

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 34, Page 13,
2 Section 566.010, Line 40, by inserting immediately after said section and line the following:

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

9 2. For purposes of this section:

10 (1) "Arrearage":

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

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

16 (c) Both paragraphs (a) and (b).
17

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

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

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

28 [(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

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

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

34 4. The defendant shall have the burden of injecting the issues raised by subdivision [(4)] (5)
35 of subsection 2 of this section.

36 5. The offense of criminal nonsupport is a class A misdemeanor, unless the total arrearage is

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1 in excess of an aggregate of ~~[twelve]~~ twenty-four monthly payments due under any order of support
 2 issued by any court of competent jurisdiction or any authorized administrative agency, in which case
 3 it is a class E felony.

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

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

19 (3) (a) An individual whose children were the subject of a child support order and the
 20 obligation of such individual to make child support payments has been terminated under subsection
 21 3 of section 452.340, who has pled guilty to or has been convicted of a felony offense for criminal
 22 nonsupport under this section, and who has successfully completed probation after a plea of guilty
 23 or was sentence may petition the court for expungement of all official records all recordings of his
 24 or her arrest, plea, trial, or conviction. If the court determines after hearing that such person:

25 a. Has not been convicted of any subsequent offense, unless such offense is eligible for
 26 expungement under a different section;

27 b. Does not have any other felony pleas of guilt, findings of guilt, or convictions, unless
 28 such felony pleas of guilt, findings of guilt, or convictions are eligible for expungement under a
 29 different section;

30 c. Has paid off all arrearages; and

31 d. Has no administrative child support actions pending at the time of the hearing on the
 32 application for expungement with respect to all children subject to orders of payment of child
 33 support

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

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

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

48 (d) A person shall only be entitled to one expungement under this section. Nothing in this

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

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

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

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

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

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

25 (2) In any county in which the defendant resided during the period of time for which the
 26 defendant is charged."; and
 27

28 Further amend said bill, Page 24, Section 595.045, Line 118, by inserting immediately after said
 29 section and line the following:
 30

31 "610.145. 1. (1) If a person is named in a charge for an infraction or offense, whether a
 32 misdemeanor or a felony, as a result of another person using the identifying information of the
 33 named person or mistaken identity and a finding of not guilty is entered, or the conviction is set
 34 aside, the named person may apply by petition or written motion to the court where the charge was
 35 last pending on a form approved by the office of state courts administrator and supplied by the clerk
 36 of the court for an order to expunge from all official records any entries relating to the person's
 37 apprehension, charge, or trial. The court, after providing notice to the prosecuting attorney, shall
 38 hold a hearing on the motion or petition and, upon finding that the person's identity was used
 39 without permission and the charges were dismissed or the person was found not guilty, the court
 40 shall order the expungement.

41 (2) If any person is named in a charge for an infraction or offense, whether a misdemeanor
 42 or a felony, as a result of another person using the identifying information of the named person or
 43 mistaken identity, and the charge against the named person is dismissed, the prosecutor or other
 44 judicial officer who ordered the dismissal shall provide notice to the court of the dismissal, and the
 45 court shall order the expungement of all official records containing any entries relating to the
 46 person's apprehension, charge, or trial.

47 2. No person as to whom such an order has been entered under this section shall be held
 48 thereafter under any provision of law to be guilty of perjury or to be guilty of otherwise giving a

1 false statement or response to any inquiry made for any purpose, by reason of the person's failure to
 2 recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

3 3. The court shall also order that such entries shall be expunged from the records of the
 4 court and direct all law enforcement agencies, the department of corrections, the department of
 5 revenue, or any other state or local government agency identified by the petitioner, or the person
 6 eligible for automatic expungement under subdivision (2) of subsection 1 of this section, as bearing
 7 record of the same to expunge their records of the entries. The clerk shall notify state and local
 8 agencies of the court's order. The costs of expunging the records, as provided in this chapter, shall
 9 not be taxed against the person eligible for expungement under this section.

10 4. The department of revenue shall expunge from its records entries made as a result of the
 11 charge or conviction ordered expunged under this section. The department of revenue shall also
 12 reverse any administrative actions taken against a person whose record is expunged under this
 13 section as a result of the charges or convictions expunged, including the assessment of the driver's
 14 license points and driver's license suspension or revocation. Notwithstanding any other provision of
 15 this chapter, the department of revenue shall provide to the person whose motor vehicle record is
 16 expunged under this section a certified corrected driver history at no cost and shall reinstate at no
 17 cost any driver's license suspended or revoked as a result of a charge or conviction expunged under
 18 this section.

19 5. The department of corrections and any other applicable state or local government agency
 20 shall expunge its records. The agency shall also reverse any administrative actions taken against a
 21 person whose record is expunged under this section as a result of the charges or convictions being
 22 expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a
 23 license or privilege resulting under this section shall be waived.

