

## RÉSUMÉ DIGEST

ACT 339 (HB 449)

2021 Regular Session

Wilford Carter

Existing 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.

New law retains existing 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 existing law and new law provisions relative to the suspension of a child support obligation during the obligor's incarceration.

Existing 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.

New law retains existing law, and includes cases in which the obligor is sentenced to 180 days or more with or without hard labor.

New law defines "child support order".

Existing 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.

New law retains existing law but requires the time frame for notification to be determined by an interagency agreement between DCFS and DPSC.

Prior law required DCFS to provide notice to the custodial party by certified mail, return receipt requested, that a child support obligation was suspended.

New law instead requires DCFS to provide notice by regular mail.

Prior law required DCFS to include in the notice a statement that the child support order was required to be suspended unless the custodial party objected within 15 days upon certain grounds.

New law repeals prior law.

Prior law provided that if the custodial party did not object, the suspension became effective when DCFS filed an affidavit with the court.

New 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.

Prior law authorized DCFS or either party to file a motion with the court, upon which the court was required to suspend the child support obligation unless certain conditions existed. Further provided that if the custodial party made a timely objection, DCFS was required to file a contradictory motion with the court.

New law repeals prior law.

Existing 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.

New law retains existing law.

New 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.

Existing 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.

New law retains existing law.

Existing 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 existing law shall not apply if a court does not have continuing exclusive jurisdiction to modify the child support order.

New law retains existing law.

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

New law retains existing 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.

Existing 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.

New law retains existing law.

Prior law (R.S. 9:315.11) prohibited a party from being deemed voluntarily unemployed or underemployed for purposes of calculating a child support obligation if he was incarcerated for 180 consecutive days or longer.

New 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.

New law provides cross-references to the existing law definition of "incarceration".

Effective August 1, 2021.

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