

2017 Regular Session

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

BY REPRESENTATIVES MARINO, BAGNERIS, BOUIE, CARPENTER, GARY CARTER, GLOVER, HALL, HOFFMANN, HUNTER, JAMES, TERRY LANDRY, LEGER, LYONS, MARCELLE, NORTON, PIERRE, AND SMITH

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(A)(2) and (D) and 315.11(A) and (C), to enact Children's
3 Code Article 1353(G), R.S. 9:311.1 and 315.22(F), R.S. 13:4611(1)(d)(iii), R.S.
4 46:236.6(B)(4) and 236.7(C)(4), and to repeal R.S. 9:311(G), relative to child
5 support; to provide relative to child support obligations; to provide relative to
6 incarceration of the obligor; to provide procedures for the temporary modification
7 or suspension of child support orders; to provide for notice requirements; to provide
8 for a defense to contempt of court; and to provide for related 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 as provided by R.S. 9:311.1 to a charge of contempt of
14 court for failure to comply with a court order of child support if an obligor can prove
15 that he was incarcerated during the period of noncompliance. This defense applies
16 only to the time period of actual incarceration.

17 Section 2. R.S. 9:311(A)(2) and (D) and 315.11(A) and (C) are hereby amended and
18 reenacted and R.S. 9:311.1 and 315.22(F) are hereby enacted to read as follows:

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

4 A.

5 * * *

6 (2) The Department of Children and Family Services shall prepare and
7 distribute information, forms, and rules for the modification or suspension of support
8 orders, in accordance with this Subsection, and for proceeding *in forma pauperis*.
9 The information provided by the Department of Children and Family Services shall
10 specifically include what may constitute a material change in circumstances. The
11 clerks of court in all parishes shall make this information available to the public upon
12 request. This information shall also be distributed by the Department of Public
13 Safety and Corrections or the sheriff of any parish, as appropriate, to every person
14 incarcerated in every state and parish jail and prison facility. When the initial
15 support order is entered, either the court or the department, if providing services,
16 shall provide this information to the parties.

17 * * *

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

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

22 (2) To suspend or modify a child support award in accordance with R.S.
23 9:311.1.

24 * * *

25 §311.1. Child support during the obligor's incarceration

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

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

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

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

6 B. As used in this Section:

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

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

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

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

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

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

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

27 (2) Upon finding that none of the conditions in Subsection A exists, the
28 department shall provide notice to the custodial party by certified mail, return receipt
29 requested. The notice shall state all of the 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.

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

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 child support.

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

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

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

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

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

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

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

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

27 (4) The suspension of the order of support shall begin upon the date that the
28 department files the affidavit.

1 (5) If the custodial party makes a timely objection, the department shall file
2 a contradictory motion with the court that has jurisdiction over the order of child
3 support.

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

6 E. Nothing in this Section shall prevent either party from seeking a
7 suspension or a modification of the order of support under this Section or any other
8 provision of law.

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

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

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

18 (2) An order that suspends an obligor's order of support because of the
19 obligor's incarceration shall contain a provision that the previous order will be
20 reinstated on the first day of the second full month after the obligor's release from
21 incarceration.

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

25 H. The suspension of an order of support in accordance with this Section
26 shall not affect any past due support that has accrued before the effective date of the
27 suspension.

1 (d)

2 * * *

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

7 * * *

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

10 §236.6. Failure to pay support; procedure, penalties and publication

11 * * *

12 B.

13 * * *

14 (4) It is a defense as provided by R.S. 9:311.1 to a charge of contempt of
15 court for failure to comply with a court order of child support if an obligor can prove
16 that he was incarcerated during the period of noncompliance. This defense applies
17 only to the time period of actual incarceration.

18 * * *

19 §236.7. Order of support; stipulation by district attorney and party

20 * * *

21 C.

22 * * *

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

27 * * *

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

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

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

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 680 Reengrossed

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. Requires the Dept. of Children and Family Services, once it is notified that an individual subject to support enforcement services is being incarcerated, to verify that none of the following exceptions exist:

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

Proposed law requires the Dept. of Public Safety and Corrections or the sheriff in certain circumstances to distribute information to every person in a prison facility regarding the suspension of child support, including information specific as to what may constitute a material change in circumstances.

Proposed law requires the Dept. of Children and Family Services to provide notice to the custodial party by certified mail that the child support obligation will be suspended (if none of the exceptions exist) unless the custodial party objects no later than fifteen calendar days from receipt of notice.

Proposed law outlines the grounds for the custodial parent to object to modification or suspension of support, and provides the means required for the custodial parent to object.

Proposed law requires the Dept. of Children and Family Services to file an affidavit with the court having jurisdiction over the order of child support and provides for the mandatory contents of the affidavit.

Proposed law permits a court, at its discretion and upon motion of any party, to continue an award of child support that would be otherwise terminated, if the award was suspended due to the obligor's incarceration. Proposed law prohibits such a continuation from exceeding a longer period of time than the award was suspended due to the obligor's incarceration.

Provides that proposed law does not apply if a court does not have continuous exclusive jurisdiction to modify the order pursuant to the Uniform Interstate Family Support Act.

Effective Jan. 1, 2019.

(Amends R.S. 9:311(A)(2) and (D) and 315.11(A) and (C); Adds Ch.C. Art. 1353(G), R.S. 9:311.1 and 315.22(F), 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))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Add a requirement that the Dept. of Public Safety and Corrections or the sheriff must distribute information to every person in a correctional facility regarding the suspension of child support, including information as to what may constitute a material change in circumstances.
2. Change proposed notice requirements to require the Dept. of Children and Family Services to provide notice to the custodial party by certified mail that the child support obligation will be suspended (if none of the exceptions exist) unless the custodial party objects no later than fifteen calendar days from receipt of notice.
3. Outline the grounds for the custodial parent to object to modification or suspension of support, and provides the means required for the custodial parent to object.
4. When no objection is received, require the Dept. of Children and Family Services to file an affidavit with the court having jurisdiction over the order of child support, and provide for the mandatory contents of the affidavit.
5. Provide that proposed law does not apply if a court does not have continuous exclusive jurisdiction to modify the order pursuant to the Uniform Interstate Family Support Act.
6. Provide that when a child support award is suspended due to the obligor's incarceration, a court may, at its discretion and upon motion of any party, continue the award that would be otherwise terminated, but the award shall not be continued for a longer period of time than it was suspended due to the obligor's incarceration.
7. Make technical changes.