

CRIMINAL NONSUPPORT

MAY 2007



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT
CHILD SUPPORT DIVISION



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2007

Dear Prosecuting Attorneys:

Our collaborative efforts have made a very real difference in the lives of Texas children. District attorneys across the state, in cooperation with our field investigators and assistant attorneys general, have successfully prosecuted 263 criminal cases against parents for failure to pay child support. That is a good start; but with your assistance we can do better.

Thousands of Texas children rely on child support payments for a fair start in life. Parents who do not follow the law must be held accountable for refusing to take care of their children. Failure to follow court orders that require payment of financial and medical support must be prosecuted to ensure that Texas children receive the support they need. Without enforcement, compliance will wane.

To help district attorneys with child support prosecutions under Texas Penal Code Section 25.05, we developed the criminal nonsupport handbook. It is an easy to use guide that provides all the essential information. It also outlines how the Attorney General's Child Support Division can assist you with criminal nonsupport cases.

Because of the wide range of services my office can provide, prosecutors who have worked with us on these cases have found that they take little time and effort to prepare, present to a grand jury, and plead out.

Additional copies of this handbook are available from the child support section of my website at www.oag.state.tx.us. For more information, you may also contact Penny Denmon, field operations investigator, 512-460-6276.

If your office has been reluctant to prosecute these cases, please consider joining forces with my Child Support Division. Together, we can ensure that children receive the support that is essential for their future.

Sincerely,

Greg Abbott
Attorney General of Texas

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Introduction

Purpose

The purpose of this handbook is to assist prosecutors in Texas with the preparation and trial of criminal nonsupport cases. Every year, hundreds of thousands of parents regularly make their child support payments. However, there are others who have the ability to pay but refuse to fulfill their legal and moral obligation to support their children.

To create a culture of compliance, it must be clear that there are stiff penalties for parents who refuse to take care of their children. Prosecution for criminal nonsupport is one important avenue for sending the message that parents should take seriously their obligation to pay child support.

Cooperation

Many prosecutors shy away from criminal nonsupport cases because they involve family law, which is far outside the normal purview of most prosecutors. This is where the OAG can help. The OAG's Child Support Division handles more child support cases than any other entity in the nation, filing approximately one-half of all family law cases in Texas, and one-third of all the civil suits in Texas.

The OAG serves every Texas county with 75 offices across the state, and employs a staff of more than 2,000, including more than 200 assistant attorneys general (AAG). The OAG has a caseload of about 1 million cases, and last year collected more than \$2 billion in child support. However, it cannot independently prosecute criminal nonsupport cases. That is why the OAG needs your help.

An Ongoing Effort

To create a culture of compliance, our office will work closely with your office to make the public aware of how serious the state of Texas is about people supporting their children, and your efforts to pursue these cases. If we bring a case to you, an AAG and a field investigator will be assigned to assist with the case from presentation to conviction. We can provide litigation support; experts on how child support is set, collected, recorded, and distributed; and staff familiar with the specific case. The OAG is committed to referring only those cases where prosecution is clearly indicated, and where the facts are established beyond a reasonable doubt.

Credits

This handbook was prepared by John Beauduy, AAG; Debi Caffee, AAG; A.D. Clark, AAG; Tom Hamilton, Assistant Deputy Director for Special Enforcement Operations; Meg Jordan, AAG; Harry Monck, AAG; Debra Morgan, AAG; Donna O'Shea, AAG; Rolando Ramirez, AAG; Don Strup, Supervisor and Field Investigator for Special Enforcement Operations; Alan Sumrall, AAG; and Henry Voegtle, AAG.

Comments and Questions

For comments or suggestions regarding this handbook, or to get your questions answered about criminal nonsupport, please contact Penny Denmon, field operations investigator, at 512-460-6276.

The OAG and Child Support Collection in Texas

Background

In 1975, the federal government determined that the best way to help women and children move from public assistance to self-sufficiency was to help them collect child support from the fathers. To ensure that states followed through with this idea, a state's receipt of welfare funding (under Title IV-A of the Social Security Act) was tied to its creation and operation of a child support enforcement program (under Title IV-D of the Social Security Act; hence the name "IV-D"). [S.REP. NO. 1356, 93d Cong., 2nd Sess. (1974).]

Until 1985, this responsibility was shared by district and county attorneys and the Texas Department of Public Welfare. In 1985, the function was transferred to the Office of the Attorney General (OAG).

Nationwide, the child support program is governed almost exclusively by federal regulations. Title IV-D, 42 U.S.C. §651 *et seq* spells out in great detail the standards state programs must meet to qualify for funding.

The Role of the OAG

Texas is Unique

Texas is one of only three states that makes the attorney general responsible for child support collections and one of only two states where child support is the responsibility of an elected official.

Texas is one of only a handful of states with a statewide consolidated program. In most states, programs are run at the county level. In some states, the nonlegal program is state based, but in-court activities are the responsibility of the local district or county attorney's office or private contract attorneys.

The Office of the Attorney General is the state's Title IV-D agency. [Texas Family Code §231.001] These duties are handled by the OAG's Child Support Division, under the supervision of the Deputy Attorney General for Families and Children, who is designated as the state's IV-D director. By statute, this person must report directly to the Attorney General. [TFC §231.0012]

As the state's IV-D agency, the OAG provides the following services:

- parent locator services
- paternity determination
- child support and medical support establishment
- review and adjustment of child support orders
- enforcement of child support and medical support orders
- collection and distribution of child support payments.

[TFC §231.101]

What the OAG Does Not Do

The OAG is not authorized to handle divorces, address property issues, or enforce visitation or custody provisions.

The AAGs who work in the Child Support Division represent the state and not any parties in the suit. The OAG does not represent the children, nor can its AAGs be appointed as *ad litem*s or “friends of the court”. [TFC §231.109]

Local Rule Offices

The OAG has contracted with several counties to provide IV-D services for all divorce cases in the county, usually handled through the local domestic relations office. The district judges in those counties have enacted a local rule declaring that all divorce decrees entered after a certain date will be treated as IV-D cases. The parties may opt out of this referral. [TFC §231.0011(c)]

Confidential Records

The OAG’s child support records contain information from many sources, including the Internal Revenue Service (IRS), credit bureaus, and other state and federal agencies. Therefore, by state and federal statute, our records are confidential. [TFC §231.108]

Title IV-D Cases

The OAG gets its cases in two ways:

1. A case is automatically referred to the OAG if a person with possession of a child applies for public assistance or Medicaid.
2. Individuals may apply for IV-D services, whether or not they have received public assistance. This includes people who have possession of the child but are not the parents, such as grandparents. About 45 percent of the current caseload involves families who have never received any form of public assistance. Texas does not charge fees for IV-D services.

By filing an application or accepting public assistance, the applicant assigns his or her rights in the child support case to the State. [TFC §231.104] This provides the OAG with standing in the case.

A person who has never received public assistance may terminate services at any time. Those currently receiving public assistance cannot terminate services and must cooperate with the OAG or risk losing benefits. Those who have previously received public assistance cannot terminate services until these benefits have been recouped.

How are we doing

In SFY 2006, the OAG collected \$2 billion in child support, second in the nation after California. In 2007, the OAG received the National Child Support Enforcement Association’s Outstanding Program award to recognize the Child Support Division’s excellent performance.

The OAG and Criminal Nonsupport Cases

The role of the Office of the Attorney General (OAG) in criminal nonsupport cases is to provide support and assistance to enable local prosecutors to see that justice is served. The discretion to prosecute any case remains with the district or county attorney. The support services offered will vary depending on the needs and circumstances of each jurisdiction.

What the OAG Can Do

Find Cases

The OAG can identify criminal nonsupport cases suitable for prosecution from its caseload of more than 900,000 statewide.

Investigate Cases

The OAG can investigate cases to determine if they are suitable for criminal nonsupport prosecution. Each case under consideration for referral for prosecution is assigned to a field investigator. These investigators, many of whom are former law enforcement personnel, are specially trained to research child support cases for prosecution. Their duties include the following:

- collecting and reviewing the original order establishing the support obligation to ensure the obligor received proper notice and the order is not subject to collateral attack
- collecting and reviewing any modifications and civil enforcement actions;
- reviewing the financial information to ensure proper credit was given for all payments
- contacting the obligee to ensure no payments were received that were not included in the official payment records
- reviewing the obligor's wage and income records to ensure the obligor had the ability to pay support as ordered
- reviewing the OAG's case file and computer system to identify any potential difficulties with the case
- reviewing the court records and discussing the case with the AAGs to determine if a civil enforcement remedy may be more appropriate than criminal prosecution
- determining if the case meets the guidelines established by the local prosecutor for a criminal nonsupport referral

Refer Cases

If a case meets the guidelines established by the local prosecutor, the OAG can refer the case to the prosecutor for consideration of possible criminal action, along with a specific case package containing all the relevant orders, pleadings, and records.

