

-FIRST REGULAR SESSION

HOUSE BILL NO. 320

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEELY.

0988H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 454.1000, 454.1008, 454.1010, 478.1000, and 568.040, RSMo, and to enact in lieu thereof five new sections relating to criminal nonsupport, with penalty provisions.

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

Section A. Sections 454.1000, 454.1008, 454.1010, 478.1000, and 568.040, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 454.1000, 454.1008, 454.1010, 478.1000, and 568.040, to read as follows:

454.1000. As used in sections 454.1000 to 454.1025, the following terms mean:

- (1) "Arrearage", the amount created by a failure to provide:
 - (a) Support to a child pursuant to an administrative or judicial support order; or
 - (b) Support to a spouse if the judgment or order requiring payment of spousal support also requires payment of child support and such spouse is the custodial parent;
- (2) "Child", a person for whom child support is due pursuant to a support order;
- (3) "Court", any circuit court of the state that enters a support order or a circuit court in which such order is registered or filed;
- (4) "Director", the director of the family support division;
- (5) "Division", the family support division of the department of social services;
- (6) "IV-D case", a case in which support rights are assigned to the state pursuant to section 208.040 or the division is providing support enforcement services pursuant to section 454.425;
- (7) "License", a license, certificate, registration or authorization issued by a licensing authority granting a person a right or privilege to engage in a business, occupation, profession, recreation or other related privilege that is subject to suspension, revocation, forfeiture or

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 termination by the licensing authority prior to its date of expiration, except for any license issued
18 by the department of conservation~~]. Licenses include licenses to operate motor vehicles pursuant~~
19 ~~to chapter 302, but shall not include motor vehicle registrations pursuant to chapter 301] or a~~
20 **driver's license issued by the department of revenue;**

21 (8) "Licensing authority", any department, except for the department of conservation,
22 division, board, agency or instrumentality of this state or any political subdivision thereof that
23 issues a license. Any board or commission assigned to the division of professional registration
24 is included in the definition of licensing authority;

25 (9) "Obligee":

26 (a) A person to whom payments are required to be made pursuant to a support order; or

27 (b) A public agency of this or any other state which has the right to receive current or
28 accrued support payments or provides support enforcement services pursuant to this chapter;

29 (10) "Obligor", a person who owes a duty of support;

30 (11) "Order suspending a license", an order issued by a court or the director to suspend
31 a license. The order shall contain the name of the obligor, date of birth of the obligor, the type
32 of license and the Social Security number of the obligor;

33 (12) "Payment plan" includes, but is not limited to, a written plan approved by the court
34 or division that incorporates an income withholding pursuant to sections 452.350 and 454.505
35 or a similar plan for periodic payment of an arrearage, and current and future support, if
36 applicable;

37 (13) "Support order", an order providing a determinable amount for temporary or final
38 periodic payment of support. Such order may include payment of a determinable amount of
39 insurance, medical or other expenses of the child issued by:

40 (a) A court of this state;

41 (b) A court or administrative agency of competent jurisdiction of another state, an Indian
42 tribe, or a foreign country; or

43 (c) The director of the division.

454.1008. 1. Upon receipt of an order suspending a license, a licensing authority shall:

2 (1) Determine if the licensing authority has issued a license to the obligor whose name
3 appears on the order;

4 (2) Enter the suspension as effective from the date of the order issued by the court or
5 division;

6 (3) Issue the notice of the suspension to the licensee; and

7 (4) If required by law, demand surrender of the suspended license.

8 2. An order issued by a court or the director suspending a license shall be processed by
9 the licensing authority without any additional review or hearing by such licensing authority.

10 3. Notwithstanding the provisions of any other law regarding the suspension, revocation,
11 denial, termination or renewal of a license to the contrary, an order issued by a court or the
12 director suspending a license shall be implemented by the licensing authority and continue until
13 the court or division advises the licensing authority that such suspension has been stayed or
14 terminated. The obligor may not appeal the suspension of a license pursuant to sections
15 454.1000 to 454.1025 pursuant to any other law~~], including, but not limited to, section 302.311].~~
16 The exclusive procedure for appeal is provided in sections 454.1000 to 454.1025.

17 4. If a license is suspended, any funds paid by the obligor to the licensing authority for
18 costs related to issuance, renewal or maintenance of a license shall not be refunded to the obligor.

