

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No.: 2015-0077
 Plaintiff-Appellant, : On Appeal from the Marion County Court
 of Appeals, Third Appellate District
 v. : Court of Appeals
 ROBERT PITTMAN : Case No. 9-13-65
 Defendant-Appellee. :

BRIEF OF DEFENDANT-APPELLEE, ROBERT PITTMAN

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STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

The Appellee agrees with the Statement of Facts as submitted by the Appellant in regards to this case's history. However, the Appellee would correct the following fact that was misstated by the Third District Court of Appeals, and then again by the Appellant:

On July 9, 2009, Mr. Pittman was indicted on six (6) counts of Non-Support of Dependents in violation of R.C. 2919.21(B), felonies of the fourth degree, enumerated as counts 1-6, and three counts of Non-Support of Dependents in violation of R.C. 2919.21(B), felonies of third degree, enumerated as counts 7-9. (*State v. Pittman*, 2014-Ohio-5001, at p.2, and Appellant's Brief at p.1-2). To clarify, the three counts of Non-Support of Dependents in violation of R.C. 2919.21(B), enumerated as counts 7-9, were felonies of the fifth degree and not felonies of the third degree as previously stated.

Also, Appellee would add the following facts not covered in Appellant's brief:

After the indictment was filed, no proceedings took place in this case until almost four years later, when Appellee learned of the indictment through a background check that was completed as part of his job application. (*State v. Pittman*, 2014-Ohio-5001, at p.3). On June 11, 2013, Appellee voluntarily appeared before the court to accept service of the indictment and to be arraigned. (*State v. Pittman*, 2014-Ohio-5001, at p.3).

On July 29, 2013, Appellee filed a motion to dismiss the indictment for violating his constitutional right to speedy trial due to pre-indictment and post-indictment delay. (*State v. Pittman*, 2014-Ohio-5001, at p.4). On August 19, 2013, the State filed a response. (*State v. Pittman*, 2014-Ohio-5001, at p.4).

ARGUMENT

Proposition of Law:

A person is not subject to prosecution under R.C. 2919.21(B) for the nonpayment of an arrearage-only child support order because the person has no current legal obligation to support the emancipated child.

R.C. 2919.21(B) states, “No person shall abandon, or fail to provide support as established by a court order to, another person whom, by court order or decree, the person is legally obligated to support.” Under R.C. 2919.21(B), the Defendant cannot be criminally prosecuted for failing to pay child support arrearages based on the plain text and structure of the statute, the statute of limitations, and public policy.

1. The plain text and structure of the R.C. 2919.21(B) shows that it does not involve the nonpayment of arrearages.

In Ohio, there is a presumption that every word in the statute is designed to have legal effect. *Shump v. First Continental-Robinwood Assoc.*, 138 Ohio App. 3d 353, 741 N.E.2d 232. Also, it is presumed that the legislature knew the meaning of the words or phrases used in a statute. *Motor Cargo, Inc. v. Board of Tp. Trustees of Richfield Tp.*, 52 Ohio Op. 257, 67 Ohio L. Abs. 315, 117 N.E.2d 224. Further, the Revised Code provides that words and phrases must be construed according to “the rules of grammar.” R.C. § 1.42. Moreover, a statute employing operative language in the present tense, does not purport to cover past events of a similar nature. *Hyle v. Porter*, 117 Ohio St. 3d 165, 2008-Ohio-542, 882 N.E.2d 899 (2008); *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167 (2007). To discern legislative intent, the Supreme Court first considers the statutory language, reading all words and phrases in context and in accordance with rules of grammar and common usage. R.C. § 1.42, *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St.3d 536, 2014-Ohio-2440, 13 N.E. 3d 1115 (2014).

Under R.C. 2919.21(B), the Defendant cannot be prosecuted for failing to pay child support arrearages as the last prong of the statute calls for the Appellee to be under a current obligation to support his children. R.C. 2919.21(B) states: "No person shall abandon, or fail to provide support as established by a court order to, another person whom, by court order or decree, the person is legally obligated to support." [Emphasis Added]. Therefore, the State would have to prove, beyond a reasonable doubt, all of the following:

1. The Defendant failed to provide support;
2. Support was established by a court order;
3. Support is owed to another person, whom, by court order, the Defendant is legally obligated to support.

The trial court noted, "[t]he State's interpretation would restrict the statute to the initial phrase which provides: 'No person shall abandon, or fail to provide support as established by a court order.'" (See Trial Court Judgment Entry at p. 6). This interpretation renders the remaining clarifying language in the statute meaningless.

In *Board of Edn. v. Fulton County Budget Comm.* (1975), 41 Ohio St. 2d 147, the court, at page 156, stated: "Courts do not have the authority to ignore, in the guise of statutory interpretation, the plain and unambiguous language in a statute." (Citations omitted). Also, in *First National Bank of Wilmington v. Kosydar* (1976), 45 Ohio St. 2d 101, the court, at page 106, stated: "In the construction of a legislative enactment, the question is not what did the General Assembly intend to enact but what is the meaning of that which it did." Thus, "...it is a cardinal rule of statutory construction that significance and effect should if possible be accorded every word, phrase, sentence and part of an act." *Dunbar v. State* (2013), 136 Ohio St.3d 181 citing *Wachendorf v. Shaver* (1948), 149 Ohio St. 231.

Here, the State asks for an interpretation of the statute that renders the last phrase of the statute, “the person is legally obligated to support” meaningless. Clearly, the statute uses the word “is” to indicate that the Appellee had to be legally under an obligation to support at the time of his criminal offense. It is undisputed that the Appellee “was” under an obligation to support at an earlier time, but not at the time of his alleged offense, as outlined in the bill of particulars. (See Bill of Particulars, Appellee’s Appendix 9). The legislature could have used the past tense verb “was” in place of “is” or any combination of the two such as “is and/or was.” Further, the legislature could have simply used the word “arrearages” or included the word “arrearages” within the statute. Clearly, the legislature chose not to use the past tense and intentionally chose not use the word arrearages. As the trial court properly noted, “[t]o the extent that the meaning of the statute is ambiguous, R.C. 2901.04 requires the statute to be interpreted in favor of the Defendant.” (See Trial Court Judgment Entry at p. 7). According to the Marion County Common Pleas Court, Family Division Entries, both dated November 20, 2006, Mr. Pittman’s children were emancipated effective August 31, 2006. The alleged criminal act by the Appellee, outlined in the Bill of Particulars that was filed on October 16, 2013, covers the dates of July 1, 2007 through June 30, 2009. Thus, the Defendant was not under a current duty to support the children, but was only under an obligation to pay arrearages to Alma Douglas, the children’s mother. The trial court stated, “[t]he additional meaning provided by the phrase ‘to, another person whom, by court order or decree, the person is legally obligated to support’ is that at the time of the commission of the criminal offense, there must be a current obligation of support.” (See Trial Court Judgment Entry at p. 7)

The State relies on *State v. Dissinger* (2002), 2002-Ohio-530, 2002 WL 31270151 for their argument. In *Dissinger*, Michael Dissinger and Teresa Kannaird were divorced on May 8,

1985 and had one daughter born October 20, 1977. *Id.* at ¶1. Mr. Dissinger was ordered to pay \$40.00 per week toward a \$10,982.70 arrearage. *Id.* at ¶2. On October 26, 2001, the Delaware County Grand Jury indicted Mr. Dissinger on one count of nonsupport in violation of R.C. 2919.21. *Id.* at ¶3. Mr. Dissinger filed a motion to dismiss and the trial court dismissed the indictment, finding the legislature's intent did not provide for prosecution under R.C. 2919.21 for nonpayment of an "arrearage only" child support order. *Id.* at ¶3. The State of Ohio filed an appeal claiming the trial court erred in dismissing the indictment. *Id.* at ¶3. In a two to one (2-1) decision, the majority held that based upon the legislature's definition of a child support order under R.C. 3115.01(B), a child support order includes an "arrearage only" order. *Id.* at ¶12. Thus, an arrearage only order can be the basis of a prosecution under R.C. 2919.21. *Id.* at ¶12.

Dissenting Judge Hoffman based his opinion on the fact that he believed the trial court correctly determined the statute is applicable only when the defendant is under a current obligation to support. Specifically, he stated, "[i]t does require proof that the defendant failed to provide support as established by a court order to another person to whom the defendant 'is legally obligated to support.'" *Id.* at ¶18. Further, Judge Hoffman noted that criminal statutes must be strictly construed against the state and in favor of the accused. *Id.* at ¶19.

In the present case, like *Dissinger*, the State is attempting to obtain felony charges on the Defendant as to the arrearages owed to the children's mother. In *Dissinger*, the Fifth District Court of Appeals only looked for a definition of "support order." The court noted that R.C. Chapter 29 does not define a "support order," and the court turned to R.C. Chapter 3115, the Uniform Interstate Family Support Act. According to R.C. 3115.01(B), a "child support order" is defined as "an order for the support of a child that provides for monetary support, whether current or in arrears..." *Dissinger* at ¶11. Further, the *Dissinger* court acknowledged that this

definition is a limited definition pertaining to sections 3115.01 to 3115.59 of the Revised Code, but the court stated that this definition demonstrated legislative intent. It is the Appellee's contention that the Fifth District's use of a definition in R.C. 3115 to explain the legislative intent in Chapter 29 is clearly wrong.

First, the language contained in R.C. 2919.21 does not contain the words "support order" or "child support order." Since the statute does not use these terms, it was problematic for the *Dissinger* court and would be problematic for this Court to be searching for definitions of terms that are not directly in the statute. Instead, the *Dissinger* court should have searched for a definition of "support." According to *Black's Law Dictionary*, Third Pocket Edition, the term "support" is defined as sustenance or maintenance; esp., articles such as food and clothing that allow one to live in the degree of comfort to which one is accustomed. (See *Black's Law Dictionary*, Appellee's Appendix 10). Moreover, *Ballentine's Law Dictionary*, Third Edition, defines the term "support" as to furnish the necessities of life for maintenance in a proper manner, not merely the necessities for a bare maintenance. Also, *Ballentine's Law Dictionary* further defines "support" as to provide the means of maintenance of a person. (See *Ballentine's Law Dictionary*, Appellee's Appendix 11).

Regarding the support of a child, the mother and father have a duty to "support" their children. Here, while mother and father both have this duty under R.C. 2919.21(A), it was father that had his duty of support order by a court under R.C. 2919.21(B). Thus, Appellee had to provide the means of maintenance for his children by providing money to allow the children to live in the degree of comfort to which they were accustomed to receive. This court order opened Appellee to potential criminal prosecution, but not mother because she was never court ordered to provide "support." Mother is not subject to criminal prosecution, because it is presumed

mother does provide this “support” as the children resided with her. In addition, if Appellee was not court ordered to provide “support,” it is presumed that he was providing this “support.” However, both mother and father would be subject to prosecution under R.C. 2919.21(A)(2), but not subject to prosecution under R.C. 2919.21(B).

Once, these children reach the age of majority or are emancipated, the obligation to “support” these children is terminated both for the mother and for the father. Mother no longer has a duty to provide the children’s necessities, just as father no longer has this duty. The children are deemed to be able to provide for their own “support.” Therefore, neither parent is deemed to have any current obligation to support these children. It follows that Appellee’s court ordered obligation to support these children would then cease, as well. Hence, the Marion County Family Court had to enter its Judgment Entry Determination of Emancipation and Arrears. Appellee’s obligation to “support” his children ceased, as they are now adults. However, the children’s mother presumably provided the “support” of the children without the help of Appellee. Thus, the mother had to incur additional funds to provide this “support,” because Appellee had failed to pay his obligation. Therefore, a separate order was entered to reimburse the mother for the additional support she provided to the children during the time that both parents were under the obligation to support their children. This arrearage order flows to the mother, not to the children. This arrearage order is money that is owed to the mother. Therefore, R.C. 2919.21(B) does not contemplate criminal prosecution for money owed to one parent or the other for reimbursement.

