

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 773, Page 20, Section 566.135, Line 28,
2 by inserting immediately after said 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
6 parent knowingly fails to provide adequate support which such parent is legally obligated to provide
7 for his or her child or stepchild who is not otherwise emancipated by operation of law. 2. For
8 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
17 The arrearage shall reflect any retroactive support ordered under a modification, and any judgments
18 entered by a court of competent jurisdiction or any authorized agency and any satisfactions of
19 judgment filed by the custodial parent;

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

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

27 [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

28 [(4)] (5) It shall not constitute a failure to provide medical and surgical attention, if
29 nonmedical remedial treatment recognized and permitted under the laws of this state is provided.

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

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

35 5. Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of an
36 aggregate of [twelve] twenty-four monthly payments due under any order of support issued by any

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1 court of competent jurisdiction or any authorized administrative agency, in which case it is a class D
2 felony.

3 6. (1) If at any time a defendant convicted of criminal nonsupport or pleads guilty to a
4 charge of criminal nonsupport is placed on probation or parole, there may be ordered as a condition
5 of probation or parole that the defendant commence payment of current support as well as satisfy the
6 arrearages. Arrearages may be satisfied first by making such lump sum payment as the defendant is
7 capable of paying, if any, as may be shown after examination of defendant's financial resources or
8 assets, both real, personal, and mixed, and second by making periodic payments. Periodic payments
9 toward satisfaction of arrears when added to current payments due [may] shall be in such aggregate
10 sums as is not greater than fifty percent of the defendant's adjusted gross income after deduction of
11 payroll taxes, medical insurance that also covers a dependent spouse or children, and any other court-
12 or administrative-ordered support, only.

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

18 (3) (a) After a period of not less than eight years, an individual who has pled guilty to or has
19 been convicted of a first felony offense for criminal nonsupport under this section and who has
20 successfully completed probation after a plea of guilty or was sentenced may petition the court for
21 expungement of all official records all recordations of his or her arrest, plea, trial, or conviction. If
22 the court determines after hearing that such person:

- 23 a. Has not been convicted of any subsequent offense;
- 24 b. Does not have any other felony pleas of guilt, findings of guilt or convictions;
- 25 c. Is current on all child support obligations and has had no lapse in payment of all child
26 support obligations during the eight-year period;
- 27 d. Has paid off all arrearages; and
- 28 e. Has no other criminal charges or administrative child support actions pending at the time
29 of the hearing on the application for expungement with respect to all children subject to orders of
30 payment of child support,

31 the court shall enter an order of expungement. In addition, the court may consider successful
32 completion of a criminal nonsupport courts program under section 478.1000, or any other
33 circumstances or factors deemed relevant by the court.

34 (b) Upon granting the order of expungement, the records and files maintained in any court
35 proceeding in an associate or circuit division of the circuit court under this section shall be
36 confidential and only available to the parties or by order of the court for good cause shown.

37 (c) The effect of such order shall be to restore such person to the status he or she occupied
38 prior to such arrest, plea or conviction, and as if such event had never taken place. No person for
39 whom such order has been entered shall be held thereafter under any provision of any law to be
40 guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or
41 acknowledge such arrest, plea, trial, conviction, or expungement in response to any inquiry made of
42 him or her for any purpose whatsoever and no such inquiry shall be made for information relating to
43 an expungement under this section.

44 (d) A person shall only be entitled to one expungement under this section. Nothing in this
45 section shall prevent the director of the department of social services from maintaining such records
46 as to ensure that an individual receives only one expungement under this section for the purpose of
47 informing the proper authorities of the contents of any record maintained under this section.
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7. During any period that a nonviolent defendant is incarcerated for criminal nonsupport, if the defendant is ready, willing, and able to be gainfully employed during said period of incarceration, the defendant, if he or she meets the criteria established by the department of corrections, may be placed on work release to allow the defendant to satisfy defendant's obligation to pay support. Arrearages shall be satisfied as outlined in the collection agreement. 8.

