

**ASSEMBLY BILL**

**No. 1742**

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**Introduced by Committee on Judiciary (Jones (Chair), Evans,  
Laird, Levine, Lieber, and Montanez)**

March 2, 2005

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An act to amend Sections 116.330, 116.340, 116.780, 396b, and 998 of, and to repeal and add Section 116.725 of, the Code of Civil Procedure, to amend Sections 811.9, 905, 910.4, and 69926.5 of, and to add Section 905.7 to, the Government Code, and to amend Section 213.5 of the Welfare and Institutions Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1742, as introduced, Committee on Judiciary. Courts: civil procedure.

Existing law governs procedures in the small claims court. These provisions set forth various time periods for scheduling cases for hearing and specifies methods for service of the claim and order on a defendant. These provisions state that they may not be construed to prevent a court from correcting a clerical error in a judgment or setting aside and vacating a judgment on the ground of an incorrect or erroneous legal basis for the decision.

This bill would provide that, when a claim is filed, the case shall be scheduled for hearing no earlier than 20 days and not more than 70 days from the date of the order, thereby eliminating the various time periods. The bill would require that proof of service of the claim and order be filed at least 5 days before the hearing. The bill would authorize a party to make only one motion to correct a clerical error or set aside and vacate a judgment and provide that a party may have 30 days after the clerk mails notice of entry of judgement to the parties to make that motion.

Existing law also governs offers by a party to compromise a dispute that is to be resolved by arbitration.

This bill requires that any acceptance of the offer be in writing.

Existing law imposes a surcharge of \$20 for court security in addition to the total court fees collected pursuant to specified provisions and also authorizes the collection of an additional surcharge in certain cases filed from January 1, 2004 to June 30, 2005, inclusive.

This bill would extend that additional surcharge until June 30, 2006, as specified.

Existing law requires the Judicial Council to provide for the representation or defense of judicial officers and employees by the county counsel or Attorney General, and authorizes such representation or defense of the Judicial Council. Existing law also provides that this representation or defense shall not be the sole basis for the disqualification of a judicial officer or employee in an unrelated action.

This bill would add justices and the Administrative Office of the Courts to the judicial officers to which this provision applies, and specify that representation of the Judicial Council of the Administrative Office of the Courts shall not be the sole basis for disqualification of a judicial officer or employee from an unrelated action.

Existing law sets forth the procedure for filing a claim against a statewide public entity, as specified.

This bill would specify that these procedures also apply to claims against a judicial branch entity.

Existing law authorizes a court in a proceeding for dissolution of marriage or legal separation and prior to the determination of a motion for a change of venue, to consider and make all necessary and proper orders in connection with motions for allowance of temporary spousal support, support of children, and counsel fees and costs.

This bill would revise that provision to additionally apply to proceedings under the Uniform Parentage Act and to authorize the court to consider and determine motions to determine custody of and visitation with children in any of the proceedings to which the provision applies prior to determining the motion for a change of venue.

Existing law authorizes a court to issue an ex parte order enjoining a person from engaging in specified acts of abuse against a parent, legal

guardian, or current caretaker of a child simultaneously with an order enjoining a person from engaging in those acts against the child.

This bill would delete the requirement that the court issue that order simultaneously.

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

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

1 SECTION 1. Section 116.330 of the Code of Civil Procedure  
2 is amended to read:

3 116.330. (a) When a claim is filed, the clerk shall schedule  
4 the case for hearing ~~in accordance with subdivision (e)~~ and shall  
5 issue an order directing the parties to appear at the time set for  
6 the hearing with witnesses and documents to prove their claim or  
7 defense. *The case shall be scheduled for hearing no earlier than*  
8 *20 days but not more than 70 days from the date of the order.*

9 (b) In lieu of the method of setting the case for hearing  
10 described in subdivision (a), at the time a claim is filed the clerk  
11 may do all of the following:

12 (1) Cause a copy of the claim to be mailed to the defendant by  
13 any form of mail providing for a return receipt.

14 (2) On receipt of proof that the claim was served as provided  
15 in paragraph (1), issue an order scheduling the case for hearing in  
16 accordance with subdivision ~~(e)~~ (a) and directing the parties to  
17 appear at the time set for the hearing with witnesses and  
18 documents to prove their claim or defense.

19 (3) Cause a copy of the order setting the case for hearing and  
20 directing the parties to appear, to be served upon the parties by  
21 any form of mail providing for a return receipt.

