

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

SB 343 (Skinner) – As Amended June 28, 2023

SENATE VOTE: 40-0

SUBJECT: Child support

SUMMARY: Revises provisions regarding court-ordered child support to be in compliance with federal guidelines. Specifically, **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 increasing the income bands.
- 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) above, 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, veteran's 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 a local child support agencies (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 and requires the LCSA to 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; and,
 - 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

and clarifies the following:

- 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; and,
 - 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) above, 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) below.
- 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) above will take effect January 1, 2026, and requires the Judicial Council (JCC) to adopt and approve the forms necessary for these new provisions by September 1, 2024.

EXISTING LAW:

- 1) Sets 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. Requires a state to review its child support guideline every four years and, following completion of this quadrennial review, to modify its child support guideline as necessary to bring it in conformity with federal requirements. (45 Code of Federal Regulations 302.56(a))
- 2) 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. (Family Code Section [FAM] 17202)
- 3) Requires, at the local level, the child support enforcement program to be run by LCSA, which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations. (FAM 17400(a))

- 4) 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 when the parent who has requested or is receiving support enforcement services is not necessary to the action. (FAM 17404)
- 5) Provides that the compromise amount in the California Compromise of Arrears Program, must equal or exceed “what the state can expect to collect for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in the absence of the compromise, based on the obligor's ability to pay.” (FAM 17560(f)(1))
- 6) 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 3900-4000)
- 7) 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 4055)
- 8) 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 JCC based on the change in the annual California Consumer Price Index for All Urban Consumers. (FAM 4055(b)(7))
- 9) Establishes a rebuttable presumption that the amount of support calculated using the statewide guideline is the correct amount of support, and that the presumption may be rebutted based on the court’s finding that at least one specified conditions exist. (FAM 4057)
- 10) 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. Provides that a court may, in its discretion, consider the earning capacity of a parent in lieu of the parent’s income 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. (FAM 4058 (a)-(c).)
- 11) Provides that additional child support may be ordered if certain conditions are met. (FAM 4061-4063)
- 12) 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. Specifies that 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 3651, 3653(a))
- 13) Provides procedures for obtaining a support order on an expedited basis. (FAM 3620 *et seq.*)
- 14) Establishes procedures for a suit to 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 17404.1)

- 15) Provides, for purposes of the above, that in an action filed by the LCSA 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. Specifies that the amount set forth in the complaint shall be the amount of support ordered unless the LCSA has filed a declaration and amended proposed judgment. Upon entry of the judgment, the clerk of the court must provide a copy to the LCSA, and the LCSA must serve the judgment and notice upon the defendant, as specified. Permits a court to set aside the order for enumerated reasons. (FAM 17430 and 17432.)

FISCAL EFFECT: According to the Senate Appropriations Committee on May 18, based a prior version of this bill, the Judicial Council of California (JCC) reports court workload cost pressures of approximately \$500,000 annually and ongoing (Trial Court trust Fund, General Fund). This is based on an anticipated increase of existing child support hearings by roughly 6,500 per year. If funding is not provided for new workload created by this bill, it likely may result in delays and prioritization of court cases and impact access to justice.

COMMENTS:

Background: *The Child Support Program* was enacted in 1975 as part D of Title IV of the Social Security Act (P.L. 93-647), and according to the federal Office of the Assistant Secretary for Planning and Evaluation, is one of the largest income support programs in the country, serving more children than the Children's Health Insurance Program, Temporary Assistance for Needy Families, and Social Security combined.

Eligibility for the Child Support Program is open to all children living apart from a parent and services include locating noncustodial parents, establishing paternity, establishing and enforcing support orders, modifying orders when appropriate, and collecting and disbursing child support payments.

In California, child support arrangements may be established privately, through the use of an attorney, during divorce proceedings, or through the state child support system, which is administered by DCSS and run locally through 47 LCSAs in partnership with local courts. The state child support program establishes child support orders and collects payments from noncustodial parents to distribute to custodial parents and their children. These state child support programs support obligations, as highlighted through recent DCSS data, fall disproportionately on low-income families.

The Final Rule and Federal Law Conformity. The federal Office of Child Support Services (OCSE), which is within the Office of the Administration of Children and Families (ACF) issued correspondence in 2017 to all state IV-D Directors regarding the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule (Final Rule).

The Final Rule was adopted to address procedures that increase regular, on-time payments to all families and is intended to support program modernization, reduction of accumulated unpaid arrears, customer service, and management practices.

According to ACF, the Final Rule makes changes to strengthen the Child Support Enforcement program and update current practices in order 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. ACF further states that these changes remove regulatory barriers to cost-effective approaches for improving enforcement consistent with the current knowledge and practices in the field, and informed by many successful state-led innovations.

