

2021 Regular Session

HOUSE BILL NO. 449

BY REPRESENTATIVE WILFORD CARTER

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

CHILDREN/SUPPORT: Provides relative to the reduction of a child support obligation during the obligor's incarceration

1 AN ACT

2 To amend and reenact R.S. 9:311(A)(2), (C)(3), and (D)(2), 311.1, 315.11(C)(2), and 315.27

3 and to enact R.S. 9:311(D)(3), relative to the reduction of child support obligations;

4 to provide for reduction during an obligor's incarceration; to remove provisions for

5 suspension and exceptions to suspension of a support order during the obligor's

6 incarceration; to provide for requirements of the Department of Children and Family

7 Services when providing support enforcement services; to provide for definitions;

8 to provide for notifications required of the Department of Public Safety and

9 Corrections and the Department of Children and Family Services; to provide a

10 timeframe for the Department of Children and Family Services to file an affidavit

11 with the court; to remove provisions regarding notice given to the custodial party;

12 to provide for the voluntary unemployment or underemployment of the obligor; to

13 authorize the promulgation of rules; to provide for an effective date; and to provide

14 for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 9:311(A)(2), (C)(3), and (D)(2), 311.1, 315.11(C)(2), and 315.27 are

17 hereby amended and reenacted and R.S. 9:311(D)(3) is hereby enacted to read as follows:



1 under R.S. 9:311.1. For the purpose of this Section, "incarceration" shall have the  
2 same meaning as provided in R.S. 9:311.1.

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

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

7 D. A material change in circumstance need not be shown for ~~either~~ any of  
8 the following purposes:

9 \* \* \*

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

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

13 \* \* \*

14 §311.1. ~~Child~~ Reduction of child support during the obligor's incarceration;  
15 Department of Children and Family Services providing support enforcement  
16 services

17 A. ~~In accordance with the provisions of this Section, every order of~~ When  
18 the Department of Children and Family Services is providing support enforcement  
19 services, a child support order shall be ~~suspended~~ reduced when the obligor ~~will be~~  
20 or is incarcerated for, or is sentenced to, with or without hard labor, any period of  
21 one hundred eighty consecutive days or more, unless any of the following conditions  
22 exist:

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

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

26 (3) ~~The incarceration resulted from the obligor's failure to comply with a~~  
27 ~~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) ~~"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 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.(+) 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 reduction of the order of child support order shall~~  
4           ~~begin upon the date that the department files the affidavit. The support order shall~~  
5           ~~be reduced to the minimum support provided in R.S. 9:315.14 until modified by~~  
6           ~~subsequent order of the court.~~

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

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

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

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

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

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

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

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

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

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

10                               \*       \*       \*

11           §315.11. Voluntarily unemployed or underemployed party

12                               \*       \*       \*

13           C. A party shall not be deemed voluntarily unemployed or underemployed  
14           if either:

15                               \*       \*       \*

16           (2) He is or was incarcerated ~~for one hundred eighty consecutive days or~~  
17           ~~longer~~ and is unemployed or underemployed as a direct result of the incarceration.  
18           "Incarceration" shall have the same meaning provided in R.S. 311.1.

19           §315.27. ~~Child~~ Continuing child support award

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

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

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

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

12           (a) The Department of Children and Family Services, the district attorney,  
13 or the contract attorney providing support services pursuant to Title IV-D of the  
14 Social Security Act.

15           (b) The person owing the support obligation.

16           (c) The individual or current caretaker to whom the support obligation is  
17 owed.

18           (3) "Support enforcement services" shall have the same meaning as in R.S.  
19 46:236.1.1.

20           C. The proceeding shall be brought within one of the following time periods:

21           (1) If the suspension ended after August 1, 2021, within a two-year period  
22 commencing on the date on which the obligor's incarceration has ended.

23           (2) If the suspension ended on or before August 1, 2021, on or before August  
24 1, 2023.

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



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**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)]

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HB 449 Engrossed

2021 Regular Session

Wilford Carter

**Abstract:** Provides for the procedures related to suspension and reduction of a child support order for an incarcerated obligor.

