

SECOND REGULAR SESSION

HOUSE BILL NO. 1524

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

3072H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 568.040, RSMo, and to enact in lieu thereof one new section relating to the offense of nonsupport, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 568.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.040, to read as follows:

568.040. 1. A person commits the offense of nonsupport if he or she knowingly fails to provide adequate support for his or her spouse; a parent commits the offense of nonsupport if such parent knowingly fails to provide adequate support which such parent is legally obligated to provide for his or her child or stepchild who is not otherwise emancipated by operation of law.

2. For purposes of this section:

(1) "Arrearage":

(a) The amount of moneys created by a failure to provide support to a child under an administrative or judicial support order;

(b) Support to an estranged or former spouse if the judgment or order requiring payment of spousal support also requires payment of child support and such estranged or former spouse is the custodial parent; or

(c) Both paragraphs (a) and (b) of this subdivision.

The arrearage shall reflect any retroactive support ordered under a modification and any judgments entered by a court of competent jurisdiction or any authorized agency and any satisfactions of judgment filed by the custodial parent;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (2) "Child" means any biological or adoptive child, or any child whose paternity has
19 been established under chapter 454, or chapter 210, or any child whose relationship to the
20 defendant has been determined, by a court of law in a proceeding for dissolution or legal
21 separation, to be that of child to parent;

22 (3) "Good cause" means any substantial reason why the defendant is unable to
23 provide adequate support. Good cause does not exist if the defendant purposely maintains his
24 inability to support;

25 (4) "Support" means food, clothing, lodging, and medical or surgical attention;

26 (5) It shall not constitute a failure to provide medical and surgical attention, if
27 nonmedical remedial treatment recognized and permitted under the laws of this state is
28 provided.

29 3. Inability to provide support for good cause shall be an affirmative defense under
30 this section. A defendant who raises such affirmative defense has the burden of proving the
31 defense by a preponderance of the evidence.

32 4. The defendant shall have the burden of injecting the issues raised by subdivision
33 (5) of subsection 2 of this section.

34 5. The offense of criminal nonsupport is a class A misdemeanor, unless the total
35 arrearage is in excess of an aggregate of twelve monthly payments due under any order of
36 support issued by any court of competent jurisdiction or any authorized administrative
37 agency, in which case it is a class E felony.

38 6. (1) If at any time an offender convicted of criminal nonsupport, or an offender who
39 has plead guilty to a charge of criminal nonsupport, is placed on probation or parole, there
40 may be ordered as a condition of probation or parole that the offender commence payment of
41 current support as well as satisfy the arrearages. Arrearages may be satisfied first by making
42 such lump sum payment as the offender is capable of paying, if any, as may be shown after
43 examination of the offender's financial resources or assets, both real, personal, and mixed, and
44 second by making periodic payments. Periodic payments toward satisfaction of arrears when
45 added to current payments due shall be in such aggregate sums as is not greater than fifty
46 percent of the offender's adjusted gross income after deduction of payroll taxes, medical
47 insurance that also covers a dependent spouse or children, and any other court- or
48 administrative-ordered support, only.

49 (2) If the offender fails to pay the support and arrearages under the terms of his or her
50 probation, the court may revoke probation or parole and then impose an appropriate sentence
51 within the range for the class of offense that the offender was convicted of as provided by law,
52 unless the offender proves good cause for the failure to pay as required under subsection 3 of
53 this section.

54 (3) (a) An individual whose children were the subject of a child support order and the
55 obligation of such individual to make child support payments has been terminated under
56 subsection 3 of section 452.340, who has been found guilty of a felony offense for criminal
57 nonsupport under this section, and who has successfully completed probation after a plea of
58 guilty or conviction may petition the court for expungement of all recordations of his or her
59 arrest, plea, trial, or conviction. If the court determines after hearing that such person:

60 a. Has not been convicted of any subsequent offense, unless such offense is eligible
61 for expungement under a different section;

62 b. Does not have any other felony pleas of guilt, findings of guilt, or convictions,
63 unless such felony pleas of guilt, findings of guilt, or convictions are eligible for
64 expungement under a different section;

65 c. Has paid off all arrearages; and

66 d. Has no administrative child support actions pending at the time of the hearing on
67 the application for expungement with respect to all children subject to orders of payment of
68 child support

69

70 the court shall enter an order of expungement. In addition, the court may consider successful
71 completion of a criminal nonsupport court program under section 478.1000, or any other
72 circumstances or factors deemed relevant by the court.

73 (b) Upon granting the order of expungement, the records and files maintained in any
74 court proceeding in an associate or a circuit division of the circuit court under this section
75 shall be confidential and only available to the parties or by order of the court for good cause
76 shown.

77 (c) The effect of such order shall be to restore such person to the status he or she
78 occupied prior to such arrest, plea, or conviction, and as if such event had never taken place.
79 No person for whom such order has been entered shall be held thereafter under any provision
80 of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her
81 failure to recite or acknowledge such arrest, plea, trial, conviction, or expungement in
82 response to any inquiry made of him or her for any purpose whatsoever and no such inquiry
83 shall be made for information relating to an expungement under this section.

84 (d) A person shall only be entitled to one expungement under this section. Nothing in
85 this section shall prevent the director of the department of social services from maintaining
86 such records as to ensure that an individual receives only one expungement under this section
87 for the purpose of informing the proper authorities of the contents of any record maintained
88 under this section.

89 7. During any period that a nonviolent offender is incarcerated for criminal
90 nonsupport, if the offender is ready, willing, and able to be gainfully employed during said

91 period of incarceration, the offender, if he or she meets the criteria established by the
92 department of corrections, may be placed on work release to allow the offender to satisfy his
93 or her obligation to pay support. Arrearages shall be satisfied as outlined in the collection
94 agreement.

95 8. Beginning August 28, 2009, every nonviolent first- and second-time offender then
96 incarcerated for criminal nonsupport, who has not been previously placed on probation or
97 parole for conviction of criminal nonsupport, may be considered for parole, under the
98 conditions set forth in subsection 6 of this section, or work release, under the conditions set
99 forth in subsection 7 of this section.

100 9. Beginning January 1, 1991, every prosecuting attorney in any county which has
101 entered into a cooperative agreement with the family support division within the department
102 of social services regarding child support enforcement services shall report to the division on
103 a quarterly basis the number of charges filed and the number of convictions obtained under
104 this section by the prosecuting attorney's office on all IV-D cases. The division shall
105 consolidate the reported information into a statewide report by county and make the report
106 available to the general public.

107 10. Persons accused of committing the offense of nonsupport of the child shall be
108 prosecuted:

109 (1) In any county in which the child resided during the period of time for which the
110 defendant is charged; or

111 (2) In any county in which the defendant resided during the period of time for which
112 the defendant is charged.

113 **11. If a person:**

114 **(1) Commits the offense of nonsupport under this section;**

115 **(2) Posts a cash bond for release pending trial; and**

116 **(3) Is subsequently arrested on a warrant for failing to appear on the charge of**
117 **nonsupport under this section,**

118

119 **the cash bond posted under subdivision (2) of this subsection shall be forfeited, and the**
120 **court shall direct such cash bond to be remitted to the family support payment center**
121 **for payment of the child support arrears of such person.**

✓