

FIRST REGULAR SESSION

SENATE BILL NO. 347

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Read 1st time February 19, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1679S.011

AN ACT

To repeal section 568.040, RSMo, and to enact in lieu thereof one new section relating to the offense of nonsupport.

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Section A. Section 568.040, RSMo, is repealed and one new section enacted
2 in lieu thereof, to be known as section 568.040, to read as follows:

568.040. 1. A person commits the [crime] **offense** of nonsupport if such
2 person knowingly fails to provide adequate support for his or her spouse; a parent
3 commits the [crime] **offense** of nonsupport if such parent knowingly fails to
4 provide adequate support which such parent is legally obligated to provide for his
5 or her child or stepchild who is not otherwise 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
8 paternity has been established under chapter 454, or chapter 210, or any child
9 whose relationship to the [defendant] **person** has been determined, by a court
10 of law in a proceeding for dissolution or legal separation, to be that of child to
11 parent;

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

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

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

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

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

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

25 5. [Criminal nonsupport is a class A misdemeanor, unless the total
26 arrearage is in excess of an aggregate of twelve monthly payments due under any
27 order of support issued by any court of competent jurisdiction or any authorized
28 administrative agency, in which case it is a class D felony] **The offense of**
29 **nonsupport is an infraction.**

30 6. If at any time a defendant convicted of criminal nonsupport **prior to**
31 **August 28, 2013**, is placed on probation or parole, there may be ordered as a
32 condition of probation or parole that the defendant commence payment of current
33 support as well as satisfy the arrearages. Arrearages may be satisfied first by
34 making such lump sum payment as the defendant is capable of paying, if any, as
35 may be shown after examination of defendant's financial resources or assets, both
36 real, personal, and mixed, and second by making periodic payments. Periodic
37 payments toward satisfaction of arrears when added to current payments due
38 may be in such aggregate sums as is not greater than fifty percent of the
39 defendant's adjusted gross income after deduction of payroll taxes, medical
40 insurance that also covers a dependent spouse or children, and any other court-
41 or administrative-ordered support, only. If the defendant fails to pay the current
42 support and arrearages as ordered, the court may revoke probation or parole and
43 then impose an appropriate sentence within the range for the class of offense that
44 the defendant was convicted of as provided by law, unless the defendant proves
45 good cause for the failure to pay as required under subsection 3 of this section.

46 7. During any period that a nonviolent defendant is incarcerated for
47 criminal nonsupport **as the offense existed prior to August 28, 2013**, if the
48 defendant is ready, willing, and able to be gainfully employed during said period
49 of incarceration, the defendant, if he or she meets the criteria established by the
50 department of corrections, may be placed on work release to allow the defendant
51 to satisfy defendant's obligation to pay support. Arrearages shall be satisfied as
52 outlined in the collection agreement.

53 8. [Beginning August 28, 2009,] Every nonviolent first- and second-time
54 offender [then] incarcerated for **an offense of** criminal nonsupport **committed**
55 **before August 28, 2013**, who has not been previously placed on probation or

56 parole for conviction of criminal nonsupport, may be considered for parole, under
57 the conditions set forth in subsection 6 of this section, or work release, under the
58 conditions set forth in subsection 7 of this section.

59 9. [Beginning January 1, 1991,] Every prosecuting attorney in any county
60 which has entered into a cooperative agreement with the child support
61 enforcement service of the family support division of the department of social
62 services shall report to the division on a quarterly basis the number of [charges
63 filed] **infraction notices issued** and the number of convictions obtained under
64 this section by the prosecuting attorney's office on all IV-D cases. The division
65 shall consolidate the reported information into a statewide report by county and
66 make the report available to the general public.

67 10. [Persons accused of committing] The offense of nonsupport of [the] a
68 child shall be [prosecuted] **adjudicated:**

69 (1) In any county in which the child resided during the period of time for
70 which the [defendant is charged] **person failed to provide support in**
71 **violation of this section;** or

72 (2) In any county in which the [defendant] **person** resided during the
73 period of time for which the [defendant is charged] **person failed to provide**
74 **support in violation of this section.**

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