

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 2325 (Carrillo)
Version: May 4, 2020
Hearing Date: July 30, 2020
Fiscal: Yes
Urgency: No
JT

SUBJECT

Child support: suspension

DIGEST

This bill reestablishes, 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.

EXECUTIVE SUMMARY

Often, incarcerated parents who are the subject of a child support order do not know about their right to petition a court for modification of the order due to their changed financial circumstances. A lack of resources at the local level compounds this problem, as local child support agencies do not have the means to implement outreach programs for parents incarcerated within their jurisdiction. In the meantime, the arrears balance for the state's incarcerated parents continues to grow, but will remain largely uncollectible. This has implications not only for the state's federal child support performance measures, which affect the incentives funding received from the federal government, but also for the rates of recidivism for obligors. It can also impede the parent's reentry to society and hinder reunification efforts, driving fractured families further apart and ultimately harming child wellbeing.

In 2015, the Legislature enacted and subsequently extended a pilot program to suspend an obligor's child support obligations while they are incarcerated or involuntarily institutionalized. The pilot program expired January 1, 2020. This bill would reinstate it until January 1, 2023. The bill is sponsored by the Center for Employment Opportunities, Child Support Directors Association, and the Western Center on Law and Poverty. The bill is supported by, among others, A New Way of Life Reentry Project, California Attorneys for Criminal Justice, California Judges Association, Homeboy Industries, Legal Services for Prisoners with Children, San Bernardino Fatherhood, and family law attorneys. It has no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) 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.)¹
- 2) 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. (§ 17400.)
- 3) 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. (§ 3651.)

This bill:

- 1) Finds and declares:
 - a) In 2016, there was a new federal rule concerning child support orders when a noncustodial parent is incarcerated.
 - b) The new rule codified case law, which said that a noncustodial parent has the right to adjust their order if they are impoverished as a result of institutionalization.
 - c) People in prison are paid pennies on the dollar due to a constitutional provision, dating back to chain gangs, that allows for workers in prison to be paid less than others for equal work and therefore, even though tens of thousands of California workers, of whom about one-half are parents of children under 18 years of age, work while in prison, they do not earn enough to pay child support.
 - d) California law established regulations facilitating this federally required process for the courts, the prisons, and the local child support agencies, but this law was allowed to sunset on January 1, 2020, and as a result, the administrators of the program will need to resort to more administrative processes to comply with this law and noncustodial parents may not be supported in securing their federal right to a reduced child support order while in prison.
- 2) Suspends every money judgment or order for support for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or

¹ All further section references are to the Family Code, unless otherwise specified.

involuntarily institutionalized, unless the person (1) has the means to pay, or (2) was incarcerated or involuntarily institutionalized for domestic violence.

- 3) Provides that a suspended support obligation, in the amount previously ordered, resumes on the first day of the first full month after the obligor is released. States the amount is presumed appropriate under federal and state law. Clarifies an obligor may seek modification of that amount under existing law.
- 4) Provides that if an LCSA may, 30 days after providing notice to the obligor and obligee and a form that enables them to object, administratively adjust account balances for a money judgement or child support order, as long as neither party objects and the LCSA verifies that: (1) arrears and interest were accrued in violation of these provisions, (2) the obligor does not have the means to pay, and (3) the obligor was not incarcerated or institutionalized for domestic violence.
- 5) Requires the LCSA, if the party objects to the proposed adjustment, to file a motion with the court to seek the adjustment and prohibits adjustment without a court order.
- 6) Requires the department, by January 1, 2022, in consultation with the Judicial Council, to develop forms to implement this section.
- 7) Requires, by January 1 2022, the department and Judicial Council to conduct an evaluation of the effectiveness of the administrative adjustment process under these provisions and to report the result of the review, as well as any recommended changes to the Assembly and Senate Judiciary Committees.
- 8) Sunsets January 1, 2023.