Second, R.C. 3115 is a civil statute, which adheres to the rules of civil procedure, and clearly limits the use of its definitions, procedures, and rules to only R.C. 3115.01 to 3115.59. R.C. 3115 is the Uniform Interstate Family Support Act (UIFSA). Family Support is not a legal

term in Ohio law, but is a term that is used to mean child support and/or spousal support. The UIFSA is a result of federal regulations requiring states to cooperate in establishing child support, and assist in enforcing child support, spousal support and family support. UIFSA regulates the processing of all cases in which parties are located in more than one state. Each state was required by federal law to adopt UIFSA for the processing of intergovernmental cases and because of this, the legislative intent was clearly to limit its use to only R.C. 3115.01 to 3115.59.

Again, like the State, the *Dissinger* decision does not address the last phrase in R.C. 2919.21(B) as the third prong of section clearly reads “the person is legally obligated to support.” [Emphasis Added]. In the present case, the Appellee’s original child support order dated November 15, 1988, stated that he was obligated to pay support until said children attains the age of eighteen (18) and has completed their high school education, or is otherwise emancipated. The children were emancipated on August 31, 2006, relieving the Appellee from any current obligations of support. Thus, since criminal statutes must be strictly construed in favor of the accused, the trial court appropriately dismissed counts five (5) and six (6) of the indictment, and the Third District Court of Appeals properly upheld this dismissal.

Moreover, the State refers this Court to *State v. Partee* (2008), 2008-Ohio-59, which upheld a jury trial conviction against Mr. Partee for failing to pay support in violation of R.C. 2919.21(B). However, the *Partee* case is distinguishable from the present case in the fact that Mr. Partee was under a current obligation to support at the time of his offense. He was convicted for failing to pay support from January 1, 2006 to June 30, 2006, but Mr. Partee’s child support order was not terminated until July of 2006. *Id.* at ¶16, 17. *Partee* did not involve an arrearage

only order payable to the child's mother. Therefore, this case's outcome was determined under an entirely different set of facts, and is not applicable to the present matter.

2. A person is not subject to prosecution under R.C. 2919.21(B) for the nonpayment of an arrearage-only child support order because the person has no current legal obligation to support the emancipated child and prosecution would violate the statute of limitations.

In most cases, the duty of a parent to provide for support ends upon the child reaching the age of majority. *In re Beilstein* (1940), 145 Ohio St. 397, 31 Ohio Op. 12, 62 N.E.2d 205. Also, emancipation generally discharges a parent's duty to pay child support. *Risser v. Risser* (2007), 173 Ohio App. 3d 430, 2007-Ohio-4936, 878 N.E.2d 1073. The terms "emancipation" and "majority" with regard to status of a child are not synonymous; emancipation generally refers to freeing of a child from parental control, and majority refers to the "age of majority." *Risser v. Risser* (2007), 173 Ohio App. 3d 430, 2007-Ohio-4936, 878 N.E.2d 1073.

R.C. 2901.13 is the Statute of Limitations for criminal offenses. According to R.C. 2901.13 (A):

(1) Except as provided in division (A)(2) or (3) of this section or as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

(a) For a felony, six years.

(See Appellant Brief p.6 as Appellant agrees with this six year term).

In *State v. Climaco, Climaco, Seminatore, Leskowitz, & Garofoli Company, L.P.A.*, 85 Ohio St. 3d 582 (1999), this Court stated in paragraph 2:

The primary purpose of a criminal statute of limitations is to limit exposure to prosecution to a certain fixed period of time following the occurrence of those acts the General Assembly has decided to punish by criminal sanctions. *Toussie v. United States* (1970), 397 U.S. 112, 114-115, 90 S.Ct. 858, 860, 25 L.Ed.2d 156, 161. This "limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official

punishment because of acts in the far-distant past.” *Id.* Additionally, such a time limit has the salutary effect of encouraging law enforcement officials to promptly investigate suspected criminal activity. *Id.*

Here, both children had reached the age of majority and were emancipated on August 31, 2006 due to the children being 18 years old and terminated from high school. Consequently, the Marion County Common Pleas Court, Family Division’s Judgment Entry Determination of Emancipation and Arrears dated November 20, 2006 relieved the Appellee from criminal prosecution, as he was no longer under a current obligation of support as required by R.C. 2919.21(B). This does not relieve Appellee from his obligation of the arrearage order, nor does it deprive the child’s mother or the state from bringing a contempt action for failing to pay this arrearage order.

The dates outlined in the Bill of Particulars for the alleged violations were from July 1, 2007 through June 30, 2009. Since the Appellee was no longer obligated to support the children and the alleged violations occurred past the date of emancipation, the Appellee could not be prosecuted for violating 2919.21(B). However, it is the Appellee’s position that the State can prosecute individuals, similar to the Appellee, before the children are emancipated until six (6) years past the date of emancipation, provided that the dates for the commission of the criminal offense occurred before the child was emancipated. This allows the state to prosecute individuals for nonpayment of support until the children reach approximately twenty-four (24) years of age. This Statute of Limitations makes the State prosecute the criminal non-support activity as it does for all other criminal activity. To hold otherwise, would allow the State to be able to prosecute individuals such, as the Appellee, at any point for a majority of their adult life. For example, Appellee was ordered to pay his wife \$33,730.14, and Job and Family Services of Marion County Child Support Division for ODJFS \$583.31 for one child, as well as \$33,720.55

and Job and Family Services of Marion County Child Support Division for ODJFS \$583.32 for the other child. This is a total judgment of \$68,617.32. Since Appellee works as a landscaper and earns approximately \$10 to \$12 an hour, he will inevitably be paying off this debt for a significant number of years. Even under the court ordered amounts, if Appellee made every payment for both children as prescribed, he would pay off his arrearages in approximately twelve (12) years. Therefore, under the State's argument, Appellee would be subject to potential criminal prosecution for at least the entire twelve (12) years or until the entire \$68,617.32 was paid in full, at which time his children would be over the age of thirty (30). This potential criminal liability looming over the Appellee's head would be more restrictive than any other form of criminal prosecution for restitution/financial sanctions imposed in Chapter 29.

3. A person is not subject to prosecution under R.C. 2919.21(B) for the nonpayment of an arrearage-only child support order because public policy would dictate otherwise.

Contrary to the *Amicus Curiae* brief filed by the Ohio Attorney General, the Appellee does not profess a theory that escapes the consequences of arrearages owed, that escapes the responsibility of the arrearages owed, nor whisks away the Appellee's arrearages that are owed. In fact, the Appellee concedes that there is an obvious public policy interest in making sure child support arrearages are paid. As properly outlined in the Attorney General's *Amicus Curiae* brief, any arrearage now paid by the Appellee does not go to his children for their support, but instead goes solely to the mother. Thus, the trial court properly noted, "[t]here is a significant policy difference between criminalizing non-payment of current support and non-payment of arrearages when there is no longer a duty to provide support." (See Trial Court Judgment Entry at p. 7). It only makes common sense that prosecutors should be encouraged to bring charges under the statute sooner rather than later since the child is not emancipated and would receive the benefit

of the support. Consequently, the trial court noted, “[f]ailing to support a child, for whom there is a current duty to support, potentially causes an ongoing harm to the child, which criminal enforcement may prevent.” (See Trial Court Judgment Entry at p. 7). During the time before the child reaches the age of majority or before the child is emancipated, the child cannot provide for his own “support.” Thus, the parent must provide the “support.” However, once the child has reached the aged of majority or has been emancipated, the child can provide his own “support.” The ongoing harm and potential harm does not exist when the child is deemed emancipated and able to support themselves. This potential harm to the child can be alleviated by the children themselves, who are no longer children but are adults. The children can obtain employment and be self-sufficient. Thus, under R.C. 2919.21(A), both parents would be relieved of their obligation of “support” and could not be prosecuted for failing to provide support, after the child has reached the age of eighteen. Similarly, under R.C. 2919.21(B), the parents’ obligation to “support” their children would terminate when the child reached the age of majority or was emancipated. Under both sections, the obligation to “support” the children has been terminated. To hold otherwise, the custodial parent’s obligation would terminate at the age of eighteen under the (A) section and the non-custodial parent’s obligation continues under the (B) section. In addition, holding otherwise, non-custodial parents obligation to support their child terminates under the (A) section but continues under the (B) section. In both these scenarios, the (A) section and (B) section of R.C. 2919.21 use the term “support,” yet the definition would have two separate meanings depending on which section of R.C. 2919.21 is being applied, interpreted, and prosecuted.

It is unpersuasive that a prosecutor would wait until the child is emancipated to seek criminal charges as any support received does not benefit the child, which is the entire purpose

of having a child support order. Further, it should be equally unpersuasive that an obligor would withhold support as the child reaches the age of majority/emancipation as the Statute of Limitations would allow prosecutors either two (2) years or six (6) years, depending on the level of the criminal charge, beyond the age of majority or emancipation to criminally prosecute the child support obligor. The potential Defendants do not escape criminal prosecution when there is a current obligation. Once the obligation becomes an arrearage only order, the Statute of Limitations begins to run on criminal prosecution of these potential Defendants.

Moreover, by not allowing for the prosecution of an arrearage only order under R.C. 2919.21(B), the State is not left without adequate remedies. For example, the State still can file contempt actions, impose liens against property, revoke professional or occupational licenses, revoke driver's license or recreational license, withhold income and income tax refunds, access restrictions and deduction from financial institutions, as well as any other action permitted by law to satisfy the support obligation. In *Cramer et al. v. Petrie* (1994), 70 Ohio St.3d 131, the Supreme Court held that a court may use its contempt powers in such a manner even if the child is emancipated. Therefore, the State may not criminally prosecute the Appellee under R.C. 2919.21(B), but may pursue other available remedies, such as contempt actions in R.C. 2705. This contempt process provides adequate remedies for the State and individuals that are owed arrearages, which includes the possibility of imposing a jail sanction for either thirty (30), sixty (60), or (90) days. Child support obligors should not be subject to criminal prosecutions after their current obligation has ceased when adequate remedies exist to pursue child support arrearages.

Further, the State argues that a contempt proceeding is not always a realistic option. Appellant states that according to R.C. 2705, the accused is to appear at a court hearing upon a

summons and order by the court and serving a summons on them would be next to impossible. Simply put, this argument is ridiculous. The same procedure employed by the court to get an accused to appear in court to face allegations of contempt, would be the same tactics the State would use to have a defendant appear for an indictment or complaint. Also, it is interesting that the Appellant argues that a contempt proceeding is not always a realist option because in regards to the Appellee, the State filed a motion to impose sentence on a prior civil contempt on June 24, 2009 against the Defendant, which the Defendant was ordered to serve zero (0) days in jail with the twenty five (25) days of the original sentence to remain suspended upon the same terms and conditions. Then, fifteen (15) days later, the State indicted the Defendant on felony charges.

CONCLUSION

A person is not subject to prosecution under R.C. 2919.21(B) for the nonpayment of an arrearage-only child support order because the person has no current legal obligation to support the emancipated child and the Appellee's argument should be upheld based on the following:

1. The Defendant was not under a current obligation to support as the statute provides;
2. Criminal statutes must be strictly construed against the state and in favor of the accused;
3. Child support Obligor may be under a threat of criminal prosecution long after the child has emancipated;
4. Public policy dictates that criminal prosecutions of Obligor should happen before the child emancipates and;

5. The State and the child support obligees are not left without a proper remedy.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing Appellee Brief was served upon Brent Yager, Prosecutor and Megan Frericks, Assistant Prosecutor, 134 East Center Street, Marion, OH 43302 by personal service to their office on this 1st day of June, 2015.

