Department of Finance and Administration

Legislative Impact Statement

Bill: HB1850 **Amendment Number: H1**
Bill Subtitle: CONCERNING CHILD SUPPORT OWED BY A NONCUSTODIAL PARENT WHO IS INCARCERATED.

Basic Change :

Sponsors: Rep. Fielding and Sen. Elliott

House Amendment No. 1 --- HB1850-H1 would provide that an abatement of support under a new section of the Arkansas Code, § 9-14-234, which would extend until 90 days after the obligor was released from incarceration.

Original Bill --- HB1850 would amend § 9-14-234 to provide that an order for child support that has accrued unpaid support may be modified for a prior period.

Additionally, HB1850 would create § 9-14-243 providing that, effective July 1, 2021, child support and judgments for support may be abated for periods the obligor is incarcerated for more than 90 consecutive days 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.

Abatement of support under this section would be effective as of the first date on which the obligor is incarcerated for a period of 90 consecutive days. A court entering a money judgment or child support order would be required to inform all support obligors of the opportunity to abate or modify support during any period the obligor is incarcerated for more than 90 consecutive days.

HB1850 would require the obligor to provide notice of a petition to the obligee and to DFA/OCSE in accordance with Rule 5 of the Arkansas Rules of Civil Procedure. Further, HB1850 would provide 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. would be charged with developing forms necessary for the implementation of the new code section by July 1, 2021.

Revenue Impact :

Federal funding of the child support program of $38.5 million in the 2022-23 biennium and funding of the TANF block grant would be placed in jeopardy.

Taxpayer Impact :

Potential loss of services provided through the TANF block grant and child support enforcement program.

Resources Required :

None.

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Time Required :

Adequate time is provided for DFA/OCSE implementation.

Procedural Changes :

Minor changes to DFA/OCSE training material.

Other Comments :

None.

Legal Analysis :

Enactment of HB1850, would cause Arkansas to be out of compliance with federal law and jeopardize federal funding of the child support program and TANF block grant. The federal portion of the budget for DFA/OCSE is $38.5 million dollars in the 2022-23 biennium.

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. § 302.70(a)(9) and 303.106, states must have laws 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). 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). Disapproval of Arkansas' child support enforcement plan by the federal Office of Child Support Enforcement would thus result in the loss of funding of the program and the TANF block grant.

Specifically, HB1850 would amend § 9-14-234(c) to permit modification of an order for child support that has accrued unpaid support and create a contradiction in that code section that does not appear possible to harmonize. § 9-14-234(b) prohibits a court from setting aside, altering, or modifying any order that has accrued unpaid support prior to the date of filing and service of a motion. HB1850 would add paragraph (c)(2)(B) permitting modification of an order that has accrued unpaid support in contradiction of federal requirements.

HB1850 would provide that a child support obligor who was incarcerated, defined in the bill as involuntary confinement of more than 90 consecutive days, would be entitled to modification or abatement of that obligation. The 90-day time frame of incarceration contemplated as triggering a modification or abatement of support conflicts with current law at §§ 9-12-312, 9-14-106, and 9-14-107. Current law provides that incarceration may not be treated as voluntary unemployment for purposes of establishing or modifying a child support obligation. Incarceration is defined as a conviction resulting in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least 180 days excluding credit for time served before sentencing.
Further, at section 3, paragraph (e)(1), HB1850 would require that the abatement of support be effective as of the first day on which the obligor was incarcerated for a period of 90 consecutive days, resulting in a retroactive modification in most cases. As noted above, this provision conflicts with §

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9-14-234(b) and the requirements of federal law.

The entitlement to abatement of the support obligation provide by HB1850 would not be available to obligors with the means to pay support, incarcerated for a domestic battery and assault under § 5-26-301 et seq., or incarcerated for his or her failure to comply with a child support order. By specifying the offense of domestic battery and assault, it appears that the intent is that obligors incarcerated for other offenses against a custodial parent or supported child would be entitled abatement or modification of their support obligation.

At section 3, paragraph (c), HB1850 would require a court entering an order or judgment for child support to notify the obligor in writing if the obligor is incarcerated for more than 90 days that he or she may be eligible to seek abatement of the obligation. It is unclear if the notice is required at the time of entry of the support order or at the time of incarceration meeting the threshold.