

FIRST REGULAR SESSION

# HOUSE BILL NO. 386

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ALDRIDGE.

0956H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 568.040, RSMo, and to enact in lieu thereof one new section relating to criminal nonsupport.

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*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Section A. Section 568.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.040, to read as follows: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. **Notwithstanding any provision of law to the  
38 contrary, no parent shall be incarcerated for any period of time for failure to pay child  
39 support.**

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

51 (2) If the offender fails to pay the support and arrearages under the terms of his or her  
52 probation, the court may revoke probation or parole and then impose an appropriate sentence  
53 within the range for the class of offense that the offender was convicted of as provided by law,

54 unless the offender proves good cause for the failure to pay as required under subsection 3 of  
55 this section.

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

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

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

67 c. Has paid off all arrearages; and

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

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

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

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

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

91           7. ~~[During any period that a nonviolent offender is incarcerated for criminal~~  
92 ~~nonsupport, if the offender is ready, willing, and able to be gainfully employed during said~~  
93 ~~period of incarceration, the offender, if he or she meets the criteria established by the~~  
94 ~~department of corrections, may be placed on work release to allow the offender to satisfy his~~  
95 ~~or her obligation to pay support. Arrearages shall be satisfied as outlined in the collection~~  
96 ~~agreement.~~

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

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

109           ~~[10.]~~ 8. Persons accused of committing the offense of nonsupport of the child shall be  
110 prosecuted:

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

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

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