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

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

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

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

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

650.055. 1. Every individual who:

(1) Is found guilty of a felony or any offense under chapter 566; or

(2) Is seventeen years of age or older and arrested for burglary in the first degree under section 569.160, or burglary in the second degree under section 569.170, or a felony offense under chapter 565, 566, 567, 568, or 573; or

(3) Has been determined to be a sexually violent predator pursuant to sections 632.480 to 632.513; or

(4) Is an individual required to register as a sexual offender under sections 589.400 to 589.425;

shall have a fingerprint and blood or scientifically accepted biological sample collected for purposes of DNA profiling analysis.

2. Any individual subject to DNA collection and profiling analysis under this section shall provide a DNA sample:

(1) Upon booking at a county jail or detention facility; or

(2) Upon entering or before release from the department of corrections reception and diagnostic centers; or

(3) Upon entering or before release from a county jail or detention facility, state correctional facility, or any other detention facility or institution, whether operated by a private, local, or state agency, or any mental health facility if committed as a sexually violent predator pursuant to sections 632.480 to 632.513; or

(4) When the state accepts a person from another state under any interstate compact, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the person is confined or released, the acceptance is conditional on the person providing a DNA sample if the person was found guilty of a felony offense in any other jurisdiction; or

1 (5) If such individual is under the jurisdiction of the department of corrections. Such
2 jurisdiction includes persons currently incarcerated, persons on probation, as defined in section
3 217.650, and on parole, as also defined in section 217.650; or

4 (6) At the time of registering as a sex offender under sections 589.400 to 589.425.

5 3. The Missouri state highway patrol and department of corrections shall be responsible for
6 ensuring adherence to the law. Any person required to provide a DNA sample pursuant to this
7 section shall be required to provide such sample, without the right of refusal, at a collection site
8 designated by the Missouri state highway patrol and the department of corrections. Authorized
9 personnel collecting or assisting in the collection of samples shall not be liable in any civil or
10 criminal action when the act is performed in a reasonable manner. Such force may be used as
11 necessary to the effectual carrying out and application of such processes and operations. The
12 enforcement of these provisions by the authorities in charge of state correctional institutions and
13 others having custody or jurisdiction over individuals included in subsection 1 of this section which
14 shall not be set aside or reversed is hereby made mandatory. The board of probation or parole shall
15 recommend that an individual on probation or parole who refuses to provide a DNA sample have his
16 or her probation or parole revoked. In the event that a person's DNA sample is not adequate for any
17 reason, the person shall provide another sample for analysis.

18 4. The procedure and rules for the collection, analysis, storage, expungement, use of DNA
19 database records and privacy concerns shall not conflict with procedures and rules applicable to the
20 Missouri DNA profiling system and the Federal Bureau of Investigation's DNA databank system.

21 5. Unauthorized use or dissemination of individually identifiable DNA information in a
22 database for purposes other than criminal justice or law enforcement is a class A misdemeanor. 6.
23 Implementation of sections 650.050 to 650.100 shall be subject to future appropriations to keep
24 Missouri's DNA system compatible with the Federal Bureau of Investigation's DNA databank
25 system.

26 7. All DNA records and biological materials retained in the DNA profiling system are
27 considered closed records pursuant to chapter 610. All records containing any information held or
28 maintained by any person or by any agency, department, or political subdivision of the state
29 concerning an individual's DNA profile shall be strictly confidential and shall not be disclosed,
30 except to:

31 (1) Peace officers, as defined in section 590.010, and other employees of law enforcement
32 agencies who need to obtain such records to perform their public duties;

33 (2) The attorney general or any assistant attorneys general acting on his or her behalf, as
34 defined in chapter 27;

35 (3) Prosecuting attorneys or circuit attorneys as defined in chapter 56, and their employees
36 who need to obtain such records to perform their public duties;

37 (4) The individual whose DNA sample has been collected, or his or her attorney; or

38 (5) Associate circuit judges, circuit judges, judges of the courts of appeals, supreme court
39 judges, and their employees who need to obtain such records to perform their public duties.

40 8. Any person who obtains records pursuant to the provisions of this section shall use such
41 records only for investigative and prosecutorial purposes, including but not limited to use at any
42 criminal trial, hearing, or proceeding; or for law enforcement identification purposes, including
43 identification of human remains. Such records shall be considered strictly confidential and shall
44 only be released as authorized by this section.

