



## JUDICIAL COUNCIL OF CALIFORNIA

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# CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-21-04

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**Title**

Family Code Section 4007.5: An Evaluation of the Effectiveness of the Administrative Adjustment Process

**Action Requested**

VOTING MEMBERS ONLY: Submit votes by responding to the transmittal e-mail.

**Rules, Forms, Standards, or Statutes Affected**

N/A

**Please Respond By**

December 16, 2021

**Recommended by**

Hon. Marla O. Anderson, Chair  
Legislation Committee

**Date of Report**

December 9, 2021

Hon. Stephanie E. Hulse, Co-Chair  
Hon. Amy M. Pellman, Co-Chair  
Family and Juvenile Law Advisory Committee

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*California Rules of Court, rules 10.5(h) and 10.13(d) allow the Judicial Council to act on business between meetings, including urgent matters, by circulating order. This memorandum is not a Judicial Council meeting, circulating orders are conducted via electronic communications. Prior public notice of a proposed circulating order is not required.*

**Executive Summary**

On September 28, 2020, Governor Newsom signed Assembly Bill 2325 (Carrillo; Stats. 2020, ch. 217) into law, reenacting Family Code section 4007.5, which provides that, by operation of law, any money judgment or order for child support is automatically suspended when an obligor is incarcerated or involuntarily institutionalized for more than 90 consecutive days for the period of time the obligor is confined. Additionally, the statute authorizes the local child support agency to adjust account balances administratively accordingly for obligors who qualify for relief, if the agency is involved in the case. Finally, it requires the Department of Child Support Services, in conjunction with the Judicial Council, to conduct an evaluation of the effectiveness of the

administrative adjustment process, including a review of the ease of process to the obligor and obligee, the number of cases administratively adjusted, the number of cases adjusted in court, and the number of cases not adjusted; make recommendations; and provide a report to the Assembly Judiciary Committee and Senate Judiciary Committee in fulfillment of this mandate. Attached with this memorandum is the report referenced herein.

### **Recommendation**

The Legislation Committee and the Administrative Director recommend that the Judicial Council receive and approve the following sections of the joint report to the Legislature:

1. Judicial Council of California: Focus Group and Survey Results (pages 15–20);
2. Recommendation 1, Family Code section 4007.5(i): Remove the sunset provision or add a savings clause (page 22); and
3. Judicial Council of California Recommended Changes (page 23-24).

Recognizing that the report, as described in Family Code section 4007.5, is effectively a collaborative effort between the California Department of Child Support Services (DCSS) and the Judicial Council, it is important to note that the sections of the report other than those identified above reflect policy analyses and recommendations for child support collections, calculations and adjustments, and are, thus, outside the purview of the Judicial Council.

The complete report to the Legislature is included as Attachment A.

### **Relevant Previous Council Action**

Effective July 1, 2011, the Judicial Council revised several forms in response to Senate Bill 1355 (Wright; Stats. 2010, ch. 495), which originally enacted Family Code section 4007.5 and provided a process for formerly incarcerated or involuntarily institutionalized obligors to petition the court for forgiveness of child support arrears that accrued during their incarceration or involuntary institutionalization. Section 4007.5 contained a sunset date and expired accordingly on June 30, 2015.

Effective January 1, 2017, the Judicial Council revised various forms in response to Assembly Bill 610 (Jones-Sawyer; Stats. 2015, ch. 629), which enacted a new version of section 4007.5 that both revived and expanded the relief previously available to child support obligors. This legislation included both a reporting requirement and a sunset date of January 1, 2020.

On January 1, 2019, DCSS and the Judicial Council jointly submitted a report to the Legislature regarding the effectiveness of the administrative process set forth in section 4007.5 under the requirement in section 4007.5 (see Link A).

Effective January 1, 2020, the Judicial Council again revised multiple forms to remove references to relief formerly available to child support obligors under section 4007.5, as the statute sunsetted effective January 1, 2020.

Effective January 1, 2022, the Judicial Council again revised various forms, in response to Assembly Bill 2325 (Carrillo; Stats. 2020, ch. 217), which reenacted section 4007.5, identical to the prior version, apart from the new effective date and sunset date of January 1, 2023.

### **Analysis/Rationale**

The report evaluates the effectiveness of the administrative process for adjusting child support obligations per section 4007.5 by analyzing case data from DCSS, evaluating survey responses from case workers and attorneys at local child support agencies, and gathering feedback from child support commissioners and family law facilitators throughout the state. Since the adjustment of support obligations under section 4007.5 is an administrative process for cases in which the local child support agency is involved, the court's involvement is limited to those cases in which an obligor has been denied administrative relief by the local child support agency or in which either party objects to the adjustment of child support consistent with the statute.

Information about eligible cases is within the DCSS case management system, requiring the Judicial Council to rely on DCSS to identify which cases are eligible for relief, develop a process to make administrative relief available, and evaluate the effectiveness of providing relief through the administrative process. As detailed in the report, since the implementation of the administrative adjustment process by DCSS, local child support agencies have been adjusting support obligations that have been identified by DCSS to meet the criteria of section 4007.5. However, because the prior version of section 4007.5 was allowed to sunset before being reenacted, it is challenging to measure the impact of this current legislation on qualifying families, as the current version of the statute has been in place for less than one year.

Notwithstanding these logistical issues, the report to the Legislature regarding the effectiveness of the administrative process is required to be submitted no later than January 1, 2022. Judicial Council staff, the Family and Juvenile Law Advisory Committee, and the Legislation Committee have all reviewed this report and the proposed Judicial Council recommendation on an extremely tight schedule in order to present it for council review. As the council will not hold its next regularly scheduled meeting until January 20–21, 2022, Judicial Council of California staff recommends that the council review the report via circulating order to meet the statutory deadline.

While little data is available regarding the effectiveness of the current version of section 4007.5, as the statute is identical to the prior version, which was allowed to sunset January 1, 2020, feedback was received from child support commissioners and family law facilitators regarding the law more broadly. Both groups overwhelmingly agree with the recommendation to eliminate the January 1, 2023, sunset date.

With this feedback in mind, Judicial Council of California staff, the Family and Juvenile Law Advisory Committee, and the Legislation Committee recommend that the council join in the recommendation by DCSS to remove the sunset date from the statute. This will avoid confusion for court users (including self-represented litigants), promote consistency, and increase court efficiencies and access to justice. As to all other recommendations included in the report and recommended by DCSS, Judicial Council staff, the Family and Juvenile Law Advisory Committee, and the Legislation Committee do not recommend that the council take action, as those recommendations reflect policy considerations beyond the purview of the council.

### **Policy implications**

If section 4007.5 is allowed to sunset for a third time, this will create more confusion and potentially inconsistent treatment among child support obligors solely based on the dates of their incarceration or involuntary commitments. For example, due to the law's expiration on January 1, 2020, followed by reenactment one year later, an obligor whose child support order was entered or modified on or after January 1, 2021, is entitled to relief if they qualify under the current statute, whereas an obligor whose order was entered or modified prior to the law's effective date is not entitled to relief, even if they meet the other qualifications of the statute (i.e., incarcerated or involuntarily institutionalized for longer than 90 days).

### **Comments**

As this proposal does not involve funding allocations or changes to rules or forms, it has not circulated for public comment.

### **Alternatives considered**

As stated above, section 4007.5 requires DCSS, in conjunction with the Judicial Council, to conduct an evaluation of the effectiveness of the administrative adjustment process and submit a report to the Legislature. Consequently, no alternatives to submitting the required report were considered.

### **Fiscal and Operational Impacts**

There are no anticipated costs associated with this report. The initial analysis of child support case data was conducted by DCSS, which bore its own costs. Staff from the Judicial Council's AB 1058 Program obtained feedback from program stakeholders and conducted their own analysis.

