

SUBJECT: Suspending a child-support order while obligor is in jail or prison

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Dutton, Goodman, Castro, Hodge, J. Moreno, Morrison, Reyna
0 nays
1 present not voting — Baxter
1 absent — Dunnam

WITNESSES: None

BACKGROUND: Family Code, sec. 156.401 allows a court to modify a child-support order if the circumstances of the child or a person affected by the order have changed materially and substantially since the order was rendered. The release of a child-support obligor from incarceration is considered a material and substantial change if the child support was abated, reduced, or suspended during the obligor's incarceration.

DIGEST: CSHB 344 would make the sentencing of a child-support obligor to a local, state, or federal jail or prison for at least 90 days a material and substantial change in circumstances that would allow a court to modify a child-support order. If an obligor who met these criteria requested modification of a child-support order, the courts would have to order that the obligor's child-support obligations be suspended while the obligor was incarcerated, unless the court found that the obligor had resources, other than earnings from personal services, to pay the child support.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: CSHB 344 would allow people who had been sentenced to prison or jail to have their child-support payments modified so that when they were released, they would not face an insurmountable debt that never would be paid. Under current law, release from incarceration is considered a material and substantial change that warrants alteration of a child-support order, but only if

the payments were altered *while* the obligor was incarcerated. In many cases, this does not occur because incarcerated people are focused on serving their terms and not on the need to modify their child-support payments, and many are unaware of the option. Modifying the payments usually involves hiring a lawyer, which is difficult and expensive for someone who has been newly incarcerated and usually has limited financial means.

As a result, when obligors are released from prison or jail, they may be saddled with a huge debt while trying to find a job and straighten out their lives. In many of these cases, the child-support arrearages are never paid, and the obligor is discouraged from even trying. Huge, unpayable debts ultimately harm the child, who stops receiving money.

CSHB 344 would address this problem by making the sentencing of someone a circumstance that warranted a suspension of payments while an obligor was incarcerated and by requiring a court to grant the suspension unless the obligor had some financial resources. This would prevent huge debts from accumulating while the obligor was incarcerated, and children would have hope of seeing their support payments resume.

The bill would give courts the necessary discretion to make appropriate decisions, as the suspension would not be automatic if the obligor had resources other than earnings from personal services. This would ensure that suspension would be granted only to those who truly could not afford their obligations and were living on their paychecks.

**OPPONENTS
SAY:**

CSHB 344 is unnecessary. Current law allowing a person to ask a court to modify a child-support order if the obligor's circumstances have changed materially and substantially is broad enough to include a person being sentenced to prison or jail. There is no need for the code to describe every conceivable circumstance.

The bill would infringe on judicial discretion by mandating that payments be suspended if an obligor asked for a suspension and did not have resources in addition to earnings for personal services. This could be inappropriate in some cases. For example, an obligor could have a well-paying job that would allow him to pay off any debt upon release. Courts should retain broad authority to make decisions as they see fit.

It would be inappropriate to mandate that payments be suspended under any circumstances. People should be held accountable for all child-support arrearages, even if they accumulated while the obligor was incarcerated. A child's needs continue even while an obligor is incarcerated, and people should have to pay any child-support payment debt, even if it means making small payments to reduce the debt. Current law allows courts to decide whether it is appropriate to hold someone accountable for debt, and this should not be changed.

NOTES:

The committee substitute made many changes in the original bill, including eliminating requirements that court clerks notify obligees of the suspension of child-support obligations and that the order expire on the date an obligor was released from confinement. As filed, HB 344 would not have applied to people confined for failing to pay child support, committing an act of family violence against the obligee, or violating a protective order.