COMMENTS

1. Reestablishes a pilot program that suspends prisoners' child support obligations

In 1999, Governor Gray Davis signed legislation creating the DCSS and enacting massive reforms of the state's child support system. (AB 196 (Kuehl, Ch. 478, Stats. 1999); SB 542 (Burton, Ch. 542, Stats. 1999).) As part of the reforms, DCSS was mandated to analyze the current amount of child support arrears statewide and determine the amount that is realistically collectible. DCSS contracted with the Urban Institute to conduct this study, which published its findings and recommendations on how to improve collectability of arrears in 2003.²

² Elaine Sorensen, *Examining Child Support Arrears in California: The Collectibility Study* (March 2003) Urban Institute.

One of the study's recommendations was to suspend child support orders by operation of law while noncustodial parents are incarcerated if they have no income or assets. The study found that, although very few debtors were in state prison at any point in time, their child support situations were dismal on average. The median amount of child support orders for incarcerated debtors was \$291 per month, which was only slightly lower than the median amount among all debtors. However, the reported income and assets for incarcerated debtors was substantially lower than other debtors. According to the study, approximately half of incarcerated debtors had reported incomes in the two years prior to incarceration and their median annual net income was just under \$3,000. The median arrears amount was \$14,564. The large amount of arrears, combined with an inability to pay, can make it more difficult for individuals to make the successful transition from prison back into the community, thus increasing the likelihood of recidivism.

In order to address these issues, the Legislature approved SB 1355 (Wright, Ch. 495, Stats. 2010), which created a pilot program to suspend the obligation to pay child support for certain obligors who are involuntarily institutionalized or incarcerated, unless the obligor otherwise has the means to pay support. That bill required that, upon release, the obligation to pay child support immediately resumes at the amount specified in the child support order before the suspension. That program sunsetted July 1, 2015. AB 610 (Jones-Sawyer, Ch. 629, Stats. 2015), created a second pilot program, effective October 8, 2015, which reinstated the original pilot program until January 1, 2020, and allowed the LCSAs to administratively adjust orders based on the suspension, with the hope that the expanded pilot program could more successfully reduce uncollectible child support and help noncustodial parents better support their children upon release from prison. Finally, last years' AB 1091 (Jones-Sawyer) would have extended the pilot program indefinitely. Despite passing Assembly committees without a "no" vote, the bill was held on the Assembly Floor.

This bill would instead reestablish the program until January 1, 2023. The bill would provide for the suspension of every money judgement or order for support for any period exceeding 90 consecutive days in which the obligor is incarcerated or involuntarily institutionalized, unless the person has the means to pay or was incarcerated or involuntarily institutionalized for domestic violence. The bill would enable the LCSA to make automatic adjustments to an obligor's account upon verifying their eligibility, as long as neither the obligor nor the obligee objects. If they object, the LCSA would instead be required to file a petition with the court and the adjustment could only be made upon order of the court.

The author writes:

AB 2325 ensures a healthy and positive reunification between the noncustodial parent and child. Many noncustodial parents are burdened with shame when they are behind on child support payments and will be less likely to reconnect

with their kid(s) because of it. By restoring the statute that expired last year which allowed for the automatic suspension of a child support order of a parent who is incarcerated or held involuntarily more than 90 days, noncustodial parents will have successful reunification with their children and better reentry into society.

2. Policy arguments for an automatic suspension of child support obligation

Research suggests that the accumulation of arrears for low-income obligors is frequently counter-productive, and has negative consequences for the obligor, their family, and the state. The DCSS has found that 95 percent of delinquent debt was likely uncollectible. Noncustodial parents making less than \$10,000 owed an average of \$20,000 due in part to the 10 percent interest rate on late payments. Collectively, these parents' debt comprised 70 percent of the outstanding child support debt owed to the state.³

More recently, the U.S. Partnership on Mobility from Poverty wrote as follows:

