

1-1 By: Dutton (Senate Sponsor - Whitmire) H.B. No. 440  
1-2 (In the Senate - Received from the House April 27, 2005;  
1-3 April 29, 2005, read first time and referred to Committee on  
1-4 Jurisprudence; May 21, 2005, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 21, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the modification or enforcement of a child support  
1-9 order during the obligor's confinement in jail or prison.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 156.401, Family Code, is amended by  
1-12 adding Subsections (e)-(g) to read as follows:

1-13 (e) The rendering of a judgment or order for the confinement  
1-14 of an obligor in a local, state, or federal jail or prison for a  
1-15 period of at least 90 consecutive days is a material and substantial  
1-16 change in circumstances for purposes of Subsection (a)(1).

1-17 (f) The obligor is not entitled to a waiver in Subsection  
1-18 (a)(1) if the obligor is incarcerated for an act of family violence  
1-19 as defined by Section 71.004 or for violation of a protective order  
1-20 as defined by Subtitle B, Title 4, or citation of contempt.

1-21 (g) All accruing interest for an obligor's child support  
1-22 obligation shall be suspended during an obligor's incarceration in  
1-23 a local, state, or federal jail or prison.

1-24 SECTION 2. Section 157.008(a), Family Code, is amended to  
1-25 read as follows:

1-26 (a) An obligor may plead as an affirmative defense in whole  
1-27 or in part to a motion for enforcement of child support that:

1-28 (1) the obligee voluntarily relinquished to the  
1-29 obligor actual possession and control of a child; or

1-30 (2) the obligor was confined in a local, state, or  
1-31 federal jail or prison for a period of at least 90 consecutive days  
1-32 and the arrearages and interest on the arrearages alleged in the  
1-33 motion for enforcement are attributable to child support payments  
1-34 that became due during that period of confinement.

1-35 SECTION 3. Section 156.401(e), Family Code, as added by  
1-36 this Act, applies only to a suit for modification of a child support  
1-37 order that is filed on or after the effective date of this Act. A  
1-38 suit for modification that is filed before the effective date of  
1-39 this Act is governed by the law in effect on the date the suit was  
1-40 filed, and the former law is continued in effect for that purpose.

1-41 SECTION 4. Section 157.008(a), Family Code, as amended by  
1-42 this Act, applies only to a child support payment that becomes due  
1-43 or interest on child support arrearages that accrues on or after the  
1-44 effective date of this Act. A child support payment that became due  
1-45 or interest on child support arrearages that accrued before the  
1-46 effective date of this Act is governed by the law in effect on the  
1-47 date the payment became due or the interest accrued, and the former  
1-48 law is continued in effect for that purpose.

1-49 SECTION 5. This Act takes effect September 1, 2005.

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