What the OAG Can Do to Help the Prosecutor

Pre-screen Cases

The OAG can assist the prosecutor by pre-screening cases that obligees bring to the prosecutor. We can only work on OAG child support cases. If the obligees do not have a case, they must apply for our services. Once that happens, the cases are assigned to a field investigator.

Prepare a Case for the Grand Jury

Upon request, the OAG can assist the prosecutor in preparing a case for presentation to the grand jury. Each case accepted for prosecution is assigned to an AAG in the local field office, often a former prosecutor, and a field investigator. The AAG reviews the field investigator's report, the documents, pleadings, case file, and computer and financial records to ensure the case is clean and there are no "surprises." The field investigator gathers additional documents and information as needed.

Present a Case to the Grand Jury

The OAG's field investigator can assist the prosecutor in presenting the criminal nonsupport case to the grand jury. Field investigators are trained and experienced in testifying before grand juries and are knowledgeable about all phases of OAG child support enforcement.

Locate the Obligor

The OAG can assist the prosecutor in locating the obligor. Through the Child Support Evader program, the OAG seeks the public's help in finding parents wanted for criminal nonsupport by displaying their pictures in newspapers, on posters, and on the OAG's Web site. Attorney General Greg Abbott holds press conferences across the state to announce the release of each new list of Top Ten Child Support Evaders.

Prepare a Case for Trial

The OAG can assist the prosecutor in preparing the case for trial. Backed by Board Certified Family Law Specialists, the AAG can answer questions and produce briefs on any relevant legal topic. The AAG can assist in drafting indictments, responses to defensive motions, and evidentiary and trial motions. OAG staff with personal knowledge of the case can provide factual evidence regarding the specific activities of the obligor and obligee, and information regarding the OAG's child support payment records.

Try a Case

The OAG can assist the prosecutor in trying the case. The AAG can sit second chair and the OAG staff can testify regarding the order creating the child support obligation, any modifications, and the payment records. If the obligor raises the affirmative defense of inability to pay, the field investigator can testify regarding the obligor's employment and income history.

Set Up Restitution

The OAG can assist the prosecutor in setting up terms of probation to ensure the obligor's restitution payments are credited against the child support obligation and go to support the children.

Inform the Public

The OAG can assist the prosecutor in raising public awareness about the basic elements of the case and how it was resolved to benefit the children. The community expects children to be supported, and one purpose of prosecution is to meet that expectation.

What the OAG Cannot Do

Release Confidential Information

Some information, such as tax records and application forms, available to the OAG is confidential pursuant to federal and state law. The OAG cannot release this confidential information to a prosecutor. However, the OAG can provide the prosecutor with all the information necessary to successfully prosecute the criminal nonsupport case.

Prosecute a Case Without You

The distinction and division of responsibilities between civil enforcement and criminal prosecution of nonsupport are clear. The OAG cannot prosecute criminal nonsupport cases. It can only assist the local prosecutor to the extent requested.

The OAG and the Prosecutor

The scope and extent of the services the OAG offers to prosecutors eliminates most of the uncertainty of prosecuting criminal nonsupport cases, especially for those prosecutors who do not have the available resources to develop a specialized criminal nonsupport program. The OAG is here to assist.

Indictment

Elements

The elements of the offense of criminal nonsupport are as follows:

1. the defendant intentionally or knowingly
2. fails to provide support for his child younger than 18 years of age, or for his child who is the subject of a court order requiring the individual to support the child.

[*Belcher v. State*, 962 S.W.2d 653 (Tex. App. -- Austin 1998, no pet)]

Alternatives

Two indictment examples are provided:

- Example 1, from Harris County, is a one-count indictment.
- Example 2, from Rains County, is a multi-count indictment listing each missed payment for each child as a separate count.

Example 1

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

The duly organized Grand Jury of [] County, Texas, presents in the [] District Court of [] County, Texas, that in [] County, Texas, [], hereafter styled the Defendant, heretofore on or about [], did then and there unlawfully, intentionally and knowingly fail to provide support for [], his child younger than 18 years of age (*or* his child who was the subject of a court order requiring the Defendant to support the said child.)

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Example 2

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

The Grand Jurors of [] County, State of Texas, duly selected, impaneled, sworn, charged and organized as such at the [] Term, [] of the [] District Court of said County, Texas, upon their oaths present in and to said Court, that on or about the [] day of [], [], and before the presentation of this indictment, in said County and State, [], hereafter styled the Defendant, did then and there unlawfully, intentionally or knowingly fail to provide support for his child, [CHILD 1], said child being the subject of a court order requiring the Defendant to support said child;

And the Grand Jurors aforesaid do further present in and to said Court, that on or about the [] day of [], [], and before the presentation of this indictment, in said County and State, [] did then and there intentionally or knowingly fail to provide support for his child, [CHILD 2], said child being the subject of a court order requiring [OBLIGOR] to support said child;

And the Grand Jurors aforesaid do further present in and to said Court, that on or about the [] day of [], [], and before the presentation of this indictment, in said County and State, [] did then and there intentionally or knowingly fail to provide support for his child, [CHILD 1], said child being the subject of a court order requiring [] to support said child;

And the Grand Jurors aforesaid do further present in and to said Court, that on or about the [] day of [], [], and before the presentation of this indictment, in said County and State, [] did then and there intentionally or knowingly fail to provide support for his child, [CHILD 2], said child being the subject of a court order requiring [] to support said child;

And the Grand Jurors aforesaid do further present in and to said Court, that on or about the [] day of [], [], and before the presentation of this indictment, in said County and State, [] did then and there intentionally or knowingly fail to provide support for his child, [CHILD 1], said child being the subject of a court order requiring [] to support said child;

And the Grand Jurors aforesaid do further present in and to said Court, that on or about the [] day of [], [], and before the presentation of this indictment, in said County and State, [] did then and there intentionally or knowingly fail to provide support for his child, [CHILD 2], said child being the subject of a court order requiring [] to support said child;

(This continues for each child for each month for a year of missed payments.)

AGAINST THE PEACE AND DIGNITY OF THE STATE OF TEXAS.

Extradition

Statutory Authority

Extradition for criminal nonsupport is governed by Texas Family Code §159.801. The Governor may demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee. [TFC §159.801(b)(1)] This applies even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from that state. [TFC §159.801(c)]

Before making such a demand, the Governor may require the prosecutor to demonstrate that the obligee instituted proceedings for support at least 60 days prior to the date of the demand for extradition. [TFC §159.802(a)] All cases referred by the OAG will have already had proceedings for support instituted and a final order for support entered.

Transportation

It is the policy of the OAG to assist prosecutors in arranging transportation for prisoners arrested out of state on criminal nonsupport warrants referred by the OAG and pay for transportation costs. We need to know as soon as possible after the obligor is arrested to make these arrangements. Please contact Penny Denmon, field operations investigator, at 512-460-6276.

Requisition Forms

Samples of two forms are provided on the following pages:

- Application to Governor for Issuance of Requisition
- Governor's Requisition

Application to Governor for Issuance of Requisition

To the Honorable _____, Governor of Texas.

I request a requisition for the return to this state of the person of [], who is charged by indictment with the crime of criminal nonsupport, in that [], did on the _____ day of _____ in the County of _____, State of Texas, then and there unlawfully, intentionally and knowingly fail to provide support for [], his child younger than 18 years of age (*or* his child who was the subject of a court order requiring the Defendant to support the said child), and who has fled this state and is now believed to be in the City of _____, County of _____, State of _____.

I certify that in my opinion the ends of justice require the arrest and return of [] to this state and further that this application is not made to enforce a private claim.

Governor's Requisition

STATE OF TEXAS
EXECUTIVE DEPARTMENT

From the Governor of the State of Texas.

To His Excellency, The Governor of the State of _____.

WHEREAS, it appears by the annexed papers which I certify to be authentic and duly authenticated in accordance with the laws of this State, that _____ stands charged by indictment with the crime of criminal nonsupport committed in the County of _____ in this State, which I certify to be a crime under the laws of this State, and that he has fled from this State and is a fugitive from justice, and it is believed that he has taken refuge in the State of _____.

Now, Therefore, I _____, Governor of the State of Texas, pursuant to the provisions of the Constitution and laws of the United States and the laws of the State of Texas and the State of _____, and the Uniform Interstate Family Support Act, and the Uniform Criminal Extradition Act, do hereby make requisition for the apprehension of said fugitive and for his delivery to _____ who is hereby authorized to receive and convey him to the State of Texas, here to be dealt with according to law.

In Testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State, at Austin, Texas this _____ day of _____, 20__.

Pretrial Considerations

Finding a case that meets the elements of a criminal nonsupport charge is not difficult. Getting a grand jury to indict a defendant in such a case is also not difficult. However, there are other considerations, issues, and arguments of which a prosecutor should be aware.

This section addresses the major reasons or “defenses” raised by defendants and their counsel, and the appropriate answers, reasons, or justifications.

