

CRIMINAL NONSUPPORT AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Karen W. Morgan

AN ACT RELATING TO CRIMINAL CODE; MODIFYING CRIME OF CRIMINAL NONSUPPORT TO EXPAND THE BASES FOR ENHANCEMENT OF THE OFFENSE TO A THIRD DEGREE FELONY AND CLARIFYING THAT IT IS NO DEFENSE THAT THE PERSON TO BE SUPPORTED IS NOT NEEDY BECAUSE THAT PERSON IS RECEIVING SUPPORT FROM ANOTHER SOURCE OR PAID ON DEFENDANT'S BEHALF.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-7-201, as last amended by Chapter 289, Laws of Utah 1995

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-7-201** is amended to read:

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; [or]

(b) committed the offense while residing [in another state] 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) In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.]~~

~~[(6)] (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 ten 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.