

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

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February 9, 2024

CSSI LETTER: 24-02

ALL IV-D DIRECTORS
ALL LCSA POLICY COORDINATORS

SUBJECT: FAMILY CODE SECTION 4007.5 – INCARCERATED PARENT
ORDERED TO PAY SUPPORT

REFERENCE: [Family Code \(FC\) § 4007.5](#), [Title 22 California Code of Regulations \(CCR\) § 115530\(a\)\(1\) & \(a\)\(5\)](#), [Chapter 565, Statutes of 2023 \(Assembly Bill \(AB\) 1148\)](#), [Section 2, Chapter 573, Statutes of 2022 \(AB 207\)](#), [Section 2, Chapter 217, Statutes of 2020 \(AB 2325\)](#), [Chapter 629, Statutes of 2015 \(AB 610\)](#), [Chapter 495, Statutes of 2010 \(SB 1355\)](#), [Child Support Services Informational \(CSSI\) Letter 23-02](#)

PURPOSE: To communicate statewide direction to local child support agencies (LCSAs) regarding Family Code (FC) section 4007.5. This letter addresses the following:

- Legislative background
- New provisions of FC section 4007.5
- What to do when an obligor has been incarcerated or involuntarily institutionalized
- Required forms
- Procedures and training

Beginning in 2010, the Legislature enacted a series of statutory changes to provide relief from current support for parents ordered to pay support (PPS) who are incarcerated or involuntarily institutionalized. This letter provides a full history of these statutory changes, as well as directions for LCSA action to implement the current statute, including the most recent changes effective January 1, 2024. This letter supersedes CSSI Letter 23-02 Family Code Section 4007.5 – Incarcerated Parent Ordered to Pay Support.

BACKGROUND:Legislative Background

Chapter 495, Statutes of 2010 (SB 1355) added section 4007.5 to the FC effective July 1, 2011, with a sunset date of July 1, 2015. SB 1355 applied to the Department of

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

Child Support Services (DCSS) enforced child support orders issued or modified on or after July 1, 2011 and required the PPS to petition the court for the child support order to be suspended for any period exceeding 90 consecutive days in which the PPS was incarcerated or involuntarily institutionalized. The provisions of SB 1355 did not apply if the PPS had the means to pay support and specified that the court could deny PPS relief if they were incarcerated for specified crimes. **The provisions of SB 1355 did not provide relief by operation of law and are no longer in effect.**

Chapter 629, Statutes of 2015 (AB 610) reinstated FC section 4007.5 effective October 8, 2015 due to urgency legislation approval, with a sunset date of January 1, 2020. AB 610 had broadened application in that it applied to any order issued or modified on or after its enactment, whether or not it was being enforced by DCSS. AB 610 specified that the suspension of a child support order occurs **by operation of law** for any period exceeding 90 consecutive days in which a PPS is incarcerated or involuntarily institutionalized and authorized LCSAs to administratively adjust support rather than requiring judicial approval. AB 610 included similar exceptions where PPS has the means to pay support as well as exceptions based on the nature of the crime for which PPS is incarcerated. AB 610 introduced a requirement for LCSAs to provide written notice to PPS and the person ordered to receive support (PRS) prior to administratively adjusting support for relevant periods, and to file a motion if either person objected to adjustment. **The provisions of AB 610 are no longer in effect as the statute sunset according to its initial terms.**

Chapter 217, Statutes of 2020 (AB 2325) reestablished FC section 4007.5 effective January 1, 2021, with a sunset date of January 1, 2023. AB 2325 applied to every money judgment or child support order issued or modified after its enactment. Similar to the last iteration of this statute, suspension for qualifying periods of incarceration or involuntary institutionalization occurs **by operation of law** unless PPS has the means to pay support or was incarcerated for specified crimes. AB 2325 clarifies the child support obligation shall resume on the first day of the first full month after the release of the PPS in the amount previously ordered, and that the PPS may seek modification of the child support order based on a change of circumstances or any other appropriate reason. AB 2325 also contains requirements for LCSAs to provide written notice to the PPS and PRS prior to administratively adjusting support.

Chapter 573, Statutes of 2022 (AB 207) amended FC section 4007.5 effective September 27, 2022 to strike from statute the January 1, 2023 sunset date as well as the exceptions related to the type of crime committed by the PPS. AB 207 also clarifies that a qualifying suspension period begins on the first day of the first full month of incarceration, which is consistent with prior DCSS interpretation. Lastly, AB 207 specifies that any period of incarceration or involuntary institutionalization after its effective date of September 27, 2022 is considered for potential relief, regardless of when the order was issued or last modified, a significant expansion in eligibility for relief.

Chapter 565, Statutes of 2023 (AB 1148), further amended FC section 4007.5 for a PPS who is released from incarceration or involuntary institutionalization after January 1, 2024, to extend the suspension period until the first day of the 10th month after release of the PPS. Further change authorizes a PRS or the LCSA to seek a court order reinstating child support obligations at an amount to be determined by the court pursuant to the child support guidelines if the PPS obtains employment prior to the end of the statutory suspension period.

