

BILL ANALYSIS

C.S.H.B. 440
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, child support may be modified if circumstances of the child or a person affected by the order have materially and substantially changed. Presumably, the release of a child support obligor from incarceration is a material and substantial change in circumstances, but only if the obligor's child support obligation was abated, reduced, or suspended during the period of the obligor's incarceration. The problem occurs when persons are released and faced with huge child support arrearages. As a consequence, much of this debt is never paid and many persons are discouraged from trying.

C.S.H.B. 440 would provide 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 would encourage child support payments and prevent the build-up of uncollectible arrearages.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

- SECTION 1.** Amends Section 156.401, Family Code by adding Subsection (e) which provides for the rendering of a judgment or order for the confinement of an obligor in a local, state, or federal jail or prison for the period of at least 90 consecutive days is a material and substantial change in circumstances for purposes of Subsection (a)(1).
- SECTION 2.** Amends Section 157.008(a), of the Family Code to provide that an obligor may plead as an affirmative defense in whole or in part to a motion for enforcement of child support that the obligee voluntarily relinquished to the obligor actual possession and control of a child or 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.** Amends Section 156.401(e) of the Family Code as added by this Act, applies only to a suit for modification of a child support order that is filed on or after the effective date of this Act. A suit for modification that is filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose prospectively.
- SECTION 4.** Section 157.008(a), Family Code, as amended by this Act, applies only to a child support payment that becomes due or interest on child support arrearages that accrues on or after the effective date of this Act. A child support payment that became due or interest on child support arrearages that accrued before the effective date of this Act is governed by the law in effect on the date the payment became due or the interest accrued, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2005.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 440 modifies the original H.B. 440 by providing for 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.