

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1148 (Bonta)
Version: May 18, 2023
Hearing Date: June 27, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Child support suspension

DIGEST

This bill extends the automatic suspension of the obligation to pay child support when a person ordered to pay support is incarcerated or involuntarily institutionalized to ten months after the person's release, unless they have the means to pay support during that time; requires the Department of Child Support Services (DCSS) to notify a person to whom support is owed and the local child support agency when the person who owes child support is released; and permits a person to whom child support is owed to seek a court order for reinstatement of the obligation prior to the end of the ten-month window if the obligor obtains employment, which the court shall calculate using the state's existing child support guideline.

EXECUTIVE SUMMARY

Studies show that ordering a parent to pay child support that they cannot feasibly pay hurts, rather than helps, families and children. Unpayable orders frequently end up compounding into a mountain of debt the parent cannot make a dent in, particularly because of (1) California's ten percent annual interest rate on unpaid child support, and (2) federal law prohibiting retroactive modifications of court-ordered child support. As a result, state and federal child support policies have, in recent years, increasingly focused on developing rules and regulations that will result in right-sized orders, rather than unrealistically high orders that look good on paper but do more harm than good. These recent changes include a federal requirement, implemented in this State last year, that child support obligations be automatically suspended when a support obligor is incarcerated or involuntarily institutionalized for more than 90 days, unless the support obligor has the means to pay.

This bill, in recognition of the barriers to reentry faced by recently incarcerated and institutionalized persons, moves the reinstatement date for child support obligations

from the first full month following the release from incarceration or institutionalization to the tenth full month. This does not apply to obligors whose support was never suspended because they have the means to pay. The bill also allows the person to whom support is owed to seek an earlier reinstatement from the court, in cases where the support obligor gains employment prior to the tenth month. Additionally, the bill requires the DCSS to notify the person to whom support is owed and the local child support agency of the support obligor's release from incarceration or institutionalization.

The author has agreed to amend the bill to ensure that a parent to whom support is owed is informed of the date child support will recommence and of their right to seek reinstatement earlier if the support obligor obtains employment before the 10-month window; and to clarify that, if a parent to whom support is owed seeks reinstatement before the 10-month window, the court must determine the reinstated amount consistent with the state's child support guideline.

This bill is sponsored by Root & Rebound and is supported by over 20 organizations dedicated to equity in child support and reducing barriers to reentry following incarceration. This bill is opposed by the California Association of Certified Family Law Specialists and the California Association of Judgment Professionals. If this Committee passes this bill, it will be heard by the Senate Human Services Committee.

PROPOSED CHANGES TO THE LAW

Existing state law:

- 1) Provides that each parent of a child has an equal responsibility to support their child in the manner suitable to the child's circumstances, and that if a parent willfully fails to so provide that support, the other parent may bring an action to enforce the duty to provide support. (Fam. Code, §§ 3900, 4000.)
- 2) Establishes DCSS as the single statewide agency responsible for the administration and management of California's child support enforcement program and administers the state plan for securing child support and determining paternity. (Fam. Code, § 17202.)
- 3) Requires each county to establish a local child support agency (LCSA) that has the responsibility for promptly and effectively establishing, modifying, and enforcing child support orders. (Fam. Code, § 17400(a).)
- 4) Provides that every money judgment or order for support of a child shall be suspended, by operation of law, for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily

institutionalized, unless the person owing support has the means to pay support while incarcerated or involuntarily institutionalized. (Fam. Code, § 4007.5(a).)

- a) "Incarcerated or involuntarily institutionalized" includes, but is not limited to, involuntary confinement to a federal or state prison, a county jail, a juvenile facility, as defined, or a mental health facility. (Fam. Code, § 4007.5(e)(1).)
 - b) "Suspend" means that the payment due on the current child support order, an arrears payment on a preexisting arrears balance, or interest on arrears created during a qualified period of incarceration pursuant to 1) is, by operation of law, set to \$0 for the period in which the person owing support is incarcerated or involuntarily institutionalized. (Fam. Code, § 4007.5(e)(2).)
- 5) Provides that the child support obligation for a parent under 1) shall be suspended effective on the first day of the first full month of incarceration or involuntary institutionalization and shall resume on the first day of the first full month after release, in the amount previously ordered; that amount is presumed to be correct, though nothing precludes a person from seeking a modification of a support order based on a change in circumstances or other appropriate reason. (Fam. Code, § 4007.5(b).)
 - 6) Authorizes an LCSA, in specified circumstances, to administratively adjust account balances for a money judgment or order for child support suspended pursuant to 1). (Fam. Code, § 4007.5(c).)
 - 7) Provides that nothing in 4)-6) prohibits an LCSA or party from petitioning a court for a determination of child support or arrears amounts. (Fam. Code, § 4007.5(d).)

