

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee  
Hon. Jerilyn Borack and Hon. Susan Huguenor, Co-chairs  
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DATE: November 7, 2005

SUBJECT: Family Law: Notice of Activation of Military Service and Deployment and  
Request to Modify Support (adopt form FL-398) (Action Required)

Issue Statement

The proposed new mandatory form would implement changes to the Family Code made by Senate Bill 1082 (Stats. 2005, ch. 154; Morrow), which is urgency legislation that permits military service members activated to duty to file and serve a notice of activation and to request modification of support. SB 1082 requires the Judicial Council to develop any necessary forms within 90 days of its effective date, which was August 30, 2005.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective December 2, 2005, adopt form FL-398, *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*.

The form is attached at pages 4–8.

Rationale for Recommendation

Senate Bill 1082 is urgency legislation requiring the Judicial Council to develop forms within 90 days of its effective date implementing procedures for modification of support orders of military service members. The procedures set forth in SB 1082 apply to child, family, and spousal support orders.

Amended Family Code section 3651 provides that if a party to a support order is activated to military duty or National Guard service and deployed out of state, the service

member may file and serve a notice of activation of military service and request modification of the support order based on the change in circumstances. The procedure anticipates that the party can apply for the modification of the support order directly to the court or to the local child support agency, which in turn would file for the modification on behalf of the service member. Amended Family Code section 3651 also specifies that the forms must include the date of deployment, whether the service member's employer will supplement the service member's income during deployment, and a notice to the opposing party that, absent good cause, the support order will be made retroactive to the date of service of the form or the date of deployment, whichever is later. The forms must also contain notice that if the court stays the proceeding until after the service member's return from deployment, the service member must ask the court to set the matter for hearing within 90 days of return from deployment to hear any unresolved request for modification of support, or the matter will be taken off calendar and the service member will lose the right to the modification allowed under Family Code section 3651.

Proposed new mandatory form FL-398, *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*, would be the form that service members use to apply to the court for a support modification.

#### Alternative Actions Considered

Since SB 1082 requires the Judicial Council to develop forms within 90 days of its effective date, which was August 30, 2005, the committee rejected the option of taking no action. (Fam. Code §3651(g) (1)).

#### Comments From Interested Parties

The proposal as circulated was for two new forms. Proposed new mandatory form FL-398, *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*, would be the form that service members use to apply to the court for a support modification. Proposed new mandatory form FL-399, *Notice of Deployment*, would have been the form that service members use to request that the local child support agency seek modification of support while the service member is deployed, and would have been attached to form FL-398. This form has been withdrawn, as discussed below.

The invitation to comment on the proposal was circulated from October 4, 2005 to October 24, 2005, to the standard mailing list for family and juvenile law proposals, as well as the regular rules and forms mailing list. This distribution list includes judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. In addition, this proposal was sent to child support commissioners, family law facilitators, court clerks, the state Department of Child Support Services (DCSS)/Child Support Directors Association (CSDA) Judicial Council Forms Committee, and title IV-D directors.

A total of 19 comments were received from interested parties. The commentators included judicial officers, court administrators and managers, family law facilitators, the DCSS/CSDA Judicial Council Forms Committee, a deputy attorney general, attorneys, a local bar association, the Senate Office of Research, and members of the general public.

Most commentators agreed with the proposal but suggested specific changes to help clarify the form. Most of these suggestions were incorporated into the revised form and information sheet. Several commentators included suggestions for legislative changes with their comments. Only one commentator, a member of the general public, did not agree with the proposed forms.

The Senate Office of Research reviewed and commented on the two proposed forms on behalf of the Senate Judiciary Committee. The comment agreed with the proposal if modified to exclude form FL-399 *Notice of Deployment*. The commentator indicated that the procedure intended by the legislation was the development of forms by both the Judicial Council and DCSS. The DCSS form would serve as the service member's request for the agency to pursue the support modification, as well as provide all information necessary for the local child support agency to proceed without further contact from the service member. The DCSS form thus needs to provide the agency with all information necessary to apply for local child support agency services if services were not already being provided.

*FL-399 Notice of Deployment*, as originally drafted and circulated for comment, was intended to serve the requirement for both notice to the local child support agency that the service member wanted the agency to request a support modification and notice to the court that the service member had authorized the agency to act on his or her behalf. SB 1082 mandated DCSS to develop this and other forms. Form FL-399 was drafted with the assistance of and input from the DCSS/CSDA Judicial Council Forms Committee.

The comment from the Senate Office of Research on behalf of the Senate Judiciary Committee was forwarded to DCSS. DCSS has agreed to develop a non-Judicial Council form, *Notice of Deployment*. Therefore, the committee recommends that form FL-399 not be adopted as a Judicial Council form. The Senate Office of Research was also informed of this proposed resolution.

A chart summarizing the comments and the committee's responses is attached at pages 9–33.

#### Implementation Requirements and Costs

Courts will incur some costs in copying the forms.

Attachments



PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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5. I am requesting the court to change the existing
- a.  child support       spousal support       family support      order made under the case number listed above to an amount based on my income while deployed.
  - b. earnings assignment order to state the new support amount if the request in item 5a is granted.
  - c. This support is payable by  
 petitioner/plaintiff       respondent/defendant       other parent.
6. This request is based on:
- a.  petitioner's/plaintiff's       respondent's/defendant's       other parent's      military deployment
  - b. completed attached *Financial Statement (Simplified)* (form FL-155) or completed *Income and Expense Declaration* (form FL-150)
  - c.  the attached service member's *Notice of Deployment* that has been submitted to the local child support agency (*Attach this form if the local child support agency is involved.*)
7. Additional required information
- a. service member's out-of-state deployment date is (*specify date and attach a copy of the order of deployment*):
  - b. service member's duration of activation is (*specify beginning and end dates*):
8. A blank *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) and a **blank** *Financial Statement (Simplified)* (form FL-155) or a **blank** *Income and Expense Declaration* (form FL-150) will be served with the moving papers.
9. Check all that apply (*you must check at least one box*):
- a.  While the service member is deployed, his or her employer will supplement the military pay (*specify amount per month and attach proof*): \$
  - b.  While the service member is deployed, his or her employer will not supplement the military pay, and the service member will only have military pay in the amount stated on the attached *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150).
  - c.  It is unknown whether the service member's employer will supplement the military pay.
  - d.  While deployed, the service member will have other income (*specify amount per month, source of income, and attach proof*): \$
10.  The other party and the service member have previously agreed that spousal support cannot be modified or terminated (*attach a copy of the agreement.*)
11.  **The facts in support of this request are** (*specify*):

Contained in an attached declaration.

