

CALIFORNIA LEGISLATURE

Joint Select Task Force  
on the  
Changing Family

"CALIFORNIA COUPLES: RECOGNIZING DIVERSITY  
AND  
STRENGTHENING FUNDAMENTAL RELATIONSHIPS"

A Report Submitted  
to the  
Joint Select Task Force

COUPLES WORKGROUP  
Preliminary Report

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## **JOINT SELECT TASK FORCE ON THE CHANGING FAMILY**

By joint resolution, the California Legislature created the Joint Select Task Force on the Changing Family on September 18, 1987. The Task Force consists of 6 legislators and 20 public members, half appointed by the Senate Rules Committee and half appointed by the Speaker of the Assembly.

The Task Force was charged with a responsibility to: (1) review social, economic, and demographic trends impacting California families; (2) define the basic tenets of a comprehensive California family policy; (3) develop legislative recommendations to implement specific policies and programs; and (4) to evaluate the impact of state programs on the families using family functions as baseline criteria.

The Task Force created several thematic workgroups to design policy and program recommendations, each in a selected family policy area. The themes of these workgroups are: (1) helping parents work; (2) helping parents parent; (3) preparing today's children to support tomorrow's families; (4) families in economic peril: restoring self-sufficiency; (5) the silver opportunity (older adults); and (6) couples: recognizing diversity and strengthening fundamental relationships.

### **COUPLES WORKGROUP**

At some time in their lives, most adults pair off into couples to create families. Couples should not be stereotyped; their relationships are varied. Despite their diversity, all couples do share a common concern, namely, the challenge of maintaining healthy relationships that endure over time.

The couples workgroup has examined social, legal, economic, and psychological pressures that impede positive problem-solving within couple relationships. Research has found some inconsistencies between society's professed public policies to promote stability in relationships and some existing practices which may actually produce the opposite results.

The report of the workgroup documents a wide variety of problems experienced by a broad array of couples. It highlights suggestions made by secular and religious agencies. It recommends implementation of specific policies and programs to encourage stability and strengthen fundamental family relationships.

### **DISCLAIMER**

This document was submitted to the Joint Select Task Force on the Changing Family to stimulate dialogue on issues affecting California couples. The views contained herein are not necessarily shared by all Task Force members or workgroup participants.

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[To Be Included In Final Workgroup Report - Available Feb. 1989]

## PREFACE

Healthy individuals, healthy families, and healthy relationships are inherently beneficial and crucial to a healthy society, and are our most precious and valuable resources. The well-being of the State of California depends greatly upon the healthiness and success of its families, and the State of California values the family, marriage, and healthy human relationships.

-- California State Legislature  
1986 Statutes, Chapter 1365

Couples play a fundamental role in the formation and development of families. The vitality of families often depends on whether couples have healthy and durable relationships.

Recognizing these principles, the Joint Select Task Force on the Changing Family convened a committee, or workgroup, to study issues of particular concern to couples.

The workgroup's research methodology was varied. Student interns engaged in directed research for the workgroup. Other participants conducted a variety of surveys, thereby gaining valuable insights from administrators, service providers, and educators affiliated with both secular and religious agencies. Relevant reports and articles were brought to the workgroup's attention by staff. These background materials -- survey responses, student research papers, government reports, and related articles -- may be found in a Supplement, published by the workgroup under separate cover.



This report synthesizes the collective efforts of workgroup participants. Its findings demonstrate that California couples, whether married or unmarried, have a diversity of relationships and experience a wide array of problems. Its recommendations are intended to generate spirited debate. Through cooperative efforts, the State of California can provide leadership to its families -- indeed, to the nation -- by implementing policies and programs to assist individuals in forming and maintaining healthy and enduring relationships.

It is anticipated that the Final Report of the Couples Workgroup will be completed by February 1989. It will include a major section on "Maintaining Stable and Healthy Relationships." Most of the research on this section has been completed and the background papers related to this topic can be found in the Supplement.

Dissolution of marital and nonmarital relationships is an aspect of family life that has not escaped the workgroup's attention. No doubt, public policy reform in this area may well be in order. However, the workgroup has placed priority on education, prevention, intervention, and maintenance of relationships. The subject of dissolution has been left for future study.

-- Thomas F. Coleman



## SUMMARY OF RECOMMENDATIONS

### Demographics

1. It is recommended that the Legislature amend Health and Safety Code Section 429.50 so that the State Department of Health Services is required to issue an annual report to the Legislature analyzing statewide trends with respect to the formation, maintenance, and dissolution of families.

*Bi-annually  
would be  
better & less  
costly.*

### Family Life Education

2. It is recommended that family life education curricula maintain an appropriate balance between the teaching of rights and the teaching of responsibilities. Effective education is undermined when one side of the equation is ignored. Although curricula may stress abstinence and promote marriage, relationship options and family diversity are also legitimate topics for family life classes. (The rights of students to academic freedom, privacy, and the pursuit of happiness demand a balanced approach in family life education.)

*I'm not sure the last sentence is pertinent or necessary.*

3. It is also recommended that all high school students be required to complete a formal class in marriage and family relationships prior to graduation. Government has a compelling interest in making sure that students acquire basic information and skills pertaining to fundamental family relationships. Minimum requirements for family life education classes should be developed by the State Board of Education. To accommodate other interests, such as freedom of religion and parental authority, students should be permitted to satisfy the family life education requirement either by completing a class within the public school system, or at a private school, or at an educationally-accredited religious institution. However, no student should graduate without exposure to some formal education on marriage and family relationships.

*I always  
worry about  
who is  
developing  
minimum  
standards.*

*Excellent recommendation & very necessary. Who will  
enforce or monitor?*

### Marriage: Premarital Counseling

4. In order to correct deficiencies in California's premarital counseling statute, it is recommended that Civil Code Section 4101 be amended, and annual fiscal legislation be passed by the Legislature to reflect the following objectives:

(a) Premarital counseling should be structured counseling. Specific procedures should be designed to make applicants aware of the complex dynamics involved in the marital relationship. Counseling should consist of lectures, group counseling, and/or individual counseling. At least four (4) separate hour-long sessions should be required.

*Impractical &  
unworkable. If #3  
were implemented  
this might be less  
needed.*

(b) Sufficient funds should be allocated to ensure the success of state-mandated premarital counseling programs.

(c) There should be a method of ensuring that counseling meets minimum standards. Following the guidelines of Utah's premarital counseling scheme, it is suggested that each county establish a premarital counseling board. Such a panel would develop a master plan for the delivery of premarital counseling services by public and private sector agencies.

5. It is recommended that the Legislature require all adult applicants for a marriage license either to participate in premarital counseling meeting minimum state requirements, or to wait six months from the date of application to the date of issuance of the license. Although the right to marry is fundamental, the state may impose reasonable regulations and impose the conditions under which the marital status may be created or terminated. Since marriage is a contract, the consent of the parties lies at the core of a marriage. The consent of the parties to any contract must be free, mutual, and communicated to each other. An apparent consent is not real or free when obtained through duress, menace, fraud, undue influence, or mistake. For most couples, marriage is the most significant contract they will ever create. The state has an significant interest in making sure that marriage applicants are entering the institution of marriage with informed consent. Amending the law to require a waiting period of six months or premarital counseling is a reasonable way to help ensure that couples are entering the institution of marriage freely and with full knowledge of the consequences.

*A waiting period is a good idea - say 10 days to 2 weeks, but 6 months is unrealistic.*

#### **Marriage: Prenuptial Agreements**

6. It is recommended that the Prenuptial Agreement Act be amended to require that both parties to the agreement participate in at least two hours of counseling with a licensed marriage counselor before executing a prenuptial agreement. Such a requirement will help insure that the parties are entering the agreement knowingly and voluntarily.

*How about a lawyer instead of a marriage counselor?*

#### **Marriage: Civil Ceremony and Vows**

7. It is recommended that, at the time a couple applies for a marriage license, the county clerk be required to provide the applicants with a copy of the civil ceremony customarily performed by civil authorities in that county, with each vow delineated in bold type. The clerk should be required to inform applicants that vows can be tailored to meet the needs of each relationship. Applicants should be informed that they can add or delete vows for use in a civil ceremony, so long as they include an agreement to become husband and wife.

*If you can write your own vows why furnish as copy of the counties civil ceremony?*

8. It is further recommended that, within the next year, the County Clerk's Association should sponsor a seminar on marriage vows and ceremonies. A representative from each county should be encouraged to attend. Panelists should include an administrator, a marriage counselor, a representative from the state Department of Health Services, and a representative from the state Department of Justice.

*How about  
doing through  
the schools?*

### Confidential Marriage

9. Although discrimination against unmarried couples and children born out of wedlock is generally illegal, social stigma in these areas is not uncommon. Therefore, the confidential marriage process may continue to have some validity. It is recommended that Civil Code Section 4213 dealing with confidential marriages be amended to provide relief only in these situations. It is recommended that couples applying for a confidential marriage certificate be required to declare either that they have been living together as husband and wife for five years, or that they have been living together as husband and wife for less than five years but during that time they have given birth to a child.

*O.K.*

### Common Law Marriage

10. It is recommended that the Legislature recognize the validity of common law marriages consummated in this state. Civil Code Section 4100 should be amended to authorize couples to become married in one of two ways: (1) consent accompanied by the issuance of a license and a marriage ceremony; or (2) cohabitation for at least five years, plus consent to be married, plus a mutual assumption of marital rights and obligations. Such a legislative amendment would promote marriage, vindicate the marital expectations of the parties, and eliminate many potential inequities inherent in our current law. (It would also demonstrate that California is tolerant of marital and cultural diversity.)

