

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 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.

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 438 Engrossed

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))