# **Department of Finance and Administration**

## **Legislative Impact Statement**

Bill: HB2037 Amendment Number: H1

Bill Subtitle: TO AMEND THE LAW CONCERNING CHILD SUPPORT.

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### Basic Change:

Sponsor: Rep. Fielding

HB2037 creates a new Arkansas Code section at § 9-14-243 to suspend a noncustodial parent's child support obligation during any period of incarceration. "Incarceration" is defined to include involuntary confinement in a state prison, county jail, juvenile facility, or mental health facility.

### Revenue Impact:

No direct revenue impact is anticipated.

### **Taxpayer Impact:**

Parents who owe a child support obligation would be relieved of that burden while they were incarcerated and without the means to pay. Conversely, those parents to whom the child support obligation was owed would lose the opportunity to be reimbursed for support provided for the children during the time the other parent was incarcerated. This could potentially increase the need for other services such as SNAP and Medicaid for children not receiving child support.

### **Resources Required:**

The cost to the Office of Child Support Enforcement (OCSE) for data system changes would be approximately \$300,000. A slight impact on staffing needs is anticipated.

## **Time Required**:

The bill as written is effective on July 1, 2017. It is estimated that up to six months would be required for OCSE to develop and implement data system changes, internal procedures, training, publications, and forms. This estimate may be extended if coordination with other entities to automate data transfer is required.

#### **Procedural Changes:**

The development of a process for the timely receipt of information indicating a noncustodial parent who is a member in a case receiving child support enforcement services is incarcerated as well as the date of release would be required. Additionally, the development of procedures, training, and revision of forms and publications would be needed.

# Other Comments:

Based on a report from the National Conference of State Legislatures, fourteen states, including Arkansas, do not currently permit modification of a child support obligation during periods of incarceration. On December 19, 2016, new federal rules were published which require that each state's guidelines for setting child support awards prohibit incarceration from being treated as voluntary unemployment in establishing and modifying child support orders. See 45 C.F.R § 302.56(c)(3). The effective date of this portion of the federal rule is delayed to allow states time to implement the

3/14/2017 2:32 PM 1

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requirement. Under the federal rule, Arkansas would be expected to have provisions in place to prohibit incarceration from being treated as voluntary unemployment by late 2020. States are required to implement this requirement as part of an approved state plan for the child support enforcement program. Failure to implement this requirement by the effective date could eliminate federal funding for the child support program and the TANF block grant.

### 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).

If enacted, HB2004 at paragraph (b)(1) would provide that a child support obligor's duty to pay shall be suspended during any period of incarceration. The suspension would occur by operation of law without the need for notice or petition.

Incarceration is defined to include, but not be limited to, any period of involuntary confinement in a state prison, county jail, juvenile facility, or mental health care facility. While federal facilities are not included in the definition, it is assumed that confinement to such a facility would trigger the suspension of an obligor's duty to provide child support. It is unclear whether periods of voluntary confinement in a mental health care facility or similar in-patient treatment setting are intended to meet the definition of incarceration.

The bill does not set a minimum period of confinement before the suspension of a child support obligation becomes effective. As written, confinement of a couple of days would suspend a support obligation for that time period. The lack of a minimum confinement period before suspending the support obligation increases the difficulty of monitoring the amount due under an order for child support.

The bill provides that the obligation is not suspended if the obligor has the means to pay support while incarcerated. There is no standard for determining whether the obligor has the means to pay or what happens if the obligor has assets at the time of commitment but which are exhausted during the course of the incarceration. This creates uncertainty for all parties as to whether the duty to support continues during periods of incarceration for a given obligor.

At paragraph (b)(2), the bill requires that orders in cases in which OCSE is providing services state that the obligor's duty to pay support will be suspended during any period of incarceration unless the obligor has the means to pay. OCSE does not provide services in all cases involving orders for payment of child support. There is no similar requirement for inclusion of notice in orders directing payment of child support in those cases. It is therefore unclear to what extent the suspension of support during periods of incarceration is intended to apply to those orders in cases in which OCSE is not providing services.

At paragraph (b)(3), the court is required to give notice to the obligee and the office when an obligor's duty to pay is suspended due to incarceration. The bill does not define "office" although it is assumed that the term is intended to refer to OCSE. Similarly, the bill does not define "court." This requirement places a significant burden on the courts to identify individuals who owe child support obligations, the

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name and mailing address of persons to whom support may be owed, and to deliver the appropriate notice. In cases in which the obligor is incarcerated because of a federal offense or in another state, the required notice will be lacking.

Paragraph (c)(2) provides that an obligor may petition the court for an adjustment of arrears. Upon proof of the period of incarceration and lack of means to pay, the arrears are to be adjusted by court order unless the incarceration was for the offense of domestic battery under § 5-26-301 et seq. or as a result of the obligor's failure to comply with a court order to pay support. However as noted above, it appears that the suspension of the duty to support occurs upon incarceration. The intent of this paragraph allowing but not requiring the filing of a petition for an adjustment of support is unclear.

3