



TRAVERSING THE CHANGING TIDES OF CHILD SUPPORT



CHILD SUPPORT DIRECTORS ASSOCIATION

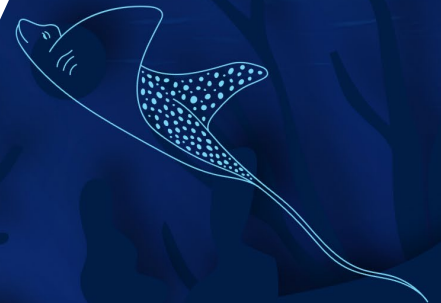


EXPLORING THE TIDEPOOLS

Jennifer Coultas, Attorney IV

Shannon Welton, Supervising Attorney

Elizabeth Lawrence, Chief Attorney



CHILD SUPPORT DIRECTORS ASSOCIATION



FAMILY CODE §4251

Presented by:
Jennifer Coultas

Los Angeles County Child Support Services Dept



CHILD SUPPORT DIRECTORS ASSOCIATION



Family Code 4251

History

(a) **Commencing July 1, 1997, each superior court shall provide sufficient commissioners to hear Title IV-D child support cases filed by the local child support agency.** The number of child support commissioners required in each county shall be determined by the Judicial Council as prescribed by [paragraph \(3\) of subdivision \(b\) of Section 4252](#). **All actions or proceedings filed by the local child support agency** in a support action or proceeding in which enforcement services are being provided pursuant to [Section 17400](#), for an order to establish, modify, or enforce child or spousal support, including actions to establish parentage, **shall be referred for hearing to a child support commissioner** unless a child support commissioner is not available due to exceptional circumstances, as prescribed by the Judicial Council pursuant to [paragraph \(7\) of subdivision \(b\) of Section 4252](#)....





Family Code 4251

Commissioner acts as temporary judge

- ⚓ ***(b) The commissioner shall act as a temporary judge unless an objection is made by the local child support agency or any other party.*** The Judicial Council shall develop a notice that shall be included on all forms and pleadings used to initiate a child support action or proceeding that advises the parties of their right to review by a superior court judge and how to exercise that right. The parties shall also be advised by the court prior to the commencement of the hearing that the matter is being heard by a commissioner who shall act as a temporary judge unless any party objects to the commissioner acting as a temporary judge. While acting as a temporary judge, the commissioner shall receive no compensation other than compensation as a commissioner.





Family Code 4251

Objection to commissioner

- ⚓ ***(c) If a party objects to the commissioner acting as a temporary judge, the commissioner may hear the matter and make findings of fact and a recommended order.*** Within 10 court days, a judge shall ratify the recommended order **unless either party objects to the recommended order**, or where a recommended order is in error. In both cases, the judge shall issue a temporary order and schedule a hearing de novo within 10 court days. A party may waive the right to the review hearing at any time.





Family Code 4251(c)

What are the issues?

- ⚓ NCP attempt to withdraw 4251(c) objection does not preclude the other party's right to object to findings and recommended order and request Trial de Novo
- ⚓ Language of statute allows either party to object to recommended order after initial party raises objection to Commissioner sitting as Temporary Judge
- ⚓ Once either party raises 4251(c) objection the Commissioner is limited to making findings of fact and recommended order





Family Code 4251(c)

San Diego P's & A's excellent

- ⚓ “Exercise of the right to object to the Commissioner acting as a temporary judge cannot and does not negate or impact the other party’s separate and distinct right to object to the Findings of Fact and Recommended Order issued by the Commissioner.”
- ⚓ “Once FC 4251 process is initiated by one party’s initial objection to the Commissioner acting as a Temporary Judge, the entire 4251 process is opened up and gives rise to separate and distinct rights to the other party.”





Family Code 4251(c)

Can we simplify the issue?

- ⚓ If either party objects to Commissioner sitting as Temporary Judge under 4251(c) [then]
- ⚓ Commissioner now limited to making Findings of Fact and Recommended Order [and]
- ⚓ Judge will affirm Recommended Order within 10 days **unless either party** files a Notice of Objection to Recommended Order [and]
- ⚓ If Notice of Objection is filed the court will schedule a Trial de Novo within 10 days





BANK LEVY OF VA BENEFITS

Presented by:
Shannon Welton

San Diego County Dept of Child Support Services



CHILD SUPPORT DIRECTORS ASSOCIATION



OVERVIEW OF VA BENEFITS

- ⚓ VA benefits are granted either as non-service or service-connected.
- ⚓ 38 U.S.C. §§1513,1521: **Non-service connected** is need based and is for veterans who are discharged honorably or other than honorably:
 - ◆ Permanently and totally disabled or
 - ◆ 65+ and disabled
 - and
 - ◆ Must have served 90+ days during a time of war
 - ◆ Do not qualify for service-connected disability
- ⚓ Not reported in CSE
- ⚓ Not income for purposes of support
- ⚓ Cannot be levied



OVERVIEW OF VA BENEFITS

- ⚓ 38 U.S.C. §§1110-1118, 38 U.S.C. §§1131-1137: Service connected is the benefit that we see reported in CSE.
- ⚓ Granted for a physical or mental condition that is exacerbated by or caused by military service during war or peacetime.

