

Assembly Bill No. 610

CHAPTER 629

An act to repeal and add Section 4007.5 of the Family Code, relating to child support, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 2015. Filed with
Secretary of State October 8, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 610, Jones-Sawyer. Child support: suspension of support order.

Prior law required, until July 1, 2015, the obligation of a person to pay child support pursuant to an order that is being enforced by a local child support agency under Title IV-D of the Social Security Act to be suspended for the period of time exceeding 90 days in which the person required to pay support is incarcerated or involuntarily institutionalized, with specified exceptions. Prior law required that, upon the release of the obligor, the obligation to pay child support immediately resume in the amount otherwise specified in the child support order prior to the suspension of that obligation. Prior law required the court to provide notice to the parties of the support obligation suspension at the time the order was issued or modified. Prior law authorized an obligor, upon release from incarceration or involuntary institutionalization, to petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation.

This bill would enact similar provisions to require the suspension of a child support order to occur by operation of law when an obligor is incarcerated or involuntarily institutionalized, unless the obligor has the means to pay support, or the obligor was incarcerated or involuntarily institutionalized for either an offense constituting domestic violence or the failure to pay child support. The bill would also authorize the local child support agency to administratively adjust account balances for a money judgment or order for support of a child that is suspended by operation of law if the agency verifies that arrears and interest were accrued in violation of these provisions, that specified conditions relating to the obligor's inability to pay while incarcerated and the underlying offense for which he or she was incarcerated do not exist, and neither the obligor nor the obligee object to the adjustment. The bill would require the local child support agency to give notice, as prescribed, of the adjustment to the obligor and obligee. If either the obligor or the obligee objects to the adjustment, the bill would require the agency to file a motion with the court to adjust the arrears and would allow the adjustment only after approval by the court. The bill would require the child support obligation to resume on the first day of the first full month after the release of the person owing support. The bill would require the Department of Child Support Services, in consultation with the

Judicial Council, to develop forms to implement these provisions, and would require them to report specified information relating to these provisions to the Assembly Judiciary Committee and the Senate Judiciary Committee on or before January 1, 2019. The bill would make these provisions operative only until January 1, 2020.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 4007.5 of the Family Code is repealed.

SEC. 2. Section 4007.5 is added to the Family Code, to read:

4007.5. (a) 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 either of the following conditions exist:

(1) The person owing support has the means to pay support while incarcerated or involuntarily institutionalized.

(2) The person owing support was incarcerated or involuntarily institutionalized for an offense constituting domestic violence, as defined in Section 6211, against the supported party or supported child, or for an offense that could be enjoined by a protective order pursuant to Section 6320, or as a result of his or her failure to comply with a court order to pay child support.

(b) The child support obligation shall resume on the first day of the first full month after the release of the person owing support in the amount previously ordered, and that amount is presumed to be appropriate under federal and state law. This section does not preclude a person owing support from seeking a modification of the child support order pursuant to Section 3651, based on a change in circumstances or other appropriate reason.

(c) (1) A local child support agency enforcing a child support order under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.) may, upon written notice of the proposed adjustment to the support obligor and obligee along with a blank form provided for the support obligor or obligee to object to the administrative adjustment to the local child support agency, administratively adjust account balances for a money judgment or order for support of a child suspended pursuant to subdivision (a) if all of the following occurs:

(A) The agency verifies that arrears and interest were accrued in violation of this section.

(B) The agency verifies that neither of the conditions set forth in paragraph (1) or (2) of subdivision (a) exist.

(C) Neither the support obligor nor obligee objects, within 30 days of receipt of the notice of proposed adjustment, whether in writing or by telephone, to the administrative adjustment by the local child support agency.

(2) If either the support obligor or obligee objects to the administrative adjustment set forth in this subdivision, the agency shall not adjust the order, but shall file a motion with the court to seek to adjust the arrears and shall serve copies of the motion on the parties, who may file an objection to the agency's motion with the court. The obligor's arrears shall not be adjusted unless the court approves the adjustment.

(3) The agency may perform this adjustment without regard to whether it was enforcing the child support order at the time the parent owing support qualified for relief under this section.

(d) This section does not prohibit the local child support agency or a party from petitioning a court for a determination of child support or arrears amounts.

(e) For purposes of this section, the following definitions shall apply:

(1) "Incarcerated or involuntarily institutionalized" includes, but is not limited to, involuntary confinement to the state prison, a county jail, a juvenile facility operated by the Division of Juvenile Facilities in the Department of Corrections and Rehabilitation, or a mental health facility.

(2) "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 qualifying period of incarceration pursuant to this section is, by operation of law, set to zero dollars (\$0) for the period in which the person owing support is incarcerated or involuntarily institutionalized.

(f) This section applies to every money judgment or child support order issued or modified on or after the enactment of this section.

(g) The Department of Child Support Services shall, by January 1, 2016, and in consultation with the Judicial Council, develop forms to implement this section.

(h) On or before January 1, 2019, the Department of Child Support Services and the Judicial Council shall conduct an evaluation of the effectiveness of the administrative adjustment process authorized by this section and shall report the results of the review, as well as any recommended changes, to the Assembly Judiciary Committee and the Senate Judiciary Committee. The evaluation shall include a review of the ease of the process to both the obligor and obligee, as well as an analysis of the number of cases administratively adjusted, the number of cases adjusted in court, and the number of cases not adjusted.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to limit the duration of the interruption in the protections provided by former Section 4007.5 of the Family Code, it is necessary that this bill take effect immediately.

O