused about the purpose of mediation. A number believed that the goal was to produce reconciliation. Many found mediation a difficult experience, feeling nervous about dealing with the spouse, and worried that the ex-spouse would try to prove them unfit or would manipulate the mediator. Women were not as confident of receiving custody in mediation as men were.
c. Satisfaction With Process

In Pearson's study, three months following mediation, approximately 80% said they would recommend mediation to their friends and 92% favored the mandatory mediation of other custody disputes, irrespective of whether or not an agreement was reached. About 60% reported settling in mediation and about 40% considered the settlement a permanent agreement. Most of those who reached an agreement in mediation felt that they would be less pleased with a judicial award made after a court hearing. About a third reported an improved relationship with their ex-spouse as a direct result of the process. Almost 60% of those who reached an agreement in mediation, and almost one-half of those who did not, reported having joint custody.

At the final interview, nearly 70% were glad they tried mediation and a majority continued to favor mandatory mediation of child-related issues. Approximately half were "very dissatisfied" with the legal system in general, frequently complaining about the rushed and impersonal aspects of the court.

Other Benefits

Other research suggests that:

a) The ability to cooperate around parenting issues can be encouraged and enhanced by providing the parents with limited and relatively inexpensive education, counseling or skillful mediation.28

b) Successful mediation results in a reduction of attorneys' fees connected with the divorce because custody is not litigated. For example, in Pearson's study, the reduction averaged 20%, a legal fee of $2,000 was reduced to $1,630.29
c) The relitigation rate in mediated cases is lower than litigated cases. Jessica Pearson found that fifteen months after the promulgation of a final order, only 4% of the individuals who successfully mediated had filed or received a motion to modify custody or visitation. Roughly eighteen months after receiving final orders, 15% of a control group comprised of cases that proceed to full hearing and judicial determinations had begun modification proceedings. \(^{30}\) Several other studies, however, show that 15-20% of the parties returned over a 5-year interval regardless of the method used for reaching a settlement. \(^{31}\)

Conclusion

The Panel concluded that the expansion of child custody mediation has been limited by the unavailability of longitudinal studies and statewide empirical data. Dr. Pearson's studies, for example, focus on the Los Angeles Conciliation Court. The Legislature recognized the needs for such studies in 1984 when AB 2445 was passed, but such studies have not been realized. In making this recommendation, the Panel seeks to provide a focus to the Judicial Council on the research studies which should be conducted.
Recommendation §7-DOMESTIC VIOLENCE CASES

In order to promote effective mediation of agreements on parental rights and responsibilities in cases in which there is a history of domestic violence, training should be provided to mediators, judges, and other court personnel which would: 1) define the cause of domestic violence and its effect on children; 2) lead to the recognition of the personality dynamics and traits of battered spouses; 3) ensure that both parties articulate their concerns; and 4) provide guidelines for the development of agreements which are understood by the parties and can reduce the possibility of continuing violence.

Implementation

Amend §5181 (d) of the Civil Code, adding specific training requirements on the problems of domestic violence to be administered by the Judicial Council. (Attachment 3, Pages 14 and 15).

Findings

The Panel considered whether domestic violence cases should be excluded from mediation and concluded that excluding these cases from mediation would not ensure a fair settlement of the dispute. Consequently, current practice to permit mediation of these cases should continue, but training for mediators and other court personnel in the area of domestic violence should be supported. A summary of the issues considered follow.

It has been argued that California mediation laws present a dilemma and a danger to battered women and their children. The assertion is that the concept of mediation assumes an equal balance of power between two parties, and therefore, results in a negotiated resolution of a family dispute. However, for couples who come to mediation with a history of spousal abuse, the balance of power may not be an equal one. As a result, agreements made through mandatory mediation may result in an unfair settlement for the battered spouse.
A second aspect of the argument is that mediation may result in an agreement which is likely to require continuing contact between the battered spouse and the assailant spouse. This ongoing contact can set the stage for future violence, placing the battered spouse and the children in jeopardy.

A last aspect of this argument is that formats used in some counties do not adequately present the battered spouse's view.

This Panel acknowledged that mediation is difficult in cases involving domestic violence. However, the Panel concluded that excluding these cases from mediation would not ensure a fair settlement of the dispute. The only alternative is litigation, shifting the focus of the negotiations to the courts, rather than the parties, and giving the more economically capable spouse an advantage in the costly legal proceedings. Mediation, on the other hand, provides an opportunity for the battered spouse to meaningfully negotiate with the battering spouse. If it fails, litigation is still an alternative to both parties.

The Panel also concluded that mediation benefits all parents and their children by setting the stage for discussion and focusing on parenting duties and the needs of the child. Furthermore, a skilled mediator can effectively mediate a case in which domestic violence is alleged, and would recognize when, and if, such mediation should be discontinued. Finally, mediation, as opposed to litigation, is a better alternative for parents and their children. The Panel recognized that training of court personnel on the dynamics of domestic violence would benefit all families and recommends that such training be supported by the Legislature.
III. FOCUS ON THE CHILD'S BEST INTEREST

In order to remove the win/lose concept of family law proceedings, facilitate self-determination by parents on parental rights and responsibilities, establish more positive symbols in our society about families in transition, and more closely reflect the needs of the child, several changes to current law are recommended in this section.

Recommendation 18- "CUSTODY" OF THE CHILD

Current law sets forth the desired policy regarding preferences for custodial arrangements in Civil Code Sections 4600 and 4600.5 without establishing a legal preference for joint custody. The established policy is frequent and continuing contact with both parents. The Legislature should not change this policy without conducting further research on the effects on children of the various custodial arrangements. However, the Panel recommends amendments to current law relating to "custody" which would focus on the child's right to parental contact, establish simplified modification of custody, when parents agree, without the necessity of showing a change of circumstances, and encourage parents who must move from the jurisdiction to consider the best interests of the child or children involved. The Panel also recommends a sweeping change in language in order to remove negative symbols in the law about families undergoing divorce. Specifically, the terms "custody" and "visitation" would be replaced with the terms "parental rights and responsibilities."

Implementation:

1) Amend Civil Code §4600(a) to more closely reflect the needs of the child, as opposed to parents. (Attachment 3, Page 2).

2) Add Section 4600.7 to the Civil Code to establish simplified modification of parental rights and responsibilities, when they agree, without the necessity of showing a change of circumstances. (Attachment 3, Pages 9 and 10).

3) Amend Civil Code Section 4600.5 to require a parent who is removing a child from the jurisdiction to give notice to the non-moving parent permitting that parent to request modification or termination of the existing agreement on parental rights and responsibilities. (Attachment 3, Page 9, Subsection 4600.5(i)).
4) Without affecting the Uniform Child Custody Jurisdiction Act and other federal laws, replace the terms "joint, legal, physical, custody, and visitation", with terms which reflect shared parental rights and responsibilities. (Attachment 3, primarily focus on Section 4600.5, Pages 5-9).

5) Submit research questions to the Judicial Council on joint custody and encourage the review of research questions submitted by Judith Wallerstein to the Senate Family Equity Task Force. (Attachment 4).

6) Amend Section 5181 of the Civil Code to include an educational component on the meaning of Civil Code Sections 4600 and 4600.5, specifically, the meaning of legal presumptions and preferences. (Attachment 3, Pages 14 and 15).

Findings

The Panel deliberations included a lengthy discussion on whether current custody law should be changed. Specific proposals for establishing a presumption of joint custody, or other presumption were discussed including:

1) whether a clear preference or presumption of joint custody should be established since there is no statutory preference for one option over the other. Civil Code Section 4600.5 sets out joint custody as a coequal option to sole custody;

2) Whether the concepts of legal and physical custody should be replaced with language which would strengthen the parental responsibility of both parents;

3) whether Civil Code Section 4600(b) should be amended to emphasize the best interests of the child; and

4) the need for education regarding the meaning of the law.

It was decided that current custody law on preferences for certain custodial arrangements should not change without further
research on the effects on children of the various custodial arrangements. The Judicial Council should be instructed to conduct research with monies accumulated for implementation of AB 2445. It was also decided that educational programs need to be established in the court system to ensure that Sections 4600(a) and 4600.5 of the Civil Code are not interpreted as establishing a legal presumption of joint custody.

On the other hand, the consensus was that a sweeping change in language is necessary in order to remove negative symbols in the law, such as the terms "custody" and "visitation" which encourage the treatment of children as the prize of the party prevailing in court. The Panel also concluded that changes in the law must be made to give parents the greatest flexibility in making arrangements on the child's living situation without having to use specific and complicated terminology. The statutes of Maine were examined and recommended for accomplishing this change. It should be noted that numerous sections in the Civil Code, Code of Civil Procedure, Welfare and Institutions Code and Penal Code would be affected.

