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## DIGEST

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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)