

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

AB 1755 (Committee on Judiciary)

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Fiscal: Yes

Urgency: No

AWM

SUBJECT

Child support

DIGEST

This bill 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.

EXECUTIVE SUMMARY

Every parent has an obligation to support their child. Separated parents may stipulate to different support amounts, but in the absence of such an agreement, a court will award child support calculated pursuant to the state's uniform child support guideline and related provisions. The state's child support guideline was put in place in 1992 and has not been significantly updated since that time.

At the end of 2016, the federal Department of Health and Human Services (DHHS) promulgated new regulations setting forth requirements for state child support laws; states are required to comply with these regulations as a condition of receiving certain amounts of federal funding. The current deadline for California to bring its laws into compliance with the new federal regulations is September 1, 2024, but the Department of Child Care Support (DCSS) has received confirmation from DHHS that the State may take additional time to implement the changes (e.g., through the creation of forms and rules of court) if the changes are adopted in statute before the deadline.

Some of the federally required changes were implemented through the budget process last year. This bill, drafted with input from stakeholders over an extended collaborative process, makes the remaining necessary changes to the state's child support laws. Among other things, the bill updates the child support guideline and low-income adjustment to reflect the current cost of living; modifies certain related provisions

relating to a support award, such as what constitutes income and how childcare costs may be apportioned; and prevents a local child support agency from seeking support on the basis of an obligor's presumed income, requiring instead that the support amount be based on the specific circumstances of the obligor. This bill is the Assembly's counterpart to SB 343 (Skinner, 2023), which this Committee passed with a vote of 10-0; both bills have since been amended to make minor changes to the bill, which are discussed below in Part 4 of this analysis.

This bill is authored by the Assembly Judiciary Committee and is supported by the San Francisco Financial Justice Project. The bill is opposed by one individual. 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 a uniform statewide guideline for calculating child support, which is based on the income of both parents and the time each parent spends with the child. (Fam. Code, § 4055.)
- 3) Establishes, for a parent whose net disposable monthly income is less than \$1,500, a rebuttable presumption that the parent is entitled to a low-income adjustment, which is determined annually by the Judicial Council based on the change in the annual California Consumer Price Index for All Urban Consumers.
 - a) The presumptive application of the low-income adjustment may be rebutted by evidence showing that the application of the low-income adjustment would be unjust or inappropriate in the particular case.
 - b) If the court determines that the low-income adjustment should apply, the parent's support obligation will be reduced accordingly. (Fam. Code, § 4055(b)(7).)
- 4) Establishes a rebuttable presumption that the amount of support calculated using the statewide guideline in 2) is the correct amount of support, and that the presumption may be rebutted based on the court's finding that at least one of specified conditions exist, including the following:
 - a) The parties have stipulated to a different amount of support.
 - b) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the guideline would exceed the needs of the children.

- c) A party is not contributing to the needs of the child at a level commensurate with the party's custodial time.
 - d) Application of the formula would be unjust based on the specific needs of the case, such as in cases where the parents have different time-sharing arrangements for different children or where a child has special medical or other needs that require support in excess of the guideline amount. (Fam. Code, § 4057.)
- 5) Defines a parent's gross income for purposes of calculating child support as income from whatever source derived, excluding income derived from child support payments and from any public assistance program for which eligibility is determined based on need. (Fam. Code, § 4058(a), (c).)
- 6) Provides that a court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income under 5), consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.
 - a) If the court elects to consider the parent's earning capacity, the court shall consider the parent's specific circumstances to the extent known, including, but not limited to, the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings levels in the local community, and other relevant background factors affecting the parent's ability to earn.
 - b) A parent's incarceration or involuntary institutionalization shall not be treated as voluntary unemployment for the purpose of establishing or modifying a support order. (Fam. Code, § 4058(b).)
- 7) Provides that additional child support may be ordered as follows:
 - a) The court shall order as additional child support (1) childcare costs related to employment or to reasonably necessary education or training for employment skills and (2) the reasonable uninsured health care costs for children, as specified. (Fam. Code, § 4062(a).)
 - b) The court may order as additional child support (1) costs related to the educational or other special needs of the children and (2) travel expenses for visitation. (Fam. Code, § 4062(b).)
- 8) Provides that any additional support ordered under 7) shall be computed as follows:
 - a) Expenses shall be divided one-half to each parent unless either parent requests a different apportionment and presents documentation demonstrating that the different apportionment would be more appropriate.
 - b) If the court determines that a different apportionment is appropriate, the court shall compute the basic child support obligation using the formula set

