

Date of Hearing: May 11, 2020

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AB 3365 (Committee on Judiciary) – As Amended May 4, 2020

PROPOSED CONSENT

SUBJECT: FAMILY LAW

KEY ISSUE: SHOULD NON-CONTROVERSIAL CHANGES BE MADE TO THE FAMILY CODE, INCLUDING LIFTING THE SUNSET ON THE 2013 INCREASE TO THE LOW-INCOME ADJUSTMENT TO THE CHILD SUPPORT GUIDELINE, CLARIFYING THAT CHILD SUPPORT COURT FILES ARE OPEN TO THE PUBLIC, AND MAKING TIMEFRAMES CONSISTENT FOR REGULAR AND CONFIDENTIAL MARRIAGES?

SYNOPSIS

This bill is the Committee's annual omnibus family law bill. It makes non-controversial changes to family law in California, including lifting the sunset on the 2013 increase to the low-income adjustment to the child support guideline, clarifying that child support court files are public documents, and making timeframes consistent for regular and confidential marriages. The bill is supported by the California Association of Certified Family Law Specialists, and there is no reported opposition to the bill.

SUMMARY: Makes multiple changes to the Family Code, including lifting the sunset on the increase in the low-income adjustment to the child support guideline and clarifying that child support court records are open to the public. Specifically, **this bill**:

- 1) Extends the time period, that a duplicate confidential marriage license can be issued by the county clerk, if the confidential marriage license is lost, damaged, or destroyed after the performance of the marriage, but before it is returned to the county clerk, or deemed unacceptable for registration by the county clerk, from not later than one year after issuance of the original license to not later than one year after the date of the marriage.
- 2) Lifts the sunset on the increase of the maximum low-income adjustment to the child support guideline of \$1,500 net disposable income per month, adjusted annually for cost of living increases.
- 3) Provides that a court is not a public entity for purposes of the provision that requires all files, applications, papers, documents, and records established or maintained by a public entity pursuant to the administration and implementation of the state child and spousal support enforcement program be confidential, and not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. States this is declarative of existing law.

EXISTING LAW:

- 1) Allows couples who have been living together as spouses to marry confidentially through the confidential marriage process. Provides that confidential marriage certificates are not

available to the public. (Family Code Section 500 *et seq.* Unless stated otherwise, all further statutory references are to the Family Code.)

- 2) If a confidential marriage license is lost, damaged, or destroyed after the performance of the marriage, but before it is returned to the county clerk, or deemed unacceptable for registration by the county clerk, requires the person solemnizing the marriage, in order to return the license to the county clerk as required, to obtain a duplicate marriage license by filing an affidavit setting forth the facts with the clerk of the county in which the license was issued. Prohibits the duplicate license from being issued later than one year after issuance of the original license. (Section 510.)
- 3) If a regular marriage license is lost, damaged, or destroyed after the performance of the marriage, but before it is returned to the county clerk, or deemed unacceptable for registration by the county clerk, requires the person solemnizing the marriage, in order to return the license to the county clerk as required, to obtain a duplicate marriage license by filing an affidavit setting forth the facts with the clerk of the county in which the license was issued. Prohibits the duplicate license from being issued later than one year after the date of the marriage. (Section 360.)
- 4) Establishes a uniform, statewide guideline for calculating child support, based on the income of both parents and the time they each spend with the child. (Section 4055.)
- 5) Increases, until January 1, 2021, the rebuttable presumption that an obligor with net disposable income of less than \$1,500 a month is entitled to a low-income adjustment to their child support obligation. Allows this presumption to be rebutted by evidence showing that application of the adjustment would be unjust or inappropriate in a particular case. Requires the Judicial Council to annually update the low-income adjustment based on the California Consumer Price Index, as specified. Provides that the low-income adjustment may reduce the child support obligation by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under guideline by a fraction, the numerator of which is 1,500 minus the obligor's net disposable income per month, and the denominator of which is 1,500. (Section 4055 (b)(7).)
- 6) Restores, beginning January 1, 2021, the low-income adjustment to \$1,000 per month and eliminates the requirement that the Judicial Council annually update the low-income adjustment based on the California Consumer Price Index. (Section 4055 (d).)
- 7) Requires the Judicial Council to review the guideline at least every four years, as specified. (Section 4054; 45 C.F.R. 302.56.)
- 8) Requires that all files, applications, papers, documents, and records established or maintained by a public entity pursuant to the administration and implementation of the state child and spousal support enforcement program be confidential, and not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. Prohibits a public entity from disclosing any file, application, paper, document, or record, or the information contained therein, except as provided. (Section 17212.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: This bill is the Committee's annual omnibus family law bill. It makes non-controversial changes to family law in California, including lifting the sunset on the 2013 increase to the low-income adjustment to the child support guideline, clarifying that child support court files are open to the public, and making consistent timeframes for regular and confidential marriages.

