

FIRST REGULAR SESSION

# HOUSE BILL NO. 502

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HUBBARD (Sponsor), NASHEED, WEBB, JONES (63), MAY, PACE, SMITH (71), WALTON GRAY, CURLS, BAHR, CONWAY (14) AND SPRENG (Co-sponsors).

1516L.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, with an existing 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Section A. Section 568.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.040, to read as follows: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) "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 does not exist if the defendant purposely maintains his **or her** inability to support;

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

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

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

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

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

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

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

46           8. Beginning August 28, 2009, every nonviolent first- and second-time offender then  
47 incarcerated for criminal nonsupport, who has not been previously placed on probation or parole  
48 for conviction of criminal nonsupport, may be considered for parole, under the conditions set  
49 forth in subsection 6 of this section, or work release, under the conditions set forth in subsection  
50 7 of this section.

51           9. Beginning January 1, 1991, every prosecuting attorney in any county which has  
52 entered into a cooperative agreement with the [division of] child support enforcement **services**

53 **of the family support division within the department of social services** shall report to the  
54 division on a quarterly basis the number of charges filed and the number of convictions obtained  
55 under this section by the prosecuting attorney's office on all IV-D cases. The division shall  
56 consolidate the reported information into a statewide report by county and make the report  
57 available to the general public.

58 10. Persons accused of committing the offense of nonsupport of the child shall be  
59 prosecuted:

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

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

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