

Part 2 Nonsupport and Sale of Children

76-7-201 Criminal nonsupport.

- (1) A person commits criminal nonsupport if, having a spouse, a child, or children under the age of 18 years, he knowingly fails to provide for the support of the spouse, child, or children when any one of them:
 - (a) is in needy circumstances; or
 - (b) would be in needy circumstances but for support received from a source other than the defendant or paid on the defendant's behalf.
- (2) Except as provided in Subsection (3), criminal nonsupport is a class A misdemeanor.
- (3) Criminal nonsupport is a felony of the third degree if the actor:
 - (a) has been convicted one or more times of nonsupport, whether in this state, any other state, or any court of the United States;
 - (b) committed the offense while residing outside of Utah; or
 - (c) commits the crime of nonsupport in each of 18 individual months within any 24-month period, or the total arrearage is in excess of \$10,000.
- (4) For purposes of this section "child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.
- (5)
 - (a) In a prosecution for criminal nonsupport under this section, it is an affirmative defense that the accused is unable to provide support. Voluntary unemployment or underemployment by the defendant does not give rise to that defense.
 - (b) Not less than 20 days before trial the defendant shall file and serve on the prosecuting attorney a notice, in writing, of his intention to claim the affirmative defense of inability to provide support. The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses who the defendant proposes to examine in order to establish the defense.
 - (c) Not more than 10 days after receipt of the notice described in Subsection (5)(b), or at such other time as the court may direct, the prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses who the state proposes to examine in order to contradict or rebut the defendant's claim.
 - (d) Failure to comply with the requirements of Subsection (5)(b) or (5)(c) entitles the opposing party to a continuance to allow for preparation. If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

Amended by Chapter 89, 1999 General Session

76-7-202 Orders for support in criminal nonsupport proceedings.

- (1) In any proceeding under Section 76-7-201, the court may, instead of imposing the punishments otherwise prescribed, issue an order directing the defendant to periodically pay a sum to the Office of Recovery Services, or otherwise as the court may direct, to be used for the support of the dependents who are the subject of the proceeding under Section 76-7-201.
- (2) The order to periodically pay a sum for the support of the dependents:
 - (a) may be issued with the consent of the defendant prior to trial, or after conviction, having regard to the circumstances, financial ability, and earning capacity of the defendant;
 - (b) shall be subject to change from time to time as circumstances may require;

- (c) may not require payments for a period exceeding the term of probation provided for the offense with which the defendant is charged, or of which he is found guilty; and
 - (d) shall be conditioned upon the defendant either entering a recognizance in accordance with Subsection (3), or providing security in a sum as the court directs.
- (3) The condition of recognizance shall require the defendant to:
- (a) make personal appearance in court whenever ordered to do so within the period of probation; and
 - (b) comply with the terms of the order and any subsequent modifications of the order.
- (4) If the court is satisfied by information and due proof under oath that at any time during the period of probation the defendant has violated the terms of the order, it may proceed with the trial of defendant under the original charge or sentence him under the original conviction or enforce the original sentence as the case may be. In the case of forfeiture of bail or bond in any proceeding under Section 76-7-201, the sum recovered may, in the discretion of the court, be paid in whole or in part to the Office of Recovery Services, or otherwise as the court may direct, to be used for the support of the dependents involved.

Amended by Chapter 289, 1995 General Session

76-7-203 Sale of child -- Felony -- Payment of adoption related expenses.

- (1) For purposes of this section:
- (a) "Adoption related expenses" means expenses that:
 - (i) are reasonably related to the adoption of a child;
 - (ii) are incurred for a reasonable amount; and
 - (iii) may include expenses:
 - (A) of the mother or father of the child being adopted, including:
 - (I) legal expenses;
 - (II) maternity expenses;
 - (III) medical expenses;
 - (IV) hospital expenses;
 - (V) counseling expenses;
 - (VI) temporary living expenses during the pregnancy or confinement of the mother; or
 - (VII) expenses for travel between the mother's or father's home and the location where the child will be born or placed for adoption;
 - (B) of a directly affected person for:
 - (I) travel between the directly affected person's home and the location where the child will be born or placed for adoption; or
 - (II) temporary living expenses during the pregnancy or confinement of the mother; or
 - (C) other than those included in Subsection (1)(a)(iii)(A) or (B), that are not made for the purpose of inducing the mother, parent, or legal guardian of a child to:
 - (I) place the child for adoption;
 - (II) consent to an adoption; or
 - (III) cooperate in the completion of an adoption.
 - (b) "Directly affected person" means a person who is:
 - (i) a parent or guardian of a minor when the minor is the mother or father of the child being adopted;
 - (ii) a dependant of:
 - (A) the mother or father of the child being adopted; or
 - (B) the parent or guardian described in Subsection (1)(b)(i); or

- (iii) the spouse of the mother or father of the child being adopted.
- (2) Except as provided in Subsection (3), a person is guilty of a third degree felony if the person:
 - (a) while having custody, care, control, or possession of a child, sells, or disposes of the child, or attempts or offers to sell or dispose of the child, for and in consideration of the payment of money or another thing of value; or
 - (b) offers, gives, or attempts to give money or another thing of value to a person, with the intent to induce or encourage a person to violate Subsection (2)(a).
- (3) A person does not violate this section by paying or receiving payment for adoption related expenses, if:
 - (a) the expenses are paid as an act of charity; and
 - (b) the payment is not made for the purpose of inducing the mother, parent, or legal guardian of a child to:
 - (i) place the child for adoption;
 - (ii) consent to an adoption; or
 - (iii) cooperate in the completion of an adoption.

Amended by Chapter 137, 2008 General Session