“I didn’t receive notice of the paternity suit.”

Suits to establish paternity are subject to the same rules of service as any other civil proceeding. If an obligor did not receive notice of the paternity suit, then a bill of review is the appropriate mechanism for attacking the underlying order.

If the underlying paternity order was a default, the OAG is very cautious about proceeding against the obligor in a criminal nonsupport case. The OAG will have brought the obligor to court at least once before proceeding to criminal prosecution, so the prosecutor will not be presented with default issues.

“It’s not a real order, it’s just from the OAG.”

Child support orders can be issued in an administrative proceeding initiated by the OAG, called the “Child Support Review Process.” [TFC § 233] These administrative hearings are usually held at an OAG office although hearings by phone are becoming more common. An OAG employee, called the child support review officer, works with the parties to determine the facts and reach an agreement. Parties can request paternity testing and can present evidence regarding the appropriate amount of child support. Parties do not have to participate, but the OAG can still issue an order, which is signed by an AAG. Before an order is binding, it must be approved by a court. [TFC §§ 233.024, 233.0271]

If the parties agree, the OAG submits the order to the court for approval without further notice to either party. If the parties do not agree, the OAG files a petition to confirm the order. The non-agreeing party has the option of requesting a hearing, which is a trial *de novo* regarding the non-agreed sections of the order. §233.025(b).

“It’s not my child.”

A criminal nonsupport case is neither the proper time nor the proper place to make such an argument. If the OAG presents a prosecutor with a case, the obligor’s paternity has already been established, either by execution of an Acknowledgment of Paternity or by an adjudication in a paternity action. Under *res judicata*, these findings may not be collaterally attacked in a criminal nonsupport case. [*In re E.L.P.*, 636 S.W.2d 579 (Tex. App.–San Antonio 1982, no writ)]

“I want (or wanted) a blood test.”

At the time paternity is established, the OAG encourages potential fathers to have a paternity test if there is **any** question that the child may not be theirs. If the paternity test shows that the child is not biologically related to the alleged father, there is no charge for the paternity test. Once again, *res judicata* applies.

The OAG no longer uses blood to conduct paternity testing. Instead, the inside of the cheek is swabbed to collect samples of buccal cells, which are then tested. This procedure is non-invasive and painless. The DNA in the buccal cells is the same as the DNA in blood or any other tissue sample and yields the same results without the safety concerns connected with needles and blood samples.

“The order was unclear; I didn’t know what to do.”

This is a *Slavin* challenge, from *Ex parte Slavin*, 412 S.W.2d 43 (Tex. 1967). In it, the Texas Supreme Court held that for a person to be held in contempt for disobeying a court decree, the decree must spell out the details of compliance in clear, specific, and unambiguous terms so the person will readily know exactly what duties or obligations are imposed upon him. [*Slavin* at 44]

The OAG is well aware of the requirements of *Slavin* and its progeny. Since the OAG will almost always seek contempt of court before criminal nonsupport, this issue will have already been addressed, and the prosecutor will not receive a case with *Slavin* issues.

“The records are wrong; I paid the other parent in cash.”

Standard child support orders require that child support payments be made through either a local registry, or the State Disbursement Unit (SDU). [TFC §154.004] Most orders state that the child support obligation may be met only by payments as prescribed and that any other payment or remuneration is treated as a gift. The OAG is required to investigate any discrepancy between the payment record of the SDU and the records of the parties. The person claiming a discrepancy must provide documentary evidence of payments. [TFC §234.0091]

“The other parent doesn’t spend the money on the child.”

The nature of child support is well-settled. The Texas Supreme Court held, in *Williams v. Patton*, 821 S.W.2d 141 (Tex. 1991), that the characterization of past child support as mere reimbursement for amounts already expended oversimplifies the true situation. The function of child support is to help a custodial parent maintain an adequate standard of living for the child. When child support payments are not made, the result is a loss of funds available for the child’s food, clothing, education, and home environment. Characterizing arrearages as nothing more than a “debt” owed to the custodial parent ignores the reality that the child is frequently the one who has been harmed by the nonpayment. The payment of arrearages compensates for the wrong to the child at least as much as it reimburses the custodial parent for monies spent on the child. [*Williams* at 145.]

The “Trust” Theory is based on *Bailey v. Bailey*, 987 S.W.2d 206 (Tex. App.–Amarillo 1999, no pet.). In this case, the Court of Appeals held that child support payments might constitute a “hybrid express trust” for the benefit of the child, but the Court was specifically addressing a requirement that \$100 of a party’s child support be deposited into the registry of the court, which is unique in its facts.

Any arrearage belongs to the custodial parent, who has the right to enforce the obligation. [TFC §151.001(c); *Office of the Attorney General v. Carter*, 977 S.W.2d 159 (Tex. App.–Houston [14th Dist.] 1998, no pet.)] That right may be exercised through civil or criminal proceedings.

“The other parent and I have an agreement that I don’t have to pay child support.”

An agreement to modify the terms of a court order is void unless reduced to writing, presented to the court in the form of an agreement, and approved by the court. [*Rogers v. Griffin*, 774 S.W.2d 706 (Tex. App.–Texarkana 1989, no writ.)]

“I never get to see my child.”

This is an unfortunate situation, but it is not a defense for failure to pay child support. TFC § 154.011 makes it clear that support and visitation are not connected.

“My employer is withholding child support, but not sending it in.”

The obligation to pay the child support remains with the obligor, regardless of whether a wage withholding order is in place. The failure of an employer to remit child support withheld creates liability on the part of the employer. [TFC §158.206] The OAG actively pursues employers in these circumstances. If the obligor has complained of this situation to the OAG and it has not been resolved, the OAG will not submit such a case to a prosecutor.

“If the obligor's payment record was so bad, why didn't the OAG ever request more than 180 days in jail?”

Contempt of court for failure to pay child support is a quasi-criminal proceeding. Obligor has the right to an appointed attorney and cannot be made to testify against themselves. Obligor is also entitled to a jury if there is a possibility that they may be held in punitive or criminal contempt and sentenced to more than 180 days. Because of the OAG's massive caseload, we find it more expeditious to only pursue up to 180 days.

Conclusion

The excuses and rationalizations that obligors think up to justify their failure to support their children are as varied as the needs of the children. This section covers some of the most frequent ones. When the prosecutor accepts a case from the OAG, the AAG assigned to the case can address any “new and creative” theories raised by the defendant.

Search, Seizure and Discovery

Information the OAG Provides to Prosecutors

Field investigators provide the following documentation when submitting criminal nonsupport cases for prosecution:

- Full biographical information on the custodial parent, obligor, and children
- Copy of birth certificate, or evidence of paternity
- Copy of current arrears calculations and registry payment records
- Copies of divorce decrees, existing court orders, and wage assignments
- Statement from the custodial parent regarding the case, including the following:
 - Date and place of marriage, and divorce, if any
 - Affidavit of residency
 - How child support was ordered
 - How support was to be paid
 - Provisions for medical coverage
 - Previous orders and monetary judgments
 - Any modifications of orders

- Names, dates of birth, and social security numbers of the children
- Full-time residency of the children
- Children's school history and anticipated graduation dates
- Emancipation history of children for whom support is owed
- Explanation of disabilities or special needs of the children
- Affidavit of the amount the custodial parent believes is owed
- Affidavit of non-receipt (or receipt) of direct payments
- The most current locate and employment history of the obligor
- Criminal history checks of both the custodial parent and the obligor
- A credit report on the obligor
- Asset information on the obligor
- Motor vehicle information on the obligor
- Explanation of possible concealment of assets, or excessive lifestyle
- Obligor's driver's license and driving history.

The field investigator will also present a report that summarizes the entire civil case along with a summary of service attempts and evasions by the obligor, as well as an explanation of why criminal charges against the obligor are necessary.

The OAG will monitor these cases and provide updated locate and employment information on the obligor as changes occur.

Confidential Case Information

The information contained in all child support records, the physical case file and/or computer systems, is confidential and prosecutors must safeguard it. This includes information concerning any custodial parent, noncustodial parent, child, or alleged or presumed father. 42 U.S.C. § 654(26); TEXAS FAMILY CODE § 231.108(a).

Access to the information contained in a case file or on a computer system is restricted to designated users and authorized personnel, though they do not necessarily share the same degree of access to the information.

Case Information that May be released

If the OAG submits a case to a prosecutor for possible criminal action, the following information may be released:

- The case status of pending or possible legal action
- Copies of legal documents that have been filed with the court and are maintained in the OAG's files, unless the documents have been sealed by the court or there is an order prohibiting their release
- Copies of correspondence or documents previously provided to the OAG by either party
- Copies of correspondence or documents previously provided by the OAG to either party
- Financial information regarding child support payments and arrearage balances

- Copies of the State Registry
- Amounts of arrears submitted to consumer reporting agencies
[TFC § 231.108(f); Texas Administrative Code § 55.501(a)]

Information that Cannot be Released

Financial information received from the Texas Workforce Commission may not be released.