In order to encourage parents to focus on the children's needs, three changes to current law are necessary. First, Civil Code Section 4600(a) should be amended to focus on the child's right to parental contact. This would give children the same right of access to their parents as the parental right of access to their children. Second, the law should be changed to discourage parents from removing a child from an environment which is to the best interest of the child. Last, a simplified method for modifying parental agreements should be established to encourage parents to make their own decisions about parental responsibilities as opposed to the courts, subject to the child's best interests.
Recommendation #9-LINKING CUSTODY AND SUPPORT

Conduct a comprehensive study on issues which link child custody and visitation to child support in order to formulate a comprehensive policy on the extent to which financial considerations should be joined to the custody determination.

Implementation

Finance a study to provide the information needed. (Attachment 5, proposed bill).

Findings

There are a number of issues identified by the Panel linking custody and child support which impact the psychological, emotional, and physical stability of children, but they have not been adequately addressed by researchers nor by the Legislature.

A number of concerns were raised:

1. Current child support laws encourage bargaining over custody of the child. For example, Civil Code §4727 permits the court to consider expenses incurred and savings resulting from shared physical custody arrangements in determining the pro rata share of the mandatory minimum child support award. Shared physical custody means an arrangement in which both parents have custody of the child or children more than 30 percent of a 365-day period. The typical scenario resulting from the enactment of this law is either one of the following: a) the custodial parent wants the noncustodial parent to have the child less than 109.5 days (30% of the time), otherwise child support for that spouse could be reduced; or b) the noncustodial parent seeks custody of the child for at least 109.5 days to avoid paying child support although, in practice, the custodial parent keeps the child more than 70% of the time. In both situations, Section 4727 of the
Civil Code encourages parents to focus on support over custody.

2. It is unclear whether custody should be decided before child support in all cases.

3. The impact on all children of passing legislation which would equalize the standard of living of children upon dissolution of marriage. Consideration should be given to children born out of previous or subsequent marriages.

4. The unavailability of current data on what it costs to raise children in two separate households, as opposed to intact families (most studies focus on intact family costs).

The consensus was that these four areas should be researched further. In addition, the Legislature should declare in requesting this study that the focus shall be in the best interests of the child. This can be accomplished by adopting a principle stated in Burchard v Garay, Cal. 3d 229 C.R. 800, 729 P.2d 486 (1986) that the principal focus in determining custody is the best interests of the child, not financial considerations.
Recommendation #10-FUNDS FOR CHILD'S COUNSEL

Create a fund for the child's counsel for cases where the court determines that there are insufficient funds to pay for counsel for the child.

Implementation

Amend Section 4606 of the Civil Code to require the Judicial Council to make recommendations for the establishment of a fund for the child's counsel. (Attachment 6).

Findings

In a few cases, counsel for the child would be very helpful in protecting the rights of the child whose parents are involved in a controversy over custody. A fund for the child's counsel should be established in cases where the court determines that the parents are unable to pay for the child's counsel. A surcharge on penalties assessed against parties or counsel involved in family law proceedings is suggested.
**Recommendation #11—CONTINUOUS ACCESS TO ONE'S CHILD**

Establish a cause of action for compensatory and punitive damages against a parent who denies the other parent access to a child on a prolonged basis and permit all equitable defenses to be raised.

**Implementation**

Draft a bill establishing a cause of action for denying a parent access to her/his child. (Attachment 7).

**Findings**

Most of the Panel members concluded that the law should encourage parents to allow each other continuous access to their child or children. To accomplish this, the vigorous approach of making denial of access to one's child tortious conduct was recommended. Panel members were particularly concerned with parents who, contrary to the child's best interest, deny the other parent access to a child on a prolonged basis or intentionally conceal the existence of a child but later seek child support for the child. Legislation should target these parents.

The following Panel Members did not concur or abstained: Commissioner Manly Calof, Abby Franklin, Hugh McIsaac, Wayne Couvillion, Honorable Donald King and Honorable John Woolley.
Recommendation #12 - RETROACTIVE CHILD SUPPORT

Support legislation which would allow a court to award retroactive child support to the date of birth of a child and permit equitable defenses to be raised. (Attachment 8)

Implementation

Propose amendments to legislation introduced last year which would make equitable defenses apply and which would estop a parent from recovering for periods of time in which he/she intentionally concealed a child or unjustifiably avoided contact with the parent to pay child support.

Findings

After much deliberation, the Panel found that legislation which would allow a court to award retroactive child support from birth should be supported. It was pointed out that many fathers avoid the child support obligation by disappearing until the child has almost reached the age of majority. As a result, they avoid their parental obligation to support the child. Washington's law was proposed as model legislation.

Panel Members Gerald Silver, Fern Salka and James Cook opposed this recommendation.
Recommendation #13-POST DIVORCE COUNSELING INSURANCE

Changes to current law should be made to help provide insurance coverage for counseling services or other family therapy for children and parents following dissolution of a marriage. Specifically, all forms of health coverage should offer group subscribers the option of coverage for post-dissolution counseling for families with children under eighteen. The counseling would be for a minimum period of six months.

Implementation

1. Amend Section 10125 of the Insurance Code to require that all disability insurers offer group policyholders six months of post-dissolution counseling for families with children under eighteen.

2. Amend Section 11512.5 of the Insurance Code to require that all nonprofit hospital plans offer group contract holders six months of post-dissolution counseling for families with children under eighteen.

3. Amend Section 10127 of the Insurance Code to require that all self-insured employee welfare benefit plans offer members six months of post-dissolution counseling for families with children under eighteen.

4. Amend Section 1373 of the Health and Safety Code to require that all health care service plans offer group contract holders six months of post-dissolution counseling for families with children under eighteen.

(See Attachment 9 for proposed text of law).

Findings

The Advisory Panel discussed the fact that many families including the children are in need of family or individual counseling to assist them in making the transition following the dissolution of a marriage. Despite referrals made by the Family Court, many families are unable to utilize counseling services because of lack of resources. Most health coverage which includes mental health services only covers treatment for mental illness not situational problems such as those engendered by divorce.
Studies cited by Panel members indicate that children are more negatively affected by the dysfunctional parental relationship than by the divorce itself. The Panel found that increased access to counseling would prove beneficial to alleviate children's difficulties in adjustment to the post-dissolution situation.
IV. OTHER ACTION BY THE LEGISLATURE

Recommendation §14- REGULATION OF MEDIATORS

Request that the Senate Business and Professions Committee, or another committee, hold hearings on the feasibility of regulating family mediators through one of several methods for regulating professional services such as licensing, certification, or establishment of a registry of mediators.

Implementation
Submit a request to the appropriate committee.

Findings

Current law gives the public the option to mediate child custody and visitation conflicts through private nonregulated mediation or public court-connected mediation. Public mediators must meet specified requirements, set forth in Civil Procedure Section 1745. After six years' experience with mandatory mediation of child custody disputes, it is necessary to determine whether the public would best be served by regulation of both public and private mediation at this time. Several factors contributed to this determination.

First, the emergence of custody mediation in the public and private sectors requires a complete assessment of the educational and experience necessary for providing the service effectively and assuring protection of the public interest. California and three other states, Connecticut, Nevada, and Oregon, currently regulate the qualifications of mediators in the public sector. The Florida State Legislature considered legislation establishing a licensing process for mediators, but this legislation did not pass.

There is consensus by the Panel that current legislation provides for threshold requirements for public mediators, but private
mediators are not bound by the statutory requirements. In addition, the courts can monitor the effectiveness of their mediation programs, but there is no way to determine whether mediation outside the courts is resulting in effective mediation.

Second, unresolved questions remain about the content, prerequisites, and curriculum of an educational program for mediators. Regulation insuring that all mediators meet these requirements could assist in the professional development of mediation. The Panel has partially addressed this concern by recommending that the Judicial Council convene an interdisciplinary advisory group to develop a graduate program which would lead to a certificate in child custody mediation.

It has been argued that the regulation of mediators can create recruitment difficulties for smaller counties, result in the payment of higher salaries, reduce competition, and restrict entry into the profession. These factors should be discussed in a setting where the benefits to the public of regulating child custody mediators can be considered and weighed against potential disadvantages.
Recommendation #15- SENATE OFFICE OF RESEARCH STUDY

Request the Senate Office of Research to conduct a study on the feasibility of establishing: 1) a pilot program offering a wide range of professional services to families going through divorce including therapy for crisis intervention, mediation of disputed child custody and financial issues, spousal and child support determination and enforcement, methods of dividing property, the legal and tax consequences of divorce, and valuation of property or 2) an Office of Support Determination and Enforcement countywide. The results of the study would be provided by December 31, 1988, and include recommendations for legislation.

