

FIRST REGULAR SESSION

SENATE BILL NO. 410

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time February 5, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1836S.011

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
2 senate bill no. 491, ninety-seventh general assembly, second regular session, and
3 section 568.040 as enacted by house bill no. 111, ninety-sixth general assembly,
4 first regular session, are repealed and two new sections enacted in lieu thereof,
5 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
2 knowingly fails to provide adequate support for his or her spouse; a parent
3 commits the offense of nonsupport if such parent knowingly fails to provide
4 adequate support which such parent is legally obligated to provide for his or her
5 child or stepchild who is not otherwise emancipated by operation of law.

6 2. For purposes of this section:

7 (1) "Arrearage":

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 (c) Both paragraphs (a) and (b).

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

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

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

26 [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical
27 attention;

28 [(4)] (5) It shall not constitute a failure to provide medical and surgical
29 attention, if nonmedical remedial treatment recognized and permitted under the
30 laws of this state is provided.

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

34 4. The defendant shall have the burden of injecting the issues raised by
35 subdivision [(4)] (5) of subsection 2 and subsection 3 of this section.

36 5. The offense of criminal nonsupport is a class A misdemeanor, unless
37 the total arrearage is in excess of an aggregate of [twelve] **twenty-four** monthly
38 payments due under any order of support issued by any court of competent
39 jurisdiction or any authorized administrative agency, in which case it is a class
40 E felony.

41 6. (1) If at any time an offender [convicted] **found guilty** of criminal
42 nonsupport is placed on probation or parole, there may be ordered as a condition
43 of probation or parole that the offender commence payment of current support as
44 well as satisfy the arrearages. Arrearages may be satisfied first by making such
45 lump sum payment as the offender is capable of paying, if any, as may be shown
46 after examination of the offender's financial resources or assets, both real,
47 personal, and mixed, and second by making periodic payments. Periodic
48 payments toward satisfaction of arrears when added to current payments due
49 [may] **shall** be in such aggregate sums as is not greater than fifty percent of the

50 offender's adjusted gross income after deduction of payroll taxes, medical
51 insurance that also covers a dependent spouse or children, and any other court-
52 or administrative-ordered support, only.

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

59 **(3) (a)** **After a period of not less than eight years, an individual**
60 **who has been found guilty of a first offense of criminal nonsupport**
61 **under this section and who has successfully completed the terms of his**
62 **or her sentence may petition the court for expungement of all official**
63 **records of his or her arrest, plea, trial, or conviction. If the court**
64 **determines after hearing that such person:**

- 65 a. **Has not been convicted of any subsequent offense;**
66 b. **Has not been found guilty of any felony offense;**
67 c. **Is current on all child support obligations and has had no**
68 **lapse in payment of all child support obligations during the eight-year**
69 **period;**
70 d. **Has paid off all arrearages; and**
71 e. **Has no other criminal charges or administrative child support**
72 **actions pending at the time of the hearing on the application for**
73 **expungement with respect to all children subject to orders of payment**
74 **of child support,**

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

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

84 **(c)** **The effect of such order shall be to restore such person to the**
85 **status he or she occupied prior to such arrest, plea or conviction as if**
86 **such event had never taken place. No person for whom such order has**

87 **been entered shall be held thereafter under any provision of any law**
88 **to be guilty of perjury or otherwise giving a false statement by reason**
89 **of his or her failure to recite or acknowledge such arrest, plea, trial,**
90 **conviction, or expungement in response to any inquiry made of him or**
91 **her for any purpose whatsoever and no such inquiry shall be made for**
92 **information relating to an expungement under this section.**

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

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

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

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

119 10. Persons accused of committing the offense of nonsupport of the child
120 shall be prosecuted:

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

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

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

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7 (1) "Arrearage":

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9 **to a child under an administrative or judicial support order; or**

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

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

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

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

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

26 [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical
27 attention;

28 [(4)] (5) It shall not constitute a failure to provide medical and surgical
29 attention, if nonmedical remedial treatment recognized and permitted under the
30 laws of this state is provided.

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

34 4. The defendant shall have the burden of injecting the issues raised by

35 subdivision [(4)] **(5)** of subsection 2 of this section.

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

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

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

58 **(3) (a) After a period of not less than eight years, an individual**
59 **who has been found guilty of a first offense of criminal nonsupport**
60 **under this section and who has successfully completed the terms of his**
61 **or her sentence may petition the court for expungement of all official**
62 **records of his or her arrest, plea, trial, or conviction. If the court**
63 **determines after hearing that such person:**

- 64 a. **Has not been convicted of any subsequent offense;**
65 b. **Has not been found guilty of any felony offense;**
66 c. **Is current on all child support obligations and has had no**
67 **lapse in payment of all child support obligations during the eight-year**
68 **period;**
69 d. **Has paid off all arrearages; and**
70 e. **Has no other criminal charges or administrative child support**

71 actions pending at the time of the hearing on the application for
72 expungement with respect to all children subject to orders of payment
73 of child support,
74 the court shall enter an order of expungement. In addition, the court
75 may consider successful completion of a criminal nonsupport courts
76 program under section 478.1000, or any other circumstances or factors
77 deemed relevant by the court.