*O.K.*

*This sentence  
is consent rather than recommendation.*

### Marriage Barriers: Elderly Couples

11. The decision of seniors to live in unmarried cohabitation should be a matter of free choice, not economic coercion. Elderly widows or widowers who remarry should not be penalized for doing so. It is recommended that the Legislature adopt a "Vesper Marriage Act" patterned after legislation enacted in the Virgin Islands in 1981. This unique form of marriage is limited to persons age 60 and older. Although the parties to such a marriage are considered legally married, they are treated as single persons for purposes of taxation and receipt of pension benefits. The workgroup received correspondence from the Attorney General of the Virgin Islands indicating that passage of the Vesper Marriage Act has not created administrative burdens or other adverse consequences.

*O.K.*

## Marriage Barriers: Disabled Couples

12. It is recommended that the Assembly Health and Human Services Committee hold public hearings to investigate ways to overcome problems caused by "deeming." "Deeming" creates economic barriers that discourage or prevent persons with disabilities from marrying or cohabiting. At these hearings, representatives of the relevant state and federal agencies should explain what revisions in state or federal laws would be necessary to overcome the marriage/cohabitation barriers caused by "deeming." Following the hearings, appropriate legislation should be introduced in both Congress and the state Legislature rectify the situation. As it now stands, fundamental rights such as the freedom to marry and the right to choose one's living companions are not available to many people with disabilities.

## Domestic Partners: Rights of Survivors

13. It is recommended that the wrongful death statute be amended to provide relief to other members of a decedent's household family. The law should permit adult dependents who reside with the decedent to sue a tortfeasor or criminal for wrongfully causing the decedent's death. Code of Civil Procedure, Section 277(b), should be amended to provide recovery for "any dependent, whether or not qualified under other subdivisions, if, at the time of the decedent's death, the dependent resided for the previous 180 days in the decedent's household and was dependent or partially dependent on the decedent within the meaning of Labor Code Section 3503."

## Domestic Partners: Fair Housing

14. Housing discrimination against unmarried couples can be reduced through the education of consumers and landlords as well as through aggressive enforcement of fair housing laws. It is recommended that literature prepared by, and educational programs conducted by, the state Department of Fair Employment and Housing specifically mention that housing discrimination against same-sex or opposite-sex unmarried couples is illegal in California.

## Domestic Partners: Insurance Discrimination

15. It is recommended that the state Insurance Commissioner declare the following practices against insurance consumers to be "unfair" and illegal: the refusal to issue a joint renter's or homeowner's policy to an unmarried couple living together in a jointly owned or jointly rented residence, the denial of discounts to unmarried couples while granting such discounts to married couples, and the refusal to allow a life insurance applicant to name a non-spousal lifemate as a beneficiary.

### Domestic Partners: Child Custody

16. It is recommended that the Continuing Legal Education Division of the California State Bar Association offer seminars for family law practitioners on how to handle child custody cases in which the sexual orientation or unmarried cohabitation of a party becomes a disputed issue.

OK.

17. It is recommended that the California Judges Association offer its members continuing education classes on mediation and adjudication of child custody cases in which the sexual orientation or unmarried cohabitation of a party becomes a disputed issue.

OK.

*What agencies or persons are going to set up criteria for these continuing education classes?*

## MARRIED COUPLES

Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

-- Justice William O. Douglas  
United States Supreme Court  
Griswold v. Connecticut  
(1965) 381 U.S. 484, 486.

This section of the workgroup report examines policy issues associated with the institution of marriage. It includes an exploration of the legal definition of marriage, current demographics, and public opinion about marriage. It also focuses on other important issues, such as preparing for marriage, methods of authenticating marriage, informal or so-called common law marriage, and impediments to marriage.

?  
The Task Force on the Changing Family is a government-sponsored think-tank. The report of the couple's workgroup is written from a secular perspective out of respect for constitutional requirements separating government and religious concerns. However, the workgroup is aware that families and religious institutions influence each other in significant ways. Therefore, this study of California couples includes information gathered from a variety of religious sources, in addition to data obtained from government and private-sector agencies.

## **Legal Definition of Marriage**

The California Legislature has defined marriage as a "personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary." [1] Before a couple can be considered legally married, they must declare that they "take each other as husband and wife." [2] Once married, the man and woman legally become each other's spouse. [3] In addition to the emotional and spiritual satisfaction experienced by couples when they marry, the status of marriage brings with it many social and economic, as well as legal rights and responsibilities.

The freedom to marry has long been recognized as one of the most vital personal rights essential to the orderly pursuit of happiness in a free society. [4] It is considered a fundamental right protected by the United States Constitution. [5]

## **Marriage Demographics**

Millions of Californians have exercised their fundamental right to marry. The Census Bureau estimates that nearly 5.5 million California couples are married. [6] Nearly 150,000 marriage licenses are issued each year in California. [7] However, this figure is offset annually by almost an equal number of divorces. [8]

Classifying married couples in stereotypical terms is no longer realistic. As a class, married couples include people of many ages, colors,



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Table 1

**Marital Status of Californians**  
(15 years of age and older)

Never Married	28.0%
Presently Married	54.5%
First Time 41.4%	
Subsequent 13.1%	
Separated	2.7%
Presently Divorced	8.4%
Widowed	5.8%
	<hr/> 100.0%

Sources:  
1987 State Census Estimates  
1987 Phillip Morris Family Survey

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cultures, and religious affiliations. Although many couples have minor children, almost an equal number do not. Interracial and cross-cultural marriages are increasingly common.[9] So are inter-faith marriages. For example, marriages between Christians and Jews jumped from 7% in the 1940s to nearly 40% in the 1980s.[10]

There are nearly 10 million households in California.[11] Married couples live in about 55% of these households.[12] Census estimates show almost an equal number of married couples with and without minor children.[13] The proportion of married couples with children in California households has steadily declined, dropping from 54% of all households in 1950 to a mere 28% in 1980.[14] The decline in husband-wife-child(ren) households has varied greatly among various racial and ethnic groups. In 1980, for example, such households still comprised 47% of all Latino households, nearly twice the rate for Anglos (non-Hispanic whites).[15] Only 22% of the state's Black households were comprised of a married couple with children.[16]

The median length of marriages has increased a bit, from 6.5 years in 1976 to slightly more than seven years in 1986.[17] The median age of first marriages is also rising, from 20.6 for women and 22.5 for men in 1970, to 22.8 for women and 24.6 for men in 1984.[18] According to data from the National Center for Health Statistics, baby boomers are marrying later and less frequently than occurred in previous generations.[19]

Divorce statistics reveal important information about the status of marriage as a social institution. After a 15-year rise, the divorce rate has leveled off, with indications it is dropping.[20] The annual divorce rate is

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Table 2

**California Household Characteristics**

(Average = 2.7 Persons Per Household)

Total Households:	9,883,100	(100.0%)
One-Occupant:	2,269,700	( 22.9%)
Married-Couples		
With Children:	2,907,100	( 29.4%)
Without Children:	2,578,700	( 26.1%)
Single-Parent:	900,000	( 9.1%)
Unmarried Couples:	694,000	( 7.0%)
Related Adults:	534,000	( 5.4%)

Source:  
1987 State Census Estimates

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at its lowest point since 1975.[21] According to Census Bureau statisticians, the leveling divorce rate likely stems from a combination of the rising age at first marriage and a change in social attitudes toward maintaining marriages.[22] Interpreting these new divorce statistics, a spokesperson for the Bureau's Population Division rendered this opinion:[23]

There seems to have been a period when divorce was the easiest answer. Now, there is more of a feeling that people should try harder, should work more at it. Marriage is important and we should not be giving up so easily.

Statistics for certain age groups run counter to this trend, however. The rate of divorce appears to be highest for childless or single-child couples who are between the ages of 25 and 29.[24] Current projections indicate that 54% of first marriages by women ages 25 to 29 will end in divorce.[25] A 1985 survey found that nearly one-third of women aged 35 to 39 had ended a first-marriage in divorce, and researchers have projected that as many as 56% of this group would eventually divorce.[26]

California statistics reveal that up to 30% of all persons who marry eventually obtain a divorce.[27] The percentage of married persons who divorce varies considerably among racial groups: 29% among Whites, 35% among Blacks, 38% for American Indians, and 12% for Asians.[28]

Over 8% of California adults are presently divorced.[29] Nearly 3% are separated.[30] Another 13% were once divorced but have remarried.[31]

These marriage and divorce statistics take on added significance, given the value society placed on marriage, the role of marriages in family systems, and the overall of importance of family stability to societal stability and development.

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Table 3

**California Marriage and Divorce Statistics**

(Ages 15 to 54)

**General Population**

Ever Married	8,183,837	(100%)
Never Widowed or Divorced	5,614,159	( 69%)
Widowed	223,026	( 3%)
Divorced	2,394,165	( 29%)

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**Divorce Rate Among Racial Groups**  
(Percentage of Those Ever Married)

White	29%
Black	35%
American Indian	38%
Asian, Pacific Islanders	12%

Source:  
1980 State Census

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Since marriage and family are critical components in social development, society should take a keen interest in how quality relationships are created and maintained. Policy makers and administrators should listen closely to sound advice offered by those with expertise in this area -- social scientists and happily married couples. Psychologists say that the most common predictors of a good marriage include whether or not a couple has good communication, the ability to resolve conflict, personality compatibility, realistic expectations, and an agreement on religious values.[32] In a recent survey of happily married couples who had passed their 20th anniversary, husbands and wives agreed that six factors contributed to the success of their marriages: commitment to the institution of marriage, loyalty to their spouse; strong moral values; desire to have children and raise them well; good sexual relations; and faith in God or some other spiritual commitment.

*It'd be interested in any in depth studies made of happily married couples.*

The workgroup has discovered that reliable information on the status of marriage and divorce in California is difficult to obtain. Sound public policy concerning marriage and divorce cannot be developed and implemented without accurate information. Recognizing the need for ongoing research in this area, the Legislature has authorized, but not mandated, the State Department of Health Services to perform the following functions:[33]

*If there is true on what are we basing our recommendation?*

- (1) Make a continuing study of births, deaths, marriages, and divorce, in order to provide a continuing analysis of such trends to state agencies and to the Legislature.

