

Senate Bill No. 1355

Passed the Senate August 25, 2010

Secretary of the Senate

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Section 4007.5 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 1355, Wright. Child support: suspension of support order.

Existing law provides that if a court orders a person to make payments for child support until the occurrence of a specified event, the obligation of the person ordered to pay support terminates on the happening of the contingency.

This bill would, until July 1, 2015, provide that the obligation of a person to pay child support pursuant to an order that is being enforced by a local child support agency under Title IV-D of the Social Security Act is suspended for the period of time exceeding 90 days in which the obligor is incarcerated or involuntarily institutionalized, with specified exceptions. The bill would require that, upon the release of the obligor, the obligation to pay child support immediately resume in the amount otherwise specified in the child support order prior to the suspension of that obligation. The bill would require the court to provide notice to the parties of the support obligation suspension at the time the order is issued or modified. The bill would authorize an obligor, upon release from incarceration or involuntary institutionalization, to petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation. These provisions would apply to all child support orders and modifications issued on or after July 1, 2011.

The bill would also require the Judicial Council, by July 1, 2011, to develop forms necessary for the implementation of the above-described provisions, including forms for a petition to adjust arrears.

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

SECTION 1. Section 4007.5 is added to the Family Code, to read:

4007.5. (a) Every money judgment or order for support of a child that is being enforced by a local child support agency under

Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.) shall provide the following:

(1) The obligation of the person ordered to pay support shall be suspended for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, unless the obligor has the means to pay support while incarcerated or involuntarily institutionalized.

(2) The suspension of the support obligation shall only apply for the period of time during which the obligor is incarcerated or involuntarily institutionalized, after which the obligation shall immediately resume in the amount otherwise specified in the child support order.

(b) The court shall provide notice to the parties of the support obligation suspension provided in subdivision (a) at the time the order is issued or modified.

(c) Upon release from incarceration or involuntary institutionalization, an obligor may petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation authorized in subdivision (b). The obligor must show proof of the dates of incarceration or involuntary institutionalization, as well as proof that during that time, the obligor did not have the means to pay the support. The obligor shall serve copies of the petition to the support obligee and the local child support agency, who may file an objection to the obligor's petition with the court. An obligor's arrears shall not be adjusted until the court has approved the petition.

(d) Notwithstanding subdivision (a), the court may deny the obligor's petition if it finds that the obligor was incarcerated or involuntarily institutionalized for any offense constituting domestic violence, as defined in Section 6211, against the support obligee or supported child, or for any offense that could be enjoined by a protective order pursuant to Section 6320, or as a result of his or her failure to comply with a court order to pay child support.

(e) For purposes of this section, "incarcerated or involuntarily institutionalized" includes, but is not limited to, involuntary confinement to a state prison, county jail, juvenile facility operated by the Division of Juvenile Facilities in the Department of Corrections and Rehabilitation, or a mental health facility.

(f) For purposes of this section, "suspend" means that the child support order is modified and set to zero dollars (\$0) for the period

in which the obligor is incarcerated or involuntarily institutionalized.

(g) This section applies to all child support orders and modifications issued on or after July 1, 2011.

(h) The Judicial Council shall, on or before July 1, 2011, develop forms necessary for the implementation of this section, including forms for a petition to adjust arrears.

(i) This section shall remain in effect only until July 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2015, deletes or extends that date.

Approved _____, 2010

Governor