

# Criminal Non-Support Prosecution

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# OVERVIEW

- Our goal today is to detail the process of taking a criminal non-support charge from referral to plea or trial.
- We will go over each step of the process:
  - What to Consider When Making a Charging Decision
  - Making a Charging Decision & Drafting Charging Documents and Probable Cause Statements
  - The Court Process from Arraignment to Plea
  - Non-support Trials
  - Non-support Cases after plea or sentence.

# Things to Consider Before Making a Charging Decision

- Role of the Prosecuting Attorney in Enforcing Criminal Nonsupport
- Audit Time Standards
- The Statute we must all know and consider when making a charging decision: §568.040. Criminal Nonsupport

## Role of Prosecuting Attorney in Enforcing Criminal Non-support

- §454.513 states: “Any attorney initiating any legal proceedings at the request of the Missouri Family Support Division shall represent the State of Missouri, Department of Social Services, Family Support Division exclusively. An attorney/client relationship *shall not* exist between the attorney and any applicant or recipient of child support enforcement services for and on behalf of a child or children, without regard to the name in which legal proceedings are initiated.” (emphasis added)



## Role of the Prosecuting Attorney in Enforcing Criminal Non-support; Relationship with the CP (PRS)

- Based on §454.513, we do not represent the CP. The CP is:
  - Our victim
  - Our primary and in many cases are only witness to the crime of non-support.
- As a victim, the CP is afforded certain rights under the Constitution of Missouri and RSMo §595.209, such as but not limited to:
  - To be informed, in a timely manner, of filing of charges, preliminary hearing dates, trial dates, continuances, and final dispositions of the case (such as pleas).
  - The right to confer with and be informed by the prosecutor regarding bail hearings, guilty pleas, hearings, sentencing, and probation revocation hearings, as well as the right to be heard at said hearings.

## Role of the Prosecuting Attorney in Enforcing Criminal Non-support; Relationship with the NCP (PPS)

- A prosecuting attorney (PA) or assistant prosecuting attorney (APA) is not required to speak with or negotiate with a *pro se* defendant outside the presence of the Court.
  - However, there are certain jurisdictions where speaking to *pro se* Defendants is expected by the Court in order to move cases.
- APAs cannot give legal advice to either the NCP or CP.
  - Often, especially when first meeting with Defendant NCP in Court, Defendant will want to start talking about multiple issues that CP has done in relation to the child.
  - Defendant's will also often say they cannot afford the child support amount or it is unfair and they need a modification.

## Role of the Prosecuting Attorney in Enforcing Criminal Nonsupport; Relationship with the NCP (PPS) Cont.

- No matter what the Defendant may state, an APA cannot provide them with legal advice.
- The only reaction a PA should have is to tell Defendant they have remedies available to them in family court. PA can encourage them to speak to a family law attorney.
- It is also appropriate to point them to other resources:
  - For example, I routinely tell Defendants that there are self-help forms on the Missouri Courts website that they can utilize.
- The Defendant should also be reminded that they have a right to hire counsel or apply for the public defender to discuss any defenses or claims they may have and how they may affect their criminal case.

## Audit Time Standards (Kind of Important)

- IV-D Audit Timelines, set down in 13 CSR 40-108.010, must be met for each case referral.
- For criminal enforcement, the criminal summons must be sent within 60 days of accepting a referral.
- This means that prior to 60 days an APA must:
  - Review the Case
  - Make a Charging Decision
  - Draft Charging Documents
  - Get Probable Cause Statement signed
  - File the Charge.
- Then, the Circuit Clerk must send out the summons by the 60<sup>th</sup> day.

## Understanding the Statute: §568.040. Criminal Non-support; Statute Language

- **The Offense:** Per the statute, “a person commits the offense of non-support if he or she knowingly fails to provide adequate support for his or her spouse; a parent commits the offense of non-support if such parent knowingly fails to provide adequate support which such parent is legally obligated to provide for his or her child or stepchild who is not otherwise emancipated by operation of law.”
- **Classification:** Subsection 5: “The offense of criminal non-support is a class A misdemeanor, unless the total arrearage is in excess of an aggregate of twelve monthly payments due under any order of support issued by any court of competent jurisdiction or any authorized administrative agency, in which case it is a class E felony”.
- **Jurisdiction:** Subsection 10: “Persons accused of committing the offense of non-support of the child shall be prosecuted:
  - In any county in which the child resided during the period of time the defendant is charged; or
  - In any county in which the defendant resided during the period of time for which the defendant is charged.”

## Understanding the Statute the attorney is charging: §568.040. Criminal Non-support; Deciding the Charge

- Elements that must be met:
  - That child and/or defendant resided in (county) on (charge date);
  - Child is Defendant's child;
  - ID the Defendant;
  - Defendant failed to provide adequate support for child during charge period;
  - Defendant acted knowingly in failing to provide support for child;
  - **For Felony**, Defendant is required to pay \$x.xx/mo for the benefit of child;
  - **For Felony**, Defendant had arrears in excess of 12 monthly child support payments

# Making a Charging Decision

## Review the 506:

- First thing to do is review the 506 to see FSD's referral request and read their notes on the case.

## Reviewing the Criminal Questionnaire (CQs):

- CQs are sent to CP after a referral is accepted to get CP's statements.
  - A case is not reviewed by a prosecuting attorney until CQ is returned by CP.
  - CQ provides:
    - CP/child's current address
    - Child's educational status
    - Child married/in the military
    - Child living or has lived with the NCP?
    - Is the CP willing to cooperate with criminal prosecution?
    - Has the NCP given CP direct payments or in kind support?
    - NCP's current address or place of employment
    - What is NCP spending his/her money on?