Existing federal law and regulations:

- 1) Require a state, as a condition of the receipt of certain federal funds, to implement procedures for court-ordered child support orders and give full faith and credit to other states' support orders, and that a court order for child support is not subject to retroactive modification. (42 U.S.C. § 699(a)(9).)
- 2) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders. (45 C.F.R. § 302.56(c)(3).)

This bill:

- 1) Provides that, when a child support order is suspended by operation of law when a support obligor is incarcerated or involuntarily institutionalized, the support obligation resumes on the first day of the tenth month after their release from incarceration or involuntary institutionalization.

- 2) Requires DCSS to notify an LCSA and the person to whom support is owed of the release of a person whose child support has been suspended due to incarceration or involuntary institutionalization.
- 3) Provides that, if the support obligor obtains employment prior to the date set for reinstatement, the person to whom support is owed may seek a court order reinstating child support at the amount previously ordered or in an amount that the court deems is equitable and in the best interest of the child.

COMMENTS

1. Author's comment

According to the author:

Currently, a formerly incarcerated parent is required to resume paying child support only a month after exiting incarceration. This sets parents up for failure and ignores many of the systemic barriers that formerly incarcerated people face, such as finding housing, obtaining a stable job, and reuniting with their children. Providing a parent enough time to secure stable employment and get back on their feet ensures they can adequately support themselves and their children. My bill, AB 1148, will help put parents in a better and more stable position to support their children.

2. The harm caused by unpayable child support orders and the ongoing efforts to find the right balance

Over 75 percent of outstanding child support debt in California is owed by parents who could not afford to pay their original child support order.¹ This problem is compounded by the fact that interest on past-due child support accrues at 10 percent annually,² so it is nearly impossible for a parent to catch up.³ Parents faced with insurmountable debt and significant wage garnishments (which will not make a dent in the principal) are more likely to engage in “off-the-books” work or illegal activities, increasing the likelihood of disruption to the family.⁴ Research also shows that parents who are in arrears on child support are less likely to have relationships with their children.⁵ Thus, while there might be some facial appeal to ordering high levels of child support for the

¹ Brown, et al., *The Payback Problem: How Taking Parents' Child Support Payments to Pay Back the Cost of Public Assistance Harms California Low-Income Children & Families* (Apr. 2019), p. 21.

² Code Civ. Proc., § 685.010.

³ *The Payback Problem*, *supra*, at pp. 21, 23-24.

⁴ Haney & Mercier, National Institute of Justice, Report: *Child Support and Reentry* (Sept. 2021), p. 28, available at <https://www.ojp.gov/pdffiles1/nij/300780.pdf> (link current as of June 23, 2023).

⁵ E.g., Turner & Waller, *Indebted Relationships: Child Support Arrears and Nonresident Fathers' Involvement With Children*, *Journal of Marriage and Family*, Vol. 79, No. 1 (Feb. 2017) p. 24.

sake of the child, too-high orders can have the perverse result of harming parent-child relationships.

The federal government has also recognized that, when child support orders are set too high, it often hurts rather than helps the child. SB 343 (Skinner, 2023), which this Committee passed earlier this session, modifies the state's guidelines for setting child support to bring them in line with new federal requirements. The summary of the new rules noted that parents' "[c]ompliance with support orders is strongly linked to actual income and ability to pay," and that when parents fail to meet their support obligations, it is because "they do not earn enough to pay what is ordered."⁶ The summary also explained that setting orders "beyond a noncustodial parent's ability to pay can result in a number of deleterious effects, including unmanageable debt, reduced low-wage employment, increased underground activities, crime, incarceration, recidivism, *and reduced contact with their children.*"⁷ The rulemaking requires the State (and all other states) to modify their child support laws to ensure that orders for low-income parents are realistic and account for the parents' subsistence needs.