(2) Request and receive demographic and population data from the Department of Finance.

(3) Make any additional collection of data necessary to describe and analyze fertility, family formation and dissolution, abortion practices, and other factors related to population dynamics, public health, and the environment.

Unfortunately, performing these functions has not been a priority with the State Department of Health Services. The department does not periodically report to the Legislature on family-related issues. Statistics compiled by the department on the subject of marriage and divorce are not kept current. For example, the most recent marriage and divorce statistics available from the department were for 1985. Also, in the data it does keep, the department does not make distinctions such as the number of confidential marriages versus regular marriages, the number of civil versus religious ceremonies, or the number of first versus second marriages.[34]

*Important information here.*

It is recommended that the Legislature amend Health and Safety Code Section 429.50 so that the State Department of Health Services is required to perform the functions described by the statute. The department should issue an annual report to the Legislature analyzing trends with respect to the formation, maintenance, and dissolution of California families.

#### Public Opinion

Since it began operations in 1947, the California Poll has periodically measured public opinion on the subject of marriage. The results of the most recent survey find that the California public is slightly more inclined to



believe that the institution of marriage has become weaker, rather than stronger, during the past 10 years.[35] Young people (18-29) and old people (60+) were more pessimistic than middle-aged adults.

*Anybody know why this is so?*

Marital faithfulness ranks at the top of the list (93%) of nine aspects listed by the public as aspects contributing to a successful marriage. Other aspects the public thinks are very important are living separately from in-laws (70%), having common interests (70%), and sharing household chores (61%).[36]

An examination of the opinions of men and women show a divergence on what each feels contributed to a successful marriage. Concerning sharing household chores, 65% of women say that it is very important to a marriage, whereas just 57% of men think this way. On the other hand, men attach greater importance to having an active sex life than women do (53% to 42%).[37]

*How true!*

### Preparing for Marriage

During the past year, the couples workgroup focused much of its attention on how society prepares its members to undertake the responsibilities associated with marriage. Intuitively, many workgroup participants felt that the large number of unsuccessful marriages may be linked to inadequate preparation for, and easy access to, marriage. Therefore, family life education and premarital counseling were given priority as topics of research.

*Important*

## Family Life Education

People obtain information about marriage and family from a variety of sources. Experience probably leaves the strongest and most lasting impression. Children are influenced by the attitudes and behavior of their parents. Extended family members also serve as role models. Religious affiliations help to shape beliefs. The impact of the media in reinforcing or redirecting perceptions cannot be understated. Through public education, laws, and social programs, government also is involved in the family life education network.

The Constitution requires that family life education be administered as a joint venture, with parents, religion, media, and government all acting as primary partners. In the first instance, childrearing and education are generally matters of parental discretion. In other words, parents have the initial responsibility to educate their children about marriage and family. Religious institutions have a constitutionally protected right to formulate guidelines for adherents. Freedom of speech and press also guarantee the media's participation in the educational process.

However, the role of government in family life education is significant. Government has a duty to protect the health and welfare of the people. This includes a major responsibility with respect public education. The welfare of society is dependent upon healthy families. Therefore, from a strictly secular perspective, government has a compelling interest in promoting the development of successful marriages and other family relationships.

Youngsters must often rely on the public schools for accurate and

complete information regarding sexuality, marriage, and family relationships. The State Board of Education has recognized that traditional institutional sources of family and sexual information and guidance for young people are often inadequate or absent.[38] Therefore, state guidelines have been developed to assist public schools in administering Family Life and Health Education Programs.[39] State guidelines respect local control over materials and methods of education. Community involvement is encouraged. Under state law, parents have veto power. Parents may require that their children be excluded from family life education classes.[40] In other words, family life education is optional in the public schools.

Looking for ways to improve the present family life education system, the couples workgroup conducted two surveys of administrators and educators. One questionnaire was directed to the Superintendents of County Boards of Education. Another was sent to family life educators within the state's Community College system.

Respondents agreed that education was a key to helping the family.[41] Many recommended that completion of a family life/marriage class be made a prerequisite to graduation from high school, community colleges, or state universities.[42] *Absolutely necessary.*

Public schools in some counties do not offer classes on marriage and family relationships. However, where such classes are taught, some common themes in the curricula included:[43]

- \* functions of a personal relationship
- \* mate selection process
- \* love and individual needs
- \* gender roles/marriage roles
- \* readiness and maturity
- \* society, family and evolving structures

- \* conflict management and problem solving
- \* parenthood and family planning
- \* communication skills

Comments from many survey respondents were very powerful and insightful. One county superintendent complained that public schools are facing crisis-level problems with the children and parents from multiple-divorce situations.[43] Another county superintendent underscored the same concern:[44]

The fall-out of divorce, particularly when children are involved, is having a catastrophic impact on school and other community services . . . . The divorce rate and the problems it generates are killing off our public schools as well as public agencies with the sheer numbers of those young people who are requiring services above and beyond our normal means of operation. Poorly treated, poorly housed, poorly fed, and poorly cared for children are reaching our schools and other public services in overwhelming numbers and as a result all the needs are not being met.

To have a positive impact on youngsters, family life education must be based in reality. Many relationship options are available to individuals in their quest for love and happiness. As the Legislature has already acknowledged, family relationships are unique and complex and should not be thought of in stereotypical terms, nor should society attempt to pattern family relationships after a uniform model.[45] After all, the right of privacy is an inalienable right guaranteed to each individual by the California Constitution.[46] It protects personal choices in matters pertaining to procreation, marriage, family, living companions, and lifestyle.

It is recommended that family life education curricula maintain an appropriate balance between the teaching of rights and the teaching of

responsibilities. Effective education is undermined when one side of the equation is ignored. Although curricula may stress abstinence and promote marriage, relationship options and family diversity are also legitimate topics for family life classes. The rights of students to academic freedom, privacy, and the pursuit of happiness demand a balanced approach in family life education.

It is also recommended that all high school students be required to complete a formal class in marriage and family relationships prior to graduation. Government has a compelling interest in making sure that students acquire basic information and skills pertaining to fundamental family relationships. Minimum requirements for family life education classes should be developed by the State Board of Education. To accommodate other interests, such as freedom of religion and parental authority, students should be permitted to satisfy the family life education requirement either by completing a class within the public school system, or at a private school, or at an educationally-accredited religious institution. However, no student should graduate without exposure to some formal education on marriage and family relationships. *No mention is made in this section about requirements for teachers who will teach these courses. High standards for the are a necessity!*

Premarital Counseling

The couples workgroup asked family life educators and administrators to identify ways in which society can support couples to build strong relationships. In particular, respondents were asked for suggestions on how laws might be revised to assist couples in remaining together as a family.[47] Many respondents suggested that couples be required to participate in premarital counseling before obtaining a marriage license.[48]

*This should be mandatory.*

Under civil law, adults are not required to participate in premarital counseling before obtaining a marriage license. In some circumstances, however, a judge may require counseling if one or both of the applicants is under 18 years of age.[49]

**Religious Requirements.** Marriage can be viewed as both a religious institution and a civil contract. Neither the state nor the church has exclusive authority on the subject of marriage. Although the study conducted by the Task Force on the Changing Family is sponsored by state government, recommendations regarding marriage cannot ignore religious influences and traditions. The couples workgroup, therefore, looked to the experience of some religious organizations in dealing with the issue of marriage preparation.

There is a trend among religious denominations to make entry into the institution of marriage a more thoughtful and deliberate process. Increasingly, churches are requiring premarital counseling prior to a religious ceremony. A survey conducted by the workgroup found a common concern among religious denominations about interfaith marriage and their potential for failure.[50]

The survey also found that churches are grappling with three common issues in connection with couple relationships:[51]

- (1) The establishment of a common value system and the authority to appeal to it;
- (2) A well-defined definition of the nature and purpose of couple unions; and
- (3) The need for some form of premarital preparation to assist couples in making informed choices.

One minister at an interfaith campus ministry center, who is also a marriage and family counselor, affirmed that "Premarital counseling is the right problem . . . and churches are the right link for civil authorities to be pursuing." [52] Family pathology, he asserted, is in many cases linked to the phenomenon of the "easy marriage." He insisted that premarital preparation is "reality therapy" which helps couples to determine whether a relationship exists in imagination or in reality. [53]

Almost without exception, religious groups surveyed expressed the need for well-defined procedures or policies regarding premarital preparation. One standard feature common to many denominations is a waiting period. Many churches set a minimum time lapse between first contact with the minister and the date of the ceremony. Delay gives couples an opportunity to think about the significance of what they are doing.

Some form of counseling usually is associated with the waiting period. Some denominations mandate a minimum number of meetings with the minister. Others offer classes on healthy communications, managing finances, or conflict resolution. Conferences or weekend seminars for engaged couples are standard requirements in Roman Catholic family life programs. [54]

In recent years, many religious leaders have utilized psychological testing instruments to help couples come to a better understanding of their own presuppositions about marriage and their own predisposition to a role within a couple relationship.

Civil authorities should consider the experiences of religious



authorities in formulating public policies regarding entrance into the institution of marriage. At least two requirements common to religious marriages may lend themselves particularly well to secular marriages: (1) a minimum time requirement between applying for the license and performing the ceremony; and (2) recommending, if not requiring, some form of compatibility evaluation, such as premarital counseling.

**Secular Requirements.** In 1970, the Legislature took the first step toward recognizing premarital counseling as a possible solution to the rising divorce rate. Legislation was enacted to promote premarital counseling when one of the marriage applicants was under 18 years-old.[55] Such counseling for teenage couples is not required, however, because judges can waive it. Most teenagers, in fact, escape the premarital counseling scheme. For instance, last year in Los Angeles less than 6% of teenagers seeking a marriage license were required to engage in counseling.[56] The quality and content of counseling, when it was required, ranged from professional, private counseling, to unstructured, public counseling. Los Angeles County has no guidelines or minimum requirements for counseling except that at least one session of one hour's duration occur.[57]

The lack of adequate counseling and the failure to make counseling mandatory for all teenage applicants may explain the ineffectiveness of the 1970 legislation and its failure to impact the divorce rate for teenage marriages.

