

HOUSE _____ AMENDMENT NO. _____

Offered By _____

AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 758, Page 22,
Section 453.350, Line 15, by inserting after all of said section and 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 that of child to parent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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