### **Attachments and Links**

1. Attachment A: *Family Code Section 4007.5: An Evaluation of the Effectiveness of the Administrative Adjustment Process*, at pages 6–37
2. Link A: Judicial Council of Cal., *Report to the Legislature: Evaluation of the Effectiveness of Family Code Section 4007.5* (Feb. 15, 2019), <https://jcc.legistar.com/View.ashx?M=F&ID=7058039&GUID=04D5F382-CC14-4F49-A2B5-9AC6065D9569>

3. Link B: Fam. Code, § 4007.5,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=FAM&sectionNum=4007.5](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=4007.5)
4. Voting instructions, at page 38  
Vote and signature pages, at pages 39–40

Report to the Legislature

**Family Code Section 4007.5:  
An Evaluation of the Effectiveness of the  
Administrative Adjustment Process**

California Department of  
Child Support Services  
and  
Judicial Council of California

December 7, 2021

Submitted by the California Department of Child Support Services and the  
Judicial Council of California for the fulfillment of the requirements of Family Code  
Section 4007.5(h)

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## Executive Summary

Assembly Bill 2325 (Carrillo; Stats. 2020, ch. 217) reestablishes, effective January 1, 2021, through January 1, 2023, a previously enacted program to suspend the obligation to pay child support when a parent ordered to pay support (PPS) is incarcerated or involuntarily institutionalized, as provided by Family Code (FC) section 4007.5 (section 4007.5). Section 4007.5(h) directs the Department of Child Support Services (DCSS) and the Judicial Council of California (Judicial Council) to conduct an evaluation of the administrative adjustment process and report the results of the review to the Assembly Judiciary Committee and Senate Judiciary Committee by January 1, 2022.

This evaluation includes a review of the ease of process to both the obligor and obligee, in addition to an analysis of the number of cases administratively adjusted, the number of cases adjusted in court, and the number of cases not adjusted. Local child support agencies (LCSAs) are permitted to administratively adjust child support account balances to address arrears that have accrued during an obligor's incarceration or institutionalization. The administrative process transitions to a judicial process when either party objects to the LCSA's intent to administratively adjust account balances. Since the effective date of the statute was January 1, 2021, and this report is required to be submitted by January 1, 2022, the data and the cases to be analyzed to measure the effectiveness of the administrative adjustment process are very limited. Further, the statute by its own language has a limited application. Two circumstances must occur simultaneously for a case to qualify for adjustment: (1) the support order must have been issued or modified on or after January 1, 2021; and (2) the PPS must have completed a qualifying period (90 days) of incarceration or involuntary institutionalization after January 1, 2021.

DCSS' review and analysis of the relevant data indicates limited use of the administrative adjustment process under section 4007.5. Rather, there is a stronger reliance on existing review and adjustment regulations. Existing review and adjustment regulations do not require that the LCSA wait a prescribed period of time before acting, only that the change in circumstance be reasonably expected to last 90 days or more.<sup>1</sup> Furthermore, LCSAs will initiate a review and adjustment of the court order when the PPS's release date is known to be after the statute's sunset date. It has been observed that LCSAs typically initiate the administrative adjustment of arrears after the PPS has been released. Given the high number of currently incarcerated parents ordered to pay support, as represented by the number of motions for modification, future

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<sup>1</sup> 22 Cal. Code Regs. § 115510(e)(1)(A).



administrative adjustments are not represented in the data. This may also be attributed to the limited reporting period.

California's child support program is operated at the county level. A network of 47 county and regional LCSAs provide child support services to the general public. DCSS' mission is to promote parental responsibility to enhance the well-being of children by providing child support services to establish parentage and collect child support. This includes a vision that all parents are engaged in supporting their children. In support of this mission and vision, and as a result of the passage of major child support reforms,<sup>2</sup> DCSS contracted with the Urban Institute to study and analyze the amount of child support arrears statewide and to determine the amount that can be collected.<sup>3</sup> This study also recommended the suspension of a child support obligation if it is found that the PPS is incarcerated with no attachable income or assets. Further studies have shown that California's state-owed child support arrears are largely uncollectible, and this is exacerbated when billing an imprisoned parent who has no means of paying support. As research indicates, formerly incarcerated and institutionalized parents must contend with the danger of recidivism, barriers to societal and employment reentry, and mountainous debt that is difficult to overcome.<sup>4</sup>

The addition of section 4007.5 seeks to address the issue concerning uncollectible debt among incarcerated and institutionalized parents, and their efforts to reunify with their children. According to the author of the legislation, the law

ensures a healthy and positive reunification between the noncustodial parent and child. Many noncustodial parents are burdened with shame when they are behind on child support payments and will be less likely to reconnect with their kid(s) because of it. By restoring the statute that expired last year which allowed for the automatic suspension of a child support order of a parent who is incarcerated or held involuntarily more than 90 days,

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<sup>2</sup> Assem. Bill 196 (Kuehl; Stats. 1999, ch. 478); Sen. Bill 542 (Burton; Stats. 1999, ch. 542).

<sup>3</sup> Elaine Sorensen et al., *Examining Child Support Arrears in California: The Collectability Study* (Urban Institute, March 2003).

<sup>4</sup> Jennifer L. Noyes, *Review of Child Support Policies for Incarcerated Payers*, Institute for Research on Poverty, University of Wisconsin–Madison (Dec. 2006).

noncustodial parents will have successful reunification with their children and better reentry into society.<sup>5</sup>

DCSS' review of cases eligible for relief under the current statute indicate that the temporary nature of relief due to the sunset date result in an inefficient use of time and resources for LCSAs, the courts, and the parties to the case. In some cases, this results in both administrative adjustment and judicial modification, doubling the effort rather than reducing bureaucratic burdens. The intermittent and limited operative periods for the section do not adequately serve incarcerated parents and create inconsistencies in the application of the law. This results in confusion at all levels, especially for those parents who do not have knowledge of the law. DCSS and the Judicial Council recommend, at the very least, that the Legislature amend the statute by making the form of relief permanent. Other considerations documented in this report include the following:

- Remove disqualifying factors related to the PPS's criminal offenses;
- Extend timeframe for the resumption of the child support obligation after the PPS's release;
- Reduce the required number of days of incarceration or involuntary institutionalization to less than 90 days (e.g., 60 or 30 days);
- Remove the provision that excludes pre-enactment date child support orders; and
- Improve access to necessary evidence to prove qualification of relief through automation.

## **Background**

### **State Law**

In 2004, DCSS adopted California Code of Regulations, title 22, section 115530. The regulation requires an LCSA to file a motion with the court to modify child support orders to zero dollars when a PPS becomes incarcerated or involuntarily institutionalized and there is no other source of income that can be used to pay support.<sup>6</sup> These review and adjustment regulations remain in effect today, providing LCSAs with added flexibility when assisting incarcerated or involuntarily institutionalized parents ordered to pay support. Under 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." As an example, section 4007.5

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<sup>5</sup> Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 2325, p. 6 (Aug. 26, 2020).

<sup>6</sup> 22 Cal. Code Regs. § 115530(a)(1).

may be applied to allow an LCSA to administratively adjust arrears that have accumulated during qualifying periods of incarceration. The associated order in the previous example could also be modified to zero dollars prior to the PPS's release so that the support obligation does not automatically resume at the prior rate, as the PPS's ability to pay will likely be diminished. DCSS issued Child Support Services Policy (CSSP) Letter 21-01, which outlined these provisions and clarified the state authorities relating to relief available to an incarcerated or involuntarily institutionalized PPS.<sup>7</sup>

Senate Bill (SB) 1355 (Wright; Stats. 2010, ch. 495) was signed into law on September 29, 2010. Section 4007.5 was codified and applied to orders enforced by a local child support agency under title IV-D of the Social Security Act. The support order must have been issued or modified on or after July 1, 2011. This statute enacted a pilot program that differed from its successors in a number of areas. First, the PPS was required to petition the court for relief upon his or her release from prison or jail. The burden was on the PPS to provide justification for the adjustment of arrears accrued while incarcerated. Second, only child support orders being enforced by the LCSA were eligible for relief under this section. Lastly, an exception was given to any incarcerated obligor with the ability to pay while incarcerated or involuntarily institutionalized. The court reserved the right to deny the adjustment of accounts if the PPS is, or was, incarcerated for domestic violence against the support party or child or for failure to comply with an order to pay child support. The child support obligation immediately resumed upon the PPS's release from incarceration or institutionalization. The section was ultimately repealed by its own authority on July 1, 2015. As SB 1355 provided no express savings clause, courts have denied relief to parents seeking adjustment of arrears after its sunset date.

