



## JUDICIAL COUNCIL OF CALIFORNIA

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# CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-22-06

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**Title**

Child Support: Additional Legislative  
Changes Required to Bring California into  
Compliance with Federal Final Rule

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

Fam. Code, §§ 3620–3634, 4055, 4057,  
17400, 17404.1, 17430, and 17432

**Recommended by**

Legislation Committee  
Hon. Marla O. Anderson, Chair

Family and Juvenile Law Advisory  
Committee

Hon. Stephanie E. Hulse, Cochair  
Hon. Amy M. Pellman, Cochair

**Action Requested**

VOTING MEMBERS ONLY: Submit votes  
by responding to the transmittal email.

**Please Respond By**

Noon on October 14, 2022

**Date of Report**

October 4, 2022

**Contact**

Anna L. Maves, 916-263-8624  
[anna.maves@jud.ca.gov](mailto:anna.maves@jud.ca.gov)

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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**

The Legislation Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council receive and accept the report entitled *Additional Legislative Changes Required to Bring California into Compliance with Federal Final Rule*, and direct staff to forward it to the Legislature. On September 27, 2022, Governor Newsom signed Assembly Bill 207 (Stats. 2022, ch. 573) into law, enacting Family Code section 4077,<sup>1</sup> which requires the

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<sup>1</sup> All further references are to the Family Code.

Judicial Council to meet and confer with the California Department of Child Support Services and then each submit separate reports to the Assembly Committee on Budget, the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Judiciary, and the Senate Judiciary Committee on what additional legislative changes are required to bring California into compliance with the final rule, *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*, as promulgated in current federal child support regulations. Any recommendations made to the Legislature must consider the most recent review of the statewide child support guideline completed by the Judicial Council pursuant to section 4054. Finally, the report must be submitted to the Legislature no later than November 21, 2022.

### **Recommendation**

The Legislation Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council receive and accept the report entitled *Additional Legislative Changes Required to Bring California into Compliance with Federal Final Rule*, and direct staff to forward it to the Legislature. The report details various proposed amendments to the Family Code that are necessary to bring California into compliance with the final rule.

The report, including proposed legislation, is attached to this report as Attachment A.

### **Relevant Previous Council Action**

On May 16, 2022, the Judicial Council forwarded to the Legislature the report entitled *Review of Statewide Uniform Child Support Guideline 2021*.<sup>2</sup> This quadrennial review of California's statewide uniform child support guideline is legislatively mandated by state and federal law.<sup>3</sup> Section 4054 states that any recommendations for revision to the guideline must be made to ensure that the guideline results in appropriate child support orders, limits deviations from the guideline, or otherwise helps to ensure that the guideline is in compliance with federal law. One major area of focus in the most recent guideline study was reviewing what legislative changes were still required to bring California into compliance with new federal regulations promulgated by the final rule, *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* (the final rule).<sup>4</sup> (See Link A.) The overriding principal of the final rule is that child support orders must be based on the individual circumstances of the obligor. The review provides a basis for the Legislature to periodically reassess California's child support guideline and evaluate its impact on children and families.

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<sup>2</sup> The complete study can be viewed at <https://www.courts.ca.gov/documents/lr-2022-review-uniform-child-support-guideline-2021-fc-4054.pdf>.

<sup>3</sup> See Fam. Code, § 4054; 45 C.F.R. § 302.56.

<sup>4</sup> 81 Fed. Reg. 93492–93569 (Dec. 20, 2016).

## Analysis/Rationale

In addition to enacting section 4077 (see Link B), AB 207 also amended sections 4007.5, 4054, and 4058. These amendments brought California closer to compliance with the final rule by:

- Providing that incarceration cannot be considered as voluntary unemployment; and
- Providing for the consideration of the factors listed in federal regulation when income imputation (i.e., earning capacity) is authorized.<sup>5</sup>

However, as stated above, section 4077 also requires the Judicial Council to meet and confer with the California Department of Child Support Services (DCSS) and then report to the Legislature regarding what additional legislative changes are required to bring California into full compliance with the final rule, taking into consideration the recommendations made in the guideline study. The attached report, including proposed amendments, details all changes that are still required to fully move California into compliance with new federal regulations by September 2024.<sup>6</sup> The Legislation Committee and the Family and Juvenile Law Advisory Committee support the recommendations detailed in the attached report, as summarized below.

The attached report is required to be submitted to the Legislature no later than November 21, 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 recommendations on an extremely tight schedule in order to present it for council review. However, as the council will not hold its next regularly scheduled meeting until December 1–2, 2022, and legislative staff has indicated they intend to conduct meetings in November with various stakeholders—including DCSS and Judicial Council staff—to discuss what legislation should be enacted, it is recommended that the council review the report via circulating order to meet these deadlines.

### Recommendation 1

#### ***Improve the low-income adjustment (LIA).***

Revise the current LIA, which must take into consideration the basic subsistence needs of the obligor, to increase the threshold to ensure protections for low-income obligors and modify the income bands for low-income parents. There are three components to revamping the LIA:

- Revise and update the LIA income threshold by tying it to the full-time gross state minimum wage;
- Modify the bottom-income bands of the K-factor formula by increasing the income ranges of the lowest bands, changing the K-factor for those income bands, and adding a new income band for lower incomes;

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<sup>5</sup> See 45 C.F.R. § 302.56(c)(1)(iii).

<sup>6</sup> The federal Office of Child Support Enforcement (OCSE) previously granted California an extension until September 2024 to move into compliance with the federal final rule.

- Address the adverse impact of the multiplier for additional children by providing a deviation factor for support exceeding a threshold relating to the Consumer Credit Protection Act limit.

## **Recommendation 2**

### ***Revise the statutory scheme for initiating cases and obtaining default judgments in IV-D matters.***<sup>7</sup>

While AB 207 amended section 4058 so that the court must consider the factors listed in federal regulation any time it imputes income to a party and bases child support on the party's earning capacity, section 17400(d)(2), which was not amended, still requires local child support agencies (LCSAs) to request an initial child support order based either on actual income or on presumed income (i.e., full-time minimum wage earning ability) when the obligor's actual income is unknown. Additionally, section 17430 requires the court to adopt a proposed judgment based on presumed income, essentially without any ability for review if the default judgment presented to the court for approval matches the proposed judgment. In short, as the final rule requires the court to consider the individual circumstances of the obligor anytime a child support order is entered, the current scheme for obtaining child support orders in title IV-D matters based on presumed income runs afoul of the final rule and must be replaced.

## **Recommendation 3**

### ***Repeal expedited child support order statutes.***

Family Code sections 3620 to 3634 allow for a party to request the issuance of an *ex parte* child support order in a pending child support action. If no response is filed by the other party, the court must issue a child support order in the amount requested, as long as certain procedural requirements are met. However, this process was created prior to when the current California child support guideline was adopted and is also in conflict with the final rule, as it allows for minimum orders, when the income information of the obligor is unknown.

## **Policy implications**

If the recommendations contained in the report are adopted by the Legislature, California law would be brought into full compliance with the federal regulations by the September 2024 deadline. If California is not in full compliance by this deadline, federal funding of the state's child support program could be withheld. Additionally, the recommendations would improve outcomes for low-income parents and create more accurate orders based on the known circumstances of the parents, which in turn should lead to better compliance with child support orders and greater participation with their children.