MISSOURI DEPARTMENT OF SOCIAL SERVICES  
FAMILY SUPPORT DIVISION  
REFERRAL FOR LEGAL ACTION

TO: SPRINGFIELD REGIONAL PA  PRIORITY

**SECTION A — CASE DATA**  
 N-D CASE NUMBER: 06  
 CASE TYPE:  TANF  Non-TANF  Family Violence  
 Foster Care  Medicaid Only

**SECTION B — PARENT RESPONSIBLE FOR PAYING SUPPORT (PPS) DATA**  
 NAME (LAST, FIRST, MIDDLE): [REDACTED] SOCIAL SECURITY NUMBER: [REDACTED]  Potentially Dangerous  
 ADDRESS (STREET, CITY, STATE, ZIP CODE): [REDACTED] DATE OF BIRTH: [REDACTED] RACE: CAUCASIAN SEX: MALE  
 TELEPHONE NUMBER (INCLUDING AREA CODE): [REDACTED] IS PPS IN THE MILITARY? (YES/NO): NO  
 DRIVER'S LICENSE NUMBER/STATE OF ISSUANCE: [REDACTED]  
 NAME AND ADDRESS OF EMPLOYER: [REDACTED] PROFESSIONAL LICENSE: [REDACTED]  
 INCOME AND EXPENSE INFORMATION:  
 CS-500 ATTACHED  
 OTHER INCOME AND EXPENSE DOCUMENTS ATTACHED

**SECTION D — PERSON ELIGIBLE TO RECEIVE SUPPORT (PRS) DATA**  
 NAME (LAST, FIRST, MIDDLE): [REDACTED] SOCIAL SECURITY NUMBER: [REDACTED]  
 ADDRESS (STREET, CITY, STATE, ZIP CODE): [REDACTED] DATE OF BIRTH: [REDACTED] RACE: CAUCASIAN SEX: FEMALE  
 TELEPHONE NUMBER (INCLUDING AREA CODE): [REDACTED] IS PRS IN THE MILITARY? (YES/NO): NO  
 RELATIONSHIP TO CHILD(REN): MTHR  
 NAME AND ADDRESS OF EMPLOYER: [REDACTED] INCOME AND EXPENSE INFORMATION:  
 CS-500 ATTACHED  
 OTHER INCOME AND EXPENSE DOCUMENTS ATTACHED

**SECTION E — CHILDREN FOR WHOM SUPPORT IS SOUGHT**

NAME	DATE OF BIRTH	SEX	SSN	PLACE OF BIRTH (STATE)	PLACE OF CONCEPTION (STATE)
N. N.	[REDACTED]	F	[REDACTED]	MO	MO

**SECTION F — COURT INFORMATION**  
 SUPPORT ORDER AND MODIFICATION(S) ATTACHED  
 OTHER DOCUMENTS ATTACHED

**SECTION G — ACTION NEEDED**  
 ENFORCE SUPPORT ORDER FOR:  
 CHILD SUPPORT

**SECTION H — REMARKS**  
 Case is open for current and arrears, owed to the PRS. Payments have not posted to the case at all. PPS is not currently employed, no new wages, no assets, not in custody and not hard copy medical. All admin remedies have been exhausted. Please enforce for child support.  
 To contact FSD staff, please send an email to [FSD.09131@dss.mo.gov](mailto:FSD.09131@dss.mo.gov) for enforcement or modification cases or to [FSD.18331@dss.mo.gov](mailto:FSD.18331@dss.mo.gov) for paternity and establishment cases. If a case is assigned to another office FIPS code in MACSS, send an email to [FSD.XXXXX@office fips@dss.mo.gov](mailto:FSD.XXXXX@office fips@dss.mo.gov).  
 DATE OF REFERRAL: 04-01-2024

# GREENE COUNTY PROSECUTING ATTORNEY

www.greencountymissouri.gov



**DAN PATTERSON**  
PROSECUTING ATTORNEY



## SPRINGFIELD REGIONAL PROSECUTORS' CHILD SUPPORT OFFICE

SERVING GREENE, CHRISTIAN, & TANNEY COUNTIES  
Cox Medical Tower, 1443 N. Robberson Avenue, Suite 600 Springfield MO 65802  
PHONE (417) 868-4126 FAX (417) 862-8739

### Criminal Questionnaire to Custodial Parent / Complaining Witness

Please send this completed questionnaire back to us by \*\*date + 10 days

If you need help in answering any of the questions, please call this office at (417) 868-4126.

#### SECTION 1: CASE INFORMATION

Custodial Parent's Name:

PADME AMIDALA  
342 Rebel Lane  
Alderson

Non-custodial Parent's Name: DARTH VADER

Technician Assigned: STEPHANIE TUCKER  
APA Assigned: CHERI K. COBB  
MACSS Number:

#### SECTION 2: CUSTODIAL PARENT AND CHILD INFORMATION

Please complete the following questions to the best of your knowledge. The Assistant Prosecutor uses this questionnaire to determine if criminal non-support charges are appropriate in this case. Please keep in mind that there are many factors to consider before filing criminal charges and what kind of criminal non-support charges. Criminal non-support charges are not appropriate in every situation, and therefore it is possible that no charges will be filed. IT IS VERY IMPORTANT THAT YOU COMPLETE THESE QUESTIONS TRUTHFULLY AND COMPLETELY. The Assistant Prosecutor may call you to further discuss your answers. This office will contact you when a decision has been made.