78 (b) Upon granting the order of expungement, the records and
79 files maintained in any court proceeding in an associate or circuit
80 division of the circuit court under this section shall be confidential and
81 only available to the parties or by order of the court for good cause
82 shown.

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

92 (d) A person shall only be entitled to one expungement under
93 this section. Nothing in this section shall prevent the director of the
94 department of social services from maintaining such records as to
95 ensure that an individual receives only one expungement under this
96 section for the purpose of informing the proper authorities of the
97 contents of any record maintained under this section.

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

104 8. Beginning August 28, 2009, every nonviolent first- and second-time
105 offender then incarcerated for criminal nonsupport, who has not been previously
106 placed on probation or parole for conviction of criminal nonsupport, may be
107 considered for parole, under the conditions set forth in subsection 6 of this

108 section, or work release, under the conditions set forth in subsection 7 of this
109 section.

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

118 10. Persons accused of committing the offense of nonsupport of the child
119 shall be prosecuted:

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

122 (2) In any county in which the defendant resided during the period of time
123 for which the 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
4 degree under section 569.160, or burglary in the second degree under section
5 569.170, or a felony offense under chapter 565, 566, 567, 568, or 573; or

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

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

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

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

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

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

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

21 or

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

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

32 (6) At the time of registering as a sex offender under sections 589.400 to
33 589.425.

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

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

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

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

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

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

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

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

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

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

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

84 9. **(1)** An individual may request expungement of his or her DNA sample
85 and DNA profile through the court issuing the reversal or dismissal, **or through**
86 **the court granting an expungement of all official records under section**
87 **568.040.** A certified copy of the court order establishing that such conviction has
88 been reversed [or], guilty plea has been set aside, **or expungement has been**
89 **granted under section 568.040** shall be sent to the Missouri state highway
90 patrol crime laboratory. Upon receipt of the court order, the laboratory will
91 determine that the requesting individual has no other qualifying offense as a
92 result of any separate plea or conviction and no other qualifying arrest prior to

93 expungement.

94 [(1)] **(2)** A person whose DNA record or DNA profile has been included
95 in the state DNA database in accordance with this section and sections 650.050,
96 650.052, and 650.100 may request expungement on the grounds that the
97 conviction has been reversed, [or] the guilty plea on which the authority for
98 including that person's DNA record or DNA profile was based has been set aside,
99 **or an expungement of all official records has been granted by the court**
100 **under section 568.040.**

101 [(2)] **(3)** Upon receipt of a written request for expungement, a certified
102 copy of the final court order reversing the conviction [or], setting aside the plea,
103 **or granting an expungement of all official records under section**
104 **568.040**, and any other information necessary to ascertain the validity of the
105 request, the Missouri state highway patrol crime laboratory shall expunge all
106 DNA records and identifiable information in the state DNA database pertaining
107 to the person and destroy the DNA sample of the person, unless the Missouri
108 state highway patrol determines that the person is otherwise obligated to submit
109 a DNA sample. Within thirty days after the receipt of the court order, the
110 Missouri state highway patrol shall notify the individual that it has expunged his
111 or her DNA sample and DNA profile, or the basis for its determination that the
112 person is otherwise obligated to submit a DNA sample.

113 [(3)] **(4)** The Missouri state highway patrol is not required to destroy any
114 item of physical evidence obtained from a DNA sample if evidence relating to
115 another person would thereby be destroyed.

116 [(4)] **(5)** Any identification, warrant, arrest, or evidentiary use of a DNA
117 match derived from the database shall not be excluded or suppressed from
118 evidence, nor shall any conviction be invalidated or reversed or plea set aside due
119 to the failure to expunge or a delay in expunging DNA records.

120 10. When a DNA sample is taken from an individual pursuant to
121 subdivision (2) of subsection 1 of this section and the prosecutor declines
122 prosecution and notifies the arresting agency of that decision, the arresting
123 agency shall notify the Missouri state highway patrol crime laboratory within
124 ninety days of receiving such notification. Within thirty days of being notified by
125 the arresting agency that the prosecutor has declined prosecution, the Missouri
126 state highway patrol crime laboratory shall determine whether the individual has
127 any other qualifying offenses or arrests that would require a DNA sample to be
128 taken and retained. If the individual has no other qualifying offenses or arrests,

129 the crime laboratory shall expunge all DNA records in the database taken at the
130 arrest for which the prosecution was declined pertaining to the person and
131 destroy the DNA sample of such person.

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

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

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

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

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

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

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