

SUBJECT: Administration of child support enforcement program

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Goodman, Pickett, Isett, Morrison, E. Reyna, Truitt

0 nays

3 absent — P. King, Naishtat, A. Reyna

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 26 — 30-0

WITNESSES: For — None

Against — None

On — Mary Rhoads, Texas Association of Domestic Relations Offices and Wichita County Family Court Services; Lynda Benson, ACES

BACKGROUND: The federal government requires each state to designate a single agency to administer child support cases in which the recipient also receives certain federal benefits, including Temporary Assistance to Needy Families, and for others who apply for child support services. This agency often is called the IV-D agency, in reference to Title IV, Part D of the federal Social Security Act. The Office of the Attorney General (OAG) is Texas' IV-D agency.

In 1997, the 75th Legislature enacted HB 3281 by Goodman, Van de Putte, and Naishtat, placing the attorney general's child support operations under sunset review but not establishing an abolishment date for the operations. The bill required the Sunset Advisory Commission to select an independent firm to analyze the structure, efficiency, and effectiveness of child support operations. The firm was required to recommend whether child-support enforcement programs should remain part of the OAG, be privatized, or be transferred to an independent state agency established for that purpose. HB 3281 also required the state auditor, the Texas Legislative Council, and the Department of Information Resources to assist in the review. The bill required the findings to be reported to the 76th Legislature.

In 1996, Congress enacted a sweeping welfare-reform law, the Personal Responsibility and Work Opportunity Reconciliation Act, which, among other provisions, requires states to implement a centralized registry to record and track child support cases and to implement an automated, centralized system to collect and disburse child support payments for which wages are withheld and payment is made by an employer.

Texas' statewide registry began operating in early 1998. The statewide disbursement unit must be implemented by October 1, 1999, to collect and disburse child support payments from income withholding ordered after January 1, 1994.

DIGEST:

CSSB 368 would leave the state's child-support enforcement program with the OAG and would require a limited review of the program again in two years. The attorney general would have to redesign and improve the child-support enforcement program, and the program would be subject to review under the Sunset Act as if it were a state agency.

The Sunset Advisory Commission could review only the attorney general's implementation of child-support enforcement functions and the redesign and improvement of this program. The commission would have to analyze the degree to which the attorney general had improved the program, resolved computer system implementation issues, complied with federal welfare-reform mandates, improved customer service, and increased customer satisfaction. The commission would have to report its findings to the 77th Legislature.

The attorney general's child-support enforcement division would have to investigate the use of alternative sources of revenue to operate the child support program. The division would have to perform a cost-benefit analysis of charging fees, including a paternity establishment fee, a service fee, and a fee charged for an insufficient funds check. These findings would have to be reported by October 15, 2000, to the commission and the appropriate legislative committees.

CSSB 368 would take effect September 1, 1999.

Establishing paternity. CSSB 368 would replace existing procedures for voluntary paternity establishments with new provisions that would allow a

man who voluntarily signed a paternity acknowledgment to be considered the legal father for child support purposes without a court order establishing paternity. A mother and a man claiming to be the father could establish the man's paternity by jointly executing an acknowledgment of paternity and filing the acknowledgment with the bureau of vital statistics of the Texas Department of Health. The acknowledgment would have to be in writing, signed by the mother and father, and state whether there was also a presumed father, such as the woman's husband. If the mother declared there was a presumed father other than the man claiming to be the father, the acknowledgment would have to be accompanied by a denial of paternity by the presumed father.

A signed acknowledgment of paternity would be considered a legal finding of the paternity of a child that would be equal to a judicial determination. CSSB 368 would establish procedures and deadlines to file a suit to rescind an acknowledgment of paternity or a denial of paternity. If all parties did not agree to the rescission, courts would have to hold a hearing to determine parentage.

If the time period allowed for rescinding an acknowledgment was over, an acknowledgment of paternity or a denial of paternity also could be contested by filing a suit to affect the parent-child relationship. These suits would have to be on the basis of fraud, duress, or material mistake of fact and would have to be filed within four years of the date the acknowledgment of paternity or denial of paternity was filed with the bureau of vital statistics. A suit to contest an unrescinded acknowledgment of paternity could not be filed after a court had rendered an order, including one for child support, based on the acknowledgment.

The bureau of vital statistics would have to develop forms for the acknowledgment of paternity and the denial of paternity.