With the passage of Assembly Bill 610 (Jones-Sawyer; Stats. 2015, ch. 629), a new version of section 4007.5 was made effective on October 8, 2015, and was approved as urgency legislation. This version of section 4007.5 was repealed by its own authority on January 1, 2020. The section was recast to include the suspension of a money judgment or order for support, by operation of law, for any period exceeding 90 consecutive days in which the PPS is incarcerated or involuntarily institutionalized. This iteration of section 4007.5 applied to all money judgments and orders for support, as opposed to only those support orders being enforced under title IV-D of the Social Security Act. The exceptions to this law were the same as previously cited in SB 1355. The law also specified that the child support obligation was to be reinstated in the previous amount on the first day of the first month following release of the PPS. This version similarly contained

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<sup>7</sup> Assembly Bill 2325—Reenactment of Family Code § 4007.5—Incarcerated Parent Ordered to Pay Support, CSSP Letter 21-01 (Feb. 10, 2021).

no express savings clause, but as it specifies the relief is available by operation of law, courts are reviewing whether a subsequent adjustment is permissible. There is no appellate precedent resolving that question at this time.

Assembly Bill 1091 (Jones-Sawyer; 2019–2020 Reg. Sess.) would have made the pilot program permanent by removing the repeal date of January 1, 2020. This bill was held on the Assembly Floor, despite passing the Assembly committees without a no vote.

Assembly Bill 2325 (Carrillo; Stats. 2020, ch. 217) reestablishes, until January 1, 2023, the previously enacted program to suspend the obligation to pay child support when the PPS is incarcerated or involuntarily institutionalized, as provided by section 4007.5. The provisions of the current iteration of section 4007.5 mirror its predecessor that was enacted in 2015 (AB 610). Per the bill's author, "By restoring the statute that expired last year, which allowed for the automatic suspension of a child support order of a parent who is incarcerated or held involuntarily more than 90 days, noncustodial parents will have successful reunification with their children and better reentry into society."<sup>8</sup>

In the past, incarceration was not a basis for modification in many states, although California case law has long provided for modification while parents are incarcerated.<sup>9</sup> Courts believed that because incarceration is the result of a willful criminal act, imprisonment and the resulting loss of income were intentional acts not worthy of a review of the child support order. Reexamination of this position has progressed over recent years. Now, many courts hold that incarceration creates a significant change of circumstances that justifies the review and potential modification of the child support order.<sup>10</sup> There are no exceptions to California's general rule (*State of Oregon v. Vargas*). The exceptions cited in statute (section 4007.5(a)(2)) have caused confusion at the local court level, as DCSS has observed that courts have denied a prospective modification because of the crime exception under section 4007.5. In this instance, the administrative adjustment should be denied; however, the request to modify the support order (current support obligation) should still be considered.

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<sup>8</sup> Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 2325, p. 6 (Aug. 26, 2020).

<sup>9</sup> See *State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1123.

<sup>10</sup> See *Mackowiak v. Harris* (Idaho 2009) 204 P.3d 504; *Hopkins v. Stauffer* (Neb. App. 2009) 775 N.W.2d 462; *El Dorado County Dept. of Child Support Servs. v. Nutt* (2008) 167 Cal.App.4th 990.

**Federal Law**

In 2016, the Office of Child Support Enforcement (OCSE) published a Final Rule that made significant changes with regard to incarceration as a basis for modification.<sup>11</sup> OCSE's guiding focus in making the regulatory changes was "the fundamental principle that child support obligations are based on the noncustodial parent's ability to pay."<sup>12</sup> According to the OCSE, the "goal of the final rule revisions is to increase consistent child support payments for children by setting child support orders based on the noncustodial parent's earnings, income, or other evidence of ability to pay, including for incarcerated parents."<sup>13</sup> The Final Rule requires states to address incarceration in three areas related to review and adjustment:

Federal Final Rule	Current State Law
The standard for adequate grounds, otherwise referred to as "minimum change criteria," may not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order. <sup>14</sup>	California does not exclude incarceration as a basis for review and adjustment, however statutes do not specifically direct that incarceration cannot be considered voluntary unemployment.
States may elect in their state plan to initiate a review and adjustment upon learning that a PPS will be incarcerated for more than 180 consecutive calendar days without the need for a specific request. <sup>15</sup> Neither the notice nor a review is required if the state has a	California initiates review and adjustments without the need for a specific request.

<sup>11</sup> Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed.Reg. 93492 (Dec. 20, 2016).

<sup>12</sup> *Id.* at p. 93522.

<sup>13</sup> Office of Child Support Enforcement, Division of Policy and Training, *Modification for Incarcerated Parents* (Jan. 5, 2017), p. 1, [http://www.acf.hhs.gov/sites/default/files/documents/ocse/fem\\_final\\_rule\\_incarceration.pdf](http://www.acf.hhs.gov/sites/default/files/documents/ocse/fem_final_rule_incarceration.pdf).

<sup>14</sup> 45 C.F.R. § 303.8(c) (2019).

<sup>15</sup> *Id.*, § 303.8(b)(2).

Federal Final Rule	Current State Law
comparable law or rule that modifies a child support obligation upon incarceration by operation of state law. <sup>16</sup>	
State child support guidelines must provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders. <sup>17</sup>	Based on existing case law, California's child support guideline does not treat incarceration or involuntary institutionalization as voluntary unemployment.

OCSE, in explaining the regulatory changes, stated that the “collateral consequences of the treatment of incarceration as voluntary unemployment include uncollectible debt, reduced employment, and increased recidivism.”<sup>18</sup> Studies cited by OCSE show that there is a lower likelihood that parents who accumulate debt during periods of incarceration will work and pay support upon release.<sup>19</sup>

### Required Data Elements

The data in this section is inclusive of the period January 1, 2021, through September 28, 2021. An ad hoc query of the Child Support Enforcement System (CSE) was constructed using the following parameters:

Return cases with an open or closed case status that contain:

- Support order(s) filed on or after January 1, 2021; and
- PPS incarceration record(s) indicating confinement for 90 consecutive days or more (inclusive of any period beginning October 1, 2020).

The query requirements established the population to be studied and measured. The query returned 5,342 records that met the above requirements. The results

<sup>16</sup> *Id.*, § 303.8(b)(7)(ii).

<sup>17</sup> *Id.*, § 302.56(c)(3).

<sup>18</sup> 81 Fed.Reg. 93492 (Dec. 20, 2016).

<sup>19</sup> See Jessica Pearson, “Building Debt While Doing Time: Child Support and Incarceration,” 43:1 *Judges’ J.* 5 (Winter 2004); Alexes Harris, Heather Evans, & Katherine Beckett, “Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States,” 115 *Am. J. Sociology* 1753, 1753–1799 (2010).

contained duplicate records, as a PPS may have multiple valid incarceration or institutionalization records in the CSE (one-to-many relationship). After duplicate case entries were removed, 2,635 unique case records remained. However, table 1 below shows outcomes at the participant level (3,334 unique incarceration records). Additional data requirements were established to determine whether an account adjustment and/or suspension occurred. The additional data fields contain:

- A yes/no indicator for title IV-D cases that include charging instruction updates that reference “4007.5” (as required by statewide procedure);
- The presence of an incarceration adjustment selection (values include administrative, court, or no adjustment); and
- A yes/no indicator to indicate the presence of a zero order (\$0) filed on or after January 1, 2021.

**Table 1. Family Code Section 4007.5 Adjustments in 2021—Statewide**

<b>Administrative Adjustment</b>	<b>Court Adjustment</b>	<b>No Adjustment (Motion for Modification)</b>	<b>No Action Taken</b>
14	0	1,657	1,862

### **Data Considerations**

Adjustment totals reflect action taken after the effective date of the law. Review of the data, through September 2021, indicates that 1,862 cases had no apparent action taken as a result of the PPS’s incarceration or institutionalization. A review of a representative sample is detailed later in this report. Also of note is the relatively short reporting period. The reenacted statute requires that four months (90-day incarceration and 30-day notice period) elapse before any action can be taken by the LCSA. With that said, the earliest account adjustment would have occurred in May 2021.

### **Number of Cases Administratively Adjusted**

There were 14 cases that included an administrative adjustment under section 4007.5. For this population, the average length of confinement was 195 days, ranging from 98 to 611 days. This average does not account for five parents ordered to pay support who have not yet been released from incarceration or institutionalization. Current support obligations ranged from as low as \$6 to as high as \$704 per month, with an average of \$271. Total account adjustments per case ranged from \$30 to \$5,632, with an average of \$1,752. Qualifying periods of incarceration or institutionalization ranged from three to eight months, with an average length of confinement of six months. The average length of confinement does not account for the five parents ordered to pay support who

continue to be incarcerated or institutionalized as of the writing of this report. Case-specific data may be found in the appendix.

