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AMENDED IN SENATE JULY 8, 1999

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AMENDED IN ASSEMBLY MAY 6, 1999

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1614

Introduced by Assembly Member Wright
(Coauthors: Assembly Members Vincent and Washington)
(Coauthor: Senator Murray)

February 26, 1999

An act to amend Section 3653 of, and to add Sections 3651.5 and 7634.5 to, the Family Code, to amend Sections 26826 and 26830 of the Government Code, and to add Section 11475.19 to the Welfare and Institutions Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

AB 1614, as amended, R. Wright. Child support.

Under existing law, a support order may be modified or terminated at any time as the court determines necessary, subject to certain exceptions. Existing law requires each county to maintain a single unit within the district attorney's office having responsibility to establish, modify, and enforce, child support orders, as specified.

This bill would provide that incarceration of a support obligor in a state or county facility for a period in excess of 90

days ~~is~~ *may be* a change of circumstances upon which a support modification motion may be based, as specified. The bill would ~~(1) require each state and county facility to notify the local child support agency of the name and expected release date of each inmate and to provide inmates with forms require the Department of Corrections or the county sheriff to provide an inmate, at the time of such a remand, a form to enable them the inmate to obtain a modification of support, and (2) if the inmate is a support obligor subject to proceedings by the district attorney, require the district attorney to provide a specified modification request form to the inmate and to either file a motion to modify support or notify the support obligor of his or her right to file that motion review the case and either make a motion to the court for modification of support, or provide the support obligor with a written statement regarding why the district attorney will not make the motion and advising the support obligor that he or she may make the motion on his or her own behalf, as specified. The bill would direct the Judicial Council to develop forms to implement these provisions, as specified.~~ By imposing new duties on local personnel, this bill would create a state-mandated local program.

Existing law provides that, if an order decreasing or terminating support is entered retroactively, the support obligee shall not be obligated to repay any amounts paid pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order.

This bill would instead provide that, in those circumstances, the support obligee may be obligated to repay those excess amounts, on terms ordered by the court after consideration of specified factors.

Existing law requires that counsel be appointed to represent indigent defendants in paternity proceedings where the state appears as a party or appears on behalf of a mother or child. Existing law also provides that indigent persons may be entitled to proceed in forma pauperis, and thereby be entitled to a waiver of all or a portion of court fees and costs.

This bill would provide that an alleged or presumed father shall be entitled to a waiver of fees and costs for appointed



counsel in those paternity proceedings if the court finds that the alleged or presumed father would otherwise qualify to proceed in forma pauperis.

Existing law specifies fees for filing the first paper on behalf of a defendant or other adverse party in specified actions and for filing a notice of motion or other specified papers. These fees do not apply to any of a list of other specified types of papers.

This bill would additionally provide that those fees would not apply to an answer, responsive declaration, or other document, or to any paper relating to a hearing or show-cause hearing, relating solely to child support and filed in an action in which the district attorney is providing child support services.

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.

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

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

1 SECTION 1. Section 3651.5 is added to the Family
2 Code, to read:
3 3651.5. (a) Incarceration of a support obligor in any
4 county or state facility for a period in excess of 90 days
5 ~~shall~~ *may* be a change in circumstances upon which a
6 motion or order to show cause to modify and order for
7 modification of support may be based. In exercising its
8 discretion to grant or deny a motion or order to show
9 cause to modify support based on incarceration, the court
10 ~~shall consider the nature of the offense and determine~~



1 whether the support obligor has any other sources of
2 income or assets available for the payment of support.

3 (b) ~~At the time of each inmate's incarceration, the~~
4 ~~county or state facility shall notify the local child support~~
5 ~~enforcement agency of the name of the inmate and the~~
6 ~~earliest expected release date. The facility shall also~~
7 *remand to the Department of Corrections or the county*
8 *sheriff to serve a sentence in excess of 90 days, the*
9 *Department of Corrections or the county sheriff shall*
10 provide the inmate with a simplified form to be used by
11 the inmate, if he or she is a support obligor, to request a
12 modification of support pursuant to this chapter. *It shall*
13 *be the responsibility of the support obligor to complete*
14 *the form and forward it to the local child support agency*
15 *or superior court, as appropriate.*

16 (c) This section shall not apply to cases in which the
17 support obligor has been incarcerated for any offense
18 constituting domestic violence, as defined in Section
19 6211, against the support obligee, including, but not
20 limited to, the violation of any protective order, as
21 defined in Section 6218, or any offense that could be
22 enjoined by a protective order pursuant to Section 6320,
23 *or in cases where the support obligor has been*
24 *incarcerated as a result of his or her failure to comply with*
25 *a court order to pay child support.*

26 (d) This section shall not be deemed to limit the right
27 of a support obligor to seek a modification of support
28 pursuant to any other provision of law.

