

CRIMINAL NONSUPPORT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to the crime of criminal nonsupport.

Highlighted Provisions:

This bill:

- ▶ modifies the monetary limits for criminal nonsupport;
- ▶ makes it a third degree felony if the total arrearage is between \$5,000 and \$15,000;
- ▶ makes it a second degree felony if the total arrearage is more than \$15,000; and
- ▶ affirms that criminal nonsupport is a continuing offense.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-7-201, as last amended by Laws of Utah 1999, Chapter 89

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~~] An individual commits criminal nonsupport if, having a spouse, a child,



28 or children under the age of 18 years, ~~[he]~~ the individual knowingly fails to provide for the
29 support of the spouse, child, or children when any one of them:

30 (a) is in needy circumstances; or

31 (b) would be in needy circumstances but for support received from a source other than
32 the defendant or paid on the defendant's behalf.

33 (2) Except as provided in ~~[Subsection]~~ Subsections (3) and (4), criminal nonsupport is
34 a class A misdemeanor.

35 (3) Criminal nonsupport is a felony of the third degree if the actor:

36 ~~[(a) has been convicted one or more times of nonsupport, whether in this state, any
37 other state, or any court of the United States;]~~

38 ~~[(b)]~~ (a) committed the offense while residing outside of Utah; ~~[or]~~

39 ~~[(c)]~~ (b) commits the crime of nonsupport in each of 18 individual months within any
40 24-month period~~[;]~~; or

41 (c) the total arrearage is ~~[in excess of \$10,000]~~ or exceeds \$5,000 but is not more than
42 \$15,000.

43 (4) Criminal nonsupport is a felony of the second degree if the individual:

44 (a) has been convicted of or pled guilty or nolo contendere one or more times to
45 nonsupport, whether in this state, any other state, or any court of the United States; or

46 (b) the total arrearage is or exceeds \$15,000.

47 (5) Criminal nonsupport is a continuing offense.

48 ~~[(4)]~~ (6) For purposes of this section "child" includes a child born out of wedlock
49 whose paternity has been admitted by the ~~[actor]~~ individual or has been established in a civil
50 suit.

51 ~~[(5)]~~ (7) (a) In a prosecution for criminal nonsupport under this section, it is an
52 affirmative defense that the accused is unable to provide support. Voluntary unemployment or
53 underemployment by the defendant does not give rise to that defense.

54 (b) Not less than 20 days before trial the defendant shall file and serve on the
55 prosecuting attorney a notice, in writing, of ~~[his]~~ the defendant's intention to claim the
56 affirmative defense of inability to provide support. The notice shall specifically identify the
57 factual basis for the defense and the names and addresses of the witnesses who the defendant
58 proposes to examine in order to establish the defense.

59 (c) Not more than 10 days after receipt of the notice described in Subsection [~~(5)~~
60 (7)(b), or at [~~such~~] any other time as the court may direct, the prosecuting attorney shall file and
61 serve the defendant with a notice containing the names and addresses of the witnesses who the
62 state proposes to examine in order to contradict or rebut the defendant's claim.

63 (d) Failure to comply with the requirements of Subsection [~~(5)~~] (7)(b) or [~~(5)~~] (c)
64 