- forth in 2), apply the low-income adjustment in 3) if necessary, and order expenses under 7) to be paid in proportion to the parents' net disposable income.
- c) Net disposable income for purposes of 8)(b) shall account for any spousal support paid or received, as specified, and for the basic child support ordered. (Fam. Code, § 4061.)
- 9) Provides procedures for the issuance of an order that includes additional support for uninsured health costs, including:
- a) Except where the support has been assigned to the county as a condition of receiving certain benefits, a parent who accrues or pays uninsured health costs must provide the other parent with an itemized statement of the costs no more than 30 days after accrual.
 - b) A rebuttable presumption that the costs actually paid for uninsured health care needs of the children are reasonable, except as provided.
 - c) When ruling on a motion to include health care, the court must consider all relevant facts relating to the health care needs of the child, as specified. (Fam. Code, § 4063.)
- 10) Provides that a support order may be modified or terminated at any time as the court determines to be necessary, pursuant to the filing of a motion or an order to show cause. (Fam. Code, § 3651.)
- a) An order modifying a support order can be retroactive only to the date of the filing of the notice of the motion seeking the modification, even if the original order was inequitable when made. (Fam. Code, § 3653(a); *see also* 42 U.S.C. § 666(a)(9)(C).)
- 11) Provides procedures for obtaining a support order on an expedited basis. (Fam. Code, div. 9, pt. 1, ch. 5, §§ 3620 et seq.)
- 12) Establishes the Department of Child Support Services (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.)
- 13) Requires, at the local level, the child support enforcement program to be run by local child support agencies (LCSA), which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations. (Fam. Code, § 17400(a).)
- 14) Establishes the procedures by which an LCSA may bring an action for child support in the name of the county on behalf of the child, children, or parent of the child or children, including:

- a) The parent who has requested or is receiving support enforcement services is not a necessary party to the action but may be subpoenaed as a witness.
 - b) Judgment may be rendered by noticed motion; if the defendant appears at the hearing on the motion, the court shall inquire as to whether the defendant wishes to present evidence and continue the hearing for up to 90 days as appropriate.
 - c) The court shall order all payments of support to be made to the LCSA unless the support enforcement services have been terminated prior to the order. (Fam. Code, § 17404.)
- 15) Requires the Judicial Council, in consultation with the relevant Legislative Committees and stakeholders, to develop simplified summons, complaint, and answer forms for actions brought under 14), including:
- a) A complaint form that provides specified information, including the amount of child support sought pursuant to the guidelines; if the support obligor's income is unknown to the LCSA, the complaint shall inform the support obligor that the income shall be presumed to be the amount of the prevailing minimum wage at 40 hours per week. The complaint form must also include a notice that the proposed judgment will be effective if the obligor fails to file an answer with the court within 30 days of service.
 - b) A simplified answer form written in simple English and that permits a defendant to answer and raise defenses by checking boxes, along with a blank income and expense declaration or simplified financial statement. (Fam. Code, § 17400(d).)
- 16) Provides that the same procedures for a suit set forth in 14)-15) shall be used upon the receipt of a petition or comparable pleading for child support under the Uniform Interstate Family Support Act, including authorizing the LCSA, where the respondent's income or income history is unknown to the LCSA, to calculate the obligor's presumed income as the amount of the state minimum wage at 40 hours per week. (Fam. Code, § 17404.1)
- 17) Provides, in an action filed by the LCSA under 14), that a judgment may be entered without a hearing if the defendant fails to file an answer with the court within 30 days of service or any time before the default judgment is entered.
- a) The amount set forth in the complaint shall be the amount of support ordered unless the LCSA filed a declaration and amended proposed judgment.
 - b) An LCSA is required to file a declaration and amended proposed judgment if, within 30 days of service of the complaint, it receives additional information that would result in a support order different than the amount set forth in the proposed judgment. The defendant's 30-day window in which to file an answer is extended to 30 days from the service of the declaration and proposed judgment.

