

1 Section 2. Code of Civil Procedure Article 197(A) is hereby amended and reenacted
2 and Code of Civil Procedure Article 197(C) is hereby enacted to read as follows:

3 Art. 197. Testimony of inmates

4 A. As used in this Article, "inmate" means a person confined in any prison,
5 jail, correctional or training institution operated by the state, any of its political
6 subdivisions, or any sheriff either while awaiting disposition of contemplated or
7 pending criminal charges, pursuant to a sentence imposed by a court following the
8 conviction of a crime, or pursuant to the judgment of a civil or juvenile court.

9 * * *

10 C.(1) Notwithstanding the provisions of Paragraph B of this Article, in any
11 child support proceeding for which the Department of Children and Family Services
12 is providing support enforcement services as defined in R.S. 46:236.1.1, the trial
13 judge, upon request of any interested party by ex parte motion, shall order the
14 testimony of the inmate be taken, or the proceedings conducted, by teleconference,
15 video link, or other available remote technology if the obligor or prospective obligor
16 is an inmate.

17 (2) If the inmate is represented by an attorney during the proceeding, the
18 attorney may elect to be present either in the courtroom with the trial judge or in the
19 place where the inmate is confined.

20 (3) Nothing in this Paragraph shall require the trial judge to use any means
21 of communication other than those required by Children's Code Article 1303.16(F).

22 (4) As used in this Paragraph, "interested party" shall mean any of the
23 following:

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

27 (b) The inmate.

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

1 Section 3. R.S. 9:311(D)(2), 311.1, and 315.11(C)(2) are hereby amended and
2 reenacted and R.S. 9:311.2 is hereby enacted to read as follows:

3 §311. Modification or suspension of support; material change in circumstances;
4 periodic review by Department of Children and Family Services; medical
5 support

6 * * *

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

9 * * *

10 (2) To suspend ~~or modify~~ a child support award in accordance with R.S.
11 9:311.1 or 311.2.

12 * * *

13 §311.1. ~~Child~~ Suspension of child support during the obligor's incarceration;
14 Department of Children and Family Services providing support enforcement
15 services

16 A. ~~In accordance with the provisions of this Section, every order of~~ When
17 the Department of Children and Family Services is providing support enforcement
18 services, a child support order shall be suspended when the obligor will be or is
19 incarcerated for ~~any period of~~ one hundred eighty consecutive days or more, unless
20 any of the following conditions exist:

- 21 (1) The obligor has the means to pay support while incarcerated.
- 22 (2) The obligor is incarcerated for an offense against the custodial party or
23 the child subject to the support order.
- 24 (3) The incarceration resulted from the obligor's failure to comply with a
25 court order to pay child support.

26 B. As used in this Section and R.S. 9:311.2:
27 (1) "Child support order" shall have the same meaning as provided in
28 Children's Code Article 1301.2.

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

5 ~~(2)~~ (3) "Support enforcement services" shall have the same meaning as
6 provided in R.S. 46:236.1.1.

7 ~~(3)~~ (4) "Suspension" means ~~the modification of a child support order to zero~~
8 ~~dollars during the period of an obligor's incarceration.~~ a postponement of the
9 scheduled due date of any payment required to be paid under a child support order
10 or as previously suspended.

11 (5) "Suspension period" means a period in which no child support payment
12 is scheduled to be paid by reason of a suspension.

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

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

19 (2) At least six months before the person who was the subject of notification
20 under Paragraph (1) of this Subsection is scheduled to be released from incarceration
21 as defined in Subsection B of this Section.

22 D.(1) ~~When the Department of Children and Family Services is providing~~
23 ~~support enforcement services, the department~~ The Department of Children and
24 Family Services shall, upon receipt of notice in accordance with Paragraph (C)(1)
25 of this Section, verify that none of the conditions in Subsection A exists.

26 (2) ~~Upon finding that~~ If none of the conditions in Subsection A exists, the
27 department shall provide notice to the custodial party by registered or certified mail
28 or commercial courier, ~~return receipt requested~~. The notice shall state all of the
29 following:

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

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

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

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

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

14 (3) If no objection is received from the custodial party in accordance with
15 Paragraph (2) of this Subsection, the department shall file an affidavit with the court
16 that has jurisdiction over the ~~order of~~ child support order. The affidavit shall include
17 all of the following:

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

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

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

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

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

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

28 ~~(4)~~ E.(1) The suspension of the ~~order of support period~~ shall begin upon the
29 date that the department files the affidavit.

1 (2) The suspension period shall terminate by operation of law on the first day
2 of the second full month after the obligor's release from incarceration.

3 ~~(5) F.(1)~~ If the custodial party makes a timely objection, the department shall
4 file a contradictory motion pursuant to R.S. 9:311.2 with the court that has
5 jurisdiction over the ~~order of~~ child support order.

6 ~~(6) (2)~~ If a timely objection is made, the ~~order of~~ child support order shall
7 continue until further order of the court.

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

11 H. The suspension of a child support order in accordance with this Section
12 shall not affect any past due support that has accrued before the effective date of the
13 suspension.

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

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

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

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

26 ~~(2) An order that suspends an obligor's order of support because of the~~
27 ~~obligor's incarceration shall contain a provision that the previous order will be~~
28 ~~reinstated on the first day of the second full month after the obligor's release from~~
29 ~~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. The suspension of an order of support in accordance with this Section~~
5 ~~shall not affect any past due support that has accrued before the effective date of the~~
6 ~~suspension.~~

7 ~~I. 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 in accordance~~
9 ~~with Children's Code Article 1302.5.~~

10 §311.2. Suspension of child support order; judicial proceedings

11 A.(1) When an obligor will be or is incarcerated for one hundred eighty
12 consecutive days or more, upon motion of an interested party, after notice and
13 hearing, the court shall suspend the child support order unless it finds one of the
14 conditions in R.S. 9:311.1(A) exists.

