

SECOND REGULAR SESSION

# HOUSE BILL NO. 2692

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE NEELY.

6751H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 454.1000, 454.1008, 454.1010, 478.1000, RSMo, section 568.040 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 568.040 as enacted by house bill no. 111, ninety-sixth general assembly, first regular session, and to enact in lieu thereof five new sections relating to criminal nonsupport, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

- Section A. Sections 454.1000, 454.1008, 454.1010, 478.1000, RSMo, section 568.040 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 568.040 as enacted by house bill no. 111, ninety-sixth general assembly, first regular session, are repealed and five new sections enacted in lieu thereof, to be known as sections 454.1000, 454.1008, 454.1010, 478.1000, and 568.040, to read as follows:
- 454.1000. As used in sections 454.1000 to 454.1025, the following terms mean:
- (1) "Arrearage", the amount created by a failure to provide:
    - (a) Support to a child pursuant to an administrative or judicial support order; or
    - (b) Support to a spouse if the judgment or order requiring payment of spousal support also requires payment of child support and such spouse is the custodial parent;
  - (2) "Child", a person for whom child support is due pursuant to a support order;
  - (3) "Court", any circuit court of the state that enters a support order or a circuit court in which such order is registered or filed;
  - (4) "Director", the director of the family support division;
  - (5) "Division", the family support division of the department of social services;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 (6) "IV-D case", a case in which support rights are assigned to the state pursuant to  
12 section 208.040 or the division is providing support enforcement services pursuant to section  
13 454.425;

14 (7) "License", a license, certificate, registration or authorization issued by a licensing  
15 authority granting a person a right or privilege to engage in a business, occupation, profession,  
16 recreation or other related privilege that is subject to suspension, revocation, forfeiture or  
17 termination by the licensing authority prior to its date of expiration, except for any license issued  
18 by the department of conservation[. Licenses include licenses to operate motor vehicles pursuant  
19 to chapter 302, but shall not include motor vehicle registrations pursuant to chapter 301] **or a**  
20 **driver's license issued by the department of revenue;**

21 (8) "Licensing authority", any department, except for the department of conservation,  
22 division, board, agency or instrumentality of this state or any political subdivision thereof that  
23 issues a license. Any board or commission assigned to the division of professional registration  
24 is included in the definition of licensing authority;

25 (9) "Obligee":

26 (a) A person to whom payments are required to be made pursuant to a support order; or

27 (b) A public agency of this or any other state which has the right to receive current or  
28 accrued support payments or provides support enforcement services pursuant to this chapter;

29 (10) "Obligor", a person who owes a duty of support;

30 (11) "Order suspending a license", an order issued by a court or the director to suspend  
31 a license. The order shall contain the name of the obligor, date of birth of the obligor, the type  
32 of license and the Social Security number of the obligor;

33 (12) "Payment plan" includes, but is not limited to, a written plan approved by the court  
34 or division that incorporates an income withholding pursuant to sections 452.350 and 454.505  
35 or a similar plan for periodic payment of an arrearage, and current and future support, if  
36 applicable;

37 (13) "Support order", an order providing a determinable amount for temporary or final  
38 periodic payment of support. Such order may include payment of a determinable amount of  
39 insurance, medical or other expenses of the child issued by:

40 (a) A court of this state;

41 (b) A court or administrative agency of competent jurisdiction of another state, an Indian  
42 tribe, or a foreign country; or

43 (c) The director of the division.

454.1008. 1. Upon receipt of an order suspending a license, a licensing authority shall:

2 (1) Determine if the licensing authority has issued a license to the obligor whose name  
3 appears on the order;

4           (2) Enter the suspension as effective from the date of the order issued by the court or  
5 division;

6           (3) Issue the notice of the suspension to the licensee; and

7           (4) If required by law, demand surrender of the suspended license.

8           2. An order issued by a court or the director suspending a license shall be processed by  
9 the licensing authority without any additional review or hearing by such licensing authority.

