

## Assembly Bill No. 1449

### CHAPTER 463

An act to amend Section 17415 of, and to add Sections 17550 and 17552 to, the Family Code, and to amend Section 903 of the Welfare and Institutions Code, relating to children.

[Approved by Governor October 2, 2001. Filed with  
Secretary of State October 3, 2001.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1449, Keeley. Child support.

Existing law requires the local child support agency in each county to enforce child support orders and to collect arrearages, as specified.

This bill would require the Department of Child Support Services, in consultation with the State Department of Social Services, to establish and promulgate, by October 1, 2002, specified regulations by which the local child support agency may compromise an obligor's liability for public assistance debt in cases where the parent separated from or deserted a child who consequently became the recipient of aid under the AFDC-FC or CalWORKs programs, if specified conditions are met, and the department determines that compromise is necessary for the child's support. The bill would define "guardian" and "relative caregiver" for these purposes. The bill would also require the State Department of Social Services, in consultation with the Department of Child Support Services, by October 1, 2002, to promulgate specified regulations by which the county child welfare department, in case of separation or desertion of a parent or parents from a child resulting in aid, as specified, would determine whether it is in the best interests of the child to have his or her case referred to the local child support agency for child support services, as specified. The bill would further require the local child support agency to consult with the county child welfare department prior to compromising an obligor parent's liability for debt incurred for AFDC-FC payment provided to a child.

This bill also would require the Department of Child Support Services and the State Department of Social Services to make a report to the Governor and Legislature, by October 1, 2003, which contains specified topics addressed by this bill.

Certain provisions of this bill would not be implemented if it is determined that the provisions would reduce federal financial participation to AFDC-FC or CalWORKs programs. The bill would make other related, conforming changes.

Because this bill would impose new duties on local officials, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17415 of the Family Code is amended to read:

17415. (a) It shall be the duty of the county welfare department to refer all cases in which a parent is absent from the home, or in which the parents are unmarried and parentage has not been established by the completion and filing of a voluntary declaration of paternity pursuant to Section 7573 or a court of competent jurisdiction, to the local child support agency immediately at the time the application for public assistance, including Medi-Cal benefits, or certificate of eligibility, is signed by the applicant or recipient, except as provided in Section 17552 of this code and Section 11477.04 of the Welfare and Institutions Code. If an applicant is found to be ineligible, the applicant shall be notified in writing that the referral of the case to the local child support agency may be terminated at the applicant's request. The county welfare department shall cooperate with the local child support agency and shall make available all pertinent information as provided in Section 17505.

(b) Upon referral from the county welfare department, the local child support agency shall investigate the question of nonsupport or paternity and shall take all steps necessary to obtain child support for the needy child, enforce spousal support as part of the state plan under Section 17604, and determine paternity in the case of a child born out of wedlock. Upon the advice of the county welfare department that a child is being considered for adoption, the local child support agency shall delay the investigation and other actions with respect to the case until advised that the adoption is no longer under consideration. The granting of public assistance or Medi-Cal benefits to an applicant shall not be delayed or contingent upon investigation by the local child support agency.

(c) In cases where Medi-Cal benefits are the only assistance provided, the local child support agency shall provide child and spousal support



services unless the recipient of the services notifies the local child support agency that only services related to securing health insurance benefits are requested.

(d) Where a court order has been obtained, any contractual agreement for support between the local child support agency or the county welfare department and the noncustodial parent shall be deemed null and void to the extent that it is not consistent with the court order.

(e) Whenever a family which has been receiving public assistance, including Medi-Cal, ceases to receive assistance, including Medi-Cal, the local child support agency shall, to the extent required by federal regulations, continue to enforce support payments from the noncustodial parent until the individual on whose behalf the enforcement efforts are made sends written notice to the local child support agency requesting that enforcement services be discontinued.

(f) The local child support agency shall, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent. In individual cases where utilization of reciprocal arrangements has proven ineffective, the local child support agency may forward to the Attorney General a request to utilize federal courts in order to obtain or enforce orders for child or spousal support. If reasonable efforts to collect amounts assigned pursuant to Section 11477 of the Welfare and Institutions Code have failed, the local child support agency may request that the case be forwarded to the Treasury Department for collection in accordance with federal regulations. The Attorney General, where appropriate, shall forward these requests to the Secretary of Health and Human Services, or a designated representative.

SEC. 2. Section 17550 is added to the Family Code, to read:

17550. (a) The Department of Child Support Services, in consultation with the State Department of Social Services, shall establish regulations by which the local child support agency, in any case of separation or desertion of a parent from a child that results in aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code being granted to the child, may compromise the obligor parent or parents' liability for public assistance debt, including interest thereon, owed to the state where the child for whom public assistance was paid is residing with the obligor parent, and all of the following conditions are met:

(1) The obligor parent establishes one of the following:

(A) The child has been adjudged a dependent of the court under Section 300 of the Welfare and Institutions Code and the child has been reunified with the obligor parent pursuant to a court order.

(B) The child received public assistance while living with a guardian or relative caregiver and the child has been returned to the custody of the



obligor parent, provided that the obligor parent for whom the debt compromise is being considered was the parent with whom the child resided prior to the child's placement with the guardian or relative caregiver.

