

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

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



to read as follows:

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

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

(2) However, the court may:

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

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

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

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

(a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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