

**ASSEMBLY BILL**

**No. 610**

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**Introduced by Assembly Member Jones-Sawyer**

February 24, 2015

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An act to repeal and add Section 4007.5 of the Family Code, relating to child support, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 610, as introduced, Jones-Sawyer. Child support: suspension of support order.

Existing law, until July 1, 2015, provides 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 person required to pay support is incarcerated or involuntarily institutionalized, with specified exceptions. Existing law requires that, upon the release of the obligor, the obligation to pay child support immediately resumes in the amount otherwise specified in the child support order prior to the suspension of that obligation. Existing law requires the court to provide notice to the parties of the support obligation suspension at the time the order is issued or modified. Existing law authorizes 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.

This bill would instead specify that the suspension of the child support order occurs by operation of law, and would authorize the local child support agency to administratively adjust account balances for cases managed by the agency if the agency verifies that arrears and interest

were accrued in violation of these provisions. The bill would require the child support obligation to resume on the first day of the first full month after the release of the person owing support. The bill would make these provisions operative indefinitely.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . 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 Section 4007.5 of the Family Code is repealed.  
 2 ~~4007.5.—(a) Every money judgment or order for support of a~~  
 3 ~~child that is being enforced by a local child support agency under~~  
 4 ~~Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.)~~  
 5 ~~shall provide the following:~~  
 6 ~~(1) The obligation of the person ordered to pay support shall be~~  
 7 ~~suspended for any period exceeding 90 consecutive days in which~~  
 8 ~~the person ordered to pay support is incarcerated or involuntarily~~  
 9 ~~institutionalized, unless the obligor has the means to pay support~~  
 10 ~~while incarcerated or involuntarily institutionalized.~~  
 11 ~~(2) The suspension of the support obligation shall only apply~~  
 12 ~~for the period of time during which the obligor is incarcerated or~~  
 13 ~~involuntarily institutionalized, after which the obligation shall~~  
 14 ~~immediately resume in the amount otherwise specified in the child~~  
 15 ~~support order.~~  
 16 ~~(b) The court shall provide notice to the parties of the support~~  
 17 ~~obligation suspension provided in subdivision (a) at the time the~~  
 18 ~~order is issued or modified.~~  
 19 ~~(c) Upon release from incarceration or involuntary~~  
 20 ~~institutionalization, an obligor may petition the court for an~~  
 21 ~~adjustment of the arrears pursuant to the suspension of the support~~  
 22 ~~obligation authorized in subdivision (b). The obligor must show~~  
 23 ~~proof of the dates of incarceration or involuntary~~  
 24 ~~institutionalization, as well as proof that during that time, the~~  
 25 ~~obligor did not have the means to pay the support. The obligor~~  
 26 ~~shall serve copies of the petition to the support obligee and the~~  
 27 ~~local child support agency, who may file an objection to the~~  
 28 ~~obligor’s petition with the court. An obligor’s arrears shall not be~~  
 29 ~~adjusted until the court has approved the petition.~~

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

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

13 ~~(f) For purposes of this section, "suspend" means that the child~~  
14 ~~support order is modified and set to zero dollars (\$0) for the period~~  
15 ~~in which the obligor is incarcerated or involuntarily~~  
16 ~~institutionalized.~~

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

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

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

25 SEC. 2. Section 4007.5 is added to the Family Code, to read:

26 4007.5. (a) Every money judgment or order for support of a  
27 child shall be suspended, by operation of law, for any period  
28 exceeding 90 consecutive days in which the person ordered to pay  
29 support is incarcerated or involuntarily institutionalized, unless  
30 either of the following conditions exist:

31 (1) The person owing support has the means to pay support  
32 while incarcerated or involuntarily institutionalized.

33 (2) The person owing support was incarcerated or involuntarily  
34 institutionalized for any offense constituting domestic violence,  
35 as defined in Section 6211, against the supported party or supported  
36 child, or for any offense that could be enjoined by a protective  
37 order pursuant to Section 6320, or as a result of his or her failure  
38 to comply with a court order to pay child support.

39 (b) The child support obligation shall resume on the first day  
40 of the first full month after the release of the person owing support

1 in the amount previously ordered, and that amount is presumed to  
2 be appropriate under federal and state law. This section does not  
3 preclude a person owing support from seeking a modification of  
4 the child support order pursuant to Section 3651, based on a change  
5 in circumstances or other appropriate reason.

6 (c) A local child support agency enforcing child support under  
7 Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.)  
8 may, upon notice to the person supported, administratively adjust  
9 account balances for cases managed by the agency if the agency  
10 verifies that arrears and interest were accrued in violation of this  
11 section. The agency may perform this adjustment without regard  
12 to whether a party was represented by the local child support  
13 agency at the time he or she qualified for relief under this section.

14 (d) Nothing in this section prohibits an attorney, the local child  
15 support agency, or a party from petitioning a court for a  
16 determination of child support or arrears amounts.

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

22 (f) For purposes of this section, “suspend” means that the  
23 payment due on the current child support order and any arrears  
24 payment, or interest resulting from these amounts, is, by operation  
25 of law, set to zero dollars (\$0) for the period in which the person  
26 owing support is incarcerated or involuntarily institutionalized.

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

29 SEC. 3. This act is an urgency statute necessary for the  
30 immediate preservation of the public peace, health, or safety within  
31 the meaning of Article IV of the Constitution and shall go into  
32 immediate effect. The facts constituting the necessity are:

33 In order to avoid an interruption in the protections provided by  
34 Section 4007.5 of the Family Code, it is necessary that this bill  
35 take effect immediately.