

SECOND REGULAR SESSION

# HOUSE BILL NO. 1652

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WALTON.

Read 1st time February 2, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4404L.02I

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### AN ACT

To repeal section 568.040, RSMo, and to enact in lieu thereof two new sections relating to criminal nonsupport, with penalty provisions.

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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Section A. Section 568.040, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 478.495 and 568.040, to read as follows:

**478.495. 1. Criminal nonsupport divisions may be established by any circuit court, within the family courts established under chapter 487, RSMo, to provide an alternative for the criminal justice system to dispose of cases which stem from criminal nonsupport. A criminal nonsupport division shall combine judicial supervision, education, vocational and employment training, work programs, and support payment plans for criminal nonsupport division participants. Except for good cause found by the court, a criminal nonsupport division making a referral for criminal nonsupport education, vocational, or employment training, or work programs, when such program will receive state or federal funds in connection with such referral, shall refer the person only to a program which is certified by a department of the state of Missouri, unless no appropriate certified program is located within the same county as the criminal nonsupport division. Upon successful completion of the education, vocational, or employment training program, work program, or support payment plan, the defendant becoming gainfully employed, or the defendant commencing payment of current and accrued support, the charges, petition, or penalty against a criminal nonsupport division participant may be dismissed, reduced, or modified.**

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 Any fees received by a court from a defendant as payment for education and training  
17 programs shall not be considered court costs, charges, or fines.

18       2. Each circuit court shall establish conditions for referral of proceedings to the  
19 criminal nonsupport division. The defendant in any criminal proceeding accepted by a  
20 criminal nonsupport division for disposition shall be a nonviolent person, as determined  
21 by the prosecuting attorney, and shall be subject to the conditions set forth in section  
22 568.040.5(4), RSMo. Any proceeding accepted by the criminal nonsupport division  
23 program for disposition shall be upon agreement of the parties.

24       3. Any statement made by a participant as part of participation in the criminal  
25 nonsupport division program, or any report made by the staff of the program, shall not be  
26 admissible as evidence against the participant in any criminal, juvenile, or civil proceeding.  
27 Notwithstanding the foregoing, termination from the criminal nonsupport division  
28 program and the reasons for termination may be considered in sentencing or disposition.

29       4. Notwithstanding any other provision of law, criminal nonsupport division staff  
30 shall be provided with access to all records of any state or local government agency  
31 relevant to the supervision of any program participant. Upon general request, employees  
32 of all such agencies shall fully inform criminal nonsupport division staff of all matters  
33 relevant to the supervision of the participant. All such records and reports and the  
34 contents thereof shall be treated as closed records and shall not be disclosed to any person  
35 outside of the criminal nonsupport division, and shall be maintained by the court in a  
36 confidential file not available to the public.

37       5. In order to coordinate the allocation of resources available to criminal  
38 nonsupport divisions throughout the state, there is hereby established a "Criminal  
39 Nonsupport Divisions Coordinating Commission" in the judicial department. The  
40 criminal nonsupport divisions coordinating commission shall consist of one member  
41 selected by the director of the department of corrections; one member selected by the  
42 director of the department of social services; one member selected by the director of the  
43 department of education; one member selected by the director of the department of public  
44 safety; one member selected by the state courts administrator; one member selected by the  
45 director of the department of labor and industrial relations; and two members selected by  
46 the Missouri supreme court. The Missouri supreme court shall designate the chair of the  
47 commission. The commission shall periodically meet at the call of the chair; evaluate  
48 resources available for assessment and training of persons assigned to criminal nonsupport  
49 divisions or for operation of criminal nonsupport divisions; secure grants, funds, and other  
50 property and services necessary or desirable to facilitate criminal nonsupport division

51 operation; and allocate such resources among the various criminal nonsupport divisions  
52 operating within the state.

