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## DIGEST

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HB 363 Engrossed

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)

#### Summary of Amendments Adopted by House

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

1. Restore present law definition of "suspension" which means the modification of a child support order to zero dollars during the period of an obligor's incarceration.