

AMENDED IN ASSEMBLY JANUARY 5, 1998

AMENDED IN ASSEMBLY MAY 1, 1997

AMENDED IN ASSEMBLY MARCH 31, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 960

Introduced by Assembly Member Wright

February 27, 1997

~~An act to add Section 8318 to the Government Code, relating to state property. An act to amend Sections 3653, 4351, and 5245 of, and to add Sections 3681, 4205, 4206, 4353, and 5245.5 to, the Family Code, and to amend Section 11350.1 of the Welfare and Institutions Code, relating to support orders.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as amended, R. Wright. ~~State facilities—Support orders.~~

Existing law provides that, when a court enters a support order it shall include an earnings assignment order directing the obligor's employer to pay the obligee a portion of the obligor's earnings, as specified.

This bill would provide that, as long as an earnings support order is being enforced, all other means of enforcement shall be stayed unless the court, on noticed motion and for good cause shown, as specified, terminates the stay.

Existing law allows the court to make an order modifying or terminating an order for child, family, or spousal support

retroactive to the date of filing of the motion or order to show cause.

This bill would require the court to make an order modifying or terminating a support order retroactive to the date of filing if the modification or termination of support is due to the unemployment of either the support obligor or the support obligee.

Existing law authorizes, and in specified circumstances requires, the district attorney to enforce support orders.

This bill would require that any notice from the district attorney requesting a meeting with a support obligor shall advise the support obligor of his or her right to have an attorney present at the meeting. The bill also directs the Judicial Council to develop, not later than July 1, 1999, a model questionnaire to be used by district attorneys to identify income and assets of, and deductions and exemptions available to, the support obligor.

Because this bill would impose new duties on district attorneys, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law generally authorizes the Director of General Services to acquire title to real property in the name of the state and to lease any real property for the use of any state agency if the director deems the leasing to be in the best interest of the state.~~

~~This bill would state that it is the policy of this state to relocate state agencies into state-owned office space wherever feasible where the relocation does not remove the agency more than 5 miles from its previous location;~~



~~applicable to any location or property acquisition that occurs after January 1, 1998. The bill would also state that it is the policy of the state that all state agencies, including the University of California and the California State University, utilize state-owned facilities wherever feasible for short-term, periodic, or occasional events. The bill provides that if an agency cannot relocate as provided above, or utilize a state-owned facility for short-term, periodic, or occasional events and the annual cost involved exceeds \$500,000, the head of that agency shall state the reason therefor and transmit this information to the Director of Finance and the Legislature. The bill would provide that it does not apply to state development activities relating to the Capitol Area Plan.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

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

1 ~~SECTION 1.~~ Section 8318 is added to the
2 *SECTION 1. Section 3653 of the Family Code is*
3 *amended to read:*
4 3653. (a) An order modifying or terminating a
5 support order may be made retroactive to the date of the
6 filing of the notice of motion or order to show cause to
7 modify or terminate, or to any subsequent date, except as
8 provided in subdivision (b) or by federal law (42 U.S.C.
9 Sec. 666(a)(9)).
10 (b) *If an order modifying or terminating a support*
11 *order is entered due to the unemployment of either the*
12 *support obligor or the support obligee, the order shall be*
13 *made retroactive to the date of the filing of the notice of*
14 *motion or order to show cause to modify or terminate,*
15 *subject to the notice requirements of federal law (42*
16 *U.S.C. Sec. 666 (a)(9)).*
17 *SEC. 2. Section 3681 is added to the Family Code, to*
18 *read:*
19 3681. *The Judicial Council shall adopt a form of notice*
20 *that shall be given by the court and, if applicable, the*
21 *district attorney, to all parties to any proceedings under*
22 *this division and that shall summarize the rights and*



1 obligations of the parties under this division, the
2 procedures for obtaining a modification, and the
3 circumstances under which a modification may be
4 sought, including, but not limited to, a change in a party's
5 financial circumstances.

6 SEC. 3. Section 4205 is added to the Family Code, to
7 read:

8 4205. Any notice from the district attorney requesting
9 a meeting with the support obligor for any purpose
10 authorized under this part shall contain a statement
11 advising the support obligor of his or her right to have an
12 attorney present at the meeting.