Your Name:

If your name is not correct or not complete as printed above, please state it fully and correctly here:

18998

#### Your Children:

Please state the following for each biological child of both you and JUSTIN PAUL NELSON:

NAME (First, Middle, Last)	Date of Birth	Does child live with you now?

(Attach an additional sheet to add more children)

#### Your Contact Information

Please provide two phone numbers where you can be reached during normal business hours:

Best contact number: \_\_\_\_\_ is this Home / Work / Cell / Other? (circle)

Second best contact number: \_\_\_\_\_ is this Home / Work / Cell / Other? (circle)

#### Your Current address

County:

Street Address:

City/State/Zip:

Please provide the address, county and the dates of time of any and each additional place you have lived the past three years:

Address \_\_\_\_\_ County \_\_\_\_\_ Dates \_\_\_\_\_

Address \_\_\_\_\_ County \_\_\_\_\_ Dates \_\_\_\_\_

Address \_\_\_\_\_ County \_\_\_\_\_ Dates \_\_\_\_\_

18998

8. We need information about your child(ren) and school. For each child on this order, please give the following information: (please add a page if you run out of room here)

- a) His or her age right now
- b) What grade s/he is in at school
- c) If applicable, what year s/he quit school
- d) If applicable, when (month, year) s/he graduated high school
- e) If applicable, when (month, year) s/he started attending college after high school graduation
- f) If applicable, when (month, year) s/he quit attending college

9. Are any of the children on this order married? \_\_\_\_\_ If yes, state the child's name, the spouse's name, and the date of the marriage and the county, state where the marriage is registered.

10. Are there any reasons you would NOT want criminal charges filed in this case? \_\_\_\_\_ If yes, please explain those reasons below.

11. If you are not the biological parent of the child, please state your relationship to the child. Also, please indicate if you have a court order giving you custody of the child. If so, what county and state is the order? (Please attach a copy of that Order and return it with the questionnaire.)

10496

### SECTION 3: INFORMATION ABOUT THE OTHER PARENT

Please state below if you know the following information about JUSTIN PAUL NELSON:

<u>Address</u>
County:
Street Address:
City/State/Zip:
Phone number:

<u>Current employer:</u>
Name:
Address:
Phone Number:

1. To your knowledge, is JUSTIN PAUL NELSON currently in good health?

2. Has JUSTIN PAUL NELSON been in either a county jail or a state's Department of Corrections in the last 3 years? \_\_\_\_\_. If so, state the facility's name and the start date and release date of each period of incarceration.

10496

## Making a Charging Decision; Cont.

### Jurisdiction:

- Does the CP/Child(ren) live in your county?
- If not, does the NCP live in your county?

### Pick a Charge Period:

- Review the 509 (pay history):
  - Is there a viable charge period for each child?
  - Consider picking months where no child support was paid.
- Should always keep in mind the Statute of Limitations.
- **RSMo 556.036** - Time Limitations:
  - Misdemeanor: 1 year from the dates of filing.
  - Felony: 3 years from the date of filing.

MISSOURI DEPARTMENT OF SOCIAL SERVICES  
FAMILY SUPPORT DIVISION  
SUPPORT CALCULATION SUMMARY

PAGE: 1

ORDER NUMBER: [REDACTED] ORDER FIPS: 2907701 CASE NUMBER: [REDACTED] DATE: 07-12-2024 TIME: 10:10

NON-CUSTODIAL PARENT: [REDACTED] CUSTODIAL PARENT: [REDACTED] WORKER: COOPBDS

OBLIGATION HISTORY:

DEBT TYPE	BEGIN DATE	END DATE	AMOUNT	FREQUENCY	INITIAL JUDGEMENT	BENEFICIARIES	DOB
CHILD SUPPORT	10-01-2019		435.33	MONTHLY		[REDACTED]	[REDACTED]
	10-01-2019		435.33	MONTHLY		[REDACTED]	[REDACTED]
	10-01-2019		435.36	MONTHLY		[REDACTED]	[REDACTED]

SUMMARY OF DEBT BALANCES AS OF: 07-12-2024

	IV-D ASSIGNED	IV-D RDI ASSIGNED	NON-IV-D
CHILD SUPPORT			
LTD OWED :	75,400.00		
LTD PAID :	53,300.00		
BALANCE :	22,100.00	0.00	22,100.00
ALL DEBT TYPES COMBINED			
LTD OWED :	75,400.00		
LTD PAID :	53,300.00		
BALANCE :	22,100.00	0.00	22,100.00

COMMENTS:

"Being duly delegated by the Circuit Clerk of Greene County, the undersigned certifies these documents as official records from the Missouri Automated Child Support System (MACSS)"  
DATE: 7-12-24  
NAME: Michelle Cooper

CSE-509 (REV. 03-2005)

MISSOURI DEPARTMENT OF SOCIAL SERVICES ORDER NUMBER: [REDACTED] PERIOD: 10-2019 TO 07-12-2024 WORKER: COOPBDS PAGE: 2  
FAMILY SUPPORT DIVISION ORDER FIPS: 1287701 DATE: 07-12-2024 TIME: 10:10  
SUPPORT CALCULATION WORKSHEET CASE NUMBER: [REDACTED] HCP: [REDACTED] CP: [REDACTED]  
DEBT TYPES: CS

