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AB-1148 Child support suspension. (2023-2024)

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Assembly Bill No. 1148

CHAPTER 565

An act to amend Section 4007.5 of the Family Code, relating to child support.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1148, Bonta. Child support suspension.

Existing law suspends, by operation of law, a money judgment or order for support of a child for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized unless the person owing support has the means to pay while incarcerated or involuntarily institutionalized. Under existing law, the obligation resumes on the first day of the first full month after the release of the person owing support in the amount previously ordered.

This bill would instead require the child support obligation to resume on the first day of the 10th month after the release of the person from incarceration or involuntary institutionalization for persons who are released on or after January 1, 2024. The bill would authorize the person to whom the support is owed or the local child support agency to seek a court order reinstating child support obligations at the amount determined by a court.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4007.5 of the Family Code is amended 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 the person owing support has the means to pay support while incarcerated or involuntarily institutionalized.

(b) (1) The child support obligation shall be suspended effective on the first day of the first full month of incarceration or involuntary institutionalization.

(2) For persons owing support who are released from incarceration or involuntary institutionalization on or after January 1, 2024, the child support obligation shall resume on the first day of the 10th month after release from incarceration or involuntary institutionalization of the person owing support.

(3) If the person owing support obtains employment prior to the date set for reinstatement, the person to whom the support is owed or the local child support agency may seek a court order reinstating child support obligations at the amount determined by the court pursuant to Article 2 (commencing with Section 4050).

(4) This section does not preclude a person owing support or the local child support agency from seeking a modification of the child support order pursuant to Section 3651, based on a change in circumstances or any 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, to the extent known to the agency, the person owing support does not have the means to pay support while incarcerated or involuntarily institutionalized.

(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 a federal or 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 any child support obligation that accrues on or after the enactment of this section regardless of when the child support order was established.

(g) The Department of Child Support Services shall, by July 1, 2023, and in consultation with the Judicial Council, develop forms to implement this section.

(h) On or before January 1, 2026, the Department of Child Support Services, in consultation with 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) It is the intent of the Legislature to ensure qualified persons are provided the support suspension by operation of law for qualified periods of incarceration or involuntary institutionalization that existed during the operative terms of the earlier versions of this statute regardless of whether the judicial or administrative determination of arrears is made before or after the repeal of the statute, if the earlier version of the statute provided for the money judgment or order for support to be suspended by operation of law. This subdivision is declarative of existing law.