The IV-D agency could serve a notice of a proposed child-support review order on persons who had signed the acknowledgment of paternity of a child or had executed a statement of paternity. If the person identified as responsible for paying the child support did not contest the notice in writing or request a negotiation conference within 15 days after delivery of the notice, the IV-D agency could file child support and medical support orders.

If a child's mother and father were not married, the person who filled out the birth certificate would have to give the parents an opportunity to sign an acknowledgment of paternity and would have to inform them about establishing paternity and the availability of child support services. The state registrar would have to record the information in the acknowledgment of paternity and send the information to the IV-D agency.

CSSB 368 would prohibit persons from demanding jury trials in suits to determine parentage.

Recommendations of child support masters. Child support masters, who are attorneys appointed by the presiding judge of a judicial region to hear enforcement cases, could render and sign any order, such as a discovery order or other procedural order, that was not a final order on the merits of the case. Orders by child support masters after a trial on the merits of a case, other than recommendations of enforcement by contempt and recommendations of immediate incarceration, would become orders of the court without ratification of the referring court if an appeal had not been filed or if an appeal had been waived.

Masters' orders recommending enforcement by contempt or immediate incarceration would have to have court approval. Courts would have to act on masters' reports that included findings of contempt within 10 days after the report was filed. CSSB 368 would establish procedures for appealing masters' recommendations, including a requirement that persons appealing a master's recommendation of incarceration after a contempt finding be brought before the referring court by the first working day after the appeal was filed.

CSSB 368 would establish a group to oversee and analyze the work of the IV-D masters. By January 1, 2000, the Office of Court Administration and the presiding judges of the administrative judicial regions would have to report to the Legislature a plan to improve the efficiency of the IV-D masters and the masters' participation in the child-support enforcement program. The plan would have to include performance standards and annual performance evaluations for the masters and their staffs.

CSSB 368 would prohibit masters from practicing private law.

Oversight committees. CSSB 368 would eliminate an advisory committee appointed by the Texas Supreme Court that helps the Legislature review certain Family Code guidelines about child possession and child support. Instead, during each legislative session, the standing committees of the House and Senate with jurisdiction over family law issues would have to review and revise certain guidelines for possession of and access to a child and for child support. In December of each odd-numbered year, the attorney general would have to submit a report to the legislative standing committees on economic data obtained from the U.S. Department of Agriculture on the cost of raising children, an analysis of the application of the child support guidelines, and a summary of federal legislation enacted since the last review.

In addition, the lieutenant governor, the House speaker, and the attorney general each could appoint five members to a committee to review and make recommendations on these guidelines. The lieutenant governor and the speaker each would have to appoint one member who had been appointed as a sole or joint managing conservator of a child and one member who had been appointed as a possessory conservator of a child. The lieutenant governor would designate the presiding officer and the speaker would designate the assistant presiding officer.

By October 15, 2000, the attorney general's child-support enforcement division would have to report to the legislative committees with standing jurisdiction over child support issues and to the Sunset Advisory Commission about significant improvements in its performance and in the child-support enforcement program.

The IV-D agency's biennial report to the Legislature would have to include information on the use and effectiveness of all enforcement tools and on the progress and impact of the agency's efforts to use private contractors to perform the IV-D program's functions.

Work groups with state agencies, counties. CSSB 368 would require the IV-D agency to convene a standing work group with other state agencies involved in the child support program to develop and maintain an interagency partnership strategy. The group would include the Department of Protective and Regulatory Services, the Department of Human Services, the Department of Health, the Texas Workforce Commission, and the Comptroller's Office,

and it could include representation from the Health and Human Services Commission. The strategy would have to be developed by January 1, 2000.

The director of the IV-D agency also would have to establish a county advisory work group to help the agency develop and change child support programs that affect counties. The group would have to include a county judge, a county commissioner, a district clerk, a domestic relations officer, a Title IV-D master, and a district court judge. The proposed changes would have to be developed by January 1, 2000.

The IV-D agency would have to create an information resources steering committee to oversee the development of information resource projects for the agency, among other functions. The committee would have to include a senior management executive from each of the agency's significant IV-D functions and could include representation from the counties and vendors contracting with the agency.

State case registry and state disbursement unit. CSSB 368 no longer would require the state case registry and the state disbursement unit to be a unified system. The bill would make the state case registry responsible only for maintaining records of child support orders in IV-D cases and other cases in which a child support order was established or modified on or after October 1, 1998.

The state disbursement unit would be responsible for:

- ! receiving, maintaining, and furnishing child-support payment records in IV-D and other cases required by law;
- ! forwarding child support payments;
- ! maintaining child-support payment records made through the state disbursement unit; and
- ! making available each day certain information to local registries, including lawsuit cause numbers, payors' names and social security numbers, payees' names and, if available, social security numbers, and payment information.

The IV-D agency would have to notify the courts that the state disbursement unit had been established. After receiving the notice, courts that ordered income

to be withheld for child support would have to order all income withheld to be paid to the disbursement unit.

To redirect payments from local registries to the disbursement unit, the IV-D agency would have to issue a notice of place of payment, informing the obligor, obligee, and employer that the withholding was to be paid to the disbursement unit. The court and the local registry would have to receive a copy of the notice.

CSSB 368 would set a deadline for the state disbursement unit to process payments it received. Within two working days of receiving a child support payment, the state disbursement unit would have to distribute the payment to the IV-D agency or the obligee. The IV-D agency would have to develop procedures for the return of payments made in error or delivered to the state disbursement unit with insufficient information.

Outreach. The Title IV-D agency would have to establish an ombudsman program to process and track complaints against the agency. There would have to be a chief ombudsman and an employee in each field office to act as an ombudsman for that office. The field office ombudsman would have to ensure that employees in the field responded to and attempted to resolve each complaint filed.

The agency would have to inform the public and recipients of IV-D services of the right to file complaints against the agency. The Title IV-D agency would have to maintain a toll-free number to answer questions from employers responsible for withholding child support.

Employer withholding. CSSB 368 would require employers who remitted payments to an incorrect office or person to remit the payment to the proper agency or person within two business days of receiving the returned payment. The bill would require employers transmitting child-support withholding payments by electronic means to do so no later than the second business day after a pay date and to include certain identifying information with each payment remitted.

CSSB 368 would revise the laws concerning writs of withholding that tell employers to withhold child support from an employee's paycheck. The writs could be issued only by the IV-D agency. The agency could initiate income

withholding without a judicial or administrative hearing. The writs could be issued either as a reissuance of an existing withholding order or, if the obligor was delinquent, to add or change a payment on the arrears. The administrative writs could be delivered to all parties electronically and could be signed electronically.

Other provisions. CSSB 368 would make many other changes, including:

- ! authorizing the IV-D agency to contract with private process servers to serve citations, subpoenas, orders, or other documents required or appropriate under law to be served and allowing process to be served under this authority without a written court authorization;
- ! expanding the definition of obligee to include persons authorized by statute, but not necessarily under a court order, to receive child support payments;
- ! authorizing the IV-D agency to order a nonparent or agency with physical possession of a child to receive the child's support payments if neither parent had physical possession or conservatorship of the child;
- ! allowing courts to modify child support orders to give a person with physical possession of a child the right to receive the child's support payments if a sole or joint managing conservator who designated the child's primary residence had voluntarily relinquished the care, control, and possession of the child for at least six months;
- ! requiring, rather than allowing, the entry of a child support capias (similar to an arrest warrant) into the Texas Crime Information Center and the National Crime Information Center;
- ! identifying what must be in a child-support enforcement order that included findings of criminal or civil contempt;
- ! requiring the IV-D agency to file a lien in all cases in which delinquent child support was at least \$5,000 and the obligor owned property or resided in Texas;
- ! including deposits in financial institutions — including mutual funds, money market accounts, and retirement plans — within the definition of property that can be attached by a child support lien;
- ! giving the IV-D agency a role in determining noncompliance of recipients of public assistance by requiring the agency to send determinations that recipients of public assistance were not cooperating with the agency to the Texas Department of Human Services (DHS) for the immediate imposition of sanctions;

- ! expanding the parent locator services to include child support establishment and the establishment of paternity and to authorize certain persons to receive information from the service;
- ! expanding what must be included in the memorandum of understanding between the IV-D agency and DHS concerning child support cases involving children that receive public assistance;
- ! authorizing the IV-D agency to enter into agreements with other states to create a consortium to match data to identify accounts of persons owing past-due child support;
- ! giving the IV-D agency access to federal and law enforcement criminal records and allowing them to obtain the records of applicants being considered for service as consultants, interns, or volunteers with the IV-D program;
- ! expanding the locations in which a petition to suspend a license of someone owing past-due child support could be filed to include the court of continuing jurisdiction or the tribunal in which a child support order had been registered under the Uniform Interstate Family Support Act; and
- ! allowing obligors and employers to notify the court or the IV-D agency if employment was terminated.

