

2021 Regular Session

HOUSE BILL NO. 449

BY REPRESENTATIVE WILFORD CARTER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/SUPPORT: Provides relative to the suspension of a child support obligation during the obligor's incarceration

1 AN ACT

2 To amend and reenact R.S. 9:311(C)(3) and (D)(2), 311.1, and 315.11(C)(2), to enact R.S.
3 9:311.2, and to repeal R.S. 9:315.27, relative to the suspension of child support
4 obligations; to authorize the promulgation of rules; to provide for an effective date;
5 and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:311(C)(3) and (D)(2), 311.1, and 315.11(C)(2) are hereby amended
8 and reenacted and R.S. 9:311.2 is hereby enacted to read as follows:

9 §311. Modification or suspension of support; material change in circumstances;
10 periodic review by Department of Children and Family Services; medical
11 support

12 * * *

13 C. For purposes of this Section, in cases where the Department of Children
14 and Family Services is providing support enforcement services:

15 * * *

16 (3)(a) The department shall request a judicial review under either of the
17 following conditions:

18 (i) If the best interest of the child so requires, ~~the department shall request~~
19 a ~~judicial review~~ upon request of either party or on it's the department's own
20 initiative. If appropriate, the court may modify the amount of the existing child

1 support award every three years if the existing award differs from the amount which
2 would otherwise be awarded under the application of the child support guidelines.

3 (ii) Upon request of either party or the department's own initiative when a
4 suspension period ends pursuant to R.S. 9:311.1 or 311.2.

5 (b) A material change in circumstances shall not be required for the purpose
6 of this Paragraph.

7 D. A material change in circumstance need not be shown for either of the
8 following purposes:

9 * * *

10 (2) To suspend or modify a child support award in accordance with R.S.
11 9:311.1 or 311.2.

12 * * *

13 §311.1. ~~Child~~ Suspension of child support during the obligor's incarceration;
14 Department of Children and Family Services providing support enforcement
15 services

16 A. ~~In accordance with the provisions of this Section, every order of~~ When
17 the Department of Children and Family Services is providing support enforcement
18 services, a child support order shall be suspended when the obligor ~~will be or is~~
19 incarcerated for, or is sentenced to, with or without hard labor, any period of one
20 hundred eighty consecutive days or more, unless any of the following conditions
21 exist:

22 (1) The obligor has the means to pay support while incarcerated.

23 (2) The obligor is incarcerated for an offense against his child or the
24 ~~custodial party or of the child subject to the support order.~~

25 (3) The incarceration resulted from the obligor's failure to comply with a
26 ~~court order to pay child support~~ order.

27 B. As used in this Section and R.S. 9:311.2:

28 (1) "Child support order" shall have the same meaning provided in Children's
29 Code Article 1301.2.

1 (2) "Incarceration" means placement of an obligor in a county, parish, state
2 or federal prison or jail, in which the obligor is not permitted to earn wages from
3 employment outside the facility. "Incarceration" does not include probation or
4 parole.

5 ~~(2)~~ (3) "Support enforcement services" shall have the same meaning as
6 provided in R.S. 46:236.1.1.

7 ~~(3)~~ (4) "Suspension" means ~~the modification of a child support order to zero~~
8 ~~dollars during the period of an obligor's incarceration~~ a postponement of the
9 scheduled due date of any payment required to be paid under a child support order
10 or as previously suspended. Child support does not accrue during a suspension.

11 (5) "Suspension period" means a period in which child support does not
12 accrue by reason of a suspension.

13 C. The Department of Public Safety and Corrections or the sheriff of any
14 parish, as appropriate, shall notify the Department of Children and Family Services
15 of any person who has been in their custody and may be subject to a child support
16 ~~obligation order~~ order if either:

17 (1) The person ~~will be or~~ is incarcerated for, or is sentenced to, with or
18 without hard labor, one hundred eighty consecutive days or longer.

19 (2) ~~At least six months before the~~ The person who was the subject of
20 notification under Paragraph (1) of this Subsection is scheduled to be released from
21 incarceration as defined in Subsection B of this Section. The time frame for such
22 notification under this Paragraph shall be determined by an interagency agreement
23 between the Department of Children and Family Services and the Department Public
24 Safety and Corrections.

25 D.(1) ~~When the~~ The Department of Children and Family Services is
26 ~~providing support enforcement services, the department~~ shall, upon receipt of notice
27 in accordance with Paragraph (C)(1) of this Section, verify that none of the
28 conditions in Subsection A of this Section exists.

1 (2) ~~Upon finding that~~ If none of the conditions in Subsection A of this
2 Section exists, the department shall provide notice to the custodial party by
3 registered or certified mail, return receipt requested or commercial courier. The
4 notice shall state all of the following:

5 (a) The child support order shall be suspended unless the custodial party
6 objects no later than fifteen calendar days after receipt of such notice on any of the
7 following grounds:

8 (i) The obligor has sufficient income or assets to comply with the ~~order of~~
9 child support order.

10 (ii) The obligor is incarcerated for an offense against ~~the custodial party or~~
11 his child or the current custodian of the child ~~subject to the order of child support~~.

12 (iii) The offense for which the obligor is incarcerated is due to the obligor's
13 failure to comply with ~~an order to pay a~~ child support order.

14 (b) The custodial party may object to the proposed ~~modification~~ suspension
15 by delivering a signed objection form, indicating the nature of the objection to the
16 department no later than fifteen calendar days after receipt of the notice in this
17 Paragraph. Any objection shall be based on one of the conditions in Subsection A
18 of this Section.

19 (3) If no objection is received from the custodial party in accordance with
20 Paragraph (2) of this Subsection, the department shall file an affidavit with the court
21 that has jurisdiction over the ~~order of child support~~ order. The affidavit shall include
22 all of the following:

23 (a) The beginning and expected end dates of such obligor's incarceration.

