

FIRST REGULAR SESSION

HOUSE BILL NO. 178

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MAY.

0352L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 650.055, RSMo, and section 568.040 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 568.040 as enacted by house bill no. 111, ninety-sixth general assembly, first regular session, and to enact in lieu thereof two new sections relating to criminal nonsupport, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 650.055, RSMo, and section 568.040 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 568.040 as enacted by house bill no. 111, ninety-sixth general assembly, first regular session, are repealed and two new sections enacted in lieu thereof, to be known as sections 568.040 and 650.055, to read as follows: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 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).**

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.

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14 **The arrearage shall reflect any retroactive support ordered under a modification, and any**
15 **judgments entered by a court of competent jurisdiction or any authorized agency and any**
16 **satisfactions of judgment filed by the custodial parent;**

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

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

24 [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

25 [(4)] (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 [(4)]
31 (5) of subsection 2 and subsection 3 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] **twenty-four** monthly payments due under any
34 order of support issued by any court of competent jurisdiction or any authorized administrative
35 agency, in which case it is a class E felony.

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

46 (2) If the offender fails to pay the [current] support and arrearages [as ordered] **under**
47 **the terms of his or her probation**, the court may revoke probation or parole and then impose
48 an appropriate sentence within the range for the class of offense that the offender was convicted

49 of as provided by law, unless the offender proves good cause for the failure to pay as required
50 under subsection 3 of this section.

51 **(3) (a) After a period of not less than eight years, an individual who has pled guilty**
52 **to or has been convicted of a first felony offense for criminal nonsupport under this section**
53 **and who has successfully completed probation after a plea of guilty or was sentenced may**
54 **petition the court for expungement of all official records all recordations of his or her**
55 **arrest, plea, trial, or conviction. If the court determines after hearing that such person:**

56 **a. Has not been convicted of any subsequent offense;**

57 **b. Does not have any other felony pleas of guilt, findings of guilt or convictions;**

58 **c. Is current on all child support obligations and has had no lapse in payment of all**
59 **child support obligations during the eight-year period;**

60 **d. Has paid off all arrearages; and**

61 **e. Has no other criminal charges or administrative child support actions pending**
62 **at the time of the hearing on the application for expungement with respect to all children**
63 **subject to orders of payment of child support,**
64

65 **the court shall enter an order of expungement. In addition, the court may consider**
66 **successful completion of a criminal nonsupport courts program under section 478.1000,**
67 **or any other circumstances or factors deemed relevant by the court.**

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

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

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

85 7. During any period that a nonviolent offender is incarcerated for criminal nonsupport,
86 if the offender is ready, willing, and able to be gainfully employed during said period of
87 incarceration, the offender, if he or she meets the criteria established by the department of
88 corrections, may be placed on work release to allow the offender to satisfy his or her obligation
89 to pay support. Arrearages shall be satisfied as outlined in the collection agreement.

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

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

102 10. Persons accused of committing the offense of nonsupport of the child shall be
103 prosecuted:

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

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

568.040. 1. A person commits the crime of nonsupport if such person knowingly fails
2 to provide adequate support for his or her spouse; a parent commits the crime of nonsupport if
3 such parent knowingly fails to provide adequate support which such parent is legally obligated
4 to provide for his or her child or stepchild who is not otherwise emancipated by operation of law.

5 2. For purposes of this section:

6 (1) **"Arrearage":**

7 **(a) The amount of money created by a failure to provide support to a child under**
8 **an administrative or judicial support order; or**

9 **(b) Support to an estranged or former spouse if the judgment or order requiring**
10 **payment of spousal support also requires payment of child support and such estranged or**
11 **former spouse is the custodial parent; or**

12 **(c) Both paragraphs (a) and (b).**

13

14 **The arrearage shall reflect any retroactive support ordered under a modification, and any**
15 **judgments entered by a court of competent jurisdiction or any authorized agency and any**
16 **satisfactions of judgment filed by the custodial parent;**

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

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

24 [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

25 [(4)] (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 person who raises such affirmative defense has the burden of proving the defense by
29 a preponderance of the evidence.

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

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

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

46 (2) If the defendant fails to pay the [current] support and arrearages [as ordered] **under**
47 **the terms of his or her probation**, the court may revoke probation or parole and then impose
48 an appropriate sentence within the range for the class of offense that the defendant was convicted

49 of as provided by law, unless the defendant proves good cause for the failure to pay as required
50 under subsection 3 of this section.