Specific problems with the premarital counseling statute include: (1) the failure of the statute to define "premarital counseling," (2) the failure to allocate sufficient funds to operate premarital counseling programs, and

*yes or  
fish*

*Should be  
required for  
teenagers +  
then should be  
standards for  
counseling.*

*Free*

(3) the failure of the statute to mandate such counseling for all teenage applicants.

In order to correct deficiencies in California's premarital counseling statute, Civil Code Section 4101 should be amended, and annual fiscal legislation should be passed by the Legislature to reflect the following objectives:

(1) Premarital counseling should be structured counseling. Specific procedures should be designed to make applicants aware of the complex dynamics involved in the marital relationship. Counseling should consist of lectures, group counseling, and/or individual counseling. At least four (4) separate hour-long sessions should be required.

(2) Sufficient funds should be allocated to ensure the success of state-mandated premarital counseling programs.

(3) There should be a method of ensuring that counseling meets minimum standards. Following the guidelines of Utah's premarital counseling scheme, it is suggested that each county establish a premarital counseling board. Such a panel would develop a master plan for the delivery of premarital counseling services by public and private sector agencies.

California's divorce rate currently exceeds that of the nation. Public policy should promote thoughtful and deliberate preparation for marriage.

A current Utah statute provides some guidance in this area.[58] Utah gives an option to couples at "high risk" for divorce. If one of the marriage applicants has been previously divorced, the couple must either participate in premarital counseling or wait six months for the marriage license to issue.

Considering the high divorce rate, and the consequences of divorce to society, California should take Utah's statutory scheme one step further. It

is recommended that the Legislature require all adult applicants for a marriage license either to participate in premarital counseling meeting minimum state requirements, or to wait six months from the date of application to the date of issuance of the license.

Although the right to marry is fundamental, the state may impose reasonable regulations on the creation or dissolution of marital relationships.[59] Since marriage is a contract, the consent of the parties lies at the core of a marriage. The consent of the parties to any contract must be free, mutual, and communicated to each other.[60] An apparent consent is not real or free when obtained through duress, menace, fraud, undue influence, or mistake.[61] For most couples, marriage is the most significant contract they will ever create. The state has an significant interest in making sure that marriage applicants are entering the institution of marriage with informed consent. Amending the law to require a waiting period of six months or premarital counseling is a reasonable way to help ensure that couples are entering the institution of marriage freely and with full knowledge of the consequences.

#### Prenuptial Agreements

Fear of divorce is stimulating more couples to protect themselves with a prenuptial agreement.[62] Some refer to a prenuptial contract as a form of "marriage planning." Others say it's really "divorce planning."

California is one of 12 states that has adopted the Uniform Prenuptial Agreement Act.[63] Parties to such a contract cannot waive their right to spousal support, nor can they include agreements that adversely affect

rights to child support. Since divorce is generally against public policy, the terms of a prenuptial agreement may not promote divorce.[64]

However, it may be argued that by their very nature, prenuptial agreements promote divorce. First, they are documents created solely in contemplation of divorce. Secondly, they make divorce an easier option by softening the financial blows associated with divorce. Finally, they set the stage for dissolutions rather than solutions when problems arise.

It is recommended that the Prenuptial Agreement Act be amended to require that both parties to the agreement participate in at least two hours of counseling with a licensed marriage counselor before executing a prenuptial agreement. Such a requirement will help insure that the parties are entering the agreement knowingly and voluntarily.

### **Authentication of Marriage**

Although consent lies at the core of the marriage contract, consent alone will not constitute marriage under California law.[65] Generally, consent must be accompanied by issuance of a license and solemnization.[66] Compliance with these requirements must be authenticated.[67]

#### **Obtaining a License**

California law provides that all persons about to be joined in marriage must first obtain a license from the county clerk.[68] A license may not issue if either party is insane or under the influence of liquor or narcotics

at the time of application. A marriage license expires 90 days after its issuance.

Marriage applicants must also obtain a certificate of registry from the county clerk.[69] The certificate of registry is later signed by the person who performs the marriage ceremony. Ultimately, it is filed with the county clerk as proof that the ceremony has occurred.

#### Exchange of Vows

Marriages may be solemnized by any judge, court commissioner, priest, minister, or rabbi of any religious denomination.[70] County clerks may appoint deputy commissioners to perform marriages.[71] Other officials of nonprofit religious institutions may be authorized to perform marriage ceremonies.[72]

No particular form of ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.[73]

Civil Code Section 4206 which governs marriage vows and ceremonies is a general state law. The state Constitution provides that laws of a general nature shall be uniform in operation.[74] The couples workgroup conducted a survey to determine how the law governing marriage vows and ceremonies was operating throughout the state.[75] Forty-four county clerks responded to the survey.

Of those who responded, 19 counties required an exchange of vows; 17 said that vows were optional.[76] Most of the counties sent copies of recommended, and sometimes mandated, ceremonies for civil marriages.

Thirty-one of the counties indicated that they would give some flexibility to couples in choosing a ceremony. However, three counties were inflexible in this regard. In other words, in some counties, couples participating in a civil ceremony must follow the ceremony mandated by the county clerk.[77] Also, even in those counties that professed flexibility, couples are not necessarily informed that they have options with respect to the form of the ceremony or the content of the vows to be exchanged.[78]

*I'm not  
sure any  
of these  
is terribly  
important.*

The Legislature obviously intended for couples to have flexibility in formulating vows and fashioning ceremonies. This legislative intent appears to be frustrated by the practices of some county clerks who either mandate particular vows or fail to inform couples that they have options.

Some civil ceremonies used by county clerks include vows of fidelity and a lifetime commitment. Others do not. Major issues such as these should be discussed and agreed upon by a couple prior to the ceremony. Otherwise, chances are increased that the couple will go through the form of the ceremony imposed upon them by the clerk without really agreeing to the content wholeheartedly. It is recommended that, at the time a couple applies for a marriage license, the county clerk be required to provide the applicants with a copy of the civil ceremony, with each vow delineated in bold type. The clerk should be required to inform applicants that vows can be tailored to meet the needs of each relationship. Applicants should be informed that they can add or delete vows for use in the civil ceremony, so long as they include an agreement to become husband and wife.

It is further recommended that, within the next year, the County Clerk's Association should sponsor a seminar on marriage and vows and

ceremonies. A representative from each county should be encouraged to attend. Panelists should include an administrator, a marriage counselor, a representative from the state Department of Health Services, and a representative from the state Department of Justice.

### Confidential Marriage

A man and a woman who have been living together as husband and wife may be married in California without first obtaining a marriage license.[79] Although the parties to a so-called confidential marriage must participate in a formal marriage ceremony, when the marriage certificate is filed with the county clerk it is not open to public inspection.[80]

Confidential marriages were first authorized by statute in 1878 as a method of allowing couples living under the guise of marriage to escape public humiliation by "secretly" legitimizing their relationship and thereby securing inheritance rights for their children.[81]

Many of the reasons justifying confidential marriages no longer exist. Society no longer places the same stigma on unmarried couples as it once did.[82] The status of "illegitimacy" was discarded by the Legislature in 1975.[83] Under current law, all children are deemed legitimate, regardless of the marital status of their parents.

Recent studies have shown that the number of confidential marriages continue to rise, primarily because couples want to escape the inconvenience of obtaining a health certificate.[84] The law was amended in 1982 to require county clerks to keep track of the number of such marriages and to list them alphabetically. Also, couples who seek to avoid



a marriage license through the confidential marriage process must swear under penalty of perjury that they have been living together as husband and wife.

The State Office of Vital Statistics does not have records on how many confidential marriages are performed in California each year.[85] However, last year in Los Angeles County, about 42,000 couples were married after obtaining a regular marriage license while over 34,000 avoided the marriage license by marrying through the confidential process. According to one County Clerk, the confidential marriage process is being abused and the law needs to be amended:[86]

I believe the Task Force should include in their study and report the reasons for continuing the practice of having both regular, or public marriage licenses, and what is referred to as "confidential" certificates under Section 4213 of the Civil Code. It is my belief, and I think this is shared by many others in the business of issuing marriage licenses, that the original purpose of Section 4213 has been forgotten, and it is simply used now as a way of avoiding the time, money, and inconvenience of obtaining marriage health certificates. Very few of those obtaining confidential licenses do so to keep the date of their marriage confidential. . . .

The legislature has over the years attempted to protect the marrying public and their children by requiring blood tests for syphilis and rubella, and more recently by requiring that doctors executing marriage health certificates offer AIDS testing to the couples. The confidential marriage license remains an easy way for people to avoid the blood tests and for a large number of people the good intentions of the legislature are obviated.

*Considering the health tests should not, in my opinion, be allowed. This is a public health problem as even those applying for confidential marriages should have the regular health tests required of those applying for a regular marriage license.*

Although discrimination against unmarried couples and children born out of wedlock is generally illegal, social stigma in these areas is not uncommon. Therefore, the confidential marriage process may continue to

have some validity. It is recommended that Civil Code Section 4213 dealing with confidential marriages be amended to provide relief only in these situations. It is recommended that couples applying for a confidential marriage certificate be required to declare either that they have been living together as husband and wife for five years, or that they have been living together as husband and wife for less than five years but during that time they have given birth to a child.