Present law (R.S. 9:311) provides that in cases where the Dept. of Children and Family Services ("DCFS") is providing support enforcement services, if the best interest of the child so requires, DCFS shall request a judicial review upon request of either party or on DCFS's own initiative.

Proposed law retains present law and further provides that DCFS shall request a judicial review upon request of either party or DCFS's own initiative when a party is incarcerated or when the child support award is reduced pursuant to proposed law provisions relative to the reduction of a child support obligation during the obligor's incarceration.

Present law provides that a material change in circumstances need not be shown to suspend or modify a child support award pursuant to present law.

Proposed law instead provides that a material change in circumstances need not be shown to modify a child support award previously reduced pursuant to proposed law after an obligor's incarceration or to modify the award upon the incarceration of either party.

Present law (R.S. 9:311.1) provides for the temporary suspension of a child support order due to an obligor's incarceration for more than 180 days.

Proposed law removes present law provisions for suspension and instead provides for the reduction of child support to the minimum support obligation provided by present law during the obligor's incarceration, and includes cases in which the obligor is sentenced to 180 days or more with or without hard labor. Proposed law provides that the support order shall remain at the reduced obligation until modified by subsequent court order.

Present law requires the Dept. of Public Safety and Corrections (DPSC) or the sheriff to notify DCFS of any person in their custody that may be subject to a child support order at least six months before the inmate is scheduled to be released from incarceration.

Proposed law retains present law, but requires the time frame for the notification period to be determined by an interagency agreement between DCFS and DPSC.

Present law requires DCFS to provide notice to the custodial party by certified mail, return receipt requested that a child support obligation will be suspended.

Proposed law instead requires DCFS to provide notice by regular mail.

Present law requires DCFS to include in the notice a statement that the child support order shall be suspended unless the custodial party objects within 15 days upon certain grounds including that the obligor is incarcerated for an offense against the custodial party or the child subject to the order of child support.

Proposed law repeals present law.

Present law provides that if the custodial party does not object, the suspension shall become effective when DCFS files an affidavit with the court.

Proposed law repeals present law.

Present law authorizes DCFS or either party to file a motion with the court, upon which the court shall suspend the child support obligation unless certain conditions exist. Further provides that if the custodial party makes a timely objection, DCFS shall file a contradictory motion with the court.

Proposed law repeals present law.

Present law provides that unless the terms of the child support order have been modified, the suspended child support order shall resume at the same terms that existed before the suspension.

Proposed law repeals present law and provides that orders suspended pursuant to present law may be continued by the court after notice and hearing and the amount of support shall be established using the child support guidelines. Proposed law further provides a limited time period within which such action may be brought.

Present law provides that the suspension of a child support order shall not affect any past due child support that has accrued before the effective date of the suspension. Further provides that a party is not prevented from seeking a suspension or modification of child support under any other provision of law and that present law shall not apply if a court does not have continuing exclusive jurisdiction to modify the child support order.

Proposed law retains present law relative to reduction, rather than suspension.

Present law (R.S. 9:315.11) provides that a party shall not be deemed voluntarily unemployed or underemployed for purposes of calculating a child support obligation if he is or was incarcerated for 180 consecutive days or longer. Proposed law instead provides that a party shall not be deemed voluntarily unemployed or underemployed if he is incarcerated and is unemployed or underemployed as a direct result of incarceration.

Proposed law provides cross-references to present law definition of "incarceration".

(Amends R.S. 9:311(A)(2), (C)(3), and (D)(2), 311.1, and 315.11(C)(2), and 315.27; Adds R.S. 9:311(D)(3))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Remove provisions for the suspension and exceptions to the suspension of a support obligation during the obligor's incarceration.
2. Add provisions for the reduction of a support obligation during the obligor's incarceration.
3. Add conditions for which a material change in circumstances need not be shown.
4. Provide for the continuation of support obligations suspended pursuant to present law.

5. Add provisions requiring notice and deadlines for filing certain motions.
6. Remove the special effective date.