

CRIMINAL LAW) The venue and jurisdiction of a prosecution
SUPPORT OF MINOR CHILD) under Sect. 4420, Laws of 1947, Vol. I, p.
VENUE) 259, lies in the county in which the minor
JURISDICTION) child is residing at the time the father
CHILD SUPPORT) fails to support and maintain said child.

June 27, 1949

Honorable Homer F. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri



Dear Sir:

We are in receipt of your letter of June 4th, 1949, in which you request an opinion of this Department as follows:

"I am somewhat puzzled as to the venue of cases which arise under Section 4420 of the Revised Statutes of Missouri, as amended, under the Laws of 1947, and particularly as to failure to support minor child, which is the particular portion of the section that relates to the cases which have my attention.

"In the one case, A, the wife was married to her husband B, in St. Louis, and they lived there for several years and have one child about 7 yrs. of age; later A. obtained a divorce from B. in St. Louis, Missouri, and also judgment for support for the child in a certain sum. A few months ago, she moved to this county, where she has remarried and now lives; her former husband B, has paid her very little on her award for support of child, and our Welfare Office thinks that he, (B) could be prosecuted in this county now, for failure to support this child, since she now lives here in this county. Would the court here, in your opinion have jurisdiction of the offense if the facts otherwise would warrant the prosecution?

"In the other case, A. the wife, marries B. the husband in another county, where they lived until they separated about 6 months ago, B. having never lived in this county? When they separated A. came back here to live with her parents. A. and B. are not divorced, but B. has

not been supporting their child, although he has promised to do so on occasions. Does the court here have jurisdiction of the offense, if there is an offence?

"Am not clear as to the jurisdiction and have not found any case passing specifically on this question."

From the above request, we gather that you are interested in the question of prosecution for the support of minor children, and we will therefore restrict the scope of this opinion to that issue.

The primary distinction, between the two sets of facts which you set out in your letter, is that in one case the wife has been divorced from her husband and in the other case the parties are still married. In both situations the failure to provide for the minor child or children is taking place as of the present time in your county. The fact that the mother is divorced from the father does not alter the duty of the father to provide the support for the children, and, therefore, the set of facts in which there is a divorce is on the same footing as the second case which you mention. (State v. Hartman, 259 S.W. 514 (Mo. App. 1924)). The basic question, therefore, presented by these two situations is whether the criminal prosecution under Section 4420, as amended in 1947, can be maintained in the county in which the mother and child are living, but the father is not present in the county and the marriage took place and the parties lived outside the county at some prior date.

Section 4420, Laws of 1947, Vol. I, page 259, reads as follows:

"If any man shall, without good cause, fail, neglect or refuse to provide adequate food, clothing, lodging, medical or surgical attention for such wife; or if any man or woman shall, without good cause abandon or desert or shall without good cause fail, neglect or refuse to provide adequate food, clothing, lodging, medical or surgical attention for his or her child or children born in or out of wedlock, under the age of sixteen years, or if any other person having the legal care or custody of such minor child, shall without good cause, fail, refuse or neglect to provide adequate food, clothing, lodging, medical or surgical attention for such child, whether or not, in either such case such child or children, by reason of such failure, neglect or refusal, shall actually suffer physical or material want or destitution; or if any man shall leave the State of Missouri and shall take up his abode in

some other state, and shall leave his wife, child or children, in the State of Missouri, and shall, without just cause or excuse, fail, neglect or refuse to provide said wife, child or children, with adequate food, clothing, lodging, medical or surgical attention, then such person shall be deemed guilty of a misdemeanor; and it shall be no defense to such charge that some person or organization other than the defendant has furnished food, clothing, lodging, medical or surgical attention for said wife, child or children and he or she shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars (\$1,000) or by both such fine or imprisonment. No other evidence shall be required to prove that such man was married to such wife than would be necessary to prove such fact in a civil action."

There was a section of the statutes which provided for the crime described in the 1947 law long before that date. In 1947, it was amended to make it possible to prosecute under the section regardless of whether the child was receiving attention and necessities from some other source than the father. A court decision on venue with regard to such prosecution would not, therefore, be altered in its effect and influence by the amendment of 1947. The portion of Section 4420 providing for adequate care of a man's child or children is in the same language as the former Section 4420, R. S. Missouri, 1939. Under the latter section, the case of *State v. Winterbauer*, 318 Mo. 693, 300 S.W. 1071 (1927), was decided. In that case the defendant was prosecuted in Oregon County, Missouri, under Section 4420 for failure to support an infant child. The marriage of the defendant and the mother of the child occurred in Illinois. They lived together four or five days, and she removed to Oregon County, where she lived between the time she left Illinois and the time of the suit. In that case, the court said at l. c. 697:

"The defendant never lived in Oregon County and it was contended that the circuit court of that county was without jurisdiction of the offense charged. The defendant voluntarily sent his wife to live with her father in Oregon County. His duty to support and provide for her and his child when born followed them wherever he sent them. In *State v. Hobbs*, 291 S. W. 184, a similar prosecution, based on this statute, the mother of the infant child found it necessary to remove to Cape Girardeau County where she resided with her children

for three years. It was contended that the venue was in Stoddard County where the defendant, the father, lived with his second family. The court said:

"In the instant case, we think, the venue may be properly laid in Cape Girardeau County where the children were residing, and where, it is alleged, they were being neglected by the father in the necessities of life. It was there they were receiving no such contribution as the law requires the parent to furnish them. Of course, if the offense alleged were for abandonment, a different situation would be presented, as abandonment generally, if not always, occurs at one definite place.'

"The Springfield Court of Appeals cites many cases supporting this view. We think the venue was properly laid in Oregon County."

The above quotation points out clearly that the statute is directed (so far as we are here concerned) at the prevention of the failure of a father to support a minor child or children. He is to do this wherever the child is. It is thus clear, and the court points out, that the crime under Section 4420 occurs in the county in which the father fails to render this support. Since the child is living in a certain county, the failure to provide is a failure to provide in that country.

If you are interested in the same venue question with regard to the portion of the statute which deals with the abandonment of the wife, we think the above quoted language of the case sheds considerable light on that also.

CONCLUSION

We are therefore of the opinion that venue and jurisdiction to prosecute a man for failure to support his minor child or children lies in Bollinger County under the two sets of facts which you set out in your letter of June, 1949, and which we have quoted above.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General