

HOUSE COMMITTEE AMENDMENTS

2017 Regular Session

Substitute for Original House Bill No. 426 by Representative Marino as proposed by the House Committee on Civil Law and Procedure

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To amend and reenact R.S. 9:311(D) and 9:315.11(A) and (C), to enact Children's Code Article 1353(G), R.S. 9:311.1, R.S. 13:4611(1)(d)(iii), R.S. 46:236.6(B)(4) and 236.7(C)(4), and to repeal R.S. 9:311(G), relative to child support; to provide relative to child support obligations; to provide relative to incarceration for the obligor; to provide for a defense to contempt of court; to provide procedures for the temporary modification of child support orders; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Article 1353(G) is hereby enacted to read as follows:

Art. 1353. Support provisions; contempt; penalties; defenses

* * *

G. It is a defense to a charge of contempt of court for failure to comply with a court order of child support if an obligor can prove that he was incarcerated during the period of noncompliance. This defense applies only to the time period of actual incarceration.

Section 2. R.S. 9:311(D) and 315.11(A) and (C) are hereby amended and reenacted and R.S. 9:311.1 is hereby enacted to read as follows:

§311. Modification of support; material change in circumstances; periodic review by Department of Children and Family Services; medical support

* * *

D. A material change in circumstance need not be shown for either of the following purposes of:

(1) ~~modifying~~ To modify a child support award to include a court-ordered award for medical support.

(2) To suspend or modify a child support award in accordance with R.S. 9:311.1.

§311.1. Child support during the obligor's incarceration

A. In accordance with the provisions of this Section, every order of child support shall be suspended when the obligor will be or is incarcerated for any period of one hundred eighty consecutive days or more, unless any of the following conditions exist:

- (1) The obligor has the means to pay support while incarcerated.
- (2) The obligor is incarcerated for an offense against the custodial party or the child subject to the support order.
- (3) The incarceration resulted from the obligor's failure to comply with a court order to pay child support.

B. As used in this Section:

(1) "Incarceration" means placement of an obligor in a county, parish, state or federal prison or jail, in which the obligor is not permitted to earn wages from employment outside the facility. "Incarceration" does not include probation or parole.

(2) "Support enforcement services" shall have the same meaning as provided in R.S. 46:236.1.1(14).

(3) "Suspension" means the modification of a child support order to zero dollars due to an obligor's incarceration.

C.(1) When an obligor is incarcerated as defined in Subsection B of this Section, the Department of Children and Family Services shall provide notice to the parties of the right to file for temporary suspension of child support in the event of incarceration. The notice shall include the same information distributed by the Department of Children and Family Services in accordance with R.S. 9:311(A)(2).

(2) The Department of Public Safety and Corrections or the sheriff of any parish, as appropriate, shall distribute the information in this Subsection to every person incarcerated in this state.

D. The Department of Public Safety and Corrections or the sheriff of any parish, as appropriate, shall notify the Department of Children and Family Services of any person who has been in their custody and may be subject to a child support obligation if either of the following occurs:

(1) The person will be or is incarcerated for one hundred eighty consecutive days or longer.

(2) The person who was the subject of notification under Paragraph (1) of this Subsection is no longer incarcerated as defined in Subsection B of this Section.

E. When the Department of Children and Family Services receives notice, in accordance with Paragraph (D)(1) of this Section or by any other means, the department shall:

(1) Initiate a review pursuant to this Section once the person's incarceration is verified.

(2) File a motion to modify the child support obligation within sixty days of receipt of the verification of incarceration.

F. The provisions of Subsection E of this Section shall only apply when the Department of Children and Family Services is providing support enforcement services.

G. Nothing in this Section shall prevent either party from seeking a suspension or a modification of the order of support under this Section or any other provision of law.

H.(1) Upon motion of either party or the Department of Children and Family Services, after notice and hearing, the court shall suspend the child support obligation unless it finds one of the conditions in Subsection A of this Section exists.

(2) If one of the conditions in Subsection A of this Section exists, the court shall use the child support guidelines in R.S. 9:315 et seq. to determine an obligor's support obligation during his period of incarceration.

I.(1) An order of support suspended in accordance with this Section shall resume by operation of law on the first day of the second full month after the obligor's release from incarceration.