YEAR	MONTH	OWED FOR MONTH	PAID FOR MONTH	APPLIED TO CURRENT	APPLIED TO OTHER	ADJUSTMENT	LIFE-TO-DATE OWED	LIFE-TO-DATE PAID	MONTH-END BALANCE	NOTES
2020	JUN	1,500.00	1,500.00	1,500.00	0.00	0.00	58,500.00	53,300.00	5,200.00	
	JUL	1,500.00	0.00	0.00	0.00	0.00	59,800.00	53,300.00	6,500.00	
	AUG	1,500.00	0.00	0.00	0.00	0.00	61,100.00	53,300.00	7,800.00	
	SEP	1,500.00	0.00	0.00	0.00	0.00	62,400.00	53,300.00	9,100.00	
	OCT	1,500.00	0.00	0.00	0.00	0.00	63,700.00	53,300.00	10,400.00	
	NOV	1,500.00	0.00	0.00	0.00	0.00	65,000.00	53,300.00	11,700.00	
	DEC	1,500.00	0.00	0.00	0.00	0.00	66,300.00	53,300.00	13,000.00	
2024	JAN	1,300.00	0.00	0.00	0.00	0.00	67,600.00	53,300.00	14,300.00	
	FEB	1,300.00	0.00	0.00	0.00	0.00	68,900.00	53,300.00	15,600.00	
	MAR	1,300.00	0.00	0.00	0.00	0.00	70,200.00	53,300.00	16,900.00	
	APR	1,300.00	0.00	0.00	0.00	0.00	71,500.00	53,300.00	18,200.00	
	MAY	1,300.00	0.00	0.00	0.00	0.00	72,800.00	53,300.00	19,500.00	
	JUN	1,300.00	0.00	0.00	0.00	0.00	74,100.00	53,300.00	20,800.00	
	JUL	1,300.00	0.00	0.00	0.00	0.00	75,400.00	53,300.00	22,100.00	

CSE-509 (REV. 07-2005)

So in our second page of the 509, we have a good range of dates for charging a Misdemeanor, but there is no viable Felony charging date until February 2024.

## Drafting Charging Docs & Probable Cause Statement; Preparing the Docs

- After a charging decision is made, the legal assistant drafts charging documents for APA review and signature.
  - Draft one count for each child that there is a viable charge period for.
    - Misdemeanor Information or Felony Complaint
- Who signs the Probable Cause (PC) Statement?
  - CP signs the PC Statement. Why?
    - They are the person with the knowledge of the facts.
    - They will be witness at trial.
  - CP can come to office to sign PC statement or the PC statement can be emailed or mailed to the CP and the CP can return it to the PAO after it has been signed in front of a notary.

MISDEMEANOR INFORMATION  
IN THE CIRCUIT COURT OF CHRISTIAN COUNTY, MISSOURI  
Associate Division IV

STATE OF MISSOURI, )  
Plaintiff, )  
)  
)  
vs. ) Case No. )  
)  
) MACSS #: )  
)  
DARTH VADER, )  
Defendant. )

State of Missouri )  
) ss. )  
County of Christian )

COUNT I  
(Missouri Charge Code: 568.040-002Y202038.0)

The Prosecuting Attorney of the County of Christian, State of Missouri, charges that the defendant, in violation of Section 568.040, RSMo, committed the class A Misdemeanor of criminal non-support, punishable upon conviction under Sections 558.011 and 558.002, RSMo, in that between November 1, 2023 and January 31, 2024 in the county of Christian, State of Missouri, the defendant, DARTH VADER, knowingly failed to provide adequate support for L.S. born in the year 2011, the defendant's child for whom the defendant was legally obligated to provide such support.

COUNT II  
(Missouri Charge Code: 568.040-002Y202038.0)

The Prosecuting Attorney of the County of Christian, State of Missouri, charges that the defendant, in violation of Section 568.040, RSMo, committed the class A Misdemeanor of criminal non support, punishable upon conviction under Sections 558.011 and 558.002, RSMo, in that between November 1, 2023 and January 31, 2024 in the county of Christian, State of Missouri, the defendant, DARTH VADER, knowingly failed to provide adequate support for P.L. born in the year 2011, the defendant's child for whom the defendant was legally obligated to provide such support.

The facts that form the basis for this information and belief are contained in the attached probable cause statement, made a part hereof and submitted as a basis upon which this Court may find the existence of probable cause.

WHEREFORE, the Prosecuting Attorney prays that a summons be issued as provided by law.



# Drafting Charging Docs & Probable Cause Statement; REDACTION

- Before E-filing, redactions **MUST** be made pursuant to the new redaction rules. Supreme Court Rule 19.10 effective 07/01/2023.
- Information that must be redacted:
  - SSNs, DOBs, DL number, state identification numbers, taxpayer identification numbers, and passport numbers;
  - Any financial institution account numbers, credit and debit card numbers, personal identification numbers, or passwords to secure any such accounts or cards;
  - Names, addresses, and contact information of informants, victims, witnesses, and persons protected under protection or restraining orders;
  - Names of individuals known to be minors; and
  - Case numbers of confidential, expunged, or sealed records.
- CRIFS – Confidential Redaction Information Filing Sheet
  - E-file redacted document, then;
  - Add a new document – CRIFS with attached unredacted documents

So for example, the CP's name and children's initials would be redacted in the PC statement.

