

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 (2) The Department of Children and Family Services shall prepare and
 2 distribute information, forms, and rules for the modification or suspension of support
 3 orders, in accordance with this Subsection, and for proceeding *in forma pauperis*.
 4 The information provided by the Department of Children and Family Services shall
 5 specifically include what may constitute a material change in circumstances. The
 6 clerks of court in all parishes shall make this information available to the public upon
 7 request. This information shall also be distributed by the Department of Public
 8 Safety and Corrections or the sheriff of any parish, as appropriate, to every person
 9 incarcerated in every state and parish jail and prison facility. When the initial
 10 support order is entered, either the court or the department, if providing services,
 11 shall provide this information to the parties.

12 * * *

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

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

17 (2) To suspend or modify a child support award in accordance with R.S.
 18 9:311.1.

19 * * *

20 §311.1. Child support during the obligor's incarceration

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

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

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

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