[...] Roughly one-quarter of the more than \$100 billion in past-due child support payments and interest on the child support debt is owed to the government, not to families. Most of that past-due support is owed by a relatively small number of fathers who have disproportionately low incomes. A study of nine states found that 11 percent of noncustodial parents owed 54 percent of the total past-due amount; each of these fathers owed over \$30,000. Three-quarters of these fathers had no reported income or annual incomes below \$10,000, but only one in five noncustodial fathers with no child support debt had incomes this low. Within just three zip codes in Baltimore, 4,000 noncustodial parents (mostly fathers) collectively owe \$26 million to the state in child support arrears and interest. [...].⁴

The accumulation of uncollectible debt, along with the reduction in current support payments reduces the state's performance on federal child support measures. This, in turn, directly reduces the incentive funding California receives from the federal government for its child support program.

The accumulation of debt can also have a major impact on families. If low-income parents, who are disproportionately from communities of color, struggle to consistently make payments, they may be forced to pay punitively high interest rates for missed payments, adding to mounting financial distress and increasing the likelihood of additional missed payments, creating a vicious cycle. These policies make it harder to

³ Elaine Sorensen, *Examining Child Support Arrears in California: The Collectibility Study* (March 2003) Urban Institute.

⁴ *Transforming Child Support into a Family-Building System* (March 2018).

escape poverty, drive fractured families further apart, and ultimately harm child wellbeing.

Mass incarceration exacerbates these problems. Professor Ann Cammett writes:

Prisoners are also parents, and in many states they amass huge child support arrears during a period of incarceration. Such a debt does not relate to real income since prisoners earn little or no money, the debt will likely never be collected, and the support arrearage will not ultimately redound to the benefit of their children. This dynamic has been further complicated by an important element of the support model that we have embraced in the United States: absolute enforcement against all nonresident parents who have fallen behind in child support, regardless of their circumstances. A wide range of very serious sanctions, such as onerous salary garnishment, driver's license suspension, re-incarceration, and many others can be triggered against parents when they are released. Moreover, pursuant to federal law--specifically the Bradley Amendment--debt from child support arrears cannot be modified or discharged by a court once it is accrued. These automatic penalties are counterproductive, as they make it more difficult for formerly incarcerated parents to pay ongoing support as they attempt to successfully reintegrate into society and resume contact with their children. Rather, automatic child support enforcement creates perverse incentives that alienate parents from the formal economy and drive them underground--and away from their families. Such a paradigm cannot be in the best interests of their children and runs counter to the goals of the child support program.⁵

A broad coalition of organizations that support the bill jointly write:

High child support debt also undermines the ability of a non-custodial parent to co-parent their own child as they lack resources to visit them or take time off work to attend school functions. Research shows that the two most important factors in a former prisoner's successful reentry into the community are employment and positive relationships with family. Both of these are hindered by the aggressive pursuit of child support arrears sending him bills that are so far beyond his capacity to pay that he keeps his distance from his/her/their family. (Footnotes omitted.)

Indeed, research indicates that significant debt serves as a barrier to reentry for ex-offenders and hinders their ability to participate in the formal economy.⁶ This increases

⁵ *Deadbeats, Deadbrokes, and Prisoners* (2011) 18 Geo. J. Poverty Law & Pol'y 127, 129-130 (footnotes omitted).

⁶ Jennifer L. Noyes, *Review of Child Support Policies for Incarcerated Payers*, Institute for Research on Poverty, University of Wisconsin-Madison (Dec. 2006).

the risk of recidivism and further emotional and financial harm being visited on the families:

Most people agree that parents should support their children to the best of their ability. However, children receive the most benefit from reliable long-term support from their parents, even if those payments are modest. The key to regular child support payments is steady employment. The reality is that most parents coming home from prison have trouble supporting themselves, let alone their children. Those who cannot maintain steady employment and keep up with their child support obligations fall deeply into debt, and their children lose out. . . .