(2) An order that suspends an obligor's order of support because of the obligor's incarceration must contain a provision that the previous order will be reinstated on the first day of the second full month after the obligor's release from incarceration.

(3) Unless the terms of the order of support have been otherwise modified, the suspended order of support shall resume at the same terms that existed before the suspension.

J. The suspension of an order of support in accordance with this Section shall not affect any past due support that has accrued before the effective date of the suspension.

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

* * *

§315.11. Voluntarily unemployed or underemployed party

A.(1) If a party is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of income earning potential, unless the party is physically or mentally incapacitated, or is caring for a child of the parties under the age of five years. In determining the party's income earning potential, the court may consider the most recently published Louisiana Occupational Employment Wage Survey. In determining whether to impute income to a party, the court's considerations shall include, to the extent known, all of the following:

- (a) Assets owned or held by the party.
- (b) Residence.
- (c) Employment and earnings history.
- (d) Job skills.
- (e) Educational attainment.
- (f) Literacy.
- (g) Age and health.

(h) Criminal record and other employment barriers.

(i) Record of seeking work.

(j) The local job market.

(k) The availability of employers willing to hire the noncustodial parent.

(l) Prevailing earnings level in the local community.

(m) Other relevant background factors in the case.

(2) Absent evidence of a party's actual income or income earning potential, there is a rebuttable presumption that the party can earn a weekly gross amount equal to thirty-two hours at a minimum wage, according to the laws of his state of domicile or federal law, whichever is higher.

* * *

C. A party shall not be deemed voluntarily unemployed or underemployed if either: he or she has been temporarily unable to find work or has been temporarily forced to take a lower paying job as a direct result of Hurricane Katrina or Rita.

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

(2) He is or was incarcerated for one hundred eighty consecutive days or longer, unless the obligor is incarcerated for an offense against the custodial party or the child subject to the support order, or the incarceration resulted from the obligor's failure to comply with a court order to pay child support.

Section 3. R.S. 13:4611(1)(d)(iii) is hereby enacted to read as follows:

§4611. Punishment for contempt of court; defenses

Except as otherwise provided for by law:

(1) The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city courts may punish a person adjudged guilty of a contempt of court therein, as follows:

* * *

(d)

* * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(iii) It is a defense to a charge of contempt of court for failure to comply with a court order of child support if an obligor can prove that he was incarcerated during the period of noncompliance. This defense applies only to the time period of actual incarceration.

* * *

Section 4. R.S. 46:236.6(B)(4) and 236.7(C)(4) are hereby enacted to read as follows:

§236.6. Failure to pay support; procedure, penalties and publication

* * *

B.

* * *

(4) It is a defense to a charge of contempt of court for failure to comply with a court order of child support if an obligor can prove that he was incarcerated during the period of noncompliance. This defense applies only to the time period of actual incarceration.

* * *

§236.7. Order of support; stipulation by district attorney and party

* * *

C.

* * *

(4) It is a defense to a charge of contempt of court for failure to comply with a court order of child support if an obligor can prove that he was incarcerated during the period of noncompliance. This defense applies only to the time period of actual incarceration.

* * *

Section 5. R.S. 9:311(G) is hereby repealed in its entirety.

Section 6. The legislature finds that the purpose of modifying child support during a person's incarceration is to increase the likelihood of successful reintegration into the workforce and long-term stability after a jail or prison term. Establishing financial stability in the weeks and months following a jail or prison term reduces the risk of recidivism,

increasing both public safety and the likelihood of consistent payment of child support over time.

Section 7. The provisions of this Act shall become effective on January 1, 2019.

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 Draft

2017 Regular Session

Abstract: Provides for the modification of child support under certain circumstances when an obligor is incarcerated for 180 days or more.

Proposed law requires a court to consider an obligor's incarceration of more than 180 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 of corrections to notify the department of children and family services in certain circumstances when a person in its custody may be subject to a child support obligation.

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 one hundred eighty days.

Effective Jan. 1, 2019.

(Amends R.S. 9:311(D) and 315.11(A) and (C); Adds Ch. C. Art. 1353(G), R.S. 9:311.1, R.S.13:4611(1)(d)(iii), and R.S. 46:236.6(B)(4) and 236.7(C)(4); Repeals R.S. 9:311(G))