

**CIVIL VS. CRIMINAL ENFORCEMENT:
*PROSECUTOR AND JUDGE PERSPECTIVE (CLE)***

This workshop will address in a lecture and question and answer format, various methods of enforcement of child support orders via the mechanisms of contempt orders and criminal charges when obligors fail to comply with support orders. It will also address various practical and pragmatic considerations to achieve compliance with court ordered support.

Presenters: Rick Sparks
County Attorney
Franklin County
Frankfort, KY

Honorable Rebecca Ward
Chief District Judge
Bullitt County
Shepherdsville, KY

Moderator: Tim McClain
Branch Manager
KY Department of Income Support, CSE
Frankfort, KY

My Notes....

**JUDICIAL REMEDIES:
CIVIL v. CRIMINAL ENFORCEMENT
OF
DELINQUENT SUPPORT ORDERS**

- I. **Initial Consideration** (so you got your Order, S/he won't pay . . . what you gonna do about it?)
- Make sure your order is valid.
 - Ensure all payments are made through the Cabinet.
 - Double check that there are no intervening/superseding orders.
 - Ensure that the Payor/obligor has not been declared disabled.
 - Does Payor KNOW of obligation, order or duty?
- II. **Civil Contempt of Court**
- PRO: quick procedure on Motion; relatively painless procedurally; bench trial; worker can testify from cabinet accounting, maximum penalty 5 months and 29 days in county jail, work release may be available; have more control over disposition; may be incentive to pay to avoid further criminal sanction.
 - CON: no supervision of other conduct that may have contributed to delinquency; may purge by payments - if so, have to start all over again (generally recommend allowing agreed order to suspend further execution upon partial payment, reserve the balance of time conditioned upon future payment, if for no other reason gets a payment stream started.)
- * requires showing that the defendant knew of ORDER and was able to comply. If Payor has paid, had wage garnished, etc., then s/he KNOWS.

IF default, and no payments, may have problems?

III. **CRIMINAL NON-SUPPORT**

KRS 530.050

Misdemeanor – 2 months delinquent or PERSISTENTLY fails to pay?

Felony - PERSISTENTLY fails to pay AND \$1000 behind or 6 months without payment of support or dependant is destitute?

Receipt of Public assistance is by definition “destitute circumstance”

KRS 530.050(2)(c)

** requires showing that the defendant knew of OBLIGATION or DUTY and was reasonably able to comply.

**N.b. Double jeopardy does NOT attach for civil contempt and does not bar criminal prosecution, Dunagan v. Comm., 31 S.W.3d 928 (Ky. 2000).

IV. CHARGING DECISION

- For CRIMINAL action, always have payee testify or swear out complaint. Reinforces the Payee as participant/Puts a face to the case, and minimizes chance that something has occurred, payments made directly. Also avoids Contracting Official (or staff) as witness in chief.
- Jurisdiction specific: Some Counties have direct prosecution and the County Attorney prosecutes felony non-support. In others, Commonwealth takes over after indictment or presentation after preliminary hearing. Both work!! Do what works best for YOUR County.

V. District court v. Grand Jury considerations (120 ways to skin that cat)

- Generally prefer District Court presentation, more flexible resolution, quicker turn around from arraignment to plea/trial. BUT - can only probate 24 months, max. If guilty, supervision options are limited.

VI. VENUE

- Wherever CHILD is or PAYOR resides. Cleveland v. Comm., 173 S.W.3d 626 (Ky.App. 2005). OAG 63-843, addressing former version of statute.
- Even if foreign order, if Payor is here, we can go after 'em for Non-Support.

VII QUESTIONS/DISCUSSION

530.050 Nonsupport and flagrant nonsupport.

- (1) A person is guilty of nonsupport:
 - (a) When he persistently fails to provide support which he can reasonably provide and which he knows he has a duty to provide to a minor or to a child adjudged mentally disabled, indigent spouse or indigent parent; or
 - (b) Upon a finding that a defendant obligor, subject to court order to pay any amount for the support of a minor child, is delinquent in meeting the full obligation established by such order and has been so delinquent for a period of at least two (2) months duration.
- (2) A person is guilty of flagrant nonsupport when he persistently fails to provide support which he can reasonably provide and which he knows he has a duty to provide by virtue of a court or administrative order to a minor or to a child adjudged mentally disabled, indigent spouse or indigent parent and the failure results in:
 - (a) An arrearage of not less than one thousand dollars (\$1,000); or
 - (b) Six (6) consecutive months without payment of support; or
 - (c) The dependent having been placed in destitute circumstances. For the purposes of this paragraph, it shall be prima facie evidence that a dependent has been placed in destitute circumstances if the dependent is a recipient of public assistance as defined in KRS 205.010.
- (3) A person has a duty to provide support for an indigent spouse, a minor child or children, or a child or children adjudged mentally disabled and, for purposes of this section, is presumed to know of that duty.
- (4) Any person who is eighteen (18) years of age or over, residing in this state and having in this state a parent who is destitute of means of subsistence and unable because of old age, infirmity, or illness to support himself or herself, has a duty to provide support for such parent and, for purposes of this section, is presumed to know of that duty.
- (5) Nonsupport is a Class A misdemeanor. For a second offense, the person shall receive a minimum sentence of seven (7) days in jail. For a third or any subsequent offense, the person shall receive a minimum sentence of thirty (30) days in jail.
- (6) Flagrant nonsupport is a Class D felony.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 411, sec. 30, effective July 15, 1988. -- Amended 1984 Ky. Acts ch. 144, sec. 18, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 141, sec. 136, effective July 1, 1982. -- Amended 1976 Ky. Acts ch. 361, sec. 1, effective June 19, 1976. -- Created 1974 Ky. Acts ch. 406, sec. 261, effective January 1, 1975.

Note: 1980 Ky. Acts ch. 396, sec. 148 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.