15 (2) If one of the conditions in R.S. 9:311.1(A) exists, the court shall use the
16 child support guidelines in R.S. 9:315 et seq. to determine an obligor's support
17 obligation during his period of incarceration.

18 (3) As used in this Section, "interested party" shall mean any of the
19 following:

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

23 (b) The person owing the support obligation.

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

26 B.(1) The suspension period shall terminate on the first day of the second
27 full month after the obligor's release from incarceration.

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

4 * * *

5 (d)

6 * * *

7 (iii) It is a defense ~~as provided by R.S. 9:311.1~~ to a charge of contempt of
8 court for failure to comply with a court order of child support if an obligor can prove
9 that he was incarcerated during the period of noncompliance. This defense applies
10 only to the time period of actual incarceration. "Incarceration" shall have the same
11 meaning as provided in R.S. 9:311.1.

12 * * *

13 Section 5. R.S. 46:236.6(B)(4) and 236.7(C)(4) are hereby amended and reenacted
14 to read as follows:

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

16 * * *

17 B. If at the hearing of such rule the court finds the accused guilty of
18 contempt for failure to comply with the previous judgment, the contempt shall be
19 deemed constructive contempt under Code of Civil Procedure Article 224(2) and the
20 defendant may be punished as follows:

21 * * *

22 (4) It is a defense ~~as provided by R.S. 9:311.1~~ to a charge of contempt of
23 court for failure to comply with a court order of child support if an obligor can prove
24 that he was incarcerated during the period of noncompliance. This defense applies
25 only to the time period of actual incarceration. "Incarceration" shall have the same
26 meaning as provided in R.S. 9:311.1.

27 * * *

28 §236.7. Order of support; stipulation by district attorney and party

29 * * *

1 C. If the defendant is held in contempt by the court, he may be punished as
2 follows:

3 * * *

4 (4) It is a defense ~~as provided by R.S. 9:311.1~~ to a charge of contempt of
5 court for failure to comply with a court order of child support if an obligor can prove
6 that he was incarcerated during the period of noncompliance. This defense applies
7 only to the time period of actual incarceration. "Incarceration" shall have the same
8 meaning as provided in R.S. 9:311.1.

9 * * *

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)]

HB 363 Original

2019 Regular Session

Marino

Abstract: Provides for the testimony of inmates for child support proceedings, for the automatic suspension of child support payments during the obligor's incarceration, and for the motion to suspend child support payments.

Present law provides procedures to allow for the testimony of inmates to be taken in a judicial proceeding. Present law applies to inmates subject to a sentence imposed by a court following a conviction of a crime, or pursuant to the judgment of a juvenile court. Proposed law adds inmates subject to a sentence imposed pursuant to the judgment of a civil court.

Proposed law further provides for circumstances for which the testimony of an inmate may be taken by teleconference, video link, or other available remote technology in any child support proceeding for which the Department of Children and Family Services (Dept.) is providing support enforcement services.

Present law, effective Aug. 1, 2019, provides that all child support orders shall be automatically suspended during the obligor's incarceration for a period of 180 consecutive days or more unless the obligor has the means to pay support while incarcerated, the obligor is incarcerated for an offense against the custodial party or child, or the incarceration resulted from the obligor's failure to pay child support. Present law requires the Dept. to provide notice to the custodial party and the court with jurisdiction over the child support order before a suspension can be effective.

Proposed law limits automatic suspension to those cases for which the Dept. is providing support enforcement services. Proposed law further provides for definitions.

Present law, effective Aug. 1, 2019, requires the Dept. to give notice of suspension to the custodial party by certified mail return receipt requested. Proposed law further allows for delivery by registered mail or commercial courier and removes the requirement of return receipt.

If the custodial party does not object to the proposed suspension, present law, effective Aug. 1, 2019, provides that the suspension period shall begin on the date the Dept. files an affidavit with the court with jurisdiction over the child support order. Proposed law provides that the suspension period shall terminate by operation of law on the first day of the second full month after the obligor's release from incarceration.

Present law (R.S. 9:311.1), effective Aug. 1, 2019, provides that the obligor, the custodial parent, and the Dept. may file a motion for the court to suspend the child support obligation during incarceration after notice and hearing. Proposed law (R.S. 9:311.2) redesignates present law and further allows the district attorney or contract attorney to file the motion.

Present law, effective Aug. 1, 2019, provides that a party shall not be deemed voluntarily unemployed or underemployed for purposes of calculating child support if he 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 was incarcerated and is unemployed or underemployed as a direct result of the incarceration.

Present law, effective Aug. 1, 2019, defines "incarceration" for purposes of suspending a child support order.

Proposed law uses the present law definition of "incarceration" in present law provisions (Ch.C. Art. 1353, R.S. 13:4611, and R.S. 46:236.6 and 236.7), effective Aug. 1, 2019, providing it is a defense to a charge of contempt of court for failure to comply with a child support order if an obligor can prove he was incarcerated during the period of noncompliance.

(Amends Ch.C.Art. 1353(G), C.C.P. Art. 197(A), R.S. 9:311(D)(2), 311.1, and 315.11(C)(2), R.S. 13:4611(1)(d)(iii), R.S. 46:236.6(B)(4) and 236.7(C)(4); Adds C.C.P. 197(C) and R.S. 9:311.2)