

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1816**

**Bill Subtitle: CONCERNING THE MODIFICATION OF CHILD SUPPORT WHEN A NONCUSTODIAL PARENT IS INCARCERATED.**

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### **Basic Change:**

**Sponsor: Rep. Fielding**

The bill would prohibit the incarceration of a parent from being treated as voluntary unemployment in the establishment or modification of a child support obligation. Incarceration is defined as involuntary confinement for more than 90 days in a jail, correctional facility, or mental health facility. The bill provides that an order for child support that has accrued unpaid support may be modified for a prior period.

Additionally, the bill creates a new section, § 9-14-243, requiring that effective July 1, 2019 a child support order or a judgment for child support may be abated for the period during which the obligor is incarcerated unless he or she has the means to pay support, is incarcerated for a domestic battery offense under § 5-26-301 et seq., or is incarcerated for his or her failure to comply with a child support order. All orders and judgments for child support must include language stating that the amount due under a judgment or order for child support may be abated and the duty to pay may be modified during any period of incarceration. Courts entering a support order or judgment would be required to provide written information to the child support obligor about the process of seeking abatement of support due to incarceration. The bill provides various factors for the court to consider in determining if an incarcerated obligor has the means to pay support and requires the obligor to provide notice of a petition to the obligee and "the office" in accordance with the Arkansas Rules of Civil Procedure. The bill provides that if an obligor's child support obligation or judgment is modified under this code section, a court may not incarcerate or impose a fine on the obligor for criminal nonsupport of a dependent under § 5-26-401 for at least 180 days after release from incarceration.

The Arkansas Judicial Council, Inc. is charged with developing various forms necessary for the implementation of the new code section by July 1, 2019.

### **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.

### **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.

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### Time Required:

If enacted, certain provisions of this bill would become effective July 1, 2019. OCSE estimates that approximately four months is required for the necessary data system development.

### Procedural Changes:

None.

### Other Comments:

Current federal regulations require states have provisions in place to prohibit incarceration from being treated as voluntary unemployment. 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:

At section 4, the bill amends current § 9-14-234(c) and creates an internal contradiction in that code section. The current statute at paragraph (b) prohibits a court from setting aside, altering or modifying any order that has accrued unpaid support prior to the date of a motion. This bill would add paragraph (c)(2)(b) permitting modification of an order that has accrued unpaid support.

Similarly, at section 5, paragraph (e)(1) provides that an abatement or modification of a judgment or child support order will be effective on the first day on which an obligor is incarcerated for 90 consecutive days.

Federal law at 42 U.S.C. § 666(a)(9) requires that states have provisions that a payment under a child support order is a judgment by operation of law, entitled to full faith and credit in each State, and not subject to retroactive modification. Further, by federal regulation at 45 C.F.R. § 303.106, states must have provisions prohibiting modification of a support obligation prior to the date of filing and notice of a petition. Such state laws are required as a provision of a state plan for child support. 42 U.S.C. § 654(20). Additionally, to be eligible for the TANF block grant, the State must operate a child support program under an approved State plan. 42 U.S.C. § 602(a)(2).

Enactment of section 4 and section 5, paragraph (e)(1) of this bill would place OCSE out of compliance with these requirements under federal law and regulation and jeopardize federal funding of the Arkansas 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.

At section 5, the bill would add a new code section titled "Suspension of child support order". At paragraph (b)(1) the bill provides that a child support obligor may be entitled to abatement and modification of a child support order and judgment for child support for periods except for reasons stated in the bill. Specifically excluded is incarceration for the offense of domestic battering and assault under § 5-26-301. By specifying this offense, it appears that obligors incarcerated for other offenses

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against a custodial parent or supported child would be entitled abatement or modification of their support obligation.

At paragraph (b)(2) the bill requires that effective July 1, 2019 all judgments and child support orders state that the amount due under a money judgment or a child support order may be abated and the duty to pay modified during any period of incarceration. Similarly, at paragraph (c) a court entering an order or judgment for support is required to provide the obligor with written notice regarding eligibility to seek abatement or modification of support upon incarceration and the procedure for doing so. It's not clear if paragraph (b)(2) is intended to abate an order for support automatically upon the incarceration of a child support obligor or is merely to provide information similar to that required at paragraph (c).

At paragraph (d)(2) the bill would require that an obligor provide notice of a petition to the obligee and the "office." The identity of the office is not defined but is assumed to refer to the Office of Child Support Enforcement. OCSE does not provide services in all cases involving orders for payment of child support.