

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H4/5/21 H4/8/21
A Bill

HOUSE BILL 1850

By: Representative Fielding
By: Senator Elliott

For An Act To Be Entitled

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

Subtitle

CONCERNING CHILD SUPPORT OWED BY A
NONCUSTODIAL PARENT WHO 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 § 9-14-234(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 3. 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 to modify a money judgment or child support order for the period of time that an obligor is incarcerated so that 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 owed or is alleged to be owed; and

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

(b) 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 of time that the obligor is incarcerated unless the obligor:

(1) 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; or

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

(c)(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 his or her present employment;

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

(C) The obligor's income from:

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

(ii) Rent payments, interest, or dividends;

(iii) Pensions, annuities, or life insurance payments;

(iv) Bereavements of inheritance and gifts;

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

(vi) Casino winnings;

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

(E) 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 of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration in writing of his or her petition to abate the amount of child support due in accordance with Rule 5 of the Arkansas Rules of Civil Procedure.

(e)(1) Upon the obligor's release from incarceration, the obligor shall not be required to pay the amount of child support owed at the time he or she was first incarcerated until ninety (90) days after the date on which the obligor is released.

(2) If the amount of child support due is abated 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.

/s/Fielding