Federal law mandates that all IV-D agencies comply with safeguarding procedures established by the IRS to protect tax information (other than payment history) received from the IRS and Social Security Administration (SSA). [26 U.S.C. §6103] Federal tax information may be sent to the IV-D agency by the Department of the Treasury, IRS, SSA, or the federal Office of Child Support Enforcement.

Any agency that receives information from the IV-D agency must also safeguard this information.

Search, Seizure, and Discovery by the Prosecutor

The OAG has administrative subpoena power and by law is authorized to seek discovery from any entity for the purpose of child support. [TFC §231.303] The OAG also has access to databases from many sources. If there is any information a prosecutor may need, the OAG will likely be able to obtain it quickly and easily. Please discuss your needs with the AAG and field investigator working with you on a case.

Pretrial Disposition

Since December 2002, local prosecutors working with the OAG have indicted 263 parents for criminal nonsupport. Of these parents, the vast majority accepted plea bargains, and one indictment was dismissed at the request of the custodial parent.

Deterrence

Criminal nonsupport prosecutions act as a deterrent by showing that parents must support their children or face severe consequences. The OAG is ready to assist prosecutors in raising public awareness about local indictments and convictions.

Impact

The greatest impact comes from convictions as opposed to deferred adjudication. By the time the OAG recommends a case to a prosecutor, the obligor has had many opportunities to support his or her child, up to and including contempt. A conviction also allows the matter to be raised in subsequent civil enforcement actions.

Restitution

Part of any plea bargain should be restitution. To ensure the obligor's restitution payments are properly credited against the child support arrears and are properly distributed to the custodial parent, the payments must eventually be directed to the SDU and specifically identified.

Sample of Criminal Nonsupport Jury Charge

CHARGE OF THE COURT

Ladies and Gentlemen of the Jury:

The defendant, [], stands charged by indictment [*or* information] with the offense of criminal nonsupport, alleged to have been committed in ____ County, Texas, on or about the ____ day of ____, 20___. To this charge the defendant has pleaded not guilty. You are instructed that the law applicable to this case is as follows:

I.

An individual commits the offense of criminal nonsupport if he intentionally or knowingly fails to provide support for his child younger than 18 years, or for his child who is the subject of a court order requiring the individual to support his child.

"Child" includes a child born out of wedlock whose paternity has been admitted by the defendant or has been established in a civil suit.

II.

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

III.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, [], on or about the ____ day of ____, 20___, in the County of ____, and State of Texas, as alleged in the indictment [*or* information], did then and there intentionally or knowingly fail to provide support for [] his child younger than 18 years [*or* the said [] did then and intentionally and knowingly fail to provide support for [], his child, who was the subject of a court order requiring the said [] to support the said [], you will find the defendant guilty of the offense of criminal nonsupport and so say by your verdict, but if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

IV.

It is an affirmative defense to prosecution for criminal nonsupport that the defendant could not provide the support that he was legally obligated to provide.

The burden of proof is on the defendant to prove an affirmative defense by a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight of credible evidence.

Now, therefore, if you find and believe from the evidence beyond a reasonable doubt that the defendant did commit the offense of criminal nonsupport as alleged in the indictment [*or* information], but you further find by a preponderance of the evidence that the defendant could not provide the support, if any, that he was legally obligated to provide, you will acquit the defendant and say by your verdict "Not Guilty."

Useful Forms

The following forms are from the Harris County District Attorney's Office, which has found them useful in handling criminal nonsupport cases. We appreciate Harris County's willingness to share them with prosecutors across the state.

- Criminal Nonsupport Inquiries Procedures
- Criminal Nonsupport Information Sheet
- Obligee's Affidavit

Criminal Nonsupport Inquiries Procedures

- 1. Are there currently child support orders in place between complaining witness and suspect?**

Charges will be considered if

- A. The suspect has a legal obligation to support
- B. The suspect has made no payments or payments made were insufficient for support
- C. The suspect has the ability to pay (i.e. has been gainfully employed in the past)
- D. Complainant has a good work or home address for the suspect
- E. The child for whom support is requested is under the age of 18.

If NO, complaining witness must seek civil remedy

- A. Private attorney
Houston Referral Service (713.237.9429)
- B. Legal organization
Gulf Coast (713.652.0077)
Houston Volunteer Lawyers (713.228.0732)
University of Houston Legal Aid Clinic (713.743.2094)
- C. Domestic Relation's Office (713.755.6757 – tell DRO we referred her/him)
- D. Attorney General's Office (713.974.4876)

If YES, go to #2 below.

- 2. Has complainant filed an enforcement action or a motion for contempt against the suspect? (Through a private attorney, the Domestic Relations Office, or the Attorney General's Office)**

If NO, CNS will only be filed as a last resort.

- A. Complainant must attempt to exhaust all civil remedies first.
- B. TFC § 159.802 (Interstate Rendition) states the governor may require that the interstate action was brought at least 60 days prior to making the demand for surrender of defendant under felony non-support statute.

If YES, go to #3 below.

- 3. Gather Information**

- A. Certified copy of the child's birth certificate
- B. Certified copy of original custody orders:
Divorce decree/paternity decree/child support orders
- C. Certified payment history from Harris County Child Support Division or the SDU
- D. Certified copy of civil remedies:
Enforcement order/contempt order

- E. Respondent's stipulation to arrearages (if any)
- F. Verification of employment (VOE) or information about Suspect's employment
- G. Other helpful information:
Suspect's drivers license; date of birth; social security number; home & work address & phone number; photo; name, address and phone of close relative and friend of the suspect

4. Interview time

- A. Give the complainant all the information necessary for the interview.
- B. Have complainant complete an Information Sheet on filing CNS charges.
- C. Review Information Sheet with complainant.
- D. Complete an affidavit with complainant's statement and have it notarized.
- E. Tell complainant that we, the interns, are NOT taking charges.
Our Chief will review the file and determine if we can proceed with charges.
- F. If charges are taken, complainant will be contacted by our office.

5. File Preparation

- A. If you believe we may have a good case and have received all the required information, prepare a file.
- B. The file will include:
CNS Information Sheet completed by complainant
Complainant's Affidavit
Signed Voluntariness to Testify
All information complainant asked to gather

Criminal Nonsupport Information Sheet

Please Provide Information About YOU

Your Name: _____
Last First Middle

Race: _____ Sex: _____ Date of Birth: _____ Age: _____

Driver License or ID #: _____ Social Security #: _____

Your Home Address: _____
Street Apt # City State Zip

Your Mailing Address: _____
(if different from home address) Street Apt # City State Zip

Your Occupation: _____

Your Employer Name: _____

Your Work Address: _____
Street Apt # City State Zip

Your Phone Numbers: _____
Home Work Pager Cell

Other Contact Numbers:

(1) _____
Friend or Relative's Name Relationship to You Phone #

(2) _____
Friend or Relative's Name Relationship to You Phone #

Name of YOUR Attorney: _____

Phone Number of YOUR Attorney: _____

Have you ever been arrested? _____ Yes _____ No
IF YES, please explain:

Have you ever been convicted of a crime? _____ Yes _____ No
IF YES, please explain:

Are you currently on probation or parole? _____ Yes _____ No
IF YES, please explain:

Please Provide Information About YOUR CHILD or CHILDREN

1. Child's Name: _____
Last First Middle

Race: _____ Sex: _____ Date of Birth: _____ Age: _____

2. Child's Name: _____
Last First Middle

Race: _____ Sex: _____ Date of Birth: _____ Age: _____

3. Child's Name: _____
Last First Middle

Race: _____ Sex: _____ Date of Birth: _____ Age: _____

4. Child's Name: _____
Last First Middle

Race: _____ Sex: _____ Date of Birth: _____ Age: _____

Is the child(ren) in Harris County? _____ Yes _____ No
IF NO, where is the child currently:

Do you have child support orders for child(ren)? _____ Yes _____ No
IF YES, what is the amount that the suspect is ordered to pay monthly?