ACTION: LCSAs are to comply with the following requirements under the current version of FC section 4007.5.

Summary of FC Section 4007.5

Generally, FC section 4007.5 operates to provide relief without judicial intervention from monthly support obligations, both ongoing support and payments toward arrears, for PPS' who are incarcerated or involuntarily institutionalized for more than 90 days and who do not have the means to pay support during that time, regardless of the nature of the crime committed. Pursuant to paragraph (1) of subdivision (e) of FC section 4007.5, incarceration or involuntary institutionalization includes, but is not limited to, involuntary confinement to a federal or state prison, county jail, juvenile facility, or mental health facility. This section applies only to California child support orders that accrue on or after September 27, 2022, regardless of when the child support order was established or last modified. Refer to the Statewide Procedures Manual (SPM) under the 3000 Review and Adjustment - Incarceration or Involuntary Institutionalization Administrative Adjustment section for more information on incarceration relief for intergovernmental cases.

The child support obligation is suspended by operation of law as of the first day of the first full month of incarceration or involuntary institutionalization when all the following conditions are met:

- The PPS has been incarcerated or involuntarily institutionalized for more than 90 consecutive days prior to the suspension.
- To the extent known to the agency, the PPS does not have the means to pay support while incarcerated or involuntarily institutionalized.

For periods of incarceration ending on or after January 1, 2024, the prior child support obligation resumes on the first day of the 10th month after the release of the PPS in the amount previously ordered by the court. If the PPS obtains employment prior to the first day of the 10th month or there is otherwise a change in circumstances, the PRS or the LCSA may seek a court order reinstating child support obligations at an amount to be determined by the court pursuant to the child support guidelines. See *FC 4007.5(b)(3) and (4)*. The effective date for the requested modification should be no earlier than the

date the motion is filed pursuant to the retroactive modification limitations in FC section 3603.

Suspension of Support Obligations

Pursuant to paragraph (2) of subdivision (e) of FC section 4007.5, “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). The suspension will apply for the period of relief specified in FC section 4007.5, subd. (b).

Arrears balances accruing before a qualifying period of incarceration remain enforceable using a limited number of available enforcement resources, including intercepts, as described in the Statewide Procedures Manual, under the *3000 Review and Adjustment – Incarceration or Involuntary Institutionalization Administrative Adjustment* section. However, any monthly payment toward the arrears balances which accrued before the qualifying period of incarceration, whether a court-ordered or an administratively set monthly arrears payment, must be suspended. Interest on arrearages that accrued prior to an incarceration or institutionalization period that qualifies for relief, however, will continue to accrue.

PPS Released Prior to January 1, 2024

Pursuant to the express terms of AB 1148, if the PPS was released from incarceration prior to January 1, 2024, the obligation shall resume on the first day of the first full month after release of the PPS in the amount previously ordered. *See reference to AB 2325 under the Legislative Background section above.*

Suspension Exceptions

Pursuant to subdivisions (a) and (c) of FC section 4007.5, child support obligations shall not be suspended if the PPS, to the extent known, has the means to pay child support while incarcerated or involuntarily institutionalized. LCSAs should keep in mind that a PPS who has the means to pay an amount of support that is different than the amount previously ordered may nevertheless be entitled to a modification based on the income and assets available during incarceration or involuntary institutionalization. When suspending support that accrues after September 27, 2022, FC section 4007.5 no longer excludes participants incarcerated for domestic violence against the PRS or the child or for failure to comply with a court order to pay child support.

LCSAs shall use their best efforts to determine whether the PPS can pay their child support obligation while incarcerated or involuntarily institutionalized. If it is later

discovered that the PPS had the ability to pay support during their incarceration or involuntary institutionalization, LCSAs may file a motion with the court to determine relief.

Enforcement Suppressions

Enforcement actions intended to collect on monthly current obligations and court ordered administratively set monthly arrears payments on preexisting child support arrears balances must be suppressed. LCSAs shall apply suppressions on the following enforcement tools:

- Income Withholding Orders
- Credit Reporting
- State License Match System
- National Medical Support Notices
- Unemployment Insurance Benefit / Disability Insurance Benefits

Suppressions shall not be placed on enforcement tools intended to intercept lump sum payments (e.g. tax intercepts or real property liens) as these are not precluded by FC section 4007.5. Refer to the SPM, under the *3000 Review and Adjustment - Incarceration or Involuntary Institutionalization Administrative Adjustment* section for more information.

Adjustments and Support Order Modifications

When the statutory requirements are met, LCSAs must administratively adjust the child support accounts and/or request to modify the court order(s). Please refer to the Support Order Establishment and Modification section on page 6 for more information on how the modification process relates to FC section 4007.5 (refer to the (SPM) under the *3000 Review and Adjustment - Incarceration or Involuntary Institutionalization Administrative Adjustment* section for more information).