### **Common Law Marriage**

During California's early history, the law pertaining to marriage was sometimes more flexible than it is today. For example, the law recognized more than one way of becoming married. Consent was always required. However, consenting parties could become married explicitly by participating in a ceremony or implicitly by mutually assuming marital rights and obligations and living together as spouses. The law became more rigid when, in 1895, statutory authority for so-called common law marriage was eliminated.[87]

Although California is no longer a "common law" state, it is noteworthy that California does recognize the validity of common law marriages consummated outside of the state so long as the other jurisdiction authorizes common law marriage for its own residents.[88] Currently, 13 states and the District of Columbia allow their own residents to consummate common law marriages.[89]

When it is recognized by law, common law marriage is a judicial

recognition that a man and a woman are legally married, even though the couple did not obtain a marriage license and participate in a formal ceremony. A valid common law marriage is identical to a valid ceremonial marriage to the extent that the same marital rights and responsibilities attach to both. It is not a lesser degree of marriage. It is simply an alternative method of becoming married.

Requirements for validating a common law marriage vary from state to state. However, the most usual requirements include:[90] (1) a capacity to marry; (2) a present agreement to be husband and wife; (3) an agreement to be husband and wife in the future; (4) cohabitation; (5) holding out to the public as husband and wife; and (6) community reputation as husband and wife.

Not all common law states require each of these elements to be present. However, all states do require that the parties agree to be married and many common law states require cohabitation of some duration as well as evidence that the couple have held themselves out to the public as husband and wife.

**Historical Policy Concerns.** Four policy concerns were generally raised when various legislatures abolished common law marriage as legally recognized form of marriage: (1) it weakens the sanctity of the marital relationship; (2) it causes uncertainty regarding inheritance rights; (3) it provides a fruitful source of perjury and fraud; and (4) it encourages vice.[91] These concerns do not withstand scrutiny today, considering present legal conditions and contemporary mores.

With respect to the first concern, there is little risk of debasing

conventional marriage so long as the traditional evidence of common law marriage is required. When a valid common law marriage is proven (cohabitation for a number of years, assumption of marital rights and responsibilities, and holding out to the public as spouses), there is no ostensible difference between common law marriage and ceremonial marriage in the lives of the spouses. Furthermore, with a 700% increase in unmarried cohabitation between 1960 and 1970, and a continuation of that trend, it can hardly be said that abolition of common law marriage in most states has promoted more couples to have formal ceremonies. Also, reinstating common law marriage would help to eliminate many of the potential inequities inherent in the associational practices of contemporary couples.[92]

The abolition of common law marriage does not channel people into formal, ceremonial marriages. Rather people have continued to cohabit without the obligations and benefits of formal marriage. If marriage has been debased in the way the argument claims, then cohabitation -- not common law marriage -- might be considered the culprit. If this is so, then perhaps legalizing common law marriage would discourage cohabitation; people who are hesitant to have the obligations of marriage imputed to them would be hesitant to engage in such living arrangements. Also, it should be remembered that common law marriage promotes marriage since the doctrine is a means of finding a valid marriage for people who have been living together as husband and wife for a considerable period of time. Without the doctrine, couples in such long-term relationships would not be considered spouses.

The second argument is that common law marriage causes uncertainty regarding inheritance rights. One idea behind this argument is that formalized marriage is necessary to legitimize children and thus protect their inheritance rights. That argument no longer carries the weight it once did. The United States Supreme Court has held that the Constitution prohibits discrimination against "illegitimate" children.[93] Furthermore, as a legal term, the notion of "illegitimacy" has been abolished in California. The parent and child relationship extends equally to every child regardless of the marital status of the parents.[94] In other words, inheritance rights are no longer a problem in California for children born to parents who have not formalized their marriage.

Further, Marvin v. Marvin-type claims can be raised in probate court.[95] Therefore, unmarried cohabitation can also bring a degree of uncertainty to the inheritance rights of heirs. As a result, recognizing common law marriage will not substantially alter this function one way or the other. The prediction made by a legal commentator more than 25 years ago has proved to be true:[96]

[The] abolition of common law marriage will not result in greater certainty. Informal marriage will continue to exist in changed appearance by manipulation of legal doctrines other than common law marriage which lawyers are so able to invent in case of need. The outcome will be . . . the exchange of one ambiguity for other ambiguities.

The third argument is that recognizing common law marriage will encourage perjury and fraud. This argument rests on the faulty premise that courts, using established rules of common law marriage, would be unable to separate fraudulent from legitimate claims of marriage. If courts

were to insist on evidence that the parties cohabited for the requisite number of years and lived openly as man and wife, there would be no greater risk of fraud than in the trial of many other issues of fact, such as a Marvin v. Marvin lawsuit. The remedy for the risk of fraud is not refusal to recognize common law marriage, but a rigorous insistence on all of its elements.

The fourth argument is that recognition of common law marriage encourages vice. This argument cannot be taken seriously, given the extent of nonmarital sexual activity prevalent in California -- a state that has abolished common law marriage. Furthermore, the decriminalization of private sexual conduct between consenting adults who are not married evidences a change in public policy as to what behavior is or is not vice.[97]

**Policy Favoring Common Law Marriage.** There are valid policy reasons supporting the recognition of common law marriage. First, California has a well-established public policy to foster and promote the institution of marriage.[98] Recognizing the validity of long-term relationships is one way of promoting marriage. The doctrine also allows the law to vindicate the bona fide expectations of the parties. It allows people who take on the everyday burdens of marriage to get the benefits as well. It also allows children of informal marriages to escape the social stigma which can attach to offspring of such relationships.

One great advantage of recognition of common law marriage is that it would demonstrate the state's tolerance of any of several forms of family and marriage. The state has the same concerns of family stability, care of

children, and support obligations in informal marriages as it does in formal marriages. These concerns should not be abandoned by the state merely because the parties have not participated in a formal ceremony. There is more injustice and suffering without common law marriage than there would be with it. As one legal commentator explained:[99]

If such [marital] obligations and restrictions are not applied to de facto spouses, an intolerable anomaly is created. On the one hand, the state would be proclaiming its interest in protecting spouses with little earning capacity, or with the custody of minor children; on the other, the public could see that these policies could be circumvented by merely by not obtaining a marriage license. Such a rule would encourage, albeit unintentionally, the more sophisticated spouse to cohabit rather than marry, thereby both discouraging marriage, and leaving the unsophisticated cohabitant unprotected.

It is recommended that the Legislature recognize the validity of common law marriages consummated in this state. Civil Code Section 4100 should be amended to authorize couples to become married in one of two ways: (1) consent accompanied by the issuance of a license and a marriage ceremony; or (2) cohabitation for at least five years, plus consent to be married plus a mutual assumption of marital rights and obligations. Such a legislative amendment would promote marriage, vindicate the marital expectations of the parties, and eliminate many potential inequities inherent in our current law. It would also demonstrate that California is tolerant of marital and cultural diversity.

## **Barriers to Marriage**

Despite the professed public policy promoting the establishment of marital relationships, society places barriers to marriage in the path of some segments of the population.

### Elderly Couples

Many elderly widows and widowers receive survivor benefits from pension plans based on the deceased spouse's earnings during the marriage. If the survivor finds a new mate, remarriage may be economically unfeasible because of legal rules that end survivor benefits upon remarriage.[100] Thus, out of economic necessity, many seniors cohabit with, but never remarry, their new mates. Recognizing this reality, the Legislature has passed laws to protect the right of unmarried elders to cohabit together in dwelling units reserved for seniors.[101]

The decision of seniors to live in unmarried cohabitation should be a matter of free choice, not economic coercion. Elderly widows or widowers who remarry should not be penalized for doing so. It is recommended that the Legislature adopt a "Vesper Marriage Act" patterned after legislation enacted in the Virgin Islands in 1981. This unique form of marriage is limited to persons age 60 and older. Although the parties to such a marriage are considered legally married, they are treated as single persons for purposes of taxation and receipt of pension benefits.[102] The workgroup received correspondence from the Attorney General of the Virgin Islands indicating that passage of the Vesper Marriage Act has not created administrative burdens or other adverse consequences.[103]



### Disabled Couples

Many disabled adults cannot escape the marriage barrier. They suffer discrimination regardless of whether they have a formal marriage ceremony or whether they cohabit with a member of the opposite sex in an informal marriage-like relationship. This is especially so for people with disabilities who rely on government aid programs, such as SSI, IHSS, MediCal, or Section 8 Rent Subsidy. The marriage/cohabitation barrier was explained recently in a report issued by the Los Angeles City Task Force on Family Diversity:[104]

Eligibility for these programs is determined through means testing, that is, the determination of the applicant's income and resources. Unfortunately, when a disabled person gets married, all of the income and resources of the spouse are "deemed" available to the disabled spouse. This immediately raises the officially determined means level of the disabled person, resulting in funding cuts or even termination of benefits. In essence, the procedure imposes a harsh penalty on any financially solvent person who falls in love and wishes to marry a disabled person. As it stands, the law requires both partners to give up their means of financial security so they may sink together (and possibly with their families) into poverty. This brutal practice transforms marriage into the assumption of a burden.

Sadly, this law destroys the possibility of a much brighter and pragmatic alternative, for it is a widely known fact of medicine and sociology that people who are part of a love relationship or family tend to live longer and healthier throughout life. . . . The laws regarding benefit eligibility and deeming are vicious because instead of supporting the possibility of increased independence, physical health, and emotional well-being for disabled people, they insure poverty, isolation, and demoralization.

Consequently, people with disabilities and their loved ones suffer greatly. In some cases, the individuals involved try to ignore religious convictions and values about marriage, deciding to live together unmarried [and keeping their cohabitation a secret].

It is recommended that the Assembly Health and Human Services Committee hold public hearings to investigate ways to overcome problems caused by "deeming." Deeming creates economic barriers that discourage or prevent persons with disabilities from marrying or cohabiting. At these hearings, representatives of the relevant state and federal agencies should explain what revisions in state or federal laws would be necessary to overcome the marriage/cohabitation barriers caused by "deeming." Following the hearings, appropriate legislation should be introduced in both Congress and the state Legislature rectify the situation. As it now stands, fundamental rights such as the freedom to marry and the right to choose one's living companions are not available to many people with disabilities.