### **Number of Cases Adjusted by Court**

There were zero cases that included an adjustment authorized by the court. According to section 4007.5(c)(1), either party may object to the LCSA's intent to administratively adjust child support balances. If an objection is made by either party within 30 days of receipt of the LCSA's notice of intent, the LCSA is required to file a motion to have the court render a decision.

### **Number of Cases Submitted to Court for Modification and Number of Cases Not Adjusted**

There were 1,654 cases in which a notice of motion was filed to modify the current child support obligation to zero dollars (\$0). A review of a sample population of cases revealed that the LCSA's motion to modify was due primarily to change in circumstance (the PPS's incarceration or institutionalization) and was often initiated by the LCSA after locating the PPS. There were three cases in which "No Adjustment" was selected as the outcome.

### **Case Sample Review**

A randomized sample of 317 cases (from the "No Adjustment" and "No Action Taken" categories) was reviewed to determine the following:

- The number of administrative or court adjustments that are not accounted for in CSE;
- The number of motions filed to modify the current support obligation to zero dollars, and whether the resulting court order was filed before or after the LCSA became aware of the PPS's incarceration or institutionalization;
- Whether the PPS was disqualified from relief due to the exceptions provided in statute; and
- The number of cases in which the administrative adjustment process has been initiated, but not yet completed.

Case reviewers were given preset outcomes to select. Those outcomes (values defined in the appendix) included:

- Zero Order (Motion for Modification)
- Administrative Adjustment
- Court Adjustment
- Adjustment in Process
- No Action Taken
- Non-Eligible—Ability to Pay
- Non-Eligible—Domestic Violence
- Non-Eligible—Failure to Pay Child Support



### ***Administrative or court adjustments***

The case review exercise returned two additional administrative adjustments and three court adjustments among the 317 cases that were reviewed. These additional findings are not included in table 1. This equates to roughly 1.6 percent of reviewed cases. Only three cases were identified as “Adjustment in Process,” meaning that the LCSA initiated the administrative adjustment process but did not reach an outcome at the time of review.

### ***Motion for modification of order***

The case review exercise showed that 217, or 68 percent, of the reviewed cases include a zero dollar current support obligation. In the majority of instances, a motion to modify the court order due to a change in circumstance occurred after learning that the PPS was incarcerated or institutionalized. This accounts for 184, or 85 percent, of cases in this data subset. The remaining 33 cases include a zero dollar support order that was filed prior to the PPS's incarceration or institutionalization.

### ***Ineligible for relief***

Six case participants were deemed ineligible for relief under section 4007.5. In all instances, this was due to the noncustodial parent's ability to pay while incarcerated or institutionalized. The other exclusionary factors were not observed in the data subset.

### ***No action taken***

Of the 317 cases, case reviewers recorded 61 cases in which no apparent action was taken. This represents 20 percent of the sample population. Nonaction can be attributed to a number of factors, including but not limited to:

- No locate data available for the PPS and/or person ordered to receive support (PRS);
- Unable to confirm incarceration with local or state facilities;
- Incarceration record remains unverified;
- Pending family reunification (foster care); and/or
- Zero order entered during initial establishment of the support order and there are no subsequent support orders.

### ***Other outcomes***

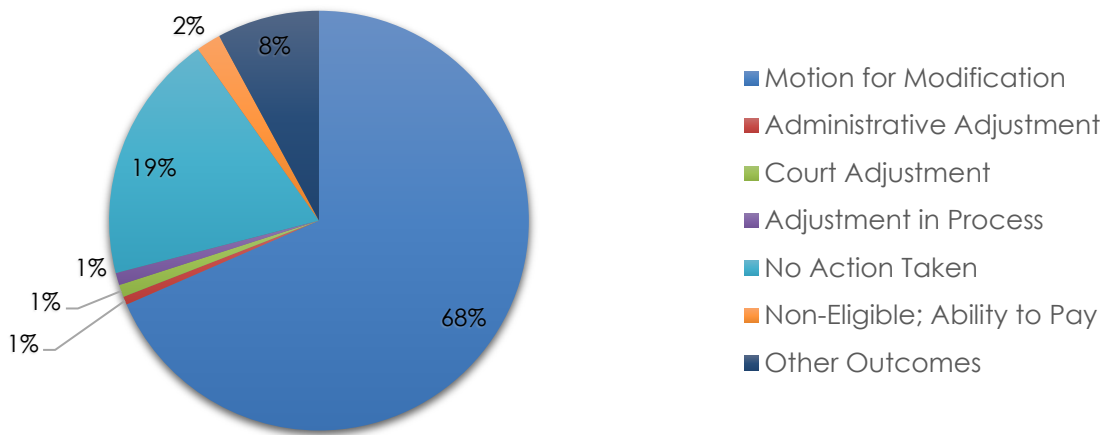
There were 25 cases that did not fall into any of the previously identified subcategories. Case reviewers observed the following factors:

- The incarceration period was nonqualifying;
- Pending legal action (i.e., an amended summons and complaint); and

- The incarceration record was not accurate at the time the ad hoc query was run. In other words, the query indicated that the PPS was incarcerated for 90 consecutive days or more, as that is what is reflected in the CSE. However, the incarceration record was not updated to reflect the PPS's release (prior to the 90-day threshold).

**Figure 1. Case Sample Review**

N = 317



In conclusion, about two-thirds of the sample population included a zero dollar support obligation. To reiterate, the majority (85 percent) of motions were filed after learning of the PPS's incarceration. The remaining cases included motions to modify to zero dollars that were filed prior to the PPS's incarceration or institutionalization. For this reason, the minority of cases did not require an administrative adjustment. A review of the remaining one-third of cases indicated various outcomes, and a very small percentage included an adjustment under section 4007.5.

### **Effectiveness and Ease of Process**

Under section 4007.5(h), an evaluation of the ease of process to both the PRS and the PPS is to be provided. To understand and assess the ease of the existing process, DCSS developed a survey using a five-point Likert scale, ranging from "strongly disagree" to "strongly agree" (presented horizontally). LCSA case managers and attorneys were the respondents for this survey. The survey asked that respondents provide their level of agreement with the provided statement, and asked that respondents refer to their general observations and experiences while guiding the PRS and PPS through the administrative and court process.

A total of 68 individuals completed the survey anonymously. The survey contained 18 statements regarding the administrative adjustment process, all of which were positively connotated. Because the survey is subjective in nature, a limitation of the survey approach is that it relies on self-reported opinions. Nonetheless, the survey results suggest consensus that the process that is relatively easy to navigate for both case participants.

The survey results display the distribution of observations in a horizontal stacked bar chart with neutral splits (see table 2 or refer to the appendix for further detail). In general, the level of agreement for each statement falls within the “neutral” and “agree” range. Statements that received the highest percentage of agreement include:

- The child support obligation resumes on the first day of the first full month after the PPS's release. This was easily understood by the case participants. *(67.6 percent of respondents agree)*
- The 30-day notice requirement provided both case participants with ample time to respond. *(69.2 percent of respondents agree)*
- The LCSA facilitates this process, with very little action required by the case participant. *(75 percent of respondents agree)*

Some of the statements that received the highest percentage of disagreement include:

- The incarcerated PPS often expressed ease, or satisfaction, with the steps required for this process. *(14.7 percent of respondents disagree)*
- In most cases, the case participants understood the factors that determine eligibility *(16.1 percent of respondents disagree)*
- In most cases, case participants expressed ease, or satisfaction, with the effort and time needed to suspend payments and/or administratively adjust accounts. *(17.6 percent of respondents disagree)*

The respondents were given the option to provide a free-form narrative regarding the ease of process for the PPS and PRS. Of the 68 respondents, 21 provided additional comments for consideration by DCSS. Comments regarding the ease of process for the PPS and PPR include:

- “We’ve never had any disagreement from parents with this process since its very clear in our standard orders.”