29 (e) The Judicial Council shall, on or before July 1, 2000,
30 develop the forms necessary to implement this section.

31 SEC. 2. Section 3653 of the Family Code is amended
32 to read:

33 3653. (a) An order modifying or terminating a
34 support order may be made retroactive to the date of the
35 filing of the notice of motion or order to show cause to
36 modify or terminate, or to any subsequent date, except as
37 provided in subdivision (b) or by federal law (42 U.S.C.
38 Sec. 666(a)(9)).

39 (b) If an order modifying or terminating a support
40 order is entered due to the unemployment of either the



1 support obligor or the support obligee, the order shall be
2 made retroactive to the later of the date of the service on
3 the opposing party of the notice of motion or order to
4 show cause to modify or terminate or the date of
5 unemployment, subject to the notice requirements of
6 federal law (42 U.S.C. Sec. 666(a)(9)), unless the court
7 finds good cause not to make the order retroactive and
8 states its reasons on the record.

9 (c) If an order decreasing or terminating a support
10 order is entered retroactively pursuant to this section, the
11 support obligor may be entitled to, and the support
12 obligee may be ordered to repay, according to the terms
13 specified in the order, any amounts previously paid by the
14 support obligor pursuant to the prior order that are in
15 excess of the amounts due pursuant to the retroactive
16 order. The court may order that the repayment by the
17 support obligee shall be made over any period of time and
18 in any manner, including, but not limited to, by an offset
19 against future support payments or wage assignment, as
20 the court deems just and reasonable. In determining
21 whether to order a repayment, and in establishing the
22 terms of repayment, the court shall consider all of the
23 following factors:

- 24 (1) The amount to be repaid.
- 25 (2) The duration of the support order prior to
26 modification or termination.
- 27 (3) The financial impact on the support obligee of any
28 particular method of repayment such as an offset against
29 future support payments or wage assignment.
- 30 (4) Any other facts or circumstances that the court
31 deems relevant.

32 SEC. 3. Section 7634.5 is added to the Family Code, to
33 read:

34 7634.5. In any action under this chapter brought by
35 the district attorney, or in any action or proceeding in
36 which the state is a party or appears on behalf of the
37 mother or child and the paternity of the child is at issue,
38 the alleged or presumed father shall be entitled to a
39 waiver of fees and costs for appointed counsel if the court
40 finds that the alleged or presumed father would



1 otherwise qualify to proceed in forma pauperis pursuant
2 to Section 68511.3 of the Government Code.

3 SEC. 4. Section 26826 of the Government Code is
4 amended to read:

5 26826. (a) The total fee for filing the first paper in the
6 action described in Section 26820.4 on behalf of any
7 defendant, intervenor, respondent, or adverse party,
8 whether separately or jointly, except for the purpose of
9 making disclaimer shall be one hundred eighty-two
10 dollars (\$182).

11 (b) As used in this section, the term “paper” does not
12 include any of the following:

13 (1) A stipulation for the appointment of a temporary
14 judge or of a court investigator, or the report made by the
15 court investigator.

16 (2) The declaration of a spouse filed in an order to
17 show cause proceeding.

18 (3) A marital settlement agreement which is signed by
19 a defaulted respondent and intended for incorporation in
20 a proposed decree of dissolution of marriage.

21 (4) A stipulation regarding the date of termination of
22 the marital status when the court has retained jurisdiction
23 over that date.

24 (5) A document relating to a stipulated postjudgment
25 modification of child support.

26 (6) A stipulation to modify a marital settlement
27 agreement which was signed by a defaulted respondent
28 and incorporated in a decree of dissolution if the
29 stipulation is presented by the petitioner.