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APPENDIX

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CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,
Fifth District, Delaware County.

STATE of Ohio, Plaintiff-Appellant,
v.
Michael A. DISSINGER, Defendant-Appellee.

No. 02CA-A-02-010. | Decided Oct. 1, 2002.

Defendant was indicted on one count of nonsupport, and defendant filed motion to dismiss. The Court of Common Pleas, Delaware County, No. 01CR-I-10-423, granted motion and State appealed. The Court of Appeals, Farmer, J., held that criminal nonsupport statute permits prosecution for nonpayment of "arrearage only" child support order.

Affirmed.

Hoffman, P.J., dissented and filed opinion.

West Headnotes (1)

[1] **Child Support**

➔ Abandonment or Neglect to Support

Criminal nonsupport statute permits prosecution for nonpayment of an "arrearage only" child support order. R.C. § 2919.21(B).

3 Cases that cite this headnote

Appeal from the Court of Common Pleas, Case No. 01CR-I-10-423.

Attorneys and Law Firms

David Hejmanowski, Delaware, OH, for Plaintiff-Appellant.

Keith A. Boger, Delaware, OH, for Defendant-Appellee.

Opinion

FARMER, J.

*1 { ¶ 1 } On May 8, 1985, appellee, Michael Dissinger, and Teresa Kannaird were divorced. The parties had a daughter, Chastity Dissinger, born October 20, 1977. The decree ordered appellee to pay \$30.00 per week for child support and \$5.00 per week toward a child support arrearage.

{ ¶ 2 } On March 21, 1996, the trial court issued an order terminating appellee's child support obligation as Chastity had reached the age of majority and had withdrawn from high school. Appellee's last child support obligation was November 10, 1995. The trial court ordered appellee to pay \$40.00 per week toward a \$10,982.70 arrearage.

{ ¶ 3 } On October 26, 2001, the Delaware County Grand Jury indicted appellee on one count of nonsupport in violation of R.C. 2919.21. Appellee filed a motion to dismiss on December 28, 2001. A hearing was held on January 22, 2002. By judgment entry filed January 31, 2002, the trial court dismissed the indictment, finding the legislature's intent did not provide for prosecution under R.C. 2919.21 for nonpayment of an "arrearage only" child support order.

{ ¶ 4 } Appellant, the State of Ohio, filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{ ¶ 5 } "THE COURT SUB JUDICE COMMITTED PREJUDICIAL ERROR WHEN IT RULED THAT THE OHIO GENERAL ASSEMBLY DID NOT INTEND FOR OHIO REVISED CODE § 2919.21(B) TO ALLOW FOR THE PROSECUTION OF PERSONS WHO VIOLATE A COURT ORDER TO PAY A CHILD SUPPORT ARREARAGE."

I

{ ¶ 6} Appellant claims the trial court erred in dismissing the indictment. Specifically, appellant claims the trial court erred in finding the legislature's intent did not provide for prosecution under R.C. 2919.21 for nonpayment of an "arrearage only" child support order. We agree.

{ ¶ 7} R.C. 2919.21 governs the offense of nonsupport of dependents. Subsection (B) states "[n]o person shall abandon, or fail to provide support as established by a court order to, another person whom, by court order or decree, the person is legally obligated to support."

{ ¶ 8} It is undisputed that appellee's only obligation that remained after his daughter was emancipated "was his obligation to pay the arrearages that had accumulated during her minority." T. at 4. Defense counsel argued the obligation was a civil obligation, "subject to being reduced to judgment and an attachment of property or earnings or executed in any other manner" as opposed to a criminal matter. T. at 4-6. Both parties agreed the subject of the indictment involved "strictly arrearages." T. at 12.

{ ¶ 9} By judgment entry filed January 31, 2002, the trial court dismissed the indictment, finding "that it was not the intention of the legislature of this State to allow prosecution under Revised Code Section 2919.21(B) for an 'arrearage only' child support order as presented by the facts of this case." We disagree for the following reasons.

*2 { ¶ 10} From the lack of Ohio case law on this issue, this appears to be a case of first impression. Appellee argues R.C. 2919 .21 does not contemplate prosecution for "arrearage only" cases as an arrearage order does not create a legal obligation of support. Appellant argues the statute pertains to any valid court order of support.

{ ¶ 11} R.C. 2919.21 states no person shall "fail to provide support as established by a court order* * *." Does an "arrearage only" order constitute a court order of support for purposes of R.C. 2919.21? In deciding this issue, we must first determine what constitutes a "support order." In making this determination, we look to the Ohio Revised Code. R.C. Chapter 29 does not define a "support order." R.C. Chapter 3115 covers the Uniform Interstate Family Support Act. Under said chapter, R.C. 3115 .01(B) defines "child support order" as "an order for the support of a child that provides for monetary support, whether current or in arrears* * *." Subsection (B)(1) further states a child support order includes "[a]n order

under which the child has attained the age of majority under the law of the issuing state and amounts for current support are required to be paid, or arrearages are owed, under the order." We acknowledge this definition is a limited definition pertaining to "sections 3115.01 to 3115.59 of the Revised Code" however, this definition demonstrates the legislature's intent of what constitutes a "support order."

{ ¶ 12} Based upon the legislature's definition of "child support order" under R.C. 3115.01(B), we find a support order includes an "arrearage only" order. Therefore, an arrearage only" order can be the basis of a prosecution under R.C. 2919.21.

{ ¶ 13} The sole assignment of error is granted.

{ ¶ 14} The judgment of the Court of Common Pleas of Delaware County, Ohio is hereby reversed and remanded.

{ ¶ 15} topic: State's appeal-ntrial court held 2919.21 did not pertain to arrearages.

FARMER and WISE, JJ., concur.

HOFFMAN, P.J. dissents.

HOFFMAN, P.J., dissenting.

*2 { ¶ 16} I respectfully dissent form the majority opinion.

{ ¶ 17} I agree with the majority an "arrearage only" child support order does constitute a support order and can be the basis of a prosecution under R.C. 2919.21. However, I dissent from the majority's disposition of the appeal because I believe the trial court correctly determined the statute is applicable only when the defendant is under a current obligation to support.

{ ¶ 18} I acknowledge R.C. 2919.21(B) does not include the word "current." It does require proof that the defendant failed to provide support as established by a court order to another person to whom the defendant "is legally obligated to support." It is the second element of the offense which is non-existent in the present case. The person to whom the defendant was obligated to support has reached the age of majority. As such, appellee is no

longer obligated to support her.

*3 { ¶ 19} Criminal statutes must be strictly construed against the state in favor of the accused. When doing so, I agree with the trial court under the facts sub judice, appellee cannot be convicted of R.C. 2919.21(B).

Parallel Citations

2002 -Ohio- 5301

{ ¶ 20} I would affirm the decision of the trial court.

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1.42 Common, technical or particular terms.

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Effective Date: 01-03-1972

**APPELLEE'S
EXHIBIT**

2

Chapter 2705: CONTEMPT OF COURT

2705.01 Summary punishment for contempt.

A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.

Effective Date: 10-01-1953

2705.02 Acts in contempt of court.

A person guilty of any of the following acts may be punished as for a contempt:

- (A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer;
- (B) Misbehavior of an officer of the court in the performance of official duties, or in official transactions;
- (C) A failure to obey a subpoena duly served, or a refusal to be sworn or to answer as a witness, when lawfully required;
- (D) The rescue, or attempted rescue, of a person or of property in the custody of an officer by virtue of an order or process of court held by the officer;
- (E) A failure upon the part of a person recognized to appear as a witness in a court to appear in compliance with the terms of the person's recognizance;
- (F) A failure to comply with an order issued pursuant to section 3109.19 or 3111.81 of the Revised Code;
- (G) A failure to obey a subpoena issued by the department of job and family services or a child support enforcement agency pursuant to section 5101.37 of the Revised Code;
- (H) A willful failure to submit to genetic testing, or a willful failure to submit a child to genetic testing, as required by an order for genetic testing issued under section 3111.41 of the Revised Code.

Effective Date: 03-22-2001

2705.03 Hearing.

In cases under section 2705.02 of the Revised Code, a charge in writing shall be filed with the clerk of the court, an entry thereof made upon the journal, and an opportunity given to the accused to be heard, by himself or counsel. This section does not prevent the court from issuing process to bring the accused into court, or from holding him in custody, pending such proceedings.

Effective Date: 10-01-1953

2705.031 Initiating contempt action for failure to pay support or comply with visitation order.

(A) As used in this section, "Title IV-D case" has the same meaning as in section 3125.01 of the Revised Code.

(B)

**APPELLEE'S
EXHIBIT**

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(1) Any party who has a legal claim to any support ordered for a child, spouse, or former spouse may initiate a contempt action for failure to pay the support. In Title IV-D cases, the contempt action for failure to pay support also may be initiated by an attorney retained by the party who has the legal claim, the prosecuting attorney, or an attorney of the department of job and family services or the child support enforcement agency.

(2) Any parent who is granted parenting time rights under a parenting time order or decree issued pursuant to section 3109.051 or 3109.12 of the Revised Code, any person who is granted visitation rights under a visitation order or decree issued pursuant to section 3109.051, 3109.11, or 3109.12 of the Revised Code or pursuant to any other provision of the Revised Code, or any other person who is subject to any parenting time or visitation order or decree, may initiate a contempt action for a failure to comply with, or an interference with, the order or decree.

(C) In any contempt action initiated pursuant to division (B) of this section, the accused shall appear upon the summons and order to appear that is issued by the court. The summons shall include all of the following:

(1) Notice that failure to appear may result in the issuance of an order of arrest, and in cases involving alleged failure to pay support, the issuance of an order for the payment of support by withholding an amount from the personal earnings of the accused or by withholding or deducting an amount from some other asset of the accused;

(2) Notice that the accused has a right to counsel, and that if indigent, the accused must apply for a public defender or court appointed counsel within three business days after receipt of the summons;

(3) Notice that the court may refuse to grant a continuance at the time of the hearing for the purpose of the accused obtaining counsel, if the accused fails to make a good faith effort to retain counsel or to obtain a public defender;

(4) Notice of the potential penalties that could be imposed upon the accused, if the accused is found guilty of contempt for failure to pay support or for a failure to comply with, or an interference with, a parenting time or visitation order or decree;

(5) Notice that the court may grant limited driving privileges under section 4510.021 of the Revised Code pursuant to a request made by the accused, if the driver's license was suspended based on a notice issued pursuant to section 3123.54 of the Revised Code by the child support enforcement agency and if the request is accompanied by a recent noncertified copy of a driver's abstract from the registrar of motor vehicles.

(D) If the accused is served as required by the Rules of Civil Procedure or by any special statutory proceedings that are relevant to the case, the court may order the attachment of the person of the accused upon failure to appear as ordered by the court.

(E) The imposition of any penalty for contempt under section 2705.05 of the Revised Code shall not eliminate any obligation of the accused to pay any past, present, or future support obligation or any obligation of the accused to comply with or refrain from interfering with the parenting time or visitation order or decree. The court shall have jurisdiction to make a finding of contempt for the failure to pay support and to impose the penalties set forth in section 2705.05 of the Revised Code in all cases in which past due support is at issue even if the duty to pay support has terminated, and shall have jurisdiction to make a finding of contempt for a failure to comply with, or an interference with, a parenting time or visitation order or decree and to impose the penalties set forth in section 2705.05 of the Revised Code in

all cases in which the failure or interference is at issue even if the parenting time or visitation order or decree no longer is in effect.