- c) Upon entry of the judgment, the clerk of the court must provide a conformed copy of the judgment to the LCSA, and the LCSA must serve the judgment and a notice of entry of judgment on the defendant, as specified. (Fam. Code, § 17430.)
- 18) Permits a court, on any terms that may be just, to set aside the portion of an order issued pursuant to 17) concerning the amount of child support to be paid, as follows:
- a) The set-aside may be ordered only for support that was based on presumed income and entered after the entry of default.
 - b) The court may set aside the child support order only if the defendant's income was substantially different for the period of time during which the judgement was effective as compared to the income the defendant was presumed to have. A "substantial difference" is income that would result in an order of support that varies from the amount entered by 10 percent or more.
 - c) The application for the set-aside must be filed with an income and expense declaration, simplified financial statement, or other information concerning income.
 - d) The party seeking the set-aside has the burden of proof showing that the defendant's actual income deviated substantially from the presumed income set forth in the judgment.
 - e) A motion to set aside the support portion of a judgment must be filed within one year of the first collection of money by the LCSA or support obligee.
 - f) Within three months of the LCSA's first collection of any order established using presumed income, the LCSA shall check all appropriate sources for the obligor's income information and determine whether the order qualifies for a set-aside; if the order does qualify, the LCSA must bring a motion for a set-aside.
 - g) In deciding whether to grant a motion for a set-aside, the court shall consider the amount of time that has passed since the entry of the order; the circumstances surrounding the defendant's default; the relative hardship on the child or children to whom the duty of support is owed, the caretaker parent, and the defendant; and any other equitable factors that the court deems appropriate.
 - h) If the court grants the motion for the set-aside, the court shall issue a new support order using the appropriate guidelines. The new order shall have the same commencement date as the order set aside. (Fam. Code, § 17432.)

Existing federal regulations:

- 1) Set forth, for a state with a governmental child support program through Title IV-D of the Social Security Act, minimum requirements for the state's child support guideline, including:
 - a) That the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
 - i. Takes into consideration all earnings and income of the noncustodial parent and, at the state's discretion, the custodial parent;
 - ii. Takes into consideration the basic subsistence needs of the noncustodial parent (and, at the state's discretion, the custodial parent) by incorporating a low-income adjustment; and
 - iii. If imputation of income is permitted, takes into consideration the noncustodial parent's specific circumstances, to the extent known, including factors such as the noncustodial parent's assets, residence, employment, educational attainment, and other factors. The state may, at its discretion, take into consideration the custodial parent's specific circumstances. (45 C.F.R. § 302.56(c)(1).)
 - b) Address how the parents will provide for the child's health care needs. (45 C.F.R. § 302.56(c)(2).)
 - c) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders. (45 C.F.R. § 302.56(c)(3).)
 - d) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation. (45 C.F.R. § 302.56(c)(4).)
- 2) Require a state to review its child support guideline every four years. (45 C.F.R. § 302.56(e).)
- 3) Require a state, following the completion of the quadrennial review set forth in 2), to modify its child support guideline as necessary to bring it in conformity with federal requirements. (45 C.F.R. § 302.56(a).)¹

This bill:

- 1) Removes the chapter of the Family Code authorizing and setting forth procedures for an expedited child support order.
- 2) Revises the statewide uniform child support guideline, including modifying the formula and raising the income bands upward.

¹ Federal regulations generally require the guidelines to be modified within one year of completion of the quadrennial review; however, California received an extension of the deadline until September 2024 due to delays associated with the COVID-19 pandemic. (Judicial Council of California, *Review of the Statewide Uniform Child Support Guideline 2021* (May 16, 2021), p. 4, available at <https://www.courts.ca.gov/documents/lr-2022-review-uniform-child-support-guideline-2021-fc-4054.pdf> (hereafter *2021 Quadrennial Review*)). All links in this analysis are current as of June 23, 2023.