12. Send notice of the hearing to the service member at (*specify address*):

13.  I will be deployed out of state at the time of the hearing. I waive appearing in person at the court hearing. I ask the court to go forward with the hearing to decide if the support will be temporarily modified until I can appear in person. This request is not a waiver of my right to a stay or rehearing of the matter under the Servicemembers Civil Relief Act (SCRA). **(This waiver is only valid if the service member signs below.)**

14. Number of pages attached: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE)

## INFORMATION SHEET FOR COMPLETING AND RESPONDING TO NOTICE OF ACTIVATION OF MILITARY SERVICE AND DEPLOYMENT AND REQUEST TO MODIFY A SUPPORT ORDER

### If you are the person requesting that the support order be changed:

Please follow these instructions to complete the *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* if you do not have an attorney to represent you. This form is intended to be used by a service member to ask the court to modify support based on his or her military activation and out-of-state deployment. If you have an attorney, he or she should complete this form. If you would like the local child support agency to assist you, fill out a *Notice of Deployment* and submit it to the local child support agency. They will prepare a request for modification, and you will not need to appear if you are already deployed. The local child support agency must attach the *Notice of Deployment* to form FL-398 to show the court that the service member has authorized the agency to act on his or her behalf. You can obtain a *Notice of Deployment* from any local child support agency. Please note that the child support agency cannot provide services for a modification of spousal support.

You may also ask to appear by telephone. See rule 5.324 of the California Rules of Court, and form FL-679 *Request for Telephone Appearance (Governmental)*. If you are in the military, you may also ask for the assistance of a JAG (Judge Advocate General) officer.

In addition to the modification procedures contained in the *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*, a service member who has been activated may be eligible for a modification based on a change in circumstances, specifically a change in income due to military activation. To request a modification of support for reasons other than out-of-state deployment, see FL-391 *Information Sheet—Simplified Way to Change Child, Spousal, or Family Support* for what forms to use and instructions. The service member may also have certain protections provided by the Servicemembers Civil Relief Act (SCRA). Please note that a modification of support cannot be effective any earlier than the filing with the court of the request to modify support.

When you have completed this form, file the original and attachments with the court clerk. The address of the court clerk is listed in the telephone directory under "County Government Offices." **Keep two copies of the filed *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* form and its attachments. Serve one copy as well as a blank *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) and blank *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) on the other party. If the local child support agency is involved, serve it too. Keep another copy for your records. (See *Information Sheet for Service of Process*, form FL-611, *Proof of Personal Service*, form FL-330, and *Proof of Service by Mail*, form FL-335.)**



#### Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code, § 54.8.)

### INSTRUCTIONS FOR COMPLETING THE NOTICE OF ACTIVATION OF MILITARY SERVICE AND DEPLOYMENT AND REQUEST TO MODIFY A SUPPORT ORDER FORM (TYPE OR PRINT FORM IN BLACK INK):

Front page, first box, top of form, left side: Print your name, address, telephone number, and fax number or e-mail address in this box if it is not already there.

Front page, second box, left side: Print your county's name and the court's address in the box. Use the same address for the court that is on your most recent support order or judgment. If you do not have a copy of your most recent support order or judgment, you can get one from either the court clerk or the local child support agency.

Front page, third box, left side: Print the names of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed in your most recent support order or judgment. If no name is listed for the other parent, leave that line blank.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print your case number in this box. Use the same number that is listed on your most recent support order or judgment.

#### Page 1, items 1 through 4:

1. Insert the name of the person(s) other than you. Include the local child support agency if they are involved in your case.
2. a. You must contact the court clerk's office to get information on obtaining a hearing date for this request. The court clerk will give you the information you need to complete this section. The hearing date must be written on the copies of the pages served on the other party.
- b. Check the first box if the address of the court where the hearing will be held is the same as the one you put at the top of the request. Check the second box if the address of the court where the hearing will be held is different from the one you put at the top of the notice. Print the different court address in the space.
- 3.-4. If you need to have the court hear your case in less than the statutorily required time, you can ask the court for an order shortening time. If you need assistance, contact the court's family law facilitator in your county or go to [www.courtinfo.ca.gov/selfhelp/](http://www.courtinfo.ca.gov/selfhelp/).

Page 2, items 5 through 12:

5. a. Check the box for the type of support order that you are asking to have changed.
  - b. If the person who pays support is in the military, and the support order is changed and the court issues a new earnings assignment order to show the new support amount, the new earnings assignment order must be served on one of the following finance centers. If the service member is in the Army, Navy, Air Force or Marines, it must be served on: DFAS Cleveland Center, DFAS-DGI/CL, P.O. Box 998002, Cleveland, OH 44199-8002. If the service member is in the Coast Guard, the new earnings assignment order must be served on: Commanding Officer (LGL), U.S. Coast Guard Pay and Personnel Center, Federal Building, 444 SE Quincy Street, Topeka, KS 66683-3591.
  - c. Check the box that correctly describes the person who is paying the support.
6. a. Check the box to show who is being deployed by the military.
  - b. Fill out the *Financial Statement (Simplified)* (form FL-155), if you are allowed to use the form. See the instructions on the back side of the form to see if you qualify. If you are not allowed to use the *Financial Statement (Simplified)* (form FL-155), fill out the *Income and Expense Declaration* (form FL-150). You must attach copies of your most recent W-2 forms and paycheck stubs for the last two months to the *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150). **If you are requesting a modification of spousal support, you must fill out the *Income and Expense Declaration* (form FL-150).**

A service member must include his or her Basic Pay, Basic Allowance for Subsistence, Basic Allowance for Quarters benefits (BAQ), and any other non-taxable entitlements in the income section of the *Income and Expense Declaration* (form FL-150). Attach a copy of the Leave and Earnings Statement (LES) from the last two months, if available.
  - c. Check this box if you are in the military and are asking the local child support agency to seek a modification of support while you are deployed out-of-state. You must attach a completed copy of the *Notice of Deployment* form provided to you by the local child support agency.
7. a. Print the date that the service member was first deployed out of state or the expected date of deployment if he or she has not yet been deployed, and attach a copy of the order of deployment.
  - b. Print the dates showing the duration of the service member's activation, listing both the beginning date and the end date.
8. Include a blank *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) in the papers you serve on the other party. Also include a blank *Financial Statement (Simplified)* (form FL-155) or a blank *Income and Expense Declaration* (form FL-150).
9. Check all boxes that apply.
  - a. Check the box if the employer will supplement military pay while the person is deployed; specify monthly amount and attach proof (such as a letter from the employer).
  - b. Check the box if the employer will not supplement military pay during the deployment, and the service member will only have military pay in the amount stated on the attached *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150).
  - c. Check the box if it is unknown whether the service member's employer will supplement the military pay.
  - d. Check the box if there will be other income (such as rental income); specify the monthly amount and attach proof. You will also need to indicate any investment or other income on the *Income and Expense Declaration* (form FL-150). If you have rental property income you will need to include a schedule showing gross receipts less cash expenses. See form FL-150 for specific instructions on other attachments that may be needed if you have investment or business income.
10. Check the box if you and the other party have previously agreed that spousal support cannot be modified or terminated. Attach a copy of your agreement.
11. Tell the court about any other information that supports your request. If you need additional space, you may attach pages.
12. List the service member's APO address or a local address where the service member will receive timely notice of the court proceedings.
13. If you will be deployed out of state and unavailable to appear at the time of the hearing, you may sign this waiver and ask the court to hold the hearing without you. The court may or may not grant your request. If you check this box, you must sign the bottom of page 2 of the form and make sure that it is fully and accurately completed and has all necessary attachments. You may also have certain protections provided by the Servicemembers Civil Relief Act (SCRA). You may ask for the assistance of a JAG (Judge Advocate General) officer.
14. Put the number of pages attached.

