

- SUBJECT:** Suspending child support order during an obligor's incarceration
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 5 ayes — Dutton, Goodman, Castro, Nixon, Strama
0 nays
4 absent — Y. Davis, Dunnam, J. Moreno, Thompson
- WITNESSES:** For — Roy Getting, Texas Father's Alliance; Robert L. Green, Lone Star Fatherhood Initiative
Against — None
On — Alicia Key, Office of the Attorney General, Child Support Division
- BACKGROUND:** Under Family Code, sec. 156.401(a), a court may modify an order for child support if the circumstances of the child or the obligor (the person obligated to pay support) have materially and substantially changed since the support was ordered. An obligor's release from incarceration is considered a material and substantial change if the obligor's child support obligation was abated, reduced, or suspended during the period of the obligor's incarceration.
- DIGEST:** CSHB 440 would provide that the rendering of a judgment or order for the confinement of an obligor in a local, state, or federal jail or prison for a period of at least 90 consecutive days would be a material and substantial change in circumstances to meet the requirements to modify a child support order under section 156.401(a).
- The bill would allow an obligor to plead his or her confinement as an affirmative defense to a motion for enforcement of child support. The motion would have to include that the arrearages and interest on the arrearages alleged in the motion for enforcement were attributable to child support payments due during the obligor's period of confinement.
- The bill would take effect September 1, 2005, and would apply only to a suit for modification of a child support order that was filed, a child support

payment that became due, or interest on child support arrearages that accrued, on or after that date.

**SUPPORTERS
SAY:**

CSHB 440 would provide obligors relief from enforcement of a child support order while incarcerated. About 930,000 child support cases are handled by the Office of the Attorney General, and of these, about 16,000 obligors are in the state prison system. When obligors are released from imprisonment, many are faced with huge debt from delinquent child support payments. Programs in place now help ease the burden, but because the debt is so daunting, many obligors never even attempt to pay it back, resulting in non-payment of much of the debt.

Under the bill, if a motion for enforcement were brought against an obligor, then once released from prison that person could make an affirmative defense against the arrearages and interest that accrued during incarceration. If an obligor made a successful affirmative defense to enforcement of child support obligations, the obligor would be granted forgiveness of the debt that accrued during imprisonment. This would help obligors remain current on child support obligations because they would be responsible only for what was owed before incarceration and what was owed after release.

The bill would provide for discretion on the part of the judge to determine whether the obligor had other resources to remain current on child support payments. The obligation would not be forgiven if the judge found that an obligor had the necessary resources to continue making payments while imprisoned.

Although the Code does provide for release from incarceration as a material and substantial change in circumstances that affects an order for child support, it should provide for an order of incarceration as a material and substantial change as well. Under the Code, the release of a child support obligor from incarceration would seem to be a material and substantial change in circumstances only if the obligor's child support obligation were abated, reduced, or suspended during incarceration. This bill specifically would provide for abatement or suspension during incarceration.

While the custodial parent does bear the financial burden when the obligor parent is incarcerated and not making support payments, current

expectations are not fair to the incarcerated obligor who may be too deep in debt when released from imprisonment ever to catch up.

**OPPONENTS
SAY:**

The bill could provide for total forgiveness of a parent's child support obligation while that parent was incarcerated if a successful affirmative defense were brought and the judge approved it. The parent, responsible for his or her own imprisonment, should be accountable for duties as a parent and continue to pay whatever child support that parent can afford. This bill would allow the children to be denied the support they are entitled to from their parents.

Responsibility should not completely be lifted from the incarcerated parent while the custodial parent bears the burden of having to care for the child, especially if the money never is repaid to the custodial parent.

**OTHER
OPPONENTS
SAY:**

Other states have made forgiveness or reduction of an obligor's duty to pay child support automatic when warranted. CSHB 440 should provide for automatic forgiveness or reduction of child support arrearages and interest when an obligor has no resources to pay the debt. This would prevent the obligor from having to bring an affirmative defense after being released from jail or prison. In so doing, it would save the obligor time and money that could go toward the future support of that person's children.

NOTES:

The committee substitute modified the original bill by allowing an obligor to plead, as an affirmative defense to a motion for enforcement of child support, that the alleged arrearages were attributable to the person's confinement in jail or prison. The original version would have required the court to suspend the obligor's support payment during the obligor's period of confinement unless the court found the obligor had resources other than earning for personal services to pay those obligations.