

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



February 10, 2021

CSSP LETTER: 21-01

ALL IV-D DIRECTORS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

<u>Reason for this Transmittal</u>
<input checked="" type="checkbox"/> State Law, Regulation and/or Change
<input type="checkbox"/> Federal Law, Regulation Change
<input type="checkbox"/> Court Order or Settlement Change
<input type="checkbox"/> Clarification requested by One or More Counties
<input type="checkbox"/> Initiated by DCSS

SUBJECT: ASSEMBLY BILL 2325 – REENACTMENT OF FAMILY CODE SECTION 4007.5 – INCARCERATED PARENT ORDERED TO PAY SUPPORT

REFERENCE: Family Code (FC) Section 4007.5, FC Section 6211, FC Section 6320, Title 22 California Code of Regulations Section 115530(a)(1), CSSI Letter 20-01

PURPOSE: The purpose of this letter is to communicate statewide policy to local child support agencies (LCSAs) regarding the reenactment of FC Section 4007.5. This letter addresses the following:

- Legislative Background
- Reenacted provisions of FC Section 4007.5
- What to do when a parent ordered to pay support (PPS) has been incarcerated or involuntarily institutionalized
- Required forms
- Procedures and training

POLICY: It is the California Department of Child Support Services' (DCSS') policy that LCSAs will administratively adjust, when appropriate, child support orders which are suspended by operation of law under FC Section 4007.5.

BACKGROUND: Senate Bill 1355 (Wright, Chapter 495, Statutes of 2010) added Section 4007.5 to the FC effective July 1, 2011 with a sunset date of July 1, 2015. The provisions of the original Section 4007.5 are no longer in effect.

Assembly Bill (AB) 610 (Jones-Sawyer, Chapter 629, Statutes of 2015) was signed into law October 8, 2015 resulting in completely new provisions for FC Section 4007.5. This statute was later repealed by its own terms on January 1, 2020.

AB 2325 (Carrillo, Chapter 217, Statutes of 2020) was signed into law September 28, 2020. The law reenacts the previous provisions of FC Section 4007.5, effective January 1, 2021. This statute will be repealed on January 1, 2023 unless a statute is enacted before January 1, 2023 which deletes or extends that date.

ACTION: Effective January 1, 2021, LCSAs are to adhere to the guidance and directives that follow:

Summary of FC Section 4007.5

According to FC Section 4007.5(e)(1), incarceration or involuntary institutionalization includes, but is not limited to, involuntary confinement to a state prison, county jail, juvenile facility, or mental health facility.

The child support obligation will be suspended by operation of law when the following conditions are met:

- A qualifying order is issued or modified on or after January 1, 2021.
- The PPS has been incarcerated or involuntarily institutionalized for more than 90 consecutive days prior to the suspension.
- The period of incarceration or involuntary institutionalization may include a timeframe before and/or after the date the order was issued or modified; however, suspension may only occur after the date the qualifying order was issued or modified.

The prior child support obligation resumes on the first day of the first full month after release.

FC Section 4007.5(e)(2) states that “suspend” means that the payment due on the current child support order, an arrears payment on a preexisting child support arrears balance, or any 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 PPS is incarcerated or involuntarily institutionalized.

Suspension Exceptions

Per FC Sections 4007.5(a)(1) and (a)(2), child support obligations shall not be suspended if any of the following exclusions exist:

- The PPS:
 - Has the means to pay child support while incarcerated or involuntarily institutionalized.

- Is incarcerated or involuntarily institutionalized for domestic violence, as defined in FC Section 6211, against the supported party and/or the supported child(ren).
- Is incarcerated or involuntarily institutionalized for an offense that could be enjoined by a protective order under FC Section 6320.
- Is incarcerated or involuntarily institutionalized for failure to comply with the child support order.

LCSAs shall use their best efforts to ascertain whether the PPS is incarcerated or involuntarily institutionalized for a criminal offense that disqualifies suspension of a child support obligation pursuant to FC Section 4007.5. LCSAs should take the necessary steps to correct any accounting error if it is later discovered that the PPS's reason for incarceration precluded the adjustment.