Amended by 129th General Assembly File No. 131, SB 337, §1, eff. 9/28/2012.

Effective Date: 03-22-2001

2705.04 Right of accused to bail.

In proceedings under section 2705.02 of the Revised Code, if the writ is not returnable forthwith, the court may fix the amount of a bond to be given by the accused, with surety to the satisfaction of the sheriff. Upon the return of a writ, when it is not convenient to hear the charge without delay, the court shall fix the amount of a bond to be given, with surety to the satisfaction of the clerk of the court, for the appearance of the accused to answer the charge.

On the execution of such bond, the accused shall be released from custody.

Effective Date: 10-01-1953

2705.05 Hearings for contempt proceedings.

(A) In all contempt proceedings, the court shall conduct a hearing. At the hearing, the court shall investigate the charge and hear any answer or testimony that the accused makes or offers and shall determine whether the accused is guilty of the contempt charge. If the accused is found guilty, the court may impose any of the following penalties:

- (1) For a first offense, a fine of not more than two hundred fifty dollars, a definite term of imprisonment of not more than thirty days in jail, or both;
- (2) For a second offense, a fine of not more than five hundred dollars, a definite term of imprisonment of not more than sixty days in jail, or both;
- (3) For a third or subsequent offense, a fine of not more than one thousand dollars, a definite term of imprisonment of not more than ninety days in jail, or both.

(B) In all contempt proceedings initiated pursuant to section 2705.031 of the Revised Code against an employer, the bureau of workers' compensation, an employer that is paying workers' compensation benefits, a board, board of trustees, or other governing entity of a retirement system, person paying or distributing income to an obligor under a support order, or financial institution that is ordered to withhold or deduct an amount of money from the income or other assets of a person required to pay support and that fails to withhold or deduct the amount of money as ordered by the support order, the court also may require the employer, the bureau of workers' compensation, an employer that is paying workers' compensation benefits, a board, board of trustees, or other governing entity of a retirement system, person paying or distributing income to an obligor under a support order, or financial institution to pay the accumulated support arrearages.

Effective Date: 12-01-1986

2705.06 Imprisonment until order obeyed.

When the contempt consists of the omission to do an act which the accused yet can perform, he may be imprisoned until he performs it.

Effective Date: 10-01-1953

2705.07 Proceedings when party released on bail fails to appear.

If the party released on bail under section 2705.04 of the Revised Code fails to appear upon the day named, the court may issue another order of arrest, or order the bond for his appearance to be prosecuted, or both. If the bond is prosecuted, the measure of damages in the action is the extent of loss or injury sustained by the aggrieved party by reason of the misconduct for which the contempt was prosecuted, and the costs of the proceeding. Such recovery is for the benefit of the party injured.

Effective Date: 10-01-1953

2705.08 Release of prisoner committed for contempt.

When a person is committed to jail for contempt, the court or judge who made the order may discharge him from imprisonment when it appears that the public interest will not suffer thereby.

Effective Date: 10-01-1953

2705.09 Judgment final.

The judgment and orders of a court or officer made in cases of contempt may be reviewed on appeal. Appeal proceedings shall not suspend execution of the order or judgment until the person in contempt files a bond in the court rendering the judgment, or in the court or before the officer making the order, payable to the state, with sureties to the acceptance of the clerk of that court, in an amount fixed by the reviewing court, or a judge thereof, conditioned that if judgment is rendered against such person he will abide by and perform the order or judgment.

Effective Date: 10-01-1953

2705.10 Alternative remedy.

This chapter furnishes a remedy in cases not provided for by another section of the Revised Code.

Effective Date: 03-17-1987

2901.04 Rules of construction for statutes and rules of procedure.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

Effective Date: 03-23-2000; 09-23-2004

**APPELLEE'S
EXHIBIT**

4

2901.13 Statute of limitations for criminal offenses.

(A)

(1) Except as provided in division (A)(2) or (3) of this section or as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

(a) For a felony, six years;

(b) For a misdemeanor other than a minor misdemeanor, two years;

(c) For a minor misdemeanor, six months.

(2) There is no period of limitation for the prosecution of a violation of section 2903.01 or 2903.02 of the Revised Code.

(3) Except as otherwise provided in divisions (B) to (H) of this section, a prosecution of any of the following offenses shall be barred unless it is commenced within twenty years after the offense is committed:

(a) A violation of section 2903.03, 2903.04, 2905.01, 2905.32, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of section 2903.11 or 2903.12 of the Revised Code if the victim is a peace officer, a violation of section 2903.13 of the Revised Code that is a felony, or a violation of former section 2907.12 of the Revised Code;

(b) A conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in division (A)(3)(a) of this section.

(B)

(1) Except as otherwise provided in division (B)(2) of this section, if the period of limitation provided in division (A)(1) or (3) of this section has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one year after discovery of the offense either by an aggrieved person, or by the aggrieved person's legal representative who is not a party to the offense.

(2) If the period of limitation provided in division (A)(1) or (3) of this section has expired, prosecution for a violation of section 2913.49 of the Revised Code shall be commenced within five years after discovery of the offense either by an aggrieved person or the aggrieved person's legal representative who is not a party to the offense.

(C)

(1) If the period of limitation provided in division (A)(1) or (3) of this section has expired, prosecution shall be commenced for the following offenses during the following specified periods of time:

(a) For an offense involving misconduct in office by a public servant, at any time while the accused remains a public servant, or within two years thereafter;

(b) For an offense by a person who is not a public servant but whose offense is directly related to the misconduct in office of a public servant, at any time while that public servant remains a public servant, or

within two years thereafter.

(2) As used in this division:

(a) An "offense is directly related to the misconduct in office of a public servant" includes, but is not limited to, a violation of section 101.71, 101.91, 121.61 or 2921.13, division (F) or (H) of section 102.03, division (A) of section 2921.02, division (A) or (B) of section 2921.43, or division (F) or (G) of section 3517.13 of the Revised Code, that is directly related to an offense involving misconduct in office of a public servant.

(b) "Public servant" has the same meaning as in section 2921.01 of the Revised Code.

(D) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.

(E) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation, or other process, unless reasonable diligence is exercised to execute the same.

(F) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.

(G) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this state or concealed the accused's identity or whereabouts is prima-facie evidence of the accused's purpose to avoid prosecution.

(H) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this state, even though the indictment, information, or process that commenced the prosecution is quashed or the proceedings on the indictment, information, or process are set aside or reversed on appeal.

(I) The period of limitation for a violation of any provision of Title XXIX of the Revised Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen years of age or of a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age shall not begin to run until either of the following occurs:

(1) The victim of the offense reaches the age of majority.

(2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.

(J) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 130, §1, eff. 6/20/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 03-09-1999; 04-14-2006; 08-03-2006; 2008 SB219 07-18-2008; 2008 HB46 09-01-2008

Related Legislative Provision: See *130th General Assembly File No. TBD, HB 130, §4.*

2919.21 Nonsupport or contributing to nonsupport of dependents.

APPELLEE'S
EXHIBIT

(A) No person shall abandon, or fail to provide adequate support to:

(1) The person's spouse, as required by law;

(2) The person's child who is under age eighteen, or mentally or physically handicapped child who is under age twenty-one;

(3) The person's aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately for the parent's own support.

(B) No person shall abandon, or fail to provide support as established by a court order to, another person whom, by court order or decree, the person is legally obligated to support.

(C) No person shall aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming a dependent child, as defined in section 2151.04 of the Revised Code, or a neglected child, as defined in section 2151.03 of the Revised Code.

(D) It is an affirmative defense to a charge of failure to provide adequate support under division (A) of this section or a charge of failure to provide support established by a court order under division (B) of this section that the accused was unable to provide adequate support or the established support but did provide the support that was within the accused's ability and means.

(E) It is an affirmative defense to a charge under division (A)(3) of this section that the parent abandoned the accused or failed to support the accused as required by law, while the accused was under age eighteen, or was mentally or physically handicapped and under age twenty-one.

(F) It is not a defense to a charge under division (B) of this section that the person whom a court has ordered the accused to support is being adequately supported by someone other than the accused.

(G)

(1) Except as otherwise provided in this division, whoever violates division (A) or (B) of this section is guilty of nonsupport of dependents, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) or (B) of this section or if the offender has failed to provide support under division (A)(2) or (B) of this section for a total accumulated period of twenty-six weeks out of one hundred four consecutive weeks, whether or not the twenty-six weeks were consecutive, then a violation of division (A)(2) or (B) of this section is a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a felony violation of this section, a violation of division (A)(2) or (B) of this section is a felony of the fourth degree.

If the violation of division (A) or (B) of this section is a felony, all of the following apply to the sentencing of the offender:

(a) Except as otherwise provided in division (G)(1)(b) of this section, the court in imposing sentence on the offender shall first consider placing the offender on one or more community control sanctions under section 2929.16, 2929.17, or 2929.18 of the Revised Code, with an emphasis under the sanctions on intervention for nonsupport, obtaining or maintaining employment, or another related condition.

(b) The preference for placement on community control sanctions described in division (G)(1)(a) of this section does not apply to any offender to whom one or more of the following applies:

(i) The court determines that the imposition of a prison term on the offender is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.

(ii) The offender previously was convicted of or pleaded guilty to a violation of this section that was a felony, and the offender was sentenced to a prison term for that violation.

(iii) The offender previously was convicted of or pleaded guilty to a violation of this section that was a felony, the offender was sentenced to one or more community control sanctions of a type described in division (G)(1)(a) of this section for that violation, and the offender failed to comply with the conditions of any of those community control sanctions.

(2) If the offender is guilty of nonsupport of dependents by reason of failing to provide support to the offender's child as required by a child support order issued on or after April 15, 1985, pursuant to section 2151.23, 2151.231, 2151.232, 2151.33, 3105.21, 3109.05, 3111.13, 3113.04, 3113.31, or 3115.31 of the Revised Code, the court, in addition to any other sentence imposed, shall assess all court costs arising out of the charge against the person and require the person to pay any reasonable attorney's fees of any adverse party other than the state, as determined by the court, that arose in relation to the charge.

(3) Whoever violates division (C) of this section is guilty of contributing to the nonsupport of dependents, a misdemeanor of the first degree. Each day of violation of division (C) of this section is a separate offense.

Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.

Effective Date: 01-01-1998

3115.01 Uniform interstate family support act definitions.

7

As used in sections 3115.01 to 3115.59 of the Revised Code:

(A) "Child" means an individual under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(B) "Child support order" means an order for the support of a child that provides for monetary support, whether current or in arrears, health care, or reimbursements, and may include related costs and fees, interest, income withholding requirements, attorney fees, and other relief. "Child support order" includes:

(1) An order under which the child has attained the age of majority under the law of the issuing state and amounts for current support are required to be paid, or arrearages are owed, under the order;

(2) An order under which the child has attained the age of majority under the laws of this state but has not attained the age of majority under the laws of the issuing state and amounts for current support are required to be paid, or arrearages are owed, under the order.

(C) "Duty of support" means an obligation imposed or that may be imposed under law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(D) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the time of filing of a complaint or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(E) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(F) "Income withholding order" means an order or other legal process directed to an obligor's payor to withhold support from the income of the obligor.

(G) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under sections 3115.01 to 3115.59 of the Revised Code or a law or procedure substantially similar to those sections, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.

(H) "Initiating tribunal" means the authorized tribunal in an initiating state.

(I) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(J) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining the existence or nonexistence of a parent and child relationship.