24 6. Any insurance company that charged any additional premium based on insurance points
 25 assessed against a policyholder as a result of a charge or conviction that was expunged under this
 26 section shall refund such additional premiums to the policyholder upon notification of the
 27 expungement.

28 7. For purposes of this section, the term "mistaken identity" means the erroneous arrest of a
 29 person for an offense as a result of misidentification by a witness or law enforcement, confusion on
 30 the part of a witness or law enforcement as to the identity of the person who committed the offense,
 31 misinformation provided to law enforcement as to the identity of the person who committed the
 32 offense, or some other mistake on the part of a witness or law enforcement as to the identity of the
 33 person who committed the offense.

34 650.055. 1. Every individual who:

- 35 (1) Is found guilty of a felony or any offense under chapter 566; or
- 36 (2) Is seventeen years of age or older and arrested for burglary in the first degree under
- 37 section 569.160, or burglary in the second degree under section 569.170, or a felony offense under
- 38 chapter 565, 566, 567, 568, or 573; or
- 39 (3) Has been determined to be a sexually violent predator pursuant to sections 632.480 to
- 40 632.513; or
- 41 (4) Is an individual required to register as a sexual offender under sections 589.400 to
- 42 589.425;

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

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

- 47 (1) Upon booking at a county jail or detention facility; or
- 48

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

3 (3) Upon entering or before release from a county jail or detention facility, state correctional
4 facility, or any other detention facility or institution, whether operated by a private, local, or state
5 agency, or any mental health facility if committed as a sexually violent predator pursuant to sections
6 632.480 to 632.513; or

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

12 (5) If such individual is under the jurisdiction of the department of corrections. Such
13 jurisdiction includes persons currently incarcerated, persons on probation, as defined in section
14 217.650, and on parole, as also defined in section 217.650; or

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

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

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

32 5. Unauthorized use or dissemination of individually identifiable DNA information in a
33 database for purposes other than criminal justice or law enforcement is a class A misdemeanor.

34 6. Implementation of sections 650.050 to 650.100 shall be subject to future appropriations
35 to keep Missouri's DNA system compatible with the Federal Bureau of Investigation's DNA
36 databank system.

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

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

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

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

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

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

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

8 9. (1) An individual may request expungement of his or her DNA sample and DNA profile
9 through the court issuing the reversal or dismissal, or through the court granting an expungement of
10 all official records under section 568.040. A certified copy of the court order establishing that such
11 conviction has been reversed [or], guilty plea has been set aside, or expungement has been granted
12 under section 568.040 shall be sent to the Missouri state highway patrol crime laboratory. Upon
13 receipt of the court order, the laboratory will determine that the requesting individual has no other
14 qualifying offense as a result of any separate plea or conviction and no other qualifying arrest prior
15 to expungement.

16 [(4)] (2) A person whose DNA record or DNA profile has been included in the state DNA
17 database in accordance with this section and sections 650.050, 650.052, and 650.100 may request
18 expungement on the grounds that the conviction has been reversed, [or] the guilty plea on which the
19 authority for including that person's DNA record or DNA profile was based has been set aside, or an
20 expungement of all official records has been granted by the court under section 568.040.

21 [(2)] (3) Upon receipt of a written request for expungement, a certified copy of the final
22 court order reversing the conviction [or], setting aside the plea, or granting an expungement of all
23 official records under section 568.040, and any other information necessary to ascertain the validity
24 of the request, the Missouri state highway patrol crime laboratory shall expunge all DNA records
25 and identifiable information in the state DNA database pertaining to the person and destroy the
26 DNA sample of the person, unless the Missouri state highway patrol determines that the person is
27 otherwise obligated to submit a DNA sample. Within thirty days after the receipt of the court order,
28 the Missouri state highway patrol shall notify the individual that it has expunged his or her DNA
29 sample and DNA profile, or the basis for its determination that the person is otherwise obligated to
30 submit a DNA sample.

31 [(3)] (4) The Missouri state highway patrol is not required to destroy any item of physical
32 evidence obtained from a DNA sample if evidence relating to another person would thereby be
33 destroyed.

34 [(4)] (5) Any identification, warrant, arrest, or evidentiary use of a DNA match derived
35 from the database shall not be excluded or suppressed from evidence, nor shall any conviction be
36 invalidated or reversed or plea set aside due to the failure to expunge or a delay in expunging DNA
37 records.

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

48 11. When a DNA sample is taken of an arrestee for any offense listed under subsection 1 of

1 this section and charges are filed:

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

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

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

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

11 If the state highway patrol crime laboratory receives notice under this subsection, such crime
12 laboratory shall determine, within thirty days, whether the individual has any other qualifying
13 offenses or arrests that would require a DNA sample to be taken. If the individual has no other
14 qualifying arrests or offenses, the crime laboratory shall expunge all DNA records in the database
15 pertaining to such person and destroy the person's DNA sample."; and

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