

SUBJECT: Allowing award of attorneys' fees and costs in child possession cases.

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 8 ayes — Dutton, Goodman, Baxter, Dunnam, Hodge, J. Moreno, Morrison, Reyna
0 nays
1 absent — Castro

WITNESSES: None

BACKGROUND: In a case where a court finds that a respondent has failed to make child support payments, Family Code, Section 157.167 requires the court to order the respondent to pay the petitioner's reasonable attorneys' fees and all court costs in addition to the past-due payments. Fees and costs awarded under this section may be enforced by any means available for enforcing child support payments, including contempt. Although attorney's fees generally cannot be collected through contempt proceedings, this is a special exception. The award of attorneys' fees and costs is not explicitly allowed on suits to enforce possession orders.

DIGEST: HB 886 would authorize the award of attorneys' fees and court costs, plus any additional remedy, to the petitioner when the court found that the respondent had failed to comply with an order providing for possession of or access to a child. While fees and costs awarded because of failure to make child support payments may be enforced by any means available for enforcing child support payments, including contempt, fees and costs awarded because of the violation of a possession order would not be included under this provision.

The bill would take effect September 1, 2003, and apply only to orders rendered on or after that date.

SUPPORTERS SAY: HB 886 appropriately would extend to violation of possession orders the right that petitioning parents already have to collect reasonable attorney's fees and costs incurred during child support cases. Many parents cannot afford to hire

an attorney to pursue enforcement of their possession orders. Offering a means by which they can recover fees and costs would better enable them to regain access to their children that they wrongfully had been denied.

By helping parents enforce possession orders, the bill would help promote the emotional health of children by ensuring access to both parents. Studies show that the absence of a father is a contributing factor in many cases where, in later life, children end up in jail, depressed, or with other problems. Giving parents the ability to seek fees and costs would better enable them to hire an attorney to settle these cases swiftly and aggressively, minimizing the amount of time children were deprived of contact with parents.

By allowing a court to assess fees and costs in child possession cases, HB 886 would offer a means of settling these disputes short of finding one parent in contempt. Contempt is rarely used as a means of enforcing possession orders because it does neither party any good — any fine would go to the state rather than the children, and children are harmed further when a parent is sent to jail. HB 886 would offer a fairer and less intrusive means of settling such cases.

This bill would act as a deterrent to parents who would violate possession orders by imposing the payment of fees and costs upon the guilty party. In addition, the fees collected could go to other groups besides parents. For example, county domestic relations offices often assist parents in possession cases, and HB 886 would allow these offices to seek fees and costs, enabling them to serve more needy people.

**OPPONENTS
SAY:**

By giving the courts explicit authority to assess fees and costs against parents, HB 886 indirectly could deprive children of money that should be used for their support.

Although costs are not explicitly allowed to be assessed in possession cases currently, some judges already award them. There is no need for a specific statute to address this.

**OTHER
OPPONENTS
SAY:**

If contempt is appropriate for enforcing fees and costs ordered in child support cases, it also should be available to enforce fees and costs ordered in cases of failure to comply with a child possession or access order.