Implementation

Submit a request to the Senate Office of Research.

Findings

There was consensus that a comprehensive support services program is necessary in every county in order to address the psychological, financial, and social problems faced by families going through a divorce. Currently, families are only provided limited child custody and visitation mediation services. On the average, a family receives two to six hours of mediation services. The Panel's conclusion was that a feasibility study must first be conducted in order to determine the type of services which need to be offered, federal mandates for such services, and the costs of setting up a program.

There was particular concern for timely and inexpensive determination and modification of support orders for parents who are going through divorce or who are returning for post-judgment modification. The feasibility study would include recommendations on whether an Office of Support Determination and Enforcement should be established in every county, recommendations on the type of administrative system which would have to be set up in order to determine and modify support awards, the extent to which computerized data system could be used to make
the initial determination and adjustments, establishment of an appeal process if an administrative system is proposed, and a funding mechanism.
HEADNOTES


5. Of the 33 responding counties to the SOR Survey, 19 had data for Fiscal Year 1984/85 on the number of cases entering mediation and were "successfully" mediated. The question was general and yielded various results. (Alameda 80%, Alpine-no cases mediated, Los Angeles 3,434/68.1%, Plumas 31/68.9%, Riverside 1,427/75.0%, Sacramento 924/63.2%, San Bernardino 1,085/63%, San Francisco 447/100%, San Joaquin 523/90.3%, San Luis Obispo 282/74.2%, Santa Barbara 315/70%, Santa Clara 802/61.5%, Santa Cruz 224/75.2%, Siskiyou 91/68.9%, Sonoma 793/72.1%, Stanislaus 351/73.9%, Trinity 9/64.3%, Tuolumne 443/67.0%, and Ventura 75/80%).


Survey data and follow-up phone calls to conciliation courts indicated that only the counties of Alpine, Amador, Calaveras, Del Norte, Lake, Lassen, Mariposa, Merced, Nevada, San Benito, Santa Cruz, Shasta, Stanislaus, Trinity, and Yuba contract for mediation services.

9. SOR Survey.

10. Ibid.


14. SOR Survey results for Fiscal Year 1984/85 and Population Estimates of California Cities and Counties, Department of Finance, January 1, 1986 indicate: Los Angeles county had a population of 8,155,300 and mediated 5,043 cases with 21.0 full-time staff, Alameda county had population of 1,208,200 and handled 1,166 cases with 18.0 full-time staff, San Bernardino had a population of 1,110,500 and handled 1,723 cases with 6.0 full-time staff and Santa Clara had a population of 1,403,100 and handled 1,305 cases with 10.0 mediators. Alameda, San Bernardino and Santa Clara counties combine mediation and investigation/evaluation.

In addition to the fifteen contracting counties, Alpine, Modoc and Plumas had less than one full-time staff person.

15. SOR Survey.

16. Ibid.


18. Interviews of Honorable Melinda Johnson, Superior Court, Ventura and Honorable Rodney Davis, Superior Court, Sacramento.

20. McIsaac, Hugh, "Confidentiality: An Exploration of Issues." Article provided by Mr. McIsaac, p. 60.


24. SOR Survey.


27. Pearson and Thoennes, Final Report, Chapter 4, pp. 16-22.


30. Ibid, at p. 509.


## MEDIATION STATISTICS

### Fiscal Year 1984/85

<table>
<thead>
<tr>
<th>COUNTY</th>
<th>Population</th>
<th>Total Family Law Filings</th>
<th>Cases Entering Mediation</th>
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2. Denotes family law filings for Fiscal Year 1984/85, Judicial Council 1986 Report to the Governor and Legislature, January 1, 1986, Table T-17. Total filings were 164,652. Extrapolating data, a total of 31,290 cases entered mediation that year, (19.0% x 164,652).

3. Self-reporting data by various counties.

4. Percent of total family law filings.
## COMMISSION OF STATE MANDATES

**COST/ESTIMATE AMOUNTS**

**CHAPTER 46, STATUTES OF 1986**

**MARRIAGE MEDIATOR PROGRAM**

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**TOTAL 23 counties 18,971,300**

**TOTAL Projected**

(for 100% of population)

*Denotes 71% of the total state population. Figures are current as of 1/1/86, and are taken from the Department of Finance, Population Research Unit, "Population Estimates of California Cities and Counties".
MEDIATION PROCESS

The mediation process can be initiated through Order to Show Cause (OSC) proceedings, daily calendar calls, or stipulations to mediate. In Los Angeles County, cases are routinely flagged when parties petition for dissolution or separation and a Confidential Counseling Statement is reviewed. If the Statement reveals that a child under the age of 18 is involved, the parties are sent two pamphlets describing mediation services and other information. The parties respond by filing a petition for Conciliation. If they do so, the full conciliation process is put into motion. If parties do not respond, couples have a second opportunity to mediate at the daily "call of the calendar." A judge will inform couples and their attorneys that all custody and visitation disputants must proceed to the Conciliation Court. When one does not show up for mediation, the conciliation court can subpoena the party. Stipulated cases today account for approximately a third of mediated cases in Los Angeles county. Other counties do not permit parties to stipulate.

The mediation session generally begins with an orientation which can include a discussion of the court services and viewing of a videotape discussing the developmental needs of children and how families may best help their children during the divorce process. While families observe the tape, attorneys may meet with the mediator. Joint or separate interviews with the parents follow. Young children and other third parties are not routinely seen by mediators. Children over five, however, are often interviewed.

The purpose of the session is to work out an agreement between the parties, if possible. Some counties have the attorneys or mediators draft a written agreement, but agreements are not always reduced to writing. If a case is not resolved in mediation, a report may or may not be made to the court. The entire session lasts approximately two hours but may require up to six sessions.
An act to amend Section 4351.5, 4602, and 4607 of, and to add Section 4607.1 to, the Civil Code, and to amend Section 1744, 1745, and 1745.5 of, and to add Section 1745.1 to, the Code of Civil Procedure, relating to family law.
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4351.5 of the Civil Code is amended to read:

4351.5. (a) Notwithstanding the provisions of Section 4351, in proceedings under Sections 4450 and 4503, the superior court has jurisdiction to award reasonable visitation rights to a person who is a party to the marriage that is the subject of the proceeding with respect to a minor child of the other party to the marriage, if visitation by that person is determined to be in the best interests of the minor child.

(b) Notwithstanding any other provision of law, in proceedings under Sections 4450 and 4503, the superior court has jurisdiction pursuant to Section 4601 to award reasonable visitation rights to a person who is a grandparent of a minor child of a party to the marriage, if visitation by that person is determined to be in the best interests of the minor child.

(c) If a stepparent or grandparent has petitioned or otherwise applied for an order of reasonable visitation rights pursuant to this section, the court shall set the matter of visitation rights for mediation. The purpose of the mediation proceeding shall be to effect a settlement of the issue of visitation rights of all parties that is in the best interests of the child. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(d) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.
(e) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child involved in the controversy and shall be entitled to interview the child when the mediator deems that the interview is appropriate or necessary.

(f) The mediator may, consistent with local court rules, render a recommendation to the court as to the visitation of the child. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation shall be conducted pursuant to Section 4602, or that action shall be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders shall be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy. Any agreement reached by the parties as a result of the mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court as soon thereafter as practical, but prior to its being reported to the court. The terms of any agreement shall be limited to the resolution of issues relating to parental rights and responsibilities. No agreement shall be confirmed or otherwise made an order of the court unless each party, in person or by his or her attorney, has affirmed and assented to the agreement in open court or by written stipulation. An agreement also may be so confirmed or incorporated if a party fails to appear at a noticed hearing on the issue involved in the agreement.
(g) A natural or adoptive parent who is not a party to the proceeding shall not be required to participate in the mediation proceedings; however, failure to participate shall be a waiver of that parent's right to object to any settlement reached by the other parties during mediation or to require a hearing on the matter.

(h) If the issue of visitation rights of all parties is not settled by agreement of all parties who participate in mediation, the mediator shall so inform the court in writing and the court shall set the matter of visitation rights for hearing. Each natural or adoptive parent and the stepparent or grandparent seeking visitation rights shall be given an opportunity to appear and be heard on that issue.

(i) Notice of mediation and of any hearing to be held pursuant to this section shall be given to the stepparent or grandparent seeking visitation rights, to each of the parents of the child, and to the counsel of record of each of the parents in any proceeding under Section 4450 or 4503 with regard to their marriage. The notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address of each of the parents and his or her counsel.

(j) Any visitation right granted to a stepparent or grandparent pursuant to this section shall not conflict with any visitation or custodial right of a natural or adoptive parent who is not a party to the proceeding.

(k) There shall be a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interests of a minor child if the parties to the marriage agree that the grandparent should not be awarded visitation rights.