53         **6. There is hereby established in the state treasury a "Criminal Nonsupport**  
54 **Division Resources Fund", which shall be administered by the criminal nonsupport**  
55 **divisions coordinating commission. Funds available for allocation or distribution by the**  
56 **criminal nonsupport divisions coordinating commission may be deposited into the criminal**  
57 **nonsupport division resources fund. Notwithstanding the provisions of section 33.080,**  
58 **RSMo, moneys in the criminal nonsupport division resources fund shall not be transferred**  
59 **or placed to the credit of the general revenue fund of the state at the end of each biennium,**  
60 **but shall remain deposited to the credit of the criminal nonsupport division resources fund.**

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

6         2. For purposes of this section:

7         (1) "Child" means any biological or adoptive child, or any child legitimated by legal  
8 process, or any child whose relationship to the defendant has been determined, by a court of law  
9 in a proceeding for dissolution or legal separation, to be that of child to parent;

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

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

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

16         3. The defendant shall have the burden of injecting the issues raised by subdivisions (2)  
17 and (4) of subsection 2.

18         4. Criminal nonsupport is a class A misdemeanor, unless [the person obligated to pay  
19 child support commits the crime of nonsupport in each of six individual months within any  
20 twelve-month period, or] the total arrearage is in excess of [five thousand dollars] **an aggregate**  
21 **of twelve monthly payments due under any order of support issued by any court of**  
22 **competent jurisdiction**, in [either of] which case it is a class D felony.

23         5. **After August 28, 2006, any person convicted of criminal nonsupport shall be**  
24 **punished as follows:**

25           (1) Except as otherwise provided herein, for a first offense of a nonviolent  
26 defendant, criminal nonsupport shall be punished by a suspended imposition of sentence  
27 and an appropriate period of probation;

28           (2) Except as otherwise provided herein, for a second offense of a nonviolent  
29 defendant, criminal nonsupport shall be punished by a suspended execution of sentence  
30 and an appropriate period of probation;

31           (3) For a third or subsequent offense, the defendant shall be punished within the  
32 range for the class of offense that the defendant was convicted of as provided by law;

33           (4) If at any time a defendant convicted of criminal nonsupport is placed on  
34 probation or parole, there shall be ordered as a condition of probation or parole that the  
35 defendant commence payment of current support as well as satisfy the arrearages.  
36 Arrearages shall be satisfied first by making such lump sum payment as the defendant is  
37 capable of paying, if any, as may be shown after examination of defendant's financial  
38 resources or assets, both real, personal, and mixed, and second by making periodic  
39 payments. Periodic payments toward satisfaction of arrears when added to current  
40 payments due shall be in such aggregate sums as is not greater than fifty percent of the  
41 defendant's adjusted gross income after deduction of payroll taxes, medical insurance that  
42 also covers a dependent spouse or children and any other court ordered support, only. If  
43 the defendant fails without good cause to pay the current support and arrearages as  
44 ordered, the court shall revoke probation or parole and then impose an appropriate  
45 sentence within the range for the class of offense that defendant was convicted of as  
46 provided by law;

47           (5) During any period that a nonviolent defendant is incarcerated for criminal  
48 nonsupport, if the defendant is ready, willing, and able to be gainfully employed during  
49 said period of incarceration, the defendant, except for good cause shown, shall be placed  
50 on work release to allow the defendant to satisfy defendant's obligation to pay support.  
51 There shall be ordered as a condition of work release that the defendant commence  
52 payment of current support as well as satisfy any accrued arrearages. Arrearages shall be  
53 satisfied first by making such lump sum payment as the defendant is capable of paying, if  
54 any, as may be shown after examination of defendant's financial resources or assets, both  
55 real, personal, and mixed, and then by making periodic payments. Periodic payments  
56 toward satisfaction of arrears when added to current payments due shall be in such  
57 aggregate sums as is reasonable after allowance of defendant's reasonable and necessary  
58 work release expenses as may be shown by the defendant. If the defendant fails without  
59 good cause to pay the current support and arrearages as ordered, the work release  
60 program shall be terminated or revoked;

61           **(6) Beginning August 28, 2006, every nonviolent first and second offender then**  
62 **incarcerated for criminal nonsupport, who has not been previously placed on probation**  
63 **or parole, for conviction of criminal nonsupport, may be considered for parole, under the**  
64 **conditions set forth in subdivision (4) of this subsection, or work release, under the**  
65 **conditions set forth in subdivision (5) of this subsection.**

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

72           **[6.] 7.** Persons accused of committing the offense of nonsupport of the child shall be  
73 prosecuted:

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

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

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