



Magistrate Court Happenings (March 2018)

Magistrate Court's New Child Abandonment Criminal Warrant Application Calendar (!)

The Gwinnett County Magistrate Court is excited to announce some significant enhancements to the process of child abandonment warrant applications and prosecutions. Pursuant to O.C.G.A. § 17-4-40(b)(1), a private citizen can apply for a criminal arrest warrant against another person. To determine whether a warrant should issue, the Court schedules a warrant application hearing. These hearings are held at 6:30 p.m. every Wednesday at the Jail Court Annex. Last year, Magistrate Court handled 1,449 citizen criminal warrant applications; approximately one-quarter (1/4) of these were applications for the crime of child abandonment.

The criminal offense of child abandonment is often misinterpreted as a tool to collect child support. Pursuant to O.C.G.A. § 19-10-1(a): "A child abandoned by its father or mother shall be considered to be in a dependent condition when the father or mother does not furnish sufficient food, clothing, or shelter for the needs of the child." The failure to pay child support pursuant to the terms and conditions of a court order may or may not rise to the level of criminal abandonment depending on the circumstances. In addition, prosecution does not require that there be a child support order. There are only two essential elements of child abandonment: (1) desertion; and (2) dependency. Both elements must be present to complete the offense. See O.C.G.A. § 19-10-1 (citations omitted). The crime is only a felony if the accused leaves the State (after having been in Georgia).

Child abandonment warrants cannot be used to establish child support or compel compliance with any existing child support orders (Superior Court has this jurisdiction). Yet desperate self-represented litigants continuously show up in Magistrate Court because we are easily accessible. Most often, the applicant does not care whether the remedy ends up being civil or criminal. We recognize that frustrated people "end up with us" when they just don't know what else to do. In an effort to minimize this frustration, we met with a number of different child support enforcement stake holders to try and craft a better solution.

After many discussions, and a few trial runs, beginning February 2018, Magistrate Court unrolled a new Child Abandonment Calendar designed to equip both the applicant and the accused with information on their options in resolving child support conflicts. Below is a summary of what we now provide at these calendars:

1. **New Day/Time for Child Abandonment Warrant Applications:** We have separated out child abandonment warrant applications and given them their own calendar. These calendars now occur on the second and fourth Monday of each month at 8:30 a.m. in Courtroom 1 at the Jail Court Annex. One bonus to moving these calendars to Monday mornings is that the applicants now have more options for child care (school, day care, baby sitter, etc.), which has almost totally eliminated the presence of children for these hearings, which can be upsetting for them.

2. **Civil Remedy Stakeholders Present:**

A. Department of Human Services (“DHS”), Office of Child Support Enforcement, State of Georgia

We now have a Special Assistant Attorney General (Sherry Ellison) at the calendar, appearing on behalf of DHS. The mission of the Office of Child Support Enforcement is to increase the reliability of child support paid by parents when they live apart from their children by: (1) locating parents; (2) establishing paternity; (3) establishing and enforcing fair support orders; (4) increasing health care coverage for children; (5) removing barriers to payment, such as referring parents to employment services, supporting healthy co-parenting relationships, supporting responsible fatherhood, and helping to prevent and reduce family violence.

After calendar call and prior to any warrant application hearings, either or both parents can speak to Ms. Ellison about how to sign up for child support, acknowledge (or contest) paternity and/or learn about their pending DHS cases. The value of having someone from DHS at the Child Abandonment Calendar was highlighted by the fact that 100% of the cases on the first test calendar and 88% of the cases on the second test calendar had some DHS interaction. DHS can also provide valuable information to the Court, attorneys and parties about pending enforcement cases, contempt and compliance options (instead of arrest), and payment histories.

B. Legal Aid

Legal Aid Attorney (Rachel Lazarus) is also present at these calendars. Litigants can speak with Legal Aid about filing private (non-DHS) actions to establish support, for contempt, as well as learn about divorce, custody and legitimation proceedings.

C. Mediation

We continue to have trained mediators on hand to assist litigants with short term solutions to avoid prosecution or to facilitate discussions with either Legal Aid and/or DHS.

3. **Criminal Stakeholders Present:**

A. Indigent Defense

We continue to have a defense attorney available to answer questions about the criminal process and/or represent the accused in the warrant application hearing.

B. Victim/Witness Coordinator, Solicitor’s Office

The applicant in a child abandonment warrant is also the victim; therefore, the Solicitor’s Office has graciously agreed to make a Victim/Witness Coordinator available at each Child Abandonment Calendar. The Victim/Witness Coordinator talks to the applicants about their rights and remedies and also helps coordinate litigants’ discussions with the mediators, DHS and/or Legal Aid.

Child support issues can be frustrating. The purpose of having all of these resources/stakeholders available is to help both the applicant and the accused break the prosecution cycle (child abandonment is a

continuing offense) and find a sustainable remedy for support in the best interests of the minor children at issue and to reserve the warrant process for only those cases that meet the elements of the crime of child abandonment.

In making this possible, I am extremely grateful for and thankful to Sherry Ellison and her associates, Marne Holloway and Lauren Sanders, Rachel Lazarus and Legal Aid, Solicitor General Rosanna Szabo, Julie Potts and Dana Pagan, Victim-Witness Coordinators Sonia Davis-Bey and Amber Walton, Indigent Defense Attorneys Bruce Hawkins and Guy Camuso, Clerk of Court Magistrate Criminal Supervisor Lisa Hopkins, and our wonderful mediation team, LauraLynn Swafford, Charles White and Alex Williams for making this new Child Abandonment Calendar a reality.

As with anything we do, this will remain a work in progress. Thank you to the Bar for all you do. We welcome any comments, suggestions or ideas you may have on ways we can improve.

Kristina Hammer Blum

Chief Magistrate

Gwinnett County Magistrate Court