IN THE CIRCUIT COURT OF CHRISTIAN COUNTY, MISSOURI

STATE OF MISSOURI,	)	
Plaintiff,	)	Case No.
	)	
vs.	)	OCN#
	)	
	)	MACSS #:
DARTH VADER,	)	
Defendant.	)	

PROBABLE CAUSE STATEMENT

I, PADME AMIDALA, a resident of Christian County, Missouri, upon my oath and knowing that false statements made herein are punishable by law, state as follows:

1. I have probable cause to believe that DARTH VADER, committed one or more crimes.
2. The following facts created my probable cause:
  - a. I am a resident of Christian County, Missouri, and resided here during the charge period of November 1, 2023 through January 31, 2024 with my child, L.S. born in 2011, and P.L. born in 2011.
  - b. That the father of the aforementioned child is DARTH VADER, the named defendant in this case.
  - c. That DARTH VADER has failed to provide adequate support for his unemancipated children during the charge period, November 1, 2023 through January 31, 2024.
  - d. That DARTH VADER knowingly failed to support his children.
  - e. That there is a Christian County, Missouri, child support order between MICHAEL SHANE DARTH VADER and me. He was adjudicated the father of this children and ordered to pay support in the amount of \$580.00 per month commencing May 1, 2017, to be paid to the Family Support Payment Center.
  - f. That the only money paid for the court-ordered child support has been either to the Circuit Clerk's office or to the Family Support Payment Center.
  - g. That DARTH VADER has not paid me directly any money as and for child support which has not been credited with the Family Support Payment Center, nor has DARTH VADER provided food, clothing, lodging, or medical or surgical attention for this child while the child was in my custody during the charge period.

I, PADME AMIDALA, attest that all facts contained in this statement are true and accurate based on direct knowledge gained as a party to the child support order and being the custodial parent of the child referenced in this action.

DATE \_\_\_\_\_ PADME AMIDALA \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

The Case is filed, Now What?  
The Court Process from  
Arraignment to Plea

- Arraignment/1<sup>st</sup> Appearance of the Defendant
- Pleas – Both Misdemeanor and Felony

## Arraignment/1<sup>st</sup> Appearance of the Defendant; Before Court

- Before Court, the APA will review the file, case.net, the pay history (509) and MACSS to determine if anything has changed since reviewing the referral:
  - Is the Defendant now paying?
  - Is there an IWO?
  - Have arrears been paid off?
  - Has Defendant retained counsel?
  - If APA decides it is appropriate to make a plea offer at arraignment, have waiver of counsel and plea forms ready and in the file.

## Arraignment/1<sup>st</sup> Appearance of the Defendant; Meeting *Pro Se* NCPs

- At Court, if the APA meets with unrepresented Defendant NCPs. APA should:
  - Introduce themselves;
  - Ask if Defendant is represented by counsel;
    - If their answer is yes, STOP, ask their attorney's name and return to the courtroom.
  - Inform the Defendant they have a right to appointed counsel (if they qualify) or to hire private counsel and their right to remain silent;
  - Inquire whether they wish to have time to get an attorney or proceed *pro se*;
  - Inform them of the charges that have been filed;
  - Confirm their current address;
  - Find out if they are employed or are seeking employment (for possible IWO); and
  - What there plans are for making child support payments and paying down arrears.

## Arraignment/1<sup>st</sup> Appearance of the Defendant; Practice Points

- Some Practice Points to keep in mind at this stage:
  - An APA should stop the conversation with a *pro se* defendant if, at any point, an NCP states that they desire to obtain an attorney.
  - For Felonies, it is common practice in many jurisdictions (including Greene Co.) that APAs will not meet with *pro se* NCPs. This is because it is expected that all defendants charged with a felony will proceed only once they have obtained counsel.
  - In Taney and Christian it is expected by the judges that the APA will meet with all *pro se* defendants, regardless of charge, prior to each court appearance unless the NCP has expressed a desire to obtain counsel. **Again, it is important to know the expectations of your jurisdiction.**

## Pleas – Both Misdemeanor and Felony: “To Plea or Not to Plea”

- Should an APA make a plea offer to a Defendant?
  - That is up to the discretion of the APA. Nothing requires an APA to make a plea offer but it is the general practice.
  - APAs may want to wait for certain things to materialize before making plea offer.
    - For example: I prefer a Defendant have steady employment so the Defendant is in position to make payments before a case is set for plea.
    - Most probation conditions require child support payments and maintain full-time jobs;
    - Having a Defendant plead before they can comply with those conditions is setting them up to fail on probation.



## Misdemeanor Pleas

- *Pro se* pleas must be on the record, for without a record for review, there is no evidence that the trial court performed the required procedure to support a finding that the Defendant's waiver was knowing and intelligent. *State v. Johnson* 172 S.W.3d 900 (Mo. Ct. App. 2005).
- *Pro se* pleas must also be accompanied by a written waiver of counsel signed by the Defendant, the requirements of which is defined by **RSMo §600.051**:
  - The offense charged and range of punishment for that offense.
  - That the NCP has the right to be represented by counsel and, if indigent, the NCP has a right to request appointed counsel.
  - The NCP has a right to a trial by Judge or Jury.
  - That the NCP has a right to remain silent.
  - That any recommendation by the Prosecutor is not binding on the Judge.
  - That if the NCP pleads or is found guilty the judge is most likely to impose a sentence of confinement.
  - That the NCP has a right to appeal the judge or jury verdict after found guilty at trial.
  - That NCP is aware that there may be defenses to the crime charged that an attorney may be better able to recognize or argue to a judge or jury.