22 ~~(e) If the defendant resides in the county in which the action is~~  
23 ~~filed, the case shall be scheduled for hearing at least 15 days but~~  
24 ~~not more than 40 days from the date of the order. If the defendant~~  
25 ~~resides outside the county in which the action is filed, the case~~  
26 ~~shall be scheduled for hearing at least 30 days but not more than~~  
27 ~~70 days from the date of the order.~~

28 ~~(d) If there are two or more defendants and one or more of~~  
29 ~~them resides outside the county in which the action is filed, the~~  
30 ~~date for the appearance of all the defendants shall be at least 30~~  
31 ~~days but not more than 70 days from the date of the order.~~

1 ~~(e) A public entity, as defined in Section 811.2 of the~~  
 2 ~~Government Code, which files more than 10 claims at one time~~  
 3 ~~may request a date for the appearance of the defendant later than~~  
 4 ~~that otherwise specified in this section, and the clerk may set the~~  
 5 ~~case for hearing at that later date subject to the following limits:~~

6 ~~(1) If all defendants reside in the county in which the action is~~  
 7 ~~filed, the date for appearance shall not be more than 70 days from~~  
 8 ~~the date of the order.~~

9 ~~(2) In other cases, the date for appearance shall not be more~~  
 10 ~~than 90 days from the date of the order.~~

11 SEC. 2. Section 116.340 of the Code of Civil Procedure is  
 12 amended to read:

13 116.340. (a) Service of the claim and order on the defendant  
 14 may be made by any one of the following methods:

15 (1) The clerk may cause a copy of the claim and order to be  
 16 mailed to the defendant by any form of mail providing for a  
 17 return receipt.

18 (2) The plaintiff may cause a copy of the claim and order to be  
 19 delivered to the defendant in person.

20 (3) The plaintiff may cause service of a copy of the claim and  
 21 order to be made by substituted service as provided in  
 22 subdivision (a) or (b) of Section 415.20 without the need to  
 23 attempt personal service on the defendant. For these purposes,  
 24 substituted service as provided in subdivision (b) of Section  
 25 415.20 may be made at the office of the sheriff or marshal who  
 26 shall deliver a copy of the claim and order to any person  
 27 authorized by the defendant to receive service, as provided in  
 28 Section 416.90, who is at least 18 years of age, and thereafter  
 29 mailing a copy of the claim and order to the defendant's usual  
 30 mailing address.

31 (4) The clerk may cause a copy of the claim to be mailed, the  
 32 order to be issued, and a copy of the order to be mailed as  
 33 provided in subdivision (b) of Section 116.330.

34 (b) *Proof of service of the claim and order shall be filed with*  
 35 *the small claims court at least five days before the hearing.*

36 (c) Service of the claim and order on the defendant shall be  
 37 completed at least 15 days before the hearing date if the  
 38 defendant resides within the county in which the action is filed,  
 39 or at least 20 days before the hearing date if the defendant resides  
 40 outside the county in which the action is filed.

1 ~~(e)~~  
 2 (d) Service by the methods described in subdivision (a) shall  
 3 be deemed complete on the date that the defendant signs the mail  
 4 return receipt, on the date of the personal service, as provided in  
 5 Section 415.20, or as established by other competent evidence,  
 6 whichever applies to the method of service used.

7 ~~(d)~~  
 8 (e) Service shall be made within this state, except as provided  
 9 in subdivisions ~~(e)~~ (f) and ~~(f)~~ (g).

10 ~~(e)~~  
 11 (f) The owner of record of real property in California who  
 12 resides in another state and who has no lawfully designated agent  
 13 in California for service of process may be served by any of the  
 14 methods described in this section if the claim relates to that  
 15 property.

16 ~~(f)~~  
 17 (g) A nonresident owner or operator of a motor vehicle  
 18 involved in an accident within this state may be served pursuant  
 19 to the provisions on constructive service in Sections 17450 to  
 20 17461, inclusive, of the Vehicle Code without regard to whether  
 21 the defendant was a nonresident at the time of the accident or  
 22 when the claim was filed. Service shall be made by serving both  
 23 the Director of the California Department of Motor Vehicles and  
 24 the defendant, and may be made by any of the methods  
 25 authorized by this chapter or by registered mail as authorized by  
 26 Section 17454 or 17455 of the Vehicle Code.