- 3) Increases the ceiling for the low-income adjustment to a net disposable income that is less than the amount earned from full-time statewide minimum wage at 40 hours per week, 52 weeks per year, and the formula for determining the low-income adjustment to reflect the same net disposable income.
- 4) Provides that there is a rebuttable presumption that an obligor is entitled to the low-income adjustment when their income falls below the ceiling in 3), which may be rebutted by evidence showing that the application of the lowest amount of child support permitted with the low-income adjustment would be unjust in the particular case.
- 5) Clarifies that, in the course of a proceeding for support, if the court learns that a parent is subject to one or more orders for support involving children with parents who are not parties to the action, the court may, in its discretion, take steps to avoid an inequitable distribution of support between children.
- 6) Expands the listed sources of income that should be counted as a parent's annual gross income, to include severance pay, veterans benefits that are not based on need, and military allowances for housing and food.
- 7) Requires the court, in cases where the parent's annual gross income is unknown, to consider the earning capacity of the parent; and authorizes the court, where the parent's annual gross income is known, to rely on earning capacity in lieu of actual income if doing so is consistent with the best interests of the children.
- 8) Provides that an order of support for childcare and/or health care costs shall be apportioned in proportion to the parents' income, as specified, unless the court determines that those costs should be divided in a different manner.
- 9) Modifies the provisions for the inclusion of childcare costs related to employment or reasonably necessary education or training for employment skills actually incurred, to clarify that those costs should not be included if already specifically included in the guideline.
- 10) Extends the window in which a parent who accrues health care costs pursuant to a support order must provide the other parent with an itemized statement of costs, from 30 to 90 days.
- 11) Adds a rebuttable presumption that the amounts actually paid for childcare for employment or reasonably necessary for education or training for employment skills are reasonable.
- 12) Provides that a court, when ruling on a motion for costs for childcare for employment or reasonably necessary for education or training for employment

skills, should consider all relevant facts, including the nature and extent of job-related childcare needs, the necessity and reasonableness of the cost under the circumstances of the case, the special needs of the child, and the reasonable inability of a parent to pay the full amount of reimbursement within a 30-day period and the resulting necessity for a court-ordered payment schedule.

- 13) Eliminates, for suits for child support brought by an LCSA, the ability to seek an order on the basis of “presumed income” calculated at 40 hours a week at the prevailing minimum wage, and replaces it with the requirement that the LCSA seek support on the basis of the parent’s actual income or earning capacity, as determined based on the specific circumstances of the parent.
- 14) Requires an LCSA that seeks an order of support on the basis of income capacity to set forth in its complaint all the steps taken to determine the support obligor’s actual income, which must include, but are not limited to:
 - a) Attempting to contact the support obligor through telephonic, electronic, and postal means, to the extent such contact information is known or can be discovered through reasonable means. The LCSA must make at least three contact attempts.
 - b) Seeking information about the support obligor’s expenses and work history from the party seeking support and relevant others where appropriate.
 - c) Searching available databases for information relating to the support obligor’s employment, income, or both.
- 15) Requires a complaint filed by the LCSA to inform the support obligor of the basis for the proposed support order and, if the LCSA is seeking support based on earning capacity rather than actual income, to inform the support obligor of the factors considered by the LCSA and used to determine earning capacity.
- 16) Modifies the procedure for entry of default in a proceeding in which the LCSA seeks child support on the basis of earning capacity to permit the court to consider the evidence presented by the LCSA and, if the court determines that the guideline amount is lower than the amount set forth in the LCSA’s complaint, enter the guideline amount.
- 17) Requires an LCSA, where a judgment is entered by default and is based on the LCSA’s determination of earning capacity, to conduct an annual review of the case to determine if there is sufficient evidence of actual income or earning capacity to establish a modified order.
 - a) This obligation terminates when a modified order is entered.
 - b) The LCSA must file a motion pursuant to this obligation within 60 days of determining that sufficient additional evidence exists to modify the support order.