(K) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(L) "Obligee" means any of the following:

(1) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order

has been issued or a judgment determining parentage has been rendered;

(2) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee;

(3) An individual seeking a judgment determining parentage of the individual's child.

(M) "Obligor" means an individual, or the estate of a decedent to which any of the following applies:

(1) The individual or estate owes or is alleged to owe a duty of support;

(2) The individual is alleged but has not been adjudicated to be a parent of a child;

(3) The individual or estate is liable under a support order.

(N) "Payor" has the same meaning as in section 3121.01 of the Revised Code.

(O) "Register" means to file a support order or judgment determining the existence or nonexistence of a parent and child relationship in a registering tribunal.

(P) "Registering tribunal" means a tribunal in which a support order is registered.

(Q) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under sections 3115.01 to 3115.59 of the Revised Code or a law or procedure substantially similar to those sections, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.

(R) "Responding tribunal" means the authorized tribunal in a responding state.

(S) "Revised uniform reciprocal enforcement of support act" means the act addressing interstate enforcement of support orders adopted in 1968 by the national conference of commissioners on uniform state laws or any law substantially similar to the act adopted by another state.

(T) "Spousal support order" means an order for the support of a spouse or former spouse that provides for monetary support, whether current or in arrears, health care, or reimbursements, and may include related costs and fees, interest, income withholding requirements, attorney fees, and other relief.

(U) "State" has the same meaning as in section 1.59 of the Revised Code, except that it also includes both of the following:

(1) An Indian tribe;

(2) A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under sections 3115.01 to 3115.59 of the Revised Code, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.

(V) "Support enforcement agency" means a public official or agency authorized to do any of the following:

(1) Seek enforcement of support orders or laws relating to the duty of support;

(2) Seek establishment or modification of child support;

(3) Seek determination of the existence or nonexistence of a parent and child relationship;

(4) Locate obligors or their assets.

(W) "Support order" means a spousal support order or child support order.

(X) "Tribunal" means any trial court of record of this state and when the context requires, a court, administrative agency, or quasi-judicial entity of any other state authorized to establish, enforce, or modify support orders or to determine parentage.

(Y) "Uniform reciprocal enforcement of support act" means the act addressing interstate enforcement of support orders adopted in 1950 and amended in 1952 and 1958 by the national conference of commissioners on uniform state laws or any law substantially similar to the act adopted by another state.

Effective Date: 03-22-2001

Chapter 3115: UNIFORM INTERSTATE FAMILY SUPPORT ACT

3115.01 Uniform interstate family support act definitions.

As used in sections 3115.01 to 3115.59 of the Revised Code:

- (A) "Child" means an individual under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
- (B) "Child support order" means an order for the support of a child that provides for monetary support, whether current or in arrears, health care, or reimbursements, and may include related costs and fees, interest, income withholding requirements, attorney fees, and other relief. "Child support order" includes:
- (1) An order under which the child has attained the age of majority under the law of the issuing state and amounts for current support are required to be paid, or arrearages are owed, under the order;
 - (2) An order under which the child has attained the age of majority under the laws of this state but has not attained the age of majority under the laws of the issuing state and amounts for current support are required to be paid, or arrearages are owed, under the order.
- (C) "Duty of support" means an obligation imposed or that may be imposed under law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
- (D) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the time of filing of a complaint or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.
- (E) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.
- (F) "Income withholding order" means an order or other legal process directed to an obligor's payor to withhold support from the income of the obligor.
- (G) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under sections 3115.01 to 3115.59 of the Revised Code or a law or procedure substantially similar to those sections, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.
- (H) "Initiating tribunal" means the authorized tribunal in an initiating state.
- (I) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.
- (J) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining the existence or nonexistence of a parent and child relationship.
- (K) "Law" includes decisional and statutory law and rules and regulations having the force of law.
- (L) "Obligee" means any of the following:

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- (1) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
- (2) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee;
- (3) An individual seeking a judgment determining parentage of the individual's child.
- (M) "Obligor" means an individual, or the estate of a decedent to which any of the following applies:
- (1) The individual or estate owes or is alleged to owe a duty of support;
- (2) The individual is alleged but has not been adjudicated to be a parent of a child;
- (3) The individual or estate is liable under a support order.
- (N) "Payor" has the same meaning as in section 3121.01 of the Revised Code.
- (O) "Register" means to file a support order or judgment determining the existence or nonexistence of a parent and child relationship in a registering tribunal.
- (P) "Registering tribunal" means a tribunal in which a support order is registered.
- (Q) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under sections 3115.01 to 3115.59 of the Revised Code or a law or procedure substantially similar to those sections, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.
- (R) "Responding tribunal" means the authorized tribunal in a responding state.
- (S) "Revised uniform reciprocal enforcement of support act" means the act addressing interstate enforcement of support orders adopted in 1968 by the national conference of commissioners on uniform state laws or any law substantially similar to the act adopted by another state.
- (T) "Spousal support order" means an order for the support of a spouse or former spouse that provides for monetary support, whether current or in arrears, health care, or reimbursements, and may include related costs and fees, interest, income withholding requirements, attorney fees, and other relief.
- (U) "State" has the same meaning as in section 1.59 of the Revised Code, except that it also includes both of the following:
- (1) An Indian tribe;
- (2) A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under sections 3115.01 to 3115.59 of the Revised Code, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.
- (V) "Support enforcement agency" means a public official or agency authorized to do any of the following:
- (1) Seek enforcement of support orders or laws relating to the duty of support;
- (2) Seek establishment or modification of child support;

(3) Seek determination of the existence or nonexistence of a parent and child relationship;

(4) Locate obligors or their assets.

(W) "Support order" means a spousal support order or child support order.

(X) "Tribunal" means any trial court of record of this state and when the context requires, a court, administrative agency, or quasi-judicial entity of any other state authorized to establish, enforce, or modify support orders or to determine parentage.

(Y) "Uniform reciprocal enforcement of support act" means the act addressing interstate enforcement of support orders adopted in 1950 and amended in 1952 and 1958 by the national conference of commissioners on uniform state laws or any law substantially similar to the act adopted by another state.

Effective Date: 03-22-2001

3115.02 Remedies cumulative.

Remedies provided by sections 3115.01 to 3115.59 of the Revised Code are in addition to, not in substitution for, any other remedies.

Effective Date: 01-01-1998

3115.03 Personal jurisdiction.

In a proceeding to establish, enforce, or modify a support order or to determine the existence or nonexistence of a parent and child relationship, a tribunal or support enforcement agency of this state may exercise personal jurisdiction over a nonresident individual if any of the following is the case:

(A) The individual is personally served with summons within this state;

(B) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive pleading or other document having the effect of waiving any contest to personal jurisdiction;

(C) The individual resided with the child in this state;

(D) The individual resided in this state and provided prenatal expenses or support for the child;

(E) The child resides in this state as a result of the acts or directives of the individual;

(F) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(G) The individual registered in the putative father registry maintained pursuant to section 3107.062 of the Revised Code;

(H) There is any other basis for the state to exercise personal jurisdiction over the individual.

Effective Date: 03-22-2001

3115.031 Effect of wrongful taking.

(A) A duty of support of an obligor owed to a minor child is not enforceable pursuant to this chapter during

any period of time during which both of the following conditions are met:

- (1) The obligor has legal custody of the child;
- (2) The obligor does not have physical custody of the child because of the wrongful taking or wrongful continuation of physical custody by another person.

(B) If the state or a political subdivision of the state provides support to a minor child, a duty of support is owed to the child by an obligor, and the duty of support is not enforceable pursuant to division (A) of this section, the state or political subdivision may take all actions necessary to return the child to the obligor.

Effective Date: 06-26-1986

3115.04 Obtaining evidence or discovery.

A tribunal or support enforcement agency of this state exercising personal jurisdiction over a nonresident under section 3115.03 of the Revised Code may apply section 3115.27 of the Revised Code to obtain evidence from another state and section 3115.29 of the Revised Code to obtain discovery through a tribunal of another state. In all other respects, sections 3115.12 to 3115.52 of the Revised Code are not applicable and the tribunal or support enforcement agency shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by sections 3115.01 to 3115.59 of the Revised Code.

Effective Date: 03-22-2001

3115.05 Initiating and responding tribunal of state.

Under sections 3115.01 to 3115.59 of the Revised Code, a tribunal or support enforcement agency of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

Effective Date: 03-22-2001

3115.06 Application to nonresident subject to person jurisdiction.

(A) A tribunal of this state may exercise jurisdiction to issue a support order if the complaint or comparable pleading is filed in this state after a complaint or comparable pleading requesting the issuance of a support order is filed in another state only if all of the following apply:

- (1) The complaint or comparable pleading is filed in this state before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
- (2) The contesting party timely challenges the exercise of jurisdiction in the other state;
- (3) With respect to actions to issue child support orders, this state is the home state of the child.

(B) A tribunal of this state may not exercise jurisdiction to issue a support order if the complaint or comparable pleading is filed in this state before a complaint or comparable pleading requesting the issuance of a support order is filed in another state if any of the following is the case:

- (1) The complaint or comparable pleading is filed in the other state before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state.

- (2) The contesting party timely challenges the exercise of jurisdiction in this state.
- (3) With respect to actions to issue child support orders, the other state is the home state of the child.

Effective Date: 01-01-1998

3115.07 Continuing, exclusive jurisdiction.

(A) A tribunal of this state has continuing, exclusive jurisdiction over a child support order it issues as long as the obligor, individual obligee, or child subject to the child support order is a resident of this state, unless all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(B) A tribunal of this state may not exercise continuing jurisdiction to modify a child support order it issues if the order is modified by a tribunal of another state pursuant to a law adopted by the other state that is substantially similar to sections 3115.01 to 3115.59 of the Revised Code.

(C) If a child support order issued by a tribunal of this state is modified by a tribunal of another state pursuant to a law adopted by the other state that is substantially similar to sections 3115.01 to 3115.59 of the Revised Code, the tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order, and may do only the following:

- (1) Order collection of support amounts accruing before the modification of the order;
- (2) Enforce nonmodifiable aspects of that order;
- (3) Provide other appropriate relief for violations of the order that occurred before the effective date of the modification.

(D) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to a law adopted by the other state that is substantially similar to sections 3115.01 to 3115.59 of the Revised Code.

(E) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(F) A tribunal of this state has continuing, exclusive jurisdiction over a spousal support order it issues throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

Effective Date: 01-01-1998

3115.08 Continuing jurisdiction to enforce child support order.

(A) A tribunal or support enforcement agency of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(B) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 3115.27 of the Revised Code to obtain evidence from another state and section 3115.29 of the Revised Code to obtain discovery through a tribunal of another state.

(C) A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

Effective Date: 03-22-2001

3115.09 Determination of controlling child support order.

(A) If a proceeding is brought under sections 3115.01 to 3115.59 of the Revised Code, and only one support enforcement agency of this state or tribunal has issued a child support order, the order of that agency or tribunal shall be recognized as controlling.

(B) If a proceeding is brought under sections 3115.01 to 3115.59 of the Revised Code, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall do the following:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction, recognize the child support order of that tribunal as controlling.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction, recognize the child support order issued by the tribunal in the current home state of the child as controlling, but if a child support order has not been issued in the current home state of the child, recognize the child support order most recently issued as controlling.

(3) If none of the tribunals would have continuing, exclusive jurisdiction, the tribunal of this state having jurisdiction over the parties shall issue its own child support order which shall be controlling.

(C) If two or more child support orders have been issued for the same obligor and child and the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order to recognize as controlling pursuant to division (B) of this section. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(D) The tribunal that issued the controlling child support order under division (A), (B), or (C) of this section is the tribunal that has continuing, exclusive jurisdiction under section 3115.07 of the Revised Code.