Adjustments and Order Modifications

When a PPS has been incarcerated or involuntarily institutionalized, LCSAs must administratively adjust the child support accounts and/or modify the court order(s).

Administrative Adjustment

LCSAs may administratively adjust child support accounts in accordance with FC Section 4007.5 provided the LCSA first sends notice of the intended adjustment to both the PPS and person ordered to receive support. This type of administrative relief can be provided any time after the initial 90 days of incarceration or involuntary institutionalization, or after the PPS's release date. The child support obligation suspends as of the first day of the first full month following incarceration or involuntary institutionalization. Charging instructions may only be adjusted as of the first day of the first full month after the PPS's confinement date and should not be prorated.

Before proceeding to administratively adjust child support accounts, LCSAs must verify:

- The order was issued or modified on or after January 1, 2021.
- The period of confinement has lasted more than 90 consecutive days and the qualifying event has occurred prior to suspension.
- There is no evidence to support an exclusion pursuant to FC Sections 4007.5(a)(1) and (a)(2).
- The LCSA has sent the notices required by FC Section 4007.5(c)(1).

- Neither party has objected to the administrative adjustment of the child support account within 30 days of receipt of the notice.

If either party objects to the proposed administrative adjustment of the child support account, the LCSA must file a motion with the court. LCSAs may not proceed with the administrative adjustment of the child support account without court approval.

Due to the statute's sunset provision, LCSAs may no longer administratively adjust child support accounts beginning January 1, 2023, unless a later enacted law is passed that would delete or extend the sunset. As such, any administrative adjustment action must be completed in its entirety prior to January 1, 2023. The prior order must be reinstated upon the statute's sunset on January 1, 2023.

Support Order Establishment and Modification

Existing review and adjustment regulations regarding child support order modifications under Title 22, California Code of Regulations Sections 115530(a)(1) and (a)(5) are still in effect, regardless of the child support order issuance date or modification date. Pursuant to FC Section 4007.5(b), "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 any other appropriate reason."

If there is no evidence of support potential when the PPS is incarcerated or involuntarily institutionalized, LCSAs may ask the court to establish a zero-dollar order:

- At the time the obligation is initially set, or
- When LCSAs review the case and determine that the order should be modified.

If there is evidence the PPS has some ability to pay a child support obligation:

- A monetary order may be established, or
- The order may be modified to the appropriate dollar amount.

Standard Order Attachments

As of January 1, 2021:

- New LCSA pleadings that include standard order attachment language related to incarcerated or involuntarily institutionalized PPSs may not conflict with FC Section 4007.5, therefore they must state that the provisions are effective only upon the sunset of the current version of FC Section 4007.5.

- Court orders containing springing order language issued prior to January 1, 2021 are valid and may remain in place.

Forms and Reporting Requirement

DCSS and the Judicial Council of California (JCC) have developed the forms necessary for implementation of FC Section 4007.5. A request for necessary system changes, including implementing all forms in the Child Support Enforcement system, has been submitted. FC Section 4007.5(h) requires DCSS and JCC to evaluate the effectiveness of the administrative process and submit a report to the Legislature on or before January 1, 2022. System changes to provide data to support the mandated reporting requirements have also been requested.

Child Support Orders Issued or Modified Before January 1, 2021

FC Section 4007.5 does not apply to orders modified or established before January 1, 2021. These child support obligations are not suspended by operation of law. Absent a standard order attachment or court orders containing springing order language, LCSAs may not administratively adjust child support accounts pursuant to this statute. Pursuant to CSSI Letter 20-01, the LCSA should file a motion for determination of arrears as the court is the appropriate entity to determine whether an account adjustment should be made under this new version of FC Section 4007.5 or a prior version of the statute.

CONTACT: If you have any questions or concerns regarding this matter, please contact Allen Alexander at (916) 464-5883.

Sincerely,

o/s

BRIAN HOCKING
Deputy Director
Child Support Services Division