

2020 Regular Session

HOUSE BILL NO. 438

BY REPRESENTATIVE TURNER

CHILDREN/SUPPORT: Provides relative to contempt proceedings when the Department of Children and Family Services is providing support enforcement services

1 AN ACT

2 To amend and reenact R.S. 46:236.6(A), (E), and (F) and 236.7(B) and (F) and to enact R.S.  
3 46:236.6(B)(4) and (G) and 236.7(C)(4) and (G), relative to child support contempt  
4 proceedings; to require certain findings by the court; to require certain information  
5 to appear in a rule for contempt; to provide for the enforcement of a support order  
6 upon termination; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 46:236.6(A), (E), and (F) and 236.7(B) and (F) are hereby amended  
9 and reenacted and R.S. 46:236.6(B)(4) and (G) and 236.7(C)(4) and (G) are hereby enacted  
10 to read as follows:

11 §236.6. Failure to pay support; procedure, penalties and publication

12 A.(1) If a defendant violates the terms of a court order, issued pursuant to the  
13 provisions of R.S. 46:236.1.1 et seq.; and 236.2, Children's Code ~~Articles~~ Article  
14 1301 et seq., or R.S. 13:4241, requiring him to pay child support to the Department  
15 of Children and Family Services, a representative of the child support collection  
16 agency as set forth in R.S. 46:236.1.8 may issue and serve on the defendant a  
17 summons ordering him to appear and show cause before the proper court of  
18 competent jurisdiction, on a date which shall be specified by the court, why he  
19 should not be held in contempt of court. Prior to or at the hearing, the Department  
20 of Children and Family Services or the district attorney shall file with the court any

1 summons served and a rule for contempt which shall be served in open court on the  
2 defendant, setting forth the terms of the original court order for child support and all  
3 modifications thereof, along with the allegations purporting to place the defendant  
4 in contempt. If the defendant denies the allegations or offers a defense to the rule,  
5 the court may, upon motion of either party or on its own motion, continue the  
6 hearing.

7 (2) In the alternative, a representative of the child support collection agency  
8 as set forth above may serve on the defendant a rule to show cause why he should  
9 not be held in contempt for failing to abide by the previous orders of the court, with  
10 the rule setting forth the same terms as in a rule for contempt, if the representative  
11 does not serve a summons on the offender. The rule shall contain a specific time,  
12 place, and date where the offender is to appear and show cause in answer to the rule.  
13 Hearings tried on rules for contempt or rules to show cause shall be tried in a  
14 summary manner.

15 (3) Any rule served on the defendant under Paragraph (1) or (2) of this  
16 Subsection shall inform the defendant that his ability to pay child support will be a  
17 critical issue in the contempt proceeding.

18 (4) The court may find a defendant in contempt if the court expressly finds  
19 that the defendant is in arrears, had knowledge of the child support order, and any  
20 of the following apply:

21 (a) The court is satisfied that the defendant had the capacity to pay out of  
22 currently available resources all or some portion of the amount due under the support  
23 order.

24 (b) The court is satisfied that by the exercise of diligence the defendant could  
25 have obtained the capacity to pay all or some portion of the amount due under the  
26 support order and that the defendant failed or refused to do so.

27 (c) The defendant has willfully failed to participate in an approved plan for  
28 parental participation of support under R.S. 46:236.12.

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

5   \*       \*       \*

6           (4) The court shall consider the defendant's present ability to comply before  
7 imposing any sentence under Paragraph (1) or (2) of this Subsection.

8   \*       \*       \*

9           E. The termination of a court order issued pursuant to the provisions of R.S.  
10 46:236.1.1 et seq. and 236.2, Children's Code Article 1301 et seq., or R.S. 13:4241,  
11 requiring a defendant to pay child support to the Department of Children and Family  
12 Services does not abate the power of any court or the department to collect any  
13 overdue and unpaid support or arrearage owed under the terminated support order  
14 or the power of the court to punish any person for a failure to comply with, or to pay  
15 any support as ordered in, the terminated court order.

16           F. The provisions and remedies provided by this Section shall be construed  
17 as an addition to, and not in substitution for, any other remedy otherwise available  
18 to obtain or enforce an order for support. Relief under this Section shall not be  
19 denied, delayed, or otherwise affected because of the availability of other remedies,  
20 nor shall relief under any other statute be delayed or denied because of the  
21 availability of the remedies provided by this Section.

22           F.G.(1) Upon request of any representative of a newspaper and to the extent  
23 permitted by federal law, the Department of Children and Family Services shall  
24 supply a list of names and addresses of all persons who have been found guilty of  
25 criminal neglect of family as provided in R.S. 14:74 et seq. or who have been found  
26 in contempt of court for failure to comply with a support order enforced by the  
27 Department of Children and Family Services. The newspaper may publish such a  
28 list or any part of this list it considers necessary.

1           (2) The Department of Children and Family Services may adopt rules  
2 governing the publication of the names of persons who are delinquent in the payment  
3 of child support obligations under orders which are enforced by the department and  
4 the publication of information which is related to those delinquent payments. The  
5 rules shall be adopted in accordance with the Administrative Procedure Act and shall  
6 establish the criteria for the selection of the individuals whose names may be  
7 published, the criteria for the determination of the types and amount of related  
8 information which may be published, and the criteria for the determination of the  
9 types of media and individual media outlets in which the names and related  
10 information may be published. The department may publish the names and related  
11 information at the expense of the department or may release the names and related  
12 information for publication on a public service basis.

