

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

SB 618 (Rubio)
Version: March 22, 2023
Hearing Date: April 18, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Child support: enforcement

DIGEST

This bill prohibits the Department of Child Support Services (DCSS) or a local child support agency from collecting interest that has accrued on child support owed to the state or the county, and eliminates interest on child support owed or assigned to the state or the county going forward.

EXECUTIVE SUMMARY

“Child support” presumably calls to mind amounts paid by a parent to support their child. But a significant amount of court-ordered child support never reaches the child. When a parent or child is receiving or has received certain public assistance benefits, the custodial parent is required to assign their rights to the child support to the state or county as “reimbursement” for the benefits; the family is entitled to keep only a “pass through” amount of \$100 for a single-child family and \$200 for a family of two or more children. This system was put in place pursuant to a federal framework that puts certain conditions on the receipt of federal funds for certain assistance programs.

California also charges interest on past-due child support awards, though no federal law requires it. Specifically, California’s 10 percent annual postjudgment interest statute applies to past-due child support payments, which is one of the nation’s highest child-support interest rates. Under current law, this 10 percent annual interest rate is applied regardless of whether the payments are going to the child or to the state. Research shows that high interest rates on child support result in significantly higher child support arrearages and uncollectable debts.

This bill would end the practice of charging interest on child support payments owed or assigned to the state or county, and prohibit DCSS or a local child support agency (LCSA) from collecting interest that has already accrued on assigned child support

payments. The bill does not affect interest accruing on child support that would actually go to the child. By eliminating interest on child support owed or assigned to the state, this bill is intended to prevent the accrual of snowballing past-due debts and give relief to parents so they can actually support their children.

This bill is sponsored by 20 members of the Truth and Justice in Child Support Coalition, a statewide coalition that seek to bring equitable reform to the state's child support laws. There is no known opposition. If this bill is passed by this Committee, it will next 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) Requires any recipient of child support who receives or has received certain forms of public assistance funded in part with federal funds, including CalWORKS, to assign to the county any rights to the child support up to the total amount of the cash assistance received by the family, until the entire amount of aid paid has been reimbursed, as specified, subject to the below conditions. (Welf. & Inst. Code, § 11477.)
 - a) The first \$100 from any amount of child support collected for a family with one child, or the first \$200 for a family with two or more children, is not considered income for purposes of the assignment in 4) and is passed through to the family. (Fam. Code, § 17504.)
 - b) Provides that it is the intent of the Legislature that, commencing January 1, 2025, or on the date certain automated systems are complete, the Department of Social Services (DSS) and DCSS provide full pass-through of child support payments to families receiving CalWORKs benefits. DSS shall provide a report to the Legislature on this issue evaluating any unintended impacts of

this policy on or before April 1, 2024. (Welf. & Inst. Code, §§ 11477.06, 11477.07.)

- 5) Provides that DCSS and the LCSA have the primary responsibility for promptly and effectively collecting and enforcing child support obligations as necessary to comply with specified federal laws, including serving as the public agencies responsible for administering wage withholding. (Fam. Code, § 17500(a), (b).)
- 6) Defines a “child support delinquency” as an arrearage or otherwise past due amount that accrues when an obligor fails to make any court-ordered support payment when due, which is more than 60 days past due, and the aggregate amount of the support delinquency exceeds \$100. (Fam. Code, § 17500(c).)
- 7) Requires an LCSA to submit child support delinquencies to DCSS for purpose of supplementing the LCSA’s collection efforts, and authorizes DCSS to use any manner authorized under state or federal law to collect the outstanding support. (Fam. Code, §§ 17450, 17500.)
- 8) Provides that interest accrues on the principal amount of a money judgment remaining unsatisfied as follows:
 - a) For judgments entered or renewed before January 1, 2023, interest accrues at the rate of 10 percent per year.
 - b) For judgments entered or for which an application for renewal is filed on or after January 1, 2023, at the rate of 5 percent per year for specified judgments, including a judgment of under \$50,000 for a claim related to a personal debt arising out of specified transactions. All other judgment types not specified continue to accrue interest at 10 percent per year. (Code Civ. Proc., § 685.010.)

Existing federal law:

- 1) Requires a state to reimburse the federal government a certain portion of child support payments assigned to the state under 4), as repayment for federal funds granted to the state for public assistance programs, except that a state may elect to pay an excepted portion of the funds to the family, as follows:
 - a) For a family with one child, up to \$100 of the support collected may be passed through to the family.
 - b) For a child with two or more children, up to \$200 of the support collected may be passed through to the family. (42 U.S.C. § 657.)

