HLS 17RS-2137 REENGROSSED

2017 Regular Session

HOUSE BILL NO. 680 (Substitute for House Bill No 426 by Representative Marino)

BY REPRESENTATIVES MARINO, BAGNERIS, BOUIE, CARPENTER, GARY CARTER, GLOVER, HALL, HOFFMANN, HUNTER, JAMES, TERRY LANDRY, LEGER, LYONS, MARCELLE, NORTON, PIERRE, AND SMITH

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

CHILDREN/SUPPORT: Provides relative to child support when a parent is incarcerated

1	AN ACT
2	To amend and reenact R.S. 9:311(A)(2) and (D) and 315.11(A) and (C), to enact Children's
3	Code Article 1353(G), R.S. 9:311.1 and 315.22(F), R.S. 13:4611(1)(d)(iii), R.S.
4	46:236.6(B)(4) and 236.7(C)(4), and to repeal R.S. 9:311(G), relative to child
5	support; to provide relative to child support obligations; to provide relative to
6	incarceration of the obligor; to provide procedures for the temporary modification
7	or suspension of child support orders; to provide for notice requirements; to provide
8	for a defense to contempt of court; and to provide for related matters.
9	Be it enacted by the Legislature of Louisiana:
10	Section 1. Children's Code Article 1353(G) is hereby enacted to read as follows:
11	Art. 1353. Support provisions; contempt; penalties; defenses
12	* * *
13	G. It is a defense as provided by R.S. 9:311.1 to a charge of contempt of
14	court for failure to comply with a court order of child support if an obligor can prove
15	that he was incarcerated during the period of noncompliance. This defense applies
16	only to the time period of actual incarceration.
17	Section 2. R.S. 9:311(A)(2) and (D) and 315.11(A) and (C) are hereby amended and
18	reenacted and R.S. 9:311.1 and 315.22(F) are hereby enacted to read as follows:

1	§311. Modification or suspension of support; material change in circumstances;
2	periodic review by Department of Children and Family Services; medical
3	support
4	A.
5	* * *
6	(2) The Department of Children and Family Services shall prepare and
7	distribute information, forms, and rules for the modification or suspension of support
8	orders, in accordance with this Subsection, and for proceeding in forma pauperis.
9	The information provided by the Department of Children and Family Services shall
10	specifically include what may constitute a material change in circumstances. The
11	clerks of court in all parishes shall make this information available to the public upon
12	request. This information shall also be distributed by the Department of Public
13	Safety and Corrections or the sheriff of any parish, as appropriate, to every person
14	incarcerated in every state and parish jail and prison facility. When the initial
15	support order is entered, either the court or the department, if providing services,
16	shall provide this information to the parties.
17	* * *
18	D. A material change in circumstance need not be shown for either of the
19	<u>following</u> purposes of:
20	(1) modifying To modify a child support award to include a court-ordered
21	award for medical support.
22	(2) To suspend or modify a child support award in accordance with R.S.
23	<u>9:311.1.</u>
24	* * *
25	§311.1. Child support during the obligor's incarceration
26	A. In accordance with the provisions of this Section, every order of child
27	support shall be suspended when the obligor will be or is incarcerated for any period
28	of one hundred eighty consecutive days or more, unless any of the following
29	conditions exist:

1	(1) The obligor has the means to pay support while incarcerated.
2	(2) The obligor is incarcerated for an offense against the custodial party or
3	the child subject to the support order.
4	(3) The incarceration resulted from the obligor's failure to comply with a
5	court order to pay child support.
6	B. As used in this Section:
7	(1) "Incarceration" means placement of an obligor in a county, parish, state
8	or federal prison or jail, in which the obligor is not permitted to earn wages from
9	employment outside the facility. "Incarceration" does not include probation or
10	parole.
11	(2) "Support enforcement services" shall have the same meaning as provided
12	<u>in R.S. 46:236.1.1(14).</u>
13	(3) "Suspension" means the modification of a child support order to zero
14	dollars due to an obligor's incarceration.
15	C. The Department of Public Safety and Corrections or the sheriff of any
16	parish, as appropriate, shall notify the Department of Children and Family Services
17	of any person who has been in their custody and may be subject to a child support
18	obligation if either of the following occurs:
19	(1) The person will be or is incarcerated for one hundred eighty consecutive
20	days or longer.
21	(2) The person who was the subject of notification under Paragraph (1) of
22	this Subsection is no longer incarcerated as defined in Subsection B of this Section.
23	D.(1) When the Department of Children and Family Services is providing
24	support enforcement services, the department shall, upon receipt of notice in
25	accordance with Paragraph (C)(1) of this Section, verify that none of the conditions
26	in Subsection A exists.
27	(2) Upon finding that none of the conditions in Subsection A exists, the
28	department shall provide notice to the custodial party by certified mail, return receipt
29	requested. The notice shall state all of the following:

1	(a) The child support order shall be suspended unless the custodial party
2	objects no later than fifteen calendar days after receipt of such notice on any of the
3	following grounds:
4	(i) The obligor has sufficient income or assets to comply with the order of
5	child support.
6	(ii) The obligor is incarcerated for an offense against the custodial party or
7	the child subject to the order of child support.
8	(iii) The offense for which the obligor is incarcerated is due to the obligor's
9	failure to comply with an order to pay child support.
10	(b) The custodial party may object to the proposed modification by delivering
11	a signed objection form, indicating the nature of the objection to the department no
12	later than fifteen calendar days after receipt of the notice in this Paragraph.
13	(3) If no objection is received from the custodial party in accordance with
14	Paragraph (2) of this Subsection, the department shall file an affidavit with the court
15	that has jurisdiction over the order of child support. The affidavit shall include all
16	of the following:
17	(a) The beginning and expected end dates of such obligor's incarceration.
18	(b) A statement by the affiant of all of the following:
19	(i) A diligent search failed to identify any income or assets that could be
20	used to satisfy the order of child support while the obligor is incarcerated.
21	(ii) The offense for which the obligor is incarcerated is not an offense against
22	the custodial party or the child subject to the order of child support.
23	(iii) The offense for which the obligor is incarcerated is not due to the
24	obligor's failure to comply with an order to pay child support.
25	(iv) A notice was provided to the custodial party in accordance with
26	Paragraph (2) of this Subsection and an objection was not received from such party.
27	(4) The suspension of the order of support shall begin upon the date that the
28	department files the affidavit.

1	(5) If the custodial party makes a timely objection, the department shall file
2	a contradictory motion with the court that has jurisdiction over the order of child
3	support.
4	(6) If a timely objection is made, the order of child support shall continue
5	until further order of the court.
6	E. Nothing in this Section shall prevent either party from seeking a
7	suspension or a modification of the order of support under this Section or any other
8	provision of law.
9	F.(1) Upon motion of either party or the Department of Children and Family
10	Services, after notice and hearing, the court shall suspend the child support
1	obligation unless it finds one of the conditions in Subsection A of this Section exists.
12	(2) If one of the conditions in Subsection A of this Section exists, the court
13	shall use the child support guidelines in R.S. 9:315 et seq. to determine an obligor's
14	support obligation during his period of incarceration.
15	G.(1) An order of support suspended in accordance with this Section shall
16	resume by operation of law on the first day of the second full month after the
17	obligor's release from incarceration.
18	(2) An order that suspends an obligor's order of support because of the
19	obligor's incarceration shall contain a provision that the previous order will be
20	reinstated on the first day of the second full month after the obligor's release from
21	incarceration.
22	(3) Unless the terms of the order of support have been otherwise modified,
23	the suspended order of support shall resume at the same terms that existed before the
24	suspension.
25	H. The suspension of an order of support in accordance with this Section
26	shall not affect any past due support that has accrued before the effective date of the
27	suspension.