You must date the request, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

For instructions on how to complete the *Proof of Service*, see *Information Sheet for Service of Process* (form FL-611). The person who serves the request and its attachments must fill out the *Proof of Service* form. **You cannot serve your own request.**

**If you are the person receiving the request that the support order be changed:**

You will need to file a response and go to the hearing unless a written agreement is reached and signed by the court before the hearing.

- Complete the *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320). If a blank *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) was not given to you when you received the *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* (form FL-398), the court clerk's office, the court's Office of the Family Law Facilitator, or the local child support agency can tell you where one can be found. Or you can get one from the California Court's Web site: [www.courtinfo.ca.gov/forms/](http://www.courtinfo.ca.gov/forms/).
- Fill out the form *Financial Statement (Simplified)* (form FL-155) if you are allowed to use the form. See the instructions on the back of the form to see if you qualify; otherwise, you must fill out the form *Income and Expense Declaration* (form FL-150). You must attach copies of your most recent W-2 forms and paycheck stubs for the last two months to the *Financial Statement (Simplified)* (form FL-155) or the *Income and Expense Declaration* (form FL-150). Make at least three copies of the completed form and all attachments.

You must have one completed copy of each of the following papers served on the other party. If the local child support agency is involved, serve it to:

- Your *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320).
- Your *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150).

For instructions on how to serve these papers properly, see *Information Sheet for Service of Process* (form FL-611), *Proof of Personal Service* (form FL-330) and *Proof of Service by Mail* (form FL-335). Whoever serves the papers should fill out and must sign the *Proof of Service*. If there are reasons to file your own motion for modification, see FL-391 *Information Sheet—Simplified Way to Change Child, Spousal, or Family Support*. **NOTICE: Consult the court's Office of the Family Law Facilitator or the local court rules to see if there are any other documents you will need to have served on the local child support agency and on the other party.**

The local child support agency or the court's family law facilitator's office may be able to provide you with a child support calculation based on both parents' income to determine the amount of guideline support. If you agree with the proposed changes, you may be able to have one of these offices prepare an agreement to change the child support and have it signed by both parents and the court. If you are able to reach an agreement with the other party and the agreement is signed by the court before the hearing, you do not need to appear at the hearing.

**NOTICE: Unless you know the hearing has been taken off calendar, you should go to the hearing as scheduled to protect your rights. You might consider calling the court the day before the hearing to see if the hearing is still on the calendar.**

***If you need additional assistance with this form, contact an attorney or the court's family law facilitator.***

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(adopt form FL-398)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Ms. Grace Andres Court Services Program Manager Superior Court of Solano County Fairfield	A	N	Agree.	No response needed.
2.	Hon. John Chemeleski Court Commissioner Superior Court of Los Angeles County Long Beach	AM	N	<p>Form FL-398, <i>Notice of Activation of Military Service and Deployment</i></p> <ol style="list-style-type: none"> <li>Paragraph 5 should not include “to the following . . . etc” including subparagraphs a and b. This is unnecessary and is confusing as it does not specifically refer to changing spousal support for which there is no guideline formula.</li> <li>Change the first line to read: “I am requesting that the existing support and earnings assignment orders be changed. These orders were made under the case number listed above on (date) and were payable by the:”</li> </ol> <p>The last sentence is necessary to help avoid</p>	<ol style="list-style-type: none"> <li>Agree in principle. Item 5 will be modified to allow option boxes to request modification of child, spousal or family support. Reference to “guideline support” will be deleted. Also see committee responses to comments numbers 9,14,16 and 18(3).</li> <li>Agree to modify form at Item 5 to include reference that modification is related to support in this case number only. Requirement to include date of order may present a barrier to an applicant who is not using the services of the local child support</li> </ol>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				the filing of the request under the wrong case number. There are many litigants with more than one case between them.	agency and may not have this information readily available.
3.	Mr. Richard L. Haeussler Attorney Newport Beach	AM	N	There are two things: 1. The service member should disclose what his BAQ would be and provide for a wage assignment.  2. The form should provide a space for the Finance Center of the service members branch of service, so that a wage assignment can be served upon the Finance Center.	1. BAQ (basic allowance for quarters benefits) should be included in either the <i>Income and Expense Declaration</i> or <i>Financial Statement (Simplified)</i> . Information sheet will be changed to specifically reference that data.  2. Agree to modify the information sheet to include information on which Finance Centers serve which military branch and provide addresses for service of wage assignment.
4.	Mark Hannah Staff Sergeant United States Marine Corps	A	N	I strongly feel it is public policy that if a service member is called to deploy in defense of the nation, he/she should be permitted to have ex parte modification to prior support orders (to substantiate the	No response needed as commentator's position agrees with the proposed form. Comments suggest legislative changes beyond the purview of

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				<p>difference in income that is lost, therefore no arrears may originate).</p> <p>Additionally, a great concern is that public policy should be honored by excluding all non-taxable entitlements as income, specifically regarding the <i>Income and Expense Declaration</i>. Basic Pay and Basic Allowance for Subsistence are the true income a service member receives for their family.</p> <p>My reasoning, as well as all other service members regarding this matter, is the belief that it is unethical to the highest extent, that a citizen who is compensated for their patriotism by placing himself or herself into harms way, should have that specific compensation taken from them to be awarded to another individual. It is ethically correct for those entitlements to be awarded similar to a medal or ribbon to the service member who is serving. If law is truly not static and reflects the views of a constant changing society, why are support orders unjust in that a service member who places herself/himself in harms way, literally has their compensation removed</p>	<p>the Judicial Council.</p>

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				<p>and awarded to an individual who has a salary in today's California economy that is equivocal(sic) or greater than the service member?</p> <p>From experience, this very law motivates service members to serve no longer, thus weakening our military. This law also is why the military divorce rate is at its highest! Witnessed first hand, a homemaker mother raising two children while her husband was deployed, had very hard times for 50% of his single income went to a former spouse who had a higher paying job while the other half was taxed, leaving the family with near 20% of the service members salary! The awarded 50% included the non-taxable income for the use of paying for housing. The mother chose not to be employed, for daycare expenses were higher than any income she could earn. After the deployment, the service member had no choice but to leave the service (head hung low) for the law was not just. Moreover, the courts awarded his former spouse a percentage of future military retirement that should not be awarded to anybody, especially concerning</p>	

