

## BILL ANALYSIS

Senate Research Center  
87R8878 EAS-F

C.S.S.B. 286  
By: West  
State Affairs  
4/15/2021  
Committee Report (Substituted)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 286 relates to suits affecting the parent-child relationship and the calculation and enforcement of child support.

It is a reoccurring accounting problem in Title IV-D cases when the Title IV-D agency opens child support cases involving existing orders where spousal maintenance was also ordered but not ordered payable to the State Disbursement Unit (SDU). This is addressed in the bill by requiring courts to order that spousal maintenance be paid to the SDU in cases where child support is also ordered to be paid to the same spouse.

In enforcement actions, private attorneys and courts sometimes combine the total arrears accruing for multiple arrearage obligations (e.g, child support, medical support, and dental support) into one combined cumulative judgement. This creates distribution problems in Title IV-D cases because child support arrears and medical support arrears are often subject to various state assignments for TANF and Medicaid benefits received by the obligee. S.B. 286 requires courts to render separate cumulative judgments for child support, medical support, and dental support arrears when rendering a temporary or final order in an enforcement action.

This bill specifies that courts, whenever possible, should rely on actual evidence of an obligor's resources when determining the appropriate amount of child support to order and implements new federal requirements a state must incorporate when the state allows for imputing income against an obligor.

This bill also provides the following changes to how incarcerated persons are assigned child support:

Prohibits courts from treating incarceration as intentional unemployment or underemployment in establishing or modifying support orders, as per new federal guidelines.

Establishes that incarceration of an obligor for a period in excess of 180 days is a material and substantial change of circumstances for purposes of modifying a support obligation.

Additionally, this bill removes the currently outdated dollar amount that sets the upper limit of net resources to which the child support guidelines apply. The bill also creates new low-income child support guideline percentages for obligors with less than \$1,000 in monthly net resources. This ensures that Texas is in compliance with a change in federal regulations that requires each state to incorporate a "low-income adjustment" method into the state's child support guidelines to take into account the basic subsistence needs for obligors who have a limited ability to pay.

S.B. 286 makes an adjustment to the time frame for contesting the registration and enforcement of an out-of-state support order, clarifies that all child support payments should be made payable through the State Disbursement Unit, and requires a sworn statement concerning any delinquency in child support during the process of disclaiming an interest in property.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 286 amends current law relating to suits affecting the parent-child relationship and the calculation and enforcement of child support.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 8, Family Code, by adding Section 8.062, as follows:

Sec. 8.062. PLACE OF PAYMENT. Requires the court, if an obligor is ordered to pay an obligee maintenance under Chapter 8 (Maintenance) and child support under Chapter 154 (Child Support), to order the payment of maintenance to the state disbursement unit as provided by Chapter 234 (State Case Registry, Disbursement Unit, and Directory of New Hires).

SECTION 2. Amends Subchapter B, Chapter 154, Family Code, by adding Section 154.0655, as follows:

Sec. 154.0655. IMPUTATION OF INCOME. (a) Defines "resources."

(b) Requires the court, to the extent possible, to rely on evidence of a party's resources when applying the support guidelines.

(c) Requires the court, in the absence of evidence of a party's resources when applying Section 154.066 (Intentional Unemployment or Underemployment) or 154.068 (Wage and Salary Presumption), to consider relevant background circumstances regarding the obligor, including:

(1) the obligor's assets, residence, employment, earnings history, job skills, educational attainment, literacy, age, health, criminal history, barriers to employment, and record of seeking work;

(2) job opportunities in the obligor's community;

(3) the prevailing wage in the obligor's community; and

(4) whether there are employers willing to hire the obligor.

SECTION 3. Amends Section 154.066, Family Code, by adding Subsection (c), to prohibit the court from considering incarceration as intentional unemployment or underemployment when establishing or modifying a support order.

SECTION 4. Amends Section 154.125, Family Code, as follows:

Sec. 154.125. APPLICATION OF GUIDELINES TO NET RESOURCES. (a) Provides that the guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than the maximum amount of net resources to which the statutory guidelines are applicable, as most recently published by the Title IV-D agency in the Texas Register, rather than \$7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater.

(a-1) Makes a nonsubstantive change.

(b) Requires the court, if the obligor's monthly net resources are not greater than the amount described, rather than provided, by Subsection (a) and the obligor's monthly net resources are equal to or greater than the amount described by

Subsection (c), to presumptively apply the child support guidelines based on the monthly net resources of the obligor schedule in rendering the child support order.

(c) Requires the court, if the obligor's monthly net resources are less than \$1,000, to presumptively apply a certain schedule in rendering the child support order. Sets forth low income child support guidelines based on the monthly net resources of the obligor.