10          3. Notwithstanding the provisions of any other law regarding the suspension, revocation,  
11 denial, termination or renewal of a license to the contrary, an order issued by a court or the  
12 director suspending a license shall be implemented by the licensing authority and continue until  
13 the court or division advises the licensing authority that such suspension has been stayed or  
14 terminated. The obligor may not appeal the suspension of a license pursuant to sections  
15 454.1000 to 454.1025 pursuant to any other law[, including, but not limited to, section 302.311].  
16 The exclusive procedure for appeal is provided in sections 454.1000 to 454.1025.

17          4. If a license is suspended, any funds paid by the obligor to the licensing authority for  
18 costs related to issuance, renewal or maintenance of a license shall not be refunded to the  
19 obligor.

20          5. Unless acting pursuant to an order of a court or the director which stays the suspension  
21 of a license, an obligor who continues to engage in the business, occupation, profession or other  
22 licensed activity while the license is suspended pursuant to this section is guilty of a class A  
23 misdemeanor, unless a penalty is otherwise provided. The division or the licensing authority  
24 may refer the obligor to the appropriate prosecuting or circuit attorney or the attorney general for  
25 prosecution pursuant to this section in addition to any other remedy provided by law for engaging  
26 in a licensed activity without a license or while a license is suspended.

27          6. The licensing authority shall be exempt from liability to the licensee for activities  
28 conducted pursuant to this section.

29          7. The licensing authority shall not modify, remand, reverse, vacate or stay an order of  
30 the court or director suspending a license.

31          [8. If the license suspended is a driver's license, the obligor shall have no rights pursuant  
32 to section 302.311.]

454.1010. 1. An obligor may, at any time, petition a court or the director for an order  
2 to stay the suspension of a license. Any petition seeking to stay an order of the director shall be  
3 served on the director.

4          2. The court or director may consider the obligor's petition for a stay separately from any  
5 determination on the suspension of a license.

6          3. The court, but not the director, may stay suspension of a license upon a showing that  
7 a suspension or continued suspension of a license would create a significant hardship to the

8 obligor, the obligor's employees, any legal dependents residing in the obligor's household, or  
9 persons, businesses or other entities served by the obligor.

10 4. The court or director may stay suspension of a license upon entry of a payment plan  
11 or receipt of adequate assurance that the obligor shall comply with an existing payment plan.

12 5. A stay shall terminate if:

13 (1) A court determines that the significant hardship circumstance pursuant to subsection  
14 3 of this section has ended;

15 (2) The court or division determines that the obligor has failed to abide by the terms and  
16 conditions of a payment plan; or

17 (3) The order staying suspension of a license has a termination date and such date has  
18 been reached.

19 6. If the licensing authority is notified of an order suspending a license, the court or  
20 division shall send a copy of any order staying or reimposing suspension of the license to the  
21 licensing authority and the obligor by certified mail.

22 7. Upon receipt of an order staying or reimposing suspension of the license, the licensing  
23 authority shall:

24 (1) Enter the information on appropriate records;

25 (2) Issue notice of the action to the licensee; and

26 (3) If required by law, demand surrender of the suspended license or return the reinstated  
27 license.

28 8. No additional action by the licensing authority shall be required to implement a stay  
29 or reinstatement of suspension of a license.

30 9. This section shall be the exclusive remedy for the obligor to obtain an order staying  
31 suspension of a license pursuant to sections 454.1000 to 454.1025. [Any other provisions  
32 providing for the issuance of hardship licenses, including, but not limited to, those provided in  
33 section 302.309, do not apply to suspensions pursuant to sections 454.1000 to 454.1025.

34 10. No person shall be required to file proof of financial responsibility with the  
35 department of revenue as a condition of reinstatement of a driver's license suspended solely  
36 pursuant to the provisions of sections 454.1000 to 454.1025.

