

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

4           I.(1) An order of support suspended in accordance with this Section shall  
 5           resume by operation of law on the first day of the second full month after the  
 6           obligor's release from incarceration.

7           (2) An order that suspends an obligor's order of support because of the  
 8           obligor's incarceration must contain a provision that the previous order will be  
 9           reinstated on the first day of the second full month after the obligor's release from  
 10          incarceration.

11          (3) Unless the terms of the order of support have been otherwise modified,  
 12          the suspended order of support shall resume at the same terms that existed before the  
 13          suspension.

14          J. The suspension of an order of support in accordance with this Section shall  
 15          not affect any past due support that has accrued before the effective date of the  
 16          suspension.

17          K. The secretary of the Department of Children and Family Services, in  
 18          consultation with the courts, the Department of Public Safety and Corrections, and  
 19          law enforcement entities, shall promulgate rules in accordance with the  
 20          Administrative Procedure Act necessary to implement the provisions of this Section.

21                                   \*       \*       \*

22          §315.11. Voluntarily unemployed or underemployed party

23            A.(1) If a party is voluntarily unemployed or underemployed, child support  
 24            shall be calculated based on a determination of income earning potential, unless the  
 25            party is physically or mentally incapacitated, or is caring for a child of the parties  
 26            under the age of five years. In determining the party's income earning potential, the  
 27            court may consider the most recently published Louisiana Occupational Employment  
 28            Wage Survey. In determining whether to impute income to a party, the court's  
 29            considerations shall include, to the extent known, all of the following:

- 1            (a) Assets owned or held by the party.
- 2            (b) Residence.
- 3            (c) Employment and earnings history.
- 4            (d) Job skills.
- 5            (e) Educational attainment.
- 6            (f) Literacy.
- 7            (g) Age and health.
- 8            (h) Criminal record and other employment barriers.
- 9            (i) Record of seeking work.
- 10           (j) The local job market.
- 11           (k) The availability of employers willing to hire the noncustodial parent.
- 12           (l) Prevailing earnings level in the local community.
- 13           (m) Other relevant background factors in the case.

14           (2) Absent evidence of a party's actual income or income earning potential,  
15 there is a rebuttable presumption that the party can earn a weekly gross amount equal  
16 to thirty-two hours at a minimum wage, according to the laws of his state of domicile  
17 or federal law, whichever is higher.

18    \*           \*           \*

19            C. A party shall not be deemed voluntarily unemployed or underemployed  
20 if ~~either: he or she has been temporarily unable to find work or has been temporarily~~  
21 ~~forced to take a lower paying job as a direct result of Hurricane Katrina or Rita.~~

22            (1) He has been temporarily unable to find work or has been temporarily  
23 forced to take a lower paying job as a direct result of Hurricane Katrina or Rita.

24            (2) He is or was incarcerated for one hundred eighty consecutive days or  
25 longer, unless the obligor is incarcerated for an offense against the custodial party  
26 or the child subject to the support order, or the incarceration resulted from the  
27 obligor's failure to comply with a court order to pay child support.

28 Section 3. R.S. 13:4611(1)(d)(iii) is hereby enacted to read as follows:

29 §4611. Punishment for contempt of court; defenses

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

1        the period of noncompliance. This defense applies only to the time period of actual  
2        incarceration.

3    \*        \*        \*

4        Section 5. R.S. 9:311(G) is hereby repealed in its entirety.

5        Section 6. The legislature finds that the purpose of modifying child support during  
6 a person's incarceration is to increase the likelihood of successful reintegration into the  
7 workforce and long-term stability after a jail or prison term. Establishing financial stability  
8 in the weeks and months following a jail or prison term reduces the risk of recidivism,  
9 increasing both public safety and the likelihood of consistent payment of child support over  
10 time.

11        Section 7. The provisions of this Act shall become effective on January 1, 2019.

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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 680 Engrossed

2017 Regular Session

Marino

**Abstract:** Provides for the modification or suspension of child support under certain circumstances when an obligor is incarcerated for 180 days or more.

Proposed law provides for the temporary modification or suspension of a child support order due to an obligor's incarceration of more than 180 days. Allows an obligor, obligee, or the Dept. of Children and Family Services to file pleadings to modify support. Provides for the following exceptions:

- (1) The incarceration is pursuant to an intentional failure to pay a child support obligation.
- (2) The obligor has the means to pay support while incarcerated.
- (3) The obligor is incarcerated for an offense against the custodial party or the child subject to the support order.

Proposed law requires the Dept. of Public Safety and Corrections or the sheriff to notify the Dept. of Children and Family Services in certain circumstances when a person in its custody may be subject to a child support obligation.

Proposed law requires a court to consider an obligor's incarceration of more than 180 days a material change in circumstances.

Proposed law adds that a person shall not be considered voluntarily unemployed or underemployed if that person is incarcerated for more than 180 days.

Effective Jan. 1, 2019.

(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))