

HOUSE _____ **AMENDMENT NO.** _____

Offered By

1 AMEND Senate Substitute for Senate Committee Substitute for Senate Bill No. 689, Page 1, Section
2 565.182, Line 9, by inserting after all of said section and line the following:

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

8 2. For purposes of this section:

9 (1) "Arrearage":

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

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

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

16 The arrearage shall reflect any retroactive support ordered under a modification, and any judgments
17 entered by a court of competent 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 paternity has been
20 established under chapter 454, or chapter 210, or any child whose relationship to the defendant has been
21 determined, by a court of law in a proceeding for dissolution or legal separation, to be that of child to
22 parent;

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

25 [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

26 [(4)] (5) It shall not constitute a failure to provide medical and surgical attention, if nonmedical
27 remedial treatment recognized and permitted under the laws of this state is provided.

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

31 4. The defendant shall have the burden of injecting the issues raised by subdivision (4) of

1 subsection 2 of this section.

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

5 6. (1) If at any time a defendant convicted of criminal nonsupport or pleads guilty to a charge of
6 criminal nonsupport is placed on probation or parole, there may be ordered as a condition of probation or
7 parole that the defendant commence payment of current support as well as satisfy the arrearages.

8 Arrearages may be satisfied first by making such lump sum payment as the defendant is capable of paying,
9 if any, as may be shown after examination of defendant's financial resources or assets, both real, personal,
10 and mixed, and second by making periodic payments. Periodic payments toward satisfaction of arrears
11 when added to current payments due [may] shall be in such aggregate sums as is not greater than fifty
12 percent of the defendant's adjusted gross income after deduction of payroll taxes, medical insurance that
13 also covers a dependent spouse or children, and any other court- or administrative-ordered support, only.

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

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

40 7. During any period that a nonviolent defendant is incarcerated for criminal nonsupport, if the

1 defendant is ready, willing, and able to be gainfully employed during said period of incarceration, the
2 defendant, if he or she meets the criteria established by the department of corrections, may be placed on
3 work release to allow the defendant to satisfy defendant's obligation to pay support. Arrearages shall be
4 satisfied as outlined in the collection agreement.

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

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

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

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

18 (2) In any county in which the defendant resided during the period of time for which the
19 defendant is charged.” ; and

20
21 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.