

FIRST REGULAR SESSION

# SENATE BILL NO. 261

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time February 10, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1453S.02I

## AN ACT

To repeal section 568.040, RSMo, and to enact in lieu thereof one new section relating to the crime of nonsupport, with existing 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Section A. Section 568.040, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 568.040, to read as follows:

568.040. 1. A person commits the crime of nonsupport if such person  
2 knowingly fails to provide[, without good cause,] adequate support for his or her  
3 spouse; a parent commits the crime of nonsupport if such parent knowingly fails  
4 to provide[, without good cause,] adequate support which such parent is legally  
5 obligated to provide for his or her child or stepchild who is not otherwise  
6 emancipated by operation of law.

7 2. For purposes of this section:

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

12 (2) "Good cause" means any substantial reason why the defendant is  
13 unable to provide adequate support. Good cause does not exist if the defendant  
14 purposely maintains his inability to support;

15 (3) "Support" means food, clothing, lodging, and medical or surgical  
16 attention;

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20           3. Inability to provide support for good cause shall be an affirmative  
21 defense under this section. A person who raises such affirmative defense has the  
22 burden of proving the defense by a preponderance of the evidence.

23           4. The defendant shall have the burden of injecting the issues raised by  
24 [subdivisions (2) and] **subdivision** (4) of subsection 2 [and subsection 3] of this  
25 section.

26           5. Criminal nonsupport is a class A misdemeanor, unless the total  
27 arrearage is in excess of an aggregate of twelve monthly payments due under any  
28 order of support issued by any court of competent jurisdiction or any authorized  
29 administrative agency, in which case it is a class D felony.

30           6. If at any time a defendant convicted of criminal nonsupport is placed  
31 on probation or parole, there may be ordered as a condition of probation or parole  
32 that the defendant commence payment of current support as well as satisfy the  
33 arrearages. Arrearages may be satisfied first by making such lump sum payment  
34 as the defendant is capable of paying, if any, as may be shown after examination  
35 of defendant's financial resources or assets, both real, personal, and mixed, and  
36 second by making periodic payments. Periodic payments toward satisfaction of  
37 arrears when added to current payments due may be in such aggregate sums as  
38 is not greater than fifty percent of the defendant's adjusted gross income after  
39 deduction of payroll taxes, medical insurance that also covers a dependent spouse  
40 or children, and any other court or administrative ordered support, only. If the  
41 defendant fails to pay the current support and arrearages as ordered, the court  
42 may revoke probation or parole and then impose an appropriate sentence within  
43 the range for the class of offense that the defendant was convicted of as provided  
44 by law, unless the defendant proves good cause for the failure to pay as required  
45 under subsection 3 of this section.

46           7. During any period that a nonviolent defendant is incarcerated for  
47 criminal nonsupport, if the defendant is ready, willing, and able to be gainfully  
48 employed during said period of incarceration, the defendant, if he or she meets  
49 the criteria established by the department of corrections, may be placed on work  
50 release to allow the defendant to satisfy defendant's obligation to pay  
51 support. Arrearages shall be satisfied as outlined in the collection agreement.

52           8. Beginning August 28, 2009, every nonviolent first- and second-time  
53 offender then incarcerated for criminal nonsupport, who has not been previously  
54 placed on probation or parole for conviction of criminal nonsupport, may be  
55 considered for parole, under the conditions set forth in subsection 6 of this

56 section, or work release, under the conditions set forth in subsection 7 of this  
57 section.

58 9. Beginning January 1, 1991, every prosecuting attorney in any county  
59 which has entered into a cooperative agreement with the [division of] child  
60 support enforcement **service of the family support division of the**  
61 **department of social services** shall report to the division on a quarterly basis  
62 the number of charges filed and the number of convictions obtained under this  
63 section by the prosecuting attorney's office on all IV-D cases. The division shall  
64 consolidate the reported information into a statewide report by county and make  
65 the report available to the general public.

66 10. Persons accused of committing the offense of nonsupport of the child  
67 shall be prosecuted:

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

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

Bill ✓

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