- “Once a person has been incarcerated, they have a criminal record, and it is more difficult for them to obtain employment. I think that PPSs [should] have at least three months to find employment. Often, people are released from prison with restitution and other debts from their crime and they have no way to pay that either. I understand that child support is a priority. However, I think that PPSs should have more time to get their life together i.e. find housing, a job and resources to restart their life.”
- “Most times, neither party responded to the Notice of Administrative Actions.”
- “I have not received responses from the PPS or PRS thus far.”
- “We have a very limited number of cases that have qualified so far in 2021.”
- “The directions need to be made easier to follow and understand as well as make it clear what to do with historical cases with similar scenarios.”
- “Because of the sunset provisions within the various 4007.5 statutes it created a lot of confusion for case participants regarding their need to file additional requests in order to continue relief or the protection for incarceration periods despite what their orders indicated when statutes sunset.”
- “It might be good to have some type of notice to PRS that tells them that credit will be given if the person meets the criteria, and the mere fact that you believe the person should be paying even though they are incarcerated or involuntarily institutionalized is not a basis to deny the credit.”
- “When explained to most PRS, they may understand the intent, but most don’t agree.”
- “I believe the administrative process is more complicated than the option to file a motion and have the court make an order. It is easier for the customer and easier for the case manager.”
- “The custodial parents that objected didn’t feel it was fair to stop child support due to incarceration for any reason. Other custodial parents however understood the ability to earn issue and once it was explained terms would be entered upon release were ok with the process.”

**Table 2. Survey Results—Ease of Process**

See the appendix for full survey questions and details regarding distribution of responses. This chart illustrates the distribution of responses according to response type.



## **Judicial Council of California: Focus Group and Survey Results**

The AB 1058 Child Support Commissioner and Family Law Facilitator Program is a mandated statewide court program to expedite the processing of child support cases receiving services from the LCSA. The Judicial Council of California administers this program by overseeing budget administration, providing required training for commissioners, facilitators, and other court staff, including certifying commissioners in their use of the DCSS guideline child support calculator, and other administrative duties. Additionally, a cooperative agreement between DCSS and the Judicial Council provides statewide program funding for the courts in exchange for the provision of specified court services that support the federal and state child support program.

As stated above, DCSS and the Judicial Council are to report back to the Assembly Judiciary Committee and the Senate Judiciary Committee various information regarding the overall effectiveness of section 4007.5. In order to gather feedback regarding the effectiveness of the administrative adjustment process, the ease of the administrative process for case participants, and general feedback, the Judicial Council conducted a focus group with family law facilitators from various counties and sent out a survey to all child support commissioners in the state. Due to the limited amount of time the statute has been in place, family law facilitators and child support commissioners have had very few, if any, interactions with families that qualify for relief.

### **Family Law Facilitators Focus Group**

Each county is required to maintain a family law facilitator's office to provide the public with free education, information, and assistance with child support issues. In smaller counties, one facilitator may provide services to multiple counties with a very small number of support staff, whereas in the larger counties, courts may have multiple facilitator offices located throughout the county with numerous attorneys and support staff. The Judicial Council conducted a focus group comprised of attorneys from family law facilitator offices to gain insight into the effectiveness of the administrative adjustment process and the ease of the process for both the obligor and obligee. The eight attorneys who were selected for the focus group represented six counties of varying size (one small, one medium, and four large), degree of urbanization, and location.<sup>20</sup>

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<sup>20</sup> The Judicial Council also sent a short survey to support staff in family law facilitator offices (in two counties) who expressed interest in providing input. Their replies and comments aligned with the feedback received from the family law facilitators focus group as detailed below.

The following questions were asked to initiate discussion and allow participants to provide feedback:

***Have you seen any qualifying cases this year? If so, approximately how many?***

Only one participant reported having one litigant come into their office with a qualifying case. This is not surprising as the law only went into effect on January 1, 2021, and in order to qualify for relief, an obligor must have a child support order that was entered or modified on or after January 1, 2021, and be incarcerated or involuntarily institutionalized for longer than 90 days since the statute's effective date.

***How many qualifying cases did you see during the previous implementation of the law (October 2015 to December 2019)?***

Multiple participants reported regularly seeing litigants with qualifying cases in larger counties during the previous period. However, it was also reported that the fact that the law sunsetted negatively impacted litigants' ability to qualify for relief and that litigants may not know the relief is available again due to the gap. Additionally, it is unsettled if litigants with orders from the previous period are still entitled to relief after December 31, 2019, when the prior version sunsetted.

***Is the administrative process easy to explain?***

There was a split among the participants, with three replying yes and four replying no. It was also reported that the information and assistance provided by facilitators varies from county to county. However, all participants would first direct the litigant to talk to the LCSA to request relief via the administrative process. One participant also stated that in addition to referring the litigant to the LCSA, they would help the litigant prepare a motion to request relief from the court so that the matter could be placed on the court's calendar in case the litigant never followed up with the LCSA.

***How do the litigants react upon learning about the relief available?***

The participants indicated that some obligors visit the office already knowing about the relief available, while others were unaware the relief was available. In both instances, obligors are very motivated to complete the process to get relief.

***Has anyone had to explain how this process works to an obligee?***

None of the participants recalled explaining the process to an obligee (under the current or former version of the statutes) or helping an obligee object after receiving notice from the LCSA that relief would be granted. Interestingly, some participants reported having obligees come into the office to obtain information about the process to assist the obligor (i.e., the other parent).

**Do litigants need to return multiple times to the office to complete the process?**

Participants reported that some obligors only need one visit to the office, while others need to return to the office after gathering proper evidence (e.g., proof of incarceration). It was also reported that litigants do not have the ability to access proof of incarceration online and must instead obtain these records from another source, such as a probation officer.

**How would you describe your office’s working relationship with the LCSA?**

Seven participants indicated their relationship with the LCSA was either “great” or “good,” while one participant stated it was “nonexistent.” The participants who have a positive working relationship with the LSCA reported ease in the transfer of information and a good reciprocal referral system for litigants.

**At what stage of the process are litigants most often seeking assistance?**

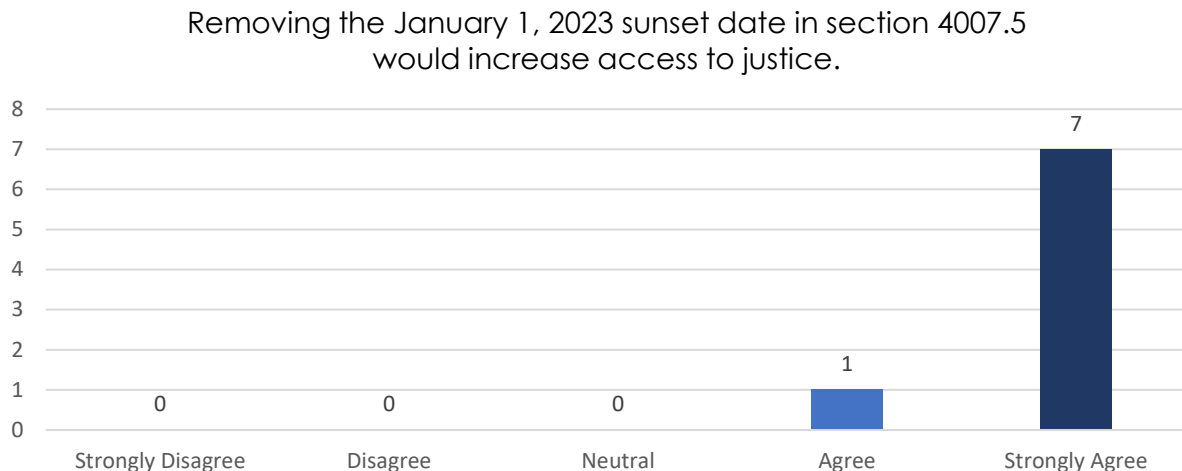
The participants reported that litigants often come to facilitator offices right after release or after they contacted the LCSA if they feel the LCSA did not grant relief for all the months they thought they were entitled to receive relief.

**Is there a particular step that is most difficult for litigants to complete?**

Several participants reported that proof of incarceration is difficult for litigants to obtain and that the process could be improved if DCSS had access to those records. One participant suggested the process would be improved if this information could be transmitted directly to DCSS through an automated process upon an individual becoming incarcerated for longer than 90 days.

**Do you agree or disagree with the following statement? Removing the January 1, 2023, sunset date in section 4007.5 would increase access to justice.**

All participants agreed that removing the sunset date would increase access to justice. Seven participants responded with “strongly agree” and one participant responded “agree.”





