

SECOND REGULAR SESSION

HOUSE BILL NO. 2510

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

5486H.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Section A. Section 568.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.040, to read as follows: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.

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

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

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

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

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

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

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

36 6. (1) If at any time an offender convicted of criminal nonsupport, or an offender who
37 has plead guilty to a charge of criminal nonsupport, is placed on probation or parole, there may
38 be ordered as a condition of probation or parole that the offender commence payment of current
39 support as well as satisfy the arrearages. Arrearages may be satisfied first by making such lump
40 sum payment as the offender is capable of paying, if any, as may be shown after examination of
41 the offender's financial resources or assets, both real, personal, and mixed, and second by making
42 periodic payments. Periodic payments toward satisfaction of arrears when added to current
43 payments due shall be in such aggregate sums as is not greater than fifty percent of the offender's
44 adjusted gross income after deduction of payroll taxes, medical insurance that also covers a
45 dependent spouse or children, and any other court- or administrative-ordered support, only.

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

51 (3) (a) An individual whose children were the subject of a child support order and the
52 obligation of such individual to make child support payments has been terminated under

53 subsection 3 of section 452.340, who has been found guilty of a felony offense for criminal
54 nonsupport under this section, and who has successfully completed probation after a plea of
55 guilty or conviction may petition the court for expungement of all recordations of his or her
56 arrest, plea, trial, or conviction. If the court determines after hearing that such person:

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

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

62 c. Has paid off all arrearages; and

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

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

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

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

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

85 7. During any period that a nonviolent offender is incarcerated for criminal nonsupport,
86 if the offender is ready, willing, and able to be gainfully employed during said period of
87 incarceration, the offender, if he or she meets the criteria established by the department of

88 corrections, may be placed on work release to allow the offender to satisfy his or her obligation
89 to pay support. Arrearages shall be satisfied as outlined in the collection agreement.

90 8. Beginning August 28, 2009, every nonviolent first- and second-time offender then
91 incarcerated for criminal nonsupport, who has not been previously placed on probation or parole
92 for conviction of criminal nonsupport, may be considered for parole, under the conditions set
93 forth in subsection 6 of this section, or work release, under the conditions set forth in subsection
94 7 of this section.

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

102 10. Persons accused of committing the offense of nonsupport of the child shall be
103 prosecuted:

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

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

108 **11. If a person:**

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

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

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

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

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