

SECOND REGULAR SESSION

# HOUSE BILL NO. 1581

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FRANKS JR.

5308H.011

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Section A. Section 568.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.040, to read as follows: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

17 (2) "Child" means any biological or adoptive child, or any child whose paternity has  
18 been established under chapter 454, or chapter 210, or any child whose relationship to the  
19 defendant has been determined, by a court of law in a proceeding for dissolution or legal  
20 separation, to be 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. **Notwithstanding any provision of law to the contrary,**  
36 **no parent shall be incarcerated for any period of time for failure to pay child support.**

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

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

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

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

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

64 c. Has paid off all arrearages; and

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

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

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

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

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

87 7. ~~During any period that a nonviolent offender is incarcerated for criminal nonsupport,~~  
88 ~~if the offender is ready, willing, and able to be gainfully employed during said period of~~

89 incarceration, the offender, if he or she meets the criteria established by the department of  
90 corrections, may be placed on work release to allow the offender to satisfy his or her obligation  
91 to pay support. Arrearages shall be satisfied as outlined in the collection agreement.

92 ~~—— 8. Beginning August 28, 2009, every nonviolent first- and second-time offender then~~  
93 ~~incarcerated for criminal nonsupport, who has not been previously placed on probation or parole~~  
94 ~~for conviction of criminal nonsupport, may be considered for parole, under the conditions set~~  
95 ~~forth in subsection 6 of this section, or work release, under the conditions set forth in subsection~~  
96 ~~7 of this section.~~

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

104 ~~[10.] 8. Persons accused of committing the offense of nonsupport of the child shall be~~  
105 ~~prosecuted:~~

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

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

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