

**CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES**

P.O. Box 419064, Rancho Cordova, CA 95741-9064



August 10, 2006

CSS LETTER: 06-29

ALL IV-D DIRECTORS  
 ALL COUNTY ADMINISTRATIVE OFFICERS  
 ALL BOARDS OF SUPERVISORS

SUBJECT: THE CALIFORNIA DOMESTIC PARTNER RIGHTS AND  
 RESPONSIBILITIES ACT

Reason for this Transmittal

- State Law or Regulation Change
- Federal Law or Regulation Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

This letter is to inform you of the provisions of the California Domestic Partner Rights and Responsibilities Act of 2003 (Act) that affect the child support services program. The letter is intended to provide clarification and instruction regarding the applicability of the Act to the local child support agencies (LCSAs) in cases where registered or formerly registered domestic partners are seeking child support from their current or former registered domestic partners based upon the rights, obligations, and responsibilities provided by the Act.

This law became effective January 1, 2005. It added provisions or amended existing statutes in Family Code (FC) Division 2.5, Domestic Partner Registration, that expanded the rights of and imposed greater responsibilities on registered domestic partners in a manner similar to the benefits and obligations of married persons under State law. Among these expanded rights and obligations are laws regarding taxation, community property, evidentiary privileges, child custody, visitation, and duties of financial support of children. The law added sections to the FC that provide registered domestic partners with access to the superior court in order to address issues of dissolution of the domestic partnership, child custody, visitation, and support.

The exception to the provisions that expand rights for registered partners are those that apply to the rights, benefits, and obligations accorded only to married persons by federal law, the California Constitution, or statutes adopted by initiative.

The extended rights and responsibilities automatically applied to all registered domestic partners who were registered prior to January 1, 2005, unless the domestic partnership was dissolved prior to that date. The California Secretary of State was required to notify registered domestic partners of the legislative changes and provide the opportunity to dissolve the relationship if the registered domestic partners did not wish to accept the extended rights and responsibilities.

## **Impact on the Delivery of Child Support Services**

Most of the law's provisions do not directly impact the Department of Child Support Services (DCSS). Subdivision (d) of § 297.5 of the FC broadly declares that the rights and obligations of registered domestic partners with respect to a child of either partner will be the same as those of spouses. However, being a spouse has no direct correlation to an individual being a parent and having child support obligations. Therefore, the widely publicized statements about the law having a direct effect on child support should be taken very cautiously by child support practitioners. The most specific thing that could be said about the new provisions in the law is that they provide registered domestic partners with access to the superior court to resolve child support issues.

## **Impact on In-State Case Processing**

### Case Intake

This law does not have any impact upon the federal and State statutory requirements that the LCSAs are to provide Title IV-D child support services to any individual who submits an application or is referred by a Title IV-A program for services. These specific federal and State statutory requirements include any individual who is a registered or formerly registered domestic partner who submits an application or is referred for child support services. Registered or formerly registered domestic partners have access to all Title IV-D services of location, establishment of paternity and establishment of a court order for child support, including medical support, order modification, and the enforcement of child support orders.

Upon receipt of an application or Title IV-A referral for child support services, the LCSAs will determine whether a court order for child support already exists or whether a dependent child has been legally adopted by each of the registered or formerly registered domestic partners. If a court order for child support exists against a current or past registered domestic partner, enforcement should proceed as in any other case.

If the adoption is not a stepparent adoption, (where a biological parent has agreed to the adoption of the child while maintaining his/her own parental rights), then the obligation for child support based upon biological parentage does not exist. In a stepparent adoption, the adopting stepparent and the biological parent are the individuals responsible for child support. Irrespective of the existence of a registered domestic partnership, the right and obligation of another biological parent cannot be taken away or ignored.

If the child has not been adopted by the other domestic partner, the LCSAs must obtain information to determine if an identifiable biological parent is known. The person seeking services should be asked whether one or more biological parents are known. If one or more potential biological parent is known, a paternity establishment proceeding must be initiated against a biological parent.

As appropriate, LCSAs should specifically plead that based upon the representations of the person seeking services, there is no other known biological parent. If it is later determined that there was a known biological parent who seeks to re-establish their parental rights, the biological parent has an opportunity to have the judgment set aside on the basis of fraud.

Since none of the new amendments or additions in the law provide the same presumption of paternity or presumption of parental relationship that applies to a marriage, the determination of a parent's relationship to a child in cases of a registered domestic partnership will be ultimately made by a superior court based on the specific facts of a case and the court's interpretation of how the new domestic partner law applies. Therefore, if no evidence of adoption nor a potential biological parent exists, the LCSAs should assess whether taking an action to have the parental relationship based on registered domestic partnership by the superior court would be viable.

### Establishment

The Act grants the same rights and obligations to a registered domestic partner that a spouse has in a marriage. An otherwise non-parent spouse in a similar situation may have custody or visitation rights, but has no duty of support unless he or she is a biological or adoptive parent. The provision of the Act does not equate a domestic partner with a biological or adoptive parent.

