

2021 Regular Session

HOUSE BILL NO. 449

BY REPRESENTATIVE WILFORD CARTER

1 AN ACT

2 To amend and reenact R.S. 9:311(C)(3), 311.1, and 315.11(C)(2) and to repeal R.S.
3 9:315.27, relative to the suspension of child support obligations; to provide for
4 suspension during an obligor's incarceration; to remove exceptions to suspension of
5 a support order during the obligor's incarceration; to provide for requirements of the
6 Department of Children and Family Services when providing support enforcement
7 services; to provide for definitions; to provide for notifications required of the
8 Department of Public Safety and Corrections and the Department of Children and
9 Family Services; to provide a timeframe for the Department of Children and Family
10 Services to file an affidavit with the court; to remove provisions regarding notice
11 given to the custodial party; to provide for the voluntary unemployment or
12 underemployment of the obligor; to provide for the continuation of child support
13 beyond the termination date; to authorize the promulgation of rules; to provide for
14 an effective date; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 9:311(C)(3), 311.1, and 315.11(C)(2) are hereby amended and
17 reenacted to read as follows:

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

21 * * *

1 C. For purposes of this Section, in cases where the Department of Children
2 and Family Services is providing support enforcement services:

3 * * *

4 (3)(a) The department shall request a judicial review under any of the
5 following conditions:

6 (i) If the best interest of the child so requires, the department shall request
7 a judicial review upon request of either party or on the department's own initiative.
8 If appropriate, the court may modify the amount of the existing child support award
9 every three years if the existing award differs from the amount which would
10 otherwise be awarded under the application of the child support guidelines.

11 (ii) Upon the request of either party or on the department's own initiative
12 after an obligor's incarceration ends when the child support award has been
13 suspended under R.S. 9:311.1. For the purpose of this Section, "incarceration" shall
14 have the same meaning as provided in R.S. 9:311.1.

15 (iii) Upon the request of either party or on the department's own initiative
16 upon the incarceration of any party.

17 (b) A material change in circumstances shall not be required for the purpose
18 of this Paragraph.

19 * * *

20 §311.1. Child support during the obligor's incarceration; Department of Children
21 and Family Services providing support enforcement services

22 A. In accordance with the provisions of this Section, every ~~order~~ of child
23 support order shall be suspended when the obligor ~~will be or~~ is incarcerated for, or
24 is sentenced to, with or without hard labor, any period of one hundred eighty
25 consecutive days or more, unless any of the following conditions exist:

26 ~~(1) The obligor has the means to pay support while incarcerated.~~

27 ~~(2) The obligor is incarcerated for an offense against the custodial party or~~
28 ~~the child subject to the support order.~~

29 ~~(3) The incarceration resulted from the obligor's failure to comply with a~~
30 ~~court order to pay child support.~~

1 B. As used in this Section:

2 (1) "Child support order" shall have the same meaning provided in Children's
 3 Code Article 1301.2.

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

8 ~~(2)~~ (3) "Support enforcement services" shall have the same meaning as
 9 provided in R.S. 46:236.1.1.

10 ~~(3)~~ (4) "Suspension" means the modification of a child support order to zero
 11 dollars during the period of an obligor's incarceration.

12 C. The Department of Public Safety and Corrections or the sheriff of any
 13 parish, as appropriate, shall notify the Department of Children and Family Services
 14 of any person who has been in their custody and may be subject to a child support
 15 ~~obligation order~~ order if either:

16 (1) The person ~~will be or is incarcerated for, or is sentenced to, with or~~
 17 without hard labor, one hundred eighty consecutive days or longer.

18 (2) ~~At least six months before the~~ The person who was the subject of
 19 notification under Paragraph (1) of this Subsection is scheduled to be released from
 20 incarceration, ~~as defined in Subsection B of this Section~~ The timeframe for such
 21 notification under this Paragraph shall be determined by an interagency agreement
 22 between the Department of Children and Family Services and the Department of
 23 Public Safety and Corrections.

24 D.~~(1)~~ When the Department of Children and Family Services is providing
 25 support enforcement services, the department shall, upon receipt of notice in
 26 accordance with ~~Paragraph (C)(1)~~ Subsection C of this Section, ~~verify that none of~~
 27 ~~the conditions in Subsection A exists~~ provide notice to the custodial party by regular
 28 mail.