19 5. Unless acting pursuant to an order of a court or the director which stays the suspension
20 of a license, an obligor who continues to engage in the business, occupation, profession or other
21 licensed activity while the license is suspended pursuant to this section is guilty of a class A
22 misdemeanor, unless a penalty is otherwise provided. The division or the licensing authority
23 may refer the obligor to the appropriate prosecuting or circuit attorney or the attorney general for
24 prosecution pursuant to this section in addition to any other remedy provided by law for engaging
25 in a licensed activity without a license or while a license is suspended.

26 6. The licensing authority shall be exempt from liability to the licensee for activities
27 conducted pursuant to this section.

28 7. The licensing authority shall not modify, remand, reverse, vacate or stay an order of
29 the court or director suspending a license.

30 ~~[8. If the license suspended is a driver's license, the obligor shall have no rights pursuant~~
31 ~~to section 302.311.]~~

 454.1010. 1. An obligor may, at any time, petition a court or the director for an order
2 to stay the suspension of a license. Any petition seeking to stay an order of the director shall be
3 served on the director.

4 2. The court or director may consider the obligor's petition for a stay separately from any
5 determination on the suspension of a license.

6 3. The court, but not the director, may stay suspension of a license upon a showing that
7 a suspension or continued suspension of a license would create a significant hardship to the
8 obligor, the obligor's employees, any legal dependents residing in the obligor's household, or
9 persons, businesses or other entities served by the obligor.

10 4. The court or director may stay suspension of a license upon entry of a payment plan
11 or receipt of adequate assurance that the obligor shall comply with an existing payment plan.

12 5. A stay shall terminate if:

13 (1) A court determines that the significant hardship circumstance pursuant to subsection
14 3 of this section has ended;

15 (2) The court or division determines that the obligor has failed to abide by the terms and
16 conditions of a payment plan; or

17 (3) The order staying suspension of a license has a termination date and such date has
18 been reached.

19 6. If the licensing authority is notified of an order suspending a license, the court or
20 division shall send a copy of any order staying or reimposing suspension of the license to the
21 licensing authority and the obligor by certified mail.

22 7. Upon receipt of an order staying or reimposing suspension of the license, the licensing
23 authority shall:

24 (1) Enter the information on appropriate records;

25 (2) Issue notice of the action to the licensee; and

26 (3) If required by law, demand surrender of the suspended license or return the reinstated
27 license.

28 8. No additional action by the licensing authority shall be required to implement a stay
29 or reinstatement of suspension of a license.

30 9. This section shall be the exclusive remedy for the obligor to obtain an order staying
31 suspension of a license pursuant to sections 454.1000 to 454.1025. ~~[Any other provisions
32 providing for the issuance of hardship licenses, including, but not limited to, those provided in
33 section 302.309, do not apply to suspensions pursuant to sections 454.1000 to 454.1025.]~~

34 ~~10. No person shall be required to file proof of financial responsibility with the
35 department of revenue as a condition of reinstatement of a driver's license suspended solely
36 pursuant to the provisions of sections 454.1000 to 454.1025.]~~

37 ~~11. Any person whose license to operate a motor vehicle in this state has been suspended
38 pursuant to this section shall, before having the license reinstated, pay to the director of revenue
39 a reinstatement fee of twenty dollars.]~~

478.1000. 1. Criminal nonsupport courts may be established by any circuit court to
2 provide an alternative for the criminal justice system to dispose of cases which stem from
3 criminal nonsupport. A criminal nonsupport court shall combine judicial supervision, substance
4 abuse treatment, education including general education development certificate (GED) programs,
5 vocational or employment training, work programs, and support payment plans for criminal
6 nonsupport court participants. Except for good cause found by the court, a criminal nonsupport
7 court making a referral for education, substance abuse treatment, vocational or employment
8 training, or work programs, when such program will receive state or federal funds in connection
9 with such referral, shall refer the person only to a program which is certified by a department of
10 the state of Missouri, unless no appropriate certified program is located within the same county
11 as the criminal nonsupport court. Upon successful completion of the education, substance abuse

12 treatment, vocational or employment training program, work program, or support payment plan,
13 the defendant becoming gainfully employed, or the defendant commencing payment of current
14 and accrued support, the charges, petition, or penalty against a criminal nonsupport court
15 participant may be dismissed, reduced, or modified. Any fees received by a court from a
16 defendant as payment for education, substance abuse treatment, or training programs shall not
17 be considered court costs, charges, or fines.