#### Same-Sex Couples

California law used to describe marriage as a personal relation arising out of a civil contract between two consenting persons. The law was amended in 1977 to clarify that marriage is a contract between a man and a woman.[105] This amendment creates a legal barrier preventing same-sex couples from entering into a lawfully recognized marriage contract. Not only are same-sex couples denied the status of marriage, but couples living in long term relationships continue to experience civil disabilities and legally sanctioned discrimination.[106]

Over the years, same-sex couples have filed lawsuits challenging, on constitutional grounds, statutes that exclude them from entering into marriage contracts. They have argued that laws prohibiting same-sex marriage are just as unconstitutional as laws that once prohibited

interracial marriage.[107] Courts have uniformly refused to mandate the legalization of same-sex marriage, noting that such reform must come through the legislative process.[108]

Lack of recognition of same-sex relationships is not universal. In recent years, changes have occurred in both the religious and political arenas. For example, the Episcopal Diocese of northern New Jersey will bless same-sex relationships even though same-sex marriages are not performed by the church.[109] The American Civil Liberties Union adopted a national policy statement endorsing the legalization of same-sex marriage and the extension of economic benefits for gay and lesbian life partners.[110] Although not legalizing same-sex marriage, per se, the Swedish Parliament has passed a bill giving same-sex partners the same rights afforded to common law heterosexual partners.[111]

While debate continues over the legitimacy of same-sex marriage, greater recognition is being given to gay or lesbian life partners for what they are: family relationships.

## DOMESTIC PARTNERS

"Family" may mean different things under different circumstances. The family, for instance, may be a group of people related by blood or marriage, or not related at all, who are living together in the intimate and mutual interdependence of a single home or household.

-- California Supreme Court  
Moore Shipbuilding Corp.  
v. Industrial Accident Comm.  
(1921) 185 Cal. 200

This section of the workgroup report focuses on domestic partnership families -- unmarried couples, many with children, who live together in the intimate and mutual interdependence of a single home or household. These household families serve the same family functions as other family forms, namely:[112]

- \* To maintain the physical health and safety of family members by providing for their shelter, food, clothing, health care, and economic sustenance.

- \* To provide conditions for emotional growth, motivation, and aspiration, and to promote the self-esteem of family members within a context of love and security.

- \* To help share a belief system from which goals and values are derived, and to promote shared responsibility for family and community.

- \* To teach social skills, promote educational achievement, and provide guidance in responding to cultural and societal pressures.

- \* To create a place for recreation and recuperation from external stresses.

Domestic partnerships are one variation on the family theme. This section of the workgroup report examines domestic partnership

demographics, variations in such relationships, the legal status of domestic partners are families, and makes recommendations to eliminate some forms of discrimination experienced by these families.

### Demographics

An accurate count of unmarried couples in the population is difficult to obtain. The Census Bureau allows couples who live together (unmarried persons, persons in common law marriages, etc.) to designate the marital status they consider the most appropriate.[113] The category of "married," is explained to those filling out the census questionnaire in the following manner:[114]

Married, except separated. Persons whose current marriage had not ended through widowhood, divorce, or separation (regardless of previous marital history). The category may also include couples who live together or persons in common law marriages if they consider this category the most appropriate.

Undoubtedly, some cohabiting couples who respond to the census survey categorize their relationships as "married" in order to avoid the social and religious stigma sometimes associated with unmarried cohabitation. This tendency would result in higher numbers of reported marriages than actually exist.

However, despite inflated marriage statistics, census figures show a tremendous increase in the number of unmarried couples living together. A 700% increase was reported between 1960 and 1970.[115] A jump of 300% occurred between 1970 and 1980.[116] Last year, the most comprehensive survey of families ever conducted by a nongovernment organization

estimated that unmarried couples comprise 6% of all family units in the nation.[117]

The 1980 Census estimated that unmarried couples reside in about 7% of California's 8 million households.[118] California now has nearly 10 million households, the number of unmarried-couple households has risen, and the percentage of such households has remained at about 7%.[119] Of course, as was previously mentioned, these figures may be understated because many unmarried couples may prefer to list themselves as "married" when they respond to census surveys.

In any event, current demographics indicate that nearly 1.4 million adults live in unmarried couple households in California.[120]

#### Relationship Variations

There are many reasons why couples decide to live together without formalizing their relationship as a marriage. For same-sex couples, the law requires it. For young opposite-sex couples, "trial marriages" may be prompted by their fear of making the wrong decision -- a fear that may be justified by high divorce rates. Long periods of cohabitation, sometimes several years in duration, may ease the anxiety of divorcees trying to avoid repeating previous mistakes. For elderly widows or widowers, unmarried cohabitation may be a matter of economic survival, since remarriage can trigger the loss of marital survivor benefits. Economic disincentives or so-called "marriage penalties" prevent many disabled couples from marrying.

The California Supreme Court has noted a wide range of motivations for nonmarital cohabitation:[121]

[A] deliberate decision to avoid the strictures of the community property system is not the only reason that couples live together without marriage. Some couples may wish to avoid the permanent commitment that marriage implies, yet be willing to share equally any property acquired during the relationship; others may fear the loss of pension, welfare, or tax benefits resulting from marriage. . . . Others may engage in the relationship as a possible prelude to marriage. In lower socioeconomic groups, the difficulty and expense of dissolving a former marriage often leads couples to choose a nonmarital relationship; many unmarried couples may also incorrectly believe that the doctrine of common law marriage prevails in California and thus that they are in fact married.

Thus, it is apparent that unwed couples should not be stereotyped. The domestic partnership family population is diverse and includes relationships with racial, ethnic, religious, age, gender, political, economic, and other variations.

#### Legal Status

An aura of illegality was once associated with unmarried cohabitation. However, 13 years ago, the Legislature passed the "Consenting Adults Act," thereby decriminalizing private sexual conduct between consenting adults.[121] As a result, the intimacies associated with unmarried cohabitation are now completely lawful.[122]

Although domestic partnerships are not recognized as common law marriages under California law, cohabiting partners may, during the course of their relationship, acquire property rights closely resembling the "community property" rights associated with marriage.[123]

The freedom to choose living companions is a fundamental right



protected by the Constitution.[124] Therefore, unmarried couples have the right to live together in areas zoned for single family use.[125]

Many forms of discrimination against unmarried couples have been outlawed in California.[126] Furthermore, unmarried couples are entitled to various protections and benefits generally reserved for family relationships.[127]

In other words, even though there are legal distinctions between domestic partners and married couples, domestic partners often are treated as family members under current law.[128]

### Discrimination

Despite gains in social acceptance and legal status, domestic partners continue to experience discrimination. A recent study documented discrimination against domestic partners in areas such as employee benefits (including sick leave, bereavement leave, health and pension plans), insurance (including homeowners, renters, life, auto, and health policies), health care services, consumer discounts, domestic violence victim protection, and school curricula and counseling programs.[129]

Discrimination against same-sex couples abounds, as the following examples demonstrate:[130]

- \* A San Francisco newspaper prohibited surviving lifemates from being listed in death notices.

- \* An Orange County photographer at a high school reunion refused to include the photo of a male couple in the reunion album.

- \* Cousins of a deceased man challenged a provision in his will leaving part of his estate to his surviving lifemate.



\* After an accident severely disabled her, a court refused to allow the disabled lesbian to have visits in the hospital from her lifemate.

\* A municipal employer rejected the attempts of a gay employee to name his seven-year lifemate as the beneficiary on his life insurance policy.

*Can this be done  
legally? Can't you  
name anyone as a  
beneficiary?*

Unmarried couples are not automatically entitled to the same rights and benefits as married couples.[131] However, unmarried couples living in stable and significant relationships deserve to be recognized as families. Among the many reasons that society should to promote and encourage long-term relationships is the medical risk resulting from multiple partners. According to the Surgeon General of the United States:[132]

The risk of infection increases according to the number of sexual partners one has, male or female. The more partners you have, the greater the risk of becoming infected with the AIDS virus . . . . Couples who maintain mutually faithful monogamous relationships (only one continuing sexual partner) are protected from AIDS through sexual transmission . . . . This is true for both heterosexual and homosexual couples.

As functioning families, most domestic partnerships benefit not only their members, but the entire community as well. Discrimination against domestic partners undermines the stability of these relationships. Therefore, public policy should discourage such discrimination.

**Victim and Survivor Rights.** While the law often gives crime victims and their families civil recourse against wrongdoers, serious gaps in the law leave domestic partners without legal remedies. For example, if a drunk driver severely injures a pedestrian, the pedestrian's ongoing relationship with a spouse or domestic partner could be hindered in many

ways, from financially, to socially, to sexually. A spouse may sue the drunk driver for damages caused to his or her marital relationship with the injured pedestrian; a domestic partner may not sue the wrongdoer.[133]

If a drunk driver strikes a pedestrian and the pedestrian's sibling witnesses the event, the sibling can sue the wrongdoer for damages caused by the emotional trauma. A spouse who witnessed the event could also sue. *However*, a traumatized domestic partner has no legal recourse against the drunk driver.[134]

If the home of a young interracial couple is firebombed in a racist attack, killing the husband or wife, the law allows the survivor to sue the criminal for the "wrongful death" of the deceased spouse. The survivor can recover for loss of companionship in addition to compensation for the income the deceased spouse would have contributed to the household in future years. *However*, if the interracial couple happened to be unmarried -- whether in a same-sex or opposite-sex relationship -- the survivor could not sue the criminal for the wrongful death of the survivor's lifemate.[135]

Public policy should not favor the rights of a tortfeasor or criminal over the rights of a member of the victim's family who is traumatized by witnessing the wrongdoing or whose relationship with the victim is terminated by the event. One respected appellate jurist, drawing the Legislature's attention to this problem, has cautioned against further postponements of needed reforms:[136]

I believe that the question of extension of marital rights and benefits beyond the legally-recognized marital relationship against third persons and government entities is a matter of public policy demanding the attention of the Legislature. These rights and benefits include recognizing the right to

bring tort actions for wrongful death and for negligent infliction of emotional distress as well as the right to employee benefits such as family health care, group insurance, and unemployment benefits. . . . The decision to extend this and other rights to committed nonmarital relationships is a matter for the Legislature . . . .