## **Comments**

This statutorily required process and the resulting proposal did not go through the invitation-to-comment process, as public review was not required by statute. Additionally, there were no

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<sup>7</sup> IV-D refers to part D of title IV-D of the Social Security Act (42 U.S.C. §§ 651–669b), which enables government child support programs, including local child support agencies in California, to establish and enforce child support orders.

points of contention or controversy when the proposal was reviewed and discussed by the relevant committees.

### **Alternatives considered**

Judicial Council staff met and conferred with representatives from DCSS several times as required by statute. Consensus was reached regarding the proposed amendments required to bring California into full compliance with the final rule, and there are no differences of interpretation to report. However, as detailed in the report to the Legislature, there is slight disagreement regarding the proper effective date of any legislative changes. DCSS has proposed certain provisions be made effective July 1, 2025, while the Judicial Council proposed an effective date of September 1, 2024, to ensure California has moved into full compliance with the final rule by the deadline given by OCSE.

### **Fiscal and Operational Impacts**

There are no costs associated with the creation of the attached report. Should the Legislature take action to implement any or all of the recommendations, the cost of such action would be evaluated as part of the standard legislative process.

### **Attachments and Links**

1. Attachment A: *Additional Legislative Changes Required to Bring California into Compliance with Federal Final Rule* (Oct. 2022)
2. Link A: *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*, 81 Fed. Reg. 93492–93569 (Dec. 20, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-12-20/pdf/2016-29598.pdf>
3. Link B: Fam. Code, § 4077, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=FAM&sectionNum=4077](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=4077)
4. Voting instructions
5. Vote and signature pages

### **Author**

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# **Additional Legislative Changes Required to Bring California into Compliance with Federal Final Rule**

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OCTOBER 2022



**JUDICIAL COUNCIL  
OF CALIFORNIA**

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OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS

This report has been prepared and submitted to the California Legislature pursuant to Family Code section 4077.

This report is available on the California Courts website at [www.courts.ca.gov/7466.htm](http://www.courts.ca.gov/7466.htm).

For additional copies or more information about this report, please call the Judicial Council Center for Families, Children & the Courts at 916-643-7065, or write to:

Judicial Council of California  
Operations and Programs Division  
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## **EXECUTIVE SUMMARY**

On September 27, 2022, Governor Newsom signed Assembly Bill 207 (Stats. 2022, ch. 573) into law, enacting Family Code section 4077,<sup>1</sup> which requires the Judicial Council to meet and confer with the California Department of Child Support Services, and requires each to submit separate reports to the Assembly Committee on Budget, the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Judiciary, and the Senate Judiciary Committee on what additional legislative changes are required to bring California into compliance with current federal child support regulations. Recommendations made to the Legislature must consider the most recent review of the statewide child support guideline completed by the Judicial Council pursuant to section 4054. This report makes recommendations regarding what amendments to the Family Code are necessary to bring California into compliance with the federal regulations, taking into account the findings and recommendations made in the recent guideline study.

## **BACKGROUND**

### **Final Rule**

In 2016, after many years of research and analysis by the federal Office of Child Support Enforcement (OCSE), which included requests for public comment, the final rule, *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*, was issued.<sup>2</sup> Generally speaking, the purpose of the final rule is to require states to set “right-sized” child support orders based on the obligor parent’s actual income or ability to pay.

The final rule, as codified in the federal regulations, creates new rules that must be adopted by the states to ensure that child support orders are “based on the noncustodial parent’s earnings, income, and other evidence of ability to pay.” (45 C.F.R. § 302.56(c)(1).) Perhaps the biggest change, as it relates to California law, is that the child support guidelines must consider the following factors when imputing income (i.e., basing orders on a parent’s earning capacity):

[The] parent’s assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the...parent, prevailing earnings level in the local community, and other relevant background factors...(45 C.F.R. § 302.56(c)(1)(iii).)

Additionally, when seeking a child support order, the local child support agency (LCSA) must take “reasonable steps to develop a sufficient factual basis for the support obligation” and must gather “available information about the specific circumstances of the noncustodial parent,”

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<sup>1</sup> All further references are to the Family Code.

<sup>2</sup> See 81 Fed. Reg. 93492–93569 (Dec. 20, 2016).

including the factors listed above (when earnings and income information is not available), in order to document “the factual basis for the support obligation...in the case record.” (45 C.F.R. § 303.4(b).)

### **Guideline Study**

On May 16, 2022 the Judicial Council forwarded to the Legislature the report entitled *Review of Statewide Uniform Child Support Guideline 2021* (Link A).<sup>3</sup> This quadrennial review of California’s statewide uniform child support guideline is legislatively mandated by state and federal law.<sup>4</sup> Section 4054 states that any recommendations for revision to the guideline must be made to ensure that the guideline results in appropriate child support orders, limits deviations from the guideline, or otherwise helps to ensure that the guideline is in compliance with federal law. One major area of focus in the most recent guideline study was reviewing what legislative changes were still required to bring California into compliance with new federal regulations promulgated by the final rule, *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* (Link B).<sup>5</sup>

The overriding principal of the final rule is that child support orders must be based on the individual circumstances of the obligor parent. Moreover, the review provides a basis for the Legislature to periodically reassess California’s child support guideline and evaluate its impact on children and families.

The child support guideline review contained the following legislatively required areas of study: (1) a review of case files to analyze the application of the guideline to particular cases, (2) an analysis and comparison of selected special factors that are considered by other states’ guidelines, and (3) available economic data on the cost of raising children.<sup>6</sup> As a result of the study, the review made various recommendations, including those listed below, which it identified as being necessary to fully move California into compliance with the final rule.

#### ***Recommendation 1: Add required language to the Family Code***

Pursuant to the final rule, all states must comply with the dictates of the new regulations within one year of the completion of the guideline study following the final rule’s enactment.<sup>7</sup> California was granted an extension until September 2024 to move into compliance. As detailed in the study, in order to bring California’s child support guideline into compliance with the final rule, legislation needed to:

- Provide that the incarceration of the obligor cannot be considered voluntary unemployment; and

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<sup>3</sup> See Link A of this report.

<sup>4</sup> See Fam. Code, § 4054; 45 C.F.R. § 302.56.

<sup>5</sup> 81 Fed. Reg. 93492–93569 (Dec. 20, 2016).

<sup>6</sup> Fam. Code, § 4054.

<sup>7</sup> 45 C.F.R. § 302.56.

- Provide for the consideration of the factors listed in federal regulations when income imputation or presumption is authorized.<sup>8</sup>

**Recommendation 2: Improve the low-income adjustment (LIA)**

Revise the current LIA, which must take into consideration the basic subsistence needs of the obligor, to increase the threshold to ensure protections for low-income obligors and modify the income bands for low-income parents. There are three components to revamping the LIA:

- Update the LIA income threshold but continue to allow for cost-of-living increases. Alternatively, the threshold could be updated based on a percentage of the federal poverty guidelines for one-person, median fair market rent in California, or the gross state minimum wage.
- Modify the bottom income bands of the K-factor formula by increasing the income ranges of the lowest bands, changing the K-factor for those income bands, and adding a new income band for lower incomes.
- Address the adverse impact of the multiplier for additional children by capping support or providing a deviation factor for support exceeding a threshold relating to the Consumer Credit Protection Act limit.

