

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H4/5/21

A Bill

HOUSE BILL 1850

5 By: Representative Fielding
6 By: Senator Elliott
7

For An Act To Be Entitled

9 AN ACT CONCERNING CHILD SUPPORT OWED BY A
10 NONCUSTODIAL PARENT WHO IS INCARCERATED; AND FOR
11 OTHER PURPOSES.
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Subtitle

15 CONCERNING CHILD SUPPORT OWED BY A
16 NONCUSTODIAL PARENT WHO IS INCARCERATED.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. DO NOT CODIFY. Legislative intent.

22 It is the intent of the General Assembly that this act prevent a person
23 from being placed under a continued monetary judgment for unpaid child
24 support due to his or her lack of earning potential during and after his or
25 her release from incarceration.
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27 SECTION 2. Arkansas Code § 9-14-234(c)(2), concerning when a court may
28 modify a decree, judgment, or order that has accrued unpaid support and apply
29 an offset against future support to be paid, is amended to read as follows:

30 (2) However, the court may:

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

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



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2 SECTION 3. Arkansas Code Title 9, Chapter 14, Subchapter 2, is amended
3 to add an additional section to read as follows:

4 9-14-243. Suspension of child support order – Definitions.

5 (a) As used in this section:

6 (1) "Abate" means to modify a money judgment or child support
7 order for the period of time that an obligor is incarcerated so that the
8 amount of child support due under the money judgment or the child support
9 order is reduced;

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

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

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

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

19 (b) Effective July 1, 2021, the amount of child support due under a
20 money judgment or a child support order may be abated and an obligor's duty
21 to pay child support under a money judgment or a child support order may be
22 modified for the period of time that the obligor is incarcerated unless the
23 obligor:

24 (1) Has the means to pay child support while incarcerated as
25 determined by the court's review of an affidavit of financial means completed
26 by the obligor;

27 (2) Is incarcerated for an offense under § 5-26-301 et seq.; or

28 (3) Is incarcerated as a result of his or her failure to comply
29 with a child support order.

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

33 (1) May be eligible to have the amount of child support due
34 under a money judgment or a child support order abated and his or her duty to
35 pay child support under a money judgment or child support order may be
36 modified for the period of time that he or she was incarcerated;

1 (2) May file a petition to abate the amount of child support due
2 with the court that has jurisdiction over the money judgment or child support
3 order; and

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

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

10 (A) The obligor's salary or wages earned from his or her
11 present employment;

12 (B) The obligor's date of last employment and the amount
13 of salary or wages earned from his or her prior place of employment;

14 (C) The obligor's income from:

15 (i) Any business, profession, or self-employment;

16 (ii) Rent payments, interest, or dividends;

17 (iii) Pensions, annuities, or life insurance

18 payments;

19 (iv) Bereavements of inheritance and gifts;

20 (v) Cash on hand located in a savings or checking

21 account;

22 (vi) Casino winnings;

23 (D) The obligor's ownership of any real estate, stocks,
24 bonds, notes, automobiles, or any other valuable property; and

25 (E) Any other factors that are relevant to a determination
26 of whether the obligor has the means to pay child support while incarcerated.

27 (2) The obligor shall notify the obligee and the Office of Child
28 Support Enforcement of the Revenue Division of the Department of Finance and
29 Administration in writing of his or her petition to abate the amount of child
30 support due in accordance with Rule 5 of the Arkansas Rules of Civil
31 Procedure.

32 (e)(1) An abatement of the amount of child support due under this
33 section is effective as of the first date on which the obligor is
34 incarcerated for a period of ninety (90) consecutive days.

35 (2) Upon the obligor's release from incarceration, the obligor
36 shall not be required to pay the amount of child support owed at the time he

1 or she was first incarcerated until ninety (90) days after the date on which
2 the obligor is released.

3 (3) If the amount of child support due is abated under this
4 section, a court shall not incarcerate or impose a fine on the obligor for
5 nonsupport under § 5-26-401 for at least one hundred eighty (180) days after
6 the date on which the obligor is released.

7 (f) On or before July 1, 2021, the Arkansas Judicial Council, Inc.
8 shall develop a petition to abate the amount of child support due, an
9 affidavit of financial means, and any other form necessary for the
10 implementation of this section.

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12 /s/Fielding
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