

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: H3/14/19
A Bill

HOUSE BILL 1612

By: Representative Maddox

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING CHILD SUPPORT AND
THE CENTRALIZED CLEARINGHOUSE; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING CHILD SUPPORT
AND THE CENTRALIZED CLEARINGHOUSE.

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

SECTION 1. Arkansas Code § 9-12-312(a)(3)-(5), concerning alimony, child support, bonds, and the method of payment in an action for divorce or alimony, are amended to read as follows:

(3)(A) In determining a reasonable amount of child support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart.

(B)(i) The incarceration of a parent shall not be treated as voluntary unemployment for the purpose of establishing or modifying an award of child support.

(ii) As used in subdivision (a)(3)(B)(i) of this section, "incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least one hundred eighty (180) days excluding credit for time served before sentencing.

~~(B)(C)~~ It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded.



~~(C)~~(D) Only upon a written finding or specific finding on the record that the application of the child support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

(4)(A)(i) The family support chart shall be reviewed and revised, if appropriate, at least once every four (4) years by a committee to be appointed by the Chief Justice of the Supreme Court to ensure that the support amounts are appropriate for child support awards.

(ii) The members of the committee shall include:

(a) One (1) or more members of the General Assembly;

(b) One (1) or more judges of the Court of Appeals;

(c) One (1) or more judges of a circuit court;

(d) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or his or her designee;

(e) An employee of an organization that provides legal services to low-income individuals; and

(f) One (1) or more attorneys who are licensed to practice law in the State of Arkansas.

(iii) The Supreme Court shall publish the following on a public website:

(a) The names of each member of the committee;

(b) The reports of the committee;

(c) The effective date of the family support chart; and

(d) The anticipated date on which the committee will next review the family support chart.

(B) The committee shall:

(i) also establish Establish the criteria for deviation from use of the chart amount; and

(ii) Consider:

(a) Economic data on the cost of raising children;

(b) Labor market data;

(c) How the amounts listed in the family support chart impact a parent who has a family income below two hundred percent (200%) of the federal poverty level;

(d) Factors that influence employment rates and payment compliance rates among noncustodial parents; and

(e) Case data and payment compliance rates based on whether there was a deviation from the family support chart, default order, imputed income, or low income adjustment.

(5) The Supreme Court shall:

(A) ~~approve~~ Approve the family support chart and criteria upon after revision by the committee for use in this state; and

(B) ~~shall publish it~~ Publish the family support chart and criteria through per curiam order of the court on a public website.

SECTION 2. Arkansas Code § 9-12-312(d)(2), concerning alimony, child support, bonds, and the method of payment in an action for divorce or alimony, is amended to read as follows:

(2) However, in all cases brought under Title IV-D of the Social Security Act or in which the income of the noncustodial parent is subject to withholding, the court shall order that all payments be made through the Arkansas child support clearinghouse in accordance with § 9-14-801 et seq.

SECTION 3. Arkansas Code § 9-14-106(a)(1), concerning the amount of support to be paid by a noncustodial parent, is amended to add an additional subdivision to read as follows:

(D)(i) The incarceration of a parent shall not be treated as voluntary unemployment for purposes of determining a reasonable amount of support either initially or upon review.

(ii) As used in subdivision (a)(1)(F)(i) of this section, "incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least one hundred eighty (180) days excluding credit for time served before sentencing.

SECTION 4. Arkansas Code § 9-14-107(a), concerning a change in payor income that warrants a modification of child support, is amended to add an

additional subdivision to read as follows:

(3)(A) The incarceration of a parent shall not be treated as voluntary unemployment for purposes of determining a reasonable amount of support either initially or upon review.

(B) As used in subdivision (a)(3)(A) of this section, "incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least one hundred eighty (180) days excluding credit for time served before sentencing.

SECTION 5. Arkansas Code § 9-14-107(c)(2), concerning a change in payor income that warrants a modification of child support, is amended to read as follows:

(2) An inconsistency between the existing child support award and the amount of child support that results from application of the family support chart shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions unless:

(A) The inconsistency does not meet a reasonable quantitative standard established by the State of Arkansas in accordance with subsection (a) of this section; ~~or~~

(B) The inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change of circumstances that resulted in the rebuttal of the guidelines amount; or

(C) The inconsistency is due solely to a revision of the family support chart.

SECTION 6. Arkansas Code § 9-14-232(a), concerning healthcare coverage, is amended to read as follows:

(a) In all cases in which the support and care of any children are involved, the court may:

(1) ~~order~~ Order either parent to secure and maintain healthcare coverage for the benefit of the children when healthcare coverage is available or becomes available to the parent at a reasonable cost; and

(2) May allocate the cost of coverage between the parents.