The legislation does not directly grant parental status to registered domestic partners over the children of the other partner. Parental status of a registered domestic partner has to be established judicially, but the Act does not provide guidance about how parentage might be established. Domestic partners may petition the courts to establish parentage, but partners are not guaranteed that the courts will grant such status. The effect of the law on establishing child support, therefore, depends on how the courts interpret the statute.

Since the law stops short of providing specific provisions for establishing child support between registered domestic partners, specific guidance or policy cannot be provided. LCSAs are encouraged to make thorough factual analysis of matters on a case-by-case basis and decide what theory of law might be applicable to their particular case. If the parental relationship cannot be established by the superior court, the case will be closed.

#### Locate/Enforcement and Modification

If the parental relationship of a registered domestic partner to a dependent child is determined by the superior court and a valid court order for child support is issued, the LCSAs will proceed to enforce the order utilizing the same locate and enforcement methods available in all Title IV-D cases. Locate services must be instituted against any NCP irrespective of their status as unmarried, married, or domestic partner. The enforcement of such an order is no different than any other order obtained for an otherwise non-biological or non-adoptive parent.

#### **Impact on Child Support Services Forms**

During the intake process and throughout all phases of establishment and enforcement activity, LCSAs and the applicant are required to complete numerous forms. The text of most forms currently in use does not include references to registered domestic partners.

In order to address this issue, FC § 297.5(l) was amended to require, “where necessary to implement the rights of registered domestic partners under this act, gender-specific terms referring to spouses shall be construed to include domestic partners.” Additionally Government Code § 14771(a)(14) gives notice to State agencies that the forms used by State agencies must be modified accordingly during the usual course of reviewing and revising public-use forms.

FC § 297.5 further clarifies that the use of the terms spouse, husband, wife, father, mother, marriage, or marital status are to be revised to include appropriate references to state-registered domestic partner, parent, or state-registered domestic partnership.

According to these provisions, LCSAs are instructed to construe references to spouses to include registered domestic partners or formerly registered domestic partners, if applicable. Modification of forms, however, will be the responsibility of DCSS in due course as part of developing new forms for the next version of the automated child support enforcement system.

## **Impact on Interstate Case Processing**

### Case Intake and Establishment

Opening an interstate case for the establishment of parentage of registered domestic partners as described under In-State Case Processing is applicable with the following additional considerations:

When the LCSAs receive an application or referral for Title IV-D services and an NCP who is a registered or formerly registered domestic partner is located in another jurisdiction, the LCSAs must determine whether they have personal jurisdiction over the NCP and are able to exercise long-arm jurisdiction, consistent with Title 22, California Code of Regulations § 17200. If the LCSAs have the legal authority to assert personal jurisdiction over the NCP, they will proceed to utilize long-arm jurisdiction to pursue the next appropriate steps in establishing the parental relationship to a dependent child or a court order for support.

If the LCSAs do not have personal jurisdiction over the NCP who resides in another state and are unable to utilize long arm jurisdiction to establish parentage and/or a child support order, the LCSAs must determine whether a Uniform Interstate Family Support Act petition can be effectively referred to the Title IV-D agency in the NCP's state of residence. If the NCP's state of residence does not have the legal authority under their state statutes to establish the parental relationship or a court order for child support for domestic partners, the LCSAs will close the case.

### Enforcement

Under circumstances where California is either the initiating or responding state to an interstate referral, if a valid court order for child support has been issued for registered domestic partners, the LCSAs will proceed to process the case in the same manner as any other interstate case.

## **Domestic Partnership Laws in Other States**

The law adds FC § 299.2 which stipulates that, "a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this State regardless of whether it bears the name domestic partnership." Currently, Vermont is the only jurisdiction in the United States that has enacted laws substantially equivalent to those in California. Both states establish child support obligations through a judicial process.

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A domestic partnership formed in either of the two states would be recognized as a validly formed civil union in either state and could be utilized by the courts as the basis to establish the parental relationship, an order for child support or other issues of custody and/or visitation. Should another jurisdiction enact substantially equivalent statutes, DCSS will inform LCSAs through a Child Support Services letter.

The LCSAs are required to accept applications or referrals of any individual seeking child support services regardless of whether a same-gender legal relationship was established in another jurisdiction.

Irrespective of whether another jurisdiction's domestic partnership laws are substantially equivalent to California's, if a valid order for child support was issued in another jurisdiction that awards child support to a dependent child whose parents are same-gender individuals, the LCSAs are required to extend full faith and credit to that order in compliance with the provisions of United States Code 28, § 1738B, the Full Faith and Credit for Child Support Orders Act. The LCSAs will open a case and utilize all appropriate enforcement remedies available to the Title IV-D agency.

If you have any questions or concerns regarding this matter, please contact Jon Cordova, Case Management Policy Section, at (916) 464-5055.

Sincerely,

/s/

KAREN ECHEVERRIA  
Deputy Director  
Child Support Services Division