**Any recommendations to improve the law?**

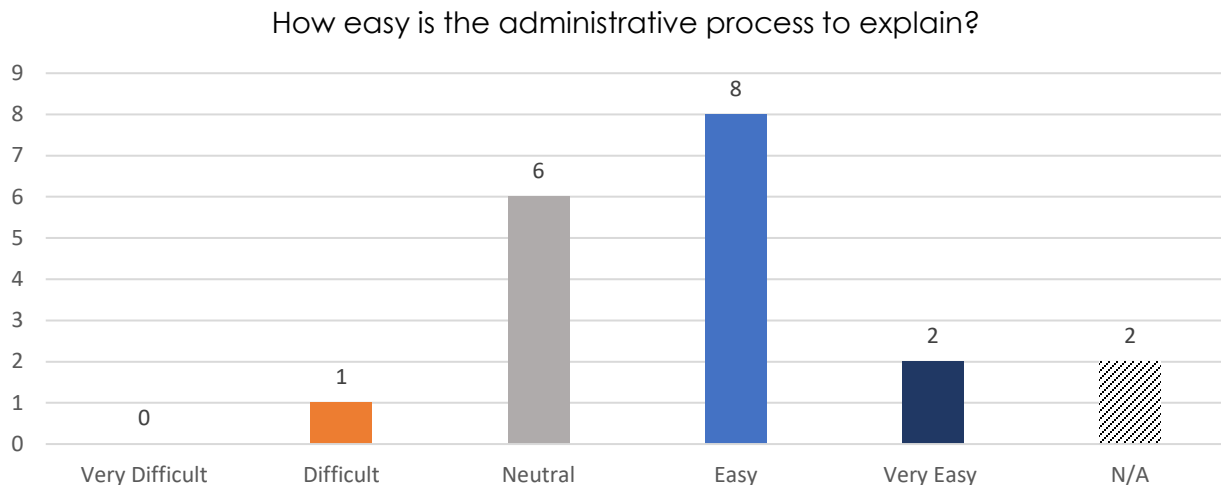
Several participants reiterated that the sunset date should be removed from the statute. Additionally, one participant noted that if the statute is allowed to sunset and is again reenacted, the replacement version should have a savings clause, so that obligors would be entitled to relief even if their order were entered or modified before the effective date of the statute. Another participant indicated that the requirement to be incarcerated or involuntarily institutionalized for longer than 90 days is too long, and perhaps a shorter timeframe (e.g., 30 or 60 days) would be more appropriate, as child support arrears can quickly accumulate. Finally, another participant indicated the requirement for relief could be made more clear and easier to understand for self-represented litigants.

**Child Support Commissioners Survey**

Each county is required to have a child support commissioner to hear title IV-D child support matters. To collect observations and feedback on the administrative process and feedback on cases in which administrative relief was not provided by the LCSA, the Judicial Council sent out an optional survey to all child support commissioners (CSC). Nineteen CSCs responded, representing 16 counties.

**How easy is the administrative process to explain?**

Two CSCs responded with “very easy,” eight responded “easy,” six responded “neutral,” one responded “difficult,” and two responded “N/A.”



**How could the administrative process be improved?**

Two major themes appeared in the responses to this question. First, CSCs noted the difficulty for qualifying obligors to provide proof for periods of incarceration, which means the adjustment may not be made for the entire applicable period

or at all. To combat this issue, one CSC suggested implementing a more automated and proactive approach to assist obligors with receiving relief. For example, if DCSS could collaborate with criminal justice partners and access incarceration data, qualifying obligors would be able to have more reliable access to proof of incarceration and perhaps even be notified that they qualify for the relief.

The second theme is to provide a better explanation and notification of the objection process. One CSC noted, "There appears to be no direction to obligors or obligees as to the proper grounds for objecting, which can lead to unfounded objections, and causing greater workload for both the agency and the courts."

***Are there any other recommendations you have in regard to section 4007.5 in general?***

The most common recommendation from nearly every CSC was the elimination of the sunset date and permanent enactment of the statute. Moreover, CSCs recommended amending the statute to give obligors the opportunity to adjust arrears upon proof of incarceration and to allow the relief to apply retroactively (overriding previous gaps due to the statute sunseting and prior to the enactment of the first version of the statute). Another common suggestion was reducing the period of incarceration to qualify for relief from 90 days to 30. Two CSCs also recommended pushing out the date the prior child support order becomes effective again to the first day of the second or third month after release since the vast majority of obligors returning from a period of incarceration will need more time to begin working and earning an income.

**Observations**

In summary, because the prior version of section 4007.5 was allowed to sunset before being reenacted, it is challenging to measure the impact of this current legislation on qualifying families due to the limited number of qualifying cases. However, the main themes and observations captured from the focus group and surveys are as follows:

- Eliminate the January 1, 2023, sunset date and allow for obligors to obtain relief during the gap periods when prior versions of the statute sunset.
- Amend the date the child support becomes enforceable after release from incarceration or involuntary institutionalization, so child support automatically restarts at a later date (e.g., on the first day of the second or third month after release).
- Reduce the required number of days of incarceration or involuntary institutionalization to less than 90 days (e.g., 60 or 30 days).

- Improve access to necessary evidence to prove qualification of relief through automation (e.g., incarceration records provided automatically to DCSS for qualifying obligors).<sup>21</sup>

## **Accurate and Timely Incarceration Records**

Since the submission of the previous report, DCSS has made strides in improving the transfer of incarceration information from the California Department of Corrections and Rehabilitation (CDCR). Previous procedure required LCSA staff to manually review incarceration information made available via the Strategic Offender Management System (SOMS). Pertinent incarceration data such as the booking date, planned release date, and facility had to be obtained outside of the CSE system and manually entered. An external report containing state incarceration data was provided on a weekly basis and required that the SOMS file be uploaded to a database that matched the CDCR data with case participant data in the CSE system. This was a cumbersome process that often resulted in delay or inaccuracies.

Due to security concerns regarding the quantity of data leaving their department, CDCR decided to cease the transfer of incarceration information in the SOMS format. A CSE system change was implemented in September 2020 to automatically populate the incarceration data fields with matched daily incarceration data received from CDCR. DCSS started with an initial upload of data into the CSE system by matching CDCR offender information with existing title IV-D child support participants. Subsequent incarceration information would be provided by CDCR on a daily basis and uploaded to the CSE system via automation. DCSS also implemented new participant management tasks to alert assigned child support professionals of newly ingested incarceration information from CDCR. A web-access service, currently in development by CDCR, will allow LCSA staff to research individuals who were not accepted into the CSE system as a match through the automated process. The web service is tentatively scheduled to be available in the second quarter of 2022.

The above, in totality, provides DCSS with more timely and accurate incarceration information. This benefits the incarcerated or institutionalized

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<sup>21</sup> This observation aligns with the Final Rule, which encourages states “to actively establish partnerships with federal, state, local, and private prisons to conduct data matches to locate, as well as to educate incarcerated parents about the child support program ... [and] to develop electronic interfaces with corrections institutions to maximize the identification of incarcerated parents and to implement outreach strategies designed to educate incarcerated parents of their rights to request reviews of their support orders, which will help to increase program efficiency.” (Office of Child Support Enforcement, Division of Policy and Training, *Modification for Incarcerated Parents* (Jan. 5, 2017), p. 2,

[http://www.acf.hhs.gov/sites/default/files/documents/ocse/fem\\_final\\_rule\\_incarceration.pdf](http://www.acf.hhs.gov/sites/default/files/documents/ocse/fem_final_rule_incarceration.pdf).)

parent, as the LCSA is able to commit more of their time and resources to address the change in circumstance, rather than expending time and energy on manual data entry.

An issue of concern is the lack of the ability to quickly ascertain whether a PPS is incarcerated in a county jail. The verification process varies by county, but often requires confirmation by use of booking websites or by a direct contact at the county jail itself. The OCSE acknowledged this challenge in the Final Rule:

It is a system certification requirement to have automated interfaces with State sources, when appropriate, feasible, and cost effective, to obtain locate information, and this includes the Department of Corrections. We also encourage States to develop electronic interfaces with child support data being shared with Federal, State, Tribal, and local corrections institutions to maximize identification of incarcerated parents and program efficiency, and to establish practices for serving parents in correctional facilities. Identifying the fact of incarceration is important to set and keep support orders consistent with the parent's current ability to pay, avoid the accumulation of arrears, and increase the likelihood that support will be consistently paid after release.<sup>22</sup>

The manual process of verifying and confirming county jail records can be inefficient and time consuming. This can lead to delays in acquiring the information necessary to take the next appropriate case action.

