

FIRST REGULAR SESSION

SENATE BILL NO. 391

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time February 26, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1805S.011

AN ACT

To amend chapter 454, RSMo, by adding thereto eight new sections relating to the remedy of civil contempt for failure to comply with child support orders.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 454, RSMo, is amended by adding thereto eight new sections, to be known as sections 454.1800, 454.1803, 454.1806, 454.1809, 454.1812, 454.1815, 454.1818, and 454.1821, to read as follows:

454.1800. As used in sections 454.1800 to 454.1821, the following terms shall mean:

(1) "Arrearage", the amount unpaid under the support order as of a date certain which can be shown by the obligee, by the family support payment center, by the family support division or by the clerk of the circuit court, which documentation includes but is not limited to, a certified copy of the payment record maintained in the Missouri automated child support system as set forth in section 454.539;

(2) "Obligee" and "Obligor", as such terms are defined in section 454.460;

(3) "Purge amount", the amount stated in the judgment of contempt that shall be paid in order to satisfy the judgment of contempt;

(4) "Purge plan", an order entered by the court after a finding of contempt that requires the obligor to make specific scheduled payments toward the purge amount and which payments may be lump sum, periodic, or a combination thereof. The purge plan shall state the amounts, the frequency and the due date for such payments;

(5) "Support order", as such term is defined in section 454.460.

454.1803. 1. If an obligor fails to comply with a support order,

2 the obligee or the family support division may initiate a contempt
3 proceeding by filing an application for an order to show cause why the
4 obligor should not be held in contempt, together with a separate
5 proposed order to show cause.

6 2. An application for an order to show cause and the proposed
7 order to show cause shall be filed in the circuit court of the county in
8 which the support order is filed or registered. The application shall
9 allege with specificity that:

10 (1) A support order and all subsequent orders of modification, if
11 any, were entered and the dates upon which they were entered;

12 (2) The obligor knew of the support order or orders;

13 (3) The obligor failed to comply with the support order; and

14 (4) An arrearage has accrued and the amount of said arrearage.

15 3. The proposed order to show cause shall contain:

16 (1) Facts regarding the support order and all subsequent orders
17 of modification, if any, pertaining to the provision of support including
18 but not limited to, for each order:

19 (a) The date each support order was entered;

20 (b) The amount or amounts of periodic support;

21 (c) The commencement date or dates and the frequency;

22 (d) Any judgments determining arrearage;

23 (e) That if the order was not entered in Missouri, the date the
24 order was registered in Missouri; and

25 (f) Any other relevant information pertaining to the support
26 order;

27 (2) An allegation that the obligor knew of the support order;

28 (3) An allegation that the obligor's failure to pay was willful and
29 contumacious;

30 (4) The total amount of arrearage owed as of a date certain; and

31 (5) A statement that gives notice to the obligor that upon
32 obligor's failure to appear on the date and time specified in the order
33 to show cause, that the court may enter a writ of body attachment.

34 4. The obligor shall be personally served with the order to show
35 cause pursuant to the supreme court rules of civil procedure.

36 5. For all subsequent court appearances, the obligor is deemed
37 to have been duly notified if the obligor appears before the court and
38 is provided with the next court date or if there is a notice of hearing

39 filed with the court and mailed to the obligor's last known address.

40 6. The obligor shall notify the court of any change in the
41 obligor's address.

42 7. If an obligor raises issues regarding custody or visitation in
43 response to an order to show cause entered on behalf of the family
44 support division, such action shall be severed upon request. No
45 attorney acting on behalf of the family support division shall represent
46 any party on the issues of custody and visitation.

454.1806. On the appearance date specified in the order to show
2 cause, and all subsequent court dates at which the obligor is thereafter
3 ordered to appear, the court shall:

4 (1) If the obligor appears, conduct a hearing on the order to
5 show cause and make a finding as to whether or not the obligor is in
6 contempt; and if the obligor is found in contempt, order a remedy as
7 found in section 454.1812; or

8 (2) Enter a judgment of contempt by consent with such
9 conditions as the parties agree upon and the court deems appropriate;
10 or

11 (3) Continue the show cause hearing to a date certain; or

12 (4) If the obligor fails to appear, order a writ of body attachment
13 in accordance with section 454.1821.

454.1809. 1. A prima facie case for civil contempt shall be
2 established when the party alleging contempt proves:

3 (1) The obligor's obligation to pay a specific amount; and

4 (2) The obligor's failure to make the payment.