**SUPPORTERS
SAY:**

CSHB 368 would leave Texas' IV-D child-support enforcement operations with the OAG for a two-year probationary period to institute changes and give the new attorney general a chance to improve the program. Many of the bill's provisions were recommended in the sunset review and would improve the program. Also, the bill would institute many federal requirements being imposed on the states by the federal welfare-reform law. If Texas fails to enact these changes, the state's share of federal funds could be cut.

There is no evidence that transferring the operations to another state agency, without initiating other changes proposed in CSSB 368 and additional management changes, would improve the program. The new administration at the OAG has pledged to make many management changes and to use this bill's proposed changes to get the program up to speed. The OAG has the program infrastructure in place and is the only agency with the experience to keep the program going while making the necessary changes.

Leaving the program with the OAG, the state's legal services agency, would

give it necessary authority and legal experience to deal with parents who owe child support. The Legislature has adequate oversight of the child support program and the attorney general through the lawmaking process and the detailed appropriations process that examines performance measures.

CSSB 368 would help ensure that the Legislature has full information to make a decision about the attorney general's programs by requiring a report to legislative committees on improvements in the program and the effectiveness of available tools to enforce child support.

Establishing paternity. In accordance with federal requirements, CSSB 368 would establish a way for men to admit paternity voluntarily so that they could be considered the legal father for child support purposes. This would eliminate a time-consuming and expensive requirement that these cases go through the court system. The bill would protect persons' rights by establishing a process to rescind a voluntary acknowledgment and to allow suits to contest the acknowledgments under some circumstances.

CSSB 368 would meet a federal requirement by prohibiting persons from demanding jury trials in suits to determine parentage.

It would be costly and unnecessary to require blood tests in all cases in which the presumed husband was not the father. If someone admits to paternity and signs an acknowledgment form, there is no need to require any further tests, especially since the bill would allow voluntary paternity acknowledgments to be rescinded and challenged in court.

Work of child support masters. CSSB 368 would eliminate the time-consuming process of requiring courts to ratify all orders issued by child support masters, resulting in a more efficient use of the judicial process. Currently, a judge must approve all orders issued by masters, including procedural orders such as setting the date for a hearing or an order for paternity testing. CSSB 368 would streamline the child-support enforcement process by allowing masters' orders — except for contempt and incarceration — to become law unless appealed.

CSSB 368 would establish a clear appeals process for a master's order so that the judge would become involved in a case if necessary. Because of the seriousness of an order of incarceration, CSSB 368 would require that judges

approve these orders.

It would be an inappropriate time to move to a purely administrative procedure for handling IV-D child support enforcement. Backlogs and problems with the current system are not primarily the fault of the judicial process but of the OAG. Transferring judicial proceedings to agency hearings officers could exacerbate current problems and lead to new ones. The Legislature already has developed an administrative process, the Child Support Review Process, for cases that can be handled without judicial intervention. Setting up another administrative process would be time-consuming, costly, and unnecessary. It would be best to allow the current process to be improved by the new attorney general and the changes in CSSB 368.

CSSB 368 would ensure the accountability of the masters by requiring the presiding judges and the Office of Court Administration to develop a plan to oversee the masters, which would have to include performance standards and evaluations. These requirements need to be applied statewide because, while some judges may give adequate oversight to masters now, others may not.

It would be appropriate to prohibit masters from practicing private law to prevent conflicts of interest when they make decisions about enforcement cases. Currently, the Code of Judicial Conduct prohibits full-time masters from practicing private law, and all but one of the 40 masters in the state are full-time. CSSB 368 would not prohibit masters from having other law-related jobs, such as municipal magistrates.

State case registry and state disbursement unit. The state case registry and the state disbursement unit are being developed as separate programs, and CSHB 368 would recognize this by no longer referring to them as “unified” and by clearly establishing the responsibilities of each. The bill would give necessary authorization for the federally-required state disbursement unit to receive and disburse all IV-D and wage-withheld child support.