IN THE 38<sup>th</sup> JUDICIAL CIRCUIT COURT, CHRISTIAN COUNTY, MISSOURI

Judge or Division:	Case Number:
State of Missouri vs.	
<b>DARTH VADER</b>	

(Data File 5/2002)

Waiver of Counsel

I request that the Court allow my waiver of attorney with full understanding that I am entitled to an attorney if I so desire, and with full knowledge and understanding of the following additional considerations:

1. That the offense charged is Count I: Class A misdemeanor criminal non-support with the punishment range of one day to one year in the county jail and/or a fine from \$1.00 to \$2,000.00.
2. That I have a right to be represented by an attorney and that, if indigent, and unable to employ an attorney, I have a right to request the judge to appoint an attorney to assist me in defending against the charge, and that the Court will appoint an attorney to assist me if it finds that I am indigent and not able to employ one.
3. That I have a right to a trial or trial by jury with assistance of an attorney to confront and cross-examine witnesses, that a guilty plea waives any right to a trial.
4. That I have the right to remain silent and not make any statement which may be used in the prosecution of the criminal charges filed against me.
5. I am aware that any recommendation by the prosecutor is not binding on the judge who may accept or reject such recommendation.
6. That if a guilty plea is entered or if found guilty by trial of the charge, the judge is most likely to impose a sentence of confinement in jail or prison.
7. That I have the right to appeal the Court's judgment (decision) or the jury's verdict should I exercise my right to trial and be found guilty.
8. I understand that there may be defenses that I am unaware of and that an attorney would be able to recognize, advise me on, and present to a judge or jury. Knowing this, I still wish to proceed without an attorney.

The above rights have been read to me by the judge in open court. I understand these rights and request the court to accept my request of waiver of an attorney.

\_\_\_\_\_  
Defendant

On this date, the defendant personally appeared before me and was read the above information by me and stated these rights were understood and the defendant signed this request in my presence.

The Court finds that the defendant has made a knowledgeable and intelligent waiver of the right to assistance of an attorney. Therefore, the Court accepts the defendant's waiver of right to representation by an attorney and further permits the defendant to proceed to trial without legal counsel.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge

## Felony Pleas

- For felony pleas, each jurisdiction has their own plea forms that usually consist of a judgment form and plea agreement.
- Defendant should be examined by the Court regarding their knowing and voluntary waiver of a trial and their fitness to enter a guilty plea (mental capacity) before accepting the plea.
- APA should read into the record the range of punishment and factual basis for the charges.
- Record should be made of what the plea agreement is and fact that NCP is in fact pleading guilty of the crime charged.
- If a criminal sentence is imposed, The Defendant should also be given a Post-Conviction Rights Notice by their defense counsel that includes a copy of Supreme Court Rules §24.035 (Correction of Conviction after Guilty Plea) and §29.15 (Correction of Conviction after Trial).
- Those post-conviction rights should also be explained to the NCP by the Court on the record.
- Defendant should be examined on the record as to whether or not they received ineffective assistance of counsel and a finding by the Court made that there is no probable cause to believe the NCP received ineffective assistance of counsel.

## Felony Pleas Practice Points

- APAs must be alert during the plea hearing and make sure that all these things are done during the plea to prevent post-conviction relief claims. Especially when we have a newly elected or appointed judge or a senior judge on the bench that is either just learning criminal procedure or is out of practice. An APA should not count on Defense counsel and especially a *pro se* defendant to ensure that a plea is done correctly.
- Suspended Imposition of Sentence (SIS) vs. Suspended Execution of Sentence (SES):
  - Discretionary (talk to your elected PA for guidance)
  - We usually start with an SIS, as that will give an NCP two terms of probation to work with to be in compliance, if necessary.
  - If the NCP has a prior felony child support conviction an SES would be appropriate.

Defendant rejects plea and now trial is set?  
What now?  
Non-support Trials

- Pre-Trial Motions
- Opening Statement
- Proving a Child Support Charge
- Evidence Presented at Trial
- Cross Examination of Defendant
- Closing Argument
- Common Defenses

## Non-support Trials; Pre-Trial Motions

- Typically nonsupport trials will be bench trials, where evidence is heard and evaluated by the Judge. However, it is important to know how to approach a bench or jury trial.
- Pre-Trial Motions: Always file a Motion for Disclosure by Defendant
  - Why? The non-support statute provides the Defendant with the affirmative defense of inability to pay.  
-- If the Defense plans on utilizing that defense, an APA will need to know ahead of trial.
  - Failure of a Defendant to timely answer a Motion for Disclosure can be grounds for exclusion of evidence or witnesses at trial.
  - Make sure to file a Motion to Endorse any witnesses that were not already endorsed on the information.
  - There are many other motions/documents that could be involved in a trial, specifically if this a jury trial, but we would need another session to cover these. These may include:
    - Motions in limine
    - Jury Instructions
    - Witness and Evidence Lists

## Non-support Trials; Opening Statement

- An opening statement is always made at beginning of trial:
  - I generally read the misdemeanor/felony information into the record and state to the court that the case will be proven beyond a reasonable doubt through witness testimony and evidence submitted;
  - For jury trials you will want to also read the misdemeanor/felony info, but then break down the elements of the case and tell the jury that each element will be proven through witness testimony and exhibits introduced into evidence.