30 (7) An answer, responsive declaration, or any other
31 document relating to child support filed in an action or
32 proceeding *involving paternity* or in which the district
33 attorney is providing child support services pursuant to
34 Section 11475.1 of the Welfare and Institutions Code, if
35 the document does not address issues other than child
36 support.

37 SEC. 5. Section 26830 of the Government Code is
38 amended to read:

39 26830. (a) Except as provided in subdivisions (b) and
40 (c), the fee for filing any notice of motion, or any other



1 paper requiring a hearing subsequent to the first paper,
2 or any notice of intention to move for a new trial of any
3 civil action or special proceeding, or an application for
4 renewal of a judgment, is twenty-three dollars (\$23).

5 However, there shall be no fee for filing any of the
6 following:

7 (1) An amended notice of motion.

8 (2) A memorandum that a civil case is at issue.

9 (3) A hearing on a petition for emancipation of a
10 minor.

11 (4) Default hearings.

12 (5) A show-cause hearing on a petition for an
13 injunction prohibiting harassment.

14 (6) A show-cause hearing on an application for an
15 order prohibiting domestic violence.

16 (7) A show-cause hearing on writs of review, mandate,
17 or prohibition.

18 (8) A show-cause hearing on a petition for a change of
19 name.

20 (9) A hearing to compromise a claim of a minor or an
21 insane or incompetent person.

22 (10) A hearing or show-cause hearing to modify child
23 support in an action or proceeding in which the district
24 attorney is providing child support services pursuant to
25 Section 11475.1 of the Welfare and Institutions Code,
26 provided the hearing does not address issues other than
27 modification of child support.

28 (b) The fee for filing a motion for summary judgment
29 or summary adjudication of issues is one hundred dollars
30 (\$100).

31 (c) The fee for the filing of any motion in small claims
32 court matters is fourteen dollars (\$14), which shall be
33 deposited in the county general fund for use as county
34 general fund revenue.

35 (d) Notwithstanding Section 68085, fourteen dollars
36 (\$14) of the twenty-three dollar (\$23) fee authorized in
37 subdivision (a) and the one hundred dollar (\$100) fee
38 established by subdivision (b) shall be deposited in the
39 county general fund for use as county general fund
40 revenue.



1 SEC. 6. Section 11475.19 is added to the Welfare and
2 Institutions Code, to read:

3 11475.19. ~~(a) If the district attorney receives a notice~~
4 ~~of incarceration request for modification~~, pursuant to
5 Section 3651.5 of the Family Code, with respect to a
6 support obligor who is the subject of an action or
7 proceeding to establish or enforce support pursuant to
8 this article, the district attorney shall ~~provide the support~~
9 ~~obligor with a form on which the support obligor may (1)~~
10 ~~specify the nature of the offense resulting in the~~
11 ~~incarceration and the nature and location of all assets and~~
12 ~~sources of income, and (2) request a modification of~~
13 ~~support due to changed circumstances as provided in~~
14 ~~Section 3651.5 of the Family Code.~~

15 ~~(b) Within 30 days after receipt of a request for~~
16 ~~modification of support from an incarcerated support~~
17 ~~obligor pursuant to subdivision (a), the district attorney~~
18 ~~shall review the case and either (1) make a motion to the~~
19 ~~court for modification of support or (2) provide the~~
20 ~~support obligor with a written statement explaining why~~
21 ~~the district attorney will not make the motion and,~~
22 ~~advising the support obligor that he or she may make the~~
23 ~~motion on his or her own behalf, and providing the name~~
24 ~~and address of the appropriate superior court.~~

25 ~~(c) The Judicial Council shall, on or before July 1, 2000,~~
26 ~~develop the forms necessary to implement this section.~~

27 SEC. 7. Notwithstanding Section 17610 of the
28 Government Code, if the Commission on State Mandates
29 determines that this act contains costs mandated by the
30 state, reimbursement to local agencies and school
31 districts for those costs shall be made pursuant to Part 7
32 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the
34 claim for reimbursement does not exceed one million
35 dollars (\$1,000,000), reimbursement shall be made from
36 the State Mandates Claims Fund.

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