
DIGEST

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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.