

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(C)(3), 311.1, and 315.11(C)(2), and to repeal R.S.  
3 9:315.27, relative to the suspension of child support obligations; to provide for  
4 suspension during an obligor's incarceration; to remove exceptions to suspension of  
5 a support order during the obligor's incarceration; to provide for requirements of the  
6 Department of Children and Family Services when providing support enforcement  
7 services; to provide for definitions; to provide for notifications required of the  
8 Department of Public Safety and Corrections and the Department of Children and  
9 Family Services; to provide a timeframe for the Department of Children and Family  
10 Services to file an affidavit with the court; to remove provisions regarding notice  
11 given to the custodial party; to provide for the voluntary unemployment or  
12 underemployment of the obligor; to provide for the continuation of child support  
13 beyond the termination date; to authorize the promulgation of rules; to provide for  
14 an effective date; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 9:311(C)(3), 311.1, and 315.11(C)(2) are hereby amended and  
17 reenacted to read as follows:

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

21 \* \* \*

1 C. For purposes of this Section, in cases where the Department of Children  
2 and Family Services is providing support enforcement services:

3 \* \* \*

4 (3)(a) The department shall request a judicial review under any of the  
5 following conditions:

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

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

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

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

19 \* \* \*

20 §311.1. Child support during the obligor's incarceration; Department of Children  
21 and Family Services providing support enforcement services

22 A. In accordance with the provisions of this Section, every ~~order~~ of child  
23 support order shall be suspended when the obligor ~~will be or is~~ incarcerated for, or  
24 is sentenced to, with or without hard labor, any period of one hundred eighty  
25 consecutive days or more, unless any of the following conditions exist:

- 26 (1) ~~The obligor has the means to pay support while incarcerated.~~  
27 (2) ~~The obligor is incarcerated for an offense against the custodial party or~~  
28 ~~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) "Child support order" shall have the same meaning provided in Children's  
5 Code Article 1301.2.

6           (2) "Incarceration" means placement of an obligor in a county, parish, state  
7 or federal prison or jail, in which the obligor is not permitted to earn wages from  
8 employment outside the facility. "Incarceration" does not include probation or  
9 parole.

10          ~~(2)~~ (3) "Support enforcement services" shall have the same meaning as  
11 provided in R.S. 46:236.1.1.

12          ~~(3)~~ (4) "Suspension" means the modification of a child support order to zero  
13 dollars during the period of an obligor's incarceration.

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

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

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

26           D.~~(1)~~ When the Department of Children and Family Services is providing  
27 support enforcement services, the department shall, upon receipt of notice in  
28 accordance with ~~Paragraph (C)~~(1) Subsection C of this Section, ~~verify that none of~~

1 ~~the conditions in Subsection A exists~~ provide notice to the custodial party by regular  
2 mail.

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

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

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

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

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

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

18 (3) ~~If no objection is received from the custodial party in accordance with~~  
19 ~~Paragraph (2) of this Subsection,~~

20 E.(1) No more than fifteen days after receiving notice as provided in  
21 Paragraph (C)(1) of this Section, the department shall file an affidavit with the court  
22 that has jurisdiction over the order of child support. ~~The affidavit shall include all~~  
23 ~~of the following:~~

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

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

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

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

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

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

5           ~~(4)(2) The suspension of the order of child support order shall begin upon~~  
6           ~~the date that the department files the affidavit.~~

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

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

28          (3)(a)(i) If the obligor is released from incarceration while the child is a  
29          minor, upon the obligor's release the Department of Children and Family Services

1 or either party shall petition the court prior to the first day of the second full month  
2 after the obligor's release from incarceration for a modification hearing to establish  
3 the terms of the previously suspended child support order. Unless the terms of the  
4 order of support have been otherwise modified, the suspended order of support shall  
5 resume at the same terms that existed before the suspension.

6 (ii) At the modification hearing, the court may continue the award beyond  
7 the termination date provided by R.S. 9:315.22. If the court extends the child  
8 support award, the amount of support shall be established using the child support  
9 guidelines. Any continuation of a child support award extended pursuant to this  
10 Subsection shall not exceed the amount of time the child support order was  
11 suspended.

12 (b) If the obligor is released from incarceration after the child has reached  
13 the age of majority, the custodial party or the child may petition the court to establish  
14 an award of support for the period of suspension within twenty-four months of the  
15 obligor's release from incarceration. The amount of support shall be established  
16 using the child support guidelines. Any child support award established pursuant to  
17 this Subsection shall not exceed the amount of time the child support order was  
18 suspended.

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

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

25 \* \* \*  
26 §315.11. Voluntarily unemployed or underemployed party  
27 \* \* \*

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

3 \* \* \*

4 (2) He is or was incarcerated ~~for one hundred eighty consecutive days or~~  
5 ~~longer~~ and is unemployed or underemployed as a direct result of the incarceration.

6 "Incarceration" shall have the same meaning provided in R.S. 311.1.

7 Section 2. R.S. 9:315.27 is hereby repealed in its entirety.

8 Section 3. The secretary of the Department of Children and Family Services shall  
9 promulgate rules necessary to implement the provisions of this Act in accordance with the  
10 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 Reengrossed

2021 Regular Session

Wilford Carter

**Abstract:** Provides for the procedures related to suspension 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 suspended pursuant to present law and proposed law provisions relative to the suspension of a child support obligation during the obligor's incarceration.

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 retains present law, and includes cases in which the obligor is sentenced to 180 days or more with or without hard labor.

Proposed law defines "child support 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 notification 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.

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 instead provides that DCFS shall file an affidavit with the court no more than 15 days after receiving the notice provided by DPSC and the suspension shall become effective when DCFS files an affidavit with the court.

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 a suspended child support order shall resume by operation of law on the first day of the second full month after the obligor's release from incarceration.

Proposed law retains present law.

Proposed law provides that if the obligor is released from incarceration while the child is a minor, DCFS or either party shall petition the court prior to the first day of the second full month after the obligor's release from incarceration for a modification hearing to establish the terms of the previously suspended child support order.

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 retains present law.

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.

Present law (R.S. 9:315.27) provides for continuing a suspended child support award beyond the termination date under certain circumstances.

Proposed law retains present law but provides that if the child is a minor at the time of the obligor's release from incarceration, the court may continue the child support award at the modification hearing held following the obligor's release.

Present law provides that if the child has reached the age of majority at the time of the obligor's release from incarceration, the custodial party or the child may petition the court to continue the child support order under certain circumstances.

Proposed law retains present law.

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(C)(3), 311.1, and 315.11(C)(2); Repeals R.S. 9:315.27)

#### 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.

The House Floor Amendments to the engrossed bill:

1. Add provisions for the suspension of a support obligation during the obligor's incarceration.
2. Remove provisions for the reduction of a support obligation during the obligor's incarceration.
3. Require the DCFS or either party to request a modification hearing within a certain time frame following the obligor's release from incarceration.
4. Allow the court to continue a suspended order pursuant to present law at the modification hearing.
5. Remove the restriction that suspension is only available if DCFS is providing support enforcement services.
6. Make technical changes.