## Elements of a Child Support Charge

- Misdemeanor:
  - “Luke” (and custodial parent) lived in (county) on (charge date);
  - “Luke” is Defendant’s child;
  - ID the Defendant;
  - Defendant failed to provide adequate support for “Luke” during the charge period.
  - Defendant acted knowingly in failing to provide such support for “Luke”.
- Felony:
  - “Luke” (and the custodial parent) lived in (your county) on (charge date);
  - “Luke” is Defendant’s child;
  - ID the Defendant.
  - Defendant was legally obligated to provide support for “Luke” under an order for support;
  - That order required payments of \$X.XX/mo for the benefit of “Luke”;
  - Defendant failed to provide adequate support for “Luke” during the charge period;
  - Defendant acted knowingly in failing to provide such support for “Luke”;
  - Defendant has arrears in excess of 12 monthly child support payments.

## Evidence Presented at Trial

- Testimony of the Custodial Parent:
  - Establish jurisdiction (CP and child lived in county during the charge period);
  - ID the Defendant;
  - Establish that the child(ren) are the Defendant's children and that the Defendant knew that they had children to support;
  - Confirm the details of the underlying child support orders;
  - Confirm that the 509 is accurate and that no payments were made to the Family Support Payment Center during the charge period;
  - Confirm that the Defendant did not make any payments directly to the CP or provide *in kind* support during the charge period;
  - **For a felony:** confirm that the arrears are in access of 12 monthly child support payments on the charge date;
  - Testimony about the Defendant's occupation, work history, ability to work, mental fitness, statements made by Defendant about refusing to pay child support, and/or spending habits, *if* the CP has that direct knowledge.

## Evidence Cont. Underlying CS Order

- Underlying Child Support Order
  - Ask the Court to take judicial notice of the order(s) if the orders are from your jurisdiction, or
  - Enter certified copies of the underlying order(s) into evidence pursuant to **RSMo §490.130**
- **§490.130 – Certified records admissible without foundation:**
  - The records of judicial proceedings (or copies) of any court of the United States, or of any state, attested by the clerk thereof, shall have such faith and credit given to them in this state as they would have at the place whence the said records come.
  - Shall be received as evidence of the acts or proceedings of such court in any court of this state.
  - Records of proceedings of any court of this state contained within any statewide court automated record-keeping system established by the supreme court shall be received as evidence of the acts or proceedings in any court of this state without further certification
  - of the clerk, provided that the location from which such records are obtained is disclosed to the opposing party.

## Evidence Cont. Underlying CS Order Practice Point

- No underlying child support order is required to prove a misdemeanor non-support charge. *State v. Orando*, 284 S.W3d (2009). Mo. Eastern Court of Appeals decision ruling that a child support obligation exists independently of an order fixing support. That the Defendant's knowledge of a parent/child relationship and the subsequent failure to pay child support is all that the State needs to prove to meet the State's burden. No underlying order is required.
- **HOWEVER**, it is **always preferable** to enter into evidence the underlying court order when one is available to us. An APA doesn't want to get into an argument with a Judge that it is required evidence. Should the judge rule in our favor? Yes. Will they? Maybe. And APAs don't want to rely on maybes. APAs don't want to create unnecessary work for themselves or potentially bad case law for their colleagues.
  - Also – often times, it has already been determined that the Defendant is the legal parent of the child(ren) in the underlying order and the fact that they appeared in court or failed to appear, but were served, is evidence that they were aware or should have been aware of the obligation to support their child(ren).

## Evidence Cont. Certified Payment Record

- Enter 509 (certified payment record) into evidence pursuant to **RSMo §454.539**.
- **§454.539 - Payment center records admissible without foundation:**
  - A copy of records of payments to and disbursements by the payment center, including records maintained in the automated child support system, or a circuit clerk, shall be admissible without further proof or foundation in any judicial or administrative proceeding as proof of credits and payments made to or by the payment center or circuit clerk.
  - The records shall be certified by the director, a circuit clerk or such clerk's designee, or an employee of the payment center, and additional proof of the official character of the person certifying such record or the authenticity of his or her signature shall not be required.
  - Including certified scanned copies and photocopies.

## Cross Examination of the Defendant

- Most Defendants do not testify at trial.
- If they do, an APA should be prepared to object to testimony and cross-examine:
  - Object to the entry of evidence or testimony of custody/visitation issues (not relevant to payment of child support);
  - Object to entry of evidence or testimony of medical issues not disclosed prior to trial. (if you filed a motion for disclosure);
  - Confirm the 509 is accurate and that no payments were made during the charge period;
  - Examine them on their work history;
  - If Defendant claims to have provided direct payments to the CP, ask about documentation of such payments; and
  - Ask about Defendant's spending habits (drinks alcohol, smokes, vacations, expensive vehicles, recreational vehicles, hobbies).

## Non-support Trials; Closing Argument

- Recap the State's evidence proving all the elements of the crime of nonsupport beyond a reasonable doubt.
- Make any arguments against defenses that were raised by the Defendant.



# Common Defense Arguments

- Defendant argues that they provided support to the child while the child was in his/her custody for their visitation and therefore has provided adequate support.
  - *State of Mo. v. William Wayne Degraffenreid* 877 S.W.2d 210 (Mo. Ct. App. 1994) – Def. convicted in Greene Co. in a bench trial of 2 counts of criminal non-support. Court rejected Defendant’s argument stating that “Such is not the support obligation of a parent in this state.”
- Arrears have to accrue within the statute of limitations:
  - *State of MO v. Mark Lindell Martin* 575 S.W.2d 764 (2019 – Mo Crt of Appeals Western Dist.) – Felony arrears do not have to accrue within the 3 year statute of limitations because the statute of limitation is not an element of the offense.
- Objection to the entering of the 509 into evidence:
  - **§454.539 - Payment center records admissible without foundation**
- Objection to entering underlying order into evidence:
  - **§490.130 – Certified records admissible without foundation:**