37 11. Any person whose license to operate a motor vehicle in this state has been suspended  
38 pursuant to this section shall, before having the license reinstated, pay to the director of revenue  
39 a reinstatement fee of twenty dollars.]

478.1000. 1. Criminal nonsupport courts may be established by any circuit court to  
2 provide an alternative for the criminal justice system to dispose of cases which stem from  
3 criminal nonsupport. A criminal nonsupport court shall combine judicial supervision, substance  
4 abuse treatment, education including general education development certificate (GED) programs,  
5 vocational or employment training, work programs, and support payment plans for criminal

6 nonsupport court participants. Except for good cause found by the court, a criminal nonsupport  
7 court making a referral for education, substance abuse treatment, vocational or employment  
8 training, or work programs, when such program will receive state or federal funds in connection  
9 with such referral, shall refer the person only to a program which is certified by a department of  
10 the state of Missouri, unless no appropriate certified program is located within the same county  
11 as the criminal nonsupport court. Upon successful completion of the education, substance abuse  
12 treatment, vocational or employment training program, work program, or support payment plan,  
13 the defendant becoming gainfully employed, or the defendant commencing payment of current  
14 and accrued support, the charges, petition, or penalty against a criminal nonsupport court  
15 participant may be dismissed, reduced, or modified. Any fees received by a court from a  
16 defendant as payment for education, substance abuse treatment, or training programs shall not  
17 be considered court costs, charges, or fines.

18         2. Each circuit court shall establish conditions for referral of proceedings to the criminal  
19 nonsupport court. The defendant in any criminal proceeding accepted by a criminal nonsupport  
20 court for disposition shall be a nonviolent person, as determined by the prosecuting attorney[,  
21 and shall be subject to the conditions set forth in subsection 6 of section 568.040]. Any  
22 proceeding accepted by the criminal nonsupport court program for disposition shall be upon  
23 agreement of the parties.

24         3. Any report made by the staff of the program shall not be admissible as evidence  
25 against the participant in the underlying criminal nonsupport case. Notwithstanding the  
26 foregoing, termination from the criminal nonsupport court program and the reasons for  
27 termination may be considered in sentencing or disposition.

28         4. Notwithstanding any other provision of law, criminal nonsupport court staff shall be  
29 provided with access to all records of any state or local government agency relevant to the  
30 supervision of any program participant. Upon general request, employees of all such agencies  
31 shall fully inform criminal nonsupport court staff of all matters relevant to the supervision of the  
32 participant. All such records and reports and the contents thereof shall be treated as closed  
33 records and shall not be disclosed to any person outside of the criminal nonsupport court, and  
34 shall be maintained by the court in a confidential file not available to the public.

35         5. In order to coordinate the allocation of resources available to criminal nonsupport  
36 courts throughout the state, there is hereby established a "Criminal Nonsupport Courts  
37 Coordinating Commission" in the judicial department. The criminal nonsupport courts  
38 coordinating commission shall consist of one member selected by the director of the department  
39 of corrections; one member selected by the director of the department of social services; one  
40 member selected by the director of the department of education; one member selected by the  
41 director of the department of public safety; one member selected by the state courts  
42 administrator; one member selected by the director of the department of labor and industrial

43 relations; three members selected by the Missouri supreme court, one being a criminal defense  
44 attorney; and one member who is a prosecuting attorney selected by the office of prosecution  
45 services. The Missouri supreme court shall designate the chair of the commission. The  
46 commission shall periodically meet at the call of the chair; evaluate resources available for  
47 assessment and training of persons assigned to criminal nonsupport courts or for operation of  
48 criminal nonsupport courts; secure grants, funds, and other property and services necessary or  
49 desirable to facilitate criminal nonsupport court operation; and allocate such resources among  
50 the various criminal nonsupport courts operating within the state.