27 ~~(g)~~  
 28 (h) If an action is filed against a principal and his or her  
 29 guaranty or surety pursuant to a guarantor or suretyship  
 30 agreement, a reasonable attempt shall be made to complete  
 31 service on the principal. If service is not completed on the  
 32 principal, the action shall be transferred to the court of  
 33 appropriate jurisdiction.

34 SEC. 3. Section 116.725 of the Code of Civil Procedure is  
 35 repealed.

36 ~~116.725. Nothing in this chapter shall be construed to prevent~~  
 37 ~~a court from correcting a clerical error in a judgment or from~~  
 38 ~~setting aside and vacating a judgment on the ground of an~~  
 39 ~~incorrect or erroneous legal basis for the decision.~~

1 SEC. 4. Section 116.725 is added to the Code of Civil  
2 Procedure, to read:

3 116.725. (a) A motion to correct a clerical error in a judgment  
4 or to set aside and vacate a judgment on the ground of an  
5 incorrect or erroneous legal basis for the decision may be made  
6 as follows:

7 (1) By the court on its own motion at any time.

8 (2) By a party within 30 days after the clerk mails notice of  
9 entry of judgment to the parties.

10 (b) Each party may file only one motion to correct a clerical  
11 error or to set aside and vacate the judgment on the ground of an  
12 incorrect or erroneous legal basis for the decision.

13 SEC. 5. Section 116.780 of the Code of Civil Procedure is  
14 amended to read:

15 116.780. (a) The judgment of the superior court after a  
16 hearing on appeal is final and not appealable.

17 (b) Article 6 (commencing with Section 116.610) on  
18 judgments of the small claims court applies to judgments of the  
19 superior court after a hearing on appeal, except as provided in  
20 subdivisions (c) and (d).

21 (c) For good cause and where necessary to achieve substantial  
22 justice between the parties, the superior court may award a party  
23 to an appeal reimbursement of (1) attorney's fees actually and  
24 reasonably incurred in connection with the appeal, not exceeding  
25 one hundred fifty dollars (\$150), and (2) actual loss of earnings  
26 and expenses of transportation and lodging actually and  
27 reasonably incurred in connection with the appeal, not exceeding  
28 one hundred fifty dollars (\$150).

29 ~~(d) Upon the expiration of 10 days following the completion~~  
30 ~~of the appeal process, the superior court shall order the appeal~~  
31 ~~and any judgment transferred to the small claims court in which~~  
32 ~~the action was originally filed for purposes of enforcement and~~  
33 ~~other proceedings under Article 8 (commencing with Section~~  
34 ~~116.810) of this chapter.~~

35 SEC. 6. Section 396b of the Code of Civil Procedure is  
36 amended to read:

37 396b. (a) Except as otherwise provided in Section 396a, if an  
38 action or proceeding is commenced in a court having jurisdiction  
39 of the subject matter thereof, other than the court designated as  
40 the proper court for the trial thereof, under this title, the action

1 may, notwithstanding, be tried in the court where commenced,  
2 unless the defendant, at the time he or she answers, demurs, or  
3 moves to strike, or, at his or her option, without answering,  
4 demurring, or moving to strike and within the time otherwise  
5 allowed to respond to the complaint, files with the clerk, a notice  
6 of motion for an order transferring the action or proceeding to the  
7 proper court, together with proof of service, upon the adverse  
8 party, of a copy of those papers. Upon the hearing of the motion  
9 the court shall, if it appears that the action or proceeding was not  
10 commenced in the proper court, order the action or proceeding  
11 transferred to the proper court.

12 (b) In its discretion, the court may order the payment to the  
13 prevailing party of reasonable expenses and attorney's fees  
14 incurred in making or resisting the motion to transfer whether or  
15 not that party is otherwise entitled to recover his or her costs of  
16 action. In determining whether that order for expenses and fees  
17 shall be made, the court shall take into consideration (1) whether  
18 an offer to stipulate to change of venue was reasonably made and  
19 rejected, and (2) whether the motion or selection of venue was  
20 made in good faith given the facts and law the party making the  
21 motion or selecting the venue knew or should have known. As  
22 between the party and his or her attorney, those expenses and  
23 fees shall be the personal liability of the attorney not chargeable  
24 to the party. Sanctions shall not be imposed pursuant to this  
25 subdivision except on notice contained in a party's papers, or on  
26 the court's own noticed motion, and after opportunity to be  
27 heard.