**FAMILY CODE SECTION 4077 REQUIREMENTS**

Family Code section 4077 states in full:

The Department of Child Support Services and the Judicial Council shall meet and confer, no later than November 21, 2022, and each entity shall submit its own report to the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review and the Assembly and Senate Committees on Judiciary on what additional legislative changes are required to comply with the federal child support regulations revised in 81 Federal Register 93492 (Dec. 20, 2016), if any, which shall consider the most recent review of the statewide child support guideline completed pursuant to Section 4054, and identify any points of agreement and any difference of interpretation, perspective, or opinion between the entities regarding the legislative changes required.

**Discussions with DCSS**

Judicial Council staff has met and conferred with representatives from the Department of Child Support Services (DCSS) several times as required. As a result of these discussions, the two agencies were able to reach a consensus regarding what legislative changes are still required to bring California into compliance with the final rule. Because an agreement was reached regarding these issues, there are no differences of interpretation, perspective, or opinion to report to the Legislature. Additionally, when discussing what changes need to be made, both parties considered

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<sup>8</sup> *Id.*

the findings and recommendations of the recently completed guideline study. The recommended changes to California law are set forth below.

### ***Effective Date***

While staff from DCSS and the Judicial Council are in full agreement regarding what legislative changes are needed to move California into compliance with the final rule, an agreement was not reached regarding the proper timeline for implementing such legislation. As stated above, OCSE previously granted California an extension to September 2024 to move into compliance with the federal regulations. The Judicial Council has interpreted this to mean any legislative changes must be made effective by that date. However, DCSS has suggested that some provisions be made effective July 1, 2025. If adopted, the recommended proposed amendments to the Family Code would require the Judicial Council to make substantial revisions to numerous child support forms. Given the time and effort needed to revise these forms, including seeking meaningful input and feedback from various stakeholders, the Judicial Council supports a later effective date, if OCSE were to grant another short extension. However, without such an extension in place, California would be in danger of facing financial penalties without moving into full compliance by September 2024.

## **RECOMMENDED LEGISLATIVE CHANGES**

### ***Recommendation 1: Improve the low-income adjustment (LIA)***

As detailed in the recent guideline study, the final rule now requires a state's guideline to consider the basic subsistence needs of the obligor through a low-income adjustment such as a self-support reserve. The new federal requirement is based on research that finds that setting support beyond what a low-income parent has the ability to pay does not result in higher child support compliance, contributes to unpayable debt, reduces employment, and increases underground activities, crime, incarceration, recidivism, and reduced contact with the children. Additionally, setting order amounts at levels that low-income obligors can pay avoids the triggering of automatic enforcement mechanisms (e.g., driver's license suspension) that may have other repercussions (e.g., impede work or contact with the child).<sup>9</sup>

The guideline study concluded that the LIA income threshold in California is too low. While the LIA is indexed for changes in the cost of living, it no longer applies to minimum wage earners because increases to minimum wage have outpaced annual LIA changes. Additionally, the LIA can leave an obligor with little income when the obligor has many children and an income just above the LIA income threshold. The LIA income threshold is low compared to California housing costs and is less than the Fair Market Rent (FMR) of an efficiency apartment in five California counties.<sup>10</sup> Consequently, the LIA must be revised to meet the requirements of the final rule. There are three components to revising the LIA.

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<sup>9</sup> Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline 2021* (May 16, 2022), p. 245.

<sup>10</sup> *Id.* at pp. 245–246.

1. *Revise and update the LIA income threshold by tying it to the full-time gross state minimum wage.*

In order to link the LIA to the minimum wage, it is proposed that section 4055(b)(7) be amended so the new LIA threshold would be the “amount of monthly gross income earned from full-time minimum wage at 40 hours per week, 52 weeks per year, established by Section 1182.12 of the Labor Code.”

2. *Modify the bottom income bands of the K-factor formula by increasing the income ranges of the lowest bands, changing the K-factor for those income bands, and adding a new income band for lower incomes.*

The following factors are used by the California guideline to calculate child support: 1) each parent’s net-disposable income and the combined net-disposable income of the parents, 2) the number of children, and 3) the percentage of time each parent has primary physical custody or responsibility for the children. The *K-factor* is the amount or percentage of both parents’ income allocated for child support under the guideline formula.<sup>11</sup> However, as detailed in the guideline study, the income bands of the *K-factor* formula have not been updated since the formula was adopted in 1993. The first income band for the total net disposable incomes of both parents (\$0 to \$800 per month) was obviously intended to produce lower amounts for parents with incomes near federal poverty levels. Since then, the federal poverty level and the state minimum wage have more than doubled. Hence, very few families fall into the first income band. Instead, most low-income families fall into the second income band of the *K-factor*, which has the highest percentage of income assigned to child support, 25%, thereby negating the effectiveness of the LIA.<sup>12</sup>

The study also found that the second *K-factor* income band should match the economic data on child-rearing expenditures—that is, it should apply to net incomes where families devote about 25% of their income to child-rearing expenditures. Below this income, the *K-factor* should be adjusted to preserve its original intent to provide a lower order amount for low-income families.<sup>13</sup>

In order to implement these recommendations, it is proposed that the *K-factor* found in section 4055(b)(3) be amended as follows:

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<sup>11</sup> Fam. Code, § 4055(b)(1)(B).

<sup>12</sup> Judicial Council of Cal. (2022), *Guideline*, *supra* at p. 246.

<sup>13</sup> *Id.* at p. 106.

Total Net Disposable Income Per Month	K
\$0–\$2,900	$0.165 + \text{TN}/82,857^*$
\$2,901–\$5,000	$0.200 + \text{TN}/100,000$
\$5,001–\$6,666	0.250
\$6,667–\$10,000	$0.10 + 1,000/\text{TN}$
Over \$10,000	$0.12 + 800/\text{TN}$

\* Per Fam. Code, § 4055(b)(1)(E), "TN = total net monthly disposable income of both parties."

3. *Address the adverse impact of the multiplier for additional children by providing a deviation factor for support exceeding a threshold relating to the Consumer Credit Protection Act limit.*

Another conclusion reached in the study is that the LIA is less effective at reducing orders for more children than other methods typically used by other states because it is insufficient to offset the multipliers for more children.<sup>14</sup> Additionally, the multipliers produce order amounts that would exceed 50% of an obligor's net income for three or more children, if there is no time-sharing and the combined net income is between \$800 and \$6,666 net per month.<sup>15</sup> In order to address the adverse impact the multipliers can produce for obligors in certain circumstances, while still giving the court discretion, it is proposed that section 4057(b) be amended to include the following in the list of factors that would allow a court to deviate from guideline child support and enter a below-guideline order:

A support obligor qualifies for the low-income adjustment under paragraph (7) of subdivision (b) of Section 4055 and the amount of child support established by the formula exceeds 50 percent of the support obligor's net disposable income as defined in Section 4059 after application of the low-income adjustment. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

***Recommendation 2: Revise statutory scheme for initiating cases and obtaining default judgments in IV-D matters<sup>16</sup>***

As detailed above, anytime a child support order is not based on actual income, but is instead based on imputing income to the obligor, federal regulations require that the court consider

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<sup>14</sup> *Id.* at p. 246.

<sup>15</sup> *Id.* at p. 66.

