

2020 Regular Session

HOUSE BILL NO. 767

BY REPRESENTATIVE GREGORY MILLER

CHILDREN/SUPPORT: Provides relative to child support obligations

1 AN ACT

2 To amend and reenact Children's Code Article 1353(G), Code of Civil Procedure Article  
3 197(A), R.S. 9:311(D), 311.1, and 315.11(C)(2), R.S. 13:4611(1)(d)(iii), and R.S.  
4 46:236.6(B)(4) and 236.7(C)(4), to enact Code of Civil Procedure Article 197(C) and  
5 R.S. 9:311.2, and to repeal R.S. 9:315.27, relative to child support; to provide  
6 relative to child support obligations; to provide relative to incarceration of the  
7 obligor; to provide for the taking of testimony of an incarcerated obligor; to provide  
8 procedures for the temporary suspension of child support orders; to provide for  
9 notice requirements; to provide for the continuation of a support obligation past its  
10 termination date; to provide for the voluntary unemployment or underemployment  
11 of a child support obligor; to provide for definitions; to provide for applicability; and  
12 to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Children's Code Article 1353(G) is hereby amended and reenacted to read  
15 as follows:

16 Art. 1353. Support provisions; contempt; penalties; defenses

17 \* \* \*

18 G. It is a defense ~~as provided by R.S. 9:311.1~~ to a charge of contempt of  
19 court for failure to comply with a court order of child support if an obligor can prove  
20 that he was incarcerated during the period of noncompliance. This defense applies

1           only to the time period of actual incarceration. "Incarceration" shall have the same  
2           meaning as provided in R.S. 9:311.1.

3           Section 2. Code of Civil Procedure Article 197(A) is hereby amended and reenacted  
4           and Code of Civil Procedure Article 197(C) is hereby enacted to read as follows:

5           Art. 197. Testimony of inmates

6                        A. As used in this Article, "inmate" means a person confined in any prison,  
7           jail, correctional or training institution operated by the state, any of its political  
8           subdivisions, or any sheriff either while awaiting disposition of contemplated or  
9           pending criminal charges, pursuant to a sentence imposed by a court following the  
10          conviction of a crime, or pursuant to the judgment of a civil or juvenile court.

11   \*       \*       \*

12                           C. Notwithstanding the provisions of Paragraph B of this Article:

13                           (1) The trial judge shall order the testimony of the inmate be taken, or the  
14           proceedings conducted, by teleconference, video link, or other available remote  
15           technology if all of the following apply:

16                                       (a) The Department of Children and Family Services is providing support  
17           enforcement services as defined in R.S. 46:236.1.1.

18                                       (b) An interested party makes the request for an order by ex parte motion.

19                                       (c) The obligor or prospective obligor is an inmate.

20                           (2) If the inmate is represented by an attorney during the proceeding, the  
21           attorney may elect to be present either in the courtroom with the trial judge or in the  
22           place where the inmate is confined.

23                           (3) Nothing in this Paragraph shall be interpreted to require the trial judge  
24           to use any means of communication other than those required by Children's Code  
25           Article 1303.16(F).

26                           (4) As used in this Article, "interested party" shall mean any of the  
27           following:

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

1                    (a) The Department of Children and Family Services, the district attorney,  
2                    or the contract attorney providing support services pursuant to Title IV-D of the  
3                    Social Security Act.

4                    (b) The inmate.

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

7                    (d) The local, state, or federal government agency that controls the facility  
8                    that houses the inmate.

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

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

14    \*        \*        \*

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

17                    (1) To modify a child support award to include a court-ordered award for  
18                    medical support.

19                    (2) To suspend or modify a child support award in accordance with R.S.  
20                    9:311.1 or 311.2.

21    \*        \*        \*

22                    §311.1. Suspension of Child child support during the obligor's incarceration;  
23                    Department of Children and Family Services providing support  
24                    enforcement services

25                    A. ~~In accordance with the provisions of this Section,~~ When the Department  
26                    of Children and Family Services is providing support enforcement services, ~~every~~  
27                    ~~order of a~~ child support order shall be suspended when the obligor ~~will be or is~~  
28                    incarcerated for, or is sentenced to, any period of one hundred eighty consecutive

1 days or more, with or without hard labor, unless any of the following conditions  
2 exist:

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

4 (2) The obligor is incarcerated for an offense against the custodial party or  
5 the child subject to the support order.

