2020 Regular Session

HOUSE BILL NO. 438

BY REPRESENTATIVE TURNER

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 1301.1 et seq., or R.S. 13:4241, requiring him to pay child support to the 15 Department of Children and Family Services, a representative of the child support 16 collection agency as set forth in R.S. 46:236.1.8 may issue and serve on the 17 defendant a summons ordering him to appear and show cause before the proper court 18 of 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 21 summons served and a rule for contempt which shall be served in open court on the 22 defendant, setting forth the terms of the original court order for child support and all 23 modifications thereof, along with the allegations purporting to place the defendant 24 in contempt. If the defendant denies the allegations or offers a defense to the rule,

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

the court may, upon motion of either party or on its own motion, continue the hearing.

- (2) In the alternative, a representative of the child support collection agency as set forth above may serve on the defendant a rule to show cause why he should not be held in contempt for failing to abide by the previous orders of the court, with the rule setting forth the same terms as in a rule for contempt, if the representative does not serve a summons on the offender. The rule shall contain a specific time, place, and date where the offender is to appear and show cause in answer to the rule. Hearings tried on rules for contempt or rules to show cause shall be tried in a summary manner.
- (3) Any rule served on the defendant under Paragraph (1) or (2) of this Subsection shall inform the defendant that his ability to pay child support will be a critical issue in the contempt proceeding.
- (4) The court may find a defendant in contempt if the court expressly finds that the defendant is in arrears, had knowledge of the child support order, and any of the following apply:
- (a) The court is satisfied that the defendant had the capacity to pay out of currently available resources all or some portion of the amount due under the support order.
- (b) The court is satisfied that by the exercise of diligence the defendant could have obtained the capacity to pay all or some portion of the amount due under the support order and that the defendant failed or refused to do so.
- (c) The defendant has willfully failed to participate in an approved plan for parental participation of support under R.S. 46:236.12.
- B. If at the hearing of such rule the court finds the accused guilty of contempt for failure to comply with the previous judgment, the contempt shall be deemed constructive contempt under Code of Civil Procedure Article 224(2) and the defendant may be punished as follows:

29 * * *

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

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E. The termination of a court order issued pursuant to the provisions of R.S. 46:236.1.1 et seq. and 236.2, Children's Code Article 1301.1 et seq., or R.S. 13:4241, requiring a defendant to pay child support to the Department of Children and Family Services does not abate the power of any court or the department to collect any overdue and unpaid support or arrearage owed under the terminated support order or the power of the court to punish any person for a failure to comply with, or to pay any support as ordered in, the terminated court order.

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

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

(2) The Department of Children and Family Services may adopt rules governing the publication of the names of persons who are delinquent in the payment of child support obligations under orders which are enforced by the department and the publication of information which is related to those delinquent payments. The rules shall be adopted in accordance with the Administrative Procedure Act and shall establish the criteria for the selection of the individuals whose names may be published, the criteria for the determination of the types and amount of related

information which may be published, and the criteria for the determination of the types of media and individual media outlets in which the names and related information may be published. The department may publish the names and related information at the expense of the department or may release the names and related information for publication on a public service basis.

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

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

(2) In the alternative, a representative of the department may serve on the defendant a rule to show cause why he should not be held in constructive contempt for violating the previous order of the court, with the rule setting forth the same terms as in a rule for contempt, if the representative does not serve a summons on the offender. The rule shall set forth a specific time, place, and date where the offender is to show cause in answer to the rule. Hearings held on rules for contempt or rules to show cause shall be tried in a summary manner.

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

1	(4) The court may find a defendant in contempt if the court expressly finds	
2	that the defendant is in arrears, had knowledge of the child support order, and any	
3	of the following apply:	
4	(a) The court is satisfied that the defendant had the capacity to pay out of	
5	currently available resources all or some portion of the amount due under the support	
6	<u>order.</u>	
7	(b) The court is satisfied that by the exercise of diligence the defendant could	
8	have obtained the capacity to pay all or some portion of the amount due under the	
9	support order and that the defendant failed or refused to do so.	
10	(c) The defendant has willfully failed to participate in an approved plan for	
11	parental participation of support under R.S. 46:236.12.	
12	C. If the defendant is held in contempt by the court, he may be punished as	
13	follows:	
14	* * *	
15	(4) The court shall consider the defendant's present ability to comply before	
16	imposing any sentence under Paragraph (1) or (2) of this Subsection.	
17	* * *	
18	F. The termination of a court order issued pursuant to the provisions of R.S.	
19	46:236.1.1 et seq. and 236.2, Children's Code Article 1301.1 et seq., or R.S. 13:4241,	
20	requiring a defendant to pay child support to the Department of Children and Family	
21	Services does not abate the power of any court or the department to collect any	
22	overdue and unpaid support or arrearage owed under the terminated support order	
23	or the power of the court to punish any person for a failure to comply with, or to pay	
24	any support as ordered in, the terminated court order.	
25	<u>G.</u> The provisions and remedies provided by this Section shall be construed	
26	as an addition to, and not in substitution for, any other remedy otherwise available	
27	to obtain or enforce an order of support. Relief under this Section shall not be	
28	denied, delayed, or otherwise affected because of the availability of other remedies,	
29	nor shall relief under any other statute be delayed or denied because of the	
30	availability of the remedies provided by this Section.	

1	Section 2. The I	Louisiana State Law Institute is hereby authorized and directed to	
2	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.		
3	46:236.7(C)(5) upon the effective date of Section 7(A) of Act No. 264 of the 2017 Regular		
1	Session of the Legislature as amended by Section 2 of Act No. 277 of the 2019 Regular		
5	Session of the Legislature.		
		SPEAKER OF THE HOUSE OF REPRESENTATIVES	
		DD ECIDENT OF THE CENTATE	
		PRESIDENT OF THE SENATE	
		GOVERNOR OF THE STATE OF LOUISIANA	

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APPROVED: