

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 643**  
**96TH GENERAL ASSEMBLY**

1373L.03C

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 the crime of criminal nonsupport, with a penalty provision.

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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Section A. Section 568.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.040, to read as follows: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 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) "**Arrearage**", 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. **Arrearage also includes any amount waived by the custodial parent under an order of support issued by a court of competent jurisdiction or any authorized administrative agency;**

(2) "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;

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)] (3) "Good cause" means any substantial reason why the defendant is unable to  
18 provide adequate support. Good cause does not exist if the defendant purposely maintains his  
19 **or her** inability to support;

20            [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

21            [(4)] (5) It shall not constitute a failure to provide medical and surgical attention, if  
22 nonmedical remedial treatment recognized and permitted under the laws of this state is provided.

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

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

28            5. Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess  
29 of an aggregate of [twelve] **eighteen** monthly payments due under any order of support issued  
30 by any court of competent jurisdiction or any authorized administrative agency, in which case  
31 it is a class D felony. **In the event that the revisor of statutes is notified by the director of  
32 economic development that the Missouri unemployment rate has remained at six percent  
33 or lower for six consecutive months, the limit on the aggregate of eighteen monthly  
34 payments shall become twelve monthly payments effective on the July first immediately  
35 following such notification.**

36            6. (1) If at any time a defendant convicted of criminal nonsupport **or pleads guilty or  
37 nolo contendere to a charge of criminal nonsupport** is placed on probation or parole, there  
38 may be ordered as a condition of probation or parole that the defendant commence payment of  
39 current support as well as satisfy the arrearages. Arrearages may be satisfied first by making  
40 such lump sum payment as the defendant is capable of paying, if any, as may be shown after  
41 examination of defendant's financial resources or assets, both real, personal, and mixed, and  
42 second by making periodic payments. Periodic payments toward satisfaction of arrears when  
43 added to current payments due [may] **shall** be in such aggregate sums as is not greater than fifty  
44 percent of the defendant's adjusted gross income after deduction of payroll taxes, medical  
45 insurance that also covers a dependent spouse or children, and any other court or administrative  
46 ordered support, only.

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

52           **(3) If the defendant satisfies all current child support obligations as well as all**  
53 **periodic payments toward satisfaction of arrears for an additional twenty-four consecutive**  
54 **months, any conviction of the defendant under this section may be expunged from the**  
55 **defendant's record.**

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

61           8. Beginning August 28, 2009, every nonviolent first- and second-time offender then  
62 incarcerated for criminal nonsupport, who has not been previously placed on probation or parole  
63 for conviction of criminal nonsupport, may be considered for parole, under the conditions set  
64 forth in subsection 6 of this section, or work release, under the conditions set forth in subsection  
65 7 of this section.

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

72           10. 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.