<sup>16</sup> IV-D refers to part D of title IV-D of the Social Security Act (42 U.S.C. §§ 651–669b), which enables government child support programs, including local child support agencies (LCSAs) in California, to establish and enforce child support orders.

various factors.<sup>17</sup> While AB 207 amended section 4058 so that the court must consider those factors any time it imputes income to a party and bases child support on their earning capacity, section 17400(d)(2), which was not amended, still requires local child support agencies (LCSAs) to request an initial child support order based either on actual income or on presumed income (i.e., full-time minimum wage earning ability), when the obligor’s actual income is unknown. Additionally, section 17430 requires the court to adopt a proposed judgment based on presumed income, essentially without any ability for review if the default judgment presented to the court for approval matches the proposed judgment.

OCSE has expressed that imputing a standard amount of income to an obligor parent fails to comply with federal regulations, because doing so “is unlikely to result in an order that a particular noncustodial parent has the ability to pay.”<sup>18</sup> In short, as the final rule requires the court to consider the individual circumstances of the obligor anytime a child support order is entered, the current scheme for obtaining child support orders in IV-D matters based on presumed income runs afoul of the final rule and must be replaced.

In order to comply with the final rule and to provide the parties and the court with specificity regarding what circumstances the LCSA considered in making its request for child support, it is proposed that section 17400(d)(2) be amended as follows:

(A) The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon one of the following methods used to determine income:

(i) If sufficient information is available to determine actual income, as defined in subdivision (a) of Section 4058 and Section 4060, the local child support agency shall use actual income as the basis of the proposed support obligation, unless earning capacity is plead pursuant to clause (ii).

(ii) If the local child support agency has sufficient information that the earning capacity is greater than the actual income, and sufficient evidence is available to establish earning capacity as defined in subdivision (b) of Section 4058, the local child support agency may use earning capacity as the basis of the proposed support obligation.

(iii) If the actual income of the support obligor is unknown to the local child support agency, and sufficient evidence is available to establish earning capacity as defined in subdivision (b) of Section 4058, the local child support agency shall use earning capacity as the basis of the proposed support obligation.

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<sup>17</sup> 45 C.F.R. § 302.56(c)(1)(iii).

<sup>18</sup> 81 Fed. Reg. 93525 (Dec. 20, 2016), response to comment 17.



(B) The complaint shall inform the support obligor of the basis for the proposed support amount. If the basis is the support obligor's earning capacity, rather than actual income, the complaint shall inform the obligor of the factors considered by the agency and used to determine the obligor's earning capacity.

Currently, the court has essentially no discretion when it comes to entering a default in title IV-D cases and is required to approve the proposed judgment.<sup>19</sup> Under the current scheme, while the court has essentially no discretion, the LCSA also has very little discretion in this setting: under section 17404(d)(2), the proposed support order must be based on the income or income history if known to the LCSA; if not known, then minimum wage ability is to be alleged. Now the federal regulations have spoken where they previously were silent and created rules that must be followed when imputing income.

In order to ensure compliance with the final rule, it is proposed that anytime an LCSA requests an initial child support order based on the earning capacity of the obligor (either when it alleges the obligor is underemployed or the obligor's income is unknown), a motion for judgment must be filed by the LCSA, which would give the court the proper discretion to ensure that the factors set forth in the federal regulations are considered if it imputes income to the obligor. Additionally, in order to ensure support orders are based on the actual circumstances of the parties, it is proposed that both the obligor and obligee be allowed to participate in this hearing if they appear, even if they have not yet filed any paperwork with the court (e.g., an answer) or have previously not made a general appearance. It is proposed that section 17430 be amended to include the following new procedures:<sup>20</sup>

(b)(1) If the proposed judgment is based on the support obligor's earning capacity pursuant to clauses (ii) or (iii) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 17400, the local child support agency shall file a motion for judgment, as provided in subdivision (b) of Section 17404.

(2) At the motion for judgment hearing, the court shall permit the appearance and participation of the defendant and the other parent in the hearing, including, but not limited to, sworn testimony and the introduction of evidence, regardless of whether the defendant has filed an answer to the complaint.

(3) If the defendant does not appear at the motion for judgment hearing, the judgment shall be entered by way of default. However, nothing in this section limits the discretion of the court to inquire of the local child support agency regarding the factors set forth in subdivision (b) of Section 4058. If after consideration of the factors set forth in

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<sup>19</sup> See *County of Yuba v. Savedra* (2000) 78 Cal.App.4th 1311. (While the court may not set a prove-up hearing regarding evidence of income, it should review proposed judgment to ensure it "is in compliance with the statutory scheme.")

<sup>20</sup> Corresponding amendments are also proposed to sections 17400 and 17404.1, as appropriate.

subdivision (b) of Section 4058 and the evidence presented by the local child support agency or the other parent the court determines that guideline child support would be lower than the proposed support obligation listed in the proposed judgment, the court shall enter an order for guideline child support. Nothing in this subpart shall be construed to limit the court's discretion to order an amount higher than, lower than, or equal to the proposed support obligation listed in the proposed judgment based on the evidence presented if the defendant files an answer or appears at the motion for judgment hearing.

(c) If the local child support agency receives additional information before the answer is filed and the additional information would result in a support order that is different from the amount in the proposed judgment, the local child support agency shall file a declaration setting forth the additional information and an amended proposed judgment. The local child support agency shall be permitted to file the amended proposed judgment at any time after the filing of the initial summons and complaint and before the answer is filed. The declaration and amended proposed judgment shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law. The defendant's time to answer or otherwise appear shall be extended to 30 days from the date of service of the declaration and amended proposed judgment.

It is true that this process would result in more hearings during the case initiation stage than the current default judgment scheme for orders based on presumed income. However, by establishing "right-sized" support orders based on the actual circumstances of the obligor, there should be fewer motions for modification and enforcement actions filed in the later stages of a case. OCSE contemplated such a result in implementing the new regulations:

We agree that the final rule may result in increased time to establish and modify a child support order, but it will also result in more orders that are legitimately based on a noncustodial parent's ability to pay, as required by Federal child support guidelines law and policy. Support orders based on ability to pay should result in better compliance rates and higher collections rates, saving time and resources required to enforce orders and resulting in actual payments to more children. One State told OCSE that by doing more investigative work to develop the evidence, it has experienced less conflict between the parents, fewer requests for hearings, and less time spent on enforcement. As a result, staff has more time to develop the documentary evidence needed to establish a child support order based on the noncustodial parent's ability to pay.<sup>21</sup>

Additionally, because the new proposed amendments would eliminate the ability for LCSAs to request orders based on presumed income, the set aside protections found in section 17432 would no longer be applicable for actions commenced after the new legislation's effective date, meaning such motions to set aside would no longer be filed. In other words, while there would be more

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<sup>21</sup> 81 Fed. Reg. 93523 (Dec. 20, 2016), response to comment 11.

work for the LCSAs and the courts in the early stages of a case, there should be less work thereafter.

Finally, it is proposed that section 17432 be amended so that it would only apply to actions filed by LCSAs before September 1, 2024. This would mean that the financial aspects of child support orders entered by default based on presumed income under the current statutory scheme would still be subject to judicial review. Currently, a request for relief under section 17432 must be filed within one year from the first collection of child support, regardless of if the support was collected via wage garnishment or a different source (e.g., tax intercept). It is proposed that the window for requesting relief be expanded from one to two years from first collection and that the first collected support must come from “an earnings assignment order or an order or notice to withhold income for child support.” By expanding this relief, it would allow for more child support orders that were not based on the actual circumstances of the obligor to be set aside so that support could be properly set. Such a change would align with the main goal of the final rule of setting “right-sized” child support orders.

