

SUBJECT: Limiting the amount of retroactive child support

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Goodman, A. Reyna, P. King, Menendez, Morrison, Naishtat
0 nays
3 absent — E. Reyna, Nixon, Tillery

WITNESSES: For — Robert Green, Texas Fathers Alliance, Texas Fatherhood Initiative, Men and Fathers Resource Center; David Shelton, Texas Fathers Alliance
Against — None
On — Howard Baldwin, Office of the Attorney General

BACKGROUND: Family Code, sec. 160.005(b) permits but does not require a court to order child support retroactive to the birth of the child when paternity is established. Family Code, sec. 154.131 sets guidelines for determining the amount of retroactive support to be awarded. The court is required to consider the obligor's net resources during the relevant time period; whether the obligor was aware of paternity or was contacted by the mother regarding paternity; and whether any undue financial hardship would be sustained by the obligor or obligor's family as a result.

DIGEST: CSHB 899 would add Family Code, sec. 154.131(c), which would create a rebuttable presumption that the amount of retroactive child support should be limited to the amount that accrued four years prior to the date of the petition. Under CSHB 899, if a judge were to order retroactive child support under the four-year limit, it would be under the presumption that the limit was reasonable and in the best interest of the child. The presumption could be rebutted on the grounds that the obligor knew he was the father and intentionally sought to avoid paying child support.

In Family Code, secs. 154.131(b)(1) and 154.131(b)(2), CSHB 899 would strike the words "biological father" and replace them with "obligor."

CSHB 899 would take effect September 1, 2001, and would apply only to a suit for or motion to enforce child support filed on or after that date. The bill would not constitute a change in circumstances sufficient to allow modification of a court order or decree rendered before the effective date.

**SUPPORTERS
SAY:**

CSHB 899 would set a necessary time limit on retroactive child support. Under current law, the judge has complete discretion to set retroactive child support back to the date of birth. According to the Office of the Attorney General, 62 percent of non-custodial parents have incomes of \$20,000 or less. Unlimited retroactive child support can create an undue financial hardship on non-custodial parents and their families, establishing the need for reasonable limits.

By limiting the amount of retroactive child support, CSHB 899 would encourage payment by obligors more promptly. A national study by the U.S. Department of Human Services shows that ordering a non-custodial parent to pay retroactive child support more than 12 months in arrears drives nonpayment rates up to 34 percent. When retroactive support is not court ordered, nonpayment rates drop to 14 percent.

CSHB 899 would bring Texas law in line with other states, where three to four-year limitations are standard. Most states do not have retroactive child support dating back to the birth of the child, and neither should Texas.

**OPPONENTS
SAY:**

CSHB 899 is unnecessary because judges already are expected to take all conditions into account, including the obligor's financial situation, when making judgements on retroactive child support. The court should retain complete discretion to award a range of child support, from zero to the full amount dating back to the birth of the child, if that is appropriate and in the best interest of the child.

**OTHER
OPPONENTS
SAY:**

CSHB 899 would not go far enough in protecting non-custodial parents. The amount of retroactive child support should be limited to two years, rather than four. This would create a more compelling interest to establish paternity early on. If paternity is not established by the child's fourth birthday, then the limit on arrearage should be two years.

NOTES:

The original version of the bill would have established a set limit of four years for retroactive child support. The committee substitute instead would create a rebuttable presumption that four years of retroactive child support would be enough unless unusual circumstances can be presented.