<u>VALID</u>	MONTHLY BENEFIT CREDITED	2,108.00	STATE VERIFICATION EXCHANGE SYSTEM (SVES) - TITLE II
<u>VALID</u>	VETERAN AFFAIRS BENEFIT - COMPENSATION / PENSION	5,122.00	DEPARTMENT OF VETERAN'S AFFAIRS
<u>VALID</u>	MONTHLY BENEFIT CREDITED	2,056.70	STATE VERIFICATION EXCHANGE SYSTEM (SVES) - TITLE II
<u>VALID</u>	VETERAN AFFAIRS BENEFIT - COMPENSATION / PENSION	4,997.00	DEPARTMENT OF VETERAN'S AFFAIRS



OVERVIEW OF VA BENEFITS

- ⚓ **Service connected** disability is determined differently than other disability benefits.
- ⚓ VA starts with 100% ability
 - ◆ Orders disabilities from highest % to lowest
 - ◆ Subtracts the highest % from 100%, then continues on down the line.
 - Ex: Disability %: 30 for back condition, 20 for knee injury and 10 for tinnitus = 60%?
 - Nope
 - $100\% - 30\% = 70\%$ ability remaining
 - 20% of the 70% is 14%. $70\% - 14\% = 56\%$ of ability remaining
 - 10% of the 56% is 5.6%. $56\% - 5.6\% = 50.4\%$ ability remaining.
 - Round to the nearest 10% and the veteran is rated at 50% disabled.





OVERVIEW OF VA BENEFITS

- ⚓ **Service connected** disability even at 100% rating does not prohibit a veteran from working and earning a living unless the VA or their private doctor specifically states that they are unemployable.
 - ◆ Many 50-100% rated veterans can and do work.
- ⚓ If a veteran claims they cannot work, request a verification of disability from a doctor.
- ⚓ Request they provide their entire VA rating documents to review the medical determination the VA used for their rating.





VA BENEFITS ARE INCOME FOR GUIDELINE SUPPORT

- ⚓ **Service-connected** disability is income under California Family Code §4058(a)(1).
 - ◆ Can be used to set support
 - Many veterans misunderstand the characteristic of VA benefits when it comes to support.
 - ◆ Non-taxable
 - ◆ Is reported in CSE or can be searched in CSP (Child Support Portal)
 - If there is an FVI flag, it has to be removed, wait a few days, run the report then reset the FVI flag.
 - ◆ Cannot be garnished by wage assignment
 - 42 U.S.C. §§659(h)(1)(A)(ii)(V) and 659(h)(1)(B)(iii)
 - ◆ Can be enforced against by bank levy





BANK LEVY OF VA BENEFITS

- ⚓ **Service-connected** disability can be enforced against once delivered to the veteran.
- ⚓ *Rose v. Rose* (1987) 481 U.S. 619, 629: Contempt case that found a Tennessee court could order a veteran to pay child support from his service-connected disability benefits.
- ⚓ Child support exception: 42 U.S.C § 659(g) and (h)(1)(A)(ii)(V) and (i)(5) allow legal process against VA benefits. Legal process is defined as a writ...or other similar process in the nature of garnishment.





BANK LEVY OF VA BENEFITS

- ⚓ **Service-connected:** Bank levy can be issued against VA benefits under 42 U.S.C. §666.
- ◆ Some banks began to reject levies in the Fall of 2024.
 - ◆ A stand-alone letter was drafted informing the banks of their obligation to garnish and indicates they are not required to perform “look back.”
 - Banks are no longer rejecting levies.
 - ◆ Veterans retain the right to request a Claim of Exemption and must meet the requirements





CA PUBLIC RECORDS ACT

Presented by:

Elizabeth Lawrence

Riverside County Dept of Child Support Services



CHILD SUPPORT DIRECTORS ASSOCIATION



CA Public Records Act

CA Gov't Code § 7920.000 et seq.

(Recodified 2021, previously Gov't Code 6250 et seq.)

- ⚓ Enacted in 1968
- ⚓ Applies to all State and Local public agencies
- ⚓ Requires public agencies to release public records in their possession upon request and in a timely manner.