18 2. Each circuit court shall establish conditions for referral of proceedings to the criminal
19 nonsupport court. The defendant in any criminal proceeding accepted by a criminal nonsupport
20 court for disposition shall be a nonviolent person, as determined by the prosecuting attorney];
21 ~~and shall be subject to the conditions set forth in subsection 6 of section 568.040].~~ Any
22 proceeding accepted by the criminal nonsupport court program for disposition shall be upon
23 agreement of the parties.

24 3. Any report made by the staff of the program shall not be admissible as evidence
25 against the participant in the underlying criminal nonsupport case. Notwithstanding the
26 foregoing, termination from the criminal nonsupport court program and the reasons for
27 termination may be considered in sentencing or disposition.

28 4. Notwithstanding any other provision of law, criminal nonsupport court staff shall be
29 provided with access to all records of any state or local government agency relevant to the
30 supervision of any program participant. Upon general request, employees of all such agencies
31 shall fully inform criminal nonsupport court staff of all matters relevant to the supervision of the
32 participant. All such records and reports and the contents thereof shall be treated as closed
33 records and shall not be disclosed to any person outside of the criminal nonsupport court, and
34 shall be maintained by the court in a confidential file not available to the public.

35 5. In order to coordinate the allocation of resources available to criminal nonsupport
36 courts throughout the state, there is hereby established a "Criminal Nonsupport Courts
37 Coordinating Commission" in the judicial department. The criminal nonsupport courts
38 coordinating commission shall consist of one member selected by the director of the department
39 of corrections; one member selected by the director of the department of social services; one
40 member selected by the director of the department of education; one member selected by the
41 director of the department of public safety; one member selected by the state courts
42 administrator; one member selected by the director of the department of labor and industrial
43 relations; three members selected by the Missouri supreme court, one being a criminal defense
44 attorney; and one member who is a prosecuting attorney selected by the office of prosecution
45 services. The Missouri supreme court shall designate the chair of the commission. The
46 commission shall periodically meet at the call of the chair; evaluate resources available for
47 assessment and training of persons assigned to criminal nonsupport courts or for operation of

48 criminal nonsupport courts; secure grants, funds, and other property and services necessary or
49 desirable to facilitate criminal nonsupport court operation; and allocate such resources among
50 the various criminal nonsupport courts operating within the state.

51 6. There is hereby established in the state treasury a "Criminal Nonsupport Court
52 Resources Fund", which shall be administered by the criminal nonsupport courts coordinating
53 commission. Funds available for allocation or distribution by the criminal nonsupport courts
54 coordinating commission may be deposited into the criminal nonsupport court resources fund.
55 The state treasurer shall be the custodian of the fund and may approve disbursements from the
56 fund in accordance with sections 30.170 and 30.180. Notwithstanding the provisions of section
57 33.080, moneys in the criminal nonsupport court resources fund shall not be transferred or placed
58 to the credit of the general revenue fund of the state at the end of each biennium, but shall remain
59 deposited to the credit of the criminal nonsupport court resources fund.

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

6 2. For purposes of this section:

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

11 (2) "Good cause" means any substantial reason why the defendant is unable to provide
12 adequate support. Good cause does not exist if the defendant purposely maintains his inability
13 to support;

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

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

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

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

22 5. The offense of criminal nonsupport is a class A misdemeanor~~], unless the total~~
23 ~~arrearage is in excess of an aggregate of twelve monthly payments due under any order of~~
24 ~~support issued by any court of competent jurisdiction or any authorized administrative agency,~~

25 ~~in which case it is a class E felony]. Any person found guilty under this section shall not~~
26 ~~receive jail time as part of his or her sentence; however, the court may order the offender~~
27 ~~to perform community service under the supervision of the court for a violation under this~~
28 ~~section.~~

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

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

47 ~~8. Beginning August 28, 2009, every nonviolent first- and second-time offender then~~
48 ~~incarcerated for criminal nonsupport, who has not been previously placed on probation or parole~~
49 ~~for conviction of criminal nonsupport, may be considered for parole, under the conditions set~~
50 ~~forth in subsection 6 of this section, or work release, under the conditions set forth in subsection~~
51 ~~7 of this section.~~

52 ~~9.] Beginning January 1, 1991, every prosecuting attorney in any county which has~~
53 ~~entered into a cooperative agreement with the child support enforcement service of the family~~
54 ~~support division of the department of social services shall report to the division on a quarterly~~
55 ~~basis the number of charges filed and the number of convictions obtained under this section by~~
56 ~~the prosecuting attorney's office on all IV-D cases. The division shall consolidate the reported~~
57 ~~information into a statewide report by county and make the report available to the general public.~~

58 ~~[10.] 7. 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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