SECTION 5. Amends Section 154.129, Family Code, as follows:

Sec. 154.129. ALTERNATIVE METHOD OF COMPUTING SUPPORT FOR CHILDREN IN MORE THAN ONE HOUSEHOLD. (a) Creates this subsection from existing text. Authorizes the court, if the obligor's monthly net resources are not greater than the amount described by Section 154.125(a) and if the obligor's monthly net resources are equal to or greater than the amount described by Section 154.125(c), in lieu of performing the computation under the preceding section, to determine the child support amount for the children before the court by applying the percentages in the multiple family adjusted guidelines to the obligor's net resources.

(b) Authorizes the court, if the obligor's monthly net resources are less than the amount described by Section 154.125(c), in lieu of performing the computation under the preceding section, to determine the child support amount for the children before the court by applying the percentages in the low-income multiple family adjusted guidelines to the obligor's net resources. Sets forth the guidelines table.

SECTION 6. Amends, Section 156.401, Family Code, by adding Subsection (c-1), to provide that incarceration of a child support obligor in a local, state, or federal jail or prison for a period exceeding 180 days is a material and substantial change of circumstances for the purposes of Section 156.401 (Grounds for Modification of Child Support).

SECTION 7. Amends Section 157.005(b), Family Code, as follows:

(b) Includes medical support and dental support as matters over which the court retains jurisdiction to confirm the total amount of support arrearages, and to render cumulative money judgments, for past-due support as provided by Section 157.263 (Confirmation of Arrearages), if a motion for enforcement requesting a money judgment is filed within a certain timeframe.

SECTION 8. Amends Section 157.263, Family Code, by amending Subsections (a), (b), and (b-1) and adding Subsections (b-2) and (b-3), as follows:

(a) Requires the court, if a motion for enforcement of child support requests a money judgment for arrearages, to confirm the amount of arrearages and render cumulative money judgments, rather than one cumulative money judgement, as follows:

(1) a cumulative money judgment for the amount of child support owed under Subsection (b);

(2) a cumulative money judgment for the amount of medical support owed under Subsection (b-1); and

(3) a cumulative money judgment for the amount of dental support owed under Subsection (b-2).

(b) Makes conforming changes.

(b-1) Provides that a cumulative money judgment for the amount of medical support owed includes:

- (1) unpaid medical support not previously confirmed;
- (2) the balance owed on previously confirmed medical support arrearages or lump sum or retroactive medical support judgments;
- (3) interest on the medical support arrearages; and
- (4) a statement that it is a cumulative judgment for the amount of medical support owed.

(b-2) Provides that a cumulative money judgment for the amount of dental support owed includes:

- (1) unpaid dental support not previously confirmed;
- (2) the balance owed on previously confirmed dental support arrearages or lump sum or retroactive dental support judgments;
- (3) interest on the dental support arrearages; and
- (4) a statement that it is a cumulative judgment for the amount of dental support owed.

(b-3) Creates this subsection from existing text and makes conforming changes.

SECTION 9. Amends Section 159.605(b), Family Code, to provide that the required notice to the nonregistering party when a support order or income-withholding order issued in another state or a foreign support order is appropriately registered must inform the nonregistering party of certain matters, including that a hearing to contest the validity or enforcement of the registered order must be requested within 30 days, rather than within 20 days, after the notice unless the registered order is under Section 159.707 (Contest of Registered Convention Support Order).

SECTION 10. Amends Section 234.007(a), Family Code, as follows:

- (a) Requires a court that orders a party to pay, rather than orders income to be withheld for, child support under a temporary or final order to order that all child support payments, rather than income ordered withheld for child support, be paid through the state disbursement unit, including any child support that the court orders an employer to withhold from the income of the obligor. Makes nonsubstantive changes.

SECTION 11. Amends Section 240.009, Property Code, by adding Subsection (e), to require that a disclaimer of an interest in property made by an individual contain a sworn statement regarding whether the disclaimant is a child support obligor whose disclaimer is barred under Section 240.151(g) (relating to certain conditions that bar a disclaimer by a child support obligor).

SECTION 12. Provides that the enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for the support of a child rendered before the effective date of this Act.

SECTION 13. (a) Makes application of Section 8.062, Family Code, as added by this Act, prospective.

- (b) Provides that, notwithstanding Subsection (a) of this section, an obligor subject to a maintenance order rendered before the effective date of this Act may choose to remit maintenance payments to the state disbursement unit as provided by Chapter 234, Family Code, and the state disbursement unit shall accept those payments.

SECTION 14. Provides that Section 154.0655, Family Code, as added by this Act, and Section 154.066, Family Code, as amended by this Act, apply only to a proceeding to establish or modify

a child support obligation that is pending in a trial court on or filed on or after the effective date of this Act.

SECTION 15. Makes application of Sections 154.125 and 154.129, Family Code, as amended by this Act, prospective.

SECTION 16. Makes application of Section 156.401, Family Code, as amended by this Act, prospective.

SECTION 17. Makes application of Section 157.263, Family Code, as amended by this Act, prospective.

SECTION 18. Makes application of Section 159.605, Family Code, as amended by this Act, prospective.

SECTION 19. Makes application of Section 240.009, Property Code, as amended by this Act, prospective.

SECTION 20. Effective date: September 1, 2021.