(E) A tribunal of this state that determines by order the identity of the controlling child support order under division (B)(1) or (2) of this section or that issues a new controlling child support order under division (B) (3) of this section shall state in the order or child support order the basis upon which the tribunal made its determination.

(F) Within thirty days after issuance of an order recognizing the controlling child support order or a new controlling child support order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier child support order. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

Effective Date: 03-22-2001

3115.10 Child support orders for two or more obligees.

In responding to multiple registrations or complaints for enforcement of two or more child support orders in

effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

Effective Date: 01-01-1998

3115.11 Credit for payments.

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order covering the same parties for the same duty of support issued by the tribunal or support enforcement agency of this state.

Effective Date: 03-22-2001

3115.12 Commencing proceedings.

An individual or a support enforcement agency may commence a proceeding authorized under sections 3115.01 to 3115.59 of the Revised Code by filing a complaint in an initiating tribunal for forwarding to a responding tribunal or by filing a complaint or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the defendant.

Effective Date: 01-01-1998

3115.13 Parties.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

Effective Date: 01-01-1998

3115.14 Application of law of state.

Except as otherwise provided by sections 3115.01 to 3115.59 of the Revised Code, a responding tribunal of this state shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings and shall determine the duty of support and the amount of support payable in accordance with sections 3115.01 to 3115.59 and Chapters 3119., 3121., 3123., and 3125. of the Revised Code.

Effective Date: 03-22-2001

3115.15 Initiating tribunal - duties.

(A) On the filing of a complaint pursuant to section 3115.12 of the Revised Code, an initiating tribunal of this state shall forward three copies of the complaint and its accompanying documents to either of the following:

- (1) The responding tribunal or appropriate support enforcement agency in the responding state;
- (2) The state information agency of the responding state with a request that they be forwarded to the appropriate tribunal, if the identity of the responding tribunal is unknown, and that receipt be acknowledged.

(B) If a responding state has not enacted a law or procedure substantially similar to sections 3115.01 to 3115.59 of the Revised Code, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

Effective Date: 01-01-1998

3115.16 Responding tribunal - powers and duties.

(A) When a responding tribunal of this state receives a complaint or comparable pleading from an initiating tribunal or directly pursuant to section 3115.12 of the Revised Code, it shall cause the complaint or pleading to be filed and notify the plaintiff where and when it was filed.

(B) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following consistent with applicable sections of Chapters 3105., 3109., 3111., 3113., 3119., 3121., 3123., and 3125. of the Revised Code:

- (1) Issue or enforce a support order, modify a child support order, or determine the existence or nonexistence of a parent and child relationship;
- (2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (3) Order income withholding;
- (4) Determine the amount of any arrearages, and specify a method of payment;
- (5) Enforce orders by civil or criminal contempt, or both;
- (6) Set aside property for satisfaction of the support order;
- (7) Place liens and order execution on the obligor's property;
- (8) Order an obligor to keep the support enforcement agency of this state or the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
- (9) Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
- (10) Order the obligor to seek appropriate employment by specified methods;
- (11) Award reasonable attorney's fees and other fees and costs;
- (12) Grant any other available remedy.

(C) A responding tribunal or support enforcement agency of this state shall include in a support order issued under sections 3115.01 to 3115.59 of the Revised Code, or in the documents accompanying the order, the calculations on which the support order is based.

(D) A responding tribunal of this state may not condition the payment of a support order issued under sections 3115.01 to 3115.59 of the Revised Code upon compliance by a party with provisions for parenting time or visitation.

(E) If a responding tribunal or support enforcement agency of this state issues an order under sections 3115.01 to 3115.59 of the Revised Code, the tribunal or support enforcement agency shall send a copy of the order to the plaintiff and the defendant and to the initiating tribunal, if any.

Effective Date: 03-22-2001

3115.17 Inappropriate tribunal.

If a complaint or comparable pleading is received by an inappropriate tribunal or support enforcement agency of this state, the tribunal or support enforcement agency shall forward the pleading and accompanying documents to an appropriate tribunal or support enforcement agency in this state or the appropriate tribunal of another state and notify the plaintiff where and when the pleading was sent.

Effective Date: 03-22-2001

3115.18 Support enforcement agency - duties.

(A) A support enforcement agency of this state, upon request, shall provide services to a plaintiff in a proceeding under sections 3115.01 to 3115.59 of the Revised Code.

(B) A support enforcement agency that is providing services to the plaintiff, as appropriate, shall do all of the following:

- (1) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the defendant;
- (2) Request an appropriate tribunal to set a date, time, and place for a hearing;
- (3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
- (4) Within two days, not including Saturdays, Sundays, and legal holidays, after receipt of a written notice from a tribunal pursuant to sections 3115.01 to 3115.59 of the Revised Code, send a copy of the notice to the plaintiff;
- (5) Within two days, not including Saturdays, Sundays, and legal holidays, after receipt of a written communication from the defendant or the defendant's attorney, send a copy of the communication to the plaintiff;
- (6) Notify the plaintiff if jurisdiction over the defendant cannot be obtained.

(C) Sections 3115.01 to 3115.59 of the Revised Code do not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Effective Date: 01-01-1998

3115.19 Duty of attorney general.

If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties pursuant to section 3115.01 to 3115.59 of the Revised Code or may provide those services directly to the individual.

Effective Date: 01-01-1998

3115.20 Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by sections 3115.01 to 3115.59 of the Revised Code.

Effective Date: 01-01-1998

3115.21 Duties of state information agency.

(A) The department of job and family services is the state information agency under sections 3115.01 to 3115.59 of the Revised Code.

(B) The state information agency shall do all of the following:

(1) Compile a list, including addresses, of the tribunals in this state and each support enforcement agency in this state and transmit a copy to the state information agency of every other state that has adopted an act substantially similar to sections 3115.01 to 3115.59 of the Revised Code;

(2) Maintain a register of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in this state that has jurisdiction over the individual obligee or the obligor or the obligor's property, all documents concerning a proceeding under sections 3115.01 to 3115.59 of the Revised Code received from an initiating tribunal or the state information agency of the initiating state;

(4) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state parent locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, drivers' licenses, and social security benefits.

Effective Date: 07-01-2000

3115.22 Pleadings and accompanying documents.

(A) A plaintiff seeking issuance or modification of a support order or a determination of the existence or nonexistence of a parent and child relationship under sections 3115.01 to 3115.59 of the Revised Code must verify the complaint. Unless otherwise ordered under section 3115.23 of the Revised Code, the complaint or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The complaint must be accompanied by a certified copy of any support order in effect. The complaint may include any other information that may assist in locating or identifying the defendant.

(B) The complaint must specify the relief sought. The complaint and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

Effective Date: 01-01-1998

3115.23 Nondisclosure of information in exceptional circumstances.

A tribunal shall order that the address of a child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under sections 3115.01 to 3115.59 of the Revised Code if a tribunal has made a finding, that may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information.

Effective Date: 01-01-1998

3115.24 Costs and fees.

(A) The plaintiff under an action filed pursuant to sections 3115.01 to 3115.59 of the Revised Code may not be required to pay a filing fee or other costs.

(B) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(C) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay.

Effective Date: 01-01-1998

3115.25 Limited immunity of petitioner.

(A) Participation by a plaintiff in a proceeding before a responding tribunal pursuant to sections 3115.01 to 3115.59 of the Revised Code, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the plaintiff in another proceeding.

(B) A plaintiff is not amenable to service of civil process while physically present in this state to participate in a proceeding under sections 3115.01 to 3115.59 of the Revised Code.

(C) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under sections 3115.01 to 3115.59 of the Revised Code committed by a party while present in this state to participate in the proceeding.

Effective Date: 01-01-1998

3115.26 Nonparentage as defense.

A party who has been previously determined pursuant to law to be the parent of a child may not plead that the party is not the parent of the child as a defense to a proceeding under sections 3115.01 to 3115.59 of the Revised Code.

Effective Date: 01-01-1998

3115.27 Special rules of evidence and procedure.

Except as provided in sections 3115.04 and 3115.50 of the Revised Code, in a proceeding under sections

3115.01 to 3115.59 of the Revised Code all the following apply:

(A) The physical presence of the plaintiff in a responding tribunal of this state is not required for the issuance, enforcement, or modification of a support order or the determination of the existence or nonexistence of a parent and child relationship.

(B) A verified complaint, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(C) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(D) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(E) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(F) A tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(G) If a party called to testify at a civil hearing refuses to answer a question, the trier of fact may draw an adverse inference from the person's silence.

(H) A privilege against disclosure of communications between spouses does not apply.

(I) The defense of immunity based on the relationship of husband and wife or parent and child does not apply.

Effective Date: 01-01-1998

3115.28 Communications between tribunals.

A tribunal or support enforcement agency of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal or support enforcement agency of this state may furnish similar information by similar means to a tribunal of another state.

Effective Date: 03-22-2001

3115.29 Assistance with discovery.

A tribunal of this state may request a tribunal of another state to assist in obtaining discovery and may, on the request of a tribunal of another state, compel a person over whom it has jurisdiction to respond to a discovery order issued by the requesting tribunal.

Effective Date: 01-01-1998

3115.30 Receipt and disbursement of payments.

A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed in the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

Effective Date: 01-01-1998

3115.31 Petition to establish support order.

(A) If a support order entitled to recognition under sections 3115.01 to 3115.59 of the Revised Code has not been issued, a responding tribunal of this state may issue a support order if either of the following apply:

- (1) The individual seeking the order resides in another state;
- (2) The support enforcement agency seeking the order is located in another state.

(B) The tribunal may issue a temporary child support order if any of the following apply:

- (1) The defendant has signed a verified statement acknowledging that the defendant is the parent of the child;
- (2) The defendant has been determined by or pursuant to law to be the parent;
- (3) There is other clear and convincing evidence that the defendant is the child's parent.

(C)

(1) If the responding tribunal finds, after giving notice and an opportunity to be heard to the obligor, that the obligor owes a duty of support, it shall issue a support order directed to the obligor and may issue any other order under section 3115.16 of the Revised Code. Support orders made pursuant to sections 3115.01 to 3115.59 of the Revised Code shall require that payments be made to the office of child support in the department of job and family services.

(2) The responding tribunal shall transmit to the initiating tribunal a copy of all orders of support or for reimbursement of support.

(3) Any tribunal that makes or modifies an order for support under this section or former section 3115.22 of the Revised Code on or after April 12, 1990, shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code. If any person required to pay child support under an order made under this section or former section 3115.22 of the Revised Code on or after April 15, 1985, or any person required to pay support under an order made or modified under this section or former section 3115.22 of the Revised Code on or after December 31, 1986, is found in contempt of court for failure to make support payments under the order, the tribunal that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the tribunal, that arose in relation to the act of contempt.

Effective Date: 03-22-2001

3115.32 Employer's receipt of income withholding order of another state.

An income withholding order issued in another state may be sent to the obligor's payor without first filing a complaint or comparable pleading or registering the order with a tribunal or support enforcement agency of this state.

Effective Date: 03-22-2001

3115.33 Employer's compliance with income withholding order of another state.

(A) Upon receipt of an income withholding order, the obligor's payor shall immediately provide a copy of the order to the obligor.

(B) The payor shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal or support enforcement agency of this state.

(C) Except as otherwise provided in division (D) of this section and section 3115.34 of the Revised Code, the payor shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order that specify:

- (1) The duration and amount of periodic payments of support, stated as a sum certain;
- (2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;
- (3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage under a policy available through the obligor's payor;
- (4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as a sum certain;
- (5) The amount of periodic payments of arrearages and interest on arrearages, stated as a sum certain.