(2) The obligor parent, for whom the debt compromise is being considered, has an income less than 250 percent of the current federal poverty level.

(3) The local child support agency, pursuant to regulations set forth by the department, has determined that the compromise is necessary for the child's support.

(b) Prior to compromising an obligor parent's liability for debt incurred for either AFDC-FC payments provided to a child pursuant to Section 11400 of the Welfare and Institutions Code, or incurred for CalWORKs payments provided on behalf of a child, the local child support agency shall consult with the county child welfare department.

(c) Nothing in this section relieves an obligor, who has not been reunified with his or her child, of any liability for public assistance debt.

(d) For the purposes of this section, the following definitions apply:

(1) "Guardian" means the legal guardian of the child, who assumed care and control of the child while the child was in the guardian's control, and who is not a biological or adoptive parent.

(2) "Relative caregiver" means a relative as defined in subdivision (c) of Section 11362 of the Welfare and Institutions Code, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent.

(e) The department shall promulgate all necessary regulations pursuant to this section on or before October 1, 2002, including regulations that set forth guidelines to be used by the local child support agency when compromising public assistance debt.

SEC. 3. Section 17552 is added to the Family Code, to read:

17552. (a) The State Department of Social Services, in consultation with the Department of Child Support Services, shall promulgate regulations by which the county child welfare department, in any case of separation or desertion of a parent or parents from a child that results in aid under Section 11400 of the Welfare and Institutions Code, shall determine whether it is in the best interests of the child to have the case referred to the local child support agency for child support services. If reunification services are not offered or are terminated, the case may be referred to the local child support agency. In making the determination, the department regulations shall provide the factors the county child welfare department shall consider, including:

(1) Whether the payment of support by the parent will pose a barrier to the proposed reunification, in that the payment of support will



compromise the parent's ability to meet the requirements of the parent's reunification plan.

(2) Whether the payment of support by the parent will pose a barrier to the proposed reunification in that the payment of support will compromise the parent's current or future ability to meet the financial needs of the child.

(b) The department regulations shall provide that, where the county child welfare department determines that it is not in the best interests of the child to seek a support order against the parent, the county child welfare department shall refrain from referring the case to the local child support agency. The regulations shall define those circumstances in which it is not in the best interest of the child to refer the case to the local child support agency.

(c) The department regulations shall provide, where the county child welfare department determines that it is not in the child's best interest to have his or her case referred to the local child support agency, the county child welfare department shall review that determination following each court hearing held under Section 361.5 of the Welfare and Institutions Code, and shall refer the child's case to the local child support agency upon a determination that, due to a change in the child's circumstances, it is no longer contrary to the child's best interests to have his or her case referred to the local child support agency.

(d) The State Department of Social Services shall promulgate all necessary regulations pursuant to this section on or before October 1, 2002.

SEC. 4. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

(b) The county shall limit the charges it seeks to impose to the reasonable costs of support of the minor and shall exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. In the event that



court-ordered child support paid to the county pursuant to subdivision (a) exceeds the amount of the costs authorized by this subdivision and subdivision (a), the county shall either hold the excess in trust for the minor's future needs pursuant to Section 302.52 of Title 45 of the Code of Federal Regulations or, with the approval of the minor's caseworker or probation officer, pay the excess directly to the minor.

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family's income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), (3), and (4), "costs of support" as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars (\$15) per day, except that:

(1) The maximum cost of fifteen dollars (\$15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children's Services Act (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee-for-service average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met under any of the coverages listed in paragraph (2), the county may impose these additional costs.

(4) For those placements of a minor subject to this section in which an AFDC-FC grant is made, the local child support agency shall, subject to Sections 17550 and 17552 of the Family Code, seek an order pursuant to Section 17400 of the Family Code and the statewide child support guideline in effect in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code. For purposes of



determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in Section 4057 of the Family Code is applicable. This paragraph shall be implemented consistent with subdivision (a) of Section 17415 of the Family Code.

(d) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the estate of that person, or the estate of the minor, shall not be liable for the costs described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing.

(e) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of a minor shall not be liable for the costs of support of that minor while the minor is temporarily placed or detained in any institution or other place pursuant to Section 625 or is committed to any institution or other place pursuant to an order of the juvenile court, if the minor is placed or detained because he or she is found by a court to have committed a crime against that person. Nothing in this subdivision shall be construed to extinguish a child support obligation between private parties.

SEC. 5. The Department of Child Support Services and the State Department of Social Services shall submit to the Governor and Legislature, on or before October 1, 2003, reports, which may be combined into a single report, on the results of the provisions of this act. The Department of Child Support Services report shall include, but is not limited to, the number of cases in which child support debt is compromised and the amount of debt that was incurred as a result of:

(a) AFDC-FC payments made pursuant to Article 5 (commencing with Section 11400) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(b) CalWORKs payments made pursuant to Sections 11203 and 11367 of the Welfare and Institutions Code.

SEC. 6. The provisions of Section 17415 of the Family Code, Section 903 of the Welfare and Institutions Code, as amended by this act, and the provisions of Sections 17550 and 17552 of the Family Code, as added by this act, shall be implemented only to the extent that federal financial participation is not reduced for the AFDC-FC program and the CalWORKs program.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one



million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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