

2017 Regular Session

HOUSE BILL NO. 426

BY REPRESENTATIVE MARINO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/SUPPORT: Suspends child support while a parent is incarcerated

1 AN ACT

2 To amend and reenact R.S. 9:315.11(C) and to enact R.S. 9:315.27 and 315.28, relative to
3 child support; to provide relative to child support obligations; to provide relative to
4 incarceration for the obligor; to provide for a defense to contempt of court; to
5 provide procedures for the temporary modification of child support orders; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:315.11(C) is hereby amended and reenacted and R.S. 9:315.27 and
9 315.28 are hereby enacted to read as follows:

10 §315.11. Voluntarily unemployed or underemployed party

11 * * *

12 C. A party shall not be deemed voluntarily unemployed or underemployed
13 if he or she has been either:

14 (1) ~~temporarily~~ Temporarily unable to find work or has been temporarily
15 forced to take a lower paying job as a direct result of Hurricane Katrina or Rita.

16 (2) Incarcerated for thirty days or longer as determined pursuant to R.S.
17 9:315.28.

18 * * *

19 §315.27. Defense to contempt of court

20 It is a defense to a charge of contempt of court as defined by R.S. 9:315.31(3)
21 for failure to comply with a court order of child support if an obligor can prove that

1 he or she was incarcerated during the period of noncompliance. This defense applies
2 only to the time period of actual incarceration.

3 §315.28. Child support during the obligor's incarceration

4 A.(1) An obligor's incarceration for thirty days or longer shall constitute a
5 material change in circumstances under R.S. 9:311, requiring temporary modification
6 of an order of support during the period of the obligor's incarceration, except when
7 the incarceration is pursuant to intentional failure to pay a child support obligation
8 pursuant to R.S. 14:75.

9 (2) The temporary modification may be terminated upon release from
10 imprisonment or placement in a work release program pursuant to R.S. 15:711 or
11 1111.

12 (3) Pleadings to modify the child support obligation due to the obligor's
13 incarceration or release from incarceration may be initiated by the obligor, the
14 obligee, or the Department of Children and Family Services.

15 (4) The Department of Children and Family Services shall notify the parties
16 pursuant to R.S. 9:311 of their right to file for temporary modification of child
17 support in the event of the obligor's incarceration.

18 (5) Upon motion of either party or the Department of Children and Family
19 Services, the court shall modify the child support obligation, and may temporarily
20 deviate below the mandatory minimum obligation amount or suspend child support
21 payments during the period of the obligor's incarceration.

22 (6) The Department of Public Safety and Corrections and the sheriff of any
23 parish shall notify the Department of Children and Family Services of any person
24 who has been in their custody and may be subject to a child support obligation if
25 either of the following occur:

26 (a) The person has been in custody for thirty days or longer.

27 (b) The person who was the subject of notification under Subparagraph (a)
28 of this Paragraph has been released from custody.

1 (7) Upon notification and verification that a person in jail or prison is subject
 2 to a child support obligation, the Department of Children and Family Services shall
 3 within thirty days of receipt of the notification file a motion to modify the child
 4 support obligation due to a material change in circumstances.

5 B. The secretary of the Department of Children and Family Services in
 6 coordination with the courts, the Department of Public Safety and Corrections, and
 7 law enforcement entities shall promulgate rules in accordance with the
 8 Administrative Procedure Act necessary to implement the provisions of this Section.

9 Section 2. The legislature finds that the purpose of modifying child support during
 10 a person's incarceration is to increase the likelihood of successful reintegration into the
 11 workforce and long-term stability after a jail or prison term. Establishing financial stability
 12 in the weeks and months following a jail or prison term reduces the risk of recidivism,
 13 increasing both public safety and the likelihood of consistent payment of child support over
 14 time. Modifying child support obligations during a person's incarceration helps prevent
 15 garnishment of full paychecks to collect past due child support following release.

16 Section 3. The provisions of this Act shall become effective on August 1, 2018.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 426 Original

2017 Regular Session

Marino

Abstract: Provides for the modification of child support under certain circumstances when an obligor is incarcerated for 30 days or more.

Present law requires an obligor who is incarcerated to continue child support payments consistent with the obligation established prior to incarceration.

Proposed law requires a court to consider an obligor's incarceration of more than 30 days a material change in circumstances, and therefore requires a temporary modification of the support order. Provides for an exception to proposed law when the incarceration is pursuant to an intentional failure to pay a child support obligation.

Proposed law permits the temporary modification of support order to terminate upon the obligor's release from imprisonment, and allows an obligor, obligee, or the Dept. of Children and Family Services to file pleadings to modify support.

Proposed law requires the department to notify a party of the legal right to file for temporary modification of support when an obligor is incarcerated.

Proposed law provides for a defense when an obligor is charged with contempt of court for failure to pay support while incarcerated.

Proposed law adds that a person shall not be considered voluntarily unemployed or underemployed if that person is incarcerated for more than thirty days.

Effective Aug. 1, 2018.

(Amends R.S. 9:315.11(C); Adds R.S. 9:315.27 and 315.28)