

SUBJECT: Attorney's fees and court costs from enforcing child visitation rights order

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Goodman, Castro, Nixon, Strama

0 nays

4 absent — Y. Davis, Dunnam, J. Moreno, Thompson

WITNESSES: For — Cecilia Burke, Texas Association of Domestic Relations Offices

Against — None

On — Robert L. Green, Lone Star Fatherhood Initiative

BACKGROUND: Under sec. 157.167(a) of the Family Code, attorney's fees and court costs incurred to enforce child support orders are themselves enforceable as child support. If a parent requires court intervention to enforce a child support order, the other parent is responsible for the moving parent's reasonable attorney's fees and all court costs in addition to the arrearages.

The law allows the fees and costs to be enforced by any means necessary for the enforcement of child support. They may be enforced by contempt, an order for income withholding, a condition for purging of a finding of contempt, or a condition of community supervision.

Section 157.167(b) requires a court also to assess a moving parent's attorney's fees and court costs against the parent found to have violated an order for possession and access to a child. The provision does not specify how the order may be enforced.

DIGEST: HB 1174 would allow an order to pay a movant's attorney's fees and costs in a child possession or access case to be enforced by any means available for the enforcement of child support, including contempt, if the court found that the possession and access order with which the respondent failed to comply was necessary to ensure the child's physical or emotional health or welfare. Income withholding, however, could not be used to enforce the order.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

Compliance with orders of possession and access would increase if the law clarified that an order to pay attorney's fees and court costs could be enforced by all available child support enforcement remedies, including contempt.

Under the current statute, better remedies are available for a parent entitled to child support than for a parent entitled to visitation rights with a child. Without the changes provided in the bill, non-custodial parents would remain at a disadvantage if attorney's fees and costs for enforcement of visitation rights could be enforced only as arrears.

Children get caught in the middle of these disputes. Domestic relations offices (DROs) in Travis County, El Paso County, Harris County and Tarrant County (and soon in Bexar County) routinely accept applications for enforcement of possession and access. When custodial parents deny visitation in violation of a court order, it hurts not only the non-custodial parent but the children. If DROs and the private bar could enforce unpaid attorney's fees by contempt, it would increase compliance with visitation orders.

Courts currently can assess fees and costs against a parent not complying with a possession and access order, but cannot enforce them. The bill would give them another means for collection and make collection efforts substantially more efficient.

A non-custodial parent is more likely to comply with a support order when the parent has a relationship with the child being supported. However, many non-custodial parents are unable to afford an attorney to help enforce their visitation rights. If these parents knew that the costs for enforcing possession and access could be reimbursed, they would be more likely to pursue their visitation rights.

Attorney's fees and court costs are an effective way of dissuading custodial parents from future noncompliance, thereby reducing the likelihood of future litigation.

OPPONENTS
SAY:

Giving the courts explicit authority to hold non-complying custodial parents in contempt of court could result in a fine, imprisonment, or both. This could indirectly deprive children of money that could be used for their support and/or deprive them of the care of the custodial parent.

NOTES:

The committee substitute modified the original bill by removing the provisions that would allow income withholding as a means to enforce an order to pay attorney's fees and costs from a possession and access proceeding.