28 (c) The court in a proceeding for dissolution of marriage or  
29 legal separation; *or under the Uniform Parentage Act (Part 3*  
30 *(commencing with Section 7600) of Division 12 of the Family*  
31 *Code)* may, prior to the determination of the motion to transfer,  
32 consider and determine motions for allowance of temporary  
33 spousal support, support of children, *and* counsel fees and costs,  
34 *and motions to determine custody of and visitation with children,*  
35 *and may* make all necessary and proper orders in connection  
36 therewith.

37 (d) In any case, if an answer is filed, the court may consider  
38 opposition to the motion to transfer, if any, and may retain the  
39 action in the county where commenced if it appears that the

1 convenience of the witnesses or the ends of justice will thereby  
2 be promoted.

3 (e) If the motion to transfer is denied, the court shall allow the  
4 defendant time to move to strike, demur, or otherwise plead if the  
5 defendant has not previously filed a response.

6 SEC. 7. Section 998 of the Code of Civil Procedure is  
7 amended to read:

8 998. (a) The costs allowed under Sections 1031 and 1032  
9 shall be withheld or augmented as provided in this section.

10 (b) Not less than 10 days prior to commencement of trial or  
11 arbitration (as provided in Section 1281 or 1295) of a dispute to  
12 be resolved by arbitration, any party may serve an offer in  
13 writing upon any other party to the action to allow judgment to  
14 be taken or an award to be entered in accordance with the terms  
15 and conditions stated at that time. *Any acceptance of the offer*  
16 *shall be in writing.*

17 (1) If the offer is accepted, the offer with proof of acceptance  
18 shall be filed and the clerk or the judge shall enter judgment  
19 accordingly. In the case of an arbitration, the offer with proof of  
20 acceptance shall be filed with the arbitrator or arbitrators who  
21 shall promptly render an award accordingly.

22 (2) If the offer is not accepted prior to trial or arbitration,  
23 within 30 days after it is made, whichever occurs first, it shall be  
24 deemed withdrawn, and cannot be given in evidence upon the  
25 trial or arbitration.

26 (3) For purposes of this subdivision, a trial or arbitration shall  
27 be deemed to be actually commenced at the beginning of the  
28 opening statement of the plaintiff or counsel, and if there is no  
29 opening statement, then at the time of the administering of the  
30 oath or affirmation to the first witness, or the introduction of any  
31 evidence.

32 (c) (1) If an offer made by a defendant is not accepted and the  
33 plaintiff fails to obtain a more favorable judgment or award, the  
34 plaintiff shall not recover his or her postoffer costs and shall pay  
35 the defendant's costs from the time of the offer. In addition, in  
36 any action or proceeding other than an eminent domain action,  
37 the court or arbitrator, in its discretion, may require the plaintiff  
38 to pay a reasonable sum to cover costs of the services of expert  
39 witnesses, who are not regular employees of any party, actually  
40 incurred and reasonably necessary in either, or both, preparation

1 for trial or arbitration, or during trial or arbitration, of the case by  
2 the defendant.

3 (2) (A) In determining whether the plaintiff obtains a more  
4 favorable judgment, the court or arbitrator shall exclude the  
5 postoffer costs.

6 (B) It is the intent of the Legislature in enacting subparagraph  
7 (A) to supersede the holding in *Encinitas Plaza Real v. Knight*,  
8 209 Cal. App. 3d 996, that attorney’s fees awarded to the  
9 prevailing party were not costs for purposes of this section but  
10 were part of the judgment.

11 (d) If an offer made by a plaintiff is not accepted and the  
12 defendant fails to obtain a more favorable judgment or award in  
13 any action or proceeding other than an eminent domain action,  
14 the court or arbitrator, in its discretion, may require the defendant  
15 to pay a reasonable sum to cover costs of the services of expert  
16 witnesses, who are not regular employees of any party, actually  
17 incurred and reasonably necessary in either, or both, preparation  
18 for trial or arbitration, or during trial or arbitration, of the case by  
19 the plaintiff, in addition to plaintiff’s costs.

20 (e) If an offer made by a defendant is not accepted and the  
21 plaintiff fails to obtain a more favorable judgment or award, the  
22 costs under this section, from the time of the offer, shall be  
23 deducted from any damages awarded in favor of the plaintiff. If  
24 the costs awarded under this section exceed the amount of the  
25 damages awarded to the plaintiff the net amount shall be awarded  
26 to the defendant and judgment or award shall be entered  
27 accordingly.