When researchers from the Urban Institute asked recently released men what kept them from returning to prison, the largest percentage singled out support from their families and seeing their children as the most important factors: ties with family and children mattered even more than housing or employment. Strong family relationships are positively correlated with maintaining employment, staying away from drugs, and rebuilding a social network after incarceration – practices that also make society safer and save taxpayers money. Yet, when parents walk away from jobs, they often pull away from their children. Parents who see no end in sight to their child support debts are less likely to remain in low-wage jobs, to comply with child support obligations in the future, or to reunite with their children and reintegrate into society.⁷

Courts and legislatures began responding to these findings, adopting programs to reduce the support obligations of incarcerated parents and construing child support guidelines to recognize incarceration as an involuntary loss of income. For instance, the Indiana State Supreme Court stated:

The child support system is not meant to serve a punitive purpose. Rather, the system is an economic one, designed to measure the relative contribution each parent should make -- and is capable of making -- to share fairly the economic burdens of child rearing. [Citation.] Considering the existing sociological evidence, it seems apparent that imposing impossibly high support payments on incarcerated parents acts like a punitive measure, and does an injustice to the best interests of the child by ignoring factors that can, and frequently do, severely damage the parent-child relationship.

(*Lambert v. Lambert* (Ind. 2007) 861 N.E.2d 1176, 1180.)

⁷ Kristen D. Levingston and Vicki Turetsky, *Debtor's Prison – Prisoners' Accumulation of Debt as a Barrier to Reentry*, 41 Clearinghouse Review 187, 194-95 (July-Aug. 2007) (footnotes omitted).

In 2016, the Obama administration modified federal rules governing child support collection. Among other things, federal rules now require states to review, and if appropriate, adjust support orders when either parent has experienced a substantial change in circumstance, which includes incarceration. After learning that a parent who owes support will be incarcerated for more than 180 calendar days, the state must either send a notice to both parents of their right to request a review and adjustment or automatically initiate a review and adjustment with notice to both parents. When modifying orders, states may consider an incarcerated parent's income and assets in setting the order amount. (*See* 45 CFR Pt. 303.8.)

These changes, and the process provided under this bill, reflect a recognition that billing an imprisoned parent with no means of paying will not help the custodial parent or child escape poverty. It just replaces actual fetters with financial ones.

3. Requires a study to evaluate the effectiveness of the program

This bill would additionally require that, by January 1, 2022, the DCSS and the Judicial Council conduct an evaluation of the effectiveness of the administrative adjustment process authorized by the bill and to report the results of the review, as well as any recommended changes, to the Assembly and Senate Judiciary Committees. The evaluation must include a review of the ease of the process to both the obligor and obligee, an analysis of the number of cases administratively adjusted, the number of cases adjusted in court, and the number of cases not adjusted.

Similar provisions were in this bill's predecessors. The most recent data was somewhat encouraging: of 8,389 cases identified, 498 (or 5.9 percent) were administratively adjusted and 105 cases (or 1.3 percent) were adjusted in court. The vast majority of cases – 92.8 percent – were not adjusted under the pilot program.⁸ However, the report contained the following caveat: “Due to the limited availability of pertinent data, a correlative analysis cannot be performed. To provide conclusive findings, DCSS would need additional time to thoroughly evaluate the relevant data.”⁹ This bill would grant an extra year to continue gathering data.

4. Amendment to add a study to examine impacts and improve child wellbeing

The author has agreed to amend the bill to include a study that would address, among other things, the impacts on low-income parents and child wellbeing caused by programs, including the program that is the subject of the bill, that limit income garnishment and intercepts for low-income obligors. The study would also examine options to: improve child wellbeing outcomes, provide additional resources and support to custodial families, improve the economic success of custodial and non-

⁸ DCSS and Judicial Council, *Evaluation of the Effectiveness of Family Code Section 4007.5: Report to the Legislature* (Jan. 2019).

