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SPRINGFIELD

May 22, 1973

FILE NO. S-592

**CRIMINAL LAW:**  
Failure to pay child support  
pursuant to divorce decree

Honorable Kelly D. Long  
State's Attorney  
Montgomery County  
Hillsboro, Illinois 62049

Dear Mr. Long:

I have your letter wherein you state as follows:

"I am requesting an opinion on the following situation:

When an individual fails to pay any child support pursuant to a support order of a divorce decree issued in a certain county, does this constitute a misdemeanor subject to prosecution in that same county under the provisions of the Non-Support of Spouse and Children Act, Chapter 68, Section 24, Illinois Revised Statutes, 1971?

I would appreciate any information you can give me in this matter at your earliest convenience."

Section 1 of the Non-Support of Spouse and Children

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Act (Ill. Rev. Stat., 1972 Supp., ch. 68, par. 24) provides as follows:

"Every person who shall, without any lawful excuse, neglect or refuse to provide for the support or maintenance of his spouse, said spouse being in need of such support or maintenance, or any person who shall, without lawful excuse, desert or neglect or refuse to provide for the support or maintenance of his or her child or children under the age of 18 years, in need of such support or maintenance, shall be deemed guilty of a Class A misdemeanor and shall be liable under the provisions of the 'Public Aid Code of Illinois', approved April 11, 1967, to the Supervisor of General Assistance or to the Illinois Department of Public Aid, as the case may be, in a civil action, for the amount of general assistance or assistance provided to his spouse or children, or both his spouse and children."

One of my predecessors issued an opinion (1954 Ill. Atty. Gen. Op., p. 82) wherein he construed a statute substantially the same as the present one. In that opinion, it was stated that a non-support suit for the children would be in the county court, as opposed to civil action based upon a divorce decree, so long as need was shown. After the divorce, however, the mother of the children was no longer a "spouse" who would be protected by section 1 of the

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Non-Support of Spouse and Children Act. (Ill. Rev. Stat., 1972 Supp., ch. 68, par. 24.) Any support liability for the mother would have to be pursued in some other manner. This opinion citing, People v. Baker, 222 Ill. App. 45, and Ryan v. Foreman, 181 Ill. App. 262, states:

"It is my opinion \* \* \* that courts of competent jurisdiction have full and complete authority to try and punish those who come within the province of section 24 of the Act [Non-Support of Spouse and Children] and that such prosecution and proper orders and sentences may be entered without interfering or conflicting with the proper jurisdiction of the court entering a decree for support of a minor."

1954 Ill. Atty. Gen.  
Op., 82, 84.

It should be emphasized that failure to pay child support pursuant to a support order of a divorce decree does not ipso facto constitute a violation of section 1 of the Non-Support of Spouse and Children Act. (Ill. Rev. Stat., 1972 Supp., ch. 68, par. 24.) Any allegation that an individual has violated said section 1 must be proved. If an individual were charged with violating section 1, some of the evidentiary issues that would be of concern to both

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the prosecution and the defense would be as follows:

1. The parent-child relationship must be proven;
2. The child must be under 18 years of age;
3. The child must be in need of support;
4. The defendant must have neglected or refused to support the child;
5. The defendant may be absolved for his lack of support if he has a lawful excuse.

Even though there are several procedures available to remedy the situation whereby a divorced parent fails to provide child support for his or her child, the parent can still be prosecuted for violating section 1 of the Non-Support of Spouse and Children Act. (Ill. Rev. Stat., 1972 Supp. ch. 68, par. 24.) However, mere failure to pay child support pursuant to a child support order of a divorce decree does not ipso facto constitute a violation of section 1 of the Non-Support of Spouse and Children Act. (Ill. Rev. Stat., 1972 Supp., ch. 68, par. 24.) Of course, failure to make said child support payments would be some evidence that could be used to prove a violation of section 1 of the Non-Support

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of Spouse and Children Act. Ill. Rev. Stat., 1972 Supp.,  
ch. 68, par. 24.

Very truly yours,

A T T O R N E Y   G E N E R A L