

2017 Regular Session

HOUSE BILL NO. 680 (Substitute for House Bill No 426 by Representative Marino)

BY REPRESENTATIVE MARINO

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

CHILDREN/SUPPORT: Provides relative to child support when a parent is incarcerated

1 AN ACT

2 To amend and reenact R.S. 9:311(D) and 9:315.11(A) and (C), to enact Children's Code
3 Article 1353(G), R.S. 9:311.1, R.S. 13:4611(1)(d)(iii), R.S. 46:236.6(B)(4) and
4 236.7(C)(4), and to repeal R.S. 9:311(G), relative to child support; to provide relative
5 to child support obligations; to provide relative to incarceration of the obligor; to
6 provide procedures for the temporary modification or suspension of child support
7 orders; to provide for a defense to contempt of court; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Children's Code Article 1353(G) is hereby enacted to read as follows:

11 Art. 1353. Support provisions; contempt; penalties; defenses

12 * * *

13 G. It is a defense to a charge of contempt of court for failure to comply with
14 a court order of child support if an obligor can prove that he was incarcerated during
15 the period of noncompliance. This defense applies only to the time period of actual
16 incarceration.

17 Section 2. R.S. 9:311(D) and 315.11(A) and (C) are hereby amended and reenacted
18 and R.S. 9:311.1 is hereby enacted to read as follows:

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

21 * * *

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

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

5 (2) To suspend or modify a child support award in accordance with R.S.
6 9:311.1.

7 * * *

8 §311.1. Child support during the obligor's incarceration

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

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

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

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

18 B. As used in this Section:

19 (1) "Incarceration" means placement of an obligor in a county, parish, state
20 or federal prison or jail, in which the obligor is not permitted to earn wages from
21 employment outside the facility. "Incarceration" does not include probation or
22 parole.

23 (2) "Support enforcement services" shall have the same meaning as provided
24 in R.S. 46:236.1.1(14).

25 (3) "Suspension" means the modification of a child support order to zero
26 dollars due to an obligor's incarceration.

27 C.(1) When an obligor is incarcerated as defined in Subsection B of this
28 Section, the Department of Children and Family Services shall provide notice to the
29 parties of the right to file for temporary suspension of child support in the event of

1 incarceration. The notice shall include the same information distributed by the
2 Department of Children and Family Services in accordance with R.S. 9:311(A)(2).

3 (2) The Department of Public Safety and Corrections or the sheriff of any
4 parish, as appropriate, shall distribute the information in this Subsection to every
5 person incarcerated in this state.

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

10 (1) The person will be or is incarcerated for one hundred eighty consecutive
11 days or longer.

12 (2) The person who was the subject of notification under Paragraph (1) of
13 this Subsection is no longer incarcerated as defined in Subsection B of this Section.

14 E. When the Department of Children and Family Services receives notice,
15 in accordance with Paragraph (D)(1) of this Section or by any other means, the
16 department shall:

17 (1) Initiate a review pursuant to this Section once the person's incarceration
18 is verified.

19 (2) File a motion to modify the child support obligation within sixty days of
20 receipt of the verification of incarceration.

21 F. The provisions of Subsection E of this Section shall only apply when the
22 Department of Children and Family Services is providing support enforcement
23 services.

24 G. Nothing in this Section shall prevent either party from seeking a
25 suspension or a modification of the order of support under this Section or any other
26 provision of law.

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

1 Except as otherwise provided for by law:

2 (1) The supreme court, the courts of appeal, the district courts, family courts,
3 juvenile courts and the city courts may punish a person adjudged guilty of a
4 contempt of court therein, as follows:

5 * * *

6 (d)

7 * * *

8 (iii) It is a defense to a charge of contempt of court for failure to comply with
9 a court order of child support if an obligor can prove that he was incarcerated during
10 the period of noncompliance. This defense applies only to the time period of actual
11 incarceration.

12 * * *

13 Section 4. R.S. 46:236.6(B)(4) and 236.7(C)(4) are hereby enacted to read as
14 follows:

15 §236.6. Failure to pay support; procedure, penalties and publication

16 * * *

17 B.

18 * * *

19 (4) It is a defense to a charge of contempt of court for failure to comply with
20 a court order of child support if an obligor can prove that he was incarcerated during
21 the period of noncompliance. This defense applies only to the time period of actual
22 incarceration.

23 * * *

24 §236.7. Order of support; stipulation by district attorney and party

25 * * *

26 C.

27 * * *

28 (4) It is a defense to a charge of contempt of court for failure to comply with
29 a court order of child support if an obligor can prove that he was incarcerated during

(Amends R.S. 9:311(D) and 315.11(A) and (C); Adds Ch.C. Art. 1353(G), R.S. 9:311.1, R.S.13:4611(1)(d)(iii), and R.S. 46:236.6(B)(4) and 236.7(C)(4); Repeals R.S. 9:311(G))