(D) A payor shall comply with the law of the state of the obligor's principal place of employment, if the payor is the obligor's employer, or the payor's principal place of business, in all other cases, for withholding from income with respect to all of the following:

- (1) The payor's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income;
- (3) The times within which the payor must implement the withholding order and forward the support payment.

Effective Date: 03-22-2001

3115.34 Employer's compliance with two or more income withholding orders.

If an obligor's payor receives multiple income withholding orders with respect to the earnings of the same obligor, the payor satisfies the terms of the multiple orders if the payor complies with the law of the state of the obligor's principal place of employment, if the payor is the obligor's employer, or the payor's principal place of business, in all other cases, to establish the priorities for withholding and allocating income withheld for multiple support obligees.

Effective Date: 03-22-2001

3115.35 Immunity of payor.

A payor who complies with an income withholding order issued in another state in accordance with sections 3115.32 to 3115.37 of the Revised Code is not subject to civil liability to an individual or agency with regard to the payor's withholding of support from the obligor's income pursuant to the support order.

Effective Date: 03-22-2001

3115.36 Penalties for noncompliance.

A payor who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal or support enforcement agency of this state.

Effective Date: 03-22-2001

3115.37 Contest by obligor.

(A) If a person designated as an obligor under an income withholding order issued in another state and received directly by a payor in this state believes that the person is not subject to a support order or does not have a duty of support under any order issued by any tribunal pursuant to which the income withholding order was issued, the person may contact the office of child support in the department of job and family services and request that the office investigate whether the person is subject to such a support order or has such a duty of support. Not later than fifteen days after the date the request is made, the office shall conduct the investigation and notify the person of its determination. If the office determines that the person is subject to a support order or does have a duty of support under any order issued by any tribunal pursuant to which the income withholding order was issued, the person may contest the validity or enforcement of the income withholding order by filing an action for declaratory judgment pursuant to Chapter 2721. of the Revised Code in the juvenile court or other court with jurisdiction under section 2101.022 or 2301.03 of the Revised Code in the county in which is located the payor's principal place of business requesting that the court determine whether the person is the obligor subject to a support order or has a duty of support under a support order pursuant to which the income withholding order was issued.

(B) The obligor shall give notice of the action initiated pursuant to Chapter 2721. of the Revised Code to all of the following:

- (1) A support enforcement agency providing services to the obligee;
- (2) Each payor that has directly received an income withholding order;
- (3) The person or agency designated to receive payments in the income withholding order or, if no person or agency is designated, the obligee.

(C) Notwithstanding sections 3115.32 to 3115.36 of the Revised Code, if the office determines, or the court issues an order determining, that the person is not an obligor subject to a support order or does not have a duty of support under a support order pursuant to which the income withholding order was issued, the payor shall not enforce the income withholding order against the person.

Effective Date: 03-22-2001

3115.38 Administrative enforcement of orders.

A party seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order pursuant to sections 3115.39 to 3115.51 of the Revised Code to a support enforcement agency of this state. On receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to sections 3115.39 to 3115.51 of the Revised Code.

Effective Date: 01-01-1998

3115.39 Procedure to register order for enforcement.

(A) A support order or income withholding order of another state may be registered in this state by sending all of the following documents and information to the appropriate tribunal in this state:

- (1) A letter of transmittal to the tribunal requesting registration and enforcement;
- (2) Two copies, including one certified copy, of all orders to be registered, including any modification of an order;
- (3) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- (4) The name of the obligor and all of the following, if known:
 - (a) The obligor's address and social security number;
 - (b) The name and address of the obligor's employer and any other source of income of the obligor;
 - (c) A description and the location of property of the obligor in this state not exempt from execution.
- (5) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(B) On receipt of a request for registration, the registering tribunal shall cause the order to be filed, together with one copy of the documents and information, regardless of their form.

(C) A complaint or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or at a later time. The pleading must specify the grounds for the remedy sought.

Effective Date: 01-01-1998

3115.40 Effect of registration for enforcement.

A support order or income withholding order issued in another state is registered when the order is filed in the registering tribunal of this state pursuant to section 3115.39 of the Revised Code. A registered order issued in another state that is confirmed pursuant to section 3115.43 or 3115.44 of the Revised Code is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of

this state. Except as provided in sections 3115.39 to 3115.51 of the Revised Code, a tribunal of this state shall recognize and enforce, but may not modify, a registered order that has been confirmed if the issuing tribunal had jurisdiction.

Effective Date: 01-01-1998

3115.41 Choice of law.

The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order. In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

Effective Date: 01-01-1998

3115.42 Notice of registration of order.

(A) When a support order or income withholding order issued in another state is registered, immediately on registration the registering tribunal shall send notice to the nonregistering party of the registration. The notice must be accompanied by a copy of the registered order and the documents and relevant information described in division (A) of section 3115.39 of the Revised Code.

(B) The notice must inform the nonregistering party of all of the following:

(1) That a registered order that is confirmed pursuant to section 3115.43 or 3115.44 of the Revised Code is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested pursuant to section 3115.43 of the Revised Code no later than twenty days after the date of mailing or personal service of the notice;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

(4) The amount of any alleged arrearages under the support order.

(C) On registration of an income withholding order for enforcement, the registering tribunal or a support enforcement agency of this state shall issue a withholding notice to the obligor's payor pursuant to Chapter 3121. of the Revised Code.

Effective Date: 03-22-2001

3115.43 Procedure to contest validity or enforcement of registered order.

(A) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing no later than twenty days after the date of mailing or personal service of the notice of the registration by filing a motion with the registering tribunal. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 3115.44 of the Revised Code.

(B) If the nonregistering party fails to make the request pursuant to division (A) of this section in a timely manner, the order is confirmed by operation of law.

(C) If a nonregistering party makes a request pursuant to division (A) of this section in a timely manner, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing. At the hearing, the registering tribunal shall determine whether the registered order is to be confirmed.

Effective Date: 01-01-1998

3115.44 Contest of registration or enforcement.

(A) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) The issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) The order was obtained by fraud;
- (3) The order has been vacated, suspended, or modified by a later order;
- (4) The issuing tribunal has stayed the order pending appeal;
- (5) There is a defense under the law of this state to the remedy sought;
- (6) Full or partial payment has been made;
- (7) The applicable statute of limitation under section 3115.41 of the Revised Code precludes enforcement of some or all of the arrearages.

(B) If a party presents evidence establishing a full or partial defense under division (A) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(C) If the contesting party does not establish a defense under division (A) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

Effective Date: 01-01-1998

3115.45 Confirmed order.

Confirmation of a registered order, whether by operation of law under section 3115.43 of the Revised Code or after notice and hearing pursuant to section 3115.44 of the Revised Code, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Effective Date: 01-01-1998

3115.46 Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state pursuant to section 3115.39 of the Revised Code. A motion for modification may be filed at the same time as a request for registration, or at a later time. The motion must specify the grounds for modification.

Effective Date: 01-01-1998

3115.47 Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 3115.48 of the Revised Code have been met.

Effective Date: 01-01-1998

3115.48 Modification of child support order of another state.

(A) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if section 3115.50 of the Revised Code does not apply and after notice and hearing it finds either of the following applicable:

(1) The child, the individual obligee, and the obligor subject to the support order do not reside in the issuing state, a petitioner who is a nonresident of this state seeks modification, and the respondent is subject to the personal jurisdiction of the tribunal of this state.

(2) The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under sections 3115.01 to 3115.59 of the Revised Code, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

(B) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(C) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that must be recognized as controlling under section 3115.09 of the Revised Code establishes the aspects of the child support order that are nonmodifiable.

(D) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

Effective Date: 01-01-1998

3115.49 Recognition of order modified in another state.

A tribunal or support enforcement agency of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to a law adopted by the other state that is substantially similar to sections 3115.01 to 3115.59 of the Revised Code and, upon request, except as otherwise provided in sections 3115.01 to 3115.59 of the Revised Code, shall do all of the following, as appropriate:

(A) Enforce collection of support amounts accruing before the modification of the order;

- (B) Enforce only nonmodifiable aspects of that order;
- (C) Provide other appropriate relief only for violations of that order that occurred before the effective date of the modification;
- (D) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

Effective Date: 03-22-2001

3115.50 Jurisdiction to modify child support order of another state when individual parties reside in this state.

If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order. Sections 3115.01 to 3115.11 and 3115.39 to 3115.51 of the Revised Code and the procedural and substantive laws of this state are applicable, and sections 3115.12 to 3115.38, 3115.52 to 3115.54, 3115.58, and 3115.59 of the Revised Code are not applicable, to a proceeding conducted by a tribunal of this state exercising jurisdiction under this section.

Effective Date: 01-01-1998

3115.51 Notice to issuing tribunal of modification.

No later than thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Effective Date: 01-01-1998

3115.52 Proceeding to determine parentage.

(A) A tribunal or support enforcement agency of this state may serve as an initiating or responding tribunal in a proceeding brought under sections 3115.01 to 3115.59 of the Revised Code or a law or procedure substantially similar to those sections, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act to determine the existence or nonexistence of a parent and child relationship with respect to the parties.

(B) In a proceeding pursuant to division (A) of this section, a responding tribunal of this state shall comply with Chapter 3111. of the Revised Code and the rules of this state on choice of law.

Effective Date: 03-22-2001

3115.53 Grounds for rendition.

(A) For purposes of this article, "governor" includes an individual performing the functions of the executive authority of a state.

(B) The governor of this state may do either of the following:

(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 pay support under a support order;

(2) On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to pay support under a support order.

(C) Notwithstanding section 2963.03 of the Revised Code, sections 2963.01 to 2963.29 and 107.04 of the Revised Code apply 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 therefrom.

Effective Date: 01-01-1998

3115.54 Conditions of rendition.

(A) Before making a demand that the governor of another state surrender an individual pursuant to division (B)(1) of section 3115.53 of the Revised Code, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to sections 3115.01 to 3115.59 of the Revised Code or that such proceedings would not be effective in enforcing the support order.

(B) If, under a law adopted by another state that is substantially similar to sections 3115.01 to 3115.59 of the Revised Code, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act, the governor of the other state makes a demand pursuant to division (B)(2) of section 3115.53 of the Revised Code, the governor of this state may require a prosecutor of this state to investigate the demand and report whether a proceeding for support has been initiated or would be effective in enforcing the support order. If it appears that a proceeding would be effective but has not been initiated, the governor of this state 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 surrender is demanded prevails, the governor of this state may decline to honor the demand. If the petitioner prevails and the individual whose surrender is demanded is subject to a support order, the governor of this state may decline to honor the demand if the individual is complying with the support order.

Effective Date: 01-01-1998

3115.55 Applicability of Civil Rules.

(A) Any action or proceeding brought pursuant to sections 3115.01 to 3115.59 of the Revised Code is a civil action and shall be governed by the Rules of Civil Procedure unless a different procedure is specifically provided by those sections.

(B) An action under section 3115.31 of the Revised Code to establish a support order, section 3115.37 of the Revised Code to contest direct withholding of support, sections 3115.43 and 3115.44 of the Revised Code to register a support order, section 3115.46 of the Revised Code to register an order for modification, or section 3115.52 of the Revised Code to determine parentage is an original action and shall be governed by the Rules of Civil Procedure. On filing the complaint with the responding tribunal, the clerk of court shall comply with the service of process requirements of the Rules of Civil Procedure.

(C) In any proceeding in which the plaintiff seeks to invoke the continuing jurisdiction of a responding tribunal of this state in order to modify or enforce a support order, notice of the complaint shall be served in the manner provided for service of process under the Rules of Civil Procedure.