1	I. The provisions of this Section shall not apply if a court does not have
2	continuing exclusive jurisdiction to modify the order of child support in accordance
3	with Children's Code Article 1302.5.
4	J. The secretary of the Department of Children and Family Services, in
5	consultation with the courts, the Department of Public Safety and Corrections, and
6	law enforcement entities, shall promulgate rules in accordance with the
7	Administrative Procedure Act necessary to implement the provisions of this Section.
8	* * *
9	§315.11. Voluntarily unemployed or underemployed party
10	A.(1) If a party is voluntarily unemployed or underemployed, child support
11	shall be calculated based on a determination of income earning potential, unless the
12	party is physically or mentally incapacitated, or is caring for a child of the parties
13	under the age of five years. In determining the party's income earning potential, the
14	court may consider the most recently published Louisiana Occupational Employment
15	Wage Survey. In determining whether to impute income to a party, the court's
16	considerations shall include, to the extent known, all of the following:
17	(a) Assets owned or held by the party.
18	(b) Residence.
19	(c) Employment and earnings history.
20	(d) Job skills.
21	(e) Educational attainment.
22	(f) Literacy.
23	(g) Age and health.
24	(h) Criminal record and other employment barriers.
25	(i) Record of seeking work.
26	(j) The local job market.
27	(k) The availability of employers willing to hire the noncustodial parent.
28	(l) Prevailing earnings level in the local community.
29	(m) Other relevant background factors in the case.

1	(2) Absent evidence of a party's actual income or income earning potential,
2	there is a rebuttable presumption that the party can earn a weekly gross amount equal
3	to thirty-two hours at a minimum wage, according to the laws of his state of domicile
4	or federal law, whichever is higher.
5	* * *
6	C. A party shall not be deemed voluntarily unemployed or underemployed
7	if he or she <u>either:</u>
8	(1) He has been temporarily unable to find work or has been
9	temporarily forced to take a lower paying lower-paying job as a direct result
10	of Hurricane Katrina or Rita.
11	(2) He is or was incarcerated for one hundred eighty consecutive days or
12	<u>longer.</u>
13	* * *
14	§315.22. Termination of child support upon majority or emancipation; exceptions
15	* * *
16	F. If a child support award has been suspended pursuant to R.S. 9:311.1, the
17	court may, in its discretion and upon motion of any party, continue the award beyond
18	the termination date otherwise provided by subsections A through E of this Section.
19	However, any continuation of a child support award ordered pursuant to this
20	Subsection shall not exceed the amount of time the child support order was
21	suspended during the obligor's incarceration.
22	Section 3. R.S. 13:4611(1)(d)(iii) is hereby enacted to read as follows:
23	§4611. Punishment for contempt of court; defenses
24	Except as otherwise provided for by law:
25	(1) The supreme court, the courts of appeal, the district courts, family courts,
26	juvenile courts and the city courts may punish a person adjudged guilty of a
27	contempt of court therein, as follows:
28	* * *

1	(d)
2	* * *
3	(iii) It is a defense as provided by R.S. 9:311.1 to a charge of contempt of
4	court for failure to comply with a court order of child support if an obligor can prove
5	that he was incarcerated during the period of noncompliance. This defense applies
6	only to the time period of actual incarceration.
7	* * *
8	Section 4. R.S. 46:236.6(B)(4) and 236.7(C)(4) are hereby enacted to read as
9	follows:
0	§236.6. Failure to pay support; procedure, penalties and publication
1	* * *
12	В.
13	* * *
14	(4) It is a defense as provided by R.S. 9:311.1 to a charge of contempt of
15	court for failure to comply with a court order of child support if an obligor can prove
16	that he was incarcerated during the period of noncompliance. This defense applies
17	only to the time period of actual incarceration.
18	* * *
19	§236.7. Order of support; stipulation by district attorney and party
20	* * *
21	C.
22	* * *
23	(4) It is a defense as provided by R.S. 9:311.1 to a charge of contempt of
24	court for failure to comply with a court order of child support if an obligor can prove
25	that he was incarcerated during the period of noncompliance. This defense applies
26	only to the time period of actual incarceration.
27	* * *
28	Section 5. R.S. 9:311(G) is hereby repealed in its entirety.