13 §236.7. Order of support; stipulation by district attorney and party

14   \*       \*       \*

15           B.(1) If a defendant violates the terms of a court order issued pursuant to the  
16 provisions of this Section requiring him to pay child support to the Department of  
17 Children and Family Services, a representative of the child support collection agency  
18 as set forth in R.S. 46:236.1.1 et seq. may issue and serve on the defendant a  
19 summons ordering him to appear and show cause before the proper court of  
20 competent jurisdiction, on a date which shall be specified by the court, why he  
21 should not be held in constructive contempt of court. Prior to or at the hearing, the  
22 Department of Children and Family Services or the district attorney shall file with  
23 the court any summons served and a rule for contempt which shall be served in open  
24 court on the defendant, setting forth the terms of the original court order for child  
25 support and all modifications thereof, along with the grounds for contempt. If the  
26 defendant denies the allegations or offers a defense to the rule, the court may, upon  
27 motion of either party or on its own motion, continue the hearing.

28           (2) In the alternative, a representative of the department may serve on the  
29 defendant a rule to show cause why he should not be held in constructive contempt

1 for violating the previous order of the court, with the rule setting forth the same  
2 terms as in a rule for contempt, if the representative does not serve a summons on the  
3 offender. The rule shall set forth a specific time, place, and date where the offender  
4 is to show cause in answer to the rule. Hearings held on rules for contempt or rules  
5 to show cause shall be tried in a summary manner.

6 (3) Any rule served on the defendant under Paragraph (1) or (2) of this  
7 Subsection shall inform the defendant that his ability to pay child support will be a  
8 critical issue in the contempt proceeding.

9 (4) The court may find a defendant in contempt if the court expressly finds  
10 that the defendant is in arrears, had knowledge of the child support order, and any  
11 of the following apply:

12 (a) The court is satisfied that the defendant had the capacity to pay out of  
13 currently available resources all or some portion of the amount due under the support  
14 order.

15 (b) The court is satisfied that by the exercise of diligence the defendant could  
16 have obtained the capacity to pay all or some portion of the amount due under the  
17 support order and that the defendant failed or refused to do so.

18 (c) The defendant has willfully failed to participate in an approved plan for  
19 parental participation of support under R.S. 46:236.12.

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

22 \* \* \*

23 (4) The court shall consider the defendant's present ability to comply before  
24 imposing any sentence under Paragraph (1) or (2) of this Subsection.

25 \* \* \*

26 F. The termination of a court order issued pursuant to the provisions of R.S.  
27 46:236.1.1 et seq. and 236.2, Children's Code Article 1301 et seq., or R.S. 13:4241,  
28 requiring a defendant to pay child support to the Department of Children and Family  
29 Services does not abate the power of any court or the department to collect any

1 overdue and unpaid support or arrearage owed under the terminated support order  
2 or the power of the court to punish any person for a failure to comply with, or to pay  
3 any support as ordered in, the terminated court order.

4 G. The provisions and remedies provided by this Section shall be construed  
5 as an addition to, and not in substitution for, any other remedy otherwise available  
6 to obtain or enforce an order of support. Relief under this Section shall not be  
7 denied, delayed, or otherwise affected because of the availability of other remedies,  
8 nor shall relief under any other statute be delayed or denied because of the  
9 availability of the remedies provided by this Section.

10 Section 2. The Louisiana State Law Institute is hereby authorized and directed to  
11 redesignate R.S. 46:236.6(B)(4) as R.S. 46:236.6(B)(5) and R.S. 46:236.7(C)(4) as R.S.  
12 46:236.7(C)(5) upon the effective date of Section 7(A) of Act No. 264 of the 2017 Regular  
13 Session of the Legislature as amended by Section 2 of Act No. 277 of the 2019 Regular  
14 Session of the Legislature.

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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 438 Original

2020 Regular Session

Turner

**Abstract:** Provides for the information provided to a defendant, the grounds for a finding of contempt, and the ability of the court or the Department of Children and Family Services (DCFS) to collect overdue support or arrearage owed under a terminated support order in cases where a defendant is under court order to pay child support to DCFS.

Present law provides that if a defendant violates the terms of a court order requiring him to pay child support to DCFS, the child support collection agency may issue a rule to show cause or a summons ordering the defendant to appear and show cause why he should not be held in contempt of court.

Proposed law requires that any rule served on the defendant contain certain information and establishes grounds for which the court may find a defendant in contempt.

Upon a finding that the accused is guilty of contempt, present law allows the court to impose upon the defendant a prison sentence not to exceed 90 days or a \$500 fine. However, the sentence may be suspended upon payment of unpaid support included in the order, additional accrued unpaid support, and court costs, or a lesser amount if recommended by the state attorney or the child support collection agency.

Proposed law requires that the court shall consider the defendant's present ability to comply before imposing any sentence under present law.

Proposed law provides that termination of a court order requiring a defendant to pay child support to DCFS does not abate the power of the court or DCFS to collect any overdue and unpaid support or arrearage owed under the terminated support order or the power of the court to punish a person for a failure to comply with a terminated court order.

(Amends R.S. 46:236.6(A), (E), and (F) and 236.7(B) and (F); Adds R.S. 46:236.6(B)(4) and (G) and 236.7(C)(4) and (G))