

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1612

Bill Subtitle: TO AMEND THE LAW CONCERNING CHILD SUPPORT AND THE CENTRALIZED CLEARINGHOUSE.

Basic Change:

Sponsor: Rep. Maddox

This bill amends various code sections primarily for conformity with current federal regulation and to remove outdated language. Compliance with certain federal regulations is required as a condition of federal funding of the child support program and the TANF block grant.

Specifically, current law is amended to provide that the incarceration of a parent for at least 180 days may not be treated as voluntary unemployment in establishing and modifying child support orders; regarding the committee appointed by the Chief Justice of the Supreme Court to review of the family support chart; to correct a conflict between code sections; to provide that a revision of the family support chart may not be the sole basis for modification of an obligation; to allocate the cost of health care coverage between parents; to address redirection of child support payments due to a change in the physical custodian of a child; and to remove outdated terminology and a reference to repealed federal regulation regarding the Arkansas Child Support Clearinghouse.

Revenue Impact:

None.

Taxpayer Impact:

While there is no impact to the general taxpayer as such, child support obligations in families in which a parent is incarcerated may be subject to modification. In addition, more parents may be ordered to share the cost of health care coverage for their children. The remainder of the bill is not expected to have any significant impact on the public.

Resources Required:

It is estimated that the Office of Child Support Enforcement (OCSE) will incur total costs of around \$135,000 related to data system and forms development to support a federal requirement that the child support program provide notice regarding or initiate modification of a support obligation if a noncustodial parent will be incarcerated for more than 180 days. Two-thirds of that cost will be paid from federal funding. Additionally, OCSE will incur minor costs related to amending promulgated policy, updating publications and the public website, revising internal staff training materials, and modifying existing forms when necessary.

Time Required:

If enacted, this bill would become effective January 1, 2020. OCSE estimates that approximately four months would be required for the necessary data system development.

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Procedural Changes:

As noted above, the development of procedures, software applications, training, and policy by OCSE will be required.

Other Comments:

States are required to implement certain requirements as part of an approved state plan for the child support enforcement program. Failure to timely implement those requirements could eliminate federal funding for the child support program and the TANF block grant. The federal portion of the budget for the Office of Child Support Enforcement for the current fiscal year is approximately \$37.5 million dollars.

Sections 1-5, in whole or in part, are proposed to bring Arkansas' child support enforcement program in compliance with the following federal regulations:

- 45 C.F.R § 302.56(c)(3) requires that each state's guidelines for setting child support awards provide that incarceration may not be treated as voluntary unemployment in establishing and modifying child support orders;
- 45 C.F.R. § 302.56(e) and (h) regarding the child support guidelines review process conducted by Supreme Court and its Committee on Child Support;
- 45 CFR § 302.38 requiring that child support payments may be redirected to an alternate caretaker designated in a record by the custodial parent and payable to the physical custodian, conservator, or guardian;
- 45 CFR § 303.31(b)(1)(ii) requiring that petitions by the child support agency include a request to allocate the cost of health care coverage for dependents between the parents.

Sections 6-10 are proposed to remove outdated terminology and a reference to an obsolete federal regulation.

Legal Analysis:

Arkansas case law currently holds that a non-custodial parent's lack of income due to incarceration will not relieve him or her of the obligation to provide child support in an initial order or provide the basis for the modification of an existing child support obligation. *See Reid v. Reid*, 57 Ark. App 289, 944 S.W.2d 559 (1997); *Allen v. Allen*, 82 Ark. App. 42, 110 S.W.3d 772 (2003).

In 2016, based on article published by the National Conference of State Legislatures, 36 states treated imprisonment as involuntary unemployment either by statute or through appellate court precedent. In those states, an incarcerated noncustodial parent could seek modification of his or her child support obligation due to lack of income. The remaining 14 states, including Arkansas, prohibited modification on that basis. Since 2017, five of those states have changed their rule to permit modification of support based on the incarceration of the noncustodial parent.

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The provisions of this bill would bring Arkansas in compliance with federal regulation while leaving the discretion with the circuit court to consider the circumstances of the family and the incarcerated parent's resources when determining an appropriate support obligation. "Incarceration" is defined to apply to individuals who have been convicted and sentenced to at least six months, excluding any credit for time served prior to sentencing and will provide guidance regarding the minimum length of sentence necessary before modification of an existing child support obligation might be appropriate. If enacted, the bill will have prospective effect and would not apply to individuals with child support debt that accrued during prior periods.