- c) The LCSA's obligation does not affect the ability of the defendant or other parent to file a motion for a modification if sufficient additional evidence becomes available.
- 18) Expands the set-aside procedure for the support portion of orders entered by default to be available for judgments entered under the Interstate Family Support Act and for judgments that established support on the basis of earning capacity, where the actual income or earning capacity is substantially different than the amount set forth in the judgment, as defined.
- 19) Permits the court, at its discretion in a proceeding under 18), to set aside and reinstate child support for all or partial periods of time based on information available when the set-aside motion is filed; relief setting aside some of the order does not modify the ability to seek a subsequent modification under 20).
- 20) Extends the time frame in which a set-aside may be sought to two years from the date of the LCSA's first collection of money through an earnings assignment or withholding of income, and requires the LCSA to notify the parents in writing of the first collection and the two-year period in which a set-aside may be sought.
- 21) Clarifies that, when a party or the LCSA has taken steps to modify a support order prospectively, it does not affect the LCSA's obligation to check all appropriate sources of income for purposes of determining whether a set-aside is appropriate.
- 22) Provides that 13)-21) will take effect January 1, 2026, and Judicial Council shall adopt and approve the forms necessary for these new provisions by September 1, 2024.

COMMENTS

1. Author's comment

According to the authoring Committee:

At the end of 2016, the federal Department of Health and Human Services promulgated new regulations setting forth requirements for state child support laws; states are required to comply with these regulations as a condition of receiving certain amounts of federal funding. The current deadline for California to bring its laws into compliance with the new federal regulations is September 1, 2024.

Some of the federally required changes were implemented through the budget process last year. This bill, drafted with input from stakeholders over an extended collaborative process, makes the remaining necessary changes to the

state's child support laws. Among other things, the bill updates the child support guideline and low-income adjustment to reflect the current cost of living; modifies certain related provisions relating to a support award, such as what constitutes income and how childcare costs may be apportioned; and prevents a local child support agency from seeking support on the basis of an obligor's presumed income, requiring instead that the support amount be based on the specific circumstances of the obligor.

AB 1755 will require the Department of Child Support Services and the Judicial Council to conform to federal rule changes, resulting in the increased ability of non-custodial parents to pay their child support orders, thus increasing assistance to custodial parents and their children. In addition to the policy benefits, by insuring compliance with federal guidance AB 1755 will secure federal funding to the state.

2. A brief overview of child support in California²

California's statutory child support guideline is comprised of a default mathematical formula based on the number of children, the amount of time each parent spends with the child, and each parent's income, with various provisions for modifying the resulting support amount based on a range of circumstances.³ For example, if a parent being ordered to pay support had a monthly net disposable income of less than \$1,837, the parent might have been entitled to a low-income adjustment (LIA) to ensure the parent is not obligated to pay more than they can reasonably afford.⁴ In applying the guideline and possible variations from it, courts should adhere to the principles that "[a] parent's first and principle obligation is to support the parent's minor children according to [their] circumstances and station in life" and "[b]oth parents are mutually responsible for the support of their children."⁵

The core formula of the guideline was adopted in 1992.⁶ Since then, the Legislature has modified the parameters of the LIA⁷ and implemented pilot programs to automatically suspend a parent's child support obligations while they are incarcerated or involuntarily institutionalized.⁸ On the whole, however, there have been no significant changes to the child support guideline since its inception.

² Parts 2 and 3 of this analysis are identical to Parts 2 and 3 in this Committee's analysis for SB 343 (Skinner, 2023).

³ Fam. Code, §§ 4050-4076.

⁴ *Id.*, § 4055(b)(7). The LIA was set at \$1,500 in 2013 and is increased annually by Judicial Council to reflect the change in the annual California Consumer Price Index for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research. (*Ibid.*)

⁵ *Id.*, § 4053.

⁶ 2021 *Quadrennial Review*, *supra*, at p. 15.