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				<p>social security and unemployment rates attributing to this law.</p> <p>End state, a solution would be to have a state run organization to manage the monies truly required in a support order. If children are what the support is going to, then the state should step in to ensure proper management of the monies and the children’s financial future. Sole custody parents should be required to invest a portion of the support to an education vehicle and all other monies should be allocated like WIC checks, Food Stamps, etc... so no monies can be mishandled by the sole parent.</p>	
5.	Ms. Donna S. Hershkowitz Senate Office of Research Senate Judiciary Committee Sacramento	AM	Y	<p><i>Notice of Activation of Military Service and Deployment and Request to Modify Support</i> (Forms FL-398 and FL-399)</p> <p>At the request of the Senate Judiciary Committee, the Senate Office of Research reviewed proposed forms FL-398 and FL-399 which were drafted in response to SB 1082, Chapter 154, Statutes of 2005. below.</p> <p>SB 1082 envisioned two forms – one</p>	<p>Agree to withdraw form FL-399 as a Judicial Council form. The Department of Child Support Services will develop a non-Judicial Council <i>Notice of Deployment</i> form.</p> <p>Form FL-399 was originally drafted with the assistance of the California Child Support Directors/Department of Child</p>

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				<p>created by the Judicial Council, which service members would use to apply directly to the court, and one created by the Department of Child Support Services (DCSS), which service members with open IV-D cases would use to ask the local child support agency (LCSA) to pursue the modification. The Judicial Council form is described in Family Code section 3651. The DCSS form is described in Family Code section 17440. If the service member has an open IV-D case, he or she would simply have to complete the DCSS form, not the court form, and the LCSA would handle the modification in the service member’s absence.</p> <p>It appears that FL-399 was created for the IV-D cases, in lieu of a DCSS created form, and does not capture all of the information necessary for the LCSA to proceed in the manner described in SB 1082.</p> <p><u>Information on the Form Insufficient for LCSA Action.</u> The statute envisioned DCSS creating this form to ensure that all the information that is needed to identify</p>	<p>Support Services Judicial Council Forms Committee. This committee routinely provides assistance and input to the AOC regarding the development of Judicial Council forms to be used in Title IV-D actions.</p> <p>The original intent was for form FL-399 to be the initial “trigger” for the local child support agency to either begin preparing the request to modify support or provide the service member with an application for services, if there was no existing case. Given the concerns expressed by the commentator, DCSS has agreed to prepare this Notice as a non-Judicial Council form taking into consideration the clarification provided by the commentator.</p> <p>The non-Judicial Council <i>Notice of Deployment</i> form will need to be attached to form FL-398, if the local child support agency is</p>

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				the case and process the request is secured. SB 1082 was responding to the possibility that a service member may receive very little advance notice before being deployed out-of-state. As a result, the bill was seeking a form that the service member could fill out, send to the LCSA, and then rely on the LCSA to take all the necessary action to seek the modification without need for further contact with the service member, or appearance by the service member at the hearing. DCSS will need to create an additional form to capture all information the LCSA needs to proceed, including the LCSA case number, and other information. This will make FL-399 duplicative and unnecessary.	filing the request for modification, in order to indicate to the court that the service member has authorized the agency to act on his/her behalf.
6.	Mr. Milton Hyams Attorney San Rafael	AM	N	1. I understand that the concern is for the soldier that is deploying, but the soldier/sailor's problems start at activation. Page 1 of FL 398 addresses that issue in its title--Notice of Activation and the service member will understand that. My major issue is with page 2, because it does not address activation, but deployment, which is a different matter.	1. Agree that SB 1082 applies only to a service member who is both activated and deployed out of state. Under any other circumstances, the service member would file a <i>Notice of Motion/OSC</i> form requesting modification of support based upon a

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				<p>2. I also understand that deployment affects the ability of the service member to appear for a hearing on his/her case. If I understand Family Code section 3651(c) (2) correctly, this form is ONLY available if the member is activated AND deployed out of state. Otherwise, I presume the usual <i>Notice of Motion/OSC</i> form is to be used. The title of page one would tend to lead the member to think otherwise. If this Notice and Request procedure can be used, or will be accepted (as I suspect that it will) upon activation but prior to deployment, page 2 will cause confusion as it will lead the member to believe that he/she is only entitled to relief upon deployment. The member is entitled to a modification and all of the stay protections under SCRA whether or not they are deployed. As a matter of fact, getting leave to handle these matters when an individual member or his/her unit is in premobilization/deployment status may be just as difficult as if they were</p>	<p>change in circumstances.</p> <p>2. Agree to modify the information sheet to indicate that service member has options to modify support, in addition to those set out in Family Code section 3651(c). Information Sheet will also be modified to reference rights under the SCRA.</p>

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				<p>shipped out of state or for that matter out of country.</p> <p>3. I would recommend that to meet the directives of AB 1082 and still have the form flexible enough for use by all service members, include lines that ask about date of <i>activation</i>, duration of <i>activation</i> (individual or unit orders of activation almost always include the duration of active duty--it doesn't mean that the service won't change them, but it should be included). Also, there should be a requirement that the member serve a copy of his/her Leave and Earnings Statement on the other parent or LCSA as that document will be critical to setting a new guideline order--page 2 requires proof of other income, but not the military income. While an <i>Income and Expense Declaration</i> or <i>Financial Statement</i> should also be required, it does not provide blanks that address many of the pay issues that will be reflected on an LES.</p> <p>4. Since a stay under SCRA of the</p>	<p>3. Agree to modify form at Item 7 to request duration of activation as this will trigger the service member's rights under SCRA.</p> <p>4. Agree to modify form to</p>

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				<p>member’s request for modification may not be in the member’s best interest, because wage withholding under the existing order may continue, the form should allow for the member, at his her/election, to waive personal appearance and request the court go forward with a limited hearing to grant interim relief pending a personal appearance and possible further adjustment of the order at a future date. It should include language to the effect that this request does NOT constitute a waiver of the member’s rights to a stay or rehearing of the matter under SCRA. This may go beyond the authorization of the statute unless an LCSA is involved, but doing nothing is not a good option.</p>	include waiver.
7.	Hon. Steven Jahr Judge Superior Court of Shasta County Redding	AM	N	In the “Notice”, 2 <sup>nd</sup> paragraph, substitute the words “request the court” for the word “try” where it appears in the second line.	Agree to modify first Notice box on form FL-398 to substitute the phrase “ <b>MUST</b> ask the court” in place of “try.”
8.	Mr. David Jetton Court Manager Superior Court of Los Angeles County	AM	N	Discussion document states that procedure appears to anticipate that the party can apply to the court or the local child support agency. Form FL-398 would be used to	Form FL-399 will be withdrawn as a proposed Judicial Council form. Department of Child Support Services will develop

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				<p>apply to the court and form FL-399 would be used to apply to the local child support agency. The information sheet for form FL-398 states that box 7b should be checked and form FL-399 attached if you want the local child support agency to request the modification. This appears to contradict the discussion document. What is the purpose of attaching form FL-399 to FL-398 and having any reference to it on that form and instructions?</p>	<p>this form as a non-judicial council form. However, FL 398 will continue to request that the Notice of Deployment be attached in order to show the court that the local child support agency is authorized by the service member to bring the action. Under SB 1082, the Notice of Deployment may actually be the document requesting the opening of a case with the local agency.</p>
9.	<p>Ms. JoAnn Johnson Family Law Facilitator Superior Court of Ventura County Ventura</p>	AM	N	<p>I suggest the following changes to the form, as proposed:</p> <ol style="list-style-type: none"> <li>1. Section 5, letter a., change to read “to a guideline child support amount based on my income while deployed out of state.</li> <li>2. Section 5, letter b, change to read “reduce spousal or family support order based on the reduction of my income</li> </ol>	<ol style="list-style-type: none"> <li>1. Agree in principle. Text will be modified to delete references to “guideline”. Item 5 (a) will modified to add the phrase “to an amount based upon my income while deployed”.</li> <li>2. Agree in principle. Item 5 (a) will be changed to give an option boxes to request</li> </ol>