5 2. After the prima facie case is established, the obligor shall have
6 the burden to prove by clear and convincing evidence that the failure
7 to pay was not willful and contumacious.

8 3. A rebuttable presumption that the obligor's failure to pay was
9 willful and contumacious shall be created if the arrearage is proven to
10 be equal to or greater than the sum of three months' support without
11 regard to whether or not current support is still accruing.

12 4. Upon a finding of contempt, the court shall determine if the
13 obligor has the present ability to pay towards the purge amount.

454.1812. 1. If the court finds that the obligor does not have the
2 present ability to pay toward the purge amount, then the court may
3 order the obligor to do one or more of the following:

- 4 (1) Pursue education or employment options;
- 5 (2) File for social security administration benefits;
- 6 (3) File state and federal tax returns;
- 7 (4) Pursue other activities that may result in income or assets for
- 8 the payment of support.

9 2. If the court finds that the obligor does have the present ability
10 to pay toward the judgment of contempt, the court shall order a remedy
11 or a combination of remedies, which may include, but shall not be
12 limited to:

13 (1) Order a warrant and order of commitment and stay its
14 execution as long as the obligor complies with a specific purge plan;

15 (2) Order and execute a warrant and order of commitment to
16 immediately commit the obligor to the county jail for the obligor to
17 remain until a specific amount has been paid as determined by the
18 court and a purge plan ordered; or

19 (3) Order and execute a warrant and order of commitment to
20 immediately commit the obligor to the county jail for the obligor to
21 remain until the purge amount is paid in full.

22 3. A commitment pursuant to sections 454.1800 to 454.1821 shall
23 not be for a fixed period of time, but shall continue until the obligor
24 has complied with the purge plan or upon further order of the court,
25 but in no event shall exceed:

26 (1) Twenty-one days for the first commitment pursuant to a
27 finding of contempt;

28 (2) Forty-two days for the second commitment; or

29 (3) Ninety-one days for any subsequent commitment.

30 4. The court may order the release of the obligor from custody
31 upon a payment of an amount certain prior to the review date. All
32 payments made to secure the obligor's release shall be paid to the
33 circuit clerk and forwarded to the family support payment center in the
34 underlying case.

35 5. In the event the obligor is released from confinement that was
36 ordered pursuant to a judgment of contempt, and if any or all of the
37 purge amount remains unpaid, the obligor remains in contempt. The
38 judgment of contempt shall not be deemed purged as a result of the
39 obligor's release from custody. Upon the obligor's release, the obligor
40 shall be ordered to appear before the court on a date certain.

454.1815. 1. If the obligor appears and is found in contempt by
2 consent or after a hearing, the court shall issue findings of fact and
3 conclusions of law as to why the obligor is in contempt. Such judgment
4 of contempt shall contain the following:

5 (1) That the obligor appeared with or without counsel;

6 (2) That there is a support order filed or registered in that
7 county;

8 (3) That the obligor had knowledge of the support order;

9 (4) That there is an arrearage as of a date certain;

10 (5) Whether or not the obligor failed to pay pursuant to the
11 support order and the specific facts that show whether the obligor's
12 failure to pay was willful and contumacious;

13 (6) The purge amount, which may not exceed the amount of the
14 arrearage stated in the order to show cause;

15 (7) That the obligor was given notice that if the obligor fails to
16 purge the contempt, whether in whole or in part, as ordered by the
17 judgment of contempt, that the obligor may be incarcerated in the
18 county jail until further order of the court; and

19 (8) Any further orders that the court deems just and appropriate.

20 2. The judgment of contempt shall also include:

21 (1) An order for the obligor to inform the court of changes in the
22 obligor's address or employment status within thirty days of said
23 change;

24 (2) The date a review hearing is scheduled, if any; and

25 (3) A statement that any party or the family support division may
26 file a notice of hearing at any time to request the court to review either
27 the purge plan or the obligor's compliance with the purge plan; and
28 that the obligor's failure to appear pursuant to such notice may result
29 in the court's issuance of a writ of body attachment.

30 3. If the obligor is found in contempt in a case that is not
31 administered by the state under Title IV-D of the Social Security Act,
32 the court may order the reasonable expenses incurred as a result of the
33 obligor's failure to pay support, including attorneys' fees and costs of
34 a proceeding to enforce a support order against the obligor. The court
35 shall retain jurisdiction over the obligor until the judgment of
36 contempt is purged.