13 SEC. 4. Section 4206 is added to the Family Code, to
14 read:

15 4206. The Judicial Council shall develop a model
16 questionnaire to be used by the district attorney in
17 connection with orders for child support referred to the
18 district attorney for enforcement pursuant to this article
19 and any investigations conducted by the district attorney
20 relating to support obligations. The questionnaire shall
21 contain comprehensive questions intended to identify all
22 sources of income and assets of, and all permissible
23 deductions and exemptions available to, the support
24 obligor. The questionnaire shall be available no later than
25 July 1, 1999.

26 SEC. 5. Section 4351 of the Family Code is amended
27 to read:

28 4351. (a) In any proceeding where the court has
29 entered an order pursuant to Section 4350, the court may
30 also refer the matter of enforcement of the spousal
31 support order to the district attorney. The district
32 attorney may bring such enforcement proceedings as the
33 district attorney in the district attorney's discretion
34 determines to be appropriate.

35 (b) Notwithstanding subdivision (a), in any case in
36 which the district attorney is required to appear on behalf
37 of a welfare recipient in a proceeding to enforce an order
38 requiring payment of child support, the district attorney
39 shall also enforce any order requiring payment to the
40 welfare recipient of spousal support that is in arrears.



1 (c) Nothing in this section shall be construed to
2 prohibit the district attorney from bringing an action or
3 initiating process to enforce or punish the failure to obey
4 an order for spousal support under any provision of law
5 ~~which that~~ empowers the district attorney to bring—~~such~~
6 an action or initiate—~~such~~ a process, whether or not there
7 has been a referral by the court pursuant to this chapter.

8 (d) *Any notice from the district attorney requesting a*
9 *meeting with the support obligor for any purpose*
10 *authorized under this part shall contain a statement*
11 *advising the support obligor of his or her right to have an*
12 *attorney present at the meeting.*

13 SEC. 6. *Section 4353 is added to the Family Code, to*
14 *read:*

15 *4353. The Judicial Council shall develop a model*
16 *questionnaire to be used by the district attorney in*
17 *connection with spousal support orders referred to the*
18 *district attorney for enforcement pursuant to this article*
19 *and any investigations conducted by the district attorney*
20 *relating to support obligations. The questionnaire shall*
21 *contain comprehensive questions intended to identify all*
22 *sources of income and assets of, and all permissible*
23 *deductions and exemptions available to, the support*
24 *obligor. The questionnaire shall be available no later than*
25 *July 1, 1999. The questionnaire developed by the Judicial*
26 *Council for purposes of Section 4206 may also be used to*
27 *satisfy the requirements of this section.*

28 SEC. 7. *Section 5245 of the Family Code is amended*
29 *to read:*

30 5245. ~~Nothing~~—*Except as provided in Section 5245.5,*
31 *nothing* in this chapter limits the authority of the district
32 attorney to use any other civil and criminal remedies to
33 enforce support obligations, regardless of whether or not
34 the child or the obligee who is the parent, guardian, or
35 other person entitled to receive payment is the recipient
36 of welfare moneys.

37 SEC. 8. *Section 5245.5 is added to the Family Code, to*
38 *read:*

39 5245.5. (a) *Notwithstanding any other provision of*
40 *law, as long as an earnings assignment order is being*



1 *enforced, all other means of enforcement of the support*
 2 *order shall be stayed until the earnings assignment order*
 3 *is terminated pursuant to Section 5240 or the stay is*
 4 *terminated pursuant to subdivision (b).*

5 *(b) If the obligee receives payments pursuant to the*
 6 *earnings assignment order that are less than the amount*
 7 *of support to be paid, or if there are support arrearages*
 8 *owing that are in excess of the amount of payments under*
 9 *the earnings assignment order, the court may, upon the*
 10 *filing and service of a motion and notice of motion by the*
 11 *obligee or the district attorney, and for good cause shown,*
 12 *order that the stay under subdivision (a) shall be*
 13 *terminated. For purposes of this section, good cause shall*
 14 *not be deemed to exist if the failure of the obligee to*
 15 *receive sufficient payments is due to the willful or*
 16 *negligent failure of the employer to withhold and*
 17 *forward support pursuant to a valid earnings assignment*
 18 *order or any other cause not within the control of the*
 19 *obligor.*

