



## TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

### ***REVISIONS TO PROBATE CODE SECTION 6452 CONCERNING INTESTATE SUCCESSION***

#### **LEGISLATIVE PROPOSAL (T&E-2013-11)**

To: Office of Governmental Affairs

From: Neil Horton, Howard Klein, Gina Lera, and Yvonne Ascher, Members, Trusts and Estates Administration Subcommittee, Trusts and Estates Section, State Bar of California

Date: May 22, 2012

Re: Intestate Succession  
A Proposal to Amend Probate Code Section 6452

#### **SECTION ACTION AND CONTACTS**

Date of Approval by Section Executive Committee: May 13, 2012

Approval Vote: For: 26 Against: 4 Abstain: 1

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## SUMMARY OF PROPOSAL

This legislative proposal revises Probate Code Section 6452.<sup>1</sup> Section 6452 deals with intestate succession and contains the rules that apply to a “natural parent” and a relative of that parent when a “child is born out of wedlock.” It allows a parent who has acknowledged a child born out of wedlock and who has contributed a minimal amount for the child’s support to inherit from the child even though the parent otherwise has abandoned the child during minority. In addition, Section 6452 allows a relative of a parent of a child born out of wedlock to inherit from the child only if the parent would have inherited.

This proposal substantially changes Section 6452. First, it eliminates any distinction based upon the marital status of a child’s parents. Second, it applies both to natural parents and to adoptive parents. Third, it provides new rules that: (a) disinherit a parent whose parental rights were terminated and not judicially reestablished, and (b) disinherit a parent who intentionally abandons a minor child, as explained more fully below. Fourth, it sets out a different rule governing the inheritance rights of relatives of a disinherited parent.

The proposed revision of Section 6452 continues the requirement that a parent must acknowledge a child in order to inherit from the child. In order to disinherit a parent for abandonment, the proposal requires proof of the following facts:

1. The parent left the child during the child’s minority;
2. The parent failed to provide for the child’s support or to communicate with the child, or both, for at least five consecutive years that continued until the end of the child’s minority; and
3. The parent intended to abandon the child. The failure to provide support or to communicate is presumptive evidence of an intent to abandon.

These three requirements draw on Family Code Section 7822(a), which provides that a court may deny custody to a parent who leaves a child in the care and custody of another person for a period of six months or in the care and custody of the other parent for a period of one year “without provision for the child’s support, or without communication from the parent, with the intent on the part of the parent to abandon the child.” Under Family Code Section 7822(b), the failure to provide support or to communicate is presumptive evidence of an intent to abandon.<sup>2</sup>

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<sup>1</sup> All subsequent citations are to the California Probate Code unless otherwise indicated.

<sup>2</sup> The Uniform Probate Code and the intestacy laws of many states bar a parent from inheriting from a child if the parent abandoned the child, refused to support the child, or abused the child. Gary, *We Are Family: The Definition of Parent and Child for Succession Purposes*, 34 ACTEC Journal 171, 179 (Winter 2008).

The proposal also provides that a relative of the parent who had abandoned the child inherits from the child as if the abandoning parent had predeceased the child. Under the current law, if the parent is disinherited, the deceased child's siblings are also disinherited.

## **ISSUES AND PURPOSE**

Under current Section 6452, if a child is born "out of wedlock" neither a natural parent nor a relative of that parent inherits from or through the child on the basis of the parent-child relationship unless the parent or the parent's relative both acknowledged the child and contributed to the child's support.

The purpose of the intestacy law is to "provide rules that are more likely to carry out...the intent a decedent without a will is most likely to have had" and to "make probate more efficient and expeditious." *Estate of Griswold* (2001) 25 Cal. 4th 904, 912. It is highly unlikely that a child whose parent had abandoned her before age 13 and who had failed to support or communicate with her would want that parent to inherit from her.

In *Estate of Shellenbarger* (2008) 169 Cal. App. 4th 894, the decedent's parents were married for a short time more than 40 years before his death. The father abandoned his wife while she was pregnant with the decedent. After the decedent's death, his mother petitioned to determine entitlement to estate distribution, alleging that, because the father abandoned his son, the father should not take as an intestate heir. The Court of Appeal agreed that it was unfair that a father who had never even seen his son for 42 years should benefit from the son's death. But because intestate succession "is purely a matter of statutory regulation," the court could not "disinherit a natural parent who abandons a child who later dies intestate." *Ibid.* at p. 896.