SECTION 7. Arkansas Code § 9-14-234(a), concerning arrearages, finality of judgment, and definitions, is amended to read as follow:

(a) As used in this section, “physical custodian” means a natural or adoptive parent, a guardian, or a person or agency who has or is anticipated to have custody of a child or children for more than eight (8) consecutive weeks, other than court-ordered visitation, during which there is an obligation to pay support for the child or children.

SECTION 8. Arkansas Code § 9-14-234(d)-(h), concerning arrearages, finality of judgment, and definitions, are amended to read as follow:

(d)(1) In cases brought pursuant to Title IV-D of the Social Security Act, a change in the physical custodian of a child or children, other than a party to the child support order, shall require written notice to the clerk of the court to redirect the child support to the present physical custodian when that physical custodian has ~~had~~ or is anticipated to have custody of the child or children for more than eight (8) consecutive weeks, other than court-ordered visitation, during which there is an obligation to pay child support.

(2) Any custodial parent who leaves a child in the physical custody of a third party for more than eight (8) consecutive weeks shall be presumed to have notice of the redirection of child support payments.

(e)(1) ~~The physical custodian shall be responsible for giving notice~~ Notice to the clerk of the court shall:

(A) Be in writing; and

(B) Contain the following:

(i) The style of the case and the court docket number;

(ii) The names and addresses of each parent, guardian, or other caretaker;

(iii) The name of each child for whom child support is owed;

(iv) The name and address of the physical custodian along with a statement from the custodial parent or physical custodian that states that child has resided or is anticipated to reside with the physical custodian for more than eight (8) consecutive weeks other than court-ordered

visitation;

(v) A statement that a parent, guardian, or other caretaker is required to file written objections within ten (10) days of the date on which he or she receives notice; and

(vi) An affidavit attesting that a copy of the notice required under subdivision (d)(1) of this section has been provided by personal service or by certified mail, restricted delivery, return receipt requested to each parent, guardian, or other caretaker, and to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

~~(2)(A) Such notice shall be in writing and shall contain the following:~~

~~(i) The style of the case and the court docket number;~~
~~(ii) The names and addresses of any parents, guardians, or other caretakers;~~

~~(iii) The names of the child or children for whom child support is owed;~~

~~(iv) The name and address of the present physical custodian, along with a statement from the physical custodian that the child or children have resided with the physical custodian for more than eight (8) consecutive weeks other than court-ordered visitation;~~

~~(v) A statement that any parent, guardian, or other caretaker shall have ten (10) days after receipt of notice to file written objections; and~~

~~(vi) An affidavit from the physical custodian that the physical custodian has provided a copy of the notice required under subdivision (d)(1) of this section by personal service or by certified mail, restricted delivery, return receipt requested, to any parent, guardian, or other caretaker, and to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration Notification is sufficient under this section if the notice is mailed to each parent, guardian, or other caretaker at:~~

~~(A) The last known address provided to the court by the parent, guardian, or other caretaker; or~~

~~(B) An address that is verified by the physical custodian or custodial parent.~~

~~(B) Notification shall be sufficient under this section if mailed to the parent, guardian, or other caretaker at either the last known address provided to a court by the parent, guardian, or other caretaker, or to an address verified by the physical custodian.~~

(f) If no objection to the redirection of child support is filed with the clerk of the court within ten (10) days, the clerk or the Office of Child Support Enforcement clearinghouse shall redirect current child support payments to the physical custodian and so note the redirection on the payment records of the case.

(g) If an objection to redirection of child support is filed with the clerk of the court, the custodial parent, physical custodian, or the office Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may petition the court for an order to redirect child support payments to the physical custodian.

(h) All current child support payments shall:

(1) ~~follow~~ Follow the child or children; and

(2) ~~shall be~~ Be payable to:

(A) the The physical custodian; or

(B) A judicially-appointed conservator or guardian who has a legal and fiduciary duty to the custodial parent or child as support for the child or children.

SECTION 9. Arkansas Code § 9-14-801 is amended to read as follows:

9-14-801. Definitions and capabilities.

As used in this subchapter:

~~(1) "ACTS" means the Arkansas Child Support Tracking System, a statewide computerized child support payment and data tracking and scheduling system;~~

~~(2)(A)(1)(A)~~ (A) "Clearinghouse" means an automated child support payment processing system operating under the auspices of the office, capable of providing electronic funds transfer and electronic data interchange transactions for all Title IV-D child support cases on a statewide basis.

(B) The clearinghouse shall be capable of pro rata distribution of child support payments on multiple cases involving the same noncustodial parent, and different custodial parents, through income withholding.