Another issue that has been the target of both State and federal action is the effect of incarceration or involuntary institutionalization on a parent's ability to pay a support order. For obvious reasons, staying current on child support ordered prior to the parent's incarceration or institutionalization is not possible for most support obligors. The State twice adopted legislation – the first was permitted to sunset – that suspended child support obligations while certain obligors were incarcerated or involuntarily institutionalized.⁸ Subsequently, the federal government adopted requirements for an even more expansive suspension: child support must be suspended for persons who are incarcerated or involuntarily institutionalized for at least 90 days, unless the person has the means to pay while incarcerated or institutionalized, beginning on the first day of the first full month of incarceration or institutionalization and ending on the first full day of the first full month after release. This change was implemented in California law through the budget process in 2022.⁹

3. The federal Bradley Amendment constrains the State's policy options

In the 1980s, Congress enacted the Bradley Amendment, which requires a state to treat an order for child support as a judgment by operation of law with the full force and effect of a judgment in the state, and prohibits the order from being modified retroactively.¹⁰ The amendment was intended to prevent unfair retroactive modifications, particularly in cases where the custodial parent and child resided in a

⁶ Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93492-93569 (Dec. 20, 2016).

⁷ *Ibid.* (emphasis added).

⁸ See AB 2325 (Carrillo, Ch. 217, Stats. 2020); SB 1355 (Wright, Ch. 495, Stats. 2010).

⁹ See AB 207 (Assembly Committee on Budget, Ch. 573, Stats. 2022).

¹⁰ 42 U.S.C. § 666(a)(9).

different state than the support obligor, and the support obligor brought a motion to reduce their support obligation in their own state, depriving the custodial parent (i.e., the recipient of the support) from the opportunity to contest the reduction or present evidence.

The Bradley Amendment has likely provided some benefits, for example, by preventing a parent in arrears on their support from taking advantage of a custodial parent's financial need and getting them to agree to accept a significantly lower amount than what is owed and wiping out the rest of the debt. But the Bradley Amendment is also a blunt instrument. With narrow exceptions for orders entered by default, a court cannot reduce a child support obligation after it has come due, no matter how unrealistic the amount of the order is or how crushing the debt is. As discussed above, it is well-established that overly stringent child support orders are harmful, rather than helpful, to children and families, but the Bradley Amendment has removed one potential tool for ensuring that support orders are fair and workable. Accordingly, State policy in this space must take into account the fact that overly high orders can cause outsized damage that cannot be corrected.

4. This bill extends the automatic suspension of child support obligations for obligors who are incarcerated or involuntarily confined, and who cannot otherwise afford to pay support, for up to ten months following the obligor's release

This bill builds on state and federal efforts to prevent incarcerated and institutionalized parents from spiraling into an insurmountable debt load from child support obligations that they cannot pay back. Specifically, the bill extends the time frame for the automatic suspension of child support for a support obligor who is incarcerated or involuntarily institutionalized until the first day of the tenth month after release from incarceration or involuntary institutionalization. The bill does not alter the existing law that child support is not suspended for an incarcerated or involuntarily institutionalized obligor who has the means to pay support while incarcerated or involuntarily institutionalized; accordingly, a person who is determined to have the means to pay support during incarceration or institutionalization will also not have their support suspended following their release.

In order to protect the parents to whom support is owed, the bill also provides a mechanism for reinstatement prior to the end of the ten-month period. If the support obligor obtains employment before the ten-month window closes, the person to whom support is owed may seek a court order reinstating the support obligation. The author has agreed to amendments to clarify that, if a court orders the reinstatement, it must do so consistent with the state child support guideline to ensure that the bill does not run afoul of federal requirements regarding the calculation of support.

The bill also requires DCSS to notify the person to whom support is owed and the LCSA when the incarcerated or institutionalized parent is released. The author has

agreed to amend this provision to require DCSS also to provide notice of the date that the ten-month suspension will end and, to the person to whom support is owed, notice of their right to seek support earlier if the support obligor obtains employment. The author is continuing to work with DCSS and the staff of this Committee and the Senate Human Services Committee on the notice provision.

5. Amendments

As noted above, the author has agreed to amendments to ensure that parents to whom support is owed have sufficient information regarding the date support should resume and their right to seek it earlier, as well as to ensure that, when a court responds to a request to reinstate support before the ten-month period is over, the ensuing order is consistent with state law and federal requirements. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

Amendment 1

On page 3, in line 6, strike out "(a)." and insert "(a), the date that the child support obligation shall resume under paragraph (2), and, for the person to whom child support is owed, the right to seek earlier reinstatement pursuant to paragraph (4)."