After researching the matter, the couples workgroup believes that the class of persons authorized to sue under the wrongful death statute needs to be expanded.[137] Some relationships that deserve protection are not covered by the statute.

Presently, the statute allows a family survivor to sue the wrongdoer if the survivor is related to the decedent by way of blood, marriage, or adoption. Just a few years ago, the statute was amended to allow surviving stepparents or stepchildren to sue for damages. Another recent amendment have given a cause of action to any dependent minor residing in the household of the decedent at the time of her or her death.[138]

It is recommended that the wrongful death statute be amended to provide relief to other members of a decedent's household family. The law should permit a dependent adult who resided with the decedent to sue a tortfeasor or criminal for wrongfully causing the decedent's death. Code of Civil Procedure, Section 277(b), should be amended to provide recovery for "any dependent, whether or not qualified under other subdivisions, if, at the time of the decedent's death, the dependent resided for the previous 180 days in the decedent's household and was dependent or partially dependent on the decedent within the meaning of Labor Code Section 3503."

**Housing Discrimination.** State law prohibits discrimination against unmarried couples in public housing.[139] Fair housing statutes also

prohibit private landlords from discriminating against cohabiting couples.[140] Despite the existence of such laws, landlords continue to discriminate against unmarried couples.[141]

Housing discrimination of this sort can be reduced through the education of both consumers and landlords as well as by aggressive enforcement of fair housing laws. It is recommended that literature prepared by, and educational programs conducted by, the state Department of Fair Employment and Housing specifically mention that housing discrimination against same-sex or opposite-sex unmarried couples is illegal in California.

**Insurance Discrimination.** Lifestyle discrimination against insurance consumers is widespread.[142] The term "lifestyle discrimination" refers to the practice of insurance companies denying coverage, setting higher rates, or cancelling policies because of the sexual orientation or unmarried cohabitation status of applicants or policy holders.

A recent study found that unmarried couples are often required to pay double the premiums paid by married couples for the same coverage, especially in connection with auto, homeowners, and renters insurance.[143] Some life insurance companies refuse to allow policy holders to designate a domestic partner as beneficiary.[144] These discriminatory practices persist, despite the fact that discrimination by insurance companies on the basis of an insured's sexual orientation or marital status was ostensibly declared illegal in California some 13 years ago.[145]

It is recommended that the state Insurance Commissioner declare various practices against insurance consumers to be "unfair practices,"

I don't understand how this can be done legally.

including the refusal to issue a joint renter's or homeowner's policy to an unmarried couple living together in a jointly owned or jointly rented residence, the denial of discounts to unmarried couples while granting such discounts to married couples, and the refusal to allow a life insurance applicant to name a non-spousal lifemate as a beneficiary.

**Child Custody.** The high divorce rate in California brings with it larger numbers of court cases involving child custody disputes. Many of these legal contests involve a biological parent who tries to prevent a former spouse from having child custody or visitation, on the ground that the former spouse is now living out of wedlock with an opposite-sex or same-sex partner.[146]

Unmarried opposite-sex cohabitation of a parent is not relevant in deciding a child custody dispute with a co-parent, unless there is compelling evidence that such conduct has significant bearing upon the welfare of the children objectively defined.[147] It is not the function of a court to punish parents for what the court may consider their shortcomings, nor to reward an "unoffending" parent for any wrongs suffered by the "sins" of the other; the prime issue is how the lives of the children are being affected.[148]

Same-sex cohabitation is judged by the same rules. A parent's homosexuality may be relevant in a child custody dispute.[149] However, proof of a parent's homosexual orientation, without more, does not allow a court to deprive him or her of primary custody of a child.[150] Unrestricted time spent with a gay or lesbian parent is not presumed detrimental to the child.[151] Therefore, without an affirmative showing of

harm or likely harm to the child, such a parent's visitation may not be restricted by court orders preventing the parent from associating with other lesbians or gay men at times when the child is in the temporary custody of the parent.[152]

Next trick  
if you can  
do it by  
any means

Despite changes in the law, some segments of society continue to discriminate against parents on account of their homosexual orientation or unmarried heterosexual cohabitation. Lawyers and judges handling such cases have an ethical duty to prevent their own personal prejudices, if any, from dominating their decisions in these cases. In order for them to keep abreast of advances constantly being made in legal, psychological, and sociological research, continuing education is essential. Resource groups and materials are available to assist the State Bar in providing this service to the legal community.[153]

It is recommended that the Continuing Legal Education Division of the California State Bar Association offer seminars for family law practitioners on how to handle child custody cases involving issues such as sexual orientation or unmarried cohabitation. Similarly, it is recommended that the California Judges Association offer its members continuing education classes on these subjects.

**Other Areas of Discrimination.** Discrimination against unmarried couples exists in many aspects of life. The illustrations and recommendations contained in this report are not intended to be exhaustive. Many other legal and economic reforms are long overdue.[154]

CALIFORNIA LEGISLATURE

Joint Select Task Force  
on the  
Changing Family

"CALIFORNIA COUPLES: RECOGNIZING DIVERSITY  
AND  
STRENGTHENING FUNDAMENTAL RELATIONSHIPS"

A Report Submitted

by the

Couples Workgroup

SUPPLEMENT TO WORKGROUP REPORT

(Surveys, Research Papers, Background Materials)

APPENDIX: TABLE OF CONTENTS OF SUPPLEMENT

Margarita Contreras  
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## Notes

1. Civil Code Section 4100.
2. Civil Code Section 4206.
3. Menchaca v. Hiat (1976) 50 Cal.App.3d 117, 127-128.
4. Skinner v. Oklahoma (1942) 316 U.S. 535, 541.
5. Loving v. Virginia (1967) 388 U.S. 1, 12.
6. California State Census Data Center, 1987 Current Population Survey Report, hereinafter referred to as "1987 State Census."
7. California State Office of Vital Statistics (1985); Renata Turner, "A Proposal to Expand Premarital Counseling Requirements in California," Supplement, p. 183.
8. Ibid.
9. Interview with Levonne G. Elder, Director, Center for Interracial Counseling and Psychotherapy, Los Angeles, California.
10. Alexa Bell, "Dilemmas of Modern Marriage," Los Angeles Times, December 25, 1987.
11. 1987 State Census.
12. Ibid.
13. Ibid.
14. Socio-Economic Trends in California, Employment Development Department Report, 1986; Ruben Castaneda, "Blacks, Hispanics Slowing Down in Economic Gains," Los Angeles herald Examiner, May 2, 1986.
15. Ibid.
16. Ibid.
17. "How to Stay Married," Newsweek, August 24, 1987.
18. Ibid.
19. "Marriage Rate Declines," Los Angeles Times, September 29, 1986.

20. Ibid.
21. Ibid.
22. Randolph E. Schmid, "Divorce Rate Leveling Off, Census Says," West [Sacramento] County Times, April 8, 1987.
23. Ibid.
24. Marriage Rate Declines, op. cit.
25. Elizabeth Mehren, "American Family Steadily Eroding, Researchers Find," Los Angeles Times, July 20, 1988.
26. Randolph, op. cit.
27. 1980 Census, General Social and Economic Characteristics of California, Vol. 1, Ch. c, part 6. Table 74, pages 6-118, 6-119.
28. Ibid.
29. 1987 State Census; These percentages were calculated among persons 15 years of age and older.
30. Ibid.
31. Ibid.
32. Jaime Talan, "Experts Predict Divorce -- Before the Marriage," Supplement, p. 326.
33. Health and Safety Code Section 429.50.
34. Supplement; p. 183.
35. "Many Californians Think Institution of Marriage Has Weakened During the Past Decade," Press Release Issued by the Field Institute, September 1, 1987, Supplement, p. 313.
36. Ibid.
37. Ibid.
38. "Family Life/Sex Education Guidelines," California State Department of Education (1987), Supplement, pp. 238-252.
39. Ibid.
40. Education Code Sections 51240, 51550.

41. Contreras and McNenny, "Couples Workgroup Survey of Community Colleges and County Boards of Education," Supplement, pp. 47-123.
42. Ibid.
43. Marjorie S. Gates, Superintendent, Shasta County Office of Education, Supplement, pp. 75-76.
44. John R. Graff, Yolo County Superintendent of Schools, Supplement, pp. 60-61.
45. Stats. 1986, Ch. 3567, Sec. 2, Supplement, p. 263.
46. Cal. Const., Art. I, Sec. 1.
47. Sample Survey Letter, Supplement, pp. 55-57.
48. Contreras and McNenny, op. cit.
49. "Premarital Counseling: State Requirements and Services," Supplement, pp. 270-273.
50. Alice Camille, "Couple Formation Counseling Services Offered by Various Religious Denominations," Supplement, pp. 37-46.
51. Ibid.
52. Ibid.
53. Ibid.
54. Ibid.
55. Renata Turner, "A Proposal to Expand Premarital Counseling in California," Supplement, pp. 173-184.
56. Ibid.
57. Ibid.
58. Ibid.
59. Zablocki v. Redhail (1978) 434 U.S. 374, 386; McClure v. Donovan (1949) 33 Cal.2d 717.
60. Civil Code Section 1565.
61. Civil Code Section 1567.

