

BILL ANALYSIS

C.S.H.B. 1174

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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The law is quite clear that attorney's fees incurred to enforce child support are themselves enforceable as child support – they may be enforced by contempt, collected by an order withholding, made a condition for purging of a finding of contempt or a condition of community supervision. However, despite the fact that §157.167(b) requires a court to assess attorney's fees and costs against a person found to have violated an order for possession and access, the law is not clear how such an award may be enforced. If attorney's fees and costs for enforcement of possession and access can only be enforced as a debt, this puts noncustodial (NCP) parents at a serious disadvantage.

Currently, the law provides much greater remedies for a person entitled to support than for a person entitled to possession and access. It is widely recognized that a noncustodial parent is more likely to comply with a support order when he or she has an actual relationship with the children being supported, but when the costs for enforcing possession and access may never be reimbursed even should the NCP prevail, many NCPs are simply unable to hire counsel to enforce their rights.

Fortunately, Domestic Relations Offices often enforce possession and access at a very low cost, but they then seek attorney's fees and court costs from the contemnor. Given that the most effective way of actually collecting fees is through an order withholding, or by making it a condition of community supervision/condition for purging, an order for fees and costs in a possession and access enforcement is often meaningless.

Furthermore, attorney's fees and court costs (including community supervision fees) are an extremely effective way of dissuading contemnors from future noncompliance, thereby reducing the likelihood of future litigation.

C.S.H.B.1174 authorizes an order for fees and costs in a proceeding to enforce possession and access to a child, which may include contempt.

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 157.167, of the Family Code by providing that for subsections(a) and (b), fees and costs ordered under these subsections be enforced by any means available for the enforcement of child support, including contempt, if the court finds that the enforcement of the order with which the respondent failed to comply was necessary to ensure the child's physical or emotional health or welfare, the fees and costs ordered under this subsection may be enforced by any means available for the enforcement of child support, including contempt, but not including income withholding.

Section 2. The changes in law made by this Act apply only to an enforcement order rendered on or after the effective date of this Act. An enforcement order rendered before that date is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

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Section 3. To the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

Section 4. This Act takes effect September 1, 2005.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.1174 modifies the original H.B.1174 by providing that the fees and costs ordered under subsection (b) may be enforced by any means available for the enforcement of child support, including contempt, but not including income withholding. Additionally deletes changes to Section 158.0051.