

BILL ANALYSIS

C.S.H.B. 364
By: Dutton
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a child support order may be modified if, in addition to other circumstances, there is a material and substantial change in the circumstances of the child or a person affected by the order. While the possibility of modification applies to all obligors, informed observers contend that an obligor who has been incarcerated rarely, if ever, files a motion to modify a child support order. As a result, the child support remains unpaid, the obligor continuously accrues arrears, and on release from confinement, the obligor is faced with a significant child support obligation that the obligor probably cannot afford to pay. The observers further explain that this circumstance presents a formidable obstacle to these obligors obtaining meaningful employment after release and further complicates payment of the unpaid child support. C.S.H.B. 364 seeks to address these issues.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 364 amends the Family Code to prohibit a court from finding a respondent in contempt of court for failure to pay child support if the respondent or the respondent's attorney appears at the hearing with evidence satisfactory to the court showing that the unpaid child support accrued during the obligor's confinement in a local, state, or federal jail or prison for a period of at least 90 consecutive days, other than confinement for an offense constituting an act of family violence committed against the obligee or a child covered by the child support order or resulting from the obligor's failure to comply with a child support order, and showing that the obligor did not have sufficient resources available to comply with the child support order during the period of the obligor's confinement.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 364 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

84R 20147

15.90.60

Substitute Document Number: 84R 19859

SECTION 1. Section 156.401, Family Code, is amended by adding Subsection (e) 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). This subsection does not apply to the extent the obligor has sufficient resources available to comply with the child support order and the availability of the resources is not affected by the obligor's confinement.

SECTION 2. Section 157.008, Family Code, is amended by amending Subsection (a) and adding Subsection (a-1) 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 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.

(a-1) The affirmative defense provided by Subsection (a)(2) does not apply to the extent the obligor had sufficient resources during that period of confinement to comply with the child support order and the availability of the resources was not affected by the obligor's confinement.

No equivalent provision.

(See added Section 156.401(e), Family Code, above.)

(See added Section 157.008(a)(2), Family Code, above.)

No equivalent provision.

(See added Section 157.162(d)(1), Family Code, below.)

(See Section 157.162(d)(2), Family Code, below.)

No equivalent provision.

(See added Section 157.162(d)(1), Family Code, below.)

(See added Section 157.162(d)(2), Family Code, below.)

SECTION 1. Section 157.162, Family Code, is amended by adding Subsection (d) to read as follows:

(d) The court may not find a respondent in contempt of court for failure to pay child support if the respondent or the respondent's attorney appears at the hearing with evidence satisfactory to the court showing that:

(1) the unpaid child support accrued during the obligor's confinement in a local, state, or federal jail or prison for a period of at least 90 consecutive days, other than confinement:

(A) for an offense constituting an act of

(See added Section 157.008(a-1), Family Code, above.)

SECTION 3. Section 156.401(e), 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.

SECTION 4. Section 157.008, 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.

No equivalent provision.

SECTION 5. This Act takes effect September 1, 2015.

family violence, as defined by Section 71.004, committed against the obligee or a child covered by the child support order; or (B) resulting from the obligor's failure to comply with a child support order; and (2) the obligor did not have sufficient resources available to comply with the child support order during the period of the obligor's confinement.

No equivalent provision.

No equivalent provision.

SECTION 2. Section 157.162(d), Family Code, as added by this Act, applies to a hearing to enforce an order in a suit affecting the parent-child relationship that commences on or after the effective date of this Act. A hearing that commences before the effective date of this Act is governed by the law in effect on the date the hearing commenced, and the former law is continued in effect for that purpose.

SECTION 3. Same as introduced version.