***Recommendation 3: Repeal expedited child support order statutes***

The expedited child support order scheme delineated in sections 3620 to 3634 (see Attachment A), was formerly set forth in Civil Code section 4357.5.<sup>22</sup> This scheme allows for a party to request the issuance of an *ex parte* child support order in a pending child support action, such as a dissolution of marriage or parentage action. If no response is filed by the other party within 30 days of service of the request and proposed order, the court must issue a child support order in the amount requested, as long as all procedural requirements are met.

However, this process is in direct conflict with the final rule. Section 3621 allows for the moving party to request a child support order based on “the minimum amount of support as provided in Section 11452 of the Welfare and Institutions Code” if the obligor’s income is unknown. In reply to comments received through the public comment process, OCSE noted that “[h]igh minimum orders that are issued across-the-board without regard to the noncustodial parent’s ability to pay the amount do not comply with these regulations.”<sup>23</sup>

Because expedited child support orders are *ex parte* (temporary) orders in nature, they can also be problematic when an obligor does not pay as ordered and is in arrears. It has been held that child support arrears that accrued under an expedited order are uncollectable if the order terminates and the action was not brought to trial within five years of its commencement; this is because the existence of the expedited order tolls the five-year mandatory dismissal rule but, once the expedited order ceases to exist, the action becomes subject to mandatory dismissal, and the arrears

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<sup>22</sup> Former Civ. Code, § 4357.5 was originally added by Stats. 1985, ch. 1069, § 1; was amended by Stats. 1987, ch. 57, § 1; and was amended again by Stats. 1992, ch. 848 (SB 1614), § 1, which repealed the section and moved its current location in the Family Code.

<sup>23</sup> 81 Fed. Reg. 93525 (Dec. 20, 2016), response to comment 18.

cease to exist once the matter has been dismissed.<sup>24</sup> Consequently, it is proposed that sections 3620 to 3634 be repealed.

## **CONCLUSION**

If the proposed amendments are made to the Family Code, California will move into full compliance with the final rule. Consequently, the Judicial Council joins DCSS in recommending to the Legislature that these amendments be made.

## **ATTACHMENTS AND LINKS**

1. Attachment A: Proposed amendments to Family Code sections 3620–3634, 4055, 4057, 17400, 17404.1, 17430, and 17432.
2. Link A: Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline 2021*, (May 16, 2022), <https://www.courts.ca.gov/documents/lr-2022-review-uniform-child-support-guideline-2021-fc-4054.pdf>
3. Link B: *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*, 81 Fed. Reg. 93492–93569 (Dec. 20, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-12-20/pdf/2016-29598.pdf>

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<sup>24</sup> *County of Orange v. Quinn* (2002) 97 Cal.App.4th 956; see also *County of Orange v. Rosales* (2008) 99 Cal.App.4th 1214.

An act to amend Sections 4055, 4057, 17400, 17404.1, 17430, and 17432, and to repeal sections 3620 to 3634, the Family Code, relating to child support.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Sections 3620 to 3634 of the Family Code are repealed.

SEC. 2. Section 4055 of the Family Code is amended to read:

4055. (a) The statewide uniform guideline for determining child support orders is as follows:  $CS = K[HN - (H\%)(TN)]$ .

(b)(1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of both parents' income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

<u>Total Net Disposable Income Per Month</u>	<u>K</u>
<u>\$0-\$2,900</u>	<u><math>0.165 + TN/82,857</math></u>
<u>\$2,901-\$5,000</u>	<u><math>0.200 + TN/100,000</math></u>
<u>\$5,001-\$6,666</u>	<u>0.250</u>
<u>\$6,667-\$10,000</u>	<u><math>0.10 + 1,000/TN</math></u>
<u>Over \$10,000</u>	<u><math>0.12 + 800/TN</math></u>

For example, if H% equals 20 percent and the total monthly net disposable income of the parents is \$1,000,  $K = (1 + 0.20) \times 0.25(0.165 + 1,000/82,857)$ , or 0.3021. If H% equals 80 percent and the total monthly net disposable income of the parents is \$1,000,  $K = (2 - 0.80) \times 0.25(0.165 + 1,000/82,857)$ , or 0.3021.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75

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8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children. H% shall not be set as described in paragraph (3) if the moving party in a default proceeding is the noncustodial parent or if the party who fails to appear after being duly noticed is the custodial parent. A statement by the party who is not in default as to the percentage of time that the noncustodial parent has primary physical responsibility for the children shall be deemed sufficient evidence.

(7) In all cases in which the net disposable income per month of the obligor is less than ~~one thousand five hundred dollars (\$1,500), adjusted annually for cost of living increases~~ increases the amount of monthly gross income earned from full-time minimum wage at 40 hours per week, 52 weeks per year, established by Section 1182.12 of the Labor Code, there is a rebuttable presumption that the obligor is entitled to a low-income adjustment. ~~The Judicial Council shall annually determine the amount of the net disposable income adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research.~~ The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the child support amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is ~~1,500, adjusted annually for cost of living increases~~ the amount of monthly gross income earned from full-time minimum wage at 40 hours per week, 52 weeks per year, established by Section 1182.12 of the Labor Code, minus the obligor's net disposable income per month, and the denominator of which is ~~1,500, adjusted annually for cost of living increases~~ the amount of monthly gross income earned from full-time minimum wage at 40 hours per week, 52 weeks per year, established by Section 1182.12 of the Labor Code.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest

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child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases in which there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

(c) If a court uses a computer to calculate the child support order and the obligor's income qualifies for a low-income adjustment, the computer program shall not automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. If the low income adjustment is applied, the computer program shall not provide the amount of the low income adjustment. Instead, the computer program shall ask the user whether or not to apply the low income adjustment, and if answered affirmatively, the computer program shall provide the range of the adjustment permitted by paragraph (7) of subdivision (b).

SEC. 3. Section 4057 of the Family Code is amended to read:

4057. (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.

(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court states in writing or on the record the information required in subdivision (a) of Section 4056:

(1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

(2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence where the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

(4) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.

(5) A support obligor qualifies for the low-income adjustment under paragraph (7) of subdivision (b) of Section 4055 and the amount of child support established by the formula exceeds 50 percent of the support obligor's net disposable income as defined in Section 4059 after application of the low-income adjustment. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(6) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:

(A) Cases in which the parents have different time-sharing arrangements for different children.



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(B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

(C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

(D) Cases in which a child is found to have more than two parents.

SEC. 4. Section 17400 of the Family Code is amended to read:

17400. (a)(1) Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, if appropriate, enforce spousal support orders if the child is receiving public assistance, including Medi-Cal, and, if requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(2)(A) Provided that no reduction in aid or payment to a custodial parent would result, the local child support agency shall cease enforcement of child support arrearages assigned to the state and other fees and costs owed to the state that the department or the local child support agency has determined to be uncollectible. If enforcement is ceased pursuant to this paragraph, cases shall be closed to the maximum extent permitted under Section 303.11 of Title 45 of the Code of Federal Regulations, as adopted under Section 118203 of Title 22 of the California Code of Regulations.