When the PRA was enacted in **1968**, “ [t]he Legislature had long been attempting to “formulate a workable means of minimizing secrecy in government.” ’ ” (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 772, 192 Cal.Rptr. 415; quoting *ACLU, supra*, 32 Cal.3d 440, 457, 186 Cal.Rptr. 235, 651 P.2d 822.) The PRA was modeled on the federal Freedom of Information Act (5 U.S.C. § 552 et seq.; *Cook v. Craig* (1976) 55 Cal.App.3d 773, 781, 127 Cal.Rptr. 712) and was passed for the explicit purpose of “increasing freedom of information” by giving the public “access to information in possession of public agencies” (*Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661, 668, 135 Cal.Rptr. 575).





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Who can request a public record?

⚓ A “member of the public”

- ◆ Any person... (Gov't Code § 7920.515)
 - “Person” includes any natural person, corporation, partnership, limited liability company, firm, or association. (Gov't Code § 7920.520)

⚓ For any reason

- ◆ This division does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure. (Gov't Code § 7921.300)

⚓ By any manner

- ◆ Verbal or written request for records- PRA doesn't need to be cited (might refer to FOIA instead).
- ◆ So long as it is, “a focused and effective request that reasonably describes an identifiable record, the public agency shall”
 - Assist the member of the public to identify the records responsive to the request or purpose of the request.
 - Describe the IT and physical location in which the records exist.
 - Provide suggestions to overcome practical basis for denying access to the records sought. (Gov't Code § 7922.600)





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What is a Public Record?

⚓ Public record

- ◆ Includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Govt. Code § 7920.530)

⚓ A writing

- ◆ Any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Govt. Code §7920.545)

⚓ Consider emails, texts, IMs (including **personal**)

- ◆ This subdivision shall not be construed to limit the public's right to access the content of an employee's personal email that is used to conduct public business, as decided by the Supreme Court in City of San Jose v. Superior Court (2017) 2 Cal.5th 608. (Gov't Code 7928.300)(b)(2))





Right to Inspect

- ⚓ Public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record...(Gov't Code § 7922.525(a))
- ⚓ A requester who inspects a disclosable record on the premises of the agency has the right to use the requester's equipment on those premises, without being charged any fees or costs, to photograph or otherwise copy the record, unless the means of copying would result in
 - ◆ (1) Damage to the record, or
 - ◆ (2) Unauthorized access to the agency's computer system or secured networks by using software, equipment or other technology capable of compromising the agency's electronic records.
(Gov't Code § 7922.530(b))





