

FIRST REGULAR SESSION

HOUSE BILL NO. 643

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MAY (Sponsor), WYATT, PIERSON, NICHOLS, SMITH (71),
CONWAY (14), TAYLOR, KELLY (24), WALTON GRAY,
McGEOGHEGAN AND ELLINGER (Co-sponsors).

1373L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 568.040, RSMo, and to enact in lieu thereof one new section relating to the crime of criminal nonsupport, with a penalty provision.

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Section A. Section 568.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.040, to read as follows: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 crime of nonsupport if such person knowingly fails to provide, without good cause, adequate support for his or her spouse; a parent commits the crime of nonsupport if such parent knowingly fails to provide, without good cause, 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) "Child" means any biological or adoptive child, or any child whose paternity has been established under chapter 454, or chapter 210, or any child whose relationship to the defendant has been determined, by a court of law in a proceeding for dissolution or legal separation, to be that of child to parent;

(2) "Good cause" means any substantial reason why the defendant is unable to provide adequate support. **Good cause includes any reduction or abatement of a support obligation for the period of time from the filing of a modification until such modification is awarded if a reduction or abatement of the support obligation is applied to such time period.** Good cause does not exist if the defendant purposely maintains his **or her** inability to support;

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.

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

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

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

22 4. The defendant shall have the burden of injecting the issues raised by subdivisions (2)
23 and (4) of subsection 2 and subsection 3 of this section.

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

28 6. (1) If at any time a defendant convicted of criminal nonsupport is placed on probation
29 or parole, there may be ordered as a condition of probation or parole that the defendant
30 commence payment of current support as well as satisfy the arrearages. Arrearages may be
31 satisfied first by making such lump sum payment as the defendant is capable of paying, if any,
32 as may be shown after examination of defendant's financial resources or assets, both real,
33 personal, and mixed, and second by making periodic payments. Periodic payments toward
34 satisfaction of arrears when added to current payments due may be in such aggregate sums as is
35 not greater than fifty percent of the defendant's adjusted gross income after deduction of payroll
36 taxes, medical insurance that also covers a dependent spouse or children, and any other court or
37 administrative ordered support, only.

38 (2) If the defendant fails to pay the current support and arrearages as ordered, the court
39 may revoke probation or parole and then impose an appropriate sentence within the range for the
40 class of offense that the defendant was convicted of as provided by law, unless the defendant
41 proves good cause for the failure to pay as required under subsection 3 of this section.

42 (3) (a) **If the defendant satisfies all current child support obligations as well as all**
43 **periodic payments toward satisfaction of arrears for twelve consecutive months, the court**
44 **shall order an abatement of twenty-five percent of the total arrearage existing at the time**
45 **the defendant entered into repayment for such arrearage.**

46 (b) **If the defendant satisfies all current child support obligations as well as all**
47 **periodic payments toward satisfaction of arrears for an additional twenty-four consecutive**
48 **months, the court shall abate any remaining arrearage and any conviction of the defendant**
49 **under this section may be expunged from the defendant's record.**

50 (c) **For purposes of this subdivision, any period of time for which a defendant**
51 **requests and is awarded a modification of his or her child support obligation shall not be**

52 **considered a failure by the defendant to satisfy all current child support obligations and**
53 **periodic payments toward satisfaction of arrears under this subdivision.**

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

59 8. Beginning August 28, 2009, every nonviolent first- and second-time offender then
60 incarcerated for criminal nonsupport, who has not been previously placed on probation or parole
61 for conviction of criminal nonsupport, may be considered for parole, under the conditions set
62 forth in subsection 6 of this section, or work release, under the conditions set forth in subsection
63 7 of this section.

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

70 10. Persons accused of committing the offense of nonsupport of the child shall be
71 prosecuted:

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

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