

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 140
95TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 12, 2009, with recommendation that the Senate Committee Substitute do pass.

0849S.09C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 568.040, RSMo, and to enact in lieu thereof two 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Section A. Section 568.040, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 478.495 and 568.040, to read as
3 follows:

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

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

18 defendant becoming gainfully employed, or the defendant commencing
19 payment of current and accrued support, the charges, petition, or
20 penalty against a criminal nonsupport court participant may be
21 dismissed, reduced, or modified. Any fees received by a court from a
22 defendant as payment for education, substance abuse treatment, or
23 training programs shall not be considered court costs, charges, or fines.

24 2. Each circuit court shall establish conditions for referral of
25 proceedings to the criminal nonsupport court. The defendant in any
26 criminal proceeding accepted by a criminal nonsupport court for
27 disposition shall be a nonviolent person, as determined by the
28 prosecuting attorney, and shall be subject to the conditions set forth in
29 subsection 6 of section 568.040, RSMo. Any proceeding accepted by the
30 criminal nonsupport court program for disposition shall be upon
31 agreement of the parties.

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

37 4. Notwithstanding any other provision of law, criminal
38 nonsupport court staff shall be provided with access to all records of
39 any state or local government agency relevant to the supervision of any
40 program participant. Upon general request, employees of all such
41 agencies shall fully inform criminal nonsupport court staff of all
42 matters relevant to the supervision of the participant. All such records
43 and reports and the contents thereof shall be treated as closed records
44 and shall not be disclosed to any person outside of the criminal
45 nonsupport court, and shall be maintained by the court in a
46 confidential file not available to the public.

47 5. In order to coordinate the allocation of resources available to
48 criminal nonsupport courts throughout the state, there is hereby
49 established a "Criminal Nonsupport Courts Coordinating Commission"
50 in the judicial department. The criminal nonsupport courts
51 coordinating commission shall consist of one member selected by the
52 director of the department of corrections; one member selected by the
53 director of the department of social services; one member selected by
54 the director of the department of education; one member selected by

55 the director of the department of public safety; one member selected by
56 the state courts administrator; one member selected by the director of
57 the department of labor and industrial relations; three members
58 selected by the Missouri supreme court, one being a criminal defense
59 attorney; and one member who is a prosecuting attorney selected by
60 the office of prosecution services. The Missouri supreme court shall
61 designate the chair of the commission. The commission shall
62 periodically meet at the call of the chair; evaluate resources available
63 for assessment and training of persons assigned to criminal nonsupport
64 courts or for operation of criminal nonsupport courts; secure grants,
65 funds, and other property and services necessary or desirable to
66 facilitate criminal nonsupport court operation; and allocate such
67 resources among the various criminal nonsupport courts operating
68 within the state.

69 6. There is hereby established in the state treasury a "Criminal
70 Nonsupport Court Resources Fund", which shall be administered by the
71 criminal nonsupport courts coordinating commission. Funds available
72 for allocation or distribution by the criminal nonsupport courts
73 coordinating commission may be deposited into the criminal
74 nonsupport court resources fund. The state treasurer shall be the
75 custodian of the fund and may approve disbursements from the fund in
76 accordance with sections 30.170 and 30.180, RSMo. Notwithstanding the
77 provisions of section 33.080, RSMo, moneys in the criminal nonsupport
78 court resources fund shall not be transferred or placed to the credit of
79 the general revenue fund of the state at the end of each biennium, but
80 shall remain deposited to the credit of the criminal nonsupport court
81 resources fund.

568.040. 1. A person commits the crime of nonsupport if [he] such
2 person knowingly fails to provide, without good cause, adequate support for his
3 or her spouse; a parent commits the crime of nonsupport if such parent
4 knowingly fails to provide, without good cause, adequate support which such
5 parent is legally obligated to provide for his or her child or stepchild who is not
6 otherwise emancipated by operation of law.

7 2. For purposes of this section:

8 (1) "Child" means any biological or adoptive child, or any child
9 [legitimated by legal process] whose paternity has been established under
10 chapter 454, RSMo, or chapter 210, RSMo, or any child whose relationship

11 to the defendant has been determined, by a court of law in a proceeding for
12 dissolution or legal separation, to be that of child to parent;

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

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

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

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

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

27 **[4.] 5. Criminal nonsupport is a class A misdemeanor, unless [the person**
28 **obligated to pay child support commits the crime of nonsupport in each of six**
29 **individual months within any twelve-month period, or] the total arrearage is in**
30 **excess of [five thousand dollars] an aggregate of twelve monthly payments**
31 **due under any order of support issued by any court of competent**
32 **jurisdiction or any authorized administrative agency, in [either of] which**
33 **case it is a class D felony.**

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

47 **defendant fails to pay the current support and arrearages as ordered,**
48 **the court may revoke probation or parole and then impose an**
49 **appropriate sentence within the range for the class of offense that the**
50 **defendant was convicted of as provided by law, unless the defendant**
51 **proves good cause for the failure to pay as required under subsection**
52 **3 of this section.**

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

60 **8. Beginning August 28, 2009, every nonviolent first and second**
61 **time offender then incarcerated for criminal nonsupport, who has not**
62 **been previously placed on probation or parole, for conviction of**
63 **criminal nonsupport, may be considered for parole, under the**
64 **conditions set forth in subsection 5 of this section, or work release,**
65 **under the conditions set forth in subsection 6 of this section.**

66 **[5.] 9.** Beginning January 1, 1991, every prosecuting attorney in any
67 county which has entered into a cooperative agreement with the division of child
68 support enforcement shall report to the division on a quarterly basis the number
69 of charges filed and the number of convictions obtained under this section by the
70 prosecuting attorney's office on all IV-D cases. The division shall consolidate the
71 reported information into a statewide report by county and make the report
72 available to the general public.

73 **[6.] 10.** Persons accused of committing the offense of nonsupport of the
74 child shall be prosecuted:

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

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

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