

- SUBJECT:** Creating an affirmative defense in enforcement of child support actions
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 6 ayes — Dutton, Riddle, Hughes, Peña, Rose, J. White
- 0 nays
- 1 absent — Sanford
- WITNESSES:** For — Karl Hays, Texas Family Law Foundation; (*Registered, but did not testify*: Ingrid Montgomery, Intended Parents' Rights; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Yannis Banks, Texas NAACP)
- Against — None
- On — Joel Rogers, Office of the Attorney General-Child Support Division; (*Registered, but did not testify*: Charles Smith, Office of the Attorney General-Child Support Division)
- DIGEST:** CSHB 364 would bar a court from finding an individual in contempt of court for failure to pay child support if the individual had accrued the unpaid child support while incarcerated.
- The bill would require the obligor or his or her attorney to present sufficient evidence during the enforcement hearing showing that the individual had been incarcerated for at least 90 consecutive days for reasons other than failure to pay child support or violence against the family owed support. The evidence presented also would have to show that the obligor did not have sufficient resources available to pay the ordered child support during the individual's incarceration.
- The bill would take effect September 1, 2015, and would apply only to hearings for suits affecting the parent-child relationship that commenced on or after that date.

SUPPORTERS
SAY:

CSHB 364 would help resolve an unfair burden on individuals who accrue child support arrears while incarcerated. Currently, incarcerated child support obligors may file for a modification in payments due to an inability to make them, but many individuals are not aware of this and do not take advantage of it, resulting in large child support arrears. These individuals may then be found in contempt of court for these arrears after they are released from confinement, which can lead to re-incarceration. The bill would allow individuals to defend against these actions by showing that they were unable to make payments while incarcerated.

The bill would allow parents and other obligors to reintegrate into society, find employment, and resume child support obligations. Many people who leave prison owing child support arrears rarely pay what is owed, and their criminal record makes finding employment — particularly with a salary sufficient to cover the arrears — difficult or impossible. As a result, those owing large amounts of child support upon release may disappear, which hurts children and custodial family members and reduces the chance of the family ever receiving child support from that person. People reentering society after incarceration face many barriers, and this bill would remove one while balancing the needs of the child support obligor with those of the obligees.

CSHB 364 also would require individuals asserting this defense to show that they were not incarcerated for harming the child or family to whom support was owed or for failing previously to pay child support. This would ensure that the bill did not benefit people who had harmed their families. The bill also would require proof that the obligor was unable to make payments while confined, as some individuals might have assets or other sources of income that would enable them to pay even while incarcerated.

OPPONENTS
SAY:

CSHB 364 should apply regardless of the reasons an obligor was incarcerated, as was the case with the bill as introduced. Many people who go to jail because of failure to pay child support are not willfully avoiding child support payments but simply are unable to make them. Holding

them in contempt for arrears when they leave prison would only exacerbate this situation. Even if a person were incarcerated for harming the family owed support, holding the obligor in contempt for support payments they may never be able to pay upon release would be a disincentive to making any payments at all, further harming the family.