

21-5606. Criminal nonsupport. (a) Criminal nonsupport is:

(1) A parent's failure, neglect or refusal without lawful excuse to provide for the support and maintenance of the parent's child in necessitous circumstances; or

(2) a person's failure, without just cause, to provide for the support of such person's spouse in necessitous circumstances.

(b) Criminal nonsupport is a severity level 10, nonperson felony.

(c) As used in this section, "child" means a child under the age of 18 years and includes an adopted child or a child born out of wedlock whose parentage has been judicially determined or has been acknowledged in writing by the person to be charged with the support of such child.

(d) (1) At any time before the trial, upon petition and notice, the court may enter such temporary order as may seem just providing for support of such child or spouse, and may punish for violation of such order as for contempt.

(2) At any stage of the proceeding, instead of or in addition to imposing the penalty provided, the court, in its discretion and having regard for the circumstances and the financial ability or earning capacity of the defendant, may enter an order which shall be subject to change by the court, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding the period during which the obligation to support shall continue, to the spouse, if applicable, the guardian, conservator or custodian of such child or spouse or to an organization or individual approved by the court as trustee. The court shall also have the power to release the defendant on probation for the period so fixed, upon the defendant's entering into a recognizance, with or without surety, in such sum as the court may order and approve. The condition of the recognizance shall be such that if the defendant makes a personal appearance in court whenever ordered to do so and further complies with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void; otherwise the recognizance shall be of full force and effect.

(3) If the court is satisfied by due proof that, at any time during the period while the obligation to support continues, the defendant has violated the terms of such order, the court may forthwith proceed with the trial of the defendant under the original charge, or sentence the defendant under the original conviction, or enforce the suspended sentence as the case may be.

(4) In no prosecution under this section shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent witnesses to testify against each other to any and all relevant matters, including the parentage of such child.

(e) Failure by a spouse to use resources or income, or both, allowed to the spouse under section 303 of the federal medicare catastrophic coverage act of 1988 or under K.S.A. 39-785 through 39-790, and amendments thereto, as applicable, to provide medical support for the other spouse shall not constitute a violation of subsection (a)(2) so long as the other spouse is receiving medical assistance as defined by K.S.A. 39-702, and amendments thereto.

History: L. 2010, ch. 136, § 83; July 1, 2011.