⁷ *Ibid.*

⁸ See AB 2325 (Carrillo, Ch. 217, Stats. 2020); AB 610 (Jones-Sawyer, Ch. 629, Stats. 2015); SB 1355 (Wright, Ch. 495, Stats. 2010).

Court-ordered child support can be sought two ways. A parent (or the child through a guardian ad litem) can seek an order of support from the child's other parent(s).⁹ And in cases where the child is receiving public assistance, including Medi-Cal, a local child support agency (LCSA) can seek a support order through a streamlined court process (known as IV-D orders).¹⁰ While support orders in cases brought by a parent must reflect the other parent's actual income or "earning capacity," an LCSA may seek and be granted an order based on the parent's "presumed income," which is set at the amount of the minimum wage at 40 hours per week.¹¹ Orders set based on the parent's presumed income have significantly worse payment patterns than orders based on evidence.¹²

A parent may seek a modification of a child support order after it is entered; however, state law and federal regulations prohibit a child support order from being modified retroactively past the date the parent sought the modification.¹³ An LCSA may also seek a modification of an order if it learns that the order does not reflect the obligor-parent's circumstances, and must do so if the LCSA learns that the obligor-parent is disabled and receiving SSI/SSP payments; again, these modifications are generally effective only back to the date that the petition to modify was filed.¹⁴ And where a IV-D order was entered by default and was calculated based on presumed income, the parent may, within one year of the first collection of money by the LCSA, seek to have the order set aside if the parent's income was "substantially different" than the income assumed during the period in which the order was in place.¹⁵ This gives a parent whose order was entered by default a limited window in which to seek a more accurate order and avoid back-due support and interest on an order that did not reflect their circumstances.

3. The 2016 changes to the federal child support regulations and California's 2021 quadrennial review

The current federal regime of imposing minimum standards for state child support guidelines, for states that have a government child support program through Title IV-D of the Social Security Act, was put in place in the late 1980s.¹⁶ Similar to California, the federal requirements were largely unchanged through the 1990s and 2000s.¹⁷ In December 2016, however, in response to a 2013 executive order, the federal Department

⁹ Fam. Code, § 4000.

¹⁰ *Id.*, §§ 17400, 17404, 17404.1, 17430, 17432.

¹¹ *Compare id.*, § 4085 with *id.*, § 17400(d).

¹² 2021 *Quadrennial Review*, at pp. 197-198.

¹³ Fam. Code, §§ 3651, 3653; 42 U.S.C. § 666(a)(9)(C).

¹⁴ *Id.*, §§ 17400, 17400.5.

¹⁵ *Id.*, § 17432. A "substantial difference" in income is a deviation of 10 percent or more from the parent's actual income. (*Id.*, § 17432(c).)

¹⁶ 2021 *Quadrennial Review*, *supra*, at p. 16.

¹⁷ *Ibid.*

of Health and Human Services published the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs regulations (the 2016 rule changes).¹⁸

The 2016 rule changes were intended to “update current practices to increase regular, on-time payments to all families, increase the number of noncustodial parents working and supporting their children, and reduce the accumulation of unpaid child support arrears.”¹⁹ Substantively, the 2016 rule changes imposed four significant new requirements for states, as follows:

- The guideline must consider, in addition to a parent’s earnings and income, other evidence of the parent’s ability to pay.
- The guideline must consider the basic subsistence needs of a noncustodial parent who has a limited ability to pay.
- If the guideline allows for imputation of income, the guideline must also consider, to the extent known, the specific circumstances of the obligor, including the obligor’s assets, earnings history, educational attainment, age, health, and other personal factors that could bear on an obligor’s earning capacity.
- The guideline may not treat incarceration as voluntary unemployment in establishing or modifying support orders.²⁰

The 2016 rule changes recognize 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.”²¹ Unrealistic support orders hurt parents and children: 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.*”²² In other words, “families do not benefit from orders that noncustodial parents cannot comply with because of their limited income.”²³ The 2016 rule changes are intended to reset states’ child support guidelines to produce *realistic* child support orders that are more likely to result in timely payments and the maintenance of the parent-child relationship.