CSSB 368 would establish realistic deadlines for the disbursement unit to remit payments it received to ensure that the state does not hold money that should be passed on to children as soon as possible. The bill would not set an inflexible deadline for the unit to return checks with insufficient information, but instead would require one of the work groups to develop procedures for

returning payments sent in error or with insufficient information. This way, a procedure could be developed to ensure that the IV-D agency had enough flexibility to handle the various situations that it might encounter. A rigid statutory deadline to return the checks could result in even more delays in getting money to children if, for example, a check were returned to the employer when a little investigation by the IV-D agency could have determined where to send it.

Oversight committees. CSSB 368 would remove a current potential conflict of interest in having the Texas Supreme Court appoint a committee to review child possession and child support guidelines. The conflict could arise if the court had to rule on committee recommendations that were enacted into law. CSSB 368 would solve this problem by requiring standing legislative committees to review the guidelines and by allowing the lieutenant governor and the speaker to appoint another committee to review the guidelines. CSSB 368 would ensure adequate public input by requiring a *minimum* of four public members. The lieutenant governor and the speaker would be free to appoint other public members.

Work groups with state agencies, counties. CSSB 368 would help ensure that the attorney general and state agencies effectively coordinate efforts and work together by establishing a work group for child support enforcement. Also, CSSB 368 would ensure that the attorney general worked in partnership with the counties by establishing a county and judicial work group to help develop the state's programs.

Outreach. CSSB 368 would help ensure better relations among the OAG, its clients, and employers. The agency would have to establish an ombudsman program to improve the resolution of complaints, as well as a toll-free number for employers to call.

OPPONENTS
SAY:

The state's IV-D child-support enforcement activities should be moved to another state agency because of the poor performance and managerial problems of the attorney general's child-support enforcement division. In addition, putting the IV-D program under the oversight of an elected official — the attorney general — would limit legislative and local government input into the program, since statewide elected officials are more accountable to the electorate than to the Legislature. The OAG's child-support enforcement

efforts have resulted in low collection rates, decreasing paternity establishments, and diminishing rates for obtaining child support orders. Only a change to another agency would allow the types of changes that are needed to get the program back on track. The agency could be transferred to one of the state's health and human services agencies so that it could have closer ties to human services programs.

Establishing paternity. CSSB 368 should include mandatory blood testing when a man who is not married to a child's mother voluntarily acknowledges paternity. This could eliminate questions and lawsuits that might arise later if a question about the paternity arose.

Work of child support masters. Instead of changing the current judicial system of child support enforcement, it would be better to institute an administrative system for processing child-support enforcement cases. An administrative system for paternity establishments, child-support order establishments, and order modifications would speed up the process and would free court time and resources for other cases. An administrative system could be developed that would protect the rights of individuals adequately and would ensure due process.

It is unnecessary to institute a formal group to oversee and analyze the work of child support masters. Masters already are overseen adequately by the presiding judges of judicial administrative regions who appoint them.

Child support masters should not be prohibited from practicing private law. Although full-time masters already are under this prohibition, part-time masters should retain the flexibility to have a private practice, since they are employed by the courts only part-time. Masters who have part-time law practices could recuse themselves from any case that presented a conflict of interest.

Oversight committees. The new committee that could be set up under CSSB 368 to review guidelines on child possession and child support would not necessarily have adequate representation from child support obligors and obligees. CSSB 368 would require a minimum of only four public members, whereas the current committee has stronger public representation.

CSSB 368 should require that the attorney general consider other data in addition to information from the U.S. Department of Agriculture when reporting to legislative committees on the cost of raising children.

Work groups with state agencies, counties. The county advisory work group should include not only governmental officials but also representation from child support obligors and obligees to ensure that they have input from all parties involved in the system.

State case registry and state disbursement unit. CSSB 368 should include a deadline for the state disbursement unit to return checks that lack adequate information instead of allowing a work group to establish these procedures. These checks should be returned to employers within a couple of days if the IV-D agency cannot straighten out the problem, and the employer should bear the burden of gathering the proper information.

Other provisions. In addition to authority to use private process servers, CSSB 368 should give the IV-D agency authority to use its own employees to serve process.

NOTES:

The committee substitute made many changes to the Senate-passed bill, including adding provisions that would:

- ! prohibit the court masters from practicing private law;
- ! require liens to enforce child support in some situations;
- ! alter the committee that would make recommendations on child possession and support guidelines;
- ! authorize the IV-D agency to enter into agreements with other states to match data for overdue child support; and
- ! eliminate provisions that would have regulated private firms that collect child support.