

BILL ANALYSIS

S.B. 870
By: West
Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Various issues have been raised relating to Title IV-D cases and the services, practices, and procedures for the operation of the Office of the Attorney General as the state's designated Title IV-D agency. S.B. 870 seeks to address these issues by providing for the administrative adjustment of support obligations during incarceration, for orders for unemployed and underemployed obligors, and for certain procedures regarding child support payments. Among other provisions, the bill also provides for certain hearings to take place through remote communication.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Office of the Attorney General in SECTION 12 of this bill.

ANALYSIS

S.B. 870 amends the Estates Code, Family Code, Government Code, Property Code, and Tax Code to revise provisions regarding certain proceedings and procedures relating to child support services and cases and the related authorizations and requirements of the Office of the Attorney General (OAG), including administrative adjustment of support obligations during incarceration, orders for unemployed and underemployed obligors, child support payments, and remote proceedings and judicial actions.

Adjustment of Support Obligations During Obligor's Incarceration

Administrative Adjustment of Obligations

S.B. 870 requires the OAG to review and administratively adjust an obligor's child support, medical support, and dental support order to amounts that are based on the application of the guidelines under applicable statutory provisions to the obligor's net resources during incarceration, on verification by the OAG that a judgment or order has been rendered for the confinement of the obligor in a local, state, or federal jail or prison for a period of at least 180 consecutive days. Such an adjustment of support does not apply if the OAG determines that the obligor is confined due to the obligor's failure to comply with a child support order or for an offense constituting an act of family violence committed against the obligee or a child covered by the child support order. The bill authorizes the OAG to seek modification of the support order in lieu of administratively adjusting the support obligation during the obligor's incarceration.

S.B. 870 requires the OAG to provide notice of an administrative adjustment to the parties to the support order and to file a copy of the notice with the court of continuing, exclusive jurisdiction. The notice must state the amount of the obligor's adjusted support obligation during incarceration, the effective date of the adjustment, and the style and cause number of the case in which the support order was rendered. The administrative adjustment may not take effect before the 30th day after the date a copy of the notice is filed with the applicable court and does not affect a support obligation due before the effective date of the adjustment.

S.B. 870 authorizes the OAG to adopt rules to implement the bill's provisions relating to administrative adjustment of support obligations.

Review of Administrative Adjustment of Support Obligations

S.B. 870 authorizes a party to the support order to contest the administrative adjustment of support obligation, not later than the 30th day after receiving notice of the adjustment, by requesting that the OAG review the adjustment decision. On such a request, the OAG must review the adjustment to make certain determinations and provide an opportunity for review with the parties in person or by telephone, as appropriate, and after conducting the review, the OAG must either affirm or withdraw the administrative adjustment. The bill authorizes a party that receives notice that the adjustment has been affirmed by the OAG, not later than the 30th day after receipt of such notice, to file a motion requesting a hearing with the court of continuing, exclusive jurisdiction to contest the adjustment, which remains in effect until the OAG files a notice withdrawing the adjustment or the court renders an order regarding the adjustment.

S.B. 870 requires the OAG, if a party does not request a review of the adjustment within the specified time frame, to file an administrative adjustment order containing specified information with the court of continuing, exclusive jurisdiction and requires the court to sign the order not later than the seventh day after the date the order is filed. On expiration of the seventh day after the date the order is filed, the order is considered confirmed by the court by operation of law, regardless of whether the court has signed the order.

S.B. 870 requires the OAG, if a party to a support order does not file a motion requesting a hearing to contest the adjustment within the prescribed time frame, to file an administrative adjustment order with the applicable court and attach to the order a copy of the notice of determination affirming the adjustment. The bill requires the order to state the amount of the obligor's adjusted support obligation during incarceration and the effective date of the adjustment and requires the court to sign the order not later than the seventh day after the date the order is filed. On expiration of the seventh day after the date the order is filed, the order is considered confirmed by the court by operation of law, regardless of whether the court has signed the order.

S.B. 870 authorizes the OAG to adopt rules to implement the bill's provisions relating to review of administrative adjustment of support obligations.

Modification of Support Obligation After Obligor's Release From Incarceration

S.B. 870 requires the OAG, on the release of an obligor whose support obligations were administratively adjusted during incarceration, to review the obligor's support order to determine if modification is necessary and may proceed under applicable statutory provisions. The bill's provisions relating to the administrative adjustment of support obligations, including the review and modification of those obligations, apply to a child support order regardless of whether the order was rendered before, on, or after the bill's effective date and constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or a portion of a decree that provides for the support of a child rendered before the bill's effective date.

Employment Services-Related Orders for Unemployed and Underemployed Obligor

S.B. 870 authorizes a court or the OAG, when establishing, modifying, or enforcing a child support obligation, to render an enforceable order to require an unemployed or underemployed obligor to do the following:

- enroll and participate fully in a program available in the obligor's community that provides employment assistance, skills training, or job placement services; or
- work, have a plan to pay child support, or participate in work activities appropriate to pay the support obligation.