The Judicial Council’s quadrennial review discussing the 2016 rule changes was released in 2022. The quadrennial review concluded that California’s existing statutes already fulfilled some of the requirements from the 2016 rule changes – such as providing an LIA – but that California would need to make additional modifications to

¹⁸ See Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93492-93569 (Dec. 20, 2016).

¹⁹ *Id.* at p. 93493.

²⁰ 2021 Quadrennial Review, *supra*, at pp. 16-17.

²¹ Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, *supra*, 81 Fed. Reg. at p. 93516.

²² *Ibid.* (emphasis added).

²³ *Id.* at p. 93517.

bring the state into compliance with federal requirements and to reflect best practices as developed by other states.²⁴ The recommended changes include:

- Modifying the parameters of the LIA and income bands of the guideline to ensure that low-income parents' subsistence needs are properly accounted for in support orders.²⁵
- Requiring a noncustodial parent's income to be calculated based on the parent's specific earning capacity in IV-D cases, rather than using a generalized "presumed income" formula, and expanding the sources of funds that should be classified as a parent's "income."²⁶
- Amending existing law to ensure that a parent's incarceration cannot be treated as voluntary unemployment.²⁷

During the 2022 legislative session, stakeholders – including the Judicial Council and the Department of Child Support Services (DCSS) – had numerous discussions over whether the recommended changes should be included in the budget, given the pending September 2024 compliance deadline. Ultimately, certain minor changes – such as adding the additional sources of income that may be considered and providing that incarceration does not constitute voluntary employment – were made through the budget, along with a requirement that the Judicial Council issue a supplemental report to address the remaining changes necessary to bring California into compliance with the 2016 rule changes.²⁸ Major issues, however, were put off to this year in order to allow the Legislature to engage with stakeholders and members of the public on this issue of significant public concern.

4. This bill implements changes to California's child support laws to bring them into conformity with federal requirements and increase the likelihood of accurate, payable child support orders

This bill implements the remaining changes necessary to bring California's child support guideline and court-ordered child support procedures into compliance with federal law. The language was negotiated with numerous stakeholders, including DCSS and the Judicial Council of California, over the interim. These changes will modernize California's approach to child support to better ensure the best outcomes for parents and children.

²⁴ 2021 Quadrennial Review, *supra*, at p. 17.

²⁵ *Id.* at pp. 101-108, 126.

²⁶ *Id.* at pp. 142-143, 167-168.

²⁷ *Id.* at pp. 168-169.

²⁸ See AB 207 (Assembly Committee on Budget, Ch. 573, Stats. 2022); see Judicial Council of California, *Additional Legislative Changes Required to Bring California into Compliance with Federal Final Rule* (Oct. 4, 2022), available at <https://www.courts.ca.gov/documents/lr-2022-additional-legislative-changes-in-compliance-with-federal-rule-fam-4077.pdf>.

First, the bill deletes the chapter authorizing child support orders on an expedited basis, as required by federal regulations.

The bill then updates California's statewide child support guideline to reflect economic realities. The lowest income band is increased from \$0-800 to \$0-2,900, and the subsequent bands are increased accordingly; the top band now begins at incomes over \$15,000 instead of incomes over \$10,000. The monetary formula for calculating support has also been modified to maintain the existing bell-curve support structure. Finally, the LIA has also been adjusted from a ceiling of \$1,500 net disposable monthly income to the amount of gross monthly income earned at 40 hours a week at the state minimum wage.

Next, the bill makes changes regarding what may qualify as a source of parental income and how a parent's income may be calculated when actual income is unknown, as required by federal regulations. The bill also makes changes to how childcare costs may be awarded, including adding a presumption that childcare costs should be divided proportionately based on the parents' income and a rebuttable presumption that childcare costs that are reasonably necessary for employment, education, or job-related training are reasonable if incurred.