(l) In making an award of visitation pursuant to this section, if an order has been directed to a stepparent or grandparent pursuant to paragraph (2), (3), or (6) of subdivision (a)
of Section 4359 or Section 7020 and 7021 of this code, or Section 546 or 547 of the Code of Civil Procedure, during the pendency of the proceeding, the court shall consider whether the best interests of the child require that any visitation by that stepparent or grandparent should be denied.

SEC. 2. Section 4602 of the Civil Code is amended to read:

4602. (a) In any proceeding under this part, when so directed by the court, the probation officer or domestic relations a family investigator meeting the qualifications of Section 1745.1 of the Code of Civil Procedure shall conduct a custody field investigation of the family's living situation and file a written confidential report on it. The report may be considered by the court and shall be made available only to the parties or their attorneys at least 10 days before any hearing regarding the custody of parental rights and responsibilities concerning a child. The report may be received in evidence upon stipulation of all interested parties.

The investigator shall visit the household or households, if the parents live separately, and compile a report. The field investigation report shall include, but not be limited to, a general description of family life, including, but not limited to, basic household demographics, chronology of household composition and residence location, relations with relatives and neighbors, school reports, and physical and mental health records of the child or children. The report shall not contain recommendations for the allocation of parental rights and responsibilities.

(b) If the parties fail to reach agreement on the allocation of parental rights and responsibilities, the court, prior to any final hearing, shall order an evaluation by a family evaluator meeting the qualifications of Section 1745 of the Code of Civil Procedure. The family evaluator shall conduct an evaluation and make recommendations to the court for the allocation of parental
rights and responsibilities following dissolution of the marriage. The evaluator shall recommend the allocation of parental rights and responsibilities to best meet the emotional, educational, and other needs of the child and to safeguard the child's right to continuing contact with both parents subject to Section 4608.

At the discretion of the court, the family evaluator may also conduct the field investigation described in subdivision (a).

(c) In addition to the family evaluation, the court, in its discretion, may order additional medical, psychological, or psychiatric evaluations of the child or parents.

(d) When the probation officer or domestic relations family investigator or family evaluator is directed by the court to conduct a custody parental rights and responsibilities investigation or to undertake visitations work, including necessary evaluations, supervision, and reporting, the court shall make inquiry into the financial condition of the parent, guardian, or such other person charged with the support and maintenance of the minor, and if the court finds the parent, guardian, or other person able, in whole or in part, to pay the expense of the investigation, report, and recommendation, the court may make an order requiring that parent, guardian, or other person to repay to the county that part, or all, of the expense of investigation, report, and recommendation as, in the opinion of the court, is proper. The repayment shall be made to the county officer designated by the board of supervisors, who shall keep suitable accounts of these expenses and repayments and shall deposit these collections in the county treasury.

(e) Nothing in this section shall prohibit the probation officer or domestic relations family investigator or family evaluator from recommending to the court that counsel be appointed pursuant to Section 4606 to represent the minor child or children. In making any recommendation, the probation officer or
domestic relations family investigator or family evaluator shall inform the court of the reasons why it would be in the best interests of the minor child or children to have counsel appointed.

SEC. 3. Section 4607 of the Civil Code is amended to read:
4607. (a) In any proceeding where there is at issue the custody of parental rights and responsibilities concerning or visitation of a minor child are an issue, and where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of determination of parental rights and responsibilities or parental contact with a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1, or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of such the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute concerning parental rights and responsibilities or parental contact that is in the best interests of the child or children, pursuant to Section 4608.

(b) Each superior court shall make available a mediator. Such The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.
(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems such interview appropriate or necessary.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation or family evaluation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. No person may serve as a family evaluator in a case that he or she has mediated. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the controversy, to protect the well-being of the children involved in the dispute. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court as soon thereafter as practical, but prior to its being reported to the court. The terms of any agreement shall be limited to the resolution of issues relating to parental rights and responsibilities. No agreement shall be confirmed or otherwise incor-
porated in an order of the court unless each party, in person or by his or her attorney, has affirmed and assented to the agreement in open court or by written stipulation. An agreement also may be so confirmed or incorporated if a party fails to appear at a noticed hearing on the issue involved in the agreement.

(f) Nothing in this section shall prohibit the mediator from recommending to the court that counsel be appointed pursuant to Section 4606 to represent the minor child or children. In making any recommendation, the mediator shall inform the court of the reasons why it would be in the best interests of the minor child or children to have counsel appointed.

(g) By January 1, 1989, each superior court shall appoint a family evaluator to make recommendations to the court concerning the allocation of parental rights and responsibilities. If the parties fail to reach agreement on the allocation of parental rights and responsibilities, the court, prior to any final hearing, shall order a family evaluation pursuant to subdivision (b) of Section 4602. In no instance shall a person who has mediated a case serve as the family evaluator for that case.

(h) Notwithstanding subdivision (a), in counties with a population of 500,000 or more, a dispute relating to parental rights and responsibilities or visitation with a minor child shall be set for mediation of the contested issues prior to the filing of a petition for dissolution or legal separation. The parties may stipulate to mediation or either party may file a petition for mediation. A petition for mediation of a dispute concerning an existing parental rights and responsibilities agreement shall be set for mediation of the contested matters prior to the hearing on the matter. The court shall set the matter for mediation pursuant to this part, and shall not deny a party participation in mediation on the basis that paternity is an issue in a proceeding before the court. The conciliation court in any such county also shall establish an educational
program informing parents of the ongoing availability of these services.

SEC. 4. Section 4607.1 is added to the Civil Code, to read:

4607.1 The Legislature finds and declares that the mediation of cases involving rights and responsibilities concerning children should be governed by uniform standards of practice, which shall be promulgated by the Judicial Council. The standards of practice shall include, but not be limited to, all of the following:

(a) Provision for the best interests of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents.

(b) Facilitation of the transition of the family by developing a comprehensive child care plan and detailing factors to be considered in decisions concerning the child's future.

(c) The conducting of negotiations in such a way as to equalize power relationships between the parties.

(d) Assurance of the confidentiality of the mediation session.

In promulgating the standards of practice, the Judicial Council shall consider standards developed by the California Society for Clinical Social Work and other relevant standards governing mediation of proceedings for the dissolution of marriage. The Judicial Council shall adopt the standards by January 1, 1989, and at that time, shall offer training with respect to the standards to mediators.

SEC. 5. Section 1744 of the Code of Civil Procedure is amended to read:

1744. In each county in which a family conciliation court is established, or in which counties have by contract established joint family conciliation court services, the superior court, or the superior courts in contracting counties jointly may appoint one supervising counselor of conciliation and one secretary to
assist the family conciliation court in disposing of its business and carrying out its functions.

The supervising counselor of conciliation so appointed shall have the power to:

(a) Hold conciliations conferences with parties to, and hearings in proceedings under this chapter, and make recommendations concerning such those proceedings to the judge of the family conciliation court.

(b) Provide such supervision in connection with the exercise of his jurisdiction as the judge of the family conciliation court may direct.

(c) Cause such reports to be made, such statistics to be compiled and such records to be kept as the judge of the family conciliation court may direct.

(d) Hold such hearings in all family conciliation court cases as may be require by the judge of the family conciliation court, and make such investigations as may be required by the court to carry out the intent of this chapter.

(e) Make recommendations relating to preage marriages.

(f) Make investigations, reports and recommendations as provided in Section 281 of the Welfare and Institutions Code under the authority provided the probation officer in such code.

(g) Act as domestic relations cases a family investigator.

(h) Conduct mediation of child custody and visitation disputes.

(i) Conduct family evaluations and make custody recommendations pursuant to Section 4602 of the Civil Code.

The superior court, or contracting superior courts, may also appoint, with the consent of the board of supervisors, such associate counselors of conciliation and other office assistants as may be necessary to assist the family conciliation court in disposing of its business. Such The associate counselors shall carry out their duties under the supervision of the supervising
counselor of conciliation and shall have the powers of the supervising counselor of conciliation. Office assistants shall work under the supervision and direction of the supervising counselor of conciliation.

The classification and salaries of persons appointed under this section shall be determined by the board of supervisors of the county which by contract has the responsibility to administer funds of the joint family conciliation court service, or by the board of supervisors of the county in which a noncontracting family conciliation court operates.

SEC. 6. Section 1745 of the Code of Civil Procedure is amended to read:

1745. (a) Any person employed as a supervising counselor of conciliation or as an associate counselor of conciliation on or after January 1, 1988, shall have all of the following minimum qualifications:

(1) A masters degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships.

(2) At least two years' experience in counseling or psychotherapy, or family mediation, or both all of these, preferably in a setting related to the areas of responsibility of the family conciliation court and with the ethnic population to be served.