This bill:

- 1) Prohibits DCSS or an LCSA from collecting interest that has accrued on child support owed to the state or the county pursuant to an assignment of rights for repayment of public assistance received.

- 2) Prohibits interest from accruing on child support owed or assigned to the state or the county for repayment of public assistance received.
- 3) Makes nonsubstantive conforming changes.

COMMENTS

1. Author's statement

According to the author:

California requires parents who receive public assistance to repay the state by intercepting their child support. Under existing California law, a \$300 payment would require only the first \$100 to go to the child, and the remaining \$200 goes to repay the cost of public assistance. Unfortunately, this puts non-custodial parents in a difficult situation. Eliminating the 10% interest will maximize all parents' ability to focus their financial resources on their families and the child specifically. Non-custodial parents, who cannot repay public assistance, may even be incarcerated for nonpayment. In fact, data shows more than 80 percent of counties currently incarcerate for nonpayment. It is time change the financial structure within the child support system and allow for funding to directly benefit the child. By eliminating the debt from parents, especially families of color, we can reduce employment barriers, improve homeowner rates, credit scores and, most importantly, improve parent-child and co-parenting relationships and outcomes for each individual child.

2. California diverts hundreds of millions of dollars in child support from families and charges parents interest on the amounts owed to the state

Every year, California intercepts hundreds of millions of dollars in child support payments ordered for the maintenance of the obligor's child and diverts those payments to the state.¹ Under a federal-state framework developed in the 1970s and 1980s, when a recipient of child support receives or has been the recipient of certain public assistance benefits – here, CalWORKS – the recipient is required to reimburse the state for their benefits received with their child support payments.² Such recipients must assign their rights to child support to DCSS or an LCSA, which then keep the child support payments up to the amount of the benefits received, minus a pass-through amount that is returned to the parent and child.³

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), pp. 3, 15.

² *Id.* at p. 10.

³ Fam. Code, § 17504; Welf. & Inst. Code, § 11477.

Until 2022, California passed through \$50 in child support to a family with one child and \$100 to a family with two or more children; in 2022, that amount was increased to \$100 for a family with one child and \$200 for a family with two or more children.⁴

The assigned child support received by DCSS or an LCSA does not go back to the child; it is instead shared among the county, local, and federal governments involved in the child support case.⁵ Additionally, if a parent becomes late on their child support payments, the past-due amounts accrue interest at 10 percent per year; the interest, too, is paid to the government unless and until the full amount of CalWORKS benefits are reimbursed.⁶

Diverting child support payments away from the children the payments are intended to support harms the children in a straightforward way: they are deprived of the resources ordered for their support.⁷ But the assignment framework harms children in indirect ways as well. 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; because of California's 10 percent annual interest accrual rate (discussed below), it is nearly impossible for a parent to catch up.⁸ Parents faced with insurmountable debt and significant wage garnishments (which will not make a dent in the principal) are more likely to engage in "of-the-books" work or illegal activities, increasing the likelihood of disruption to the family.⁹ Research also shows that parents who are in arrears on child support are less likely to have relationships with their children¹⁰ and that the system of rerouting child support payments to the government can result in custodial parents and children not appreciating how much support the noncustodial parent is actually providing, leading to resentment.¹¹ As a result, requiring parents to pay child support to the government can harm the very family relationships child support is intended to bolster.

A 2022 budget trailer bill establishes the Legislature's intent to eliminate the assignment program altogether beginning in 2025;¹² by April 1, 2024, DSS and CDSS are required to submit a report, drafted with the input of a range of stakeholders to address this policy

⁴ AB 87 (Committee on Budget, Ch. 11, Stats. 2020); Fam. Code, § 17504.

⁵ See Legis. Analyst, Rep., Analysis of Child Support Program Proposals in Governor's Proposals for the 2022-2023 Budget (2021-2022 Reg. Sess.) (Feb. 18, 2022), p. 2.

⁶ *Ibid.*; Code Civ. Proc., § 685.010.

⁷ Brown, et al., *The Payback Problem*, *supra*, at p. 18.

⁸ *Id.* at pp. 21, 23.

⁹ 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>. All links in this analysis are current as of April 14, 2023.

¹⁰ 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.

¹¹ Brown, et al., *The Payback Problem*, *supra*, at p. 31.

¹² AB 207 (Assembly Committee on Budget, Ch. 573, Stats. 2022).

and evaluate any unintended consequences.¹³ For now, however, interest continues to accrue on past-due support payments assigned to the government.

