

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1816

By: Representative Fielding

For An Act To Be Entitled

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

Subtitle

CONCERNING THE MODIFICATION OF CHILD
SUPPORT WHEN A NONCUSTODIAL PARENT IS
INCARCERATED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly that this act prevent a person from being placed under a continued monetary judgment for unpaid child support due to his or her lack of earning potential during and after his or her release from incarceration.

SECTION 2. Arkansas Code § 9-14-106, concerning the amount of support to be paid by a noncustodial parent, is amended to add an additional subsection to read as follows:

(c) The incarceration of a noncustodial parent shall not be treated as voluntary unemployment for the purpose of calculating an initial or modified amount of child support to be paid by the noncustodial parent who is incarcerated.

SECTION 3. Arkansas Code § 9-14-107, concerning a change in a payor's income that warrants modification, is amended to add an additional subsection



1 to read as follows:

2 (f) The incarceration of a noncustodial parent shall not be treated as
 3 voluntary unemployment for the purpose of calculating a modified amount of
 4 child support to be paid by the noncustodial parent who is incarcerated.

6 SECTION 4. Arkansas Code § 9-14-234(c)(2), concerning when a court may
 7 modify a decree, judgment, or order that has accrued unpaid support and apply
 8 an offset against future support to be paid, is amended to read as follows:

9 (2) However, the court may:

10 (A) ~~offset~~ Offset against future support to be paid those
 11 amounts accruing during time periods other than reasonable visitation in
 12 which the noncustodial parent had physical custody of the child with the
 13 knowledge and consent of the custodial parent; or

14 (B) Modify a decree, judgment, or order that has accrued
 15 unpaid support.

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

19 9-14-243. Suspension of child support order – Definitions.

20 (a) As used in this section:

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

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

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

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

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

34 (b)(1) Effective July 1, 2019, the amount of child support due under a
 35 money judgment or a child support order may be abated and an obligor's duty
 36 to pay child support under a money judgment or a child support order may be

1 modified for the period during which the obligor is incarcerated unless the
2 obligor:

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

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

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

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

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

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

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

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

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

35 (A) The obligor's salary or wages earned from present
36 employment;

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

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

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

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

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

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

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

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

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

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

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

30 (f) On or before July 1, 2019, the Arkansas Judicial Council, Inc.
31 shall develop a petition to abate the amount of child support due and modify
32 an obligor's duty to pay child support under a money judgment or child
33 support order, an affidavit of financial means, and any other form necessary
34 for the implementation of this section.