(3) Knowledge in all of the following areas:

(A) Knowledge of the court system of California and the procedures used in family law cases.

(B) Knowledge of other resources in the community to which clients can be referred for assistance Mental health, social service, mediation, and legal referral sources.
(C) Knowledge of adult Adult psychopathology and the psychology of families.

(D) Knowledge of child Child development, child abuse, clinical issues relating to children, the effects of divorce on children, the effects of domestic violence on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children make referrals for mental health services for children.

(b) The family conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience required under subdivision (a).

(c) The provisions of this section shall be set by all counselors of conciliation not later than January 1, 1984. This section does not apply to any supervising counselor of conciliation who is in office on the effective date of this section.

(b) On and after January 1, 1990, no person shall be employed by a family conciliation court as a supervising or associate counselor of conciliation who fails to meet the standards specified in this section unless the person was employed as a supervising or associate counselor of conciliation prior to January 1, 1988, and is making documented progress toward completing the degree requirements of subdivision (a).

(c) By January 1, 1989, each superior court shall appoint a family evaluator to conduct an evaluation and make recommendations to the court for the allocation of parental rights and responsibilities pursuant to Section 4602 of the Civil Code. Persons employed as mediators may serve as family evaluators; however, in no case shall the same person who has mediated a disputed child custody case serve as the family evaluator for that case.
SEC. 7. Section 1745.1 is added to the Code of Civil Procedure, to read:

1745.1. On and after January 1, 1988, all persons employed as family investigators to conduct field investigations pursuant to subdivision (a) of Section 4602 of the Civil Code shall have all of the following qualifications:

(a) A bachelors degree in a social or behavioral science.
(b) Training or coursework in family systems, child development, spousal and child abuse, and child sexual abuse.

SEC. 8. Section 1745.5 of the Code of Civil Procedure is amended to read:

1745.5. (a) Supervising and associate counselors and mediators described in subdivision (b) of Section 4607 of the Civil Code and family investigators and evaluators described in Section 4602 of the Civil Code shall participate in such programs of contributing instruction in domestic violence, including child abuse, as may be arranged and provided to them. This training may utilize domestic violence training programs conducted by nonprofit community organizations with an expertise in domestic violence issues.

(b) Areas of instruction shall include, but are not limited to, the following:

(1) The effects of domestic violence on children.
(2) The nature and extent of domestic violence.
(3) The social and family dynamics of domestic violence.
(4) Techniques for identifying and assisting families affected by domestic violence.
(5) Interviewing, documentation, and appropriate recommendations for families affected by domestic violence.
(6) The legal rights of, and remedies available to, victims.
(7) Availability of community and legal domestic violence resources.
(c) The Judicial Council shall solicit the assistance of community organizations concerned with domestic violence, and shall seek to develop a training program that will maximize coordination between conciliation courts and local agencies concerned with domestic violence.

SEC. 9. The Judicial Council shall study and make recommendations to the Legislature by July 1, 1988, as to an appropriate funding level for establishing both of the following units in superior courts in which they do not currently exist:

(a) Separate parental rights and responsibilities evaluation units.

(b) Separate child custody evaluation units.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.
A STUDY RELATING TO CONFIDENTIALITY
AND MEDIATION
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that under current law child custody and visitation mediation proceeding shall be held in private and shall be confidential, and that depending on local court rules, a recommendation by the mediator following mediation as to the custody or visitation of the child or children may or may not be made to the courts.

In this regard, the Legislature finds that, current mediation law established a rule of complete confidentiality, and at the same time, created a broad exception which allows mediators to disclose to the courts information provided in mediation by the parents.

The Legislature further finds that the role and authority of a mediator in the context of a mediation session varies widely depending on whether the court permits the mediator to render a recommendation with respect to child custody and visitation.

The Legislature also finds that it does not have sufficient information to formulate a policy establishing that child custody and visitation mediation should be completely confidential on a statewide basis.

Therefore, it is the intent of the Legislature in this act to provide for a study that will supply it with the information necessary to determine whether such a policy should be established.

SEC. 2 Section 5181 of the Civil Code is amended to read:

5181. The Judicial Council shall do all of the following:
(a) Assist the counties in implementing Section 3451.5 and 4607.

(b) Establish and implement a uniform statistical reporting system relating to actions brought pursuant to this part, including, but not limited to, a custody disposition survey.

(c) Administer a program of grants to public and private agencies submitting proposals for research, study, and demonstration projects in the area of family law, including, but not limited to, all of the following:
   (1) The development of conciliation and mediation and other newer dispute resolution techniques, particularly as they relate to child custody and to avoidance of litigation.
   (2) The establishment of criteria to insure that a child support order is adequate.
   (3) The development of methods to insure that a child support order is paid.
   (4) The study of feasibility and desirability of guidelines to assist judges in making custody decisions.

(d) Administer a program for the training of court personnel involved in family law proceedings, which shall be available to the court personnel and which shall be totally funded from funds specified in Section 5183.

(e) Conduct a study on whether establishment of absolute confidentiality on a statewide basis would further the best interests of the child and promote the integrity of the mediation process which shall be submitted to the
Legislature on or before December 31, 1989. The study shall include, but shall not be limited to, all of the following:

(1) A determination as to whether confidentiality is a significant factor which contributes to parental satisfaction with the mediation process.

(2) A determination on whether the use of complete confidentiality by the courts, as opposed to nonconfidentiality, results in greater promotion of child custody and visitation settlements and cost-savings to the courts.

(3) A determination as to whether information provided to the courts as part of a mediator's recommendation on child custody or visitation is prejudicial to the parties and children involved in the dispute.
An act to:

1. Amend Sections 4600, 4600.5, and 5181 of the Civil Code;

2. Add Section 4600.7 to the Civil Code; and

3. Amend Section 4600.1, 4601.5, 4603, 5150, and 5151 of the Civil Code and other applicable sections, substituting the terms "custody and visitation" with the terms "parental rights and responsibilities".
Sections 4600, 4600.1, 4600.5, 4600.6, 4601, 5150, 5151, and 5181 are amended to read:

TITLE 4: CUSTODY OF CHILDREN PARENTAL RIGHTS AND RESPONSIBILITIES

§ 4600. Legislative findings and declarations; custody parental rights and responsibilities order; preferences; findings; allegations; hearing; exclusion of public

(a) The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The Legislature further declares that minor children have the right to frequent and continuing parental involvement with both of their parents and that a decision regarding parental rights and responsibilities made by the court with the assistance of court personnel shall assure the right of access to the extent reasonably feasible, subject to the provisions of §4608.

In any proceeding where there is at issue the custody parental rights and responsibilities of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody parental rights and responsibilities of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody parental rights and responsibilities, the court shall consider and give due weight to the wishes of the child in making an award of custody parental rights and responsibilities or any modification thereof pursuant to Section 4600.7. In determining the person or persons to whom custody parental rights and
responsibilities should be awarded under paragraph (2) or (3) of subdivision (b), the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

(b) custody parental rights and responsibilities should be awarded in the following order of preference according to the best interests of the child pursuant to Section 4608:

(1) To both parents jointly pursuant to Section 4600.5 or to either parent pursuant to Section 4600.5. In making an order for custody parental rights and responsibilities to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian caretaker because of that parent's sex.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody parental rights and responsibilities order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(c) Before the court makes any order awarding custody parental rights and responsibilities to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody parental rights and responsibilities to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody
parental rights and responsibilities would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

§4600.1. Petition for a temporary custody parental rights and responsibilities order; filing; agreement or understanding on custody parental rights and responsibilities; order; resetting of hearing date and extension of order if responding party avoiding jurisdiction.

(a) In any proceeding under Title 2 (commencing with Section 4400) or Title 3 (commencing with Section 4500) where there are minor children of the marriage, and in any action for exclusive custody parental rights and responsibilities] under Section 4603, a petition for a temporary custody parental rights and responsibilities order containing the statement required by Section 5158 may be included with the initial filing of the petition or action or may be filed at any time thereafter.

(b) If the parties have agreed to or reached an understanding on the custody parental rights and responsibilities or temporary custody parental rights and responsibilities of their children, a copy of the agreement or an affidavit as to their understanding shall be attached to the petition or action. As promptly as possible after this filing, the court shall, except in exceptional circumstances, enter an order awarding temporary custody parental rights and responsibilities in accordance with the agreement or understanding, or in accordance with any stipulation of the parties.

(c) In the absence of an agreement, understanding, or stipulation, the court may, if jurisdiction is appropriate, enter an ex parte order, set a hearing date within 20 days, and issue and order to show cause on the responding party. If the responding
party does not appear or respond within the time set, the temporary order may be extended as necessary, pending the termination of the proceedings.

