

ACT No. 149

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~~ 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,

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

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

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

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

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

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

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

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

29 * * *

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

6 §236.7. Order of support; stipulation by district attorney and party

7 * * *

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

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

28 (3) Any rule served on the defendant under Paragraph (1) or (2) of this
 29 Subsection shall inform the defendant that his ability to pay child support will be a
 30 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 order.

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 G. 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.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Section 2. The 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
4 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

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____