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**HOUSE COMMITTEE AMENDMENTS**

2021 Regular Session

Amendments proposed by House Committee on Civil Law and Procedure to Original House Bill No. 449 by Representative Wilford Carter

AMENDMENT NO. 1

Delete House Committee Amendments by the House Committee on Civil Law and Procedure (#2262)

AMENDMENT NO. 2

On page 1, line 2, after "reenact" delete the remainder of the line and delete line 3 in its entirety and insert the following:

"R.S. 9:311(A)(2), (C)(3), and (D)(2), 311.1, 315.11(C)(2), and 315.27 and to enact R.S. 9:311(D)(3), relative to the reduction of child support"

AMENDMENT NO. 3

On page 1, line 4, after "obligations;" and before "to authorize" insert the following:

"to provide for reduction during an obligor's incarceration; to remove provisions for suspension and exceptions to suspension of a support order during the obligor's incarceration; to provide for requirements of the Department of Children and Family Services when providing support enforcement services; to provide for definitions; to provide for notifications required of the Department of Public Safety and Corrections and the Department of Children and Family Services; to provide a timeframe for the Department of Children and Family Services to file an affidavit with the court; to remove provisions regarding notice given to the custodial party; to provide for the voluntary unemployment or underemployment of the obligor;"

AMENDMENT NO. 4

On page 1, delete lines 7 and 8 in their entirety and insert the following:

"Section 1. R.S. 9:311(A)(2), (C)(3), and (D)(2), 311.1, 315.11(C)(2), and 315.27 are hereby amended and reenacted and R.S. 9:311(D)(3) is hereby enacted to read as follows:"

AMENDMENT NO. 5On page 1, line 9, after "Modification or" and before "of support" delete "suspension" and insert "reduction"AMENDMENT NO. 6

On page 1, between lines 11 and 12 insert the following:

"A.

\* \* \*

(2) The Department of Children and Family Services shall prepare and distribute information, forms, and rules for the modification or ~~suspension~~ reduction of support orders, in accordance with this Subsection, and for proceeding in forma pauperis. The information provided by the Department of Children and Family Services shall specifically include what may constitute a material change in circumstances. The clerks of court in all parishes shall make this information

1 available to the public upon request. This information shall also be distributed by  
 2 the Department of Public Safety and Corrections or the sheriff of any parish, as  
 3 appropriate, to every person incarcerated in every state and parish jail and prison  
 4 facility. When the initial support order is entered, either the court or the department,  
 5 if providing services, shall provide this information to the parties."

6 AMENDMENT NO. 7

7 On page 1, delete lines 16 through 20 in their entirety and on page 2, delete lines 1 through  
 8 4 in their entirety and insert the following:

9 "(3)(a) The department shall request a judicial review under any of the  
 10 following conditions:

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

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

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

22 AMENDMENT NO. 8

23 On page 2, line 7, after "for" and before "of the" delete "either" and insert "any"

24 AMENDMENT NO. 9

25 On page 2, delete lines 10 and 11 in their entirety and insert the following:

26 "(2) To ~~suspend or~~ modify a child support award ~~in accordance with~~  
 27 ~~previously reduced pursuant to~~ R.S. 9:311.1 ~~after the obligor's incarceration ends.~~

28 (3) To modify a child support award upon the incarceration of either party."

29 AMENDMENT NO. 10

30 On page 2, line 13, after "§311.1" and before "of child" change "Suspension" to "Reduction"

31 AMENDMENT NO. 11

32 On page 2, line 18, after "be" and before "when" delete "suspended" and insert "reduced"

33 AMENDMENT NO. 12

34 On page 2, line 20, after "more" delete the remainder of the line and delete line 21 in its  
 35 entirety and insert a period " ."

36 AMENDMENT NO. 13

37 On page 2, delete lines 22 through 27 in their entirety and insert the following:

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

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

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

1 B. As used in this Section:"

2 AMENDMENT NO. 14

3 On page 3, delete lines 7 through 28 in their entirety and delete pages 4 through 6 in their  
4 entirety and on page 7, delete lines 1 through 11 in their entirety and insert the following:

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

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

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

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

19 ~~D.(4)~~ When the Department of Children and Family Services is providing  
20 support enforcement services, the department shall, upon receipt of notice in  
21 accordance with ~~Paragraph (C)(1)~~ Subsection C of this Section, ~~verify that none of~~  
22 ~~the conditions in Subsection A exists~~ provide notice to the custodial party by regular  
23 mail.

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

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

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

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

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

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

39 ~~(3) If no objection is received from the custodial party in accordance with~~  
40 ~~Paragraph (2) of this Subsection,~~ E.(1) No more than fifteen days after receiving  
41 notice as provided in Paragraph (C)(1) of this Section, the department shall file an  
42 affidavit with the court that has jurisdiction over the order of child support. ~~The~~  
43 ~~affidavit shall include all of the following:~~

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

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

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

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

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

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

54 ~~(4) (2) The suspension reduction of the order of child support order shall~~  
55 ~~begin upon the date that the department files the affidavit. The support order shall~~

1 be reduced to the minimum support provided in R.S. 9:315.14 until modified by  
 2 subsequent order of the court.

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

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

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

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

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

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

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

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

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

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

### 33 AMENDMENT NO. 15

34 On page 7, delete line 21 in its entirety and insert the following:

35 "§315.27. Child Continuing child support award

36 A. ~~If a child support award is has been suspended pursuant to R.S. 9:311.1~~  
 37 ~~Act 264 of the 2017 Regular Session of the Legislature, any interested party may file~~  
 38 ~~a motion for and the obligor is released from incarceration while the child is a minor,~~  
 39 ~~the Department of Children and Family Services may petition the court to continue~~  
 40 ~~the child support award beyond the termination date provided by R.S. 9:315.22. If,~~  
 41 ~~after notice and hearing, the court extends continues~~ the child support award, the  
 42 amount of support shall be established using the child support guidelines. However,  
 43 any continuation of a child support award ~~extended~~ pursuant to this Subsection shall  
 44 not exceed the amount of time the child support order was suspended.

45 B. ~~If a child support award is suspended pursuant to R.S. 9:311.1 and the~~  
 46 ~~obligor is released from incarceration after the child has reached the age of majority,~~  
 47 ~~the custodial party or the child may petition the court to establish an award of~~  
 48 ~~support for the period of suspension within twenty-four months of the obligor's~~  
 49 ~~release from incarceration. If the court establishes a child support award for the~~  
 50 ~~period of suspension, the amount shall be established using the child support~~  
 51 ~~guidelines. However, any child support award established pursuant to this~~  
 52 ~~Subsection shall not exceed the amount of time the child support order was~~  
 53 ~~suspended. As used in this Section, the following words shall have the following~~  
 54 ~~meanings:~~

55 (1) "Incarceration" shall have the same meaning as in R.S. 9:311.1.

56 (2) "Interested party" includes any of the following:

- 1                   (a) The Department of Children and Family Services, the district attorney, or
- 2 the contract attorney providing support services pursuant to Title IV-D of the Social
- 3 Security Act.
- 4                   (b) The person owing the support obligation.
- 5                   (c) The individual or current caretaker to whom the support obligation is
- 6 owed.
- 7                   (3) "Support enforcement services" shall have the same meaning as in R.S.
- 8 46:236.1.1.
- 9                   C. The proceeding shall be brought within one of the following time periods:
- 10                   (1) If the suspension ended after August 1, 2021, within a two-year period
- 11 commencing on the date on which the obligor's incarceration has ended.
- 12                   (2) If the suspension ended on or before August 1, 2021, on or before August
- 13 1, 2023.

14 AMENDMENT NO. 16

15 On page 7, at the beginning of line 22, change "Section 3." to "Section 2."

16 AMENDMENT NO. 17

17 On page 7, delete line 25 in its entirety