(d) If, despite good faith efforts, service of the ex parte order and order to show cause has not been effected in a timely fashion and there is reason to believe, based on an affidavit, or other manner of proof made under penalty of perjury, by the petitioner, that the responding party has possession of the minor child or children and seeks to avoid the jurisdiction of the court or is concealing the whereabouts of the child or children, then the hearing date may be reset and the ex parte order extended up to an additional 90 days. After service has been effected, either party may request ex parte that the hearing date be advanced or the ex parte order be dissolved or modified.

§4600.5. Joint custody shared parental rights and responsibilities; agreement of or application by parents; statement of reasons for grant or denial; definitions; orders of joint shared parental rights and responsibilities legal or physical custody; contents; modification or termination; parental access to records.

(a) There shall be a presumption, affecting the burden of proof, that joint custody is shared parental rights and responsibilities are in the best interests of a minor child, subject to Section 4608 where the parents have agreed to an award of joint custody shared parental rights and responsibilities or so agree in open court at a hearing for the purpose of determining the custody [parental rights and responsibilities] of a minor child of the marriage.

(b) Upon the application of either parent, joint custody shared parental rights and responsibilities may be awarded in the discretion of the court in other cases, subject to provisions of
Section 4608. For the purpose of assisting the court in making a determination whether an award of joint custody shared parental rights and responsibilities is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to Section 4602.

(c) Whenever a request for joint custody shared parental rights and responsibilities is granted or denied, the court, upon the request of any party, shall state in its decision the reasons for granting or denying the request. A statement that joint physical custody is, or is not, shared parental rights and responsibilities are, or are not, in the best interests of the child shall not be sufficient to meet the requirements of this subdivision.

(d) For the purposes of this part:

(1) "Joint custody means joint physical custody and joint physical custody;"

(2) "Sole physical custody" means that a child shall reside with and under the supervision of one parent, subject to the power of the court to order visitation;

(3) "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents;

(4) "Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child;

(e) In making an order of joint legal custody the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone
may exercise legal control of the child. An order of joint legal custody shall not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court.

(f) In making an order of joint physical custody, the court shall specify the right of each parent to the physical control of the child in sufficient detail to enable a parent deprived of that control to implement laws for relief of child snatching and kidnapping.

(g) In making an order for custody with respect to both parents, the court may award joint legal custody without awarding joint physical custody.

(a) "Shared parental rights and responsibilities" means that responsibilities for most or all aspects of the child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities and both parents must confer and make joint decisions regarding the child's welfare. Responsibilities shall be divided exclusively or proportionately. Aspects of a child's welfare for which responsibility may be divided include primary physical residence, parent-child contact, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities, except support. A parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that regard.

(b) "Sole parental rights and responsibilities" means that one parent is granted exclusive parental rights and responsibilities with respect to most or all aspects of a child's welfare.

(d) In making an order under this part, the court shall specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.
(i) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order. Moved to §4600.7(c)

(f) (e) In making an order of joint physical custody shared parental rights and responsibilities, the court shall specify with sufficient detail to enable a parent deprived of that central contact with the child to implement laws for relief of child snatching and kidnapping.

(f) (f) Any order for the custody parental rights and responsibilities of a minor child of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody shared parental rights and responsibilities in accordance with the provisions of this section.

(g) (k) In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody parental rights and responsibilities order or to resolve any controversy which has arisen in the implementation of a plan for custody parental rights and responsibilities.

(h) (l) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent.
(i) In making an order for parental rights and responsibilities with respect to both parents, the court shall specify that notice must be given to a parent when the child will be removed from the original Superior Court of jurisdiction, for more than 30 days by either parent, unless there is prior written agreement or court approval. The notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address of the parent to be notified and his or her counsel, prior to the contemplated move, to the extent feasible, and within a reasonable time so as to allow for the mediation of a new agreement of parental rights and responsibilities. Failure to provide such notice willfully or without due diligence shall be a cause for modification or termination of the parental rights and responsibilities award pursuant to the requirements of §4600.7.

§4600.6. Sole contested issue or order for separate trial on issue; preference for trial date

(a) In any case in which a contested issue of custody parental rights and responsibilities over a minor child is the sole contested issue, the case shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date and shall be given an early hearing.

(b) In any case in which there is more than one contested issue and one of the issues if of the custody of parental rights and responsibilities to a minor child, the court, as to the given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date.

Add new section, Civil Code §4600.7.
§4600.7. (a) It is the intention of the legislature in enacting this section to provide a simplified method for the modification or termination order of parental rights and responsibilities when parents agree, subject to the provisions of §4608.

(b) A petition to modify or terminate an order specifying parental rights and responsibilities concerning a child may be filed with the court at any time subsequent to the entry of a previous order specifying parental rights and responsibilities to a child by either parent without the necessity of a showing of change of circumstances or by the court's own motion if it is shown that the best interests of the child require modification or termination of the order.

(1) If the terms of modification or termination are contested by either parent, the court shall set the matter for mediation pursuant to Section 4607. If no agreement is reached through mediation, the court shall set the matter for hearing and enter an order pursuant to Section 4600.

(2) If both parents agree to the terms of modification or termination, the court shall modify or terminate the order unless the court finds that such modification or termination would be detrimental to the child.

§4601. Parental contact and visitation rights

In making an order pursuant to Section 4600.5., the court shall make a determination that close and continuing contact reasonable visitation rights shall be awarded to a parent unless it is shown that such visitation contact would be detrimental to the best interests of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.
§4601.5. Parental contact visitation limited to situations in which third person is present; best interest of child; considerations

In making an award authorizing parental contact visitation pursuant to Section 4601, if an order has been directed to a parent pursuant to paragraph (2), (3), or (6) of subdivision (a) of Section 4359 during the pendency of the proceeding or pursuant to Section 4516, the court shall consider whether the best interests of the child require that any parental contact or visitation granted to that parent shall be limited to situations in which a third person, specified by the court, is present. The court shall include a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order in its deliberations.

A parent may submit the name of the person that he or she deems suitable to be present during visitation to parental contact in the court.

§4603. Action for exclusive custody Exclusive parental rights and responsibilities; order

Without filing a petition pursuant to Section 4503, husband or wife may bring an action for the exclusive custody parental rights and responsibilities to the children of the marriage. The court may, during pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody parental rights and responsibilities, education and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interests of the children. Such order or decree may be modified or revoked at any time thereafter as the natural rights of the parties and the best interests of the children may require.
Title 9. UNIFORM CHILD CUSTODY JURISDICTION ACT

§5150. Purposes of act; construction of provisions

(1) For purpose of this Act, the terms parental rights and responsibilities and parental contact, refer to the terms custody and visitation, used in other states.

(2) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody parental rights and responsibilities which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(b) Promote cooperation with the courts of other states to the end that a custody decree of parental rights and responsibilities is rendered in that state which can best decide the case in the interest of the child.

(c) Assure that litigation concerning the custody parental rights and responsibilities with regard to a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a close connection with another state.

(d) Discourage continuing controversies over child custody parental rights and responsibilities in the interest of greater stability of home environment and of secure family relationships for the child children involved in parental disputes.

(e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards an award of parental rights and responsibilities.
(f) Avoid relitigation of custody or parental rights and responsibility decisions of other states in this state insofar as feasible.

(g) Facilitate the enforcement of custody or parental rights and responsibility decrees of other states.

(h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(i) To make uniform the law of those states which enact it.

(2) This title shall be construed to promote the general purposes stated in this section.

§5151. Definitions

As used in this title:

(1) "Contestant" means a person including a parent, who claims a right to custody or parental rights and responsibilities or visitation with respect to a child.

(2) "Custody" "Parental rights and responsibilities determination" means a court decision and court orders and instruction providing for the custody of a child a determination of the parental rights and responsibilities; it does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody Parental rights and responsibility proceeding" includes proceedings in which a parental rights and responsibility determination is one of several issues, such as an action for dissolution of marriage, or legal separation, and includes child neglect and dependency proceedings;

(4) "Decree" or custody parental rights and responsibilities means a determination of custody or parental rights and responsibilities contained in a judicial decree or order made in
a proceeding, and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six-months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

(6) "Initial decree" means the first custody parental rights and responsibilities decree concerning a particular child.

(7) "Modification decree" means a custody parental rights and responsibilities decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody rights and responsibilities" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of rights and responsibilities to a child and who has either been awarded custody parental rights and responsibilities by the court or claims a right to custody parental rights and responsibilities.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Section 5181 of the Civil Code shall be amended to read:

§5181. Judicial council duties

The Judicial Council shall do all of the following;
(a) Assist counties in implementing Section 4351.5 and 4607.
(b) Establish and implement a uniform statistical reporting system relating to actions brought pursuant to this part, including, but no limited to, a custody disposition survey.