What is the total amount of child support the suspect has paid? _____

When was the last payment you received from the suspect? _____

What was the amount of that payment? _____

How much do you think the suspect currently owes in child support? _____

Please Provide Information About the SUSPECT

Suspect's Name: _____

Race: _____ Sex: _____ Height: _____ Weight: _____ Date of Birth: _____ Age: _____

Driver License or ID #: _____ Social Security #: _____

Build: _____ Eye Color: _____ Skin Color: _____ Hair Color / Style: _____

Describe any tattoos, birthmarks, or scars: _____

Glasses Beard Mustache Goatee Missing Teeth Gold Teeth

Suspect's Home Address: _____

Street Apt # City State Zip

Suspect's Mailing Address: _____

(if different from home address) Street Apt # City State Zip

Suspect's Occupation: _____

Suspect's Employer Name: _____

Suspect's Work Address: _____

Street Apt # City State Zip

Suspect's Phone Numbers: _____

Home Work Pager Cell

Name, Phone and Address of a PARENT:

Name Phone# Street Apt # City State Zip

Name, Phone and Address of a CLOSE RELATIVE:

Name Phone# Street Apt # City State Zip

Name of Suspect's Attorney: _____

Phone Number of Suspect's Attorney: _____

Has Suspect ever been arrested? _____ Yes _____ No

IF YES, please explain: _____

Has Suspect ever been convicted of a crime? _____ Yes _____ No

IF YES, please explain: _____

Is Suspect currently on probation or parole? _____ Yes _____ No

IF YES, please explain: _____

CRIMINAL NON-SUPPORT CHECKLIST

To be completed by Intern

This office has received the following materials:

- | | | | |
|--|----------|---------|-------------|
| 1. Certified copy of the child's birth certificate | Yes ____ | No ____ | Uncert ____ |
| 2. Certified copy of the divorce decree | Yes ____ | No ____ | Uncert ____ |
| 3. Certified copy of the paternity decree | Yes ____ | No ____ | Uncert ____ |
| 4. Certified copy of child support orders | Yes ____ | No ____ | Uncert ____ |
| 5. Certified payment history from SDU/County | Yes ____ | No ____ | Uncert ____ |
| 6. Certified copy of last enforcement order | Yes ____ | No ____ | Uncert ____ |
| 7. Certified copy of last contempt order | Yes ____ | No ____ | Uncert ____ |
| 8. Respondent's stipulation to arrearages | Yes ____ | No ____ | Uncert ____ |
| 9. Verification of employment (VOE) or information about Suspect's employment | Yes ____ | No ____ | |
| 10. Photo of Suspect | Yes ____ | No ____ | |
| 11. Complainant's Affidavit has been prepared and signed | Yes ____ | No ____ | |
| 12. Affidavit of voluntariness prepared, signed and explained | Yes ____ | No ____ | |
| 13. NCIC/TCIC reports are included in file | Yes ____ | No ____ | |
| 14. Credit report (FCLD Investigator) | Yes ____ | No ____ | |
| 15. Texas Employment Commission data or out of state employment data (FCLD Investigator) | Yes ____ | No ____ | |

Obligee's Affidavit

THE STATE OF TEXAS

§
§
§

AFFIDAVIT

COUNTY OF []

BEFORE ME, the undersigned Notary Public, on this day personally appeared APPLICANT'S NAME who being by me duly sworn on oath deposed as follows:

"My name is []. I live at [], [] County, Texas. { [], the Respondent, and I were divorced on [] in the [] Judicial District Court, [] County, Texas. My marriage to [] produced ___ child(ren): } {On [] in the [] Judicial District Court, [] County, Texas, paternity was established and [] was named the father of the following child(ren):} [], born on [], SSN: ___ [REPEAT FOR MORE CHILDREN]. The {Divorce Decree} {Order Establishing the Parent-Child Relationship}, Cause # _____, ordered [] to pay \$___ per month in child support [and also was to carry full-force medical/health coverage on the child(ren) until their emancipation]. The payments of child support were to commence on []. After not receiving any child support payments or medical coverage assurances from [] for [], I ...

[WAGE GARNISHMENT: I applied to the Texas Attorney General's Office for assistance. Once my case was opened, initial enforcement efforts involved the filing of Wage Assignments for the garnishment of []'s salary by his employer for the payment of the court ordered support. It seemed that each time []'s employer was identified and a Wage Assignment was filed, he would terminate his employment and the process would begin all over again.]

[MOTION TO ENFORCE: I requested court ordered enforcement of my case, and this Motion was filed in []. The court found that, after numerous attempts and re-issuance of service, law enforcement officers were unable to personally serve [] with this Motion as he frequently changed his residences and employment.]

[2nd ENFORCEMENT MOTION: A second enforcement motion was filed with the court and this time personal service was obtained on []. At the court hearing on [], I was awarded a monetary judgment against [] in the amount of \$[] for past due support. A new order was negotiated at this time wherein []'s payments were set at \$[] per moth, and he agreed to make an additional \$[] per month payment against the judgment debt. Only _#_ payment has ever been made by [], a payment for \$[] in []. I again requested enforcement of my case.]

I believe his address is [].

[] has never provided monetary gifts or direct payments to the children or me. He has never provided medical insurance for our children. Insurance for the children was provided by [].

To the best of my knowledge, as of TODAY's DATE, the monetary support owed to me by [] is as follows:

Amount from Prior Judgment: \$

Amount accrues since Judgment \$

Interest on Judgment & Arrearage: \$

I believe that []'s purposeful disregard of summons to appear in court; purposeful lack of employment, and purposeful evasion to avoid payment of Child Support is criminal, and I am now seeking his criminal prosecution.

DATE

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public on the _____ day of _____, 200--.

NOTARY PUBLIC in and for the
State of Texas
My Commission Expires:

I, the undersigned, state under oath that I am the Affiant, that I have personal knowledge of the facts and allegations stated herein and they are TRUE and CORRECT to the best of my knowledge and belief.

DATE

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public on the _____
day of _____, 200--.

NOTARY PUBLIC in and for the
State of Texas
My Commission Expires:

Basic Family Law

This is a basic overview of the current state of family law, as it relates to paternity and child support, as of September 2004.

Establishing Paternity

In 2002, Texas was the first state to enact the Uniform Parentage Act, as Texas Family Code ch. 160. Paternity can be established in three ways: presumption, acknowledgment, or adjudication.

Presumed Paternity

Under the Act, a man is presumed to be the father of a child if

- He is married to the mother of the child at the time of birth; or
- The child is born within 300 days after the termination of the marriage; or
- During the first two years of the child's life, he continuously resides with the child, and represents to others that the child is his own. [TFC §160.204]

Rebutting the Presumption

The presumption of paternity may be rebutted if

- The presumed father files a denial of paternity along with an acknowledgment of paternity by another man, [TFC §160.204(b)]; or
- A court determines that he is not the father in a suit filed within four years of the child's birth, [TFC §160.607(a)]; or
- A court determines that he is not the father, and that he did not cohabit with or have sexual intercourse with the mother during the time of probable conception, and that he never represented that the child was his own, in a suit filed at any time. [TFC §160.607(b)].

Acknowledged Paternity

A mother and a man claiming to be the biological father of a child may sign an acknowledgment of paternity. [TFC §160.301] This acknowledgment must state that the child does not have a presumed father, or the presumed father must file a denial of paternity. [TFC §160.302] Once an acknowledgment of paternity is filed with the Bureau of Vital Statistics, it is the equivalent of an adjudication of paternity by a court. [TFC §160.305]

Rescinding the Acknowledgment

An acknowledgment of paternity may be rescinded by filing a motion to rescind within 60 days of the date of signing the acknowledgment. [TFC §160.307] A challenge to the acknowledgment may be filed after the 60 day period, but must claim fraud, duress, or material mistake of fact. The results of a paternity test showing that the acknowledged father is not the biological father constitutes a material mistake of fact. [TFC §160.308]

Adjudicated Paternity

A suit to adjudicate the paternity of a child with no presumed, acknowledged, or adjudicated father may be brought at any time, even after the child becomes an adult. [TFC §160.606] A suit to adjudicate the paternity of a child with a presumed father must be brought within four years of the birth of the child, unless the mother and the presumed father did not cohabit or engage in sexual intercourse during the period of conception. In that case, the suit may be brought at any time. [TFC §160.607]

Genetic Testing

Testing may be ordered by a court or a child support enforcement agency, or voluntarily by the parties. [TFC §160.501] A man is the father of a child if the genetic tests show the man has at least a 99 percent probability of being the father. [TFC §160.505(a)] These results may be rebutted by another genetic test showing that the man is excluded as the biological father, or identifying another man as the possible biological father. [TFC §160.505(b)] For good cause, the court may order genetic testing on the parents, siblings, or other children of a man who may be the father of a child. (A “fatherless draw”). [TFC §160.508] For good cause, the court may order genetic testing of a deceased person. [TFC §160.509] If a man has an identical twin brother, the court may order testing on both. If the genetic tests cannot determine which brother is the biological father of the child, the court may rely on nongenetic evidence to determine paternity. [TFC §160.510]

The Final Order

An order establishing paternity can be in the form of a final decree of divorce, a final order in a suit affecting the parent-child relationship (SAPCR), or an unchallenged acknowledgment of paternity.