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				<p>due to deployment out of state”. My reasoning is the guideline only applies to child support, therefore 5a should so state. Modifying the earnings assignment doesn’t change the order therefore 5b doesn’t make sense.</p> <p>3. Sections 7c and 8: delete the words “and a blank financial statement” “and a blank <i>Income and Expense Declaration</i>” in 7c and add them to 8.</p> <p>4. I suggest the following additions to the form: ( ) <i>An Order/Notice to Withhold Income for Support</i> (FL-195) or <i>Earnings Withholding Order for Spousal Support</i> (FL-435) has been issued for payment of the support obligation in this case. If obligor’s</p>	<p>modification of child, spousal and family support. Reference to guideline support will be deleted. However, if any support is modified the earnings assignment will also need to be changed. The following language will be used: “I am requesting the court to change the existing earnings assignment order to state the new support amount if the request in item 5a is granted.</p> <p>3. Agree to delete them from the former 7c and to add to 8.</p> <p>4. Agree in principle. See proposed forms changes in Committee Response at Item 2 of this comment.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				<p>request is granted, a modified withholding order must be issued. (Suggested language or something to the effect of giving notice that any withholding order must be modified.) My reasoning is if DCSS not involved, self-represented litigants may not know to request a modified withholding order.</p> <p>5. Question: If DCSS is not already involved in the case, does the obligor just serve them and assume they will open a case for him/her? Is there a simplified process or does the obligor have to fill out the extensive packet required to establish a case?</p>	<p>5. DCSS is mandated by SB 1082 to develop the necessary forms and procedures to implement this law. These procedures are in the process of development.</p>
10.	<p>Mr. William Malloy Chair Department of Child Support Services/Child Support Directors Association Judicial Council Forms Committee Bakersfield</p>	AM	Y	<p>1. The committee recommends the continued use of the term “LCSA” instead of “department of child support services” on governmental child support forms, for the following reasons</p> <p>A. “LCSA” is the generic term used by DCSS in all of its public brochures. It would confuse the public not to be</p>	<p>1. Agree to retain use of the term “local child support agency”.</p>

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				<p>consistent in using the same terminology.</p> <p>B. LCSAs are generally listed under “Child Support Services” and not under DCSS in the phone book. Existing customers already have the LCSA phone number on all their mailings. Also, DCSS is mandated by the legislation to liaison with the military for outreach on this legislation, and they will take care of giving service members the contact information.</p> <p>C. Continued use of “LCSA” is consistent with CSDA and DCSS Forms Committees’ past recommendations regarding Judicial Council governmental forms.</p> <p>D. It is the term referred to in the legislation.</p> <p><i>Form FL-398, Notice of Activation of Military Service and Deployment and Request to Modify a Support Order</i></p> <p>1. Page 2 Item 7: Remove item 7b.</p>	<p>1. Agree to modify 7b (now</p>

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				<p>2. Page 2, item 7c: Remove the check box from 7.c. and move it up to be the new 7.b.</p> <p>3. Page 2 item 8: after “Check all that apply” add “(you must check at least one box):” Also add this phrase to the instruction sheet on page 4. These changes are recommended because attaching a copy of form FL-399 and a completed <i>Income and Expense Declaration</i> should be required in all cases, and therefore, a check box should not be in front of either item (7b or 7c).</p>	<p>renumbered as 6c) to state that the <i>Notice of Deployment</i> is to be attached if it has been submitted to the local child support agency. DCSS will develop a non-Judicial Council <i>Notice of Deployment</i> form.</p> <p>2. Agree to delete checkbox for 7c (now renumbered as 6b).</p> <p>3. Agree to modify form to include “you must check at least one box” at Item 8 (now renumbered as 9). Agree to delete the checkbox for 7c (now renumbered as 6b), since a completed <i>Income and Expense Declaration</i> or <i>Financial Statement (Simplified)</i> is required in all cases. The checkbox for 7b (now renumbered as 6c) is still appropriate, since the</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>4. The new statute states in the relevant part in Family Code section 3651(c) (2): “. . . The service member shall indicate the date of deployment, and if possible, the court shall schedule the hearing prior to that date . . .”, which the committee interprets to mean that the service member completes as best as possible the request and notice of deployment, and then the court selects a hearing date and sends notice of the hearing date to the parties. Based on this interpretation, the committee recommends that the proof of service for form FL-398 be changed to reflect that the clerk’s office/court set the hearing and notify the parties as it does with a <i>Request For Hearing Regarding Earnings Assignment</i>, form FL-450, or a <i>Notice of Objection</i> (to findings of a</p>	<p><i>Notice of Deployment</i> will be a DCSS form to be submitted to the local child support agency, and the local child support agency will not be involved in all cases.</p> <p>4. No proof of service is included with this form. The alternative of having the court clerk select a hearing date and send notice of the hearing to the parties was considered but rejected as the clerk may not have current mailing address information on all parties to be notices. Information sheet contains instructions for obtaining a court date at page 3 of 5 Item 2(a).</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response										
				<p>commissioner), form FL-666, and the <i>Review of Commissioner’s Findings of Fact and Recommendation (Governmental)</i>, form FL-667.</p> <p>Form FL-399, <i>Notice of Deployment</i></p> <p>1. Page 1 item 1 add an item 1.d. as follows:                      (1) [box] I currently have an open case with the following LCSA(s) (list all cases currently active):</p> <table data-bbox="1045 824 1533 1006"> <thead> <tr> <th data-bbox="1045 824 1228 860">County</th> <th data-bbox="1228 824 1533 860">Case No.</th> </tr> </thead> <tbody> <tr> <td data-bbox="1045 885 1228 917">_____</td> <td data-bbox="1228 885 1533 917">_____</td> </tr> <tr> <td data-bbox="1045 917 1228 950">_____</td> <td data-bbox="1228 917 1533 950">_____</td> </tr> <tr> <td data-bbox="1045 950 1228 982">_____</td> <td data-bbox="1228 950 1533 982">_____</td> </tr> <tr> <td data-bbox="1045 982 1228 1015">_____</td> <td data-bbox="1228 982 1533 1015">_____</td> </tr> </tbody> </table> <p>(2) [box] I do not currently have an open case with an LCSA.</p> <p>2. Page 1 item 1d: renumber to be item 2 and renumber all following numbers.</p> <p>3. Page 1 Notice box: Change the first sentence to read, “If a modification is ordered, the new court order will become effective on the date this form was served on the non-moving party, or</p>	County	Case No.	_____	_____	_____	_____	_____	_____	_____	_____	<p>1-4. Form FL-399 will be withdrawn as a proposed Judicial Council form. The Department of Child Support Services will develop a non-Judicial Council <i>Notice of Deployment</i> form.</p>
County	Case No.														
_____	_____														
_____	_____														
_____	_____														
_____	_____														

