

By: Dutton

H.B. No. 440

A BILL TO BE ENTITLED

AN ACT

relating to the modification or enforcement of a child support order during the obligor's confinement in jail or prison.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 156.401, Family Code, is amended by adding Subsections (e)-(g) to read as follows:

(e) 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) 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 or for violation of a protective order as defined by Subtitle B, Title 4, or citation of contempt.

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

SECTION 2. Section 157.008(a), Family Code, is amended to read as follows:

(a) An obligor may plead as an affirmative defense in whole or in part to a motion for enforcement of child support that:

(1) the obligee voluntarily relinquished to the obligor actual possession and control of a child; or

(2) the obligor was confined in a local, state, or

1 federal jail or prison for a period of at least 90 consecutive days
2 and the arrearages and interest on the arrearages alleged in the
3 motion for enforcement are attributable to child support payments
4 that became due during that period of confinement.

5 SECTION 3. Section 156.401(e), Family Code, as added by
6 this Act, applies only to a suit for modification of a child support
7 order that is filed on or after the effective date of this Act. A
8 suit for modification that is filed before the effective date of
9 this Act is governed by the law in effect on the date the suit was
10 filed, and the former law is continued in effect for that purpose.

11 SECTION 4. Section 157.008(a), Family Code, as amended by
12 this Act, applies only to a child support payment that becomes due
13 or interest on child support arrearages that accrues on or after the
14 effective date of this Act. A child support payment that became due
15 or interest on child support arrearages that accrued before the
16 effective date of this Act is governed by the law in effect on the
17 date the payment became due or the interest accrued, and the former
18 law is continued in effect for that purpose.

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