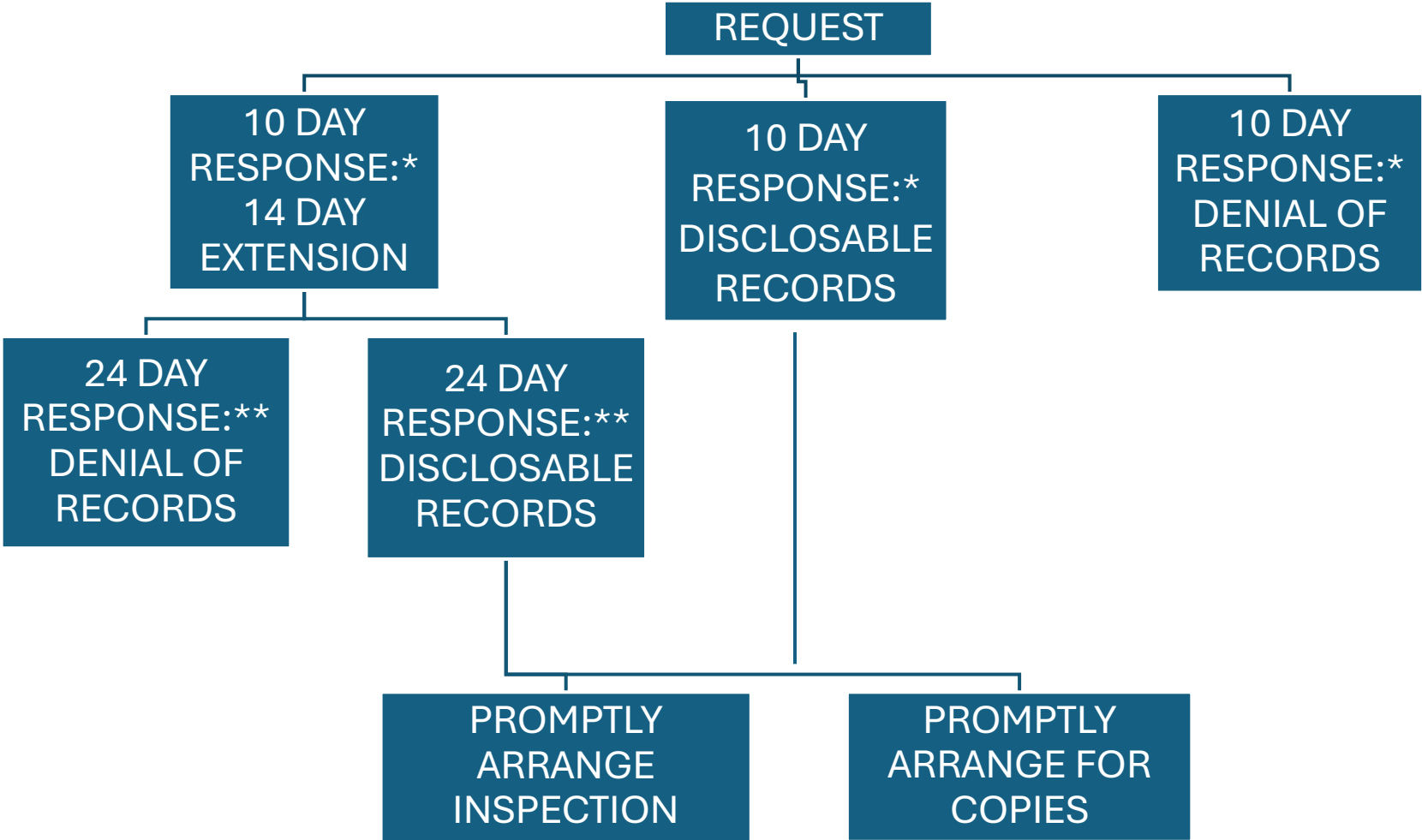
Right to Copies

- ⚓ Upon a request for a copy of records that reasonably describes an identifiable record, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable... (Gov't Code § 7922.530(a))

- ⚓ Each agency, upon a request for a copy of records, shall:
 - ◆ Within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency
 - ◆ Notify the requester of the determination and the reasons.
 - ◆ State the estimated date and time when the records will be made available. (Gov't Code § 7922.535(a))

- ⚓ In unusual circumstances,
 - ◆ Initial 10 days to *respond* may be extended for no more than 14 days (24 days total)
 - ◆ Extension requires written notice to the requester within the initial 10 days. (Gov't Code § 7922.535(b))







Justification for withholding of record

- ⚓ An agency shall justify withholding any record by demonstrating:
 - ◆ The record in question is exempt under express provisions of this division, or
 - ◆ On the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov't Code §7922.000)

- ⚓ This division does not require disclosure of records, the disclosure of which is exempted or prohibited pursuant to federal or state law...(Gov't Code §7927.705)

- ⚓ CSE specific case records - exempt from disclosure pursuant to Fam Code §17212
 - ◆ Fam Code §17212 casts a wide net -all files, applications, papers, documents, and records established or maintained by a public entity pursuant to the administration and implementation of child support...shall be confidential and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child support program.
 - ◆ Fam Code §17212(c)(5) public records exemption applies only to agency records that pertain to the public's business, not to any information related to a specific case record.





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CPRA Takeaways and Best Practices

- ⚓ Anyone can request public records for any reason and in any manner
- ⚓ Time is of the essence - you only have 10 calendar days to consider the request and respond in writing
- ⚓ Records need to be released timely, but not necessarily within the 10-day window
- ⚓ ALWAYS review records before released to ensure they are properly redacted, if necessary.
- ⚓ Do NOT release documents under the CPRA that the requester is only entitled to receive under the Fam. Code.
 - ◆ PRA exemptions will be deemed waived.
- ⚓ Do NOT use your personal phone or email for county business.
- ⚓ Keep all written communication professional and appropriate for potential release.
- ⚓ Make sure everyone in your LCSA is aware of the PRA and familiar with your internal process.
- ⚓ Managing attorneys
 - ◆ Keep your director and possibly county counsel informed of these requests
 - ◆ Know your county's PRA requirements (NextRequest)
 - ◆ Ensure your LCSA is complying with your county's retention policy





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Any Questions?





Thank You!

Jennifer Coultas, Attorney IV, Los Angeles County CSSD, (310) 354-6314,

Jennifer_Coultas@cssd.lacounty.gov

Shannon Welton, Supervising Attorney, San Diego County DCSS,

shannon.welton@sdcounty.ca.gov

Elizabeth Lawrence, Chief Attorney, Riverside DCSS, 951-955-4207,

ELawrence@rivco.org

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