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				<p>on the date...”</p> <p>4. The committee also suggests adding language to the form to instruct the LCSA that the form must be filed with the court to protect the date for retroactivity.</p>	
11.	Mr. G.R. Overton Deputy Attorney General Member of the Judicial Council’s Access and Fairness Advisory Committee	AM	N	<p>I support the form and instructions with modifications.</p> <p>I note the comment on the form about accommodations. However, there is nothing further about obtaining accommodations in the instructions. I think the instructions regarding accommodations should be repeated in the instruction portion of the form. It is not unlikely that the service member may have become disabled, the former spouse or the child is disabled. Repeating the instruction would be prudent.</p>	Agree to modify form to include instructions on accommodations in the information sheet.
12.	Mr. Hirbod Rashidi Attorney Riverside County, DCSS	AM	N	I think paragraphs 7(b) and (c) always need to be checked. Paragraph 6 already tells moving party to attach deployment documentation, but then 7(b) gives them the option of doing so. Does not make sense.	Agree to delete the checkbox for 7c (now renumbered as 6b), since an <i>Income and Expense Declaration</i> or <i>Financial Statement (Simplified)</i> will always be required.

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				<p>Also, all requests for modification must include an <i>Income and Expense Declaration</i>; nevertheless, 7(c) seems to make it optional.</p> <p>Their request MUST be made based on deployment documentation and <i>Income and Expense Declaration</i>.</p>	<p>7(b) (now renumbered as 6c) may not always be checked as the service member has the right to bring the action without the use of the local child support agency, if they so choose.</p>
13.	Ms. Lynette Rudow LPC IV Superior Court of Glenn County Willows	AM	Y	<p>The commentator provided marked up copies of the forms but no text for her comment. The forms changes she indicated were as follows:</p> <p><u>Form FL-398</u></p> <ol style="list-style-type: none"> <li>Page 2, item 7.b.: in the italicized sentence, delete “this form” and replace it with “form FL-399”</li> <li>Page 2, items 7.c.: delete “and a blank <i>Financial Statement (Simplified)</i> (form FL-155)” and delete “and a blank <i>Income and Expense Declaration</i> (form FL-150)”</li> <li>Page 2, item 8: add “and a blank</li> </ol>	<ol style="list-style-type: none"> <li>No change necessary as form FL-399 is no longer being included as a Judicial Council form.</li> <li>Agree to modify 7c (now renumbered as 6b) as suggested.</li> <li>Agree to modify text as</li> </ol>

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				<p><i>Financial Statement (Simplified)</i> (form FL-155) <u>or</u> a blank <i>Income and Expense Declaration</i> (form FL-150)”</p> <p><u>Form FL-399</u></p> <p>Delete the three lines immediately after the title of the form, NOTICE OF DEPLOYMENT (that start with “<b>Attachment to Notice of Activation of Military Service ...</b>” and end with “open case in the local child support agency.”) and replace with a box that says: “<b>NOTICE Submit</b> this form to the local child support agency. Do not file it directly with the Court.”</p>	<p>suggested.</p> <p>Form FL-399 is being withdrawn as a proposed Judicial Council form. The Department of Child Support Services will develop a non-Judicial Council form <i>Notice of Deployment</i>.</p>
14.	Hon. Robert A. Schnider Supervising Judge - Family Law Superior Court of Los Angeles County Los Angeles	AM	Y	The form should have a separate check box for child support and a separate box for spousal support.	Agree to modify the form for check boxes for child, spousal and family support.
15.	Ms. Mona Shields Sacramento	N	N	My children’s father left knowing that he wasn’t going to be able to have his visitation rights. He used me to give him 20% custody before he left which modify their child support. I am not able to contact him and his commanding location refuses to	No response needed. Commentator’s remarks do not suggest any specific form revisions.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				give me his address.	
16.	Ms. Amy Silva Family Law Manager Superior Court of Orange County Orange	AM	Y	Form FL-398, <i>Notice of Activation of Military Service and Deployment and Request to Modify a Support Order</i>  The Family Law Supervising Judge, Judge Francisco Firmat, suggests that page 4, item No. 5, line 1, “change the existing support order....” be changed to read:  “5. I am requesting the court to change the existing [ ] child support order [ ] spousal support order payable by.....”	Agree. Form will be changed at Item 5 to include option boxes for child, spousal and family support.
17.	Mr. Ray Sorensen Executive Officer (Acting) Superior Court of San Diego County San Diego	AM	Y	The following comments were received from our Court’s executives, managers, supervisors and/or staff attorneys:  1. On form FL-398, <i>Notice of Activation of Military Service and Deployment and Request to Modify a Support Order</i> , the “Notice” section on p. 1 states: “The deployed person MUST immediately notify the court and all parties when he or she returns from deployment.” What does “returns from deployment” mean? What if the person	1. The current language in the proposed form tracks the language of the statute.

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				<p>does not return to California? It may be better to phrase the requirement: “when the service member’s deployment ends.”</p> <p>2. The “Notice” section then goes on to state the service member “MUST try to bring any unresolved request to a hearing within 90 days of return...” What does it mean to “try to” bring an unresolved request to a hearing within 90 days? This requirement should be phrased instead in mandatory language.</p> <p>3. On p. 2 of form FL-398, the options contained in Item No. 9, and on form FL-399, the options in Item No. 2, require a disclosure of additional income that will be received by the service member while deployed; however, the options should also include space for additional expenses that will be incurred and/or require a statement of <i>net income</i> while deployed. What if the service member receives additional income from renting a home, but, for example, owes on a mortgage and/or needs to pay a</p>	<p>2. Agree to modify language in Notice box from “MUST try” to “MUST ask the court.”</p> <p>3. Agree in principle that this information is needed. Item 7(c) (now renumbered as 6b) references the required <i>Income and Expense Declaration or Financial Statement (Simplified)</i> forms where this type of information should be included.</p>

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				<p>management company to rent the home? These expenses must be taken into account and the current version of the form does not appear to do so.</p> <p>4. Form FL 399, <i>Notice of Deployment</i>, fails to make it clear that it is only to be used when a request for modification of support is being sought by the service member being activated. The current form of the Notice appears to indicate if there is an open case “in the local child support agency” of which a service member is a party, then the form has to be filed as a matter of course upon the activation of a service member; however, this is not required.</p>	<p>4. Form FL-399 is being deleted as a proposed form. The Department of Child Support Services will develop a non-Judicial Council form.</p>
18.	<p>Ms. Maria Tortorelli Family Law Facilitator and Ms. Jamar Muench Family Law Attorney Superior Court of Los Angeles County Los Angeles</p>	AM	N	<p>1. <i>Form Ambiguity</i>: There is confusion between the forms for FL-398 and FL-399. Form FL-398 is to be used to ask the Court directly to modify current child support and form FL-399 is for use in asking the LCSA to ask the court to modify the current child support. Referring to the second page of form FL-398, this is also to be used for requesting the LCSA to ask the Court</p>	<p>1. Form FL-399 is being removed as a proposed Judicial Council form. The Department of Child Support Services will develop a non-Judicial Council form.</p>