Additionally, the bill modifies the current procedure by which an LCSA can calculate a parent's income in a suit for child support filed by the LCSA. Currently, when the obligor's income is known, the LCSA can seek support based on "presumed income," which is the monthly amount earned at 40 hours per week at the state minimum wage. Federal law, however, now requires any estimated income to be based on the specific circumstances of the obligor – including the obligor's educational background, work history, physical limitations, and other factors – making the "presumed income" approach overly generalized. Accordingly, the bill requires the LCSA to determine, and seek support calculated using, the obligor's earning capacity, based on the information the LCSA obtains about the obligor through its investigation, as specified. The bill also requires the LCSA to annually check relevant sources to determine if additional evidence about the obligor's income can be obtained; if such evidence shows that the order should be modified, the LCSA must bring a motion for such a modification. Finally, the bill modifies the procedures and availability of the set-aside provision for child support orders sought by an LCSA and entered by default. The bill expands the set-aside procedure to be available in any such case where the support order was based on the obligor's earning capacity, and allows a motion for a set-aside to be brought within two years of the first collection of support. The bill also requires the LCSA to send a notice to both parents at the start of the two-year period to inform them that the time in which a set-aside may be sought has started to run.

As noted in the Executive Summary, this bill and SB 343 (Skinner, 2023) are running concurrently through the Legislative process with the goal of both bills remaining identical. Since this Committee heard SB 343, both bills have been amended to reflect

additional stakeholder input and an update from the federal DHHS regarding the timeline for compliance.²⁹ These amendments did the following:

- Clarified that the rebuttable presumption regarding the application of the low-income adjustment can be rebutted by evidence that the application of the lowest amount permitted pursuant to the adjustment would be unjust under the facts of the particular case.
- Removed the reference to capital gains in the list of specifically enumerated income types that must be counted towards a parent's income, to make it clear that courts can continue their current practice of treating different kinds of capital gains (e.g., realized vs. unrealized) differently based on the circumstances.
- Pushed back the date of compliance for the new procedures involving default orders and set-aside proceedings, to January 1, 2026; required Judicial Council to develop forms by September 1, 2024, for use in those proceedings; and required DCSS to administer the new statutes through letters or similar instructions until permanent regulations are entered by January 1, 2028. These changes were made in response to a request by DCSS after receiving confirmation that DHHS will not take action against the State for noncompliance while the State is actively working to implement compliant statutes.
- Clarified how an LCSA is required to serve a potential support obligor with a motion for judgment in a support proceeding in which the potential support obligor has not appeared.

SUPPORT

San Francisco Financial Justice Project

OPPOSITION

One individual

RELATED LEGISLATION

Pending Legislation:

SB 343 (Skinner, 2023) is substantially similar to this bill and serves as the Senate counterpart. SB 343 is pending before the Assembly Human Services Committee.

AB 1148 (Bonta, 2023) suspends, for 10 months after a parent is released from incarceration or involuntary institutionalization, the parent's obligation to pay child support unless they have the means to pay, requires DCSS to notify certain parties of the support obligor's release, and implements a procedure for the person to whom

²⁹ SB 343 is in the process of being amended, so at the time this analysis is released, the current version might not identically match the version of AB 1755 analyzed here.

support is owed to seek an earlier reinstatement if the support obligor obtains employment. AB 1148 is pending before this Committee and is set to be heard on the same date as this bill.

Prior Legislation:

AB 207 (Assembly Committee on Budget, Ch. 573, Stats. 2022) among other things, this bill implemented certain measures recommended by the Judicial Council to bring the state into conformity with the federal 2016 rule changes and required Judicial Council to provide the Legislature with a report on the remaining necessary changes.

AB 3365 (Assembly Judiciary Committee, 2020) would have, among other things, removed the sunset on the 2013 increase to the low-income adjustment to the child support guideline. AB 3365 was held in the Senate Judiciary Committee COVID-19-related bill restrictions.

AB 3314 (Weber, 2020) would have required that a court's determination of a parent's "earning capacity" must take into account the parent's specific circumstances, as specified, and required an LCSA to make an individualized determination of a parent's actual income earning capacity rather than relying on presumed income beginning January 1, 2022. AB 3314 bill was held in the Assembly Judiciary Committee due to COVID-19-related bill restrictions.

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 79, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