This bill lifts the sunset on the 2013 increase to the low-income adjustment to the child support guideline. As required by federal law, California has a statutory guideline – a mathematical formula – to calculate a noncustodial parent's child support obligation. To help ensure that low-income obligors are able to pay their child support obligation, the guideline contains a presumptive low-income adjustment that can reduce the support obligation for obligors with low monthly income and help ensure that these obligors are able to sustain themselves and pay support. The low-income adjustment was originally established at \$1,000 in 1993. (AB 923 (Speier), Chap. 906 Stats. 1994.) Beginning in 2013, it was raised to \$1,500, with an annual adjustment for inflation with a January 1, 2018 sunset. (AB 2393 (Davis), Chap. 646, Stats. 2012.) That sunset was extended to January 1, 2021 by SB 469 (Skinner), Chap. 730, Stats. 2017. This bill lifts the 2021 sunset so the increase in the low-income adjustment increase remains in effect and helps ensure that low-income obligors can sustain themselves, while still contributing to the support of their children.

How the low-income adjustment works: The low-income adjustment is the maximum amount by which a child support amount, as calculated by the child support guideline, can be reduced. It is the presumed correct amount, but may be rebutted by evidence showing that the application of the low-income adjustment in a particular case would be unjust and inappropriate, based on set principles and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. These principles are as follows:

- A parent's first and principal obligation is to support their minor children according to the parent's circumstances and station in life.
- Both parents are mutually responsible for the support of their children.
- The guideline takes into account each parent's actual income and level of responsibility for the children.
- Each parent should pay for the support of the children according to their ability.
- The guideline seeks to place the interests of children as the state's top priority.
- Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.
- Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.
- The financial needs of the children should be met through private financial resources as much as possible.
- It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children.
- The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.
- The guideline is intended to be presumptively correct in all cases, and only under special

circumstances should child support orders fall below the child support mandated by the guideline formula.

- Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states. (Section 4053.)

To ensure that the court properly considers the low-income adjustment's impact on both parents, if a court uses a computer to calculate the child support order (as all courts do today), the computer program cannot automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. Instead, the computer program must ask the user whether or not to apply the low-income adjustment, and if the answer is yes, the computer program must provide the range of allowable adjustments. (Section 4055 (c).)

When applicable, the low-income adjustment reduces, on a sliding scale, the support obligation. Suppose a support obligation, calculated under the guideline is, for simplicity, \$100. The order calculated with the current, maximum low-income adjustment will be \$100 if the obligor has a net monthly income of \$1,755 (the current low-income amount, adjusted for inflation), \$85 if the obligor's income is \$1,500, \$57 if the obligor's income is \$1,000, and \$28 if the obligor's income is \$500. If the low-income adjustment returns to \$1,000 a month, as will occur in the absence of this bill, the child support amount with the maximum low-income adjustment for a \$100 order will be \$100 if the obligor's net monthly income is \$1,000 or greater, and \$50 if the obligor's income is \$500.

While the maximum differences in monthly orders, with or without this bill, may not seem too large, for low-income obligors to which it applies it can make all the difference in terms of bare subsistence survival of the noncustodial parent and in terms of timely and regular payment of child support that a child may depend upon. Additionally, because the low-income adjustment is the maximum amount that a child support order can be reduced, its application depends on the circumstances of the parents and the child.

Increase in the low-income adjustment based on inflation adjustment: AB 2393 not only increased the low-income adjustment from \$1,000 to \$1,500 net income a month, it also established an annual inflation adjustment. As a result, the Judicial Council has updated the low-income adjustment annually, based on changes to the California Consumer Price Index. In 2019, the low income adjustment was \$1,755.

Judicial Council Low-Income Adjustment Threshold Table

Year	Inflation Adjusted Amount
2013	\$1533
2014	\$1556
2015	\$1584
2016	\$1607

2017	\$1644
Year	Inflation Adjusted Amount
2018	\$1692
2019	\$1755

Studies by the Judicial Council and the Urban Institute demonstrate the continued need for the increase in the low-income adjustment: According to the most recent report on child support collections in California, \$17.5 billion in uncollected child support is owed to families using the state child support agency to help collect their support. (California Department of Child Support Services (DCSS), *Comparative Data for Managing Program Performance: December 2019* (Jan. 2020).) In 2003, the Urban Institute reviewed the collectability of child support debt owed in California on behalf of DCSS and determined that much of the debt was not collectible, in large part because most of the debt was owed by low-income obligors who would likely never be able to repay it. (Elaine Sorensen, *Examining Child Support Arrears in California: The Collectibility Study* (Urban Institute, 2003).) The study examined, among other things, the low-income adjustment and determined that:

Although we were unable to examine this issue ourselves, the Judicial Council of California did a thorough review of California's child support guideline in 2001. One of their recommendations was to make the low-income adjustment in the guideline presumptive to ensure that it is used. They found that only 6 percent of obligors eligible for a low-income adjustment actually received one in 1999. We did find, however, that one of the primary factors contributing to arrears in California is high child support orders on low-income obligors. Making the low-income adjustment presumptive should help in this regard. Additionally, the low-income adjustment has not been revised since it was established nearly a decade ago. It should be reviewed for possible adjustment.