Administrative Adjustment

To administratively adjust child support accounts in accordance with FC section 4007.5, the LCSA must first send notice of the intended adjustment to both the PPS and PRS. Administrative relief can be provided at any time after the initial 90 consecutive days of incarceration or involuntary institutionalization, or after the PPS's release date if the LCSA is later made aware of the situation. As previously noted, suspension relates back to the first day of the first full month after the PPS's confinement date and should

not be prorated for a partial month. In instances where it is known the incarceration period will last more than 90 days before the 90th day has passed, LCSAs may send notices to participants before the passing of the 90th day.

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

- The period of confinement has lasted, or will last, more than 90 consecutive days, and the qualifying event has occurred prior to suspension.
- To the extent known, there is no evidence to support an exclusion pursuant to FC section 4007.5(a) and (c). If it is determined the PPS can pay their support obligation and/or preexisting arrears balance while incarcerated, they do not qualify for relief.
- The LCSA has sent the notices required by FC section 4007.5, subd. (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 to seek to adjust the arrears pursuant to FC section 4007.5, subd. (c)(2). In such instances, LCSAs may not proceed with the adjustment of the child support account without court approval.

FC section 4007.5(i)

In addition to affording relief under its own provisions, FC section 4007.5 also clarifies that PPS is entitled to relief under some, but not all, prior versions of the statute.

Specifically, subdivision (i) of FC section 4007.5, states:

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.

Thus, a PPS who would have qualified for suspension of support under a former version of FC section 4007.5 still qualifies for that suspension, so long as (1) the former version of the statute afforded relief by operation of law, and (2) the statutory requirements then in existence were met.

When determining if relief should be provided under the former versions of FC section 4007.5, for periods when FC section 4007.5 was not in effect, or for a period when relief was not provided by operation of law, LCSAs always have the option to bring the matter to court.

Support Order Establishment and Modification

Existing review and adjustment regulations regarding child support order modifications under Title 22, CCR section 115530(a)(1) and (a)(5) are superseded by the specific relief provided under FC section 4007.5. The intent and the purpose of the regulation is met when relief is provided within the parameters set by the statute.

Pursuant to FC section 4007.5, subd. (b)(4), a PPS can request a modification of their order at any point during their incarceration or involuntary institutionalization period. DCSS is working to better align the regulatory requirements to the relief afforded by the statute.

Relief afforded under FC section 4007.5 extends beyond suspension of the current monthly support amount. Therefore, when an order has been judicially modified to zero based on incarceration, the LCSA shall still send notice to the parties informing them of relief under FC section 4007.5. Refer to the SPM under the *3000 Review and Adjustment – Incarceration or Involuntary Institutionalization Administrative Adjustment* section for more information.

Standard Order Attachments

A standard order attachment with springing order language is one by which the amount payable changes automatically when a specified event happens.

- New LCSA pleadings that include standard order attachment language related to incarcerated or involuntarily institutionalized PPS may not conflict with FC section 4007.5.
- Springing order language from any court order issued before January 1, 2024, but affecting a release from incarceration that occurs on or after January 1, 2024, must be applied only to the extent the language conforms with FC section 4007.5, as amended by AB 1148.
- LCSAs should seek clarification from the court in the event there is any question as to the applicability of springing order language that conflicts with the applicable version of FC section 4007.5.

Forms, Reporting Requirements and Child Support Enforcement (CSE) Automation

FC section 4007.5, subd. (g) requires DCSS and the Judicial Council of California (JCC) to develop the forms necessary to implement FC section 4007.5 by July 1, 2023. LCSAs shall use the following forms:

- DCSS 0733 Notice of Proposed Administrative Adjustment of Child Support Account (Spanish version DCSS 0733SPA)
- DCSS 0734 - Notice of Account Adjustment (Spanish version DCSS 0734SPA)
- DCSS 0735 Notice of Account Reinstatement (Spanish version DCSS-0735SPA)
- DCSS 0736 - Objection to Administrative Adjustment of Child Support Account (Spanish version DCSS-0736SPA)
- DCSS 0737 - Declaration in Support of Notice of Motion

The DCSS 0733 and 0734 forms have been updated to align with FC section 4007.5 as amended by AB 1148. Updated forms are available in California Child Support Central. The updated forms will be incorporated into CSE in an upcoming system release. The updated forms shall be used when the PPS has been incarcerated and will be released on or after January 1, 2024, and child support orders are resuming on the first day of the tenth month after release. Previous form versions will remain accessible to LCSAs and should be sent when the LCSA is informed that the PPS was released from incarceration prior to January 1, 2024.

FC section 4007.5, subd. (h) requires that DCSS, in consultation with the JCC, conduct an evaluation of the effectiveness of the administrative adjustment process and report the result of the review to the California Legislature on or before January 1, 2026.

Statewide Procedures and Training

The Statewide Procedures [3000 Review and Adjustment - Incarceration or Involuntary Institutionalization Administrative Adjustment](#) have been revised to reflect the statutory changes.

The training module found on the [Blackboard Learning Management System](#) titled, "FEM Final Rule 4007.5" will be updated to align with the new provisions.

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CONTACT: If you have any questions or concerns regarding this matter, please contact the Policy and Program Management Section at policy.branch@dcss.ca.gov.

Sincerely,

o/s

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Child Support Services Division