(C) The clearinghouse shall be capable of processing automated assignments of child support payments in accordance with state and federal laws and regulations.

(D) The clearinghouse shall be capable of performing electronic funds transfer and electronic data interchange transactions;

~~(3)~~(2) "EFT/EDI" means electronic funds transfer and electronic data interchange;

~~(4)~~ "Office" means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration; and

~~(5)~~(3) "Title IV-D" means Title IV-D of the Social Security Act, as amended.

SECTION 10. Arkansas Code § 9-14-803(b)-(d), concerning data, are amended to read as follows:

(b)(1) All child support payments owed in the below-listed cases shall be paid through the clearinghouse.

(2) The clerk of the court shall provide the payment records of the below-listed cases to the office within five (5) working days following receipt of written notice by the office of one (1) of the listed contingencies:

(A) When there is a current assignment of rights pursuant to § 9-14-109, § 20-77-109, or § 20-77-307 to the office by the custodial parent, and in cases where the custodial parents execute an application for Title IV-D services;

~~(B) In monitoring cases pursuant to 45 C.F.R. § 302.57, and in cases in which a party to the case requests that payments be made through the clearinghouse;~~

~~(C)~~(B) In cases in which there are arrearages owed to the custodial parent and arrearages owed to the state pursuant to an assignment as set out in § 9-14-109, § 20-77-109, or § 20-77-307, and the clerk of the court is unable to split the child support payment between the custodial parent and the state; and

~~(D)~~(C) In all Title IV-D cases, or in multiple cases involving the Title IV-D office, in which income withholding is ordered and the obligated parent has more than one (1) child support case and the clerk of the court is unable to split the child support payment between the

obligated parent's cases on a pro rata basis as required by state and federal laws and regulations.

~~(e) Upon receipt of an assignment or notice from the office that a case is transferred to the clearinghouse, the clerk of the court shall enter all case data into the Arkansas Child Support Tracking System, the system to be provided to the clerk of the court by the office.~~

~~(d)~~(c) Any child support payment records provided by the clerk of the court pursuant to this section to the office shall be attested to and certified by the clerk of the court in writing as the true and accurate payment record of the noncustodial parent.

SECTION 11. Arkansas Code § 9-14-804(a), concerning payments paid through the clearing house, is amended to read as follows:

(a)(1)~~(A)~~ All child support payments made on cases brought pursuant to Title IV-D shall be paid through the clearinghouse to be operated under the auspices of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

~~(B)~~(2) Alimony payments may be paid through the clearinghouse if an order to pay child support is included in the order of alimony.

~~(C)~~(3) Support payments under § 9-14-803(b) and any other payments required by court order to be made through the registry of the court or through the clerk of the court shall be made to the clearinghouse.

~~(2) The Office of Child Support Enforcement shall seek the assistance of the Administrative Office of the Courts for the purposes of securing standing orders when required to facilitate payment transition.~~

SECTION 12. Arkansas Code § 9-14-806 is amended to read as follows:

9-14-806. Electronic funds transfer and electronic data information election — ~~Arkansas Child Support Tracking System.~~

(a) Employers may remit income withholding for child support by electronic funds transfer and electronic data interchange transaction.

~~(b) Unless otherwise notified by the Title IV-D agency, all child support payments paid by income withholding and remitted via electronic funds transfer and electronic data interchange transactions shall be sent to the circuit clerk.~~

~~(e)~~ The Title IV-D agency shall notify the employer when a case is

assigned or transferred to the clearinghouse, at which time the employer shall begin or continue income withholding for child support and may remit such payments to the clearinghouse by electronic funds transfer and electronic data interchange transactions.

~~(d)(1) The circuit clerk is authorized to use the Arkansas Child Support Data Tracking System for all private cases, including alimony, in which there is an order to pay child support, without charge until January 1, 1996.~~

~~(2) After January 1, 1996, if the circuit clerk elects to use the system, the clerk may contract with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration to pay for the costs of the use and operational expenses of the system.~~

SECTION 13. Arkansas Code § 9-14-807(b), concerning official payment records, is amended to read as follows:

(b)~~(1)~~ The child support payment record issued by the office and certified by an affidavit duly subscribed and sworn to before a notary public may be introduced in evidence in child support actions without calling an agent or employee of the office as a witness.

~~(2) A copy of a child support payment record will be accessible in the clerk's office through the Arkansas Child Support Data Tracking System, and the clerk may make the record available to officers of the court, judges, attorneys, and abstractors.~~

SECTION 14. DO NOT CODIFY. Effective date.

This act is effective on and after January 1, 2020.

/s/Maddox