37 4. In the event the court does not find the obligor in contempt,

38 the court shall issue specific findings of fact and conclusions of law as
39 to why the obligor's failure to pay was not willful and
40 contumacious. Such a finding that the obligor's failure to pay was not
41 willful and contumacious pursuant to an application for an order to
42 show cause shall not in and of itself forgive, decrease or waive any
43 arrearage owed by the obligor under the support order.

44 5. The court may, upon its own motion, and shall, upon request
45 of a party, enter a judgment determining the arrearage as of a date
46 certain.

454.1818. 1. If at any time after the obligor is found in contempt
2 and no hearing has been set to review the obligor's compliance with the
3 purge plan, or such review hearing has been scheduled but has not yet
4 occurred, and the obligor has failed to comply with the remedies
5 ordered by the court, the obligee or the family support division may file
6 a notice of hearing to review the obligor's compliance with the purge
7 plan with no other pleadings required. If the obligor appears and a
8 review hearing is held the court shall make specific findings, including
9 but not limited to:

- 10 (1) That the obligor appeared with or without counsel;
11 (2) Whether the obligor failed to provide a sufficient explanation
12 for his or her failure to comply with the purge plan; and
13 (3) Whether the obligor has the present ability to comply with
14 the purge plan, or in the court's discretion, the ability to make a
15 payment of sufficient amount toward the remaining purge amount.

16 2. If the court makes findings that the obligor had the ability to
17 pay and failed to pay pursuant to the purge plan, the court may order
18 a remedy as set forth in subsection 2 of section 454.1812.

19 3. If the obligor fails to appear for a post-review hearing after
20 being duly notified, the court shall upon request order a writ of body
21 attachment in accordance with section 454.1821.

22 4. Upon the request of either party and after a hearing, the court
23 in its discretion may deem that the obligor has sufficiently satisfied the
24 judgment of contempt prior to the payment of the remaining purge
25 amount, and the court may set aside the judgment of contempt, quash
26 the warrant and order of commitment and dismiss the application for
27 show cause.

454.1821. 1. For the purpose of procuring the appearance of an

2 obligor pursuant to sections 454.1800 to 454.1821, the court may issue
3 a writ of body attachment if the obligor fails to appear after being duly
4 notified. A writ of body attachment issued under this section shall:

- 5 (1) Be directed to a sheriff or other law enforcement agency;
- 6 (2) Order a cash bond in an amount not to exceed the amount of
7 arrearage as stated in the order to show cause if there is no judgment
8 of contempt or for the remaining purge amount if there has been a
9 judgment of contempt entered; and
- 10 (3) Remain in full force and effect until such writ is executed.

11 2. A sheriff or other law enforcement officer who receives an
12 order under this section shall immediately enter said writ into all local
13 and statewide information systems for law enforcement and execute the
14 writ and take the obligor into custody.

15 3. Any Missouri law enforcement officer in any county or city in
16 the state of Missouri shall have the authority to serve and execute a
17 writ of body attachment and take the obligor into custody.

18 4. If the obligor is taken into custody pursuant to the writ of
19 body attachment in a county other than the county issuing the writ, the
20 sheriff or other law enforcement officer of the executing county shall
21 immediately notify the sheriff of the issuing county, who shall return
22 the obligor to the issuing county, so that the obligor may be taken
23 before the issuing court. However, the sheriff may release the obligor
24 after any person has deposited the amount of bond in accordance with
25 subdivision (2) of subsection 1 of this section.

26 5. The sheriff of the county where the writ was issued shall
27 notify the court when the obligor is in custody. The court shall
28 immediately set a date certain for the obligor to appear before the
29 court and notify the parties of the execution of the writ, the court date
30 and time for the obligor to appear, and whether or not the obligor has
31 posted bond.

32 6. Any cash bond shall be deposited with the clerk of the court
33 of the county in which the writ was issued. If the obligor is served in
34 a county other than the county in which the attachment was issued and
35 posts bond in the county in which the writ is served, the bond shall be
36 forwarded to the clerk of the court in the county in which the writ of
37 body attachment was issued.

38 7. All bond money collected under this section by the clerk of the

39 court shall be deemed the property of the obligor and shall not be
40 released until ordered by the court.

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