28 (f) Police officers shall be deemed to be expert witnesses for  
29 the purposes of this section; plaintiff includes a  
30 cross-complainant and defendant includes a cross-defendant. Any  
31 judgment or award entered pursuant to this section shall be  
32 deemed to be a compromise settlement.

33 (g) This chapter does not apply to either of the following:

34 (1) An offer that is made by a plaintiff in an eminent domain  
35 action.

36 (2) Any enforcement action brought in the name of the people  
37 of the State of California by the Attorney General, a district  
38 attorney, or a city attorney, acting as a public prosecutor.

1 (h) The costs for services of expert witnesses for trial under  
 2 subdivisions (c) and (d) shall not exceed those specified in  
 3 Section 68092.5 of the Government Code.

4 (i) This section shall not apply to labor arbitrations filed  
 5 pursuant to memoranda of understanding under the Ralph C.  
 6 Dills Act (Chapter 10.3 (commencing with Section 3512) of  
 7 Division 4 of Title 1 of the Government Code).

8 SEC. 8. Section 811.9 of the Government Code is amended to  
 9 read:

10 811.9. (a) Notwithstanding any other provision of law,  
 11 judges, subordinate judicial officers, and court executive officers  
 12 of the superior ~~and municipal~~ courts are state officers for  
 13 purposes of Part 1 (commencing with Section 810) to Part 7  
 14 (commencing with Section 995), inclusive, and trial court  
 15 employees are employees of the trial court for purposes of Part 1  
 16 (commencing with Section 810) to Part 7 (commencing with  
 17 Section 995), inclusive. The Judicial Council shall provide for  
 18 representation, defense, and indemnification of such individuals  
 19 and the court pursuant to Part 1 (commencing with Section 810)  
 20 to Part 7 (commencing with Section 995), inclusive. The Judicial  
 21 Council shall provide for such representation or defense through  
 22 the county counsel, the Attorney General, or other counsel. The  
 23 county counsel and the Attorney General may, but are not  
 24 required to, provide such representation or defense for the  
 25 Judicial Council *or the Administrative Office of the Courts*. The  
 26 fact that a *justice*, judge, subordinate judicial officer, court  
 27 executive officer, ~~trial court employee,~~ *or the court, the Judicial*  
 28 *Council, or the Administrative Office of the Courts is or was*  
 29 *represented or defended by the county counsel, the Attorney*  
 30 *General, or other counsel shall not be the sole basis for a judicial*  
 31 *determination of disqualification of a justice, judge, subordinate*  
 32 *judicial officer, the county counsel, the Attorney General, or*  
 33 *other counsel in unrelated actions.*

34 (b) To promote the cost-effective, prompt, and fair resolution  
 35 of actions, proceedings, and claims affecting the trial courts, the  
 36 Judicial Council shall adopt rules of court requiring the  
 37 Administrative Office of the Courts to manage actions,  
 38 proceedings, and claims that affect the trial courts and involve  
 39 superior ~~or municipal~~ courts, superior ~~or municipal~~  
 40 subordinate judicial officers, court executive officers, or trial

1 court employees in consultation with the affected courts and  
2 individuals. The Administrative Office of the Courts’  
3 management of these actions, proceedings, and claims shall  
4 include, but not be limited to, case management and  
5 administrative responsibilities such as selection of counsel and  
6 making strategic and settlement decisions.

7 (c) Nothing in this section shall be construed to affect the  
8 employment status of subordinate judicial officers, court  
9 executive officers, and trial court employees related to any  
10 matters not covered by subdivision (a).

11 SEC. 9. Section 905 of the Government Code is amended to  
12 read:

13 905. There shall be presented in accordance with Chapter 1  
14 (commencing with Section 900) and Chapter 2 (commencing  
15 with Section 910) of this part all claims for money or damages  
16 against local public entities except:

17 (a) Claims under the Revenue and Taxation Code or other  
18 statute prescribing procedures for the refund, rebate, exemption,  
19 cancellation, amendment, modification or adjustment of any tax,  
20 assessment, fee or charge or any portion thereof, or of any  
21 penalties, costs or charges related thereto.

22 (b) Claims in connection with which the filing of a notice of  
23 lien, statement of claim, or stop notice is required under any  
24 provision of law relating to mechanics’, laborers’ or  
25 materialmen’s liens.