(B) In determining the meaning of uncollectible for purposes of arrearages assigned to the state and other fees and costs owed to the state, the department and the local child support agency shall consider, but not be limited to, the following factors:

- (i) Income and assets available to pay the arrearage or other fees and costs.
- (ii) Source of income.
- (iii) Age of the arrearage or other fees and costs.
- (iv) The number of support orders.
- (v) Employment history.
- (vi) Payment history.
- (vii) Incarceration history.
- (viii) Whether the order was based on imputed income.
- (ix) Other readily ascertainable debts.

(C) Notwithstanding subparagraph (B), the department and a local child support agency shall deem an arrearage assigned to the state or fees and costs owed to the state as uncollectible if the noncustodial parent's sole income is from any of the following:

(i) Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled (SSI/SSP) benefits.

(ii) A combination of SSI/SSP benefits and Social Security Disability Insurance (SSDI) benefits.

(iii) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI)

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benefits.

(iv) Veterans Administration Disability Compensation Benefits in an amount equal to or less than the amount the noncustodial parent would receive in SSI/SSP benefits.

(D) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this subdivision through a child support services letter or similar instruction until regulations are adopted. Thereafter, the department shall adopt regulations to implement this subdivision by July 1, 2024.

(b)(1) Notwithstanding Sections 25203 and 26529 of the Government Code, attorneys employed within the local child support agency may direct, control, and prosecute civil actions and proceedings in the name of the county in support of child support activities of the Department of Child Support Services and the local child support agency.

(2) Notwithstanding any other law, and except for pleadings or documents required to be signed under penalty of perjury, a local child support agency may substitute original signatures of the agent of the local child support agency with any form of electronic signatures, including, but not limited to, typed, digital, or facsimile images of signatures, digital signatures, or other computer-generated signatures, on pleadings filed for the purpose of establishing, modifying, or enforcing paternity, child support, or medical support. A substituted signature used by a local child support agency shall have the same effect as an original signature, including, but not limited to, the requirements of Section 128.7 of the Code of Civil Procedure.

(3) Notwithstanding any other law, ~~effective July 1, 2016~~, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time prescribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, ~~by July 1, 2016~~, shall develop rules to implement this subdivision.

(4)(A) Notwithstanding any other law, a local child support agency may substitute any original signatures, including, but not limited to, signatures of agents of the local child support agencies, support obligors, support obligees, other parents, witnesses, and the attorneys for the parties to the action, with a printed copy or electronic image of an electronic signature obtained in compliance with the rules of court adopted pursuant to paragraph (2) of subdivision (b) of Section 1010.6 of the Code of Civil Procedure, on pleadings or documents filed for the purpose of establishing, modifying, or enforcing paternity, child support, or medical support. If the pleading or document is signed under the penalty of perjury or the signature does not belong to an agent of the local child support agency, the local child support agency represents, by the act of filing, that the declarant electronically signed the pleading or document before, or on the same day as, the date of filing.

(B) The local child support agency shall maintain the electronic form of the pleading or document bearing the original electronic signature for the period of time prescribed by subdivision (a) of Section 68152 of the Government Code, and shall make it available for review upon the request of the court or any party to the action or proceeding in which it is filed. Printed

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copies or electronic images of electronic signatures used by a local child support agency in this manner shall have the same effect as an original signature, including, but not limited to, the requirements of Section 128.7 of the Code of Civil Procedure.

(c) Actions brought by the local child support agency to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The local child support agency's responsibility applies to spousal support only if the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(d)(1) The Judicial Council, in consultation with the department, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 17404. The Judicial Council may combine the summons and complaint in a single form.

(2)(A) The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon ~~the income or income history~~ one of the support obligor as known following methods used to determine income:

(i) If sufficient information is available to determine actual income, as defined in subdivision (a) of Section 4058 and Section 4060, the local child support agency shall use actual income or income history as the basis of the proposed support obligation, unless earning capacity is plead pursuant to clause (ii).

(ii) If the local child support agency has sufficient information that the earning capacity is greater than the actual income, and sufficient evidence is available to establish earning capacity as defined in subdivision (b) of Section 4058, the local child support agency may use earning capacity as the basis of the proposed support obligation.

(iii) If the actual income of the support obligor is unknown to the local child support agency, and sufficient evidence is available to establish earning capacity as defined in subdivision (b) of Section 4058, the local child support agency shall use earning capacity as the basis of the proposed support obligation.

(B) The complaint shall inform the support obligor that income shall be presumed to be the basis for the proposed support amount of the minimum wage, at 40 hours per week, established. If the basis is the support obligor's earning capacity, rather than actual income, the complaint shall inform the obligor of the factors considered by the Industrial Welfare Commission pursuant to Section 1182.11 of the Labor Code unless information concerning the support obligor's income is provided to the court agency and used to determine the obligor's earning capacity.

(C) The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the support obligor that the proposed judgment will may become effective if the obligor fails to file an answer with the court within 30 days of the service. Except as provided in paragraph (2) of subdivision (a) of Section 17402, If the proposed judgment is

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entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

(D) (i) If the proposed judgment is based on the support obligor's earning capacity pursuant to clauses (ii) or (iii) of subparagraph (A), the local child support agency shall file a motion for judgment, as provided in subdivision (b) of Section 17404. If the hearing on the motion for judgment under this subdivision is continued, the court may make a temporary order as authorized by Section 17404.

(ii) Notwithstanding any other law, at the motion for judgment hearing, the court shall permit the appearance and participation of the defendant and the other parent in the hearing, including, but not limited to, sworn testimony and the introduction of evidence, regardless of whether the defendant has filed an answer to the complaint.

(iii) If the defendant does not appear at the motion for judgment hearing, the judgment shall be entered by way of default. However, nothing in this section limits the discretion of the court to inquire of the local child support agency regarding the factors set forth in subdivision (b) of Section 4058. If after consideration of the factors set forth in subdivision (b) of Section 4058 and the evidence presented by the local child support agency or the other parent, the court determines that guideline child support would be lower than the proposed support obligation listed in the proposed judgment, the court shall enter an order for guideline child support. Nothing in this clause shall be construed to limit the court's discretion to order an amount higher than, lower than, or equal to the proposed support obligation listed in the proposed judgment based on the evidence presented if the defendant files an answer or appears at the motion for judgment hearing.

(3)(A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4)(A) The simplified complaint form prepared pursuant to this subdivision shall be used by the local child support agency or the Attorney General in all cases brought under this section or Section 17404.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However, failure to serve the answer form may be used as evidence in any proceeding under Section 17432 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the local child support agency with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received

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with the summons and additional copies may be obtained from either the local child support agency or the superior court clerk.

(e) In any action brought or enforcement proceedings instituted by the local child support agency pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the local child support agency at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(f) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the agencies established by this section a notice, in clear and simple language prescribed by the Director of Child Support Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals, whether or not they are recipients of public assistance.

(g)(1) In any action to establish a child support order brought by the local child support agency in the performance of duties under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order has the same force and effect as a like or similar order under this code.

(2) The local child support agency shall file a motion for an order for temporary support within the following time limits:

(A) If the defendant is the mother, a presumed father under Section 7611, or any father if the child is at least six months old when the defendant files the answer, the time limit is 90 days after the defendant files an answer.

(B) In any other case in which the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

(3) If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

(4) If the local child support agency fails to file a motion for an order for temporary support within the time limits specified in this section, the local child support agency shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the date the motion was filed, or, if no motion is filed, when a final judgment is entered.

