

CRIMINAL LAW: Abandonment and failure to support child
ABANDONMENT: prior to October 13, 1965, misdemeanor.
CHILD ABANDONMENT: Abandonment after October 13, 1965, con-
FAILURE TO SUPPORT: stitutes felony.
CHILDREN:

OPINION NO. 377

December 14, 1965



Honorable Don E. Burrell
Prosecuting Attorney
Greene County
Springfield, Missouri 65802

Dear Mr. Burrell:

This is in response to your request for an opinion as follows:

"I would like your opinion as to the interpretation of Section 559.356 which goes into effect October 13, 1965. The Section provides a felony in the event of a man who leaves the State of Missouri and takes up his abode in some other state and leaves his child who is under sixteen years of age in the State of Missouri, and, without just cause or excuse, neglects or refuses to provide his children with adequate food, etc.

"Suppose that on October 13, 1965, a man who has been living in another state for a period of several months has children in Missouri which he is failing to support. Is this man subject to prosecution under this statute, or does he have a good defense based on the fact that he left Missouri prior to October 13, 1965? If he does have such a defense, would this defense still be good if it could be proven that he made at least an overnight visit to Missouri after October 13, 1965?

"Your assistance in this matter will be appreciated."

The new law in question, Senate Bill 183, 73rd General Assembly, replaced Section 559.350, RSMo 1959, which made the offense a misdemeanor. It is now a felony and, therefore, to apply it to an offense which was committed prior to the new

Honorable Don E. Burrell

law taking effect would be prohibited by both our state and federal constitutions as being ex post facto, because it increases the possible punishment. Article 1, Section 10, Clause 1, Constitution of the United States; Article 1, Section 13, Constitution of Missouri, 1945; State ex rel Jones v. Nolte, Mo., 165 S.W.2d 632; Kring v. Missouri, 107 U.S. 221.

Thus, where the abandonment and failure to support, the evil at which the law is aimed, occurred prior to October 13, 1965, the prosecution could not be under the new law. The abandonment must be proved in addition to the failure to support, so, even though the failure to support at the present time can be shown, the element of abandonment must also be shown as a part of such crime. Since the abandonment in the case inquired about took place before the effective date of the law the increased punishment would not be applicable in such a situation because of the ex post facto provisions of the State and Federal Constitutions.

However, such individual could be prosecuted under the Section of 559.353, V.A.M.S., September pamphlet, making such action a misdemeanor.

Furthermore, because it is the abandonment and failure to support at which the law is aimed, the mere passage through the state or an overnight visit here after an abandonment had already occurred would not constitute a new offense.

CONCLUSION

Section 559.356, V.A.M.S., September 1965 pamphlet which took effect October 13, 1965, and which increased the offense of abandoning a child in this state to take up abode in another state and failure to support such child from a misdemeanor to a felony cannot be made to apply to an abandonment occurring before that date.

Mere passage through the state or an overnight visit here after October 13, 1965, by a man who had previously abandoned a child in this state before that date would not bring the man within the purview of Section 559.356, V.A.M.S., September 1965 pamphlet.

The foregoing opinion which I hereby approve, was prepared by my assistant, Howard L. McFadden.

Yours very truly,


NORMAN H. ANDERSON
Attorney General