DCSS has explored solutions to address this gap. In fall 2020, DCSS participated in an exploratory pilot led by the OCSE. In this pilot, six states assisted OCSE in determining whether a third party, Appriss, Inc., was a feasible option for obtaining county-level incarceration data. DCSS found that the data provided by Appriss was reliable for county jail incarceration data, though some of the records were readily available in the CSE system due to the interface with the State Verifications and Exchange System. Appriss Insights, which is the platform that provides local, state, and federal incarceration information, was recently acquired by Equifax. The credit reporting agency will make the Appriss Insights platform available on The Work Number, Equifax's database of income and employment data.<sup>23</sup>

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<sup>22</sup> 81 Fed.Reg. 93531 (Dec. 20, 2016).

<sup>23</sup> Available at <https://www.theworknumber.com>.

## Recommended Changes

DCSS puts forward a number of suggested amendments to section 4007.5.

### **Recommendation 1. Remove the sunset provision or add a savings clause.**

- Delete the sunset provision, which would allow the law to continue to assist incarcerated parents and their efforts to reestablish ties with their families. The ability to administratively adjust accrued arrears provides for an efficient process that allows for an alternative option that does not require court intervention; or
- In the alternative, establish a savings clause, which would permit the administrative adjustment (or upon court approval) of child support account balances that have accrued during the operative term of the statute. The administrative action may occur after the repeal date, which would ensure access to relief for qualifying incarceration periods to all qualifying persons.

### **Recommendation 2. Remove disqualifying factors and only consider the PPS's ability to pay.**

Federal law does not mandate the exceptions described under this section. In September 2020, OCSE published a Notice of Proposed Rulemaking (NPRM) to solicit comments regarding exceptions to the prohibition against treating incarceration as voluntary unemployment. The optional exceptions included incarceration due to failure to pay child support and incarceration resulting from domestic violence against the supported parties. In November 2021, OCSE withdrew the previously published NPRM. OCSE justified the withdrawal of the proposed rule by noting that the majority of states are already in compliance with the prohibition and that other collateral consequences associated with orders set beyond a PPS's ability to pay may also decline.<sup>24</sup>

### **Recommendation 3. Extend the timeframe for resumption of child support obligation.**

It is recommended that the timeframe for the resumption of the child support obligation in section 4007.5(b) be extended to reflect the following: "The child support obligation shall resume on the first day of the *third full month after the release* of the person owing support ... ." As mentioned by OCSE in the Final Rule of 2016, "incarceration often serves as a barrier to employment. One study showed that after release from jail, formerly incarcerated men were unemployed nine more weeks per year, their annual earnings were reduced by 40 percent, and hourly wages were 11 percent less than if they had never been

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<sup>24</sup> Office of Child Support Enforcement, Policy & Guidance, *NPRM Withdrawal - Optional Exceptions to Child Support Guidelines* (November 10, 2021), [NPRM Withdrawal - Optional Exceptions to Child Support Guidelines | The Administration for Children and Families \(hhs.gov\)](#).

incarcerated."<sup>25</sup> Section 4007.5(b) requires that the child support obligation resume on the first day of the first full month after the release of the PPS. This leaves the PPS with relatively little time to seek employment to meet said obligation. The reinstated support order is presumed to be appropriate under federal and state law. However, the PPS's ability to pay must be taken into consideration.<sup>26</sup> The support order reflects a snapshot in time, though the parties' circumstances may have changed (incarceration in this case). An extended reinstatement period would also allow the LCSEA to determine whether action should be taken to review and adjust the support order in accordance with current regulations.

***Recommendation 4. Remove the provision that excludes pre-enactment date support orders.***

DCSS recommends that subdivision (f) state that the section applies to any current child support obligations that accrue during qualifying periods of incarceration, regardless of when the child support order was made. At present, money judgments and child support orders must have been issued or modified after the effective date of the law. This excludes those incarcerated parents who are imprisoned or institutionalized but have a support order filed prior to January 1, 2021. This change would essentially make relief under section 4007.5 available to a wider population of incarcerated parents, and will aid in deterring the accrual of uncollectible debt.

***Recommendation 5. Update the compliance date to reflect January 1, 2024.***

DCSS and the Judicial Council have already developed forms to facilitate the administrative adjustment process. These forms have been in circulation since the passage of Assembly Bill 610 (prior iteration of section 4007.5) and were modified to conform with today's version of the section. DCSS anticipates the need for form revisions if section 4007.5 were to become permanent. If amendments are adopted during the next legislative session, this revised timeframe will provide DCSS and the Judicial Council with about two years to revise and implement new forms.

***Judicial Council of California recommended changes***

The Judicial Council joins in the recommendation by DCSS to remove the January 1, 2023, sunset date from the statute to avoid confusion for court users (including self-represented litigants), promote consistency, and increase court efficiency and access to justice, but as to all other recommendations made by

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<sup>25</sup> Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed.Reg. 93524 (Dec. 20, 2016).

<sup>26</sup> 45 C.F.R. § 302.56(c) (2021).

DCSS, the Judicial Council takes no position, as they are policy decisions beyond the purview of the Judicial Council.

## **Conclusion**

The information presented in this report would indicate that the administrative adjustment process is a relatively easy process to follow, though some parties have expressed difficulty explaining the process to support obligors and obligees. LCSAs have been providing relief under section 4007.5 for nearly a decade and have navigated the various iterations of this statute throughout that time. This iteration of the section has not been operational for very long. As previously mentioned, the reporting period for this report is relatively short when compared to the previous report to the Legislature.

The prevalence of relief afforded by section 4007.5 is not fully represented by the ad hoc query results, which is evidenced by the department's review of a relevant sample of cases. However, the data presented does show that LCSAs are taking appropriate steps to address the PPS's incarceration or institutionalization, whether it be by modifying the court order, adjusting accounts under section 4007.5, or a combination of both.

## Appendix

### Administrative Adjustment Details

Through September 28, 2021

<b>ID</b>	<b>Current Support Amount (\$)</b>	<b>Total Amount Adjusted (\$)</b>	<b>No. of Months</b>
1	163	815	5
2	74	370	5
3	440	3,520	8
4	279	2,232	8
5	704	5,632	8
6	215	645	3
7	555	3,330	6
8	438	2,628	6
9	167	835	5
10	71	142	2
11	38	228	6
12	6	30	5
13	440	3,520	8
14	198	594	3



## Survey Statements and Response Rate

**Statement 1: The 30-day notice requirement provided both case participants with ample time to respond.**

Strongly Disagree—1.5%  
Disagree—7.4%  
Neutral—22.1%  
Agree—32.4%  
Strongly Agree—36.8%

**Statement 2: In general, case participants understood when the suspension of payment would take effect and when it would be reinstated.**

Strongly Disagree—1.5%  
Disagree—10.3%  
Neutral—22.1%  
Agree—45.6%  
Strongly Agree—20.6%

**Statement 3: The incarcerated PPS(s) often expressed ease, or satisfaction, with the steps required for this process.**

Strongly Disagree—1.5%  
Disagree—13.2%  
Neutral—61.8%  
Agree—13.2%  
Strongly Agree—10.3%

**Statement 4: In most cases, the Person Ordered to Receive Support (PRS) understood the intent of FC § 4007.5.**

Strongly Disagree—1.5%  
Disagree—7.4%  
Neutral—25%  
Agree—48.5%  
Strongly Agree—17.6%

**Statement 5: In most cases, case participants expressed ease, or satisfaction, with providing a response to the LCSA's notice of intent to suspend payment and/or administratively adjust accounts.**

Strongly Disagree—1.5%  
Disagree—8.8%  
Neutral—50%  
Agree—27.9%  
Strongly Agree—11.8%

**Statement 6: In most cases, case participants expressed ease, or satisfaction, with the effort and time needed to suspend payments and/or administratively adjust accounts.**

Strongly Disagree—2.9%  
Disagree—14.7%  
Neutral—47.1%  
Agree—26.5%  
Strongly Agree—8.8%

**Statement 7: In most cases, case participants understood the purpose of having to go to court (i.e., an objection was received from either party).**

Strongly Disagree—2.9%  
Disagree—8.8%  
Neutral—38.2%  
Agree—41.2%  
Strongly Agree—8.8%