51 6. There is hereby established in the state treasury a "Criminal Nonsupport Court  
52 Resources Fund", which shall be administered by the criminal nonsupport courts coordinating  
53 commission. Funds available for allocation or distribution by the criminal nonsupport courts  
54 coordinating commission may be deposited into the criminal nonsupport court resources fund.  
55 The state treasurer shall be the custodian of the fund and may approve disbursements from the  
56 fund in accordance with sections 30.170 and 30.180. Notwithstanding the provisions of section  
57 33.080, moneys in the criminal nonsupport court resources fund shall not be transferred or placed  
58 to the credit of the general revenue fund of the state at the end of each biennium, but shall remain  
59 deposited to the credit of the criminal nonsupport court resources fund.

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

5 2. For purposes of this section:

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

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

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

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

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

19 4. The defendant shall have the burden of injecting the issues raised by subdivision (4)  
20 of subsection 2 and subsection 3 of this section.

21           5. The offense of criminal nonsupport is a class A misdemeanor[, unless the total  
22 arrearage is in excess of an aggregate of twelve monthly payments due under any order of  
23 support issued by any court of competent jurisdiction or any authorized administrative agency,  
24 in which case it is a class E felony]. **Any person found guilty under this section shall not  
25 receive jail time as part of his or her sentence; however, the court may order the offender  
26 to perform community service under the supervision of the court for a violation under this  
27 section.**

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

41           7. During any period that a nonviolent offender is incarcerated for criminal nonsupport,  
42 if the offender is ready, willing, and able to be gainfully employed during said period of  
43 incarceration, the offender, if he or she meets the criteria established by the department of  
44 corrections, may be placed on work release to allow the offender to satisfy his or her obligation  
45 to pay support. Arrearages shall be satisfied as outlined in the collection agreement.

46           8. Beginning August 28, 2009, every nonviolent first- and second-time offender then  
47 incarcerated for criminal nonsupport, who has not been previously placed on probation or parole  
48 for conviction of criminal nonsupport, may be considered for parole, under the conditions set  
49 forth in subsection 6 of this section, or work release, under the conditions set forth in subsection  
50 7 of this section.

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

57 [10.] 7. Persons accused of committing the offense of nonsupport of the child shall be  
58 prosecuted:

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

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

568.040. 1. A person commits the crime of nonsupport if such person knowingly fails  
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17 section. A person who raises such affirmative defense has the burden of proving the defense by  
18 a preponderance of the evidence.

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

21 5. Criminal nonsupport is a class A misdemeanor[, unless the total arrearage is in excess  
22 of an aggregate of twelve monthly payments due under any order of support issued by any court  
23 of competent jurisdiction or any authorized administrative agency, in which case it is a class D  
24 felony]. **Any person found guilty under this section shall not receive jail time as part of his  
25 or her sentence; however, the court may order the offender to perform community service  
26 under the supervision of the court for a violation under this section.**

27 6. [If at any time a defendant convicted of criminal nonsupport is placed on probation  
28 or parole, there may be ordered as a condition of probation or parole that the defendant  
29 commence payment of current support as well as satisfy the arrearages. Arrearages may be  
30 satisfied first by making such lump sum payment as the defendant is capable of paying, if any,



31 as may be shown after examination of defendant's financial resources or assets, both real,  
32 personal, and mixed, and second by making periodic payments. Periodic payments toward  
33 satisfaction of arrears when added to current payments due may be in such aggregate sums as is  
34 not greater than fifty percent of the defendant's adjusted gross income after deduction of payroll  
35 taxes, medical insurance that also covers a dependent spouse or children, and any other court-  
36 or administrative-ordered support, only. If the defendant fails to pay the current support and  
37 arrearages as ordered, the court may revoke probation or parole and then impose an appropriate  
38 sentence within the range for the class of offense that the defendant was convicted of as provided  
39 by law, unless the defendant proves good cause for the failure to pay as required under  
40 subsection 3 of this section.

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

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