

AMENDED IN SENATE JULY 2, 2015

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 610**

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**Introduced by Assembly Member Jones-Sawyer**  
*(Coauthors: Assembly Members Brown and Cristina Garcia)*

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 amended, 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 law.~~ *The bill, until January 1, 2020,* 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, that specified conditions relating to the obligor's inability to pay while incarcerated and the underlying offense for which he or she was incarcerated do not exist, and neither the obligor nor the obligee object to the adjustment. The bill would require the local child support agency to ~~give written notice~~ *notice, as prescribed,* of the adjustment to the obligor and obligee. If either the obligor or the obligee objects to the adjustment, the bill would require the agency to file a motion with the court to adjust the arrears and would allow the adjustment only after approval by the court. 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. *Commencing January 1, 2020, an obligor, upon release from incarceration or involuntary institutionalization, would be authorized to petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation.* The bill would require the Department of Child Support Services, in consultation with the Judicial Council, to develop forms to implement these provisions, and would require them to report specified information relating to these provisions to the Assembly Judiciary Committee and the Senate Judiciary Committee on or before January 1, 2019. ~~The bill would make these provisions operative only until January 1, 2020, at which time, the existing law described above would again become operative.~~

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

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
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 SEC. 2. Section 4007.5 is added to the Family Code, to read:
- 3 4007.5. (a) Every money judgment or order for support of a
- 4 child shall be suspended, by operation of law, for any period
- 5 exceeding 90 consecutive days in which the person ordered to pay

1 support is incarcerated or involuntarily institutionalized, unless  
2 either of the following conditions exist:

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

5 (2) The person owing support was incarcerated or involuntarily  
6 institutionalized for ~~any~~ an offense constituting domestic violence,  
7 as defined in Section 6211, against the supported party or supported  
8 child, or for ~~any~~ an offense that could be enjoined by a protective  
9 order pursuant to Section 6320, or as a result of his or her failure  
10 to comply with a court order to pay child support.

11 (b) The child support obligation shall resume on the first day  
12 of the first full month after the release of the person owing support  
13 in the amount previously ordered, and that amount is presumed to  
14 be appropriate under federal and state law. This section does not  
15 preclude a person owing support from seeking a modification of  
16 the child support order pursuant to Section 3651, based on a change  
17 in circumstances or other appropriate reason.

18 (c) (1) A local child support agency enforcing a child support  
19 order under Title IV-D of the Social Security Act (42 U.S.C. Sec.  
20 651 et seq.) may, upon written notice of the proposed adjustment  
21 to the support obligor and obligee along with a blank form provided  
22 for the support obligor or obligee to object to the administrative  
23 adjustment to the local child support agency, administratively  
24 adjust account balances for cases managed by the agency if all of  
25 the following occurs:

26 (A) The agency verifies that arrears and interest were accrued  
27 in violation of this section.

28 (B) The agency verifies that neither of the conditions set forth  
29 in paragraph (1) or (2) of subdivision (a) exist.

30 (C) Neither the support obligor nor obligee objects, within 30  
31 days of receipt of the notice of proposed adjustment, whether in  
32 writing or by telephone, to the administrative adjustment by the  
33 local child support agency.

34 (2) If either the support obligor or obligee objects to the  
35 administrative adjustment set forth in this subdivision, the agency  
36 shall not adjust the order, but shall file a motion with the court to  
37 seek to adjust the arrears and shall serve copies of the motion on  
38 the parties, who may file an objection to the agency's motion with  
39 the court. The obligor's arrears shall not be adjusted unless the  
40 court approves the adjustment.

1 (3) The agency may perform this adjustment without regard to  
 2 whether it was enforcing the child support order at the time the  
 3 parent owing support qualified for relief under this section.

4 ~~(d) Nothing in this section prohibits~~ *This section does not*  
 5 *prohibit* the local child support agency or a party from petitioning  
 6 a court for a determination of child support or arrears amounts.

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

13 (1) *“Incarcerated or involuntarily institutionalized” includes,*  
 14 *but is not limited to, involuntary confinement to the state prison,*  
 15 *a county jail, a juvenile facility operated by the Division of Juvenile*  
 16 *Facilities in the Department of Corrections and Rehabilitation,*  
 17 *or a mental health facility.*

18 ~~(f) For purposes of this section, “suspend”~~

19 (2) *“Suspend” means that the payment due on the current child*  
 20 *support order and any arrears payment, or interest resulting from*  
 21 *these amounts, is, by operation of law, set to zero dollars (\$0) for*  
 22 *the period in which the person owing support is incarcerated or*  
 23 *involuntarily institutionalized.*

24 ~~(g)~~

25 (f) ~~This section applies to all child support orders and~~  
 26 ~~modifications issued on or after July 1, 2011. as follows:~~

27 (1) *To every money judgment of child support order issued or*  
 28 *modified on or after the enactment of this section.*

29 (2) *If a local child support agency is enforcing a child support*  
 30 *order under Title IV-D of the Social Security Act (42 U.S.C. Sec.*  
 31 *651 et seq.), this section shall apply to an order or modification*  
 32 *issued on or after July 1, 2011.*

33 ~~(h)~~

34 (g) The Department of Child Support Services shall, by January  
 35 1, 2016, and in consultation with the Judicial Council, develop  
 36 forms to implement this section.