3. California’s high interest rate on child support payments to the state or county prevent many parents from ever catching up with their obligations

Although child support is a primarily state function, the federal government exercises control over how states’ child support frameworks operate by making compliance with certain federal laws a condition of receiving certain federal funds for public assistance programs.¹⁴ 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.¹⁵ Because the Legislature did not enact a child-support-specific interest statute, California’s general civil judgment interest statute – which accrues at 10 percent annually – governs interest on child support orders.¹⁶

California’s 10 percent annual interest rate is higher than the interest rate most other states charge on past-due child support; 16 states and the District of Columbia do not charge interest on child support arrears.¹⁷ According to the National Institute of Justice, an office within the United States Department of Justice, states that charge “interest have experienced a far greater increase in arrears than those that do not charge interest,” and evidence suggests “that these arrears are uncollectible because they are owed by parents with little or no reported income.”¹⁸

A wide range of organizations recommends eliminating interest on child support as a straightforward means to stop overburdening parents, ranging from the federal National Institute of Justice¹⁹ to the Task Force to Study and Develop Reparation Proposals for African Americans.²⁰

4. This bill prohibits DCSS or an LCSA from collecting interest already owed on child support assigned and owed to the state and from charging interest on child support payments assigned and owed to the state going forward

This bill prohibits DCSS or an LCSA from collecting interest that has accrued on child support assigned to the state or the county and eliminates interest on child support

¹³ *Id.*; Welf. & Inst. Code, §§ 11477.06, 11477.07.

¹⁴ See 42 U.S.C. §§ 651-669b.

¹⁵ 42 U.S.C. § 666(a)(9).

¹⁶ See Code Civ. Proc., § 685.010.

¹⁷ National Conference of State Legislatures, Interest on Child Support Arrears (updated Oct. 15, 2021), <https://www.ncsl.org/human-services/interest-on-child-support-arrears>.

¹⁸ Haney & Mercer, *supra*, at p. 28.

¹⁹ *Id.* at p. 8.

²⁰ California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report (Jun. 2022), pp. 21-22.

assigned to the state or the county going forward. Eliminating past-due interest does not run afoul of the Bradley Amendment because it prevents collection of past-due interest and does not modify the judgment itself.²¹ And the bill does not affect interest on child support payable to *families*, so it will not reduce any child support amounts that would actually go to a child. The bill affects only child support that is diverted to the state, which the child never sees.

According to the sponsor, the Truth in Justice Coalition:

California's egregious 10% interest rate is one of the highest in the country. Sixteen states, including Idaho, Louisiana, Mississippi, North Carolina, South Carolina, South Dakota and Utah, charge no interest at all.

California research shows that 95% percent of this debt is uncollectible. But the debt is still accruing on our most vulnerable residents. Eliminating the interest rate is also a crucial racial and economic equity issue because child support debt disproportionately impacts families of color. California's reparations task force recommends removing the annual interest rate charged for past due child support.

Eliminating interest will maximize parents' ability to focus their financial resources on their families. Lifting the burden of child support debt from parents has shown to reduce employment barriers, improve housing status and credit scores, and most importantly, improve parent-child and co-parenting relationships.

SUPPORT

Truth in Justice Coalition (sponsor)
Both Sides of the Conversation
Children's Institute
Coalition of California Welfare Rights Organizations
Ella Baker Center for Human Rights
Growing Greatness Now
Homeboy Industries
Legal Link
Parent Voices
Root & Rebound
Rubicon Programs
San Bernardino Fatherhood
The Maven Collaborative
The San Francisco Financial Justice Project

²¹ See 42 U.S.C. § 666(a)(9).

Tipping Point Community
Western Center on Law and Poverty
Young Community Developers
Young Women's Freedom Center
Youth ALIVE!
Two individuals

OPPOSITION

None known

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 Senate Appropriations Committee.

AB 1755 (Assembly Committee on Judiciary, 2023) is identical to SB 343 and serves as the Assembly counterpart. AB 1755 is pending before the Assembly Judiciary Committee.

AB 1148 (Bonta, 2023) suspends, for 18 months after a parent is released from incarceration or involuntary institutionalization, the parent's obligation to pay child support, and requires a court, within 90 days before the obligation is reinstated, to hold a hearing to determine whether the court-ordered child support amount should be modified. AB 1148 is pending before the Assembly Judiciary Committee.

Prior Legislation:

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 due to the 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 the 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.

AB 1092 (Jones-Sawyer, 2019) was similar to this bill in that it would have eliminated interest on child support arrears assigned to the state or county, but also included a more expansive provision that would have limited the state's ability to collect on all arrearages. The Governor stated in his veto message that, while he "appreciate[d] the author's concern that charging interest on past due child support arrears can lead to uncollectable debt and make it harder for families to escape poverty," he could not support the bill because "it would lead to an estimated revenue loss of millions of dollars outside the budget process."