(D) If the manner of notice is not specified in this section, or otherwise in this chapter or the Rules of Civil Procedure, notice shall be by first class mail.

Effective Date: 01-01-1998

3115.56 Venue.

(A) If this state is the responding state, a complaint seeking enforcement, collection, or modification of an existing support order originally issued in this state shall be filed with the tribunal or support enforcement agency that issued the original order.

(B) An original action under this chapter shall be filed with the appropriate tribunal of the county pursuant to sections 2151.23 and 2301.03 of the Revised Code in which the respondent resides or is found.

(C) If an obligor contesting the direct withholding of income under section 3115.37 of the Revised Code is not a resident of this state, the complaint shall be filed with the appropriate tribunal located in either of the following:

- (1) The county in which the obligor's payor is located, if the order attaches to the income of the obligor paid by the payor;
- (2) The county in which an account is located in a financial institution, if the income withholding order attaches the funds in that account.

If venue cannot be determined under division (C)(1) or (2) of this section, the nonresident obligor shall file the complaint with a tribunal located in a county of this state that borders the obligor's county of residence or in Franklin county.

Effective Date: 03-22-2001

3115.57 Support orders issued prior to effective date.

An order issued prior to the effective date of this section pursuant to former Chapter 3115. of the Revised Code shall remain in full force and effect as issued, but may be modified or terminated pursuant to Chapter 3115. of the Revised Code as that chapter exists on and after the effective date of this section. The provisions of section 3115.41 of the Revised Code shall not revive any action that could not be filed prior to the effective date of this section under provisions of former section 3115.06 of the Revised Code.

Effective Date: 01-01-1998

3115.58 Uniformity of application and construction.

Sections 3115.01 to 3115.59 of the Revised Code shall be applied and construed to effectuate its general purpose to make uniform the law of those states that enact a uniform interstate family support act.

Effective Date: 01-01-1998

3115.59 Severability.

If any provision of sections 3115.01 to 3115.59 of the Revised Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of those sections which can be given effect without the invalid provision or application, and to this end the provisions of those sections are severable.

Effective Date: 01-01-1998

COMMON PLEAS COURT
MARION CO. O.P.
IN THE COURT OF COMMON PLEAS OF MARION COUNTY, OHIO

2013 OCT 16 PM 1:42

THE STATE OF OHIO

-v-

ROBERT PITTMAN,

Defendant.

JULIE M. KAGEL
CLERK OF COURTS

Case No. 09-CR-337

Judge JIM SLAGLE

BILL OF PARTICULARS



1. NATURE OF OFFENSE

Count 5: Non Support of Dependents [R.C. 2919.21(B)], F4

Defendant, Robert Pittman, in Marion County, Ohio, on or about July 1, 2007 through June 30, 2009, did fail to provide support as established by a court order filed in the Marion County Court of Common Pleas, Family Division, on November 20, 2006, in Case No. 1998-PC-28558, to Alma Douglas for Sate Douglas. The Defendant failed to provide support for a total accumulated period of 101 weeks out of 104 consecutive weeks. Defendant has previously been convicted of or pleaded guilty to a felony violation of R.C. 2919.21 on April 3, 2003.

Count 6: Non Support of Dependents [R.C. 2919.21(B)], F4

Defendant, Robert Pittman, in Marion County, Ohio, on or about July 1, 2007 through June 30, 2009, did fail to provide support as established by a court order filed in the Marion County Court of Common Pleas, Family Division, on November 20, 2006, in Case No. 1998-PC-28559, to Alma Douglas for Sade Douglas. The Defendant failed to provide support for a total accumulated period of 101 weeks out of 104 consecutive weeks. Defendant has previously been convicted of or pleaded guilty to a felony violation of R.C. 2919.21 on April 3, 2003.

Respectfully submitted,

Megan K Frericks

Megan K. Frericks (0082682)
Assistant Prosecuting Attorney
134 E. Center Street
Marion, Ohio 43302
(740) 223-4290

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Bill of Particulars was delivered to Rocky Ratliff, Attorney for Defendant, by placing a true copy of same in his mail depository box at the Marion County Court House on 15th day of October, 2013.

Megan K Frericks

Megan K. Frericks (0082682)

supplemental jurisdiction. See JURISDICTION.

supplemental pleading. See PLEADING (1).

Supplemental Security Income. A welfare or needs-based program providing monthly income to the aged, blind, or disabled. • It is authorized by the Social Security Act. — Abbr. SSI.

supplementary proceeding. See PROCEEDING.

suppliant (səp-lee-ənt). One who humbly requests something; specif., the actor in a petition of right.

support, n. **1.** Sustenance or maintenance; esp., articles such as food and clothing that allow one to live in the degree of comfort to which one is accustomed. See MAINTENANCE (5); NECESSARIES. **2.** Basis or foundation. **3.** The bracing of land so that it does not cave in because of another landowner's actions. — **support, vb.**

support obligation. A secondary obligation or letter-of-credit right that supports the payment or performance of an account, chattel paper, general intangible, document, health-care-insurance receivable, instrument, or investment property. UCC § 9-102(a)(77).

support order. A court decree requiring a party (esp. one in a divorce or paternity proceeding) to make payments to maintain a child or spouse, including medical, dental, and educational expenses.

support trust. See TRUST.

suppress, vb. To put a stop to, put down, or prohibit; to prevent (some-

thing) from being seen, heard, known, or discussed <the defendant tried to suppress the incriminating evidence>. — **suppression, n.** — **suppressible, adj.** — **suppressive, adj.**

suppression hearing. See HEARING.

suppression of evidence. **1.** A trial judge's ruling that evidence offered by a party should be excluded because it was illegally acquired. **2.** The destruction of evidence or the refusal to give evidence at a criminal proceeding. • This is usu. considered a crime. See OBSTRUCTION OF JUSTICE. The prosecution's withholding from the defense of evidence that is favorable to the defendant.

supra (s[y]oo-prə). [Latin "above"] Earlier in this text; used as a citation signal to refer to a previously cited authority. Cf. INFRA.

supra riparian (soo-prə ri-pair-ee-ə or ri-). Upper riparian; higher up the stream. • This phrase describes the estate, rights, and duties of a riparian owner whose land is situated near the source of a stream than the land it is compared to.

supremacy. The position of having the superior or greatest power or authority.

Supremacy Clause. The clause in Article VI of the U.S. Constitution declaring that the Constitution, all laws made in furtherance of the Constitution, and all treaties made under the authority of the United States are the "supreme law of the land" and enjoy legal superiority over any conflicting provision of a state constitution or law. See PREEMPTION.

APPELLEE'S
EXHIBIT

10

answer had contained all the denials necessary to put in issue the material allegations of the complaint, was a supplemental answer and not an amended one. *Yeatman v Patrician*, 144 Wash 241, 257 P 622.

See **supplemental bill**.

supplemental proceeding. See **supplementary proceeding**.

supplemental remedy. See **extraordinary remedies**; **supplementary proceeding**.

supplemental statute. A statute intended to improve an existing statute by adding something thereto without changing the original text. 50 Am J1st Stat § 3.

supplemental surety. One who stands as surety for another who is himself only a surety. 50 Am J1st Suret § 5.

supplemental tax. An additional inheritance tax imposed by way of correcting error in the omission of property made in calculating the amount of the tax. Anno: 64 ALR 1283.

supplementary (sup-lē-men'tā-ri). Same as **supplemental**.

supplementary proceeding. A proceeding for the enforcement of a judgment where the ordinary means of enforcement by execution is unavailable or unavailing, sometimes regarded as a proceeding in the original action, at other times as a civil action or proceeding in itself, whereunder the plaintiff is enabled to examine the judgment debtor and third persons for the purpose of obtaining information concerning property owned by the debtor which may be applied in payment of the judgment. 30 Am J2d Exec §§ 774 et seq.

suppletory oath. See **oath suppletory**.

supplicate. To petition in an earnest and humble manner.

supplicatio (sup-pli-kā'she-ō). (Civil law.) Same as **duplicatio**.

supplicavit (sup-li-kā'vit). He hath supplicated.
See **writ of supplicavit**.

supplicium (sup-pli'she-um). (Civil law.) The death penalty.

supplies. Available aggregate of things needed or demanded; anything yielded or afforded to meet a want. *Anderson v United States Fidelity & G. Co.* 44 NM 483, 104 P2d 906, 129 ALR 1084 (word appearing in performance bond).

supply. Verb: To furnish. To meet a need. Noun: A substitute serving temporarily, particularly in teaching school.

See **bill of supply**; **supplies**.

support. Verb: To carry the weight of something. To comfort and sustain. To furnish the necessities of life for maintenance in a proper manner, not merely the necessities for a bare maintenance. Anno: 13 ALR 689 (term appearing in workmen's compensation statute). To provide the means of maintenance of a person. 50 Am J1st Sup Per § 2. Noun: Articles for the sustenance of a person, as food, clothing, and other conveniences, even medicines and medical services. 50 Am J1st Sup Per § 2. Maintenance, subsistence, or income for the sustenance of one person or a family. *Wall v Williams*, 93 NC 327. As used in a statute exempting from execution food necessary for the "support of the debtor and his family" for a specified period:—provisions on hand

sufficient to provide for the necessary use of the family for the prescribed period; usually not inclusive of such provisions as are necessary to provide for persons the debtor is under no obligation to support. 31 Am J2d Exemp § 78.

See **lateral support**; **subjacent support**.

support bond. See **bond for support**.

supporting affidavit. An affidavit in support of a motion, for example, a motion for a continuance. 17 Am J2d Contin § 44. An affidavit in support of an application for injunction, particularly a preliminary or temporary injunction. 28 Am J Rev ed Inj § 264.

supporting papers. Affidavits in support of a motion. 37 Am J1st Motions § 14.

support of building. A right of an owner and a corresponding liability of an adjoining owner under grant, express or implied, or under reservation, sometimes existing as a prescriptive right, although not included in the right of lateral support and confined to the condition of things at the time of the acquisition of the right. 1 Am J2d Adj L §§ 40-42.

See **lateral support**; **subjacent support**.

support of child. A moral obligation; a principle of natural law, as well as the common law, to maintain and care for one's minor child. 39 Am J1st P & C § 35.

Support of Dependents Act. One of the uniform laws. 23 Am J2d Desert § 125.

support of family. The duty of a husband, arising out of the marital relationship and imposed by law, to provide wife and family with a place of abode, the necessities and comforts of life, which are suitable when considered in reference to the particular estate, social rank, and condition of the husband and wife, and the means and earning power of the husband. 26 Am J1st H & W §§ 337, 338.

support of land. See **lateral support**; **subjacent support**.

support of person. See **support**.

support of wife. A duty arising out of the marital relationship and imposed by law which continues during the existence of the relationship. 26 Am J1st H & W § 338.

See **support of family**.

support order. An order for support of wife or child, especially an order under the Uniform Desertion and Nonsupport Act. 23 Am J2d Desert §§ 48 et seq. An allowance, in addition to alimony, granted a divorced wife, for the maintenance of children placed in her custody by the judgment or decree of divorce. 24 Am J2d Div & S § 827.

support trust. A protective trust wherein the interest of the beneficiary is protected against his grantees or assignees and against his creditors by limiting his interest to that which is necessary for his support and education. 54 Am J1st Trusts § 163.

supposition. Something regarded as true, without proof.

In the law of evidence, an inference is a deduction from the facts proved and differs widely from a "supposition," which requires no such premise for its justification. *Continental Casualty Co. v Paul*, 209 Ala 166, 95 So 814, 30 ALR 802, 804.

suppress. To restrain. To put down by force.

To suppress means to prevent, and does not mean

APPELLEE'S
EXHIBIT