

## SC Judges Ordering Jail Time in Some Civil Cases

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By Rick Brundrett - The Nerve

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In a move last month, attorneys asked a judge to order the “civil” arrest of prominent Hampton County lawyer Alex Murdaugh to compel him to pay their clients – the sons of a Murdaugh family housekeeper who died in 2018 after a reported fall in his home – from a multimillion-dollar settlement stemming from the death.

State law generally bans arrests in civil actions. But under an obscure law – the origins of which date to the 1800s – cited in the Murdaugh case, an arrest can be made in a civil case for “money received or property embezzled or fraudulently misapplied” by certain public or private officials, including attorneys.

It remains to be seen whether Murdaugh, who, according to state and national media reports, has been the focus of multiple investigations following the June slayings of his wife and son, and remains at an out-of-state rehab facility, will be taken into custody under the “civil” arrest law.

But over the years, South Carolina judges routinely jailed much-poorer defendants through another type of civil procedure – and they still have that power.

Under state law and court cases, non-custodial parents who owe child support can be jailed for up to a year if found in civil contempt by a Family Court judge. The Nerve in 2010 [reported](#) that the exact number of parents serving time in South Carolina for non-payment of child support was unknown, though according to a 2009 academic article by Elizabeth “Libba” Patterson, a former state Department of Social Services director, about 1,500 people were jailed statewide at any given time for that reason.

The S.C. Supreme Court in a 1998 ruling defined civil and criminal contempt of court, noting that under civil contempt, a defendant is “said to hold the keys to his cell because he may end the imprisonment and purge himself of the sentence at any time by doing the act he had previously refused to do.”

Translation: You can get out of jail as soon as you pay the child support you owe.

But critics contended then that jail time was overused in child support cases and is counter-productive for indigent parents because they can’t earn money while behind bars, causing them to fall further behind on their payments.

The S.C. Constitution bans imprisonment for debt “except in cases of fraud.”

The state Judicial Department on its website says most child support cases are filed by the S.C. Department of Social Services, which helps eligible custodial parents collect child support or seeks reimbursements from non-custodial parents for Temporary Assistance to Needy Families (TANF)

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payments to custodial parents  
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In written responses this week to The Nerve, DSS spokeswoman Danielle Jones said the agency had 165,654 open cases in the 2020 federal fiscal year in which custodial parents sought the agency's help in collecting child support, plus 9,818 open TANF cases as of last week. She added the number of open cases doesn't equal the number of individuals, noting that many parents have more than one pending case.

Jones said DSS doesn't keep records on the number of individuals jailed under civil contempt orders by Family Court judges, referring The Nerve to state court officials.

In an email response today to The Nerve, Judicial Department spokeswoman Ginny Jones said the department does not "track that information" – despite a 2011 U.S. Supreme Court ruling in a South Carolina case.

### Constitutional rights violated

In 2008, Oconee County Family Court judge Timothy Cain – now a U.S. District Court judge in South Carolina – found Michael D. Turner in civil contempt of court for failing to pay nearly \$6,000 in child support and sentenced him to a year in jail unless he immediately paid the full amount owed. Turner served his sentence and appealed Cain's ruling.

The S.C. Supreme Court in 2010 ruled that Turner, who appeared at his Family Court hearing without an attorney and contended drug problems and a back injury prevented him from working, didn't have a constitutional right to a lawyer in a civil contempt hearing.

Turner appealed that decision to the U.S. Supreme Court. His case drew attention in national legal circles because of the possibility that the justices could have established a precedent that indigent defendants have a right to court-appointed attorneys in civil cases as they do in criminal cases.

But the high court in June 2011 decided not to go that far, as The Nerve [reported](#) then, though the justices in a 5-4 vote ruled that Cain violated Turner's due process rights by jailing him without first determining whether he had the ability to pay his back child support.

The Nerve [reported](#) that following the ruling, a state court official said the department was working to "satisfy the due process requirements."

South Carolina was only one of five states, including Georgia, Florida, Maine and Ohio, that didn't guarantee indigent parents the right to a lawyer in civil contempt hearings that can result in jail time, according to Turner's U.S. Supreme Court petition.

Although the exact numbers are unknown, parents are still being jailed by Family Court judges for non-payment of child support, The Nerve found in a sampling of counties.

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For example, 14 people have been booked so far this year at the Greenville County Detention Center for failure to pay child support, according to John Vandermosten, assistant county administrator with the Greenville County Department of Public Safety, when contacted this week, adding that the numbers have “drastically” dropped over the past approximately 10 years.

In Charleston County, six of the 844 inmates at the county detention center as of Wednesday were being held on Family Court contempt charges, county Sheriff’s Office spokeswoman Karli Maratea said in an email response. In Horry County, four out of 675 inmates as of Tuesday were being held on civil contempt charges, said Sheriff’s Office spokeswoman Brennan Cavanagh.

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