Setting Support

The Obligation

Parents are responsible for the support of their children, and a court may order either or both parents to pay support. [TFC §154.00]. Child support is not a “debt.” *Ex parte Davis*, 101 Tex. 607 (1908). This support continues until the child dies, is emancipated, reaches 18, graduates from high school, or if the child is disabled, indefinitely. [TFC §§§ 154.001; 154.002; 154.006] If neither parent has possession of the child, the court may order that both parents pay support to the non-parent with the child. [TFC §§154.001(b); 154.001(c)] The parties can agree to an amount of child support, which the court will confirm if it is in the best interest of the child. Such an agreement is not enforceable as a contract. [TFC §154.124]

The Guidelines

The court shall order an “equitable” amount of child support. Child support is based on the obligor’s “net resources” as defined in [TFC § 154.062], and the guidelines are set forth in [TFC §154.125]. A rough approximation of net resources is take-home pay. The guidelines are 20 percent for one child, 25 percent for two children, and so on. There are adjustments for multiple children in multiple households. [TFC §154.129]

Presumptions

It is presumed that an obligor can earn minimum wage for 40 hours per week, and child support should be set at that amount. [TFC §154.068] It is assumed that the obligor will also provide medical insurance coverage for the child in addition to paying child support. [TFC §154.064] It is presumed that an order that follows the child support guidelines is reasonable and in the best interest of the children. [TFC §154.122] It is also presumed that if an obligor makes more than \$6,000 in monthly net resources, the guidelines only apply to the first \$6,000, then judicial discretion applies. [TFC §154.126] (The OAG sees very few of these cases.) It is presumed that retroactive child support (support from the date of birth to the date the child support obligation is set) for four years is reasonable. [TFC §154.131] All of these presumptions are rebuttable.

Medical Support

The Obligation

The court shall order medical support for the child. [TFC §154.008] If the child support guidelines are used, it is presumed that the obligor will also provide medical support for the child in addition to the child support. [TFC §154.064] The amount the obligor is required to pay for the child's health insurance is a child support obligation, and may be enforced as such. [TFC §154.183]

The Choices

When the court orders health insurance, it should proceed in the following order:

1. Seek insurance through the obligor's employer or membership in a union or other organization. If this is not available at a reasonable cost, proceed to the next option.
2. Seek insurance through the custodial parent's employer or membership in a union or other organization. Obligor shall reimburse the custodial parent for the amount of the premium as additional child support. If this is not available at a reasonable cost, proceed to the next option.
3. Insurance should be obtained by the obligor through another source. If this is not available at a reasonable cost, proceed to the next option.
4. Pursue health coverage through a state medical assistance plan or state children's health care program. If these are not available, proceed to the next option.
5. The obligor shall pay the custodial parent a reasonable amount each month as medical support. This is called "cash medical." [TFC §154.182]

The term "reasonable cost" means a premium that does not exceed 10 percent of the responsible person's net income in a month. [TFC §154.181(e)]

Failure to Provide

A person who fails to provide health insurance is liable for either the reasonable and necessary medical expenses of the child, regardless of whether they would have been covered by insurance; or the actual cost of premiums paid by the other party to provide insurance. [TFC §154.188]

Paying Support

When Support is Due

Child support is set as a monthly amount, due and payable as set out in the court order. Child support is considered delinquent if it is not received by the 31st day after the payment date stated in the order. §157.266. Interest accrues at a rate of six percent simple interest from the date of delinquency until the date of payment. §157.265. In practice, a payment is considered "late" if it is not received during the month in which it is due.

Where Support is Paid

For every child support order entered after Sept. 1, 2003, support must be paid through the State Disbursement Unit (SDU), a branch of the OAG. [TFC §154.00] The SDU is operated by a private contractor. Every IV-D case requires payments through the SDU, regardless of the order date.

For child support orders entered before Sept. 1, 2003, support can be paid to a local registry, through the SDU, the district clerk, the probation department, a private collection agency, or directly to the obligee.

Who Pays Support

Every child support order contains a provision for withholding child support payments from the income of the obligor. If the parties agree, this provision may be held in abeyance until a delinquency occurs. [TFC §154.007] However, the duty to pay support remains with the obligor; the failure of an employer to withhold support or pay that support as ordered does not relieve the obligor of that responsibility.

Enforcing Support

Judgments and Interest

Every delinquent child support payment constitutes a final judgement for the amount due and owing, plus interest. [TFC §157.261] This judgment accrues simple interest at six percent per annum until paid. [TFC §157.265(a)] The interest is treated as part of the child support, and is collectable in the same manner. [TFC §157.265(b)]

Liens and Foreclosures

A child support lien arises by operation of law for all amounts of child support due and owing, including accrued interest. [TFC §157.261(a)] It attaches to all of the obligor's real and personal property. [TFC §157.312(d)] This includes bank accounts, stocks and bonds, insurance proceeds, retirement accounts, and vehicles. It does not attach to homestead real property, nor to the proceeds from the sale of such property for six months. [TFC §157.317] It does, however, attach to all of the obligor's personal property, including household furnishings, livestock, and personal possessions. [Texas Property Code §42.005]

The OAG regularly receives information from financial institutions and insurance companies regarding account holders and claimants [TFC §231.307], and can place liens on these accounts and claims. [TFC §157.327]

A child support lien cannot be sent to an obligor's employer, or attach to worker's compensation payments, which replace wages. [TFC §157.312(g)]

Contempt

Failure to pay court ordered child support is punishable by contempt, both coercive and punitive. Since contempt is quasi-criminal, the obligor charged with contempt is entitled to an appointed attorney. [TFC §157.163] The obligor is also entitled to a jury trial if there is a possibility of a punitive contempt punishment of greater than 180 days. *Ex parte Whitehead*, 908 S.W.2d 68 (Tex. App.—Houston [1st Dist.] 1995). A motion for enforcement by contempt must be filed within six months after the child support obligation ends. [TFC §157.005]

It is an affirmative defense to contempt that the obligee voluntarily relinquished possession of the child to the obligor for periods longer than those set out in the standard possession order. It is also an affirmative defense that the obligor lacked the ability to pay the support ordered. [TFC §157.008]

Custody and Visitation

New Terminology

“Conservatorship, possession, and access” have replaced “custody and visitation.” A mother or father can be a “managing conservator” with custody; a “possessory conservator” with visitation rights; or a “joint managing conservator” with shared responsibilities.

The joint managing conservator mode is preferred. [TFC §153.131(b)] Under this arrangement, one conservator has the authority to receive child support, and the other has the obligation to pay child support. Both conservators have possession of the child per their agreement or pursuant to the possession schedule ordered by the court. [TFC §153.137]

The Connection Between Visitation and Child Support

The payment of child support may not be made contingent on visitation, and the two are not linked in any way under the law. [TFC §154.011] However, studies have made it clear that there is a connection; obligors with regular access to their children are more likely to pay their child support.

The OAG

The federal regulations governing the IV-D program do not permit federal funding to be spent on custody and visitation issues. Since all child support orders in Texas must contain provisions regarding conservatorship, possession, and access, the OAG includes them. [TFC §153.005] This is the extent to which the OAG can be involved in custody and visitation, except for special grants to fund visitation and access projects.

Substantive Law

Criminal Provisions

Criminal Nonsupport [Texas Penal Code § 25.05]

(a) An individual commits an offense if the individual intentionally or knowingly fails to provide support for the individual's child younger than 18 years of age, or for the individual's child who is the subject of a court order requiring the individual to support the child.

(b) For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.

(c) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense.

(d) It is an affirmative defense to prosecution under this section that the actor could not provide support for the actor's child.

(e) The pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code.

(f) An offense under this section is a state jail felony.

Definitions

"Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth. [Texas Penal Code § 1.07(26)]

Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute. [Texas Penal Code § 1.03(a)]

A person who omits to perform an act does not commit an offense unless a law as defined by Section 1.07 provides that the omission is an offense or otherwise provides that he has a duty to perform the act. [Texas Penal Code § 6.01]

“Omission” means failure to act. [Texas Penal Code § 1.07(34)]

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result. [Texas Penal Code § 1.07(a)]

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result. [Texas Penal Code § 1.07(b)]

"Actor" means a person whose criminal responsibility is in issue in a criminal action. [Texas Penal Code § 1.07(2)]

Texas Penal Code § 2.04 Affirmative Defense

(a) An affirmative defense in this code is so labeled by the phrase: "It is an affirmative defense to prosecution"

(b) The prosecuting attorney is not required to negate the existence of an affirmative defense in the accusation charging commission of the offense.

(c) The issue of the existence of an affirmative defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of an affirmative defense is submitted to the jury, the court shall charge that the defendant must prove the affirmative defense by a preponderance of evidence.

Jurisdiction

Texas Code Crim. Proc. art. 13.16. Criminal Nonsupport

Criminal nonsupport may be prosecuted in the county where the offended spouse or child is residing at the time the information or indictment is presented.

Texas Penal Code § 1.04 (c) Territorial Jurisdiction

An offense based on an omission to perform a duty imposed on an actor by a statute of this state is committed inside this state regardless of the location of the actor at the time of the offense.

Punishment [Texas Penal Code §§12.35(a), (b)]

An individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days and a fine not to exceed \$10,000.