(5) Except as provided in Section 17304, this section does not prohibit the local child support agency from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the Department of Child Support Services.

(6) This section does not otherwise limit the ability of the local child support agency from securing and enforcing orders for support of a spouse or former spouse as authorized under any other law.

(h) As used in this article, “enforcing obligations” includes, but is not limited to, all of the

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following:

(1) The use of all interception and notification systems operated by the department for the purpose of aiding in the enforcement of support obligations.

(2) The obtaining by the local child support agency of an initial order for child support that may include medical support or that is for medical support only, by civil or criminal process.

(3) The initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance.

(4) The response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order if the child or children are residing with the obligee parent and the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(5) The referral of child support delinquencies to the department under subdivision (c) of Section 17500 in support of the local child support agency.

(i) As used in this section, “out of wedlock” means that the biological parents of the child were not married to each other at the time of the child's conception.

(j)(1) The local child support agency is the public agency responsible for administering wage withholding for current support for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(2) This section does not limit the authority of the local child support agency granted by other sections of this code or otherwise granted by law.

(k) In the exercise of the authority granted under this article, the local child support agency may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under this code, or other proceeding in which child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the local child support agency may request any relief that is appropriate that the local child support agency is authorized to seek.

(l) The local child support agency shall comply with all regulations and directives established by the department that set time standards for responding to requests for assistance in locating noncustodial parents, establishing paternity, establishing child support awards, and collecting child support payments.

(m) As used in this article, medical support activities that the local child support agency is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(n)(1) Notwithstanding any other law, venue for an action or proceeding under this division shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public

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assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the local child support agency, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477 of the Welfare and Institutions Code.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(o) The local child support agency of one county may appear on behalf of the local child support agency of any other county in an action or proceeding under this part.

(p) This section shall become operative ~~January~~September 1, ~~2023~~2024.

SEC. 5. Section 17404.1 of the Family Code is amended to read:

17404.1. (a) Upon receipt of a petition or comparable pleading pursuant to Part 6 (commencing with Section 5700.101) of Division 9, the local child support agency or petitioner may either (1) request the issuance of a summons or (2) request the court to issue an order requiring the respondent to appear personally at a specified time and place to show cause why an order should not be issued as prayed in the petition or comparable pleading on file.

(b) The respondent may also be served with a proposed judgment consistent with the relief sought in the petition or other comparable pleading. ~~If the respondent's income or income history is unknown to the local child support agency, the local child support agency may serve a form of proposed judgment with the petition and other documents on the respondent that shall inform the respondent that income shall be presumed to be the amount of the state minimum wage, at 40 hours per week, unless information concerning the respondent's income is provided to the court. The respondent shall also receive notice that the proposed judgment will become effective if the respondent fails to file a response with the court within 30 days after service~~ The petition or other comparable pleading shall provide notice to the obligor of the amount of child support that is being sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the methodology for determining the obligor's income for purposes of a simplified complaint as required by clauses (i) through (iii) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 17400.

(c) (1) Notwithstanding the provisions of Section 17430, if the proposed judgment is based on the support obligor's earning capacity pursuant to clauses (ii) or (iii) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 17400, the local child support agency shall file a motion for judgment, as provided in subdivision (b) of Section 17404.

(2) Notwithstanding any other law, at the motion for judgment hearing, the court shall

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permit the appearance and participation of the defendant and the other parent in the hearing, including, but not limited to, sworn testimony and the introduction of evidence, regardless of whether the defendant has filed an answer to the complaint.

(3) If the defendant does not appear at the motion for judgment hearing, the judgment shall be entered by way of default. However, nothing in this section limits the discretion of the court to inquire of the local child support agency regarding the factors set forth in subdivision (b) of Section 4058. If after consideration of the factors set forth in subdivision (b) of Section 4058 and the evidence presented by the local child support agency or the other parent the court determines that guideline child support would be lower than the proposed support obligation listed in the proposed judgment, the court shall enter an order for guideline child support. Nothing in this subpart shall be construed to limit the court's discretion to order an amount higher than, lower than, or equal to the proposed support obligation listed in the proposed judgment based on the evidence presented if the defendant files an answer or appears at the motion for judgment hearing.

(ed) If a summons is issued for a petition or comparable pleading pursuant to Part 6 (commencing with Section 5700.101) of Division 9, the local child support agency or petitioner shall cause a copy of the summons, petition, and other documents to be served upon the respondent according to law.

(de) If an order to show cause is issued on a petition or comparable pleading pursuant to Part 6 (commencing with Section 5700.101) of Division 9 requiring the respondent to appear at a specified time and place to respond to the petition, a copy of the order to show cause, the petition, and other documents shall be served upon the respondent at least 15 days prior to the hearing.

(ef) A petition or comparable pleading served upon a respondent in accordance with this section shall be accompanied by a blank responsive form that shall permit the respondent to answer the petition and raise any defenses by checking applicable boxes and by a blank income and expense declaration or simplified financial statement together with instructions for completion of the forms.

~~(f) In any action pursuant to Part 6 (commencing with Section 5700.101) of Division 9 in which the judgment was obtained pursuant to presumed income, as set forth in this section, the court may set aside that part of the judgment or order concerning the amount of child support to be paid on the grounds specified and in the manner set forth in Section 17432.~~

SEC. 6. Section 17430 of the Family Code is amended to read:

17430. (a)(1) Notwithstanding any other law, in an action filed by the local child support agency pursuant to Section 17400, 17402, ~~or 17404,~~ or 17404.1, in which the proposed child support amount is based on actual income, a judgment shall be entered without hearing, without the presentation of any other evidence or further notice to the defendant, upon the filing of proof of service by the local child support agency evidencing that more than 30 days have passed since the simplified summons and complaint, proposed judgment, blank answer, blank income and expense declaration, and all notices required by this division were served on the defendant.

(b2) If the defendant fails to file an answer with the court within 30 days of having been served as specified in subdivision (d) of Section 17400 in an action in which the proposed child



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support amount is based on actual income, or at any time before the default judgment is entered, the proposed judgment filed with the original summons and complaint shall be conformed by the court as the final judgment and a copy provided to the local child support agency, unless the local child support agency has filed a declaration and amended proposed judgment pursuant to subdivision (c).

(b)(1) If the proposed judgment is based on the support obligor's earning capacity pursuant to clauses (ii) or (iii) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 17400, the local child support agency shall file a motion for judgment, as provided in subdivision (b) of Section 17404.

(2) At the motion for judgment hearing, the court shall permit the appearance and participation of the defendant and the other parent in the hearing, including, but not limited to, sworn testimony and the introduction of evidence, regardless of whether the defendant has filed an answer to the complaint.

(3) If the defendant does not appear at the motion for judgment hearing, the judgment shall be entered by way of default. However, nothing in this section limits the discretion of the court to inquire of the local child support agency regarding the factors set forth in subdivision (b) of Section 4058. If after consideration of the factors set forth in subdivision (b) of Section 4058 and the evidence presented by the local child support agency or the other parent the court determines that guideline child support would be lower than the proposed support obligation listed in the proposed judgment, the court shall enter an order for guideline child support. Nothing in this subpart shall be construed to limit the court's discretion to order an amount higher than, lower than, or equal to the proposed support obligation listed in the proposed judgment based on the evidence presented if the defendant files an answer or appears at the motion for judgment hearing.

