

# ACT No. 264

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

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AN ACT

To amend and reenact R.S. 9:311(A)(2) and (D) and 315.11(A) and (C), to enact Children's Code Article 1353(G), R.S. 9:311.1 and 315.27, 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 of the obligor; to provide procedures for the temporary modification or suspension of child support orders; to provide for notice requirements; to provide for a defense to contempt of court; 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 as provided by R.S. 9:311.1 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(A)(2) and (D) and 315.11(A) and (C) are hereby amended and reenacted and R.S. 9:311.1 and 315.27 are hereby enacted to read as follows:

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

A.

\* \* \*



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

3                   B. As used in this Section:

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

10                  (3) "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 if either:

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

18                  (2) At least six months before the person who was the subject of notification  
 19                  under Paragraph (1) of this Subsection is scheduled to be released from incarceration  
 20                  as defined in Subsection B of this Section.

21                  D.(1) When the Department of Children and Family Services is providing  
 22                  support enforcement services, the department shall, upon receipt of notice in  
 23                  accordance with Paragraph (C)(1) of this Section, verify that none of the conditions  
 24                  in Subsection A exists.

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

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

1           (i) The obligor has sufficient income or assets to comply with the order of  
2           child support.

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

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

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

10           (3) If no objection is received from the custodial party in accordance with  
11           Paragraph (2) of this Subsection, the department shall file an affidavit with the court  
12           that has jurisdiction over the order of child support. The affidavit shall include all  
13           of the following:

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

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

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

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

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

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

24           (4) The suspension of the order of support shall begin upon the date that the  
25           department files the affidavit.

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

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

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

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

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

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

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

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

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

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

28                  J. The secretary of the Department of Children and Family Services, in  
29                  consultation with the courts, the Department of Public Safety and Corrections, and

1 law enforcement entities, shall promulgate rules in accordance with the  
2 Administrative Procedure Act necessary to implement the provisions of this Section.

3 \* \* \*

4 §315.11. Voluntarily unemployed or underemployed party

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

- 12 (a) Assets owned or held by the party.
- 13 (b) Residence.
- 14 (c) Employment and earnings history.
- 15 (d) Job skills.
- 16 (e) Educational attainment.
- 17 (f) Literacy.
- 18 (g) Age and health.
- 19 (h) Criminal record and other employment barriers.
- 20 (i) Record of seeking work.
- 21 (j) The local job market.
- 22 (k) The availability of employers willing to hire the noncustodial parent.
- 23 (l) Prevailing earnings level in the local community.
- 24 (m) Other relevant background factors in the case.

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

29 \* \* \*

1 C. A party shall not be deemed voluntarily unemployed or underemployed  
2 if ~~he or she~~ either:

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

6 (2) He is or was incarcerated for one hundred eighty consecutive days or  
7 longer.

8 \* \* \*

9 §315.27. Child support award

10 A. If a child support award is suspended pursuant to R.S. 9:311.1 and the  
11 obligor is released from incarceration while the child is a minor, the Department of  
12 Children and Family Services may petition the court to continue the award beyond  
13 the termination date provided by R.S. 9:315.22. If the court extends the child  
14 support award, the amount of support shall be established using the child support  
15 guidelines. However, any continuation of a child support award extended pursuant  
16 to this Subsection shall not exceed the amount of time the child support order was  
17 suspended.

18 B. If a child support award is suspended pursuant to R.S. 9:311.1 and the  
19 obligor is released from incarceration after the child has reached the age of majority,  
20 the custodial party or the child may petition the court to establish an award of  
21 support for the period of suspension within twenty-four months of the obligor's  
22 release from incarceration. If the court establishes a child support award for the  
23 period of suspension, the amount shall be established using the child support  
24 guidelines. However, any child support award established pursuant to this  
25 Subsection shall not exceed the amount of time the child support order was  
26 suspended.

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

28 §4611. Punishment for contempt of court; defenses

29 Except as otherwise provided for by law:

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

4 \* \* \*

5 (d)

6 \* \* \*

7 (iii) It is a defense as provided by R.S. 9:311.1 to a charge of contempt of  
8 court for failure to comply with a court order of child support if an obligor can prove  
9 that he was incarcerated during the period of noncompliance. This defense applies  
10 only to the time period of actual incarceration.

11 \* \* \*

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

14 §236.6. Failure to pay support; procedure, penalties and publication

15 \* \* \*

16 B.

17 \* \* \*

18 (4) It is a defense as provided by R.S. 9:311.1 to a charge of contempt of  
19 court for failure to comply with a court order of child support if an obligor can prove  
20 that he was incarcerated during the period of noncompliance. This defense applies  
21 only to the time period of actual incarceration.

22 \* \* \*

23 §236.7. Order of support; stipulation by district attorney and party

24 \* \* \*

25 C.

26 \* \* \*

27 (4) It is a defense as provided by R.S. 9:311.1 to a charge of contempt of  
28 court for failure to comply with a court order of child support if an obligor can prove