Statute of Limitations [Texas Code Criminal Procedure art. 12.01. Felonies]

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(6) three years from the date of the commission of the offense: all other felonies

Prior Law [Criminal Nonsupport: Texas Penal Code § 25.05 (prior to 9/1/94)]

(a) An individual commits an offense if the individual intentionally or knowingly fails to provide support for the individual's child younger than 18 years of age, or for the individual's child who is the subject of a court order requiring the individual to support the child.

(b) For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.

(c) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense.

(d) It is an affirmative defense to prosecution under this section that the actor could not provide support for the actor's child.

(e) The pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code.

(f) Except as provided in Subsection (g) of this section, an offense under this section is a Class A misdemeanor.

(g) An offense under this section is a felony of the third degree if the actor:

- (1) has been convicted one or more times under this section; or
- (2) commits the offense while residing in another state.

Family Code Provisions

Establishment Of Parent-Child Relationship [TEXAS FAMILY CODE §160.201]

(a) The mother-child relationship is established between a woman and a child by:

- (1) the woman giving birth to the child;
- (2) an adjudication of the woman's maternity; or
- (3) the adoption of the child by the woman.

- (b) The father-child relationship is established between a man and a child by:
- (1) an un rebutted presumption of the man's paternity of the child under Section 160.204;
 - (2) an effective acknowledgment of paternity by the man under Subchapter D, unless the acknowledgment has been rescinded or successfully challenged;
 - (3) an adjudication of the man's paternity;
 - (4) the adoption of the child by the man; or
 - (5) the man's consenting to assisted reproduction by his wife under Subchapter H, which resulted in the birth of the child.

Consequences Of Establishment of Parentage [TEXAS FAMILY CODE §160.203]

Unless parental rights are terminated, a parent-child relationship established under this chapter applies for all purposes, except as otherwise provided by another law of this state.

Presumption of Paternity In Context Of Marriage [TEXAS FAMILY CODE §160.204]

- (a) A man is presumed to be the father of a child if:
- (1) he is married to the mother of the child and the child is born during the marriage;
 - (2) he is married to the mother of the child and the child is born before the 301st day after the date the marriage is terminated by death, annulment, declaration of invalidity, or divorce;
 - (3) he married the mother of the child before the birth of the child in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or before the 301st day after the date the marriage is terminated by death, annulment, declaration of invalidity, or divorce;
 - (4) he married the mother of the child after the birth of the child in apparent compliance with law, regardless of whether the marriage is or could be declared invalid, he voluntarily asserted his paternity of the child, and:
 - (A) the assertion is in a record filed with the bureau of vital statistics;
 - (B) he is voluntarily named as the child's father on the child's birth certificate; or
 - (C) he promised in a record to support the child as his own; or
 - (5) during the first two years of the child's life, he continuously resided in the household in which the child resided and he represented to others that the child was his own.

Subsection (b) below is effective for SAPCRs filed on or after Sept. 1, 2003.

- (b) A presumption of paternity established under this section may be rebutted only by:
- (1) an adjudication under Subchapter G; or
 - (2) the filing of a valid denial of paternity by a presumed father in conjunction with the filing by another person of a valid acknowledgment of paternity as provided by Section 160.305

Subsection (b) below is effective for SAPCRs filed before Sept. 1, 2003

- (b) A presumption of paternity established under this section may be rebutted only by an adjudication under Subchapter G.

Acknowledgment of Paternity [TEXAS FAMILY CODE §160.301]

For suits filed before September 1, 2003:

The mother of a child and a man claiming to be the father of the child conceived as the result of sexual intercourse with the mother may sign an acknowledgment of paternity with the intent to establish the man's paternity.

For suits filed after September 1, 2003:

The mother of a child and a man claiming to be the biological father of the child may sign an acknowledgment of paternity with the intent to establish the man's paternity.

Execution Of Acknowledgment Of Paternity [TEXAS FAMILY CODE §160.302]

(a) An acknowledgment of paternity must:

- (1) be in a record;
- (2) be signed, or otherwise authenticated, under penalty of perjury by the mother and the man seeking to establish paternity;
- (3) state that the child whose paternity is being acknowledged:
 - (A) does not have a presumed father or has a presumed father whose full name is stated; and
 - (B) does not have another acknowledged or adjudicated father;
- (4) state whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
- (5) state that the signatories understand that the acknowledgment is equivalent of a judicial adjudication of the paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after four years.

(b) An acknowledgment of paternity void if it:

- (1) states that another man is a presumed father of the child, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the bureau of vital statistics;
- (2) states that another man is an acknowledged or adjudicated father of the child; or
- (3) falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child; or

(c) A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

Denial Of Paternity [TEXAS FAMILY CODE §160.303]

A presumed father of a child may sign a denial of his paternity. The denial is valid only if:

- (1) an acknowledgment of paternity signed or otherwise authenticated by another man is filed under Section 160.305;
- (2) the denial is in a record and is signed or otherwise authenticated under penalty of perjury; and
- (3) the presumed father has not previously:
 - (A) acknowledged paternity of the child, unless the previous acknowledgment has been rescinded under Section 160.307 or successfully challenged under Section 160.308; or
 - (B) been adjudicated to be the father of the child.

Rules For Acknowledgment & Denial of Paternity [TEXAS FAMILY CODE §160.304]

(a) An acknowledgment of paternity and a denial of paternity may be contained in a single document or in different documents and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither document is valid until both documents are filed.

(b) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(c) Subject to Subsection (a), an acknowledgment of paternity or denial of paternity takes effect on the date of the birth of the child or the filing of the document with the bureau of vital statistics, whichever occurs later.

(d) An acknowledgment of paternity or denial of paternity signed by a minor is valid if it otherwise complies with this chapter.

Effect Of Acknowledgment Or Denial of Paternity [Texas Family Code §160.305]

(a) Except as provided by Sections 160.307 and 160.308, a valid acknowledgment of paternity filed with the bureau of vital statistics is the equivalent of an adjudication of the paternity of a child and confers on the acknowledged father all rights and duties of a parent.

(b) Except as provided by Sections 160.307 and 160.308, a valid denial of paternity filed with the bureau of vital statistics in conjunction with a valid acknowledgment of paternity is the equivalent of an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

Proceeding For Rescission [TEXAS FAMILY CODE §160.307]

A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

(1) the 60th day after the effective date of the acknowledgment or denial, as provided by Section 160.304; or

(2) the date of the first hearing in a proceeding to which the signatory is a party before a court to adjudicate an issue relating to the child, including a proceeding that establishes child support

Challenge After Expiration Of Period For Rescission [TEXAS FAMILY CODE §160.308]

(a) After the period for rescission under Section 160.307 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact. The proceeding must be commenced before the fourth anniversary of the date the acknowledgment or denial is filed with the bureau of vital statistics.

(b) A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

(c) Notwithstanding any other provision of this chapter, a collateral attack on an acknowledgment of paternity signed under this chapter may not be maintained after the fourth anniversary of the date the acknowledgment of paternity is filed with the bureau of vital statistics.

(d) For purposes of Subsection (a), evidence that, based on genetic testing, the man who is the signatory of an acknowledgment of paternity is not rebuttably identified as the father of a child in accordance with Section 160.505 constitutes a material mistake of fact.

Procedure For Rescission Or Challenge [Texas Family Code §160.309]

(a) Each signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial of paternity.

(b) For purposes of the rescission of or a challenge to an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of this state by signing the acknowledgment or denial. The jurisdiction is effective on the filing of the document with the bureau of vital statistics.

Ratification Barred [Texas Family Code §160.310]

A court or administrative agency conducting a judicial or administrative proceeding may not ratify an unchallenged acknowledgment of paternity.

Full Faith & Credit [Texas Family Code §160.311]

A court of this state shall give full faith and credit to an acknowledgment of paternity or a denial of paternity that is effective in another state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other state.

No Time Limitation: Child Having No Presumed, Acknowledged, or Adjudicated Father [Texas Family Code §160.606]

A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, including after the date:

- (1) the child becomes an adult; or
- (2) an earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

Time Limitation: Child Having Presumed Father [TEXAS FAMILY CODE §160.607]

(a) Except as otherwise provided by Subsection (b), a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father shall be commenced not later than the fourth anniversary of the date of the birth of the child.

(b) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:

- (1) the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception; and
- (2) the presumed father never represented to others that the child was his own.

Time Limitation: Child Having Acknowledged Or Adjudicated Father [TEXAS FAMILY CODE §160.609]

(a) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or to challenge the paternity of the child only within the time allowed under Section 160.307 or 160.308.

(b) If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is not a signatory to the acknowledgment or a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than the fourth anniversary of the effective date of the acknowledgment or adjudication.

Rules For Adjudication Of Paternity [TEXAS FAMILY CODE §160.631]

(a) The court shall apply the rules stated in this section to adjudicate the paternity of a child.

(b) The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.

(c) Unless the results of genetic testing are admitted to rebut other results of genetic testing, the man identified as the father of a child under Section 160.505 shall be adjudicated as being the father of the child.