26 (c) Claims by public employees for fees, salaries, wages,  
27 mileage or other expenses and allowances.

28 (d) Claims for which the ~~workmen’s~~ *worker’s* compensation  
29 authorized by Division 4 (commencing with Section ~~3201~~ 3200)  
30 of the Labor Code is the exclusive remedy.

31 (e) Applications or claims for any form of public assistance  
32 under the Welfare and Institutions Code or other provisions of  
33 law relating to public assistance programs, and claims for goods,  
34 services, provisions or other assistance rendered for or on behalf  
35 of any recipient of any form of public assistance.

36 (f) Applications or claims for money or benefits under any  
37 public retirement or pension system.

38 (g) Claims for principal or interest upon any bonds, notes,  
39 warrants, or other evidences of indebtedness.

1 (h) Claims—~~which~~ *that* relate to a special assessment  
 2 constituting a specific lien against the property assessed and  
 3 ~~which~~ *that* are payable from the proceeds of—~~such an~~ *the*  
 4 assessment, by offset of a claim for damages against it or by  
 5 delivery of any warrant or bonds representing it.

6 (i) Claims by the State or by a state department or agency or  
 7 by another local public entity *or by a judicial branch entity*.

8 (j) Claims arising under any provision of the Unemployment  
 9 Insurance Code, including but not limited to claims for money or  
 10 benefits, or for refunds or credits of employer or worker  
 11 contributions, penalties, or interest, or for refunds to workers of  
 12 deductions from wages in excess of the amount prescribed.

13 (k) Claims for the recovery of penalties or forfeitures made  
 14 pursuant to Article 1 (commencing with Section 1720) of  
 15 Chapter 1 of Part 7 of Division 2 of the Labor Code.

16 (l) Claims governed by the Pedestrian Mall Law of 1960, Part  
 17 1 (commencing with Section 11000) of Division 13 of the Streets  
 18 and Highways Code.

19 SEC. 10. Section 905.7 is added to the Government Code, to  
 20 read:

21 905.7. All claims against a judicial branch entity for money  
 22 or damages based upon an express contract or for an injury for  
 23 which the judicial branch entity is liable shall be presented in  
 24 accordance with Chapter 1 (commencing with Section 900) and  
 25 Chapter 2 (commencing with Section 910) of this part. The  
 26 provisions of this section are declaratory of existing law.

27 SEC. 11. Section 910.4 of the Government Code is amended  
 28 to read:

29 910.4. The board shall provide forms specifying the  
 30 information to be contained in claims against the state *or a*  
 31 *judicial branch entity*. The person presenting a claim shall use  
 32 the form in order that his or her claim is deemed in conformity  
 33 with Sections 910 and 910.2. A claim may be returned to the  
 34 person if it was not presented using the form. Any claim returned  
 35 to a person may be resubmitted using the appropriate form.

36 SEC. 12. Section 69926.5 of the Government Code is  
 37 amended to read:

38 69926.5. (a) To ensure and maintain adequate funding for  
 39 court security, a surcharge of twenty dollars (\$20) is added to the

1 total fee collected pursuant to Section 26820.4, 26826, 26827,  
2 72055, or 72056.

3 (b) In addition to the surcharge in subdivision (a), a surcharge  
4 of twenty dollars (\$20) is added to the total filing fee collected in  
5 a case pursuant to Section 26820.4, 26826, or 26827, a surcharge  
6 of twenty dollars (\$20) is added to the total filing fee collected in  
7 a limited civil case pursuant to Section 72055 or 72056 where the  
8 amount demanded, excluding attorney's fees and costs, is in  
9 excess of ten thousand dollars (\$10,000), and a surcharge of ten  
10 dollars (\$10) is added to the total filing fee collected in a limited  
11 civil case pursuant to Section 72055 or 72056 where the amount  
12 demanded, excluding attorney's fees and costs, is ten thousand  
13 dollars (\$10,000), or less. The surcharges in this subdivision shall  
14 be collected in cases filed from January 1, 2004, to June 30, ~~2005~~  
15 ~~2006~~, inclusive. The purpose of this surcharge is to stabilize  
16 funding for court security at the current level and is not intended  
17 to increase the funding available for court security in the  
18 ~~2004-05 and 2005-06~~ fiscal-year years. This subdivision shall  
19 become inoperative on July 1, ~~2005~~ 2006, or upon the enactment  
20 of a uniform filing fee, whichever is earlier.

