



# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB2037**

**Amendment Number: H1**

**Bill Subtitle: TO AMEND THE LAW CONCERNING CHILD SUPPORT.**

---

requirement. Under the federal rule, Arkansas would be expected to have provisions in place to prohibit incarceration from being treated as voluntary unemployment by late 2020. States are required to implement this requirement as part of an approved state plan for the child support enforcement program. Failure to implement this requirement by the effective date could eliminate federal funding for the child support program and the TANF block grant.

### **Legal Analysis:**

Arkansas case law currently holds that a non-custodial parent's lack of income due to incarceration will not relieve him or her of the obligation to provide child support in an initial order or provide the basis for the modification of an existing child support obligation. See *Reid v. Reid*, 57 Ark. App 289, 944 S.W.2d 559 (1997); *Allen v. Allen*, 82 Ark. App. 42, 110 S.W.3d 772 (2003).

If enacted, HB2004 at paragraph (b)(1) would provide that a child support obligor's duty to pay shall be suspended during any period of incarceration. The suspension would occur by operation of law without the need for notice or petition.

Incarceration is defined to include, but not be limited to, any period of involuntary confinement in a state prison, county jail, juvenile facility, or mental health care facility. While federal facilities are not included in the definition, it is assumed that confinement to such a facility would trigger the suspension of an obligor's duty to provide child support. It is unclear whether periods of voluntary confinement in a mental health care facility or similar in-patient treatment setting are intended to meet the definition of incarceration.

The bill does not set a minimum period of confinement before the suspension of a child support obligation becomes effective. As written, confinement of a couple of days would suspend a support obligation for that time period. The lack of a minimum confinement period before suspending the support obligation increases the difficulty of monitoring the amount due under an order for child support.

The bill provides that the obligation is not suspended if the obligor has the means to pay support while incarcerated. There is no standard for determining whether the obligor has the means to pay or what happens if the obligor has assets at the time of commitment but which are exhausted during the course of the incarceration. This creates uncertainty for all parties as to whether the duty to support continues during periods of incarceration for a given obligor.

At paragraph (b)(2), the bill requires that orders in cases in which OCSE is providing services state that the obligor's duty to pay support will be suspended during any period of incarceration unless the obligor has the means to pay. OCSE does not provide services in all cases involving orders for payment of child support. There is no similar requirement for inclusion of notice in orders directing payment of child support in those cases. It is therefore unclear to what extent the suspension of support during periods of incarceration is intended to apply to those orders in cases in which OCSE is not providing services.

At paragraph (b)(3), the court is required to give notice to the obligee and the office when an obligor's duty to pay is suspended due to incarceration. The bill does not define "office" although it is assumed that the term is intended to refer to OCSE. Similarly, the bill does not define "court." This requirement places a significant burden on the courts to identify individuals who owe child support obligations, the

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB2037**

**Amendment Number: H1**

**Bill Subtitle: TO AMEND THE LAW CONCERNING CHILD SUPPORT.**

---

name and mailing address of persons to whom support may be owed, and to deliver the appropriate notice. In cases in which the obligor is incarcerated because of a federal offense or in another state, the required notice will be lacking.

Paragraph (c)(2) provides that an obligor may petition the court for an adjustment of arrears. Upon proof of the period of incarceration and lack of means to pay, the arrears are to be adjusted by court order unless the incarceration was for the offense of domestic battery under § 5-26-301 et seq. or as a result of the obligor's failure to comply with a court order to pay support. However as noted above, it appears that the suspension of the duty to support occurs upon incarceration. The intent of this paragraph allowing but not requiring the filing of a petition for an adjustment of support is unclear.