20 *SEC. 9. Section 11350.1 of the Welfare and Institutions*
 21 *Code is amended to read:*

22 *11350.1. (a) Notwithstanding any other statute, in*
 23 *any action brought by the district attorney for the support*
 24 *of a minor child or children, the action may be prosecuted*
 25 *in the name of the county on behalf of the child, children,*
 26 *or a parent of the child or children. The parent who has*
 27 *requested or is receiving support enforcement services of*
 28 *the district attorney shall not be a necessary party to the*
 29 *action but may be subpoenaed as a witness. Except as*
 30 *provided in subdivision (e), in an action under this*
 31 *section there shall be no joinder of actions, or*
 32 *coordination of actions, or cross-complaints, and the*
 33 *issues shall be limited strictly to the question of parentage,*
 34 *if applicable, and child support, including an order for*
 35 *medical support. A final determination of parentage may*
 36 *be made in any action under this section as an incident to*
 37 *obtaining an order for support. An action for support or*
 38 *parentage pursuant to this section shall not be delayed or*
 39 *stayed because of the pendency of any other action*
 40 *between the parties.*



1 (b) Judgment in an action brought pursuant to this
2 section, and in an action brought pursuant to Section
3 11350, if at issue, may be rendered pursuant to a noticed
4 motion, ~~which~~ *that* shall inform the defendant that in
5 order to exercise his or her right to trial, he or she must
6 appear at the hearing on the motion.

7 If the defendant appears at the hearing on the motion,
8 the court shall inquire of ~~him or her~~ *the defendant* if he
9 or she desires to subpoena evidence and witnesses, if
10 parentage is at issue and genetic tests have not already
11 been conducted whether he or she desires genetic tests,
12 and if he or she desires a trial. If ~~his or her~~ *defendant's*
13 answer is in the affirmative, a continuance shall be
14 granted to allow ~~him or her~~ *the defendant* to exercise
15 those rights. A continuance shall not postpone the
16 hearing to more than 90 days from the date of service of
17 the motion. ~~In the event that~~ *If* a continuance is granted,
18 the court may make an order for temporary support
19 without prejudice to the right of the court to make an
20 order for temporary support as otherwise allowed by law.

21 (c) In any action to enforce a spousal support order the
22 action may be pled in the name of the county in the same
23 manner as an action to establish a child support
24 obligation. The same restrictions on joinder of actions,
25 coordination of actions, and cross-complaints, and delay
26 because of the pendency of any other action as relates to
27 actions to establish a child support obligation shall also
28 apply to actions to enforce a spousal support order.

29 (d) Nothing contained in this section shall be
30 construed to prevent the parties from bringing an
31 independent action under the Family Code and litigating
32 the issues of support, custody, visitation, or protective
33 orders. In that event, any support, custody, visitation, or
34 protective order issued by the court in an action pursuant
35 to this section shall be filed in the action commenced
36 under the Family Code and shall continue in effect until
37 modified by a subsequent order of the court. To the
38 extent that the orders conflict, the court order last issued
39 shall supersede all other orders and be binding upon all
40 parties in that action.



1 (e) (1) After a support order, including a temporary
 2 support order and an order for medical support only, has
 3 been entered in an action brought pursuant to this
 4 section, the parent who has requested or is receiving
 5 support enforcement services of the district attorney shall
 6 become a party to the action brought pursuant to this
 7 section, only in the manner and to the extent provided by
 8 this section, and only for the purposes allowed by this
 9 section.