37 ~~(i)~~

38 (h) On or before January 1, 2019, the Department of Child  
 39 Support Services and the Judicial Council shall conduct an  
 40 evaluation of the effectiveness of the administrative adjustment

1 process authorized by this section and shall report the results of  
2 the review, as well as any recommended changes, to the Assembly  
3 Judiciary Committee and the Senate Judiciary Committee. The  
4 evaluation shall include a review of the ease of the process to both  
5 the obligor and obligee, as well as an analysis of the number of  
6 cases administratively adjusted, the number of cases adjusted in  
7 court, and the number of cases not adjusted.

8 (j)

9 (i) This section shall remain in effect only until January 1, 2020,  
10 and as of that date is repealed, unless a later enacted statute, that  
11 is enacted before January 1, 2020, deletes or extends that date.

12 ~~SEC. 3. Section 4007.5 is added to the Family Code, to read:~~

13 ~~4007.5. (a) Every money judgment or order for support of a~~  
14 ~~child that is being enforced by a local child support agency under~~  
15 ~~Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.)~~  
16 ~~shall provide the following:~~

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

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

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

30 ~~(c) Upon release from incarceration or involuntary~~  
31 ~~institutionalization, an obligor may petition the court for an~~  
32 ~~adjustment of the arrears pursuant to the suspension of the support~~  
33 ~~obligation authorized in subdivision (b). The obligor must show~~  
34 ~~proof of the dates of incarceration or involuntary~~  
35 ~~institutionalization, as well as proof that during that time, the~~  
36 ~~obligor did not have the means to pay the support. The obligor~~  
37 ~~shall serve copies of the petition to the support obligee and the~~  
38 ~~local child support agency, who may file an objection to the~~  
39 ~~obligor's petition with the court. An obligor's arrears shall not be~~  
40 ~~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) This section shall become operative on January 1, 2020.~~

20 *SEC. 3. Section 4007.5 is added to the Family Code, to read:*

21 *4007.5. (a) Every money judgment or order for support of a*  
22 *child shall be suspended, by operation of law, for any period*  
23 *exceeding 90 consecutive days in which the person ordered to pay*  
24 *support is incarcerated or involuntarily institutionalized, unless*  
25 *either of the following conditions exist:*

26 *(1) The person owing support has the means to pay support*  
27 *while incarcerated or involuntarily institutionalized.*

28 *(2) The person owing support was incarcerated or involuntarily*  
29 *institutionalized for an offense constituting domestic violence, as*  
30 *defined in Section 6211, against the supported party or supported*  
31 *child, or for an offense that could be enjoined by a protective order*  
32 *pursuant to Section 6320, or as a result of his or her failure to*  
33 *comply with a court order to pay child support.*

34 *(b) The child support obligation shall resume on the first day*  
35 *of the first full month after the release of the person owing support*  
36 *in the amount previously ordered, and that amount is presumed*  
37 *to be appropriate under federal and state law. This section does*  
38 *not preclude a person owing support from seeking a modification*  
39 *of the child support order pursuant to Section 3651, based on a*  
40 *change in circumstances or other appropriate reason.*

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

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

15 (e) *This section does not prohibit the local child support agency*  
16 *or child support obligee from petitioning a court for a*  
17 *determination of child support or arrears amounts under this*  
18 *section.*

19 (f) *For purposes of this section, the following definitions shall*  
20 *apply:*

21 (1) *"Incarcerated or involuntarily institutionalized" includes,*  
22 *but is not limited to, involuntary confinement to the state prison,*  
23 *a county jail, a juvenile facility operated by the Division of Juvenile*  
24 *Facilities in the Department of Corrections and Rehabilitation,*  
25 *or a mental health facility.*

26 (2) *"Suspend" means that the payment due on the current child*  
27 *support order, arrears payment on preexisting arrears balance,*  
28 *and interest on arrears created during qualifying periods of*  
29 *incarceration under this section is, by operation of law, set to zero*  
30 *dollars (\$0) for the period during which the person owing support*  
31 *is incarcerated or involuntarily institutionalized.*

32 (g) *This section applies as follows:*

33 (1) *To every money judgment or order for support of a child.*

34 (2) *If a local child support agency is enforcing the child support*  
35 *orders under Title IV-D of the Social Security Act (42 U.S.C. Sec.*  
36 *651 et seq.), this section applies to any of those orders and*  
37 *modifications issued on or after July 1, 2011.*

38 (h) *The Department of Child Support Services shall, by January*  
39 *1, 2020, and in consultation with the Judicial Council, develop*  
40 *forms to implement this section.*

1     *(i) This section shall become operative on January 1, 2020.*

2     SEC. 4. This act is an urgency statute necessary for the  
3 immediate preservation of the public peace, health, or safety within  
4 the meaning of Article IV of the Constitution and shall go into  
5 immediate effect. The facts constituting the necessity are:

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

O