⁹ *Id.* at 14-15.

custodial parents, and reduce the debt burden among non-custodial parents. The amendment is as follows:

Amendment

Section 4007.6 is added to the Family Code, to read:

4007.6. (a) The Department of Child Support Services shall convene a workgroup that includes, but is not limited to, the Local Child Support Agencies, the Department of Social Services, County Welfare Directors Association of California, county social workers familiar with family reunification and child wellbeing, advocates for custodial or non-custodial parents who are incarcerated, representatives of the re-entry community, reproductive justice experts, representatives of custodial and non-custodial parents and parent advocates to consider how section 4007.5, and other aspects of child support enforcement such as the Low Income Adjustment, and various income garnishment and intercept limitations, impact low-income parents, child wellbeing, family reunification, economic success of co-parenting families, success in recidivism prevention, and reduction of staff administrative burden on Local Child Support Agencies as well as impact on child support collected.

(b) The workgroup shall consider federally allowable options pursuant to federal law or waiver to improve child wellbeing outcomes, provide additional resources and support to custodial families, improve the economic success of custodial and non-custodial parents, and reduce debt burden among non-custodial parents. It shall also consider recommendations in existing research reports and receive and consider options put forth by workgroup members.

(c) The workgroup shall develop consensus recommendations based on the considerations made pursuant to subdivisions (a) and (b). The consensus recommendations of the workgroup shall be submitted to the Legislature on or before October 1, 2021, and shall include details regarding potential implementation of these recommendations, including identification of those that the state may implement via state legislation or administrative guidance to counties, as well as those requiring changes in federal law or waivers of federal law. The report may also include ideas that were not consensus items with an opportunity for participating workgroup members to comment on those items.

(d) (1) The requirement for submitting a report imposed under subdivision (c) is inoperative on January 1, 2023, pursuant to Section 10231.5 of the Government Code.

(2) A report to be submitted pursuant to subdivision (c) shall be submitted in compliance with Section 9795 of the Government Code.

(e) Nothing in this section prevents the Department of Child Support Services from convening this workgroup concurrently with other workgroups already convened or required by law to be convened.

(f) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.¹⁰

SUPPORT

Center for Employment Opportunities (sponsor)
Child Support Directors Association (sponsor)
Western Center on Law and Poverty (sponsor)
A New Way of Life Reentry Project
American Civil Liberties Union of California
California Association of Certified Family Law Specialists
California Attorneys for Criminal Justice
California Judges Association
California Public Defenders Association
Coalition of California Welfare Rights Organizations, Inc.
Forestry and Fire Recruitment Program
Harriett Buhai Center for Family Law
Homeboy Industries
Legal Services for Prisoners with Children
National Association of Social Workers, California Chapter
National Lawyers Guild, San Francisco Bay Area Chapter – Legislative Reform Committee
Rubicon Programs
San Bernardino Fatherhood
San Francisco Financial Justice Project
St. Anthony’s Foundation

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 2046 (Voepel, 2020) would limit the amount of child support arrears that can be collected from a low-income child support obligor who is also a disabled veteran

¹⁰ These amendments may include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

receiving disability compensation to no more than five percent of the obligor's monthly disability compensation. The bill will be heard in this Committee on the same day as this bill.

AB 3365 (Assembly Judiciary Committee, 2020) would, among other things, remove the sunset on the 2013 increase to the low-income adjustment to the child support guideline. The bill is pending in this Committee.

Prior Legislation: *See* Comment 1.

SB 337 (Skinner, 2019) would have increased the amount of child support passed through to families receiving California Work Opportunity and Responsibility to Kids assistance, but was vetoed. However, similar provisions were adopted in this year's budget.

AB 1092 (Jones-Sawyer, 2019) would have limited the interest that may be charged on child support assigned to the county. The bill was vetoed.

PRIOR VOTES:

Assembly Floor (Ayes 51, Noes 9)

Assembly Appropriations Committee (Ayes 11, Noes 3)

Assembly Judiciary Committee (Ayes 8, Noes 1)
