

NEW LAW CAN HELP REUNITE FAMILIES

By Sarah E. Kurtz

After years of fighting addiction and being in and out of treatment centers and prison, Phyllis Johnson had a new job, a place to live and hopes of getting her three children back. For some time, her two teenage daughters had been living with her mother, and her son had been living with a friend. And thanks to a state program that pays for a portion of the children's care, Phyllis knew they were being well taken care of.

But just a week into her new job, Phyllis began to think that the state program wasn't all that wonderful. The government paid a visit to her employer and demanded that they deduct about \$400 a month from her salary (25 percent) to repay the state for the money provided to her children's guardians – plus 10 percent interest. The timing couldn't have been worse.

For years, critics have criticized this program saying that it penalizes parents and turns them into debtors just as they are trying to reunite their families and put their lives back together. A new bill signed into law this October, however, has the potential to change all of that.

Under the provisions of the new California law, local child support agencies are given the authority to forgive all or part of a child support debt owed to the state when repayment of the full debt would be harmful to the child or a barrier to reunification of the family.¹ The legislation, authored by Assemblyman Fred Keeley (D-Boulder Creek, CA), was sponsored by the National Center for Youth Law (NCYL) and Children Now.

When public assistance is provided to children removed from the custody of their parents and placed in foster care, or to those who are voluntarily placed with a

guardian or other caregiver, the parents of such children are required to pay child support to the state to reimburse the state for the assistance provided to their child while out of the home. These child support policies have undermined the efforts of child welfare programs to shorten foster care stays and ensure the viability of reunified families. To regain custody of children removed by the state, parents must convince the court they have made a home that is safe for their children. This is a formidable challenge to parents living in poverty, made even more so when they must reimburse the state rather than using their limited earnings to provide for their families. The California legislation takes a two-pronged approach to attacking this long-standing problem.

First, under section 2 of the new law, a child support debt may be forgiven when three factors are present. First the parent must show either (1) that the child has been adjudged a dependent of the court and has been reunified with the obligor parent pursuant to a court order,² or (2) that the child received public assistance while living with a guardian or relative caregiver, and the child has been returned to the custody of the obligor parent who the child resided with before placement with the guardian or relative caregiver.³ Second, the obligor parent in question must have an income less than 250 percent of the current federal poverty level.⁴ Third, the local child support agency must have determined that the compromise is necessary for the child's support.⁵ The Department of Child Support Services must promulgate regulations under this section by October 1, 2002.⁶

² Cal. Fam. Code § 17550(a)(1)(A).

³ Cal. Fam. Code § 17550(a)(1)(B).

⁴ Cal. Fam. Code § 17550(a)(2).

⁵ Cal. Fam. Code § 17550(a)(3).

⁶ Cal. Fam. Code § 17550(a) and (e).

¹ Chapter 463, Statutes of 2001 (Assembly Bill No. 1449).

Additionally, section 3 of the new law gives county welfare departments discretion not to refer cases to local child support agencies for the establishment of support orders in the first place.⁷ The county welfare department must review all cases where the child receives AFDC Foster Care benefits, and determine whether referral to the local child support agency is in the best interests of the child.⁸ In making this determination, the county welfare department must consider whether payment of support will undermine the parent's ability to meet either the reunification plan requirements,⁹ or the financial needs of the child.¹⁰ (A referral may be made where reunification services are not offered or are terminated.¹¹) When the county welfare department determines it is not in the

best interest of the child to refer the case to the local child support agency, no referral may be made.¹² Such determinations must be reviewed periodically for changed circumstances.¹³ The Department of Social Services is to promulgate regulations under this section of the law by October 1, 2002.¹⁴

Together, these provisions represent a tremendous improvement in an area of the law that has caused problems for many years. The legislation provides one model for other states similarly to relieve the barriers to reunification in low-income families.

Sarah Kurtz is a staff attorney with the National Center for Youth Law, specializing in government benefits, including child support services.

⁷ Cal. Fam. Code § 17552.

⁸ Cal. Fam. Code § 17552(a).

⁹ Cal. Fam. Code § 17552(a)(1).

¹⁰ Cal. Fam. Code § 17552(a)(2).

¹¹ Cal. Fam. Code § 17552(a).

¹² Cal. Fam. Code § 17552(b).

¹³ Cal. Fam. Code § 17552(c).

¹⁴ Cal. Fam. Code § 17552(d).