Amendment 2

On page 3, strike out line 10 after "amount" and line 11 and insert "determined by the court pursuant to Article 2 (commencing with Section 4050)."

6. Arguments in support

According to Root & Rebound, the sponsor of the bill:

AB 1148 was born out of the need to aid and empower our clients in the Central Valley, a region often overlooked in the state and which stands years behind in the area of reentry. Paying back child support has long been a reentry barrier, especially among our women clients, many of whom are coming home after years in prison to encounter a multitude of systems while also navigating family courts, reunifying with children, and becoming heads of households with financial strains. Child support has become a major roadblock for them. Employment is a key factor in the successful reentry of an incarcerated parent with a child support obligation; however, rates of employment and earnings are low among women in the Valley. When a person is unable to pay, they are punished with the suspension of their driver's license, making it even more difficult for formerly incarcerated people and their families to obtain financial stability. For women in the Valley, being unable to drive further pushes them into poverty and elongates their reentry journeys.

Current California law requires a formerly incarcerated person to resume paying child support only a month after exiting incarceration. This short turnaround time sets families up for failure. This system ignores many of the ongoing systemic barriers that formerly incarcerated people face, including hardships in finding housing, securing stable employment, navigating discrimination because of reentry status, and reuniting with their children. Providing a parent enough time to secure stable employment and get back on their feet ensures they can adequately support themselves and their families...

AB 1148 takes meaningful steps in addressing systematic barriers inflicted by our faulty child support system. This bill will ensure formerly incarcerated people find stable employment before resuming their child support obligations...and most importantly, help families build towards financial stability.

7. Arguments in opposition

The California Association of Judgment Professionals raises the following concerns about the bill:

- An extended suspension of child support will result in a negative fiscal impact on the State.
- DCSS will not have the necessary information to inform parents entitled to support about when the support obligor is released from incarceration or institutionalization.
- The bill improperly places the burden on the person to whom support is owed.
- The bill improperly presumes all incarcerated persons do not have the ability to pay child support.
- The bill does not require the person owing support to inform the court or DCSS of the incarceration or release from incarceration.

SUPPORT

Root & Rebound (sponsor)
ACLU California Action
Both Sides of the Conversation
California Families Rise
Californians United for a Responsible Budget
Children's Institute
Coalition of California Welfare Rights Organizations
Communities United for Restorative Youth Justice
Ella Baker Center for Human Rights
End Poverty in California
GRACE - End Child Poverty in California
Growing Greatness Now
Good+ Foundation

Homeboy Industries
Initiate Justice
Legal Link
Legal Services for Prisoners with Children
Parent Voices
Rubicon Programs
San Bernardino Fatherhood
Sister Warriors Freedom Coalition
The Maven Collective
The San Francisco Financial Justice Project
Voices for Progress
Western Center on Law and Poverty
Young Community Developers
Youth ALIVE!

OPPOSITION

California Association of Certified Family Law Specialists
California Association of Judgment Professionals

RELATED LEGISLATION

Pending Legislation:

SB 343 (Skinner, 2023) modifies the statewide uniform child support guideline and low-income adjustment, modifies certain related provisions relating to childcare costs and other aspects of calculating support, and makes changes to the procedures for court-ordered child support to bring California's laws into conformity with federal requirements. SB 343 is pending before the Assembly Human Services Committee.

AB 1755 (Committee on Judiciary, 2023) is substantially similar to SB 343. AB 1755 is pending before this Committee and is set to be heard on the same day as this bill.

Prior Legislation:

AB 207 (Committee on Budget, Ch. 573, Stats. 2022) among other things, required that child support be suspended effective the first day of the first full month an obligor is incarcerated or involuntarily institutionalized, as provided, to bring the State into compliance with federal requirements.

AB 2325 (Carrillo, Ch. 217, Stats. 2020) reestablished, until January 1, 2023, a program to suspend a parent's obligation to pay child support if the parent is incarcerated or involuntarily institutionalized, unless they have the means to pay or are incarcerated for domestic violence.

PRIOR VOTES:

Assembly Floor (Ayes 57, Noes 10)
Assembly Appropriations Committee (Ayes 12, Noes 3)
Assembly Judiciary Committee (Ayes 7, Noes 3)