(*Id.* at Executive Summary – 20 (footnote omitted).) The adjustment was made presumptive by AB 1752 (Committee on Budget), Chap. 225, Stats. 2003, and, as discussed above, was increased in 2013 by AB 2393 (Davis), Chap. 646, Stats. 2012, and SB 469 (Skinner), Chap. 730, Stats. 2017.

The latest review of the guideline by the Judicial Council raised a number of issues concerning the uniform application of the low-income adjustment, but also suggested that a study should be undertaken to determine whether and to what extent the low-income adjustment provides for the subsistence needs of noncustodial parents. (Judicial Council, *Review of Statewide Uniform Child Support guideline 2017: A Report to the California Legislature*, p. 20 (Oct. 25, 2017).)

This bill lifts the sunset on the low-income adjustment increase and works in harmony with newer federal child support guideline rules. This bill lifts the 2021 sunset of the increase in the low-income adjustment. The federal Office of Child Support Enforcement updated federal rules on states' child support guidelines at the end of the last federal administration, including a low-income adjustment for noncustodial parents, titled *Flexibility, Efficiency, and Modernization in*

Child Support Enforcement Programs. The new rules were effective January 19, 2017. These new rules, among other things, require state child support agencies to increase efforts to ensure that child support orders reflect the noncustodial parent's ability to pay. In particular, the revised federal rules require the guideline to take into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay by incorporating a low-income adjustment or other method determined by each state. (45 C.F.R. 302.56 (c)(1).) Additionally, if imputation of income is authorized, the guideline must take into consideration the specific circumstances of the noncustodial parent to the extent known, including such factors as the noncustodial 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 noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case. (*Ibid.*)

The extension of the low-income adjustment increase is consistent with the revised federal rules, which require consideration of the noncustodial parent's ability to pay child support and provide for their basic subsistence. Without the low-income adjustment, including the 2012 increase, it is likely that California would be out of compliance with the revised federal rules. Thus, continuing the low-income adjustment increase helps ensure that California is in compliance with federal requirements.

This bill clarifies that child support court records are open to the public. Court records are open to the public unless specifically made confidential. Confidential court records include adoption records and juvenile dependency and delinquency records. (*See* Section 9200; Welfare & Institutions Code Section 827.) Child support court records have never been confidential, but there is confusion in some counties because Section 17212 provides that non-court child support records belonging to the Department of Child Support Services and the local child support agencies are confidential. That section uses the term "public entity," holding that that all files, applications, papers, documents, and records established or maintained by a public entity pursuant to the administration and implementation of the state child support program be confidential, and not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child support program and prohibiting a public entity from disclosing any file, application, paper, document, or record, except as provided.

This bill clarifies that courts are not considered public entities for purposes of that section and that this clarification is declarative of existing law. Again, this is what the law has always been with respect to court records, unless they are made confidential by another provision of law.

This bill makes timeframes consistent between regular marriages and confidential marriages. There are two types of marriages in California: regular marriages and confidential marriages. A confidential marriage is the same as a regular marriage except it is designed for couples who have been living together as spouses and want to marry. Confidential marriage certificates are not available to the public. (Section 500 *et seq.*)

Regardless of marriage type, to be legally married, the marriage must be solemnized, the license must be signed by the person who solemnized the marriage, and the signed license returned to the county clerk. (Sections 423, 506.) If a marriage license is lost or damaged after the marriage ceremony but before it is returned to the county recorder, the person solemnizing the marriage can obtain and complete a duplicate license if done timely. (Section 360, 510.)

Regular and confidential marriages have slightly different timeframes for that – up to one year *from the date of the marriage* for regular marriages and up to one *from the issuance of the license* for confidential licenses. (*Id.*) This can be confusing, and there is no policy reason for the different timeframes. This bill makes the two timeframes consistent by extending the timeframe for confidential licenses to one year from the date of the marriage ceremony.

ARGUMENTS IN SUPPORT: The California Association of Certified Family Law Specialists writes to support the bill because the increase to the low-income adjustment to the child support guideline “is good law and it makes sense to increase the net disposable income threshold indefinitely,” and because the other provisions help clarify, or are declarative of, existing law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Certified Family Law Specialists

Opposition

None on file

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