24 (b) A statement by the affiant of all of the following:

25 (i) A diligent search failed to identify any income or assets that could be
26 used to satisfy the ~~order of child support~~ order while the obligor is incarcerated.

27 (ii) The offense for which the obligor is incarcerated is not an offense against
28 any child of the obligor or the custodial party or of the child ~~subject to the order of~~
29 child support.

1 (iii) The offense for which the obligor is incarcerated is not due to the
2 obligor's failure to comply with ~~an order to pay a~~ child support order.

3 (iv) A notice was provided to the custodial party in accordance with
4 Paragraph (2) of this Subsection and an objection was not received from such party.

5 ~~(4)E.(1)~~ The suspension of the order of support period shall begin upon the
6 date that the department files the affidavit.

7 (2) The suspension period shall terminate by operation of law on the first day
8 of the second full month after the obligor's release from incarceration.

9 ~~(5)F.(1)~~ If the custodial party makes a timely objection, the department shall
10 file a contradictory motion pursuant to R.S. 9:311.2 with the court that has
11 jurisdiction over the ~~order of~~ child support order.

12 ~~(6)(2)~~ If a timely objection is made, the ~~order of~~ child support order shall
13 continue until further order of the court.

14 E.G. Nothing in this Section shall prevent ~~either a~~ a party from seeking a
15 suspension or a modification of the child support order ~~of support under this Section~~
16 ~~or~~ any other provision of law.

17 ~~F.(1) Upon motion of either party or the Department of Children and Family~~
18 ~~Services, after notice and hearing, the court shall suspend the child support~~
19 ~~obligation unless it finds one of the conditions in Subsection A of this Section exists.~~

20 ~~(2) If one of the conditions in Subsection A of this Section exists, the court~~
21 ~~shall use the child support guidelines in R.S. 9:315 et seq. to determine an obligor's~~
22 ~~support obligation during his period of incarceration.~~

23 ~~G.(1) An order of support suspended in accordance with this Section shall~~
24 ~~resume by operation of law on the first day of the second full month after the~~
25 ~~obligor's release from incarceration.~~

26 ~~(2) An order that suspends an obligor's order of support because of the~~
27 ~~obligor's incarceration shall contain a provision that the previous order will be~~
28 ~~reinstated on the first day of the second full month after the obligor's release from~~
29 ~~incarceration.~~

1 ~~(3) Unless the terms of the order of support have been otherwise modified,~~
2 ~~the suspended order of support shall resume at the same terms that existed before the~~
3 ~~suspension.~~

4 H. The suspension of ~~an order of support~~ a child support order in accordance
5 with this Section shall not affect any past due support that has accrued before the
6 effective date of the suspension.

7 I. The provisions of this Section shall not apply if a court does not have
8 continuing exclusive jurisdiction to modify the ~~order~~ of child support order in
9 accordance with Children's Code Article 1302.5.

10 §311.2. Suspension of child support order; judicial proceedings

11 A.(1) When an obligor is incarcerated for, or is sentenced to, with or without
12 hard labor, one hundred eighty consecutive days or more, upon motion of an
13 interested party, after notice and hearing, the court shall suspend the child support
14 order unless it finds one of the conditions in R.S. 9:311.1(A) exists.

15 (2) If one of the conditions in R.S. 9:311.1(A) exists, the court shall use the
16 child support guidelines in R.S. 9:315 et seq. to determine an obligor's support
17 obligation during his period of incarceration.

18 (3) As used in this Section, "interested party" shall mean any of the
19 following:

20 (a) The Department of Children and Family Services, the district attorney or
21 contract attorney providing support enforcement services.

22 (b) The person owing the support obligation.

23 (c) The individual or current caretaker to whom the support obligation is
24 owed.

25 B.(1) The suspension period shall terminate on the first day of the second
26 full month after the obligor's release from incarceration. An order suspending an
27 obligor's child support order in accordance with this Section shall contain a provision
28 to this effect.

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 449 Original

2021 Regular Session

Wilford Carter

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

Present law (R.S. 9:311(C)(3)) provides that in cases where the Department of Children and Family Services ("DCFS") is providing support enforcement services, if the best interest of the child so requires, DCFS shall request a judicial review upon request of either party or on DCFS's own initiative.

Proposed law retains present law and further provides that DCFS shall request a judicial review upon request of either party or DCFS's own initiative when a suspension period ends pursuant to present law and proposed law provisions relative to the suspension of a child support obligation during the obligor's incarceration.

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 requires the time frame for the notification period to be determined by an interagency agreement between DCFS and DPSC.

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 provided in present law and proposed law.

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

Proposed law 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.

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.

Present law provides that the suspension of a child support order 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 shall not apply if a court does not have continuing exclusive jurisdiction to modify the child support order. Proposed law retains present law.

Proposed law (R.S. 9:311.2) provides for the temporary suspension of a child support order through judicial proceeding due to an obligor's incarceration for more than 180 days pursuant to procedures provided for in present law (R.S. 9:311.1).

Proposed law includes cases in which the obligor is sentenced to 180 days or more with or without hard labor.

Proposed law provides a definition for "interested party".

Proposed law provides that the suspension period through judicial proceeding shall terminate on the first day of the second full month after the obligor's release from incarceration and that the order suspending the child support order shall contain a provision to this effect.

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 when the support obligation was subject to suspension pursuant to present law.

Proposed law repeals present law.

Effective Jan. 1, 2022.

(Amends R.S. 9:311(C)(3) and (D)(2), 311.1, and 315.11(C)(2); Adds R.S. 9:311.2; Repeals R.S. 9:315.27)