(c) Administer a program of grants to public and private agencies submitting proposals for research, study, and demonstration projects in the area of family law, including, but not limited to, all of the following:

(a) The development of conciliation and mediation and other newer dispute resolution techniques, particularly as they relate to child custody parental rights and responsibilities and to avoidance of litigation.

(2) The establishment of criteria to insure that a child support order is adequate.

(3) The development of methods to insure that a child support order is paid.

(4) The study of the feasibility and desirability of guidelines to assist judges in making custody parental rights and responsibilities.

(d) Administer a program for the training of court personnel involved in family law proceedings, which shall be available to the court personnel and which shall be totally funded from funds specified in Section 5183.

(1) Training is not limited but should include areas of instruction identified in Section 1745.5 of the Code of Civil Procedure and an educational component on the order of preference of the meaning of the various parental rights and responsibilities arrangements set forth in Sections 4600 and 4600.5 of the Civil Code.
LETTER TO JUDICIAL COUNCIL
Dear Judicial Council:

As a member of the Legislature who has been deeply concerned with the litigious nature of family breakup during divorce, I assembled a group of experts including judges, therapists, professional mediators, and attorneys to work with me to help foster a more child-oriented atmosphere in our custody process.

My Advisory Panel met over a six month period and developed a package of proposed legislative changes. In addition, the Panel identified some key areas where additional research is needed before legislative action is taken as well as matters which could be addressed by the Judicial Council without the need for a legislative mandate.

Upon recommendation of the Advisory Panel, I would like to urge you to investigate the following areas with the research funds authorized under AB 2445 (Chapter 893 of 1984):

1. Much research to date on outcomes of joint custody has focused on the parents examining such issues as how well the order has been followed, the degree of conflict, sharing of decision-making, etc. When questions about the children are posed, questions are often directed to the parents. The Advisory Panel pointed to the need to have researchers directly interview the children of joint custody decisions. How have children fared under various child-sharing arrangements? Do child-sharing arrangements differ significantly when parents have joint custody as opposed to sole custody? How do children experience sole versus joint custody arrangements?
If frequent residential shifts between different households are involved, how have the children adjusted? The research should examine the broadest possible spectrum of children in terms of age, type of residence arrangement, socioeconomic factors, etc. Publicly as well as privately mediated child custody cases should be included as well as cases in which couples decide on joint custody without mediation.

2. An area which needs further exploration is that of using the private sector to provide custody mediation services for divorcing couples. The Advisory Panel posed the following questions with respect to private mediators: How can the public sector better utilize the services of private mediators? Could the Judicial Council develop guidelines for private mediators on a court referral list? Should couples be encouraged to utilize private mediators?

3. Develop an education model curriculum for courts to use to educate divorcing couples. The curriculum should include an overview of the legal decisions couples will have to make concerning their children. It should clearly point out the different types of legal and physical custody arrangements which can be entered into. There should be an audiovisual component which shows different couples and the types of arrangements they have entered into. There should also be a video or video segment on the developmental cycle of children featuring what children need at various stages of their development and what types of arrangements are most amenable to their needs. Another film segment should explore how children react during divorce and what parents can do to ameliorate their distress; again, this should be keyed to the child's developmental cycle.
The curriculum could be made available statewide. Care should be given to develop audiovisual components for the major language groups in California. The Advisory Panel recommends that minimally all materials should be in Spanish as well as English.

4. The Panel also recommends developing guidelines and uniform formats for mediators to help parents create a childcare plan to aid the family transition. The notion underlying this suggestion is that divorce is a transition crisis situation for the family unit. Often parents are caught up in their own emotional distress of the moment and lack the resources to calmly work out the details of the children's transition to life with parents in two different households. If mediators were supplied with guidelines detailing the major decisions which parents will have to make, then they would be able to more effectively guide the parents through the decision process and thereby help forestall conflict and ease the transition. The guidelines would also help create uniformity in the process.

The Advisory Panel has examined the requirements of Arizona's proposed statutory childcare plan and recommends it as a useful model in the development of California guidelines.

5. The Panel would like to see research which evaluates the effectiveness of child custody mediation in both the public and private sector. The Panel suggests exploration of the following questions: 1) degree of parental satisfaction with mediation, 2) the rate of compliance with custody agreements reached through mediation as opposed to those which are court ordered, 3) the degree to which mediation has reduced
litigation and relitigation of custody disputes, 4) data on cost-effectiveness of mediation of child custody disputes, 5) effect of mediation on the adjustment of children of divorcing families, 6) involvement of children of various ages in the mediation process itself, and 7) various models of mediation currently in use in California.

The Panel would like to see this research shed light on the central question of whether mediation, and especially public mediation, enables parents to make decisions which they are able to follow?

6. The Panel discussed at length the issue of the small number of divorced couples who appear to become locked in a continuous cycle of disputes over custody. Clinicians find that many of these people perpetuate the conflicts in their previous marriage through continual disputes over custody arrangements. Because such families, proportionately, cause much work for the courts, the Advisory panel sees a need to develop strategies to work with these families. The Council may wish to sponsor a seminar of experts who have worked with such couples to develop protocols for other professionals who have to contend with them in public and private mediation. The Advisory Panel recommends that additional research be conducted into methods for mediating or counseling such families.

7. The Panel found that there is a need for a graduate level curriculum in child custody mediation and child custody evaluation. The Panel recommended that the Judicial Council convene an interdisciplinary advisory group to develop a graduate program which would lead to a certificate in child custody mediation and to investigate curriculum changes
needed to insure that professionals have proper training in custody evaluation.

The Panel also recommended that there is a need for on-going training for custody mediators, investigators, and evaluators.

8. The Panel discussed the issue of domestic violence and mediation, concluding that certain domestic violence cases can be mediated successfully provided that the mediator is fully trained. The Panel recommended that the Judicial Council establish a training program for mediators and evaluators in how to deal with domestic violence in mediation including how to judge when mediation is not appropriate.

The Panel emphasized that training in assessing domestic violence should be extended to child custody evaluators as well.

10. The Advisory Panel has reviewed the research issues raised by Dr. Judith Wallerstein of the Family Equity Task Force and recommends that the Judicial Council use its resources to explore these topics.

I would appreciate your incorporation of the Advisory Panel's suggestions into your on-going research plans. I have asked Luisa Menchaca of the Senate Office of Research to send your staff copies of all background materials and reports from the Advisory Panel.

Thank you for your consideration.
An act to amend Section 5181 of the Civil Code, relating to family law.
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that in California over 160,000 petitions for dissolution of marriage are filed each year. Of these, approximately 60 percent involve children under the age of 12. The Legislature recognizes that the issues of child custody and support are critical issues affecting the health and welfare of children of these marriages. However, the Legislature recognizes that Section 4727 of the Civil Code encourages parents to focus on child support, rather than the best interests of the child, in determining custody.

In this regard, the Legislature finds that, consistent with the principle adopted in Burchard v. Garay, 42 Cal. 3d 531, the best interests of children, and not financial considerations, should be the focus in child custody determinations.

The Legislature also finds that California does not have the information necessary to formulate a comprehensive policy on whether the issues of child custody and support should be joined.

Therefore, it is the intent of the Legislature in this act to provide for a study that will supply it with the information necessary for the formulation of a comprehensive policy concerning the extent to which financial considerations should be joined to a determination of custody.

SEC. 2. Section 5181 of the Civil Code is amended to read:

5181. The Judicial Council shall do all of the following:

(a) Assist counties in implementing Sections 4351.5 and 4607.

(b) Establish and implement a uniform statistical reporting system relating to actions brought pursuant to this part, including, but not limited to, a custody disposition survey.

(c) Administer a program of grants to public and private agencies submitting proposals for research, study, and demonstration projects in the area of family law, including, but not limited to, all of the following:
(1) The development of conciliation and mediation and other newer dispute resolution techniques, particularly as they relate to child custody and to avoidance of litigation.

(2) The establishment of criteria to insure that a child support order is adequate.

(3) The development of methods to insure that a child support order is paid.

(4) The study of the feasibility and desirability of guidelines to assist judges in making custody decisions.

(d) Administer a program for the training of court personnel involved in family law proceedings, which shall be available to the court personnel and which shall be totally funded from funds specified in Section 5183.

(e) Conduct a study on the relationship between child custody and child support which shall be submitted to the Legislature on or before December 31, 1989. The study shall include, but shall not be limited to, all of the following:

(1) A determination as to whether current child support laws encourage bargaining over custody of the child.

(2) A determination as to whether the issue of custody should be decided prior to deciding the matter of child support.