The bill authorizes the OAG to refer any unemployed or underemployed obligor who is not in arrears in court-ordered child support payments to appropriate state and local entities that provide employment services. The bill's provisions relating to employment services-related orders and referrals for unemployed and underemployed obligors do not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or a portion of a decree that provides for the support of a child rendered before the bill's effective date.

Child Support Review Order Containing Determination of Arrearages

S.B. 870 establishes that the OAG's authority to issue and enforce a child support review order containing a determination of arrearages is not subject to the time limitation prescribed by statutory provisions relating to child support enforcement on the court's jurisdiction to confirm the amount of and render cumulative money judgments for arrearages. The bill's provisions relating to a child support review order apply to such an order issued by the OAG on or after the bill's effective date.

S.B. 870 authorizes a petition for confirmation of a child support review order not agreed to by the parties to include a waiver of service executed under statutory provisions relating to additional contents of an agreed child support review order.

Child Support Payments

State Disbursement Unit

S.B. 870 establishes that, for purposes of services provided by the state disbursement unit, a child support payment includes child support, medical support, and dental support and requires the state disbursement unit to administer spousal maintenance payments in the same manner as child support payments. The bill's provisions relating to the state disbursement unit apply to a child support or maintenance payment made on or after the bill's effective date.

S.B. 870 requires the OAG to distribute a child support payment received on behalf of a child placed in substitute care by the Department of Family and Protective Services to the appropriate state agency in accordance with applicable federal laws or regulations. This requirement applies only to a child support payment received by the OAG on or after the bill's effective date.

Child Support Payment Records

S.B. 870 establishes that a certified child support payment record produced by the OAG is admissible as evidence of the truth of the information contained in the record and does not require further authentication or verification. This establishment of admissibility applies only to the admissibility of evidence in a proceeding commenced on or after the bill's effective date.

S.B. 870 specifies that, for a Class 4 claim under Estates Codes provisions relating to estates of decedents, the determination of the principal amount of and accrued interest on delinquent child support and child support arrearages is based on a certified child support payment record

produced by the OAG in a Title IV-D case. This specification applies only to the estate of a decedent who dies on or after the bill's effective date.

S.B. 870 specifies that the determination of obligations of a child support obligor, for the purposes of barring the obligor as to disclaimed property that could be applied to satisfy the disclaimant's child support obligation, is based on a certified child support payment record produced by the OAG in a Title IV-D case. This specification applies only to a disclaimer made on or after the bill's effective date.

Proceedings and Judicial Actions by Remote Communication

S.B. 870 authorizes an associate judge for a Title IV-D case to conduct a proceeding or perform an authorized judicial action from any location in Texas using remote communication, including teleconferencing, videoconferencing, and any similar technology, unless a party files a written objection. The bill authorizes such an associate judge to require or authorize a party to participate in a proceeding using a method of remote communication available to the party. The bill entitles a respondent to appear in person at a final hearing that may result in a finding of contempt or revocation of the respondent's community supervision under a motion for enforcement in a suit affecting the parent-child relationship but authorizes the respondent to waive the right to appear in person at the hearing. The bill requires the associate judge to appear at the hearing in person unless the respondent waives that right. The bill's provisions relating to remote proceedings apply to a proceeding conducted or judicial action performed on or after the bill's effective date.

Confidentiality of Information

S.B. 870 prohibits a court from ordering the OAG to release information that is confidential or privileged under statutory provisions relating to the confidentiality of records and privileged communications regarding services provided by the OAG.

S.B. 870 requires the address of a party to be omitted from the child support review order and any waiver signed relating to an agreed child support review order. This requirement applies only to an agreed child support review order filed on or after the bill's effective date.

S.B. 870 provides the following with respect to a current or former OAG employee assigned to a division involved with Title IV-D cases:

- establishes the confidentiality of information in an appraisal record that identifies such an employee's home address if the employee chooses to restrict public access to that information; and
- excepts from requirements under state public information law certain personal information relating to such an employee, including home address, telephone number, emergency contact information, and social security number, regardless of whether the employee complies with requirements applicable to the elected disclosure of certain information.

The bill's provisions relating to the state public information law and confidentiality of certain home address information apply only to a request for information that is received by a governmental body or an officer on or after the bill's effective date.

Miscellaneous Provisions; Repealed Provision

S.B. 870 authorizes a court to dismiss a cause of action asserted in a suit filed on or after the bill's effective date against the OAG or an OAG employee pertaining to the powers or duties of, or services provided by, the OAG relating to administrative services for a suit affecting the child-parent relationship if the court determines the asserted cause of action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from the OAG or employee for which immunity applies.

S.B. 870 establishes that a release of child support lien filed by the OAG for a discretionary or mandatory release of lien executed on or after the bill's effective date does not require verification. The bill specifies that requirements for an original signature for certain instruments concerning property does not apply to a release of child support lien issued by the OAG and executed on or after the bill's effective date.

S.B. 870 requires the court clerk for a court order for reinstatement of parental rights rendered on or after the bill's effective date to provide a copy of the order to the OAG.

S.B. 870 repeals Section 231.117(d), Family Code.

EFFECTIVE DATE

September 1, 2023.