The result in *Shellenbarger* does not carry out a decedent's likely intent. The proposed amendment to Section 6452 remedies the problem that this and similar cases present, without unduly burdening the probate court with factual disputes, by prohibiting a parent from inheriting from a child only in the most egregious situations. The abandonment must occur during the child's minority and last for more than five consecutive years that continue to the end of the child's minority. Thus, the proposal would not disinherit a parent who abandons a child temporarily and who re-unites with the child during minority. Because the abandonment must be intentional, a parent who is involuntarily institutionalized or who is performing military service is not disinherited. On the other hand, in order to inherit from a child, a parent who has intentionally abandoned a minor for more than five years must both financially support the child and communicate with the child. Otherwise, a parent whose wages the state has garnished to pay for state-provided medical coverage or who has paid court-ordered support but who otherwise has failed to communicate with the child for more than five years would remain able to inherit.

The amendment thus furthers two key purposes behind Section 6452 and its predecessor statutes, namely, furthering judicial efficiency and avoiding the undesirable risk that a deceased child's estate will be claimed by a parent who had no contact with the decedent during life. *Griswold, supra*, 25 Cal. 4th at pp. 912, 924.

Finally, the proposal allows a relative of the child to inherit from or through the child as if the parent who abandoned the child had predeceased the child. In many situations, the abandoning parent will leave more than one child behind. In that case, the deceased child likely would not want to disinherit her surviving siblings.

## **HISTORY**

Section 6452 was added by AB 1137 (Stats. 1993, c. 529), continuing the substance of former Section 6408(d), and was amended by AB 2751 (Stats. 1996, c. 862). In 2002, the California Law Revision Commission considered whether to revise the law regarding the ability of a parent of a child born out of wedlock to inherit from that child, but declined to recommend legislation to revise Section 6452 because the issue occurred infrequently and because of the likelihood of unintended consequences. See staff memorandum dated August 12, 2002, at <http://www.clrc.ca.gov/pub/2002/MM02-35.pdf> and October 29, 2002, at <http://www.clrc.ca.gov/pub/2002/MM02-35s1.pdf> and the November 20, 2002, draft tentative recommendation at <http://www.clrc.ca.gov/pub/2002/MM02-63.pdf>

## **IMPACT ON PENDING LITIGATION**

None known.

## **LIKELY SUPPORT/OPPOSITION**

The concurring opinion in *Estate of Griswold* and the decision in *Estate of Shellenbarger* both criticized the current law. The Executive Committee of the Trusts and Estates Section (TEXCOM) is not aware of any opposition.

## **FISCAL IMPACT**

No fiscal impact is anticipated.

## **GERMANENESS**

The subject matter is directly related to the practice of the members of TEXCOM.

## **DISCLAIMER**

This position is only that of the Trusts and Estates Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Trusts and Estates Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

## TEXT OF PROPOSAL

SECTION 1. Section 6452 of the Probate Code is repealed:

[Deleted text begins] 6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

- (a) The parent or a relative of the parent acknowledged the child.
- (b) The parent or a relative of the parent contributed to the support or the care of the child. [Deleted text end]

SEC. 2. Section 6452 is added to the Probate Code, to read:

[Inserted text begins] 6452 (a) A parent does not inherit from or through a child on the basis of the parent and child relationship if: [Inserted text ends]

[Inserted text begins](1) The parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or [Inserted text ends]

[Inserted text begins](2) The parent did not acknowledge the child; or [Inserted text ends]

[Inserted text begins](3) The parent left the child during the child's minority and failed to provide for the child's support or to communicate with the child, or both, for at least five consecutive years that continued until the end of the child's minority, with the intent on the part of the parent to abandon the child. The failure to provide support or to communicate for the prescribed period is presumptive evidence of an intent to abandon. [Inserted text ends]

[Inserted text begins](b) A relative of a parent described in subdivision (a) inherits from or through the child as if the parent had predeceased the child. [Inserted text ends]