1 ~~(2) Upon finding that none of the conditions in Subsection A exists, the~~
2 ~~department shall provide notice to the custodial party by certified mail, return receipt~~
3 ~~requested. The notice shall state all of the following:~~

4 ~~(a) The child support order shall be suspended unless the custodial party~~
5 ~~objects no later than fifteen calendar days after receipt of such notice on any of the~~
6 ~~following grounds:~~

7 ~~(i) The obligor has sufficient income or assets to comply with the order of~~
8 ~~child support.~~

9 ~~(ii) The obligor is incarcerated for an offense against the custodial party or~~
10 ~~the child subject to the order of child support.~~

11 ~~(iii) The offense for which the obligor is incarcerated is due to the obligor's~~
12 ~~failure to comply with an order to pay child support.~~

13 ~~(b) The custodial party may object to the proposed modification by delivering~~
14 ~~a signed objection form, indicating the nature of the objection to the department no~~
15 ~~later than fifteen calendar days after receipt of the notice in this Paragraph.~~

16 ~~(3) If no objection is received from the custodial party in accordance with~~
17 ~~Paragraph (2) of this Subsection,~~

18 E.(1) No more than fifteen days after receiving notice as provided in
19 Paragraph (C)(1) of this Section, the department shall file an affidavit with the court
20 that has jurisdiction over the order of child support. The affidavit shall include all
21 of the following:

22 ~~(a) The beginning and expected end dates of such obligor's incarceration.~~

23 ~~(b) A statement by the affiant of all of the following:~~

24 ~~(i) A diligent search failed to identify any income or assets that could be~~
25 ~~used to satisfy the order of child support while the obligor is incarcerated.~~

26 ~~(ii) The offense for which the obligor is incarcerated is not an offense against~~
27 ~~the custodial party or the child subject to the order of child support.~~

28 ~~(iii) The offense for which the obligor is incarcerated is not due to the~~
29 ~~obligor's failure to comply with an order to pay child support.~~

1 ~~(iv) A notice was provided to the custodial party in accordance with~~
 2 ~~Paragraph (2) of this Subsection and an objection was not received from such party.~~

3 ~~(4)(2) The suspension of the order of child support order shall begin upon~~
 4 ~~the date that the department files the affidavit.~~

5 ~~(5) If the custodial party makes a timely objection, the department shall file~~
 6 ~~a contradictory motion with the court that has jurisdiction over the order of child~~
 7 ~~support.~~

8 ~~(6) If a timely objection is made, the order of child support shall continue~~
 9 ~~until further order of the court.~~

10 ~~E.F.~~ Nothing in this Section shall prevent either party from seeking a
 11 suspension or a modification of the order of child support order under this Section
 12 or any other provision of law.

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

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

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

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

26 (3)(a)(i) If the obligor is released from incarceration while the child is a
 27 minor, the Department of Children and Family Services or either party shall petition
 28 the court prior to the first day of the second full month after the obligor's release
 29 from incarceration for a modification hearing to establish the terms of the previously
 30 suspended child support order. Unless the terms of the order of support have been

1 otherwise modified, the suspended order of support shall resume at the same terms
2 that existed before the suspension.

3 (ii) At the modification hearing, the court may continue the award beyond
4 the termination date provided by R.S. 9:315.22. If the court extends the child
5 support award, the amount of support shall be established using the child support
6 guidelines. Any continuation of a child support award extended pursuant to this
7 Subsection shall not exceed the amount of time the child support order was
8 suspended.

9 (b) If the obligor is released from incarceration after the child has reached
10 the age of majority, the custodial party or the child may petition the court to establish
11 an award of support for the period of suspension within twenty-four months of the
12 obligor's release from incarceration. The amount of support shall be established
13 using the child support guidelines. Any child support award established pursuant to
14 this Subsection shall not exceed the amount of time the child support order was
15 suspended.

16 H. ~~The suspension of an order of support in accordance with~~ Nothing in this
17 Section shall ~~not~~ affect any past due support that has accrued before the effective
18 date of the ~~suspension~~ reduction.

19 I. The provisions of this Section shall not apply if a court does not have
20 continuing exclusive jurisdiction to modify the ~~order~~ of child support order in
21 accordance with Children's Code Article 1302.5.

22 * * *

23 §315.11. Voluntarily unemployed or underemployed party

24 * * *

25 C. A party shall not be deemed voluntarily unemployed or underemployed
26 if either:

27 * * *

28 (2) He is or was incarcerated ~~for one hundred eighty consecutive days or~~
29 ~~longer~~ and is unemployed or underemployed as a direct result of the incarceration.

30 "Incarceration" shall have the same meaning provided in R.S. 311.1.

1 Section 2. R.S. 9:315.27 is hereby repealed in its entirety.

2 Section 3. The secretary of the Department of Children and Family Services shall
3 promulgate rules necessary to implement the provisions of this Act in accordance with the
4 Administrative Procedure Act.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____