- 1 Section 6. The legislature finds that the purpose of modifying child support during
- 2 a person's incarceration is to increase the likelihood of successful reintegration into the
- 3 workforce and long-term stability after a jail or prison term. Establishing financial stability
- 4 in the weeks and months following a jail or prison term reduces the risk of recidivism,
- 5 increasing both public safety and the likelihood of consistent payment of child support over
- 6 time.
- 7 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 680 Reengrossed

2017 Regular Session

Marino

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

<u>Proposed law</u> provides for the temporary modification or suspension of a child support order due to an obligor's incarceration of more than 180 days. Requires the Dept. of Children and Family Services, once it is notified that an individual subject to support enforcement services is being incarcerated, to verify that none of the following exceptions exist:

- (1) The incarceration is pursuant to an intentional failure to pay a child support obligation.
- (2) The obligor has the means to pay support while incarcerated.
- (3) The obligor is incarcerated for an offense against the custodial party or the child subject to the support order.

<u>Proposed law</u> adds that a person shall not be considered voluntarily unemployed or underemployed if that person is incarcerated for more than 180 days.

<u>Proposed law</u> requires the Dept. of Public Safety and Corrections or the sheriff in certain circumstances to distribute information to every person in a prison facility regarding the suspension of child support, including information specific as to what may constitute a material change in circumstances.

<u>Proposed law</u> requires the Dept. of Children and Family Services to provide notice to the custodial party by certified mail that the child support obligation will be suspended (if none of the exceptions exist) unless the custodial party objects no later than fifteen calendar days from receipt of notice.

<u>Proposed law</u> outlines the grounds for the custodial parent to object to modification or suspension of support, and provides the means required for the custodial parent to object.

<u>Proposed law</u> requires the Dept. of Children and Family Services to file an affidavit with the court having jurisdiction over the order of child support and provides for the mandatory contents of the affidavit.

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

<u>Proposed law</u> permits a court, at its discretion and upon motion of any party, to continue an award of child support that would be otherwise terminated, if the award was suspended due to the obligor's incarceration. <u>Proposed law</u> prohibits such a continuation from exceeding a longer period of time than the award was suspended due to the obligor's incarceration.

Provides that <u>proposed law</u> does not apply if a court does not have continuous exclusive jurisdiction to modify the order pursuant to the Uniform Interstate Family Support Act.

Effective Jan. 1, 2019.

(Amends R.S. 9:311(A)(2) and (D) and 315.11(A) and (C); Adds Ch.C. Art. 1353(G), R.S. 9:311.1 and 315.22(F), 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))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

- 1. Add a requirement that the Dept. of Public Safety and Corrections or the sheriff must distribute information to every person in a correctional facility regarding the suspension of child support, including information as to what may constitute a material change in circumstances.
- 2. Change <u>proposed</u> notice requirements to require the Dept. of Children and Family Services to provide notice to the custodial party by certified mail that the child support obligation will be suspended (if none of the exceptions exist) unless the custodial party objects no later than fifteen calendar days from receipt of notice.
- 3. Outline the grounds for the custodial parent to object to modification or suspension of support, and provides the means required for the custodial parent to object.
- 4. When no objection is received, require the Dept. of Children and Family Services to file an affidavit with the court having jurisdiction over the order of child support, and provide for the mandatory contents of the affidavit.
- 5. Provide that <u>proposed law</u> does not apply if a court does not have continuous exclusive jurisdiction to modify the order pursuant to the Uniform Interstate Family Support Act.
- 6. Provide that when a child support award is suspended due to the obligor's incarceration, a court may, at its discretion and upon motion of any party, continue the award that would be otherwise terminated, but the award shall not be continued for a longer period of time than it was suspended due to the obligor's incarceration.
- 7. Make technical changes.