45 9. (1) An individual may request expungement of his or her DNA sample and DNA profile
46 through the court issuing the reversal or dismissal, or through the court granting an expungement of
47 all official records under section 568.040. A certified copy of the court order establishing that such
48 conviction has been reversed [or], guilty plea has been set aside, or expungement has been granted

1 under section 568.040 shall be sent to the Missouri state highway patrol crime laboratory. Upon
2 receipt of the court order, the laboratory will determine that the requesting individual has no other
3 qualifying offense as a result of any separate plea or conviction and no other qualifying arrest prior
4 to expungement.

5 [(1)] (2) A person whose DNA record or DNA profile has been included in the state DNA
6 database in accordance with this section and sections 650.050, 650.052, and 650.100 may request
7 expungement on the grounds that the conviction has been reversed, [or] the guilty plea on which the
8 authority for including that person's DNA record or DNA profile was based has been set aside, or an
9 expungement of all official records has been granted by the court under section 568.040.

10 [(2)] (3) Upon receipt of a written request for expungement, a certified copy of the final
11 court order reversing the conviction [or], setting aside the plea, or granting an expungement of all
12 official records under section 568.040, and any other information necessary to ascertain the validity
13 of the request, the Missouri state highway patrol crime laboratory shall expunge all DNA records and
14 identifiable information in the state DNA database pertaining to the person and destroy the DNA
15 sample of the person, unless the Missouri state highway patrol determines that the person is
16 otherwise obligated to submit a DNA sample. Within thirty days after the receipt of the court order,
17 the Missouri state highway patrol shall notify the individual that it has expunged his or her DNA
18 sample and DNA profile, or the basis for its determination that the person is otherwise obligated to
19 submit a DNA sample.

20 [(3)] (4) The Missouri state highway patrol is not required to destroy any item of physical
21 evidence obtained from a DNA sample if evidence relating to another person would thereby be
22 destroyed.

23 [(4)] (5) Any identification, warrant, arrest, or evidentiary use of a DNA match derived from
24 the database shall not be excluded or suppressed from evidence, nor shall any conviction be
25 invalidated or reversed or plea set aside due to the failure to expunge or a delay in expunging DNA
26 records.

27 10. When a DNA sample is taken from an individual pursuant to subdivision (2) of
28 subsection 1 of this section and the prosecutor declines prosecution and notifies the arresting agency
29 of that decision, the arresting agency shall notify the Missouri state highway patrol crime laboratory
30 within ninety days of receiving such notification. Within thirty days of being notified by the
31 arresting agency that the prosecutor has declined prosecution, the Missouri state highway patrol
32 crime laboratory shall determine whether the individual has any other qualifying offenses or arrests
33 that would require a DNA sample to be taken and retained. If the individual has no other qualifying
34 offenses or arrests, the crime laboratory shall expunge all DNA records in the database taken at the
35 arrest for which the prosecution was declined pertaining to the person and destroy the DNA sample
36 of such person.

37 11. When a DNA sample is taken of an arrestee for any offense listed under subsection 1 of
38 this section and charges are filed:

39 (1) If the charges are later withdrawn, the prosecutor shall notify the state highway patrol
40 crime laboratory that such charges have been withdrawn;

41 (2) If the case is dismissed, the court shall notify the state highway patrol crime laboratory of
42 such dismissal;

43 (3) If the court finds at the preliminary hearing that there is no probable cause that the
44 defendant committed the offense, the court shall notify the state highway patrol crime laboratory of
45 such finding;

46 (4) If the defendant is found not guilty, the court shall notify the state highway patrol crime
47 laboratory of such verdict.

48 If the state highway patrol crime laboratory receives notice under this subsection, such crime

1 laboratory shall determine, within thirty days, whether the individual has any other qualifying
2 offenses or arrests that would require a DNA sample to be taken. If the individual has no other
3 qualifying arrests or offenses, the crime laboratory shall expunge all DNA records in the database
4 pertaining to such person and destroy the person's DNA sample."; and
5
6 Further amend said bill by amending the title, enacting clause, and intersectional references
7 accordingly.