

HOUSE \_\_\_\_\_ AMENDMENT NO. \_\_\_\_

Offered By

AMEND House Committee Substitute for Senate Bill No. 0739, Page 6, Section 558.019, Line 123, by inserting immediately after said Line the following:

“568.040. 1. A person commits the crime of nonsupport if such person knowingly fails to provide adequate support for his or her spouse; a parent commits the crime 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).

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

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

1 that of child to parent;

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

5 [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

6 [(4)] (5) It shall not constitute a failure to provide medical and surgical attention, if  
7 nonmedical remedial treatment recognized and permitted under the laws of this state is provided.

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

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

13 5. Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of  
14 an aggregate of [twelve] eighteen monthly payments due under any order of support issued by any  
15 court of competent jurisdiction or any authorized administrative agency, in which case it is a class  
16 D felony.

17 6. (1) If at any time a defendant convicted of criminal nonsupport or pleads guilty to a  
18 charge of criminal nonsupport is placed on probation or parole, there may be ordered as a  
19 condition of probation or parole that the defendant commence payment of current support as well  
20 as satisfy the arrearages. Arrearages may be satisfied first by making such lump sum payment as  
21 the defendant is capable of paying, if any, as may be shown after examination of defendant's  
22 financial resources or assets, both real, personal, and mixed, and second by making periodic  
23 payments. Periodic payments toward satisfaction of arrears when added to current payments due  
24 [may] shall be in such aggregate sums as is not greater than fifty percent of the defendant's  
25 adjusted gross income after deduction of payroll taxes, medical insurance that also covers a  
26 dependent spouse or children, and any other court- or administrative-ordered support, only.

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

6           (3) After a period of not less than eight years, an individual who has pled guilty to or has  
7 been convicted of a first felony offense for criminal nonsupport under this section and who has  
8 successfully completed probation after a plea of guilt or was sentenced may petition the court for  
9 expungement of all official records all recordations of his or her arrest, plea, trial, or conviction.  
10 If the court determines after hearing that such person has not been convicted of any subsequent  
11 offense; does not have any other felony pleas of guilt, findings of guilt or convictions; is current  
12 on all child support obligations; has paid off all arrearages; and has no other criminal charges or  
13 administrative child support actions pending at the time of the hearing on the application for  
14 expungement with respect to all children subject to orders of payment of child support or that the  
15 defendant has successfully completed a criminal nonsupport courts program under section  
16 478.1000, the court shall enter an order of expungement. Upon granting the order of  
17 expungement, the records and files maintained in any court proceeding in an associate or circuit  
18 division of the circuit court under this section shall be confidential and only available to the  
19 parties or by order of the court for good cause shown. The effect of such order shall be to restore  
20 such person to the status he or she occupied prior to such arrest, plea or conviction, and as if such  
21 event had never taken place. No person for whom such order has been entered shall be held  
22 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false  
23 statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial,  
24 conviction, or expungement in response to any inquiry made of him or her for any purpose  
25 whatsoever and no such inquiry shall be made for information relating to an expungement under  
26 this section. A person shall only be entitled to one expungement under this section. Nothing in

1 this section shall prevent the director of the department of social services from maintaining such  
2 records as to ensure that an individual receives only one expungement under this section for the  
3 purpose of informing the proper authorities of the contents of any record maintained under this  
4 section.

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

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

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

22 10. Persons accused of committing the offense of nonsupport of the child shall be  
23 prosecuted:

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

26 (2) In any county in which the defendant resided during the period of time for which the

1 defendant is charged.”; and

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3 Further amend said bill by amending the title, enacting clause, and intersectional references

4 accordingly.