
DIGEST

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HB 449 Reengrossed

2021 Regular Session

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

Present law (R.S. 9:311) provides that in cases where the Dept. 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 party is incarcerated or when the child support award is suspended 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.

Proposed law defines "child support order".

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 notification 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 notice by regular mail.

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.

Proposed law repeals present 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 instead provides that DCFS shall file an affidavit with the court no more than 15 days after receiving the notice provided by DPSC and the suspension shall become effective when DCFS files an affidavit with the court.

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 repeals present law.

Present law provides that a suspended child support order shall resume by operation of law on the first day of the second full month after the obligor's release from incarceration.

Proposed law retains present law.

Proposed law provides that if the obligor is released from incarceration while the child is a minor, DCFS or either party shall petition the court prior to the first day of the second full month after the obligor's release from incarceration for a modification hearing to establish the terms of the previously suspended child support order.

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.

Present law (R.S. 9:315.27) provides for continuing a suspended child support award beyond the termination date under certain circumstances.

Proposed law retains present law but provides that if the child is a minor at the time of the obligor's release from incarceration, the court may continue the child support award at the modification hearing held following the obligor's release.

Present law provides that if the child has reached the age of majority at the time of the obligor's release from incarceration, the custodial party or the child may petition the court to continue the child

support order under certain circumstances.

Proposed law retains present law.

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".

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

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Remove provisions for the suspension and exceptions to the suspension of a support obligation during the obligor's incarceration.
2. Add provisions for the reduction of a support obligation during the obligor's incarceration.
3. Add conditions for which a material change in circumstances need not be shown.
4. Provide for the continuation of support obligations suspended pursuant to present law.
5. Add provisions requiring notice and deadlines for filing certain motions.
6. Remove the special effective date.

The House Floor Amendments to the engrossed bill:

1. Add provisions for the suspension of a support obligation during the obligor's incarceration.
2. Remove provisions for the reduction of a support obligation during the obligor's incarceration.
3. Require the DCFS or either party to request a modification hearing within a certain time frame following the obligor's release from incarceration.
4. Allow the court to continue a suspended order pursuant to present law at the modification

hearing.

5. Remove the restriction that suspension is only available if DCFS is providing support enforcement services.
6. Make technical changes.