(d) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated as not being the father of the child.

(e) If the court finds that genetic testing under Section 160.505 does not identify or exclude a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of paternity.

Binding Effect Of Determination Of Paternity [Texas Family Code §160.637]

(a) Except as otherwise provided by Subsection (b) or Section 160.316, a determination of parentage is binding on:

- (1) all signatories to an acknowledgment or denial of paternity as provided by Subchapter D; and
- (2) all parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of Section 159.201.

(b) A child is not bound by a determination of parentage under this chapter unless:

- (1) the determination was based on an unrescinded acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;
- (2) the adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or
- (3) the child was a party or was represented in the proceeding determining parentage by an attorney ad litem.

(c) In a proceeding to dissolve a marriage, the court is considered to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of Section 159.201, and the final order:

- (1) expressly identifies the child as "a child of the marriage" or "issue of the marriage" or uses similar words indicating that the husband is the father of the child; or
- (2) provides for the payment of child support for the child by the husband unless paternity is specifically disclaimed in the order.

(d) Except as otherwise provided by Subsection (b), a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

(e) A party to an adjudication of paternity may challenge the adjudication only under the laws of this state relating to appeal, the vacating of judgments, or other judicial review.

Rights and Duties of Parents [TEXAS FAMILY CODE §151.001]

(a) A parent of a child has the following rights and duties:

- (3) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education.

Support of Child [TEXAS FAMILY CODE § 154.001]

The court may order either or both parents to support a child in the manner specified by the order:

- (1) until the child is 18 years of age or until graduation from high school, whichever occurs later;
- (2) until the child is emancipated through marriage, through removal of the disabilities of minority by court order, or by other operation of law;
- (3) until the death of the child; or
- (4) if the child is disabled as defined in this chapter, for an indefinite period.

Interest Enforced As Child Support [TEXAS FAMILY CODE §157.267]

Accrued interest is part of the child support obligation and may be enforced by any means provided for the collection of child support.

Termination of Duty of Support [TEXAS FAMILY CODE §154.006]

(a) Unless otherwise agreed in writing or expressly provided in the order or as provided by Subsection

(b), the child support order terminates on:

- (1) the marriage of the child;
- (2) the removal of the child's disabilities for general purposes;
- (3) the death of:
 - (A) the child; or
 - (B) a parent ordered to pay child support; or
- (4) a finding by a court that the child:
 - (A) is 18 years of age or older; and
 - (B) has failed to comply with the enrollment or attendance requirements described by Section 154.002(a).

(b) Unless a nonparent or agency has been appointed conservator of the child under Chapter 153, the order for current child support, and any provision relating to conservatorship, possession, or access terminates on the marriage or remarriage of the obligor and obligee to each other.

Grounds for Extradition [TEXAS FAMILY CODE § 159.801]

(a) In this subchapter, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The governor of this state may:

- (1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or
- (2) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from that state.

Conditions of Extradition [TEXAS FAMILY CODE § 159.802]

(a) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor may require a prosecutor of this state to demonstrate:

- (1) that not less than 60 days before the date of the demand, the obligee had initiated proceedings for support under this chapter; or

(2) that initiating the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

Provision for Medical Support [TEXAS FAMILY CODE § 154.008]

The court shall order medical support for the child as provided by Subchapters B and D.

Health Insurance Additional Support Duty of Obligor [TEXAS FAMILY CODE § 154.183]

(a) An amount that an obligor is required to pay for health insurance for the child:

- (1) is in addition to the amount that the obligor is required to pay for child support under the guidelines for child support;
- (2) is a child support obligation; and
- (3) may be enforced as a child support obligation.

(b) If the court finds and states in the child support order that the obligee will maintain health insurance coverage for the child at the obligee's expense, the court may increase the amount of child support to be paid by the obligor in an amount not exceeding the total expense to the obligee for maintaining health insurance coverage.

(c) As additional child support, the court shall allocate between the parties, according to their circumstances, the reasonable and necessary health care expenses of a child that are not reimbursed by health insurance.

Court-Ordered Support for Disabled Child [TEXAS FAMILY CODE §154.302]

(a) The court may order either or both parents to provide for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that:

- (1) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support; and
- (2) the disability exists, or the cause of the disability is known to exist, on or before the 18th birthday of the child.

(b) A court that orders support under this section shall designate a parent of the child or another person having physical custody or guardianship of the child under a court order to receive the support for the child. The court may designate a child who is 18 years of age or older to receive the support directly.

Relevant Case Law

Elements of the Offense

The elements of the offense of criminal nonsupport are that the defendant (1) intentionally or knowingly (2) fails to provide support for his child younger than 18 years of age, or for his child who is the subject of a court order requiring the individual to support the child. [*Belcher v. State*, 962 S.W.2d 653 (Tex. App. -- Austin 1998, no pet.)]

The ability to pay is no longer an element of the offense. [*Lyons v. State*, 835 S.W.2d 715 (Tex. App. -- Texarkana 1992, no writ)]

Duty of Support

In Texas, the natural father has a continuing and primary duty arising from statutory and common law to support his children. [*Gomez v. Perez*, 409 U.S. 535 (1973)]

Duty of natural father to support his legitimate children under Texas common law and statute was enforceable on child's behalf in civil proceedings and was also subject of criminal sanctions. [*Gomez v. Perez*, 409 U.S. 535 (1973)]

Refusal of defendant's wife who was separated from defendant to take children and go to defendant upon his request did not relieve defendant of his duty to provide for his children when he knew that wife could not provide adequate support. [*Martinez v. State*, 165 Tex. Crim. 596, 307 S.W.2d 259 (1957)]

Defendant's showing that his second family drained his financial ability did not negate the element of wilfulness in neglect and refusal to support a minor child. [*Almanza v. State*, 365 S.W.2d 360, (Tex. Crim. App. 1963)]

Intentionally or Knowingly

Evidence that defendant had been notified of his arrearage in child support, and testimony of defendant's ex-wife that defendant had threatened to withhold support payments in retaliation for bringing charges against him, permitted a rational jury to find beyond a reasonable doubt that appellant's failure to support his children was intentional or knowing. [*Belcher v. State*, 962 S.W.2d 653, (Tex. App.--Austin, 1998, no pet.)]

Jurisdiction

Where defendant father was not a Texas resident and not under any Texas court order to support his children, prosecution in Texas for criminal non-support was appropriate since the crime of nonsupport is committed where the children reside. [*State v. Paiz*, 777 S.W.2d 575 (Tex. App.--Amarillo 1989), *aff'd as reformed*, 817 S.W.2d 84 (Tex. Crim. App. 1991)]

Assuming that for there to be criminal jurisdiction over defendant in any particular state, due process requires some behavior by that defendant by which he should have reasonably anticipated being subject to that state's criminal jurisdiction, Texas trial court had jurisdiction over Michigan defendant in prosecution for criminal nonsupport; failure to support one's minor children was a criminal offense in Michigan, just as in Texas, and Michigan's criminal nonsupport statute on its face did not limit its reach to resident offenders so that if defendant intentionally or knowingly failed to support his minor children, whom he knew lived in Texas, he should have reasonably anticipated Texas law regarding nonsupport

might be similar to Michigan law and might reach his conduct. [*Ex parte Boetscher*, 812 S.W.2d 600 (Tex. Crim. App. 1991)]

Challenges to Constitutionality

Criminal nonsupport statute is not subject to challenge for unconstitutionality as being an impermissible imprisonment for debt. [*Lyons v. State*, 835 S.W.2d 715, (Tex App. -- Texarkana 1992, no writ)]

Evidentiary Issues

A summary of child support accrued and payments received prepared by child support officer from the Attorney General's office was hearsay since was offered for the truth of the matter asserted but was admissible as business record exception to hearsay rule. [*Perry v. State*, 957 S.W.2d 894 (Tex. App. -- Texarkana, 1997, no pet.)]

What constitutes "support" is evidentiary, and it is therefore not essential for notice to the accused that the definition be included in the charging instrument. [*Lyons v. State*, 835 S.W.2d 715 (Tex App. -- Texarkana 1992, no pet.)]

Child support orders are not the sole standard of the appropriate level of support in a criminal nonsupport prosecution. This does not mean, however, that such support orders are not relevant evidence, but only that such an order is not conclusive evidence. [*Belcher v. State*, 962 S.W.2d 653 (Tex. App. - Austin, 1998, no pet.)]

Continuing Offense

Criminal nonsupport is a "continuing offense" committed not by any overt act but by omission or neglect and continuing so long as the neglect continues without excuse. [*Belcher v. State*, 962 S.W.2d 653, (Tex. App.--Austin, 1998, no pet.)]

The offense of failure to support a minor child was a "continuing offense" that is committed not by any overt act but by omission or neglect, and the offense continued so long as the neglect continued without excuse. [*Ex parte Beeth*, 142 Tex. Crim. 511, 154 S.W.2d 484 (1941)]