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				<p>to modify the current support. In that regard it is nearly identical to form FL-399 and creates confusion and ambiguity.</p> <p>The form sets should be unique or, in the alternative, form FL-398 could be used exclusively with a check- off box asking the LCSA to handle the case.</p> <p>2. <i>Reference to the Office of the Family Law Facilitator:</i> The form instructions mention the Office of the Family Law Facilitator or the family law facilitator’s office in several places. Only at the very bottom of page 4 is there any mention that the office is somehow related to the court. It is suggested that in the discussion of how to fill out the forms language is added to inform that the Office of the Family Law Facilitator is located in Superior Courthouses.</p> <p>3. <i>Option for Modifying Only Child or Spousal Support not provided:</i> The forms appear to assume that both child and spousal support orders will be requested to be modified. However,</p>	<p>2. Agree to modify the form to indicate that the Office of the Family Law Facilitator (FLF) is part of the court. However, not all FLF offices are physically located in the courthouse.</p> <p>3. Agree to modify the form to include option boxes for child, spousal or family support.</p>

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				<p>there might be some possibility that a party might want to terminate either type of support or terminate or modify one type of support and not the other. As written, the forms do not allow for such differences.</p> <p>4. <i>Guideline Spousal Support not Applicable in Post-Judgment Proceedings</i>: In #5 of form FL-398, the only option is to modify according to guideline. However, if it is post-judgment spousal support that is to be modified, then the guideline is not applicable. The Family Code section 4320 factors would apply.</p>	<p>4. Agree to modify the form at item 5(a) to delete reference to “guideline support”.</p>
19.	Mr. Dean J. Zipser, Esq. President Orange County Bar Association	AM	Y	Agree.	No response needed.

BILL NUMBER: SB 1082 CHAPTERED  
BILL TEXT

CHAPTER 154  
FILED WITH SECRETARY OF STATE AUGUST 30, 2005  
APPROVED BY GOVERNOR AUGUST 30, 2005  
PASSED THE ASSEMBLY AUGUST 18, 2005  
PASSED THE SENATE JUNE 1, 2005  
AMENDED IN SENATE MAY 10, 2005  
AMENDED IN SENATE MAY 3, 2005  
AMENDED IN SENATE APRIL 25, 2005  
AMENDED IN SENATE APRIL 13, 2005

INTRODUCED BY Senators Morrow and Ducheny  
(Principal coauthor: Senator Ashburn)  
(Coauthors: Senators Cox, Denham, Dunn, Dutton, Machado, Soto, and  
Speier)  
(Coauthors: Assembly Members Cogdill, DeVore, Haynes, Shirley  
Horton, Houston, Huff, La Malfa, La Suer, Leslie, Maze, Mountjoy,  
Niello, Oropeza, Parra, Plescia, Sharon Runner, Ruskin, Umberg, and  
Wyland)

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

SECTION 1. Section 3047 is added to the Family Code, to read:  
3047. A party's absence, relocation, or failure to comply with  
custody and visitation orders shall not, by itself, be sufficient to  
justify a modification of a custody or visitation order if the reason  
for the absence, relocation, or failure to comply is the party's  
activation to military service and deployment out of state.

SEC. 2. Section 3651 of the Family Code is amended to read:

3651. (a) Except as provided in subdivisions (c) and (d) and  
subject to Article 3 (commencing with Section 3680) and Sections  
3552, 3587, and 4004, a support order may be modified or terminated  
at any time as the court determines to be necessary.

(b) Upon the filing of a supplemental complaint pursuant to  
Section 2330.1, a child support order in the original proceeding may  
be modified in conformity with the statewide uniform guideline for  
child support to provide for the support of all of the children of  
the same parents who were named in the initial and supplemental  
pleadings, to consolidate arrearages and wage assignments for  
children of the parties, and to consolidate orders for support.

(c) (1) Except as provided in paragraph (2) and subdivision (b), a  
support order may not be modified or terminated as to an amount that  
accrued before the date of the filing of the notice of motion or  
order to show cause to modify or terminate.

(2) If a party to a support order is activated to United States  
military duty or National Guard service and deployed out of state,  
the service member may file and serve a notice of activation of  
military service and request to modify a support order, in lieu of a  
notice of motion or order to show cause, by informing the court and  
the other party of the request to modify the support order based on  
the change in circumstance. The service member shall indicate the  
date of deployment, and if possible, the court shall schedule the  
hearing prior to that date. If the court cannot hear the matter prior

to the date of deployment out of state, and the service member complies with the conditions set forth in the Servicemembers Civil Relief Act, Section 522 of the Appendix of Title 50 of the United States Code, the court shall grant a stay of proceedings consistent with the timelines for stays set forth in that section. If, after granting the mandatory stay required by Section 522 of the Appendix of Title 50 of the United States Code, the court fails to grant the discretionary stay described under the law, it shall comply with the federal mandate to appoint counsel to represent the interests of the deployed service member. The court may not proceed with the matter if it does not appoint counsel, unless the service member is represented by other counsel. If the court stays the proceeding until after the return of the service member, the service member shall request the court to set the matter for hearing within 90 days of return from deployment or the matter shall be taken off calendar and the existing order may not be made retroactive pursuant to subdivision (c) of Section 3653.

(3) A service member who does not file a notice of activation of military service and request to modify a support order or order to show cause or notice of motion prior to deployment out of state nonetheless shall not be subject to penalties otherwise authorized by Chapter 5 (commencing with Section 4720) of Part 5 on the amount of child support that would not have accrued if the order had been modified pursuant to paragraph (2), absent a finding by the court of good cause. Any such finding shall be stated on the record.

(4) Notwithstanding any other provision of law, no interest shall accrue on that amount of a child support obligation that would not have become due and owing if the activated service member modified his or her support order upon activation to reflect the change in income due to the activation. Upon a finding by the court that good cause did not exist for the service member's failure to seek, or delay in seeking, the modification, interest shall accrue as otherwise allowed by law.

(d) An order for spousal support may not be modified or terminated to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

(e) This section applies whether or not the support order is based upon an agreement between the parties.

(f) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 shall apply.

(g) (1) The Judicial Council, no later than 90 days after the effective date of the act adding this section, shall develop any forms and procedures necessary to implement paragraph (2) of subdivision (c). The Judicial Council shall ensure that all forms adopted pursuant to this section are in plain language.

(2) The form developed by the Judicial Council, in addition to other items the Judicial Council determines to be necessary or appropriate, shall include the following:

(A) The date of deployment and all information relevant to the determination of the amount of child support, including whether the service member's employer will supplement the service member's income during the deployment.

(B) A notice informing the opposing party that, absent a finding

of good cause, the order will be made retroactive to the date of service of the form or the date of deployment, whichever is later.

(C) Notice that the requesting party must notify the court and the other party upon return from military duty and seek to bring any unresolved request for modification to hearing within 90 days of return, or else lose the right to modify the order pursuant to this section.

