

AMENDED IN SENATE MAY 1, 2007
AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 403

Introduced by Senator Harman

February 21, 2007

An act to amend Section ~~4504~~ 3041.5 of the Family Code, relating to child ~~support obligations~~ *custody and visitation*.

LEGISLATIVE COUNSEL'S DIGEST

SB 403, as amended, Harman. ~~Child support obligations: survivor benefits: custody and visitation: drug and alcohol testing.~~

Existing law, until January 1, 2008, authorizes a court to require any person who is seeking custody of, or visitation with, a child who is the subject of a custody, visitation, or guardianship proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under specified circumstances, as specified.

This bill would extend the operative date of those provisions to January 1, 2009.

~~Existing law permits certain payments that are made by the federal government for the support of a child, because of the retirement or disability of a noncustodial parent of that child, and transmitted to the custodial parent, to be credited toward the child support paid by the noncustodial parent.~~

~~This bill would, among other things, allow federally derived survivor benefit payments of a deceased noncustodial parent that are received on behalf of a surviving dependent minor and transmitted to the custodial parent to be credited toward the deceased noncustodial parent's current, ongoing child support obligation, as specified. The bill would prohibit~~

~~those survivor benefits from being credited to any past due child support obligation.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 3041.5 of the Family Code is amended
2 to read:
3 3041.5. (a) In any custody or visitation proceeding brought
4 under this part, as described in Section 3021, or any guardianship
5 proceeding brought under the Probate Code, the court may order
6 any person who is seeking custody of, or visitation with, a child
7 who is the subject of the proceeding to undergo testing for the
8 illegal use of controlled substances and the use of alcohol if there
9 is a judicial determination based upon a preponderance of evidence
10 that there is the habitual, frequent, or continual illegal use of
11 controlled substances or the habitual or continual abuse of alcohol
12 by the parent, legal custodian, person seeking guardianship, or
13 person seeking visitation in a guardianship. This evidence may
14 include, but may not be limited to, a conviction within the last five
15 years for the illegal use or possession of a controlled substance.
16 The court shall order the least intrusive method of testing for the
17 illegal use of controlled substances or the habitual or continual
18 abuse of alcohol by either or both parents, the legal custodian,
19 person seeking guardianship, or person seeking visitation in a
20 guardianship. If substance abuse testing is ordered by the court,
21 the testing shall be performed in conformance with procedures
22 and standards established by the United States Department of
23 Health and Human Services for drug testing of federal employees.
24 The parent, legal custodian, person seeking guardianship, or person
25 seeking visitation in a guardianship who has undergone drug testing
26 shall have the right to a hearing, if requested, to challenge a positive
27 test result. A positive test result, even if challenged and upheld,
28 shall not, by itself, constitute grounds for an adverse custody or
29 guardianship decision. Determining the best interests of the child
30 requires weighing all relevant factors. The court shall also consider
31 any reports provided to the court pursuant to the Probate Code.
32 The results of this testing shall be confidential, shall be maintained
33 as a sealed record in the court file, and may not be released to any

1 person except the court, the parties, their attorneys, the Judicial
2 Council (until completion of its authorized study of the testing
3 process) and any person to whom the court expressly grants access
4 by written order made with prior notice to all parties. Any person
5 who has access to the test results may not disseminate copies or
6 disclose information about the test results to any person other than
7 a person who is authorized to receive the test results pursuant to
8 this section. Any breach of the confidentiality of the test results
9 shall be punishable by civil sanctions not to exceed two thousand
10 five hundred dollars (\$2,500). The results of the testing may not
11 be used for any purpose, including any criminal, civil, or
12 administrative proceeding, except to assist the court in determining,
13 for purposes of the proceeding, the best interest of the child
14 pursuant to Section 3011, and the content of the order or judgment
15 determining custody or visitation. The court may order either party,
16 or both parties, to pay the costs of the drug or alcohol testing
17 ordered pursuant to this section. As used in this section, “controlled
18 substances” has the same meaning as defined in the California
19 Uniform Controlled Substances Act, Division 10 (commencing
20 with Section 11000) of the Health and Safety Code.

21 (b) This section shall remain in effect only until January 1, 2008
22 2009, and as of that date is repealed, unless a later enacted statute,
23 that is enacted before January 1, 2008 2009, deletes or extends
24 that date.