(3) An analysis of the impact on all children of equalizing the standard of living of children upon dissolution of marriage. Consideration shall be given to the standards of living of children of previous and any subsequent marriages of the parties to the dissolution.

(4) Collection of current data on the costs of raising children in two separate households, as opposed to the costs of raising children in intact families.
An act to amend Section 4606 of the Civil Code, relating to family law, and declaring the urgency thereof, to take effect immediately.
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4606 of the Civil Code is amended to read:

4606. In any initial or subsequent proceeding under this part where there is in issue the custody of parental rights and responsibilities concerning, or visitation with, a minor child, the court may, if it determines it would be in the best interests of the minor child, appoint private counsel to represent the interests of the minor child. When the court appoints counsel to represent the minor, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. Such amount shall be paid by the parents in such proportions as the court deems just.

SEC. 2. The Judicial Council shall provide recommendations to the Legislature, by December 31, 1988, on the establishment of a fund for payment of the compensation and expenses of counsel in cases coming within Section 4606 of the Civil Code in which the court determines that the parents do not have sufficient funds to pay for counsel for the child.
ACCESS TO CHILD TORT

An act to add section 50.5 to the Civil Code, relating to liability.
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 50.5 is added to the Civil Code, to read:

50.5 (a) A parent who intentionally conceals the existence of a minor child from the other parent, or who engages in conduct described in Section 277 or 278.5 of the Penal Code, or any person who knowingly assists the parent in that conduct, is civilly liable to the child and the other parent as specified in subdivision (b).

(b) (1) In an action pursuant to this section a parent may recover all economic damages incurred as a result of the conduct described in subdivision (a), including reasonable expenses incurred in regaining custody of the child and reasonable expenses incurred or likely to be incurred in treating or caring for the child if the child has suffered illness or other bodily harm as a result of the defendant's conduct. A parent also may recover for the loss of society of his or her child and for emotional distress resulting from the defendant's conduct.

(2) In any action pursuant to this section, a child may recover all economic damages incurred as a result of the conduct described in subdivision (a). The child also may recover for the loss of society of his or her parent and for emotional distress resulting from the defendant's conduct.

(3) Exemplary damages may be awarded pursuant to this section in any appropriate case.

(c) A parent is not liable pursuant to this section for rescuing a child from physical violence inflicted by the other parent in excess of parental privilege. To entitle the parent to immunity, however, it must have appeared reasonably probable that the child was about to suffer immediate harm or that the child would be subjected to immediate harm if the child was returned to the other parent.

(d) An action pursuant to this section is subject to all applicable defenses at law or in equity.
Amendments to proposed legislation:

1. Identify equitable defenses in a proceeding for child support to the date of the child's birth.

2. Limit retroactive child support when a parent intentionally conceals the existence of a child or abducts the child.
AMENDED IN ASSEMBLY APRIL 24, 1986
CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL No. 3730

Introduced by Assembly Member Molina Members Molina and Davis

February 20, 1986

An act to amend Section 7010 Sections 196, 4700, and 7010 of the Civil Code, relating to parent and child.

LEGISLATIVE COUNSEL'S DIGEST

AB 3730, as amended, Molina. Parent and child.
Existing law, the Uniform Parentage Act, specifies procedures for the judicial establishment of the parent and child relationship. It requires the mother and father of a child to have an equal responsibility to support and educate their child in the manner suitable to the child's circumstances, authorizes a court to order either or both parents to pay an amount necessary for the support, maintenance, and education of the child, and authorizes a judgment or order entered pursuant thereto to contain an order for the support of a child with regard to whom such a relationship is established.

This bill would also authorize the court to require one parent to pay the other parent a reasonable amount for the costs of the support of the child from the date of the child's birth to the date of the entry of the order determining the existence of the parent and child relationship. The bill would require those judgments or orders to include interest payments at the legal rate, and would authorize a court to order any other compensatory damages proven or any exemplary damages.


(The bill specifically identifies equitable defenses which apply and sets limits on the reimbursement period when the petitioning parent intentionally conceals the existence of a child or when the child is abducted.)
Insert A:
(Any period of time in which
the petitioning parent in-
tentionally conceals the ex-
istence of a child or con-
trary to the provisions of
an existing custody order,
abducts or significantly
deprees the other parent
access to a child shall not
be included in the period
of reimbursement.)

Insert B:
(The equitable defenses of
laches, unclean hands and
estoppel may be raised in a
proceeding under this part).

The people of the State of California do enact as follows:

SECTION 1. Section 7010 of the Civil Code is
amended to read:

196. The father and mother of a child have an equal
responsibility to support and educate their child in the
manner suitable to the child's circumstances, taking into
consideration the respective earnings or earning
capacities of the parents.

A judgment or order may require one parent to pay to
the other parent a reasonable amount for the cost of the
support of the child from the date of the child's birth to
the date of entry of the order of child support. A
judgment or order requiring the payment of these costs
shall include interest payments at the legal rate. The
court may order any other compensatory damages as are
proven or any exemplary damages.

SEC. 2. Section 4700 of the Civil Code is amended to
read:

4700 (a) In any proceeding where there is at issue
the support of a minor child or a child for whom support
is authorized under Section 206, the court may order
either or both parents to pay any amount necessary for
the support, maintenance, and education of the child. At
the request of either party, the court shall make
appropriate findings with respect to the circumstances
on which the order for the support of a minor child is
based. Upon a showing of good cause, the court may order
the parent or parents required to make the payment of
support to give reasonable security therefor. All
payments of support shall be made by the person owing
the support payment prior to the payment of any debts
owing to creditors. Any order for child support may be
modified or revoked as the court may deem necessary,
except as to any amount that may have accrued prior to
the date of the filing of the notice of motion or order to
show cause to modify or revoke. Any order for child
support, as well as any order of modification or revocation
of such an order, may be made retroactive to the date of
Any period of time in which the petitioning parent intentionally conceals the existence of a child or contrary to the provisions of an existing custody order, abducts or significantly deprives the other parent access to a child shall not be included in the period of reimbursement.

(b) When a court orders a person to make specified payments for support of a child during the child’s minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 206, the liability of the person ordered to pay support terminates upon the happening of the contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make such payments, or the attorney of record of the person ordered to pay support, of the happening of the contingency, and continues to accept support payments, the person shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(c) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support, maintenance and education of the child, as the court may deem just.

SEC. 3. Section 7010 of the Civil Code is amended to read:

the filing of the notice of motion or order to show cause therefor, or to any subsequent date. An order of modification or revocation may include an award of attorney fees and court costs to the prevailing party.
7010. (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes except for actions brought pursuant to Section 270 of the Penal Code.

(b) If the judgment or order of the court is at variance with the child’s birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 6 (commencing with Section 10450) of Chapter 8, of Division 9 of the Health and Safety Code.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother’s pregnancy and confinement. A judgment or order also may require one parent to pay the other parent a reasonable amount for the cost of the support of the child from the date of the child’s birth to the date of the entry of the order determining the existence of the parent and child relationship.

Sec. 4. Section 4382 of the Civil Code is amended to read:

4382. The existence or enforcement of a duty of support owed by a noncustodial parent for the support of a minor child shall not be affected by a failure or refusal by the custodial parent to implement any rigorous as to custody or visitation granted by a court, (except where the custodial parent intentionally conceals the existence of a child to the noncustodial parent or contrary to provisions of an existing custody order, abducts or significantly deprives the noncustodial parent access to the child.)
INSURANCE BILL

An act to offer post-dissolution counseling.
Section 1. Section 10125 of the Insurance Code is amended to read:

(b) [existing language] [The offer of outpatient coverage shall include coverage for any mental disorder included in the V codes of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (Third Edition) for individuals with children under the age of eighteen which arise from the dissolution of a marriage. The coverage shall include a treatment period of not less than six months.]

Section 2. Section 11512.5 of the Insurance Code is amended to read:

[after existing language] [The offer of outpatient coverage shall include coverage for any mental disorder included in the V codes of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (Third Edition) for individuals with children under the age of eighteen which arise from the dissolution of a marriage. The coverage shall include a treatment period of not less than six months.]

Section 3. Section 10127 of the Insurance Code is amended to read:

[after existing language] [The offer of outpatient coverage shall include coverage for any mental disorder included in the V codes of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (Third Edition) for individuals with children under the age of eighteen which arise from the dissolution of a marriage. The coverage shall include a treatment period of not less than six months.]
Section 4. Section 1373 of the Health and Safety Code is amended to read:

(h) (l) [after existing language].....[A health care service plan or specialized health care plan that offers outpatient mental health services shall include in its offer coverage for any mental disorder included in the V codes of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (Third Edition) for individuals with children under the age of eighteen which arise from the dissolution of a marriage. The coverage shall include a treatment period of not less than six months.]