

SUBJECT: Exempting incarcerated persons from a child support income presumption

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

VOTE: 6 ayes — Dutton, Riddle, Hughes, Peña, Sanford, J. White

0 nays

1 absent — Rose

WITNESSES: For — Douglas Smith, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Traci Berry, Goodwill Central Texas; Ingrid Montgomery, Intended Parents' Rights; Lori Henning, Texas Association of Goodwills; Amanda Marzullo, Texas Defender Service; Emily Gerrick, Texas Fair Defense Project; Yannis Banks, Texas NAACP)

Against — Cecilia Wood

On — Joel Rogers and Charles Smith, Office of the Attorney General - Child Support Division; (*Registered, but did not testify*: Karl Hays, Texas Family Law Foundation)

BACKGROUND: When determining an individual's child support liability, courts rely in part on Family Code, sec. 154.062, which defines what may be counted as a party's "resources" for paying support. If a court does not receive any evidence of a person's resources as defined by this section, the court is required under sec. 154.068 to apply a presumption that the person earns income equal to the federal minimum wage for a 40-hour work week.

DIGEST: HB 943 would prevent courts from applying the full-time minimum wage income presumption in a child support determination where there was no evidence of a person's resources if the person was incarcerated for more than 90 days in jail or prison at the time the court determined the person's income.

HB 943 would take effect September 1, 2015, and would apply only to proceedings to establish or modify child support orders that were filed or pending in a trial court on or after that date.

**SUPPORTERS
SAY:**

HB 943 would address an injustice endured by many incarcerated individuals in Texas, many of whom have at least one child. While courts are not supposed to apply the full-time minimum wage presumption unless there is no evidence of a person's resources, many judges treat incarceration the same as intentional unemployment and apply the presumption without accounting for the inability of prisoners to appear in hearings or submit evidence. HB 943 would clarify the law to ensure that individuals in prison could still exercise their due process rights and would not by default be ordered to pay the full-time minimum wage support rate without their net income and resources being considered.

The bill would help resolve an unfortunate effect of the full-time minimum wage presumption. Many prisoners leave periods of confinement with a great deal of child support debt, making it difficult to get back on their feet. This can cause parents and other obligors to disappear, hurting children and custodial family members and eliminating the ability to receive future child support. HB 943 would allow parents to reintegrate into society and resume child support obligations. People reentering society after incarceration face many barriers, including housing and employment difficulties. HB 943 would remove one of these barriers to help individuals rebuild their lives. In addition, not everyone who has been sent to prison is guilty, as evidenced by multiple overturned convictions, and policies further punishing these individuals are unjust.

Exempting individuals from the full-time minimum wage presumption would not further any policies unjustly benefitting those who had broken the law. No one goes to prison to avoid child support payments, and many of the Family Code statutes controlling payment presumptions and considering ability to pay are in statute to protect custodial parents against another individual's willful refusal to get a job or otherwise support the individual's children.

OPPONENTS
SAY:

HB 943 would protect the interests of individuals who have broken the law at the expense of others who become solely responsible for supporting the individuals' children. Although making child support payments while in prison may be difficult or impossible, someone is still responsible for caring for an incarcerated parent's children during that time, and it should not be the child's custodian who has obeyed the law or taxpayers. Some individuals may be incarcerated for abusing or harming their children or family, and HB 943 would help exempt them from paying support while serving time for that offense.

In certain instances, a parent who went to prison after previously sharing equal custody might leave the other parent with full custody, raising overall costs and hindering the non-incarcerated parent's ability to hold a job and earn income. HB 943 would not require the imprisoned individual to contribute any support for this time.

HB 943 also could conflict with Family Code, sec. 154.066, which allows judges to set child support obligations based on potential to earn rather than current income for a person who is intentionally unemployed or underemployed. When a person breaks the law, the court should be able to base support payments on what they could earn upon leaving prison.

While there have been cases of wrongful imprisonment, lawmakers need to assume for policy purposes that those sent to prison are guilty and legislate accordingly to protect the custodians of children who receive no financial support.

OTHER
OPPONENTS
SAY:

Before granting an exemption to the full-time minimum wage presumption, HB 943 should require courts to find that an individual is incarcerated. As it stands, the bill is not clear on this point.

NOTES:

The author intends to offer a floor amendment to HB 943 that would require courts to make a finding that an individual was incarcerated for 90 days or more before exempting that person from the full-time minimum wage presumption.