# Non-support Cases after Conviction; Why Won't Anybody Comply with Probation?

- Probation Violations
- Probation Violation Hearings
- Probation Violation Dispositions

## Common Probation Conditions:

- Defendant shall obey all federal and state laws and municipal and county ordinances.
- Defendant is to submit to random urinalysis.
- Defendant is not to consume or possess alcohol or illegal drugs.
- Defendant is to maintain full-time employment.
- Defendant is ordered to pay \$\_\_\_\_\_ to the Family Support Payment Center, PO Box 109002, Jefferson City, MO 65110-9002, on MACSS 00000000 commencing \_\_\_\_\_ and on the \_\_\_\_\_ of each month thereafter.
- Defendant is ordered to report all changes of employment and/or residency to the Springfield Regional Prosecutors' Child Support Office at 417-868-4126 within 48 hours of said change.
- Costs of \$\_\_\_\_\_ are assessed against Defendant.

## Probation Violations

- Prosecuting Attorney Office monitors each Defendant's payments while on probation.
- Your office will determine the procedure and intervals for monitoring payments.
  - For example, the Springfield Regional Office monitors each case for payments on a rotating 60 day basis.
  - If there have been no payments after 2 months, the APA will review for a Motion to Revoke Probation.
  - At their discretion, the APA can decide on other enforcement methods first, such as sending a demand letter.

## Probation Violations; Filing a MTRP

- As part of the MTRP filing, the APA will also notice a date for a probation violation arraignment (PVA) for the MTRP.
- On the date of the PVA:
  - APA may speak with the Defendant to determine why payments have not been made.
  - If appropriate, reset case for reappearance on the MTRP, or
  - Set case for contested probation violation hearing (PVH)
- NOTE: If the Defendant is on an SIS, depending on jurisdiction, the Court may have the Defendant get an attorney or apply for the public defender before setting a PVH.

# Probation Violation Hearings; Admit and Argue

- There are two options for Defendant at PVH:
  - Defendant can admit the violation (admit and argue); or
  - Defendant can have a contested probation violation hearing.
- **Admit and Argue:**
  - Defendant admits violating his probation conditions (usually by failing to make his ordered child support probation payments)
  - Each side will get a chance to present evidence and make argument on a disposition
    - State will enter Certified 509 and Criminal Calculation into evidence
  - Court will make a decision on whether or not to revoke the Defendant' probation and the appropriate disposition.

**NOTE:** If the Defendant has an SIS, a waiver of counsel should be signed by the Defendant and the Court should examine the Def. regarding his filed waiver on the record and make a finding that the waiver of counsel was knowing and intelligent prior to conducting the PVH.

# Contested Probation Violation Hearing

- Defendant does not admit the violation.
- State presents evidence to prove that the Defendant committed the alleged violation(s) of the conditions of probation.
  - While we often file MTRPs on the grounds of failing to pay, violations also could include laws violations, drug use, not reporting new employment/residence, etc.
- Certified 509 entered into evidence pursuant to §454.539.
  - Criminal calculation entered into evidence
- Testimony by CP regarding payments (including any statements made to CP by NCP, what NCP has been doing for work, expenditures by NCP, ect.)
  - Not always necessary for CP to be available to testify in PVH. However they may be needed to overcome certain claims, such as that NCP has been paying CP directly
- Testimony of law enforcement officers for any law violations.

## Probation Violation Hearings Cont.

- Right to appointed counsel
  - Does your Defendant have an SIS? *Gagnon v. Scarpelli*, 93 S.Ct. 1756 (1973)
    - If yes, PD application
    - If no, maybe – Is this a complex matter?
- Is Hearsay allowed in PV hearings? YES... but....
  - Hearsay can form the basis of a revocation proceeding as long as the defendant may cross examine the witnesses presented against them. *Moore v. Stamps*, 507 S.W. 2d (1974)
  - Will your judge allow you to present hearsay evidence? Maybe.
    - Know your judge,
    - Be armed with case law.

## Probation Violation Hearings; Dispositions


- If a probation violation is found by the Court, several things could be done by the Judge:
  - **Continuance:** order for the Defendant's probation to continue to run with or without changes to the probation conditions;
  - **Revocation to new term of probation:** probation revoked, a new term of probation is ordered (two years for Misdemeanor; up to five for a felony) with either a suspended imposition of sentence (SIS) or with a back-up and suspended execution of sentence (SES). Probation conditions may or may not remain the same.
  - **Execution of sentence:** if a sentence was previously imposed (SES), court executes the sentence and the Defendant is remanded to the jail or the Department of Corrections.
  - **Extension:** Court may extend the Defendant's probation by one year and then continue the Defendant on probation with or without the same conditions of probation. This one year extension can only be done once pursuant to **RSMo 559.016. Terms of probation – extension.**



# Probation Violation Hearings; Practice Points

- Victim Rights:
  - CP/NPCR a the right to be present and make a victim impact statement regardless of whether or not you intend to call him/her to testify.
  - You must notify the CP/NPCR of all probation violation hearings.
- We generally do not revoke to jail from an SIS, unless the Defendant has done particularly poorly on probation and it is clear they will not succeed on probation.
- SES back-ups are usually 90-180 days for a misdemeanor, but can be up to a year. For a felony, SES back-ups are 3-4 years in Missouri Department of Corrections.
  - For example: repeat offenders may be deserving of a year back up sentence for a misd.

| Q&A



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