Because almost three-fourths of child support payments are collected by employers through income withholding, this rule standardizes and streamlines payment processing so that employers are not unduly burdened. The Final Rule also removes outdated barriers to electronic communication and document management, by updating existing child support regulations, which often limited methods of storing or communicating information to a written or paper format. Some of the existing rules that are amended by these updates are designed to do the following:

- Set accurate child support obligations based on the noncustodial parents' ability to pay
- Increase consistent, on-time payments to families
- Move nonpaying cases to paying status
- Increase the number of noncustodial parents supporting their children
- Improve child support collection rates
- Reduce the accumulation of unpaid and uncollectible child support arrearages, and,
- Incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices.

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.

Judicial Council of California was required through the passage of AB 207 (Committee on Budget), Chapter 573, Statutes of 2022, to meet and confer with DCSS regarding child support. AB 207 required JCC and DCSS to each submit separate reports to the Assembly Committee on Budget, the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Judiciary, and the Senate Judiciary Committee on what additional legislative changes are required to bring California into compliance with current federal child support regulations. JCC's report made recommendations regarding what amendments to the Family Code are necessary to bring California into compliance with the federal regulations, taking into account the findings and recommendations made in recent guideline study.

As noted by JCC, this statutorily required process and the resulting proposal did not go through the invitation-to comment process, as public review was not required by statute.

The overriding principal of the Final Rule is that child support orders must be based on the individual circumstances of the obligor parent. This review provides a basis for the Legislature to

periodically reassess California's child support guidelines and evaluate its impact on children and families.

Author's Statement: According to the Author, "[This bill] 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."

Need for this bill: The provisions of this bill are seeking to conform California child support law to federal regulations. This bill will bring California into compliance with the Final Rule by addressing the recommendations identified in the JCC report. Although the bill makes many revisions, most of these modifications are fairly non-controversial changes intended to update the child support formula to better reflect a noncustodial parent's ability to meet their obligations. The several changes can be categorized in four general areas:

First, as required by federal law, the bill deletes an existing law provision authorizing child support orders on expedited grounds.

Second, the bill updates California's current child support formula – which was first developed in 1992 – to better reflect current economic realities. For example, the bill updates income bands in order to reflect the inflationary changes that have taken place since 1992 when the formula was developed.

Third, the bill makes changes as to what qualifies as a source of parental income and how support may be calculated when a parent's actual income is unknown. This includes modifying current procedures by which an LCSA will calculate a support level when the suit for child support is filed by an LCSA.

Fourth, the bill modifies the procedures for so-called "set aside" provisions when an order is entered by default. In general, the changes require the LCSA and the courts to conduct a more thorough investigation into the obligor's actual economic situation for the purpose of setting more realistic and workable orders.

Equity Implications: As noted by the Legislative Analyst Office (LAO), in federal fiscal year 2020, about 75% of child support cases generally reflected families that currently or formerly received cash aid from the California Work Opportunity and Responsibility to Kids (CalWORKs) program. Under federal law, when a parent applies for CalWORKs and is not living with the other parent, they generally are required to open a child support case and sign over a portion of their child support payments to the state. This process of retaining the child support as reimbursement for CalWORKs is referred to as CalWORKs recoupment. Data show that at least 175,000 low-income families in California are eligible for only a portion of child support because they also receive public assistance.

Child support impacts many vulnerable communities, including women, Black, Indigenous, Latino and Asian populations, individuals experiencing poverty, and populations who have been incarcerated. This disproportionality is caused by multiple factors, and exacerbated by systems and structures designed to create and reinforce long-standing inequities. The final report issued by the California Reparations Task Force states that although the Black population in California stands at less than 7%, they represent around 18% of the parents who owe child support debt. Our child support system greatly and disproportionately impacts these groups, so helping to

update our laws to conform to the federal rule will help benefit these vulnerable populations to make sure more of the money paid for child support directly benefits the families and children who they are intended to benefit in the first place.

Double referral: This bill passed out of the Assembly Judiciary Committee on June 13, 2023, with an 11-0 vote.

RELATED AND PRIOR LEGISLATION:

AB 1755 (Committee on Judiciary Committee) of the current legislative session, is identical to this bill and serves as the Assembly counterpart. *AB 1755 is pending before the Senate Appropriations Committee.*

AB 1148 (Bonta) of the current legislative session, 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 set to be heard by the Senate Human Services Committee on July 13, 2023.*

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

AB 2325 (Carrillo), Chapter 217, Statutes 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Institute
Coalition of California Welfare Rights Organizations

Opposition

None on file

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