

SECOND REGULAR SESSION

# HOUSE BILL NO. 1690

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES MAY (Sponsor), WYATT, CARTER, MORGAN,  
WALTON GRAY, ELLINGER, PIERSON, WEBB, CONWAY (14), ANDERS, OXFORD,  
McGEOGHEGAN, SMITH (71), TALBOY AND HUBBARD (Co-sponsors).

5695L.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 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Section A. Section 568.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.040, to read as follows: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 adequate support for his or her spouse; a parent commits the crime 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 money created by a failure to provide support to a child under an administrative or judicial support order; or**

(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).**

**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.

16           (2) "Child" means any biological or adoptive child, or any child whose paternity has been  
17 established under chapter 454, or chapter 210, or any child whose relationship to the defendant  
18 has been determined, by a court of law in a proceeding for dissolution or legal separation, to be  
19 that of child to parent;

20           [(2)] (3) "Good cause" means any substantial reason why the defendant is unable to  
21 provide adequate support. Good cause does not exist if the defendant purposely maintains his  
22 inability to support;

23           [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

24           [(4)] (5) It shall not constitute a failure to provide medical and surgical attention, if  
25 nonmedical remedial treatment recognized and permitted under the laws of this state is provided.

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

29           4. The defendant shall have the burden of injecting the issues raised by subdivision (4)  
30 of subsection 2 of this section.

31           5. Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess  
32 of an aggregate of [twelve] **eighteen** monthly payments due under any order of support issued  
33 by any court of competent jurisdiction or any authorized administrative agency, in which case  
34 it is a class D felony.

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

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

50           (3) **After a period of not less than eight years, an individual who has pled guilty to**  
51 **or has been convicted of a first felony offense for criminal nonsupport under this section**

52 **and who has successfully completed probation after a plea of guilt or was sentenced may**  
53 **petition the court for expungement of all official records all recordations of his or her**  
54 **arrest, plea, trial, or conviction. If the court determines after hearing that such person has**  
55 **not been convicted of any subsequent offense; does not have any other felony pleas of guilt,**  
56 **findings of guilt or convictions; is current on all child support obligations; has paid off all**  
57 **arrears; and has no other criminal charges or administrative child support actions**  
58 **pending at the time of the hearing on the application for expungement with respect to all**  
59 **children subject to orders of payment of child support or that the defendant has**  
60 **successfully completed a criminal nonsupport courts program under section 478.1000, the**  
61 **court shall enter an order of expungement. Upon granting the order of expungement, the**  
62 **records and files maintained in any court proceeding in an associate or circuit division of**  
63 **the circuit court under this section shall be confidential and only available to the parties**  
64 **or by order of the court for good cause shown. The effect of such order shall be to restore**  
65 **such person to the status he or she occupied prior to such arrest, plea or conviction, and**  
66 **as if such event had never taken place. No person for whom such order has been entered**  
67 **shall be held thereafter under any provision of any law to be guilty of perjury or otherwise**  
68 **giving a false statement by reason of his or her failure to recite or acknowledge such arrest,**  
69 **plea, trial, conviction, or expungement in response to any inquiry made of him or her for**  
70 **any purpose whatsoever and no such inquiry shall be made for information relating to an**  
71 **expungement under this section. A person shall only be entitled to one expungement under**  
72 **this section. Nothing in this section shall prevent the director of the department of social**  
73 **services from maintaining such records as to ensure that an individual receives only one**  
74 **expungement under this section for the purpose of informing the proper authorities of the**  
75 **contents of any record maintained under this section.**

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

81 8. Beginning August 28, 2009, every nonviolent first- and second-time offender then  
82 incarcerated for criminal nonsupport, who has not been previously placed on probation or parole  
83 for conviction of criminal nonsupport, may be considered for parole, under the conditions set  
84 forth in subsection 6 of this section, or work release, under the conditions set forth in subsection  
85 7 of this section.

86 9. Beginning January 1, 1991, every prosecuting attorney in any county which has  
87 entered into a cooperative agreement with the [child support enforcement service of the] family

88 support division [of] **within** the department of social services **regarding child support**  
89 **enforcement services** shall report to the division on a quarterly basis the number of charges filed  
90 and the number of convictions obtained under this section by the prosecuting attorney's office  
91 on all IV-D cases. The division shall consolidate the reported information into a statewide report  
92 by county and make the report available to the general public.

93 10. Persons accused of committing the offense of nonsupport of the child shall be  
94 prosecuted:

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

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

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