**Statement 8: In most cases, the case participants understood the factors that determine eligibility.**

Strongly Disagree—0.0%  
Disagree—8.8%  
Neutral—20.6%  
Agree—51.5%  
Strongly Agree—19.1%

**Statement 9: In most cases, the case participants understood the exclusionary factors that determine ineligibility.**

Strongly Disagree—2.9%  
Disagree—13.2%  
Neutral—27.9%  
Agree—39.7%  
Strongly Agree—16.2%

**Statement 10: The case participants found this process to be manageable and/or efficient.**

Strongly Disagree—4.4%  
Disagree—10.3%  
Neutral—39.7%  
Agree—33.8%  
Strongly Agree—11.8%

**Statement 11: The PRS(s) that I assisted expressed ease, or satisfaction, understanding the process.**

Strongly Disagree—1.5%  
Disagree—11.8%  
Neutral—41.2%

Agree—32.4%  
Strongly Agree—13.2%

**Statement 12: The case participants understood the purpose, as well as the content, of the various notices (i.e., DCSS 0733 Notice of Administrative Actions as to Child Support, etc.) with relative ease.**

Strongly Disagree—4.4%  
Disagree—11.8%  
Neutral—42.6%  
Agree—35.3%  
Strongly Agree—5.9%

**Statement 13: Those case participants that objected to the administrative adjustment of accounts were able to attend the necessary court hearing with relative ease.**

Strongly Disagree—0.0%  
Disagree—4.4%  
Neutral—61.8%  
Agree—25%  
Strongly Agree—8.8%

**Statement 14: Case participants wishing to object to the administrative adjustment were able to file their objection with relative ease.**

Strongly Disagree—1.5%  
Disagree—7.4%  
Neutral—60.3%  
Agree—22.1%  
Strongly Agree—8.8%

**Statement 15: The incarcerated PPS was able to receive, and respond to, the notices with relative ease.**

Strongly Disagree—5.9%  
Disagree—7.4%  
Neutral—48.5%  
Agree—30.9%  
Strongly Agree—7.4%

**Statement 16: The Notice of Account Reinstatement provided both case participants with a clear indication of the effective date of reinstatement, advised the PPS and PRS of the continued child support obligation, and the necessary resources and contact information to resolve any issue or concerns regarding the child support case.**

Strongly Disagree—1.5%  
Disagree—1.5%  
Neutral—39.7%  
Agree—36.8%

Strongly Agree—20.6%

**Statement 17: The child support obligation resumes on the first day of the first full month after the PPS's release. This was easily understood by the case participants.**

Strongly Disagree—4.4%

Disagree—2.9%

Neutral—25%

Agree—50%

Strongly Agree—17.6%

**Statement 18: The LCSA facilitates this process, with very little action required by the case participant(s).**

Strongly Disagree—2.9%

Disagree—7.4%

Neutral—14.7%

Agree—47.1%

Strongly Agree—27.9%

## **Case Review—Values Defined**

Note: The following represents field value definitions as provided to case reviewers.

### **Adjustment Type Field Values**

**Administrative Adjustment**—The LCSA financial caseworker has adjusted accounts to remove arrears that have accrued in violation of FC § 4007.5, as the child support order is, by operation of law, suspended during qualifying periods of incarceration. This is often the case when the LCSA is unable to locate the NCP [noncustodial parent], or is not made aware of the NCP's incarceration or institutionalization until a later date.

**Court Adjustment**—Either party can object to the LCSA's intent to administratively adjust arrears that have accrued in violation of FC § 4007.5. The process requires that notice be provided to both parties and allows for 30 calendar days for either party to object verbally (on the phone with LCSA caseworker) or in writing (return completed objection form). If either party objects, a Notice of Motion must be filed and served upon both parties. The court will decide whether the LCSA may proceed with the adjustment of accounts, and if approved, will issue an Order After Hearing (or other court order) detailing the outcome.

### **Outcome Field Values**

**Zero Order**—Select this value to validate that the case has a Zero Order filed on the date reflected in the spreadsheet. This value indicates that a Zero Order was entered or a motion for modification was filed to address a change in circumstance.

**Administrative Adjustment**—Select this value if an FC § 4007.5 administrative adjustment was completed in 2021. Be sure to indicate the adjustment type and adjustment dates in Columns G and H, respectively. See Adjustment Type Field Values for more info.

**Court Adjustment**—Select this value if an FC § 4007.5 court adjustment was completed in 2021. Be sure to indicate the adjustment type and adjustment dates in Columns G and H, respectively. See Adjustment Type Field Values for more info.

**Adjustment in Progress**—Select this value if your case review indicates that the LCSA has initiated the adjustment process, but is not yet complete. This may be the case if the LCSA has issued the required notices to the parties and is awaiting a response (or the prescribed 30 days if no response) before initiating the adjustment of accounts.

**No Action Taken**—Select this value if there is no apparent action that was taken to address the NCP's incarceration or institutionalization.

**Non-Eligible: Ability to Pay**—Select this value if you've determined that the LCSA reviewed the case for eligibility and *did not* initiate any FC § 4007.5 action (suspended order or adjustment of accrued arrears) due to the NCP's ability to pay while incarcerated or institutionalized.

**Non-Eligible: Domestic Violence Against Support Party or Child**—Select this value if you've determined that the LCSA reviewed the case for eligibility and *did not* initiate any FC § 4007.5 action (suspended order or adjustment of accrued arrears) because the NCP is incarcerated or institutionalized for domestic violence against the CP [custodial parent] or child.

**Non-Eligible: Failure to Pay Child Support**—Select this value if you've determined that the LCSA reviewed the case for eligibility and did not initiate any FC § 4007.5 action (suspended order or adjustment of accrued arrears) because the NCP is incarcerated or institutionalized for failure to pay support.

If none of the above apply, or the case circumstances don't appear to fit into any of the above categories, leave Column O blank and enter a note in Column P. There is no standardized note, so feel free to enter "N/A," "Does Not Apply," or something similar.

## **Instructions for Review and Action by Circulating Order**

### **Voting members**

- Please reply to the email message with “I approve,” “I disapprove,” or “I abstain,” by **12/16/2021 at 12pm.**
- If you are unable to reply by **12/16/2021 at 12pm**, please do so as soon as possible thereafter.

### **Advisory members**

The circulating order is being emailed to you for your information only. There is no need to sign or return any documents.

**CIRCULATING ORDER**  
**Judicial Council of California**  
**Voting and Signature Pages**

Effective immediately, the Judicial Council approves the following sections of the joint report to the Legislature:

1. Judicial Council of California: Focus Group and Survey Results (pages 15–20);
2. Recommendation 1, Family Code section 4007.5(i): Remove the sunset provision or add a savings clause (page 22); and
3. Judicial Council of California Recommended Changes (page 23-24).

Recognizing that the report, as described in Family Code section 4007.5, is effectively a collaborative effort between the California Department of Child Support Services (DCSS) and the Judicial Council, it is important to note that the sections of the report other than those identified above reflect policy analyses and recommendations for child support collections, calculations and adjustments, and are, thus, outside the purview of the Judicial Council.

My vote is as follows:

Approve

Disapprove

Abstain

\_\_\_\_\_  
Tani G. Cantil-Sakauye, Chair

\_\_\_\_\_  
Marla O. Anderson

\_\_\_\_\_  
Richard Bloom

\_\_\_\_\_  
C. Todd Bottke

\_\_\_\_\_  
Stacy Boulware Eurie

\_\_\_\_\_  
Kevin C. Brazile

\_\_\_\_\_  
Kyle S. Brodie

\_\_\_\_\_  
Jonathan B. Conklin

\_\_\_\_\_  
Carol A. Corrigan

\_\_\_\_\_  
Samuel K. Feng



My vote is as follows:

Approve

Disapprove

Abstain

\_\_\_\_\_  
David D. Fu

\_\_\_\_\_  
Carin T. Fujisaki

\_\_\_\_\_  
Brad R. Hill

\_\_\_\_\_  
Rachel W. Hill

\_\_\_\_\_  
Harold W. Hopp

\_\_\_\_\_  
Dalila Corral Lyons

\_\_\_\_\_  
Gretchen Nelson

\_\_\_\_\_  
Maxwell V. Pritt

\_\_\_\_\_  
David M. Rubin

\_\_\_\_\_  
Marsha G. Slough

\_\_\_\_\_  
Thomas J. Umberg

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Administrative Director and  
Secretary of the Judicial Council