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INTERIM STUDY PROPOSAL 2019-021

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

A Bill

HOUSE BILL 1816

4 By: Representative Fielding

5
6 Filed with: House Committee on Aging, Children and Youth, Legislative and Military Affairs
7 pursuant to A.C.A. §10-3-217.
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For An Act To Be Entitled

9
10 AN ACT CONCERNING THE MODIFICATION OF CHILD SUPPORT
11 WHEN A NONCUSTODIAL PARENT IS INCARCERATED; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14
15 CONCERNING THE MODIFICATION OF CHILD
16 SUPPORT WHEN A NONCUSTODIAL PARENT IS
17 INCARCERATED.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. DO NOT CODIFY. Legislative intent.

24 It is the intent of the General Assembly that this act prevent a person
25 from being placed under a continued monetary judgment for unpaid child
26 support due to his or her lack of earning potential during and after his or
27 her release from incarceration.
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29 SECTION 2. Arkansas Code § 9-14-106, concerning the amount of support
30 to be paid by a noncustodial parent, is amended to add an additional
31 subsection to read as follows:

32 (c) The incarceration of a noncustodial parent shall not be treated as
33 voluntary unemployment for the purpose of calculating an initial or modified
34 amount of child support to be paid by the noncustodial parent who is
35 incarcerated.
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1 SECTION 3. Arkansas Code § 9-14-107, concerning a change in a payor’s
2 income that warrants modification, is amended to add an additional subsection
3 to read as follows:

4 (f) The incarceration of a noncustodial parent shall not be treated as
5 voluntary unemployment for the purpose of calculating a modified amount of
6 child support to be paid by the noncustodial parent who is incarcerated.
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8 SECTION 4. Arkansas Code § 9-14-234(c)(2), concerning when a court may
9 modify a decree, judgment, or order that has accrued unpaid support and apply
10 an offset against future support to be paid, is amended to read as follows:

- 11 (2) However, the court may:
 - 12 (A) ~~offset~~ Offset against future support to be paid those
 - 13 amounts accruing during time periods other than reasonable visitation in
 - 14 which the noncustodial parent had physical custody of the child with the
 - 15 knowledge and consent of the custodial parent; or
 - 16 (B) Modify a decree, judgment, or order that has accrued
 - 17 unpaid support.

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19 SECTION 5. Arkansas Code Title 9, Chapter 14, Subchapter 2, is amended
20 to add an additional section to read as follows:

21 9-14-243. Suspension of child support order – Definitions.

22 (a) As used in this section:

23 (1) "Abate" means the modification of a money judgment or child
24 support order so that for the period during which an obligor is incarcerated
25 the amount of child support due under the money judgment or the child support
26 order is reduced;

27 (2)(A) "Incarcerated" means involuntary confinement for more
28 than ninety (90) consecutive days.

29 (B) "Incarcerated" includes without limitation involuntary
30 confinement in a federal or a state prison, county jail, juvenile facility,
31 or a mental health facility;

32 (3) "Obligee" means an individual to whom a duty of child
33 support is or is alleged to be owed; and

34 (4) "Obligor" means an individual who owes or is alleged to owe
35 a duty of support.

1 (b)(1) Effective July 1, 2019, the amount of child support due under a
2 money judgment or a child support order may be abated and an obligor's duty
3 to pay child support under a money judgment or a child support order may be
4 modified for the period during which the obligor is incarcerated unless the
5 obligor:

6 (A) Has the means to pay child support while incarcerated
7 as determined by the court's review of an affidavit of financial means
8 completed by the obligor;

9 (B) Is incarcerated for an offense under § 5-26-301 et
10 seq.; or

11 (C) Is incarcerated as a result of his or her failure to
12 comply with a child support order.

13 (2) Effective July 1, 2019, a money judgment or a child support
14 order that is entered by a court or enforced by the Office of Child Support
15 Enforcement under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et
16 seq., shall state that the amount of child support due under a money judgment
17 or a child support order may be abated and an obligor's duty to pay child
18 support under a money judgment or a child support order may be modified for
19 any period during which the obligor is incarcerated.

20 (c) A court that enters a money judgment or a child support order
21 shall inform the obligor in writing if the obligor is incarcerated for more
22 than ninety (90) consecutive days that he or she:

23 (1) May be eligible to have the amount of child support due
24 under a money judgment or a child support order abated and his or her duty to
25 pay child support under a money judgment or child support order modified for
26 the period of time during which he or she was incarcerated;

27 (2) May file a petition to abate the amount of child support due
28 and modify his or her duty to pay child support under a money judgment or
29 child support order with the court that has jurisdiction over the money
30 judgment or child support order; and

31 (3) Is required to submit proof of incarceration for more than
32 ninety (90) consecutive days and a completed affidavit of financial means
33 with the petition to abate the amount of child support due and modify his or
34 her duty to pay child support under a money judgment or a child support
35 order.

1 (d)(1) In determining whether an obligor had the means to pay child
2 support while he or she was incarcerated, a court may consider:

3 (A) The obligor's salary or wages earned from present
4 employment;

5 (B) The obligor's date of last employment and the amount
6 of salary or wages earned from the employment;

7 (C) The obligor's income from any business, profession, or
8 self-employment;

9 (D) The obligor's income from rent payments, interest, or
10 dividends;

11 (E) The obligor's income from pensions, annuities, or life
12 insurance payments;

13 (F) The obligor's income from gifts or inheritance;

14 (G) The obligor's available cash in his or her checking or
15 savings account;

16 (H) The obligor's ownership of any real estate, stocks,
17 bonds, notes, automobiles, or any other valuable property; and

18 (I) Any other factors that are relevant to a determination
19 of whether the obligor has the means to pay child support while incarcerated.

20 (2) The obligor shall notify the obligee and the office in
21 writing of his or her petition to abate the amount of child support due and
22 modify his or her duty to pay child support under a money judgment or a child
23 support order in accordance with Arkansas Rules of Civil Procedure.

24 (e)(1) An abatement of the amount of child support due and a
25 modification of the obligor's duty to pay child support under a money
26 judgment or a child support order under this section is effective as of the
27 first date on which the obligor is incarcerated for a period of ninety (90)
28 consecutive days.

29 (2) If the amount of child support due is abated and an
30 obligor's duty to pay child support under a money judgment or child support
31 order is modified under this section, a court shall not incarcerate or impose
32 a fine on the obligor for nonsupport under § 5-26-401 for at least one
33 hundred eighty (180) days after the date on which the obligor is released.

34 (f) On or before July 1, 2019, the Arkansas Judicial Council, Inc.
35 shall develop a petition to abate the amount of child support due and modify
36 an obligor's duty to pay child support under a money judgment or child

1 support order, an affidavit of financial means, and any other form necessary
2 for the implementation of this section.

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5 Referred requested by the Arkansas House of Representatives

6 Prepared by: JNL/VJF

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