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

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

9 (1) "Child support order" shall have the same meaning as Children's Code  
10 Article 1301.2.

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

15 ~~(2)~~(3) "Support enforcement services" shall have the same meaning as  
16 provided in R.S. 46:236.1.1.

17 ~~(3)~~(4) "Suspension" means ~~the modification of a child support order to zero~~  
18 ~~dollars during the period of an obligor's incarceration~~ a postponement of the  
19 scheduled due date of any payment required to be paid under a child support order  
20 or as previously suspended.

21 (5) "Suspension period" means a period during which no child support  
22 payment is scheduled to be paid by reason of a suspension.

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

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

1           (2) At least six ~~months~~ weeks before the person who was the subject of  
2 notification under Paragraph (1) of this Subsection is scheduled to be released from  
3 incarceration as defined in Subsection B of this Section.

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

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

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

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

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

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

22           (b) The custodial party may object to the proposed ~~modification~~ suspension  
23 by delivering a signed objection form, indicating the nature of the objection to the  
24 department no later than fifteen calendar days after receipt of the notice in this  
25 Paragraph. An objection may be raised only upon the conditions listed in Subsection  
26 A of this Section.

27           (3) If no objection is received from the custodial party in accordance with  
28 Paragraph (2) of this Subsection, the department shall file an affidavit with the court

1 that has jurisdiction over the ~~order of child support order~~. The affidavit shall include  
2 all of the following:

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

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

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

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

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

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

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

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

17 (3) Notwithstanding any other law to the contrary, the termination of the  
18 child support order under R.S. 9:315.22 or any other applicable provision of law  
19 shall be extended by either of the following, whichever is shorter:

20 (a) The suspension period granted under this Section or R.S. 9:311.2.

21 (b) The amount of time that elapsed between the first day of the suspension  
22 period granted under this Section or R.S. 9:311.2 and the date the obligation would  
23 have terminated under R.S. 9:315.22.

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

27 ~~(6)~~(2) If a timely objection is made, the ~~order of child support order~~ shall  
28 continue until further order of the court.

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

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

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

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

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

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

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

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

26           §311.2. Suspension of child support order during the obligor's incarceration; judicial  
27 proceedings

28           A.(1) When an obligor is incarcerated for, or is sentenced to, one hundred  
29 eighty consecutive days or more, with or without hard labor, upon motion of an

1 interested party, after notice and hearing, the court shall suspend the child support  
2 order unless it finds one of the conditions listed in R.S. 9:311.1(A) exists.

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

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

8 (a) The Department of Children and Family Services, the district attorney,  
9 or the contract attorney providing support services pursuant to Title IV-D of the  
10 Social Security Act.

11 (b) The person owing the support obligation.

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

14 B.(1) The suspension period shall terminate on the first day of the second  
15 full month after the obligor's release from incarceration.

16 (2) Unless the terms of the child support order have been otherwise  
17 modified, the suspended child support order shall resume at the same terms that  
18 existed before the suspension.

19 (3) Notwithstanding any other law to the contrary, the termination of the  
20 child support order under R.S. 9:315.22 or any other applicable provision of law  
21 shall be extended by either of the following, whichever is shorter:

22 (a) Any suspension period granted under this Section or R.S. 9:311.1.

23 (b) The amount of time that elapsed between the first day of the suspension  
24 period granted under this Section or R.S. 9:311.1 and the date the obligation would  
25 have terminated under R.S. 9:315.22.

26 (4) An order that suspends an obligor's child support order in accordance  
27 with this Section shall contain the following provisions:

28 (a) That the suspension period shall terminate on the first day of the second  
29 full month after the obligor's release from incarceration.





1 that he was incarcerated during the period of noncompliance. This defense applies  
2 only to the time period of actual incarceration. "Incarceration" shall have the same  
3 meaning as provided in R.S. 9:311.1.

