

Query: Are ex parte requests for TROs to freeze a retirement account pending the issuance of a QDRO for child support arrears subject to the 21/25 day time limit for hearing per Family Code section 240 et seq.?

Statutes

Family Code § 240:

This part applies where a temporary restraining order, including a protective order as defined in Section 6218, is issued under any of the following provisions:

- (a) Article 2 (commencing with Section 2045) of Chapter 4 of Part 1 of Division 6 (dissolution of marriage, nullity of marriage, or legal separation of the parties).
- (b) Article 3 (commencing with Section 4620) of Chapter 3 of Part 5 of Division 9 (deposit of assets to secure future child support payments).
- (c) Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 (Domestic Violence Prevention Act), other than an order under Section 6322.5.
- (d) Article 2 (commencing with Section 7710) of Chapter 6 of Part 3 of Division 12 (Uniform Parentage Act).

Family Code § 242:

- (a) Within 21 days, or, if good cause appears to the court, 25 days from the date that a temporary restraining order is granted or denied, a hearing shall be held on the petition. If no request for a temporary restraining order is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days from the date that the petition is filed.
- (b) If a hearing is not held within the time provided in subdivision (a), the court may nonetheless hear the matter, but the temporary restraining order shall no longer be enforceable unless it is extended under Section 245.

Family Code § 4620 (emphasis added):

- (a) During the pendency of a proceeding under this chapter, upon the application of either party in the manner provided by Part 4 (commencing with Section 240) of Division 2, the court may, without a hearing, issue ex parte orders restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring the party to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.
- (b) The matter shall be made returnable not later than 20 days, or if good cause appears to the court, 25 days from the date of the order at which time the ex parte order shall expire.
- (c) The court, at the hearing, shall determine for which property the obligor-parent shall be required to report extraordinary expenditures and shall specify what is deemed an extraordinary expenditure for purposes of this subdivision.
- (d) An order issued pursuant to this section after the hearing shall state on its face the date of expiration of the order, which shall expire in one year or upon deposit of assets or money pursuant to Article 2 (commencing with Section 4610), whichever first occurs.

§ 4620 is found in Division 9 Support (Pts. 1 — 6), Part 5 Enforcement of Support Orders (Chs. 1 — 9), Chapter 3 Deposit of Assets to Secure Future Child Support Payments (Arts. 1 — 5), Article 3 Ex Parte Restraining Orders (§ 4620)

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

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



July 31, 2019

CSSP LETTER: 19-07

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

SUBJECT: ADULT DISABLED CHILDREN

REFERENCE: OCSE AT-99-04 "Case Closure Criteria Final Rule, 45 CFR Part 303",
 and Family Code (FC) section 3910.

PURPOSE: This letter provides policy and direction to local child support agencies (LCSAs) regarding case opening, establishment, and enforcement of child support orders for adult disabled children.

POLICY: It is the Department of Child Support Services' policy that Title IV-D services must be provided for an adult disabled child if the child's disability is verified to have occurred prior to the age of majority, the child is incapacitated and unable to earn a living, and without sufficient means.

BACKGROUND: FC section 3910 provides the duty for parents to support an adult disabled child.

ACTION: LCSAs shall follow these directions when handling adult disabled child cases.

Establishment: Before opening a case the LCSA shall request that the applicant provide documentation to verify the child's disability occurred prior to the age of majority, the child is incapacitated and unable to earn a living, and without sufficient means. This documentation may be provided in the form of, but is not limited to: a court finding, disability benefit assessments, medical records, or special educational need assessments. LCSAs must have this documentation before filing a motion with the court and providing IV-D services.

If a claim of disability in an open child support case is investigated, evaluated, and determined to have sufficient grounds that necessitate the filing of a motion, the LCSA shall file the motion to extend support under FC section 3910. Obtaining a court finding as to whether the disability occurred prior to the age of majority will prevent LCSAs from having to investigate the claim, if the parent requests child support after the age of majority.

Reason for this Transmittal

- State Law, Regulation and/or Change
- Federal Law, Regulation Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

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Enforcement: If an applicant has obtained a child support order under FC section 3910 and needs enforcement services from the LCSA, they must continue to enforce the order past the age of majority. In order to provide these services, the LCSA must:

- Verify that the order states the disability occurred prior to the age of majority; or
- Request that the applicant provide documentation to verify the disability, as outlined above, occurred prior to the age of majority if the order does not address the disability.

Current spousal support orders must be enforced as long as the current child support obligation is also being enforced and the child(ren) lives with the parent who is owed support.

These cases are eligible for federal financial participation and should receive the full range of child support services. Case records should reflect the rationale for providing IV-D services and include all relevant documentation.

CONTACT: If you have any questions or concerns regarding this matter, please contact the Policy and Program Branch at (916) 464-5883.

