

**RESOLUTION 3-11-2002**

**DIGEST**

Spousal Privilege: Extension to Domestic Partners

Amends Evidence Code sections 970, 971, 972, and 973 to extend the spousal privilege to domestic partners.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

Reasons:

This resolution amends Evidence Code sections 970, 971, 972, and 973 to extend the spousal privilege to domestic partners. This resolution should be approved in principle because registered domestic partners should have the same testimonial privileges as married persons.

Current law recognizes that to compel one spouse to testify against another is disruptive of domestic harmony. A registered domestic partnership is comparable to a marriage. Society has the same interest in the domestic harmony within a registered partnership as it does within a marriage. To promote that societal interest, domestic partners should have the same testimonial privileges as married spouses.

**TEXT OF RESOLUTION**

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Evidence Code Sections 970, 971, 972 and 973 to read as follows:

1 § 970

2 Except as otherwise provided by statute, a married person or domestic partner has a  
3 privilege not to testify against his spouse or domestic partner in any proceeding. For the  
4 purpose of this section, “domestic partner” has the meaning provided in Section 297 of the  
5 Family Code.

6

7 § 971

8 Except as otherwise provided by statute, a married person whose spouse or a  
9 domestic partner whose partner is a party to a proceeding has a privilege not to be called as  
10 a witness by an adverse party to that proceeding without the prior express consent of the  
11 spouse or domestic partner having the privilege under this section unless the party calling  
12 the spouse or domestic partner does so in good faith without knowledge of the marital  
13 relationship or domestic partnership. For the purpose of this section, “domestic partner” has  
14 the meaning provided in Section 297 of the Family Code.

15

16 § 972

17 A married person or domestic partner does not have a privilege under this article in:  
18 (a) A proceeding brought by or on behalf of one spouse against the other spouse or

19 one domestic partner against the other partner.

20 (b) A proceeding to commit or otherwise place his or her spouse or domestic partner  
21 or his or her spouse's property or domestic partner's property, or both, under the control of  
22 another because of the spouse's or domestic partner's alleged mental or physical condition.

23 (c) A proceeding brought by or on behalf of a spouse or domestic partner to establish  
24 his or her competence.

25 (d) A proceeding under the Juvenile Court Law, Chapter 2 (commencing with  
26 Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

27 (e) A criminal proceeding in which one spouse or domestic partner is charged with:

28 (1) A crime against the person or property of the other spouse or domestic partner or  
29 of a child, parent, relative, or cohabitant of either, whether committed before or during  
30 marriage or the domestic partnership.

31 (2) A crime against the person or property of a third person committed in the course  
32 of committing a crime against the person or property of the other spouse or domestic  
33 partner, whether committed before or during marriage or the domestic partnership.

34 (3) Bigamy.

35 (4) A crime defined by Section 270 or 270a of the Penal Code.

36 (f) A proceeding resulting from a criminal act which occurred prior to legal marriage  
37 of the spouses to each other or, in the case of domestic partners, prior to the commencement  
38 of the domestic partnership regarding knowledge acquired prior to that marriage or domestic  
39 partnership if prior to the legal marriage or domestic partnership the witness spouse or  
40 domestic partner was aware that his or her spouse or domestic partner had been arrested for  
41 or had been formally charged with the crime or crimes about which the spouse or domestic  
42 partner is called to testify.

43 (g) A proceeding brought against the spouse or domestic partner by a former spouse  
44 or former domestic partner so long as the property and debts of the marriage or domestic  
45 partnership have not been adjudicated, or in order to establish, modify, or enforce a child,  
46 family or spousal support obligation arising from the marriage or domestic partnership to  
47 the former spouse or former domestic partner; in a proceeding brought against a spouse or  
48 domestic partner by the other parent in order to establish, modify, or enforce a child support  
49 obligation for a child of a nonmarital relationship of the spouse or domestic partner; or in a  
50 proceeding brought against a spouse or domestic partner by the guardian of a child of that  
51 spouse or domestic partner in order to establish, modify, or enforce a child support  
52 obligation of the spouse or domestic partner. The married person or domestic partner does  
53 not have a privilege under this subdivision to refuse to provide information relating to the  
54 issues of income, expenses, assets, debts, and employment of either spouse or domestic  
55 partner, but may assert the privilege as otherwise provided in this article if other information  
56 is requested by the former spouse or former domestic partner, guardian, or other parent of  
57 the child.

58 Any person demanding the otherwise privileged information made available by this  
59 subdivision, who also has an obligation to support the child for whom an order to establish,  
60 modify, or enforce child support is sought, waives his or her marital or domestic partnership  
61 privilege to the same extent as the spouse or domestic partner as provided in this  
62 subdivision.

63

64 § 973

65 (a) Unless erroneously compelled to do so, a married person or domestic partner who  
66 testifies in a proceeding to which his spouse or domestic partner is a party, or who testifies  
67 against his spouse or domestic partner in any proceeding, does not have a privilege under  
68 this article in the proceeding in which such testimony is given.

69 (b) There is no privilege under this article in a civil proceeding brought or defended  
70 by a married person or domestic partner for the immediate benefit of his spouse or domestic  
71 partner or of himself and his spouse or domestic partner.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bay Area Lawyers for Individual Freedom

### STATEMENT OF REASONS

Existing Law: Establishes a privilege not to testify against a spouse in any proceeding, and a privilege not to be called as a witness in any proceeding to which a spouse is a party.

This Resolution: Provides for the extension of the privilege to persons who are registered as domestic partners in the State of California, pursuant to Family Code Section 297, to those same instances in which the privilege is applicable to married spouses.

The Problem: Currently, there is no privilege not to testify or be called as a witness which applies to domestic partners. The legal intent of the privilege is to promote harmony within the relationship. Society stands to suffer the same harms if domestic partners are not protected from disharmony to the same extent as married spouses. Forcing one domestic partner to testify against the other partner or to be a witness against them is injurious to the relationship.

### IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Deborah Hedger, Habeas Corpus Resource Center, 50 Fremont, Suite 1800, San Francisco, CA 94105, (415) 348-3800; dhedger@hcrc.ca.gov

RESPONSIBLE FLOOR DELEGATE: Deborah Hedger