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Abandonment Sentences Are Forever

Presented By
Judge John Carbo
Judge State Court of Clayton County

Fall Conference for State Court Judges, 2009

UGA Rural Development Center
Tifton, GA

October 14 – 16, 2009

ABANDONMENT SENTENCES ARE FOREVER

AND, HOW THEY BE EFFECTIVELY SUPERVISED BY THE COURT.

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IS PROBATION A GOOD OPTION?

1. How long do probated sentences last?
2. Is it helpful to an abandonment situation that the defendant has to also pay \$30-\$50 per month in supervision fees?
3. How will the probation officer handle the case if the defendant is "just a little" in arrears?
4. Does the defendant become a needle in the probation haystack?
5. What happens in later years after the probation expires?

ALTERNATIVE:

WHAT, INSTEAD OF PROBATION, YOU SUSPEND A 12 MONTH SENTENCE ON CONDITION THE DEFENDANT PAYS HIS/HER CHILD SUPPORT AS ORDERED?

O.C.G.A. 19-10-1:

- (1)(1) In a prosecution for and conviction of the offense of abandonment, the trial court may suspend the service of the sentence imposed in the case, upon such terms and conditions as it may prescribe for the support, by the defendant, of the child or children abandoned during the minority of the child or children. Service of the sentence, when so suspended, shall not begin unless and until ordered by the court having jurisdiction thereof, after a hearing as in cases of revocation or probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended.
- (2) Service of any sentence suspended in abandonment cases may be ordered by the court having jurisdiction thereof at any time before the child or children reach the age of 18 or become emancipated, after a hearing as provided in paragraph (1) of this subsection and a finding by the court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended by the court having jurisdiction thereof.
- (3) Notwithstanding any other provisions of law, in abandonment cases where the suspension of sentence has been revoked and the defendant is serving the sentence, the court may thereafter again suspend the service of sentence under the same terms and conditions as the original suspension. The sentence shall not be considered probated and the defendant shall not be on probation, but the defendant shall again be under a suspended sentence. However, the combined time of incarceration of the defendant during the periods of revocation of suspended sentences shall not exceed the maximum period of punishment for the offense.

WHO SUPERVISES THE SUSPENDED SENTENCE?

- Probation?
- Child Support Recovery?
- Your clerk?
- The judge?

WHERE AND HOW MUCH DO THE DEFENDANTS PAY?

- 1. If the Defendant is already under an order to pay through CSRU, then they pay that amount there.
- 2. If the Defendant is under a valid child support order to pay directly to the recipient, they pay that amount through the clerk's registry.
- 3. If there is no prior child support order, the Defendant can either be ordered to sign up with CSRU and begin paying there, OR you as the sentencing court can order an amount to be paid. CAVEAT: if you elect to set the amount, you are bound by all of the Child Support formulas, established by law.

ACCOUNTABILITY

- **REGARDLESS OF WHERE THE DEFENDANT PAYS, THEY MUST REPORT TO COURT ON THE FIRST FRIDAY OF THE MONTH AT 9:00 A.M. TO SHOW PROOF OF COMPLIANCE WITH THE TERMS OF THE SUSPENDED SENTENCE.**

WHAT HAPPENS AT THE CHILD SUPPORTING REPORTING CALENDAR?

- 1. If the defendant is current on his/her payments, they are simply given their next report date.
- 2. If they appear and are not current, we immediately know and can either: a) "suggest" to the defendant to take remedial action by the next reporting date, or b) serve the defendant with a motion to revoke the suspended sentence, typically to be heard at the next child support calendar.
- 3. If the defendant fails to appear, an arrest order is issued. When the defendant is arrested he/she is brought to court and served with a motion to revoke.

WHAT HAPPENS AT A REVOCATION HEARING?

- 1. The defendant can be ordered to remain on a suspended sentence, conditioned on compliance with remedial conditions.
- 2. The defendant's suspended sentence can be revoked, but can be ordered to be re-suspended on payment of the arrearages.
- 3. The defendant's suspended sentence can be revoked.

MISCELLANEOUS INFORMATION:

- 1. The Solicitor's office accesses the printout from CSRU on those cases.
- 2. Recipients may come to Court Sessions to give information.
- 3. Defendants often bring their payments to Court.
- 4. If all goes well, reporting is stopped after one year has elapsed from the sentence, however, the suspended sentence remains in full force and effect and is subject to revocation in the event of non-payment.
- 5. Some defendants have to report for several years.
- 6. Defendants are allowed to "skip" months if they are current
- 7. If an Income Deduction Order is put in place, the defendant may be allowed to skip reporting.
- 8. The average number of cases on a reporting calendar ranges from 10-18. Each report takes an average of 2-3 minutes.

BOTTOM LINE:

- 1. There is an effective, long term vehicle to enforce child support obligations with a meaningful criminal sentence.
- 2. Very little court time or resources are used.
- 3. Non-compliance is quickly addressed.
- 4. Victims feel they have the "backing" of the court system.
- 5. Use of the "Sword of Damocles" (the threat of jail) is maximized in a way unique to the misdemeanor system.
- 6. All money paid goes for child support.
- 7. Probation resources are reserved for those on probation.
- 8. Non-custodial parents actually enter or re-enter their children's lives.

JUST REMEMBER:

- While you may not be able to get blood out of a turnip, you never know for sure until you cut it on both ends!
