

BILL ANALYSIS

Senate Research Center

H.B. 440
By: Dutton (Whitmire)
Jurisprudence
5/16/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Many inmates, when released from prison, are faced with significant child support arrearages that accumulated while the prisoner was in custody. As a consequence, much of this debt is never paid and many persons are discouraged from trying.

Currently, child support may be modified if circumstances of the child or a person affected by the order have materially or substantially changed.

H.B. 440 provides an affirmative defense for a motion to enforce child support when an obligor has been confined in a local, state, or federal jail or prison for more than 90 consecutive days. This defense encourages child support payments and prevents the build-up of uncollectible arrearages.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 156.401, Family Code, by adding Subsections (e)-(g), as follows:

(e) Provides 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 is a material and substantial change in circumstances for purposes of Subsection (a)(1).

(f) Provides that the obligor is not entitled to a waiver in Subsection (a)(1) if the obligor is incarcerated for an act of family violence as defined by Section 71.004 (Family Violence) or for violation of a protective order as defined by Subtitle B (Protective Orders), Title 4, or citation of contempt.

(g) Requires all accruing interest for an obligor's child support obligation to be suspended during an obligor's incarceration in a local, state, or federal jail or prison.

SECTION 2. Amends Section 157.008(a), Family Code, as follows:

(a) Authorizes an obligor to plead as an affirmative defense in whole or in part to a motion for enforcement of child support that the obligor was confined in a local, state, or federal jail or prison for a period of at least 90 consecutive days and the arrearages and interest on the arrearages alleged in the motion for enforcement are attributable to child support payments that became due during that period of confinement.

SECTION 3. Makes application of Section 156.401(e), Family Code, as added by this Act, prospective.

SECTION 4. Makes application of Section 157.008(a), Family Code, as amended by this Act, prospective.

SECTION 5. Effective date: September 1, 2005.