SEC. 3. Section 3653 of the Family Code is amended to read:

3653. (a) An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided in subdivision (b) or by federal law (42 U.S.C. Sec. 666(a)(9)).

(b) If an order modifying or terminating a support order is entered due to the unemployment of either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of motion or order to show cause to modify or terminate or the date of unemployment, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record.

(c) If an order modifying or terminating a support order is entered due to a change in income resulting from the activation to United States military service or National Guard duty and deployment out of state for either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of activation, notice of motion, order to show cause to modify or terminate, or the date of activation, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record. Good cause shall include, but not be limited to, a finding by the court that the delay in seeking the modification was not reasonable under the circumstances faced by the service member.

(d) If an order decreasing or terminating a support order is entered retroactively pursuant to this section, the support obligor may be entitled to, and the support obligee may be ordered to repay, according to the terms specified in the order, any amounts previously paid by the support obligor pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order. The court may order that the repayment by the support obligee shall be made over any period of time and in any manner, including, but not limited to, by an offset against future support payments or wage assignment, as the court deems just and reasonable. In determining whether to order a repayment, and in establishing the terms of repayment, the court shall consider all of the following factors:

(1) The amount to be repaid.

(2) The duration of the support order prior to modification or termination.

(3) The financial impact on the support obligee of any particular method of repayment such as an offset against future support payments or wage assignment.

(4) Any other facts or circumstances that the court deems relevant.

SEC. 4. Section 17440 is added to the Family Code, to read:

17440. (a) The Department of Child Support Services shall work with all branches of the United States military and the National

Guard to ensure that information is made available regarding the rights and abilities of activated service members to have their support orders modified based on a change in income resulting from their activation, or other change of circumstance affecting the child support calculation, or to have a portion of their child support arrearages compromised pursuant to Section 17560.

(b) No later than 90 days after the effective date of this section, the department shall develop a form for completion by the service member that will allow the local child support agency to proceed with a motion for modification without the service member being required to appear. The form shall contain only the information necessary for the local child support agency to proceed with the motion.

(c) Within five business days of receipt of a properly completed form, the local child support agency shall bring a motion to modify the support order. The local child support agency shall bring the motion if the change in circumstances would result in any change in the dollar amount of the support order.

(d) The department shall work with the United States military to have this form and the form developed pursuant to Section 3651 distributed at all mobilization stations or other appropriate locations to ensure timely notification to all activated personnel of their rights and responsibilities.

SEC. 5. Section 17560 of the Family Code is amended to read:

17560. (a) The department shall create a program establishing an arrears collection enhancement process pursuant to which the department may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code. The program shall operate uniformly across California and shall take into consideration the needs of the children subject to the child support order and the obligor's ability to pay.

(b) If the obligor owes current child support, the offer in compromise shall require the obligor to be in compliance with the current support order for a set period of time before any arrears and interest accrued thereon may be compromised.

(c) Absent a finding of good cause, any offer in compromise entered into pursuant to this section shall be rescinded, all compromised liabilities shall be reestablished notwithstanding any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise may be refunded, if either of the following occurs:

(1) The department or local child support agency determines that the obligor did any of the following acts regarding the offer in compromise:

(A) Concealed from the department or local child support agency any income, assets, or other property belonging to the obligor or any reasonably anticipated receipt of income, assets, or other property.

(B) Intentionally received, withheld, destroyed, mutilated, or falsified any information, document, or record, or intentionally made any false statement, relating to the financial conditions of the obligor.

(2) The obligor fails to comply with any of the terms and conditions of the offer in compromise.

(d) Pursuant to subdivision (k) of Section 17406, in no event may

the administrator, director, or director's designee within the department, accept an offer in compromise of any child support arrears owed directly to the custodial party unless that party consents to the offer in compromise in writing and participates in the agreement. Prior to giving consent, the custodial party shall be provided with a clear written explanation of the rights with respect to child support arrears owed to the custodial party and the compromise thereof.

(e) Subject to the requirements of this section, the director may delegate to the administrator of a local child support agency the authority to compromise an amount of child support arrears that does not exceed five thousand dollars (\$5,000). Only the director or his or her designee may compromise child support arrears in excess of five thousand dollars (\$5,000).

(f) For an amount to be compromised under this section, the following conditions shall exist:

(1) (A) The administrator, director or director's designee within the department determines that acceptance of an offer in compromise is in the best interest of the state and that the compromise amount equals or exceeds what the state can expect to collect for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in the absence of the compromise, based on the obligor's ability to pay.

(B) Acceptance of an offer in compromise shall be deemed to be in the best interest of the state, absent a finding of good cause to the contrary, with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard, was activated to United States military service, and failed to modify the support order to reflect the reduction in income. Good cause to find that the compromise is not in the best interest of the state shall include circumstances in which the service member's failure to seek, or delay in seeking, the modification were not reasonable under the circumstances faced by the service member. The director, no later than 90 days after the effective date of the act adding this subparagraph, shall establish rules that compromise, at a minimum, the amount of support that would not have accrued had the order been modified to reflect the reduced income earned during the period of active military service.

(2) Any other terms and conditions that the director establishes that may include, but may not be limited to, paying current support in a timely manner, making lump sum payments, and paying arrears in exchange for compromise of interest owed.

(3) The obligor shall provide evidence of income and assets, including, but not limited to, wage stubs, tax returns, and bank statements and establish all of the following:

(A) That the amount set forth in the offer in compromise of arrears owed is the most that can be expected to be paid or collected from the obligor's present assets or income.

(B) That the obligor does not have reasonable prospects of acquiring increased income or assets that would enable the obligor to satisfy a greater amount of the child support arrears than the amount offered, within a reasonable period of time.

(C) That the obligor has not withheld payment of child support in anticipation of the offers in compromise program.

(g) A determination by the administrator, director or the director's designee within the department that it would not be in the best

interest of the state to accept an offer in compromise in satisfaction of child support arrears shall be final and not subject to the provisions of Chapter 5 (commencing with Section 17800) of Division 17, or subject to judicial review.

(h) Any offer in compromise entered into pursuant to this section shall be filed with the appropriate court. The local child support agency shall notify the court if the compromise is rescinded pursuant to subdivision (c).

(i) Any compromise of child support arrears pursuant to this section shall maximize to the greatest extent possible the state's share of the federal performance incentives paid pursuant to the Child Support Performance and Incentive Act of 1998 and shall comply with federal law.

(j) The department shall ensure uniform application of this section across the state.

(k) The department shall consult with the Franchise Tax Board in the development of the program established pursuant to this section.

(l) The department shall report to the Legislature on the results of the program established pursuant to this section no later than June 30, 2006.

(m) This section shall remain in effect only until January 1, 2007, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 6. The amendments to Section 17560 of the Family Code made by this act shall apply to all service members deployed out of state, regardless of whether that deployment occurred before or after the effective date of this act.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the parental rights of soldiers and sailors who return from active duty service in Iraq and Afghanistan on or before December 31, 2005, are protected to the same extent as those of soldiers and sailors who return after that date, it is necessary that this act take effect immediately.