21 (c) Notwithstanding any other provision of law, the surcharges  
22 collected pursuant to subdivisions (a) and (b) shall all be  
23 deposited in a special account in the county treasury, and  
24 transmitted therefrom monthly to the Controller for deposit in the  
25 Trial Court Trust Fund.

26 SEC. 13. Section 213.5 of the Welfare and Institutions Code  
27 is amended to read:

28 213.5. (a) After a petition has been filed pursuant to Section  
29 311 to declare a child a dependent child of the juvenile court, and  
30 until the time that the petition is dismissed or dependency is  
31 terminated, upon application in the manner provided by Section  
32 527 of the Code of Civil Procedure, the juvenile court may issue  
33 ex parte orders (1) enjoining any person from molesting,  
34 attacking, striking, sexually assaulting, stalking, or battering the  
35 child or any other child in the household; (2) excluding any  
36 person from the dwelling of the person who has care, custody,  
37 and control of the child; and (3) enjoining any person from  
38 behavior, including contacting, threatening, or disturbing the  
39 peace of the child, that the court determines is necessary to  
40 effectuate orders under paragraph (1) or (2). ~~A court issuing an~~

1 ~~ex parte order pursuant to this subdivision may simultaneously~~  
2 *The court may also* issue an ex parte order enjoining any person  
3 from contacting, threatening, molesting, attacking, striking,  
4 sexually assaulting, stalking, battering, or disturbing the peace of  
5 any parent, legal guardian, or current caretaker of the child,  
6 regardless of whether the child resides with that parent, legal  
7 guardian, or current caretaker, upon application in the manner  
8 provided by Section 527 of the Code of Civil Procedure.

9 (b) After a petition has been filed pursuant to Section 601 or  
10 602 to declare a child a ward of the juvenile court, and until the  
11 time that the petition is dismissed or wardship is terminated,  
12 upon application in the manner provided by Section 527 of the  
13 Code of Civil Procedure, the juvenile court may issue ex parte  
14 orders (1) enjoining any person from molesting, attacking,  
15 threatening, sexually assaulting, stalking, or battering the child or  
16 any other child in the household; (2) excluding any person from  
17 the dwelling of the person who has care, custody, and control of  
18 the child; or (3) enjoining the child from contacting, threatening,  
19 stalking, or disturbing the peace of any person the court finds to  
20 be at risk from the conduct of the child, or with whom  
21 association would be detrimental to the child.

22 (c) In the case in which a temporary restraining order is  
23 granted without notice, the matter shall be made returnable on an  
24 order requiring cause to be shown why the order should not be  
25 granted, on the earliest day that the business of the court will  
26 permit, but not later than 15 days or, if good cause appears to the  
27 court, 20 days from the date the temporary restraining order is  
28 granted. The court may, on the motion of the person seeking the  
29 restraining order, or on its own motion, shorten the time for  
30 service on the person to be restrained of the order to show cause.  
31 The court may, upon its own motion or the filing of an affidavit  
32 by the person seeking the restraining order, find that the person  
33 to be restrained could not be served within the time required by  
34 law and to reissue an order previously issued and dissolved by  
35 the court for failure to serve the person to be restrained. The  
36 reissued order shall state on its face the date of expiration of the  
37 order. Any hearing pursuant to this section may be held  
38 simultaneously with any regularly scheduled hearings held in  
39 proceedings to declare a child a dependent child or ward of the

1 juvenile court pursuant to Section 300, 601, or 602, or  
2 subsequent hearings regarding the dependent child or ward.

3 (d) The juvenile court may issue, upon notice and a hearing,  
4 any of the orders set forth in subdivisions (a), (b), and (c). Any  
5 restraining order granted pursuant to this subdivision shall  
6 remain in effect, in the discretion of the court, not to exceed three  
7 years, unless otherwise terminated by the court, extended by  
8 mutual consent of all parties to the restraining order, or extended  
9 by further order of the court on the motion of any party to the  
10 restraining order.

11 (e) (1) The juvenile court may issue an order made pursuant  
12 to subdivision (a), (c), or (d) excluding a person from a residence  
13 or dwelling. This order may be issued for the time and on the  
14 conditions that the court determines, regardless of which party  
15 holds legal or equitable title or is the lessee of the residence or  
16 dwelling.

