
DIGEST

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HB 767 Original

2020 Regular Session

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Abstract: Provides for the procedures related to suspension of a child support order for and the taking of testimony of an incarcerated obligor.

Present law (C.C.P. Art. 197) provides procedures for receiving testimony from inmates confined pursuant to a sentence imposed by a court following the conviction of a crime, or pursuant to the judgment of a juvenile court.

Proposed law retains present law and extends the procedures to inmates confined pursuant to the judgment of a civil court.

Proposed law requires the trial judge to order the testimony of the inmate be taken, or the proceedings conducted, by teleconference, video link, or other available remote technology in cases where the inmate is an obligor, the Dept. of Children and Family Services (DCFS) is providing support enforcement services, and an interested party makes the request for an order by ex parte motion. Proposed law defines interested party as DCFS, the district attorney or contract attorney providing support enforcement services, the inmate, the individual or current caretaker to whom the support obligation is owed, or the local, state, or federal government agency that controls the facility that houses the inmate.

Present law (R.S. 9:311.1) provides for the temporary suspension of a child support order due to an obligor's incarceration for more than 180 days.

Proposed law retains present law, and includes cases in which the obligor is sentenced to 180 days or more with or without hard labor. Further limits present law application to cases in which DCFS is providing support enforcement services.

Present law defines "suspension" as the modification of a child support order to zero dollars during the period of the obligor's incarceration.

Proposed law repeals present law and instead defines "suspension" as a postponement of the scheduled due date of any payment required to be paid under a child support order or as previously suspended.

Proposed law defines "child support order" and "suspension period".

Present law requires the Dept. of Public Safety and Corrections (DPSC) or the sheriff to notify DCFS

of any person in their custody that may be subject to a child support order at least six months before the inmate is scheduled to be released from incarceration.

Proposed law retains present law, but reduces the notice period from six months to six weeks.

Present law requires DCFS to provide notice to the custodial party by certified mail, return receipt requested that a child support obligation will be suspended.

Proposed law instead requires DCFS to provide the notice by registered or certified mail, or commercial courier.

Present law requires DCFS to include in the notice a statement that the child support order shall be suspended unless the custodial party objects within 15 days upon certain grounds including that the obligor is incarcerated for an offense against the custodial party or the child subject to the order of child support.

Proposed law retains present law but provides instead that the custodial party may object on grounds that the obligor is incarcerated for an offense against his child or the current custodian of the child.

Present law provides that if the custodial party does not object, the suspension shall become effective when DCFS files an affidavit with the court. Further 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. Proposed law retains present law.

Proposed law provides that the termination of the child support order pursuant to present law shall be extended by the shorter of: (a) the suspension period granted under present law or proposed law, or (b) the amount of time that elapsed between the first day of the suspension period granted under present law or proposed law and the date the obligation would have terminated under present law.

Present law requires that the order suspending the child support order shall contain certain provisions. Proposed law requires that the order also contain a provision explaining that the new termination date will be calculated as provided by proposed law.

Present law authorizes DCFS or either party to file a motion with the court, upon which the court shall suspend the child support obligation unless certain conditions exist. Further provides that if the custodial party makes a timely objection, DCFS shall file a contradictory motion with the court. Proposed law retains present law, but clarifies that the parties that may make the motion include DCFS, the obligor, or the individual or current caretaker to whom the obligation is owed.

Present law provides that unless the terms of the child support order have been modified, the suspended child support order shall resume at the same terms that existed before the suspension. Proposed law retains present law.

Proposed law provides that the suspension of a child support order under present law shall not affect any past due child support that has accrued before the effective date of the suspension. Further

provides that a party is not prevented from seeking a suspension or modification of child support under any other provision of law and that present law and proposed law shall not apply if a court does not have continuing exclusive jurisdiction to modify the child support order in accordance with present law.

Present law (R.S. 9:315.11) provides that a party shall not be deemed voluntarily unemployed or underemployed for purposes of calculating a child support obligation if he is or 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 is incarcerated and is unemployed or underemployed as a direct result of incarceration.

Proposed law provides cross-references to present law definition of "incarceration."

Present law (R.S. 9:315.27) provides for continuing a child support award pursuant to present law beyond the termination date under certain circumstances.

Proposed law repeals present law.

Proposed law provides that proposed law (Sections 1, 4, 5, and 6 and the provisions of R.S. 9:311(D) and 311.1 contained in Section 3) shall supercede present law (Sections 1 through 4 of Act No. 264 of the 2017 Regular Session of the Legislature that amend and reenact R.S. 9:311(D) and enact Children's Code Article 1353(G), R.S. 9:311.1 and 315.27, R.S. 13:4611(1)(d)(iii) and R.S. 46:236.6(B)(4) and 236.7(C)(4)).

Effective Aug. 1, 2020.

(Amends Ch.C. Art. 1353(G), C.C.P. Art. 197(A), R.S. 9:311(D), 311.1, and 315.11(C)(2), R.S. 13:4611(1)(d)(iii), and R.S. 46:236.6(B)(4) and 236.7(C)(4); Adds C.C.P. Art. 197(C) and R.S. 9:311.2; Repeals R.S. 9:315.27)