

INCARCERATION

(1) For purposes of this section, the following definitions shall apply:

(A) “Incarcerated or involuntarily institutionalized” includes, but is not limited to, involuntary confinement to the 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.

(B) “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 no less than the minimum child support allowed by law.

(2) Incarceration or involuntarily institutionalization shall be considered as a substantial change of circumstances to warrant a child support order to be reviewed and, if appropriate adjusted based on the noncustodial parent’s ability to pay. All cases of incarceration or involuntarily institutionalization of the obligor qualify for automatic finding of a substantial change in circumstances and a review hearing shall be conducted. Incarceration or involuntary institutionalization shall not be treated as voluntary unemployment and income shall not be imputed to the person who is incarcerated or involuntarily institutionalized.

(3) If child support is either suspended or reduced during incarceration or involuntary institutionalization, the money judgment or child support obligation shall resume on the first day of the first full month after the release of the person owing support in the amount previously ordered, and that amount is presumed to be appropriate. This section does not preclude a person owing support from seeking a modification of the child support order based on a change in circumstances or other appropriate reason.

(4) (A) 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 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 (1) if all of the following occurs:

(1) The agency verifies that arrears and interest were accrued in violation of this section.

(2) The agency verifies that the person owing support does not have the means to pay support while incarcerated or involuntarily institutionalized.

(3) 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.

(B) 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.

(C) 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.

(5) 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.

(6) This section applies to every money judgment or child support order issued or modified on or after the enactment of this section.