4 Section 5. R.S. 46:236.6(B)(4) and 236.7(C)(4) are hereby amended and reenacted  
5 to read as follows:

6 §236.6. Failure to pay support; procedure, penalties and publication

7 \* \* \*

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

12 \* \* \*

13 (4) It is a defense ~~as provided by R.S. 9:311.1~~ to a charge of contempt of  
14 court for failure to comply with a court order of child support if an obligor can prove  
15 that he was incarcerated during the period of noncompliance. This defense applies  
16 only to the time period of actual incarceration. "Incarceration" shall have the same  
17 meaning as provided in R.S. 9:311.1.

18 \* \* \*

19 §236.7. Order of support; stipulation by district attorney and party

20 \* \* \*

21 C. If the defendant is held in contempt by the court, he may be punished as  
22 follows:

23 \* \* \*

24 (4) It is a defense ~~as provided by R.S. 9:311.1~~ to a charge of contempt of  
25 court for failure to comply with a court order of child support if an obligor can prove  
26 that he was incarcerated during the period of noncompliance. This defense applies  
27 only to the time period of actual incarceration. "Incarceration" shall have the same  
28 meaning as provided in R.S. 9:311.1.

29 \* \* \*

1 Section 6. R.S. 9:315.27 is hereby repealed in its entirety.

2 Section 7. The provisions of Sections 1, 4, 5, and 6 and the provisions of R.S.  
3 9:311(D) and 311.1 contained in Section 3 of this Act supercede the provisions of Sections  
4 1 through 4 of Act No. 264 of the 2017 Regular Session of the Legislature that amend and  
5 reenact R.S. 9:311(D) and enact Children's Code Article 1353(G), R.S. 9:311.1 and 315.27,  
6 R.S. 13:4611(1)(d)(iii) and R.S. 46:236.6(B)(4) and 236.7(C)(4).

7 Section 8. The provisions of this Act shall become effective August 1, 2020.

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### 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)]

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HB 767 Original

2020 Regular Session

Gregory Miller

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

Present law (C.C.P. Art. 197) provides procedures for receiving testimony from inmates confined pursuant to a sentence imposed by a court following the conviction of a crime, or pursuant to the judgment of a juvenile court.

Proposed law retains present law and extends the procedures to inmates confined pursuant to the judgment of a civil court.

Proposed law requires the trial judge to order the testimony of the inmate be taken, or the proceedings conducted, by teleconference, video link, or other available remote technology in cases where the inmate is an obligor, the Dept. of Children and Family Services (DCFS) is providing support enforcement services, and an interested party makes the request for an order by ex parte motion. Proposed law defines interested party as DCFS, the district attorney or contract attorney providing support enforcement services, the inmate, the individual or current caretaker to whom the support obligation is owed, or the local, state, or federal government agency that controls the facility that houses the inmate.

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 reduces the notice period from six months to six weeks.

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 that the obligor is incarcerated for an offense against his child or the current custodian of the child.

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

Proposed law provides that the termination of the child support order pursuant to present law shall be extended by the shorter of: (a) the suspension period granted under present law or proposed law, or (b) the amount of time that elapsed between the first day of the suspension period granted under present law or proposed law and the date the obligation would have terminated under present law.

Present law requires that the order suspending the child support order shall contain certain provisions. Proposed law requires that the order also contain a provision explaining that the new termination date will be calculated as provided by proposed law.

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.

Proposed law provides that the suspension of a child support order under present law 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 and proposed law shall not apply if a court does not have continuing exclusive jurisdiction to modify the child support order in accordance with 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."

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.

Proposed law repeals present law.

Proposed law provides that proposed law (Sections 1, 4, 5, and 6 and the provisions of R.S. 9:311(D) and 311.1 contained in Section 3) shall supercede present law (Sections 1 through 4 of Act No. 264 of the 2017 Regular Session of the Legislature that amend and reenact R.S. 9:311(D) and enact Children's Code Article 1353(G), R.S. 9:311.1 and 315.27, R.S. 13:4611(1)(d)(iii) and R.S. 46:236.6(B)(4) and 236.7(C)(4)).

Effective Aug. 1, 2020.

(Amends Ch.C. Art. 1353(G), C.C.P. Art. 197(A), R.S. 9:311(D), 311.1, and 315.11(C)(2), R.S. 13:4611(1)(d)(iii), and R.S. 46:236.6(B)(4) and 236.7(C)(4); Adds C.C.P. Art. 197(C) and R.S. 9:311.2; Repeals R.S. 9:315.27)