Sincerely,

o/s

VICKIE K. CONTRERAS
Deputy Director
Child Support Services Division



FAMILY CODE - FAM

DIVISION 12. PARENT AND CHILD RELATIONSHIP [7500 - 7961] (*Division 12 enacted by Stats. 1992, Ch. 162, Sec. 10.*)

PART 3. UNIFORM PARENTAGE ACT [7600 - 7730] (*Part 3 enacted by Stats. 1992, Ch. 162, Sec. 10.*)

CHAPTER 4. Determination of Parent and Child Relationship [7630 - 7650] (*Chapter 4 enacted by Stats. 1992, Ch. 162, Sec. 10.*)

ARTICLE 1. Determination of Parent and Child Relationship [7630 - 7644] (*Heading of Article 1 amended by Stats. 2018, Ch. 876, Sec. 50.*)

7643. (a) Notwithstanding any other law concerning public hearings and records, a hearing or trial held under this part may be held in closed court without admittance of any person other than those necessary to the action or proceeding. Except as provided in subdivision (b), all papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in a public agency or elsewhere, are subject to inspection and copying only in exceptional cases upon an order of the court for good cause shown.

(b) (1) Papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection and copying by the parties to the action, their attorneys, and by agents acting pursuant to written authorization from the parties to the action or their attorneys. An attorney shall obtain the consent of the party to the action prior to authorizing an agent to inspect and copy the permanent record. An attorney shall also state on the written authorization that he or she has obtained the consent of the party to authorize an agent to inspect and copy the permanent record.

(2) For purposes of establishing parentage and establishing and enforcing child support orders, papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection and copying by any local child support agency, as defined in subdivision (h) of Section 17000.

(Amended by Stats. 2018, Ch. 504, Sec. 4. (AB 3248) Effective January 1, 2019.)



2019 California Rules of Court

Rule 2.540. Application and scope

(a) Applicability to government entities

The rules in this article provide for remote access to electronic records by government entities described in (b). The access allowed under these rules is in addition to any access these entities or authorized persons working for such entities may have under the rules in articles 2 and 3.

(b) Level of remote access

- (1) A court may provide authorized persons from government entities with remote access to electronic records as follows:
 - (A) Office of the Attorney General: criminal electronic records and juvenile justice electronic records.
 - (B) California Department of Child Support Services: family electronic records, child welfare electronic records, and parentage electronic records.
 - (C) Office of a district attorney: criminal electronic records and juvenile justice electronic records.
 - (D) Office of a public defender: criminal electronic records and juvenile justice electronic records.
 - (E) Office of a county counsel: criminal electronic records, mental health electronic records, child welfare electronic records, and probate electronic records.
 - (F) Office of a city attorney: criminal electronic records, juvenile justice electronic records, and child welfare electronic records.
 - (G) County department of probation: criminal electronic records, juvenile justice electronic records, and child welfare electronic records.
 - (H) County sheriff's department: criminal electronic records and juvenile justice electronic records.
 - (I) Local police department: criminal electronic records and juvenile justice electronic records.
 - (J) Local child support agency: family electronic records, child welfare electronic records, and parentage electronic records.
 - (K) County child welfare agency: child welfare electronic records.
 - (L) County public guardian: criminal electronic records, mental health electronic records, and probate electronic records.
 - (M) County agency designated by the board of supervisors to provide conservatorship investigation under chapter 3 of the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5350-5372): criminal electronic records, mental health electronic records, and probate electronic records.
 - (N) Federally recognized Indian tribe (including any reservation, department, subdivision, or court of the tribe) with concurrent jurisdiction: child welfare electronic records, family electronic records, juvenile justice electronic records, and probate electronic records.
 - (O) For good cause, a court may grant remote access to electronic records in particular case types to government entities beyond those listed in (b)(1)(A)-(N). For purposes of this rule, "good cause" means that the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation.
 - (P) All other remote access for government entities is governed by articles 2 and 3.
- (2) Subject to (b)(1), the court may provide a government entity with the same level of remote access to electronic records as the government entity would be legally entitled to if a person working for the government entity were to appear at the courthouse to inspect court records in that case type. If a court record is confidential by law or sealed by court order and a person working for the government entity would not be legally entitled to inspect the court record at the courthouse, the court may not provide the government entity with remote access to the confidential or sealed electronic record.
- (3) This rule applies only to electronic records. A government entity is not entitled under these rules to remote access to any documents, information, data, or other types of materials created or maintained by the courts that are not electronic records.

(c) Terms of remote access

- (1) Government entities may remotely access electronic records only to perform official duties and for legitimate governmental purposes.
- (2) Any distribution for sale of electronic records obtained remotely under the rules in this article is strictly prohibited.
- (3) All laws governing confidentiality and disclosure of court records apply to electronic records obtained under this article.
- (4) Government entities must comply with any other terms of remote access required by the court.
- (5) Failure to comply with these requirements may result in the imposition of sanctions, including termination of access.

Rule 2.540 adopted effective January 1, 2019.

Advisory Committee Comment

The rule does not restrict courts to providing remote access only to local government entities in the same county in which the court is situated. For example, a court in one county could allow remote access to electronic records by a local child support agency in a different county.

Subdivision (b)(3). As to the applicability of the rules on remote access only to electronic records, see the advisory committee comment to rule 2.501.