51 **(3) (a) After a period of not less than eight years, an individual who has pled guilty**
52 **to or has been convicted of a first felony offense for criminal nonsupport under this section**
53 **and who has successfully completed probation after a plea of guilty or was sentenced may**
54 **petition the court for expungement of all official records all recordations of his or her**
55 **arrest, plea, trial, or conviction. If the court determines after hearing that such person:**

56 **a. Has not been convicted of any subsequent offense;**

57 **b. Does not have any other felony pleas of guilt, findings of guilt or convictions;**

58 **c. Is current on all child support obligations and has had no lapse in payment of all**
59 **child support obligations during the eight-year period;**

60 **d. Has paid off all arrearages; and**

61 **e. Has no other criminal charges or administrative child support actions pending**
62 **at the time of the hearing on the application for expungement with respect to all children**
63 **subject to orders of payment of child support,**

64

65 **the court shall enter an order of expungement. In addition, the court may consider**
66 **successful completion of a criminal nonsupport courts program under section 478.1000,**
67 **or any other circumstances or factors deemed relevant by the court.**

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

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

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

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

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

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

102 10. Persons accused of committing the offense of nonsupport of the child shall be
103 prosecuted:

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

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

650.055. 1. Every individual who:

2 (1) Is found guilty of a felony or any offense under chapter 566; or

3 (2) Is seventeen years of age or older and arrested for burglary in the first degree under
4 section 569.160, or burglary in the second degree under section 569.170, or a felony offense
5 under chapter 565, 566, 567, 568, or 573; or

6 (3) Has been determined to be a sexually violent predator pursuant to sections 632.480
7 to 632.513; or

8 (4) Is an individual required to register as a sexual offender under sections 589.400 to
9 589.425;

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11 shall have a fingerprint and blood or scientifically accepted biological sample collected for
12 purposes of DNA profiling analysis.

13 2. Any individual subject to DNA collection and profiling analysis under this section
14 shall provide a DNA sample:

15 (1) Upon booking at a county jail or detention facility; or

16 (2) Upon entering or before release from the department of corrections reception and
17 diagnostic centers; or

18 (3) Upon entering or before release from a county jail or detention facility, state
19 correctional facility, or any other detention facility or institution, whether operated by a private,
20 local, or state agency, or any mental health facility if committed as a sexually violent predator
21 pursuant to sections 632.480 to 632.513; or

22 (4) When the state accepts a person from another state under any interstate compact, or
23 under any other reciprocal agreement with any county, state, or federal agency, or any other
24 provision of law, whether or not the person is confined or released, the acceptance is conditional
25 on the person providing a DNA sample if the person was found guilty of a felony offense in any
26 other jurisdiction; or

27 (5) If such individual is under the jurisdiction of the department of corrections. Such
28 jurisdiction includes persons currently incarcerated, persons on probation, as defined in section
29 217.650, and on parole, as also defined in section 217.650; or

30 (6) At the time of registering as a sex offender under sections 589.400 to 589.425.

31 3. The Missouri state highway patrol and department of corrections shall be responsible
32 for ensuring adherence to the law. Any person required to provide a DNA sample pursuant to
33 this section shall be required to provide such sample, without the right of refusal, at a collection
34 site designated by the Missouri state highway patrol and the department of corrections.
35 Authorized personnel collecting or assisting in the collection of samples shall not be liable in any
36 civil or criminal action when the act is performed in a reasonable manner. Such force may be
37 used as necessary to the effectual carrying out and application of such processes and operations.
38 The enforcement of these provisions by the authorities in charge of state correctional institutions
39 and others having custody or jurisdiction over individuals included in subsection 1 of this section
40 which shall not be set aside or reversed is hereby made mandatory. The board of probation or
41 parole shall recommend that an individual on probation or parole who refuses to provide a DNA
42 sample have his or her probation or parole revoked. In the event that a person's DNA sample is
43 not adequate for any reason, the person shall provide another sample for analysis.

44 4. The procedure and rules for the collection, analysis, storage, expungement, use of
45 DNA database records and privacy concerns shall not conflict with procedures and rules
46 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA
47 databank system.

48 5. Unauthorized use or dissemination of individually identifiable DNA information in
49 a database for purposes other than criminal justice or law enforcement is a class A misdemeanor.

50 6. Implementation of sections 650.050 to 650.100 shall be subject to future
51 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of
52 Investigation's DNA databank system.

53 7. All DNA records and biological materials retained in the DNA profiling system are
54 considered closed records pursuant to chapter 610. All records containing any information held
55 or maintained by any person or by any agency, department, or political subdivision of the state
56 concerning an individual's DNA profile shall be strictly confidential and shall not be disclosed,
57 except to:

58 (1) Peace officers, as defined in section 590.010, and other employees of law
59 enforcement agencies who need to obtain such records to perform their public duties;

60 (2) The attorney general or any assistant attorneys general acting on his or her behalf, as
61 defined in chapter 27;

62 (3) Prosecuting attorneys or circuit attorneys as defined in chapter 56, and their
63 employees who need to obtain such records to perform their public duties;

64 (4) The individual whose DNA sample has been collected, or his or her attorney; or

65 (5) Associate circuit judges, circuit judges, judges of the courts of appeals, supreme court
66 judges, and their employees who need to obtain such records to perform their public duties.