10 (2) Notice of the parent's status as a party shall be
 11 given to the parent by the district attorney in conjunction
 12 with the notice required by subdivision (e) of Section
 13 11478.2. The complaint shall contain this notice. Service
 14 of the complaint on the parent in compliance with
 15 Section 1013 of the Code of Civil Procedure, or as
 16 otherwise provided by law, shall constitute compliance
 17 with this section. In all actions commenced under the
 18 procedures and forms in effect on or before December 31,
 19 1996, the parent who has requested or is receiving
 20 support enforcement services of the district attorney shall
 21 not become a party to the action until he or she is joined
 22 as a party pursuant to an ex parte application or noticed
 23 motion for joinder filed by the district attorney or a
 24 noticed motion filed by either parent. The district
 25 attorney shall serve a copy of any order for joinder of a
 26 parent obtained by the district attorney's application on
 27 both parents in compliance with Section 1013 of the Code
 28 of Civil Procedure.

29 (3) The parent who has requested or is receiving
 30 support enforcement services of the district attorney is a
 31 party to an action brought under this section for issues
 32 relating to the support, custody, and visitation of a child,
 33 and for restraining orders, and for no other purpose. The
 34 district attorney shall not be required to serve or receive
 35 service of papers, pleadings, or documents, or participate
 36 in, or attend any hearing or proceeding relating to issues
 37 of custody or visitation, except as otherwise required by
 38 law. Orders concerning custody and visitation may be
 39 made in an action pursuant to this subdivision only if
 40 orders concerning custody and visitation have not been



1 previously made by a court of competent jurisdiction in
2 this state or another state and the court has jurisdiction
3 and is the proper venue for custody and visitation
4 determinations. All issues regarding custody and
5 visitation shall be heard and resolved in the manner
6 provided by the Family Code. Except as otherwise
7 provided by law, the district attorney shall control
8 support and parentage litigation brought pursuant to this
9 section, and the manner, method, and procedures used in
10 establishing parentage and in establishing and enforcing
11 support obligations unless and until the parent who
12 requested or is receiving support enforcement services
13 has requested in writing that the district attorney close his
14 or her case and the case has been closed in accordance
15 with federal regulation.

16 (f) (1) A parent who has requested or is receiving
17 support enforcement services of the district attorney may
18 take independent action to modify a support order made
19 pursuant to this section while support enforcement
20 services are being provided by the district attorney. The
21 parent shall serve the district attorney with notice of any
22 action filed to modify the support order and provide the
23 district attorney with a copy of the modified order within
24 15 calendar days after the date the order is issued.

25 (2) A parent who has requested or is receiving support
26 enforcement services of the district attorney may take
27 independent action to enforce a support order made
28 pursuant to this section while support enforcement
29 services are being provided by the district attorney with
30 the written consent of the district attorney. At least 30
31 days prior to filing an independent enforcement action,
32 the parent shall provide the district attorney with written
33 notice of the parent's intent to file an enforcement action
34 ~~which~~ *that* includes a description of the type of
35 enforcement action the parent intends to file. Within 30
36 days of receiving the notice, the district attorney shall
37 either provide written consent for the parent to proceed
38 with the independent enforcement action or notify the
39 parent that ~~he or she~~ *the district attorney* objects to the
40 parent filing the proposed independent enforcement



1 action. The district attorney may object only if the district
2 attorney is currently using an administrative or judicial
3 method to enforce the support obligation or if the
4 proposed independent enforcement action would
5 interfere with an investigation being conducted by the
6 district attorney. If the district attorney does not respond
7 to the parent's written notice within 30 days, the district
8 attorney shall be deemed to have given consent.

9 (3) The court shall order that all payments of support
10 shall be made to the district attorney in any action filed
11 under this section by the parent who has requested, or is
12 receiving, support enforcement services of the district
13 attorney unless support enforcement services have been
14 terminated by the district attorney by case closure as
15 provided by federal law. Any order obtained by a parent
16 prior to support enforcement services being terminated
17 in which the district attorney did not receive proper
18 notice pursuant to this section shall be voidable upon the
19 motion of the district attorney.