25 ~~SECTION 1. Section 4504 of the Family Code is amended to~~
26 ~~read:~~

27 ~~4504. (a) If the noncustodial parent is receiving payments~~
28 ~~from the federal government pursuant to the Social Security Act~~
29 ~~or Railroad Retirement Act, or from the Department of Veterans~~
30 ~~Affairs because of the retirement or disability of the noncustodial~~
31 ~~parent and the noncustodial parent notifies the custodial person,~~
32 ~~or notifies the local child support agency in a case being enforced~~
33 ~~by the local child support agency pursuant to Title IV-D of the~~
34 ~~Social Security Act, then the custodial parent or other child support~~
35 ~~obligee shall contact the appropriate federal agency within 30 days~~
36 ~~of receiving notification that the noncustodial parent is receiving~~
37 ~~those payments to verify eligibility for each child to receive~~
38 ~~payments from the federal government because of the disability~~
39 ~~of the noncustodial parent. If the child is potentially eligible for~~
40 ~~those payments, the custodial parent or other child support obligee~~

1 shall apply for and cooperate with the appropriate federal agency
2 for the receipt of those benefits on behalf of each child. The
3 noncustodial parent shall cooperate with the custodial parent or
4 other child support obligee in making that application and shall
5 provide any information necessary to complete the application.

6 (b) ~~If the court has ordered a noncustodial parent to pay for the~~
7 ~~support of a child, payments for the support of the child made by~~
8 ~~the federal government pursuant to the Social Security Act or~~
9 ~~Railroad Retirement Act, or by the Department of Veterans Affairs~~
10 ~~because of the retirement or disability of the noncustodial parent~~
11 ~~and received by the custodial parent or other child support obligee~~
12 ~~shall be credited toward the amount ordered by the court to be paid~~
13 ~~by the noncustodial parent for support of the child unless the~~
14 ~~payments made by the federal government were taken into~~
15 ~~consideration by the court in determining the amount of support~~
16 ~~to be paid. Any payments shall be credited in the order set forth~~
17 ~~in Section 695.221 of the Code of Civil Procedure.~~

18 (c) ~~If the custodial parent or other child support obligee refuses~~
19 ~~to apply for those benefits or fails to cooperate with the appropriate~~
20 ~~federal agency in completing the application but the child or~~
21 ~~children otherwise are eligible to receive those benefits, the~~
22 ~~noncustodial parent shall be credited toward the amount ordered~~
23 ~~by the court to be paid for that month by the noncustodial parent~~
24 ~~for support of the child or children in the amount of payment that~~
25 ~~the child or children would have received that month had the~~
26 ~~custodial parent or other child support obligee completed an~~
27 ~~application for the benefits if the noncustodial parent provides~~
28 ~~evidence to the local child support agency indicating the amount~~
29 ~~the child or children would have received. The credit for those~~
30 ~~payments shall continue until the child or children would no longer~~
31 ~~be eligible for those benefits or the order for child support for the~~
32 ~~child or children is no longer in effect, whichever occurs first.~~

33 (d) ~~If the surviving dependent minor child of the deceased~~
34 ~~noncustodial parent is receiving survivor benefit payments from~~
35 ~~the federal government pursuant to the Social Security Act or~~
36 ~~Railroad Retirement Act, or from the Department of Veterans~~
37 ~~Affairs, or military retirement survivor benefits because of the~~
38 ~~death of the noncustodial parent, and the court has ordered the~~
39 ~~noncustodial parent to pay for the support of a child, survivor~~
40 ~~benefit payments received by the custodial parent or other child~~

1 support obligee, on behalf of the minor child, shall be credited
2 toward the amount ordered by the court to be paid by the estate of
3 the deceased noncustodial parent for the current, ongoing support
4 of the child. The credit for those payments shall continue until the
5 child or children would no longer be eligible for those benefits or
6 the order for child support for the child or children is no longer in
7 effect, whichever occurs first. Survivor benefits received shall not
8 be credited to any past due child support obligation.

9 (e) ~~If the surviving dependent minor child of the deceased~~
10 ~~noncustodial parent was receiving derivative benefit payments~~
11 ~~from the federal government pursuant to the Social Security Act~~
12 ~~or Railroad Retirement Act, or from the Department of Veterans~~
13 ~~Affairs, or military retirement survivor benefits because of the~~
14 ~~noncustodial parent's disability or retirement, prior to the death~~
15 ~~of the noncustodial parent, and these derivative benefits were taken~~
16 ~~into consideration when the court ordered the child support~~
17 ~~obligation, then either the custodial parent or the executor of the~~
18 ~~estate of the deceased noncustodial parent may bring a motion to~~
19 ~~modify the child support obligation due to the potential change in~~
20 ~~circumstances precipitated by the lost derivative federal or~~
21 ~~retirement benefits and the gain of the federal survivorship benefits.~~
22 ~~Until a child support modification motion is brought, the federal~~
23 ~~survivor benefit payments received by the custodial parent or other~~
24 ~~child support obligee, on behalf of the minor child, shall be credited~~
25 ~~toward the amount ordered by the court to be paid by the estate of~~
26 ~~the deceased noncustodial parent for the current, ongoing support~~
27 ~~of the child. The credit for those payments shall continue until the~~
28 ~~child or children would no longer be eligible for those benefits or~~
29 ~~the order for child support for the child or children is no longer in~~
30 ~~effect, whichever occurs first. Survivor benefits received shall not~~
31 ~~be credited to any past due child support obligation.~~

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