67 8. Any person who obtains records pursuant to the provisions of this section shall use
68 such records only for investigative and prosecutorial purposes, including but not limited to use
69 at any criminal trial, hearing, or proceeding; or for law enforcement identification purposes,
70 including identification of human remains. Such records shall be considered strictly confidential
71 and shall only be released as authorized by this section.

72 9. **(1)** An individual may request expungement of his or her DNA sample and DNA
73 profile through the court issuing the reversal or dismissal, **or through the court granting an**
74 **expungement of all official records under section 568.040.** A certified copy of the court order
75 establishing that such conviction has been reversed [or] , guilty plea has been set aside, **or**
76 **expungement has been granted under section 568.040** shall be sent to the Missouri state
77 highway patrol crime laboratory. Upon receipt of the court order, the laboratory will determine
78 that the requesting individual has no other qualifying offense as a result of any separate plea or
79 conviction and no other qualifying arrest prior to expungement.

80 [(1)] **(2)** A person whose DNA record or DNA profile has been included in the state
81 DNA database in accordance with this section and sections 650.050, 650.052, and 650.100 may
82 request expungement on the grounds that the conviction has been reversed, [or] the guilty plea
83 on which the authority for including that person's DNA record or DNA profile was based has

84 been set aside, **or an expungement of all official records has been granted by the court**
85 **under section 568.040.**

86 ~~[(2)]~~ **(3)** Upon receipt of a written request for expungement, a certified copy of the final
87 court order reversing the conviction [or] , setting aside the plea, **or granting an expungement**
88 **of all official records under section 568.040,** and any other information necessary to ascertain
89 the validity of the request, the Missouri state highway patrol crime laboratory shall expunge all
90 DNA records and identifiable information in the state DNA database pertaining to the person and
91 destroy the DNA sample of the person, unless the Missouri state highway patrol determines that
92 the person is otherwise obligated to submit a DNA sample. Within thirty days after the receipt
93 of the court order, the Missouri state highway patrol shall notify the individual that it has
94 expunged his or her DNA sample and DNA profile, or the basis for its determination that the
95 person is otherwise obligated to submit a DNA sample.

96 ~~[(3)]~~ **(4)** The Missouri state highway patrol is not required to destroy any item of physical
97 evidence obtained from a DNA sample if evidence relating to another person would thereby be
98 destroyed.

99 ~~[(4)]~~ **(5)** Any identification, warrant, arrest, or evidentiary use of a DNA match derived
100 from the database shall not be excluded or suppressed from evidence, nor shall any conviction
101 be invalidated or reversed or plea set aside due to the failure to expunge or a delay in expunging
102 DNA records.

103 10. When a DNA sample is taken from an individual pursuant to subdivision (2) of
104 subsection 1 of this section and the prosecutor declines prosecution and notifies the arresting
105 agency of that decision, the arresting agency shall notify the Missouri state highway patrol crime
106 laboratory within ninety days of receiving such notification. Within thirty days of being notified
107 by the arresting agency that the prosecutor has declined prosecution, the Missouri state highway
108 patrol crime laboratory shall determine whether the individual has any other qualifying offenses
109 or arrests that would require a DNA sample to be taken and retained. If the individual has no
110 other qualifying offenses or arrests, the crime laboratory shall expunge all DNA records in the
111 database taken at the arrest for which the prosecution was declined pertaining to the person and
112 destroy the DNA sample of such person.

113 11. When a DNA sample is taken of an arrestee for any offense listed under subsection
114 1 of this section and charges are filed:

115 (1) If the charges are later withdrawn, the prosecutor shall notify the state highway patrol
116 crime laboratory that such charges have been withdrawn;

117 (2) If the case is dismissed, the court shall notify the state highway patrol crime
118 laboratory of such dismissal;

119 (3) If the court finds at the preliminary hearing that there is no probable cause that the
120 defendant committed the offense, the court shall notify the state highway patrol crime laboratory
121 of such finding;

122 (4) If the defendant is found not guilty, the court shall notify the state highway patrol
123 crime laboratory of such verdict.

124 If the state highway patrol crime laboratory receives notice under this subsection, such crime
125 laboratory shall determine, within thirty days, whether the individual has any other qualifying
126 offenses or arrests that would require a DNA sample to be taken. If the individual has no other
127 qualifying arrests or offenses, the crime laboratory shall expunge all DNA records in the database
128 pertaining to such person and destroy the person's DNA sample.

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