17 (2) The court may issue an order under paragraph (1) only on  
18 a showing of all of the following:

19 (A) Facts sufficient for the court to ascertain that the party  
20 who will stay in the dwelling has a right under color of law to  
21 possession of the premises.

22 (B) That the party to be excluded has assaulted or threatens to  
23 assault the other party or any other person under the care,  
24 custody, and control of the other party, or any minor child of the  
25 parties or of the other party.

26 (C) That physical or emotional harm would otherwise result to  
27 the other party, to any person under the care, custody, and control  
28 of the other party, or to any minor child of the parties or of the  
29 other party.

30 (f) Any order issued pursuant to subdivision (a), (b), (c), or (d)  
31 shall state on its face the date of expiration of the order.

32 (g) The juvenile court shall order any designated person or  
33 attorney to mail a copy of any order, or extension, modification,  
34 or termination thereof, granted pursuant to subdivision (a), (b),  
35 (c), or (d), by the close of the business day on which the order,  
36 extension, modification, or termination was granted, and any  
37 subsequent proof of service thereof, to each local law  
38 enforcement agency designated by the person seeking the  
39 restraining order or his or her attorney having jurisdiction over  
40 the residence of the person who has care, custody, and control of

1 the child and other locations where the court determines that acts  
2 of domestic violence or abuse against the child or children are  
3 likely to occur. Each appropriate law enforcement agency shall  
4 make available through an existing system for verification,  
5 information as to the existence, terms, and current status of any  
6 order issued pursuant to subdivision (a), (b), (c), or (d) to any law  
7 enforcement officer responding to the scene of reported domestic  
8 violence or abuse.

9 (h) Any willful and knowing violation of any order granted  
10 pursuant to subdivision (a), (b), (c), or (d) shall be a  
11 misdemeanor punishable under Section 273.65 of the Penal  
12 Code.

13 (i) A juvenile court restraining order related to domestic  
14 violence issued by a court pursuant to this section shall be issued  
15 on forms adopted by the Judicial Council of California and that  
16 have been approved by the Department of Justice pursuant to  
17 subdivision (i) of Section 6380 of the Family Code. However, the  
18 fact that an order issued by a court pursuant to this section was  
19 not issued on forms adopted by the Judicial Council and  
20 approved by the Department of Justice shall not, in and of itself,  
21 make the order unenforceable.

22 (j) Information on any juvenile court restraining order related  
23 to domestic violence issued by a court pursuant to this section  
24 shall be transmitted to the Department of Justice in accordance  
25 with subdivision (b) of Section 6380 of the Family Code.

26 (k) (1) Prior to a hearing on the issuance or denial of an order  
27 under this part, a search shall be conducted as described in  
28 subdivision (a) of Section 6306 of the Family Code.

29 (2) Prior to deciding whether to issue an order under this part,  
30 the court shall consider the following information obtained  
31 pursuant to a search conducted under paragraph (1): any  
32 conviction for a violent felony specified in Section 667.5 of the  
33 Penal Code or a serious felony specified in Section 1192.7 of the  
34 Penal Code; any misdemeanor conviction involving domestic  
35 violence, weapons, or other violence; any outstanding warrant;  
36 parole or probation status; any prior restraining order; and any  
37 violation of a prior restraining order.

38 (3) (A) If the results of the search conducted pursuant to  
39 paragraph (1) indicate that an outstanding warrant exists against  
40 the subject of the search, the court shall order the clerk of the

1 court to immediately notify, by the most effective means  
2 available, appropriate law enforcement officials of any  
3 information obtained through the search that the court determines  
4 is appropriate. The law enforcement officials so notified shall  
5 take all actions necessary to execute any outstanding warrants or  
6 any other actions, as appropriate and as soon as practicable.

7 (B) If the results of the search conducted pursuant to  
8 paragraph (1) indicate that the subject of the search is currently  
9 on parole or probation, the court shall order the clerk of the court  
10 to immediately notify, by the most effective means available, the  
11 appropriate parole or probation officer of any information  
12 obtained through the search that the court determines is  
13 appropriate. The parole or probation officer so notified shall take  
14 all actions necessary to revoke any parole or probation, or any  
15 other actions, with respect to the subject person, as appropriate  
16 and as soon as practicable.

17 (I) Upon making any order for custody or visitation pursuant  
18 to this section, the court shall follow the procedures specified in  
19 subdivisions (c) and (d) of Section 6323 of the Family Code.