62. Dawn Bonker, "Marriage: Making It Legal," Orange County Register, August 4, 1988; Supplement, pp. 185-186.
63. Civil Code Section 5300 et. seq.
64. Civil Code Section 5312(a)(7).
65. Civil Code Section 4100.
66. Ibid.
67. Civil Code Section 4200.
68. Civil Code Section 4201.
69. Civil Code Section 4202.
70. Civil Code Section 4205.
71. Civil Code Section 4205.1.
72. Civil Code Section 4205.5.
73. Civil Code Section 4206.
74. Cal. Const., Art. IV, Sec. 16.
75. "Survey of County Clerks on Marriage Vows and Ceremonies," Supplement, pp. 1-17.
76. Ibid.
77. Riverside, San Mateo, and San Bernardino counties were inflexible on the form and content of a civil ceremony.
78. Solano and Los Angeles counties appear to fall into this category.
79. Civil Code Section 4213.
80. Ibid.
81. "California Nonlicensed Marriage: A First Look at Their Characteristics," California Center for Health Statistics, Report Register No. 81-10037 (Dec. 1981).
82. Private sexual relations between consenting adults was decriminalized in 1976. (See Stats 1975, Chs. 71 and 877). Unmarried couples have a right to live together in an area zoned for single families. (See City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123). Landlords may not legally discriminate against unmarried renters. (See Hess v. Fair Employment and

Housing Commission (1982) 138 Cal.App.3d 232). Marital status discrimination against an employee or job applicant living in unmarried cohabitation is illegal under state law. (See In re D.F.E.H. v. Boy Scouts, Fair Employment and Housing Commission, precedent decision no. FEP 78-79). Many unmarried couples have the rights upon the dissolution of their relationships. (See Marvin v. Marvin (1976) 18 Cal.3d 660).

83. Stats. 1975, c. 1244, p. 3202.

84. "California Nonlicensed Marriage," ob. cit.

85. Renata Turner, ob. cit.

86. "Survey of County Clerks," ob. cit.

87. Deena Pollard, "Reinstating Common Law Marriage," Supplement, pp. 141-161.

88. Tatum v. Tatum (1957) 241 F.2d 401.

89. Deena Pollard, ob. cit.

90. Caudill, "Legal Recognition of Unmarried Cohabitation: A Proposal to Update and Reconsider Common Law Marriage," 49 Tenn. L. Rev. 537, 564 (1982).

91. Deena Pollard, ob. cit.

92. Two examples of such inequities can serve as surrogate for others. In Hewitt v. Hewitt (1979) 77 Ill.2d 49, the couple lived together for 15 years and had two children. Mrs. Hewitt helped her "common law" husband through dental school. Then she served the family as a homemaker for many years. Eventually, Mr. Hewitt demanded a separation. Mrs. Hewitt was left with nothing. The Illinois Supreme Court, citing the Legislature's abolition of common law marriage, refused to grant Mrs. Hewitt any relief. Another case involved the Aytons, a family residing in Florida. Mr. and Mrs. Ayton lived in a 20-year relationship and had several children. Mrs. Ayton, the victim of medical malpractice, became comatose. She won \$3.4 million in damages when a medical malpractice lawsuit was filed on her behalf. However, her family may never see a penny of it. Florida law does not allow children to receive any of the money until their mother dies. And as for Mr. Ayton, since Florida does not recognize common law marriage, he is not considered her legal spouse and therefore can't share the money. (See Supplement, p. 161).

93. Gomez v. Perez (1973) 409 U.S. 535, 538.

94. Civil Code Section 7002.

95. In re Estate of Funcher (1981) 119 Cal.App.3d 343.



96. Weyrauch, "Informal and Formal Marriage," University of Chicago Law Review, 88, 109 (1960).
97. Brown Act, 1975 Stats. Ch. 71; Pryor v. Municipal Court (1979) 25 Cal.3d 238.
98. Deyoe v. Superior Court (1903) 140 Cal. 476; Marvin v. Marvin (1976) 18 Cal.3d 660, 684.
99. Oldham and Caudill, "A Reconnaissance of Public Policy Restrictions Upon Enforcement of Contracts Between Cohabitants," 18 Family Law Quarterly 93, 117 (1984).
100. United States v. Seay (1983) 718 F.2d 1279.
101. Civil Code Section 51.3.
102. Virgin Islands Code Annotated, Title 16, Sec. 81-86; Supplement, pp. 311-312.
103. Letter from Joseph E. Williams, Assistant Attorney General, Virgin Islands, dated July 19, 1988; Supplement, pp. 308-310.
104. Gill, Carol, Ph.D., "Disability Team Report," Report of the Task Force on Family Diversity: Supplement -- Part One, p. S-382; Supplement, p. 293.
105. Stats. 1977, Chapter 339 (A.B. 607).
106. Hinman v. Department of Personnel Administration (1985) 167 Cal.App.3d 516 (denial of employment benefits); Adams v. Howerton (1982) 673 F.2d 1036 (denial of immigration).
107. About 35 years ago, 30 states outlawed interracial marriages. At the time the United States Supreme Court declared such statutes unconstitutional, 16 states still had such laws on the books. Loving v. Virginia (1967) 388 U.S. 1, 4, fn. 5.
108. Baker v. Nelson (Minn. 1971) 191 N.W. 2d 185, appeal dismissed, 409 U.S. 810; Anonymous v. Anonymous (N.Y. 1971) 325 N.Y.S.2d 499; Jones v. Hallahan (Ky. App. 1973) 501 S.W.2d 588; Singer v. Hara (Wash. App. 1974) 522 P.2d 1187.
109. "N.J. Episcopal Group Approves Unwed Couples, Gay Life Styles," Los Angeles Times, January 31, 1988.
110. "ACLU Endorses Gay Marriage, Benefits," Press Release, October 21, 1986.
111. "Sweden Endorses Lesbian/Gay Couples," Lesbian News, August 23, 1987.

112. "Family Functions," adopted on September 9, 1988, by the Joint Select Task Force on the Changing Family.
113. "Census Users Handbook," California State Census Data Center, September, 1981, page 35.
114. Ibid.
115. Marvin v. Marvin (1976) 18 Cal.3d 660, 684, fn. 1.
116. Bryce Nelson, "Census Reports 300% Increase in Unmarried Living Together," Los Angeles Times, October 26, 1981.
117. "American Families in 1987," Philip Morris Family Survey, conducted by Louis Harris and Associates.
118. Lee Dembart, "Census Compares State With Nation," Los Angeles Times, May 23, 1982.
119. 1987 State Census Estimates, See Table 2, within.
120. 694,000 households x 2 adults = 1,388,000.
121. Stats. 1975, Chapters 71, 1244.
122. People v. Freeman (Cal. 1988) 250 Cal. Rptr. 598, 603.
123. Marvin, ob. cit.
124. Robbins v. Superior Court (1985) 38 Cal.3d 199, 213.
125. City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123.
126. See note 82, above.
127. In medical emergencies when a patient was unconscious, the law previously reserved the right to make medical decisions to the closest available relative or the so-called "next of kin." (Cobbs v. Grant (1972) 8 Cal.3d 229, 244). With the advent of the Durable Power of Attorney for Health Care, a competent adult may, in effect, designate in advance of an emergency who shall be considered next-of-kin for purposes of medical decisionmaking. (Civil Code Sections 2430-2443). A dependent adult cohabiting with a deceased worker may collect worker's compensation survivor benefits. (Dept. of Industrial Relations v. Worker's Comp. Appeals Bd. (1979) 94 Cal.App.3d 72; Donovan v. Worker's Comp. Appeals Bd. (1983) 138 Cal.App.3d 323). A state employee is entitled to paid bereavement leave when his or her domestic partner dies. (Government Code Section 19859.3). Protections against domestic violence are available to a victim regardless of whether the perpetrator is the victim's spouse or domestic partner. (Penal Code Section 273.6, Code of Civil Procedure Section 540).

When a worker quits his job to take care of his dying same-sex partner, the couple may be considered "family members" for purposes of unemployment benefits. (Cal. Unempl. App. Bd., Adm. Law Judge Dec. No. SF-24774, filed 9-13-85).

128. MacGregor v. Unemployment Ins. App. Bd. (1984) 37 Cal.3d 205.
129. Report of the Los Angeles City Task Force on Family Diversity, Supplement, p. 289.
130. *Id.*, p. 288.
131. Hinman v. Unemployment Insurance Appeals Board (1985) 167 Cal.App.3d 516.
132. Surgeon General's Report on Acquired Immune Deficiency Syndrome (1988), Supplement, p. 295.
133. Elden v. Sheldon (Cal. 1988) 250 Cal.Rptr. 254.
134. *Ibid.*
135. Ledger v. Tippit (1985) 164 Cal.App.3d 625.
136. Coon v. Joseph (1987) 192 Cal.App.3d 1269 (Barry-Deal, J., concurring).
137. "Protecting Family Survivors: Amending the Wrongful Death Statute," Supplement, pp. 162-172.
138. Code of Civil Procedure, Section 377(b).
139. Atkisson v. Kern County Housing Authority (1976) 59 Cal.App.3d 89.
140. Hess v. Fair Employment and Housing Commission (1982) 138 Cal.App.3d 232.
141. In areas of Los Angeles, for instance, such discrimination is reported to be the third highest type of fair housing complaints. Supplement, p. 291.
142. "Insurance - Lifestyle Discrimination," Report of the Los Angeles City Task Force on Family Diversity, pp. 41-42.
143. *Ibid.*; Supplement, p. 291.
144. *Ibid.*
145. Calif. Adm. Code, Title 10, Sec. 2560.3; Insurance Commissioner Ruling No. 204, File No. RH-176, Nov. 20, 1975.

146. "Custody and the Cohabiting Parent," 20 Journal of Family Law 697 (1981-82).
147. In re Wellman (1980) 104 Cal.App.3d 992, 999.
148. Id, at p. 998.
149. Chaffin v. Frye (1975) 45 Cal.App.3d 39.
150. Nadler v. Superior Court (1967) 255 Cal.App.2d 523.
151. In re Birdsall (1988) 243 Cal.Rptr. 287.
152. Ibid.
153. Roberta Achtenberg, "Preserving and Protecting the Families of Lesbians and Gay Men," Booklet published by the Lesbian Rights Project, January, 1986.
154. For a more complete analysis, see "Domestic Partnership Families," Report of the Los Angeles City Task Force on Family Diversity, published in Supplement to the Couples Workgroup Report. See Supplement, pp. 288-295.