20 (g) *Any notice from the district attorney requesting a*
21 *meeting with the support obligor for any purpose*
22 *authorized under this section shall contain a statement*
23 *advising the support obligor of his or her right to have an*
24 *attorney present at the meeting.*

25 (h) *The Judicial Council shall develop a model*
26 *questionnaire to be used by the district attorney in*
27 *connection with orders for child support referred to the*
28 *district attorney for enforcement pursuant to this section*
29 *and any investigations conducted by the district attorney*
30 *relating to support obligations. The questionnaire shall*
31 *contain comprehensive questions intended to identify all*
32 *sources of income and assets of, and all permissible*
33 *deductions and exemptions available to, the support*
34 *obligor. The questionnaire shall be available no later than*
35 *July 1, 1999. The questionnaire developed by the Judicial*
36 *Council for purposes of Section 4206 of the Family Code*
37 *may also be used to satisfy the requirements of this*
38 *section.*

39 (i) For the purpose of this section, "a parent who is
40 receiving support enforcement services" includes a



1 parent who has assigned his or her rights to support
2 pursuant to Section 11477.

3 ~~(h) The~~

4 ~~(j) Except as otherwise provided in subdivision (h),~~
5 ~~the Judicial Council shall develop forms to implement this~~
6 ~~section. These forms shall be available no later than July~~
7 ~~1, 1998.~~

8 *SEC. 10. Notwithstanding Section 17610 of the*
9 *Government Code, if the Commission on State Mandates*
10 *determines that this act contains costs mandated by the*
11 *state, reimbursement to local agencies and school*
12 *districts for those costs shall be made pursuant to Part 7*
13 *(commencing with Section 17500) of Division 4 of Title*
14 *2 of the Government Code. If the statewide cost of the*
15 *claim for reimbursement does not exceed one million*
16 *dollars (\$1,000,000), reimbursement shall be made from*
17 *the State Mandates Claims Fund.*

18 *Notwithstanding Section 17580 of the Government*
19 *Code, unless otherwise specified, the provisions of this act*
20 *shall become operative on the same date that the act*
21 *takes effect pursuant to the California Constitution.*

22 ~~Government Code, to read:~~

23 ~~8318. (a) The Legislature finds and declares that~~
24 ~~there is a need to save taxpayer funds by the most~~
25 ~~efficient utilization of state-owned property, and, where~~
26 ~~it is cost effective and practical, by the purchase of~~
27 ~~property by the state in lieu of leasing similar facilities. In~~
28 ~~that regard, the state presently spends approximately~~
29 ~~three hundred million dollars (\$300,000,000) annually to~~
30 ~~lease property for state agency use.~~

31 ~~(b) It is the policy of this state to relocate state~~
32 ~~agencies into preexisting state-owned office space~~
33 ~~wherever feasible where such a relocation does not~~
34 ~~remove the agency more than approximately five miles~~
35 ~~from its previous location, unless justified by exceptional~~
36 ~~circumstances.~~

37 ~~(c) It is further the policy of this state that all state~~
38 ~~agencies, including the University of California and the~~
39 ~~California State University, utilize state-owned facilities~~



1 ~~wherever feasible for short-term, periodic, or occasional~~
2 ~~events.~~

3 ~~(d) If a state agency subject to subdivision (b) cannot~~
4 ~~comply with that subdivision, or a state agency subject to~~
5 ~~subdivision (c) cannot utilize a state-owned facility for~~
6 ~~short-term, periodic, or occasional events and the annual~~
7 ~~costs to the agency exceed five hundred thousand dollars~~
8 ~~(\$500,000), the head of the agency shall state, in writing,~~
9 ~~the reason therefor and transmit this information,~~
10 ~~notwithstanding Section 7550.5, to the Director of~~
11 ~~Finance, the Chair of the Senate Committee on Budget~~
12 ~~and Fiscal Review, the Chair of the Assembly Committee~~
13 ~~on Budget, and the Joint Legislative Budget Committee.~~

14 ~~(e) Subdivision (b) shall apply to any location or~~
15 ~~property acquisition that occurs on or after January 1,~~
16 ~~1998.~~

17 ~~(f) This section shall not apply to state development~~
18 ~~activities relating to the Capitol Area Plan including, but~~
19 ~~not limited to, Chapter 193 of the Statutes of 1996, or other~~
20 ~~related statutes.~~