(c) If the local child support agency receives additional ~~financial~~ information ~~within 30 days of service before the answer is filed~~ ~~of the complaint and proposed judgment on the defendant~~ and the additional information would result in a support order that is different from the amount in the proposed judgment, the local child support agency shall file a declaration setting forth the additional information and an amended proposed judgment. The local child support agency shall be permitted to file the amended proposed judgment at any time after the filing of the initial summons and complaint and before the answer is filed. The declaration and amended proposed judgment shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law. The defendant's time to answer or otherwise appear shall be extended to 30 days from the date of service of the declaration and amended proposed judgment.

(d) Upon entry of the judgment, the clerk of the court shall provide a conformed copy of the judgment to the local child support agency. The local child support agency shall mail by first-class mail, postage prepaid, a notice of entry of judgment by default and a copy of the judgment to the defendant to the address where the summons and complaint were served and last known address if different from that address.

(e) Notwithstanding any other law, if the judgment is entered from a proposed support order that is based on earning capacity pursuant to clause (iii) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 17400, within one year after entry of judgment and then

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annually thereafter, until a modified order is entered, the local child support agency shall conduct a review of the case to determine if there is sufficient additional evidence available to establish actual income of the defendant or a different earning capacity, as defined in subdivision (b) of Section 4058, from that which was the basis of the initial support order. If after any such review the local child support agency determines sufficient additional evidence exists, the local child support agency shall file a motion to modify the support order prospectively with the court within six months of its determination, and such additional evidence shall constitute a change in circumstances to obtain a modification of the support order. Nothing in this subdivision shall prohibit the local child support agency from filing the motion to modify pursuant to this subdivision prior to the expiration of any annual review period if additional evidence is discovered sooner.

SEC. 7. Section 17432 of the Family Code is amended to read.

17432.(a) In any action filed by the local child support agency before September 1, 2024 pursuant to Section 17400, 17402, ~~or 17404~~, or 17404.1, the court may, on any terms that may be just, set aside that part of the judgment or order concerning the amount of child support to be paid. This relief may be granted after the six-month time limit of Section 473 of the Code of Civil Procedure has elapsed, based on the grounds, and within the time limits, specified in this section.

(b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in ~~subdivision (d) any predecessor~~ of Section 17400, or any predecessor of that section in the Welfare and Institutions Code, and that were entered after the entry of the default of the ~~defendants support obligor~~ under Section 17430, or any predecessor of that section in the Welfare and Institutions Code. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage or the obligation of medical support or health insurance.

(c) The court may set aside the child support order contained in a judgment described in subdivision (b) if the ~~defendant's support obligor's~~ income was substantially different for the period of time during which judgment was effective compared with the income the ~~defendants support obligor~~ was presumed to have. AFor purposes of this subdivision, "substantial difference" means that amount of income that would result in an order for support that deviates from the order entered by default by 10 percent or more. The court, in its discretion, may set aside and reinstate child support for all or partial relevant periods of time depending on the income information available at the time the motion is filed. Set aside for less than the full period of time that the judgment was effective will not preclude a subsequent review within the timeframe provided under subdivision (f).

(d) Application for relief under this section shall be filed together with an income and expense declaration or simplified financial statement or other information concerning income for any relevant years. The Judicial Council may combine the application for relief under this section and the proposed answer into a single form.

(e) The burden of proving that the actual income of the ~~defendants support obligor~~ deviated substantially from the presumed income shall be on the party seeking to set aside the order.

(f) A party to the action described in subdivision (a), including the local child support

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agency, may file a motion for relief under this section ~~shall be filed~~ within ~~one year~~two years of the local child support agency's first collection of money ~~by the local child support agency through an earnings assignment order or the obligee an order or notice to withhold income for child support.~~ The ~~one-two~~ year time period shall run from the date that the local child support agency receives the first collection of money from one of the sources listed in this subdivision. Immediately upon receipt of the first collection of money from one of the sources listed in this subdivision, the local child support agency shall notify the support obligor and the support obligee in writing of the first collection, including the source of the collection, and the commencement of the two-year time period to file a motion for relief under this section. Nothing in this subdivision shall be construed to prohibit any party to the action, including the local child support agency, from filing a motion for relief under this section prior to the commencement of the two-year time period.

(g) Within three months from the date the local child support agency receives the first collection for ~~any~~an order established using presumed income, the local child support agency shall check all appropriate sources for income information, and, if income information exists, the local child support agency shall ~~make a determination~~determine whether the order qualifies for set aside under this section. If the order qualifies for set aside, the local child support agency shall bring a motion for relief under this section. Where a party to the action, including the local child support agency, has taken subsequent legal action to modify the support prospectively but did not address a possible set aside under this section, the subsequent modification shall not preclude the filing of a potential set aside at a later date.

(h) In all proceedings under this section, before granting relief, the court shall consider the amount of time that has passed since the entry of the order, the circumstances surrounding the ~~defendant's~~support obligor's default, the relative hardship on the child or children to whom the duty of support is owed, the caretaker parent, and the ~~defendants~~support obligor, and other equitable factors that the court deems appropriate.

(i) If the court grants the relief requested, the court shall issue a new child support order using the appropriate child support guidelines currently in effect. The new order shall have the same commencement date as the order set aside.

(j) ~~The Judicial Council shall review and modify any relevant forms for purposes of this section. Any modifications to the forms shall be effective July 1, 2005. Prior to the implementation of any modified Judicial Council forms, the local child support agency or custodial parent may file any request to set aside a default judgment under this section using Judicial Council Form FL-680 entitled "Notice of Motion (Governmental)" and form FL-684 entitled "Request for Order and Supporting Declaration (Governmental)."~~This section shall become operative September 1, 2024.

## **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 **October 14, 2022**, at noon.
- If you are unable to reply by **October 14** at noon, 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 submitting the following report to the Legislature: *Additional Legislative Changes Required to Bring California into Compliance with Federal Final Rule.*

My vote is as follows:

Approve       Disapprove       Abstain

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

\_\_\_\_\_/s/  
Marla O. Anderson

\_\_\_\_\_/s/  
Maria Lucy Armendariz

\_\_\_\_\_/s/  
Richard Bloom

\_\_\_\_\_/s/  
C. Todd Bottke

\_\_\_\_\_/s/  
Kevin C. Brazile

\_\_\_\_\_/s/  
Kyle S. Brodie

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

\_\_\_\_\_/s/  
Carol A. Corrigan

\_\_\_\_\_/s/  
Samuel K. Feng

\_\_\_\_\_/s/  
David D. Fu

\_\_\_\_\_/s/  
Carin T. Fujisaki

\_\_\_\_\_/s/  
Brad R. Hill

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

My vote is as follows:

Approve

Disapprove

Abstain

\_\_\_\_\_/s/  
Harold W. Hopp

\_\_\_\_\_/s/  
Ann C. Moorman

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

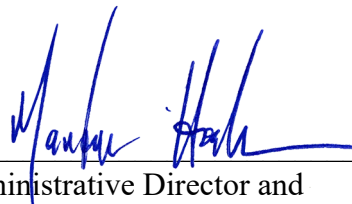
\_\_\_\_\_/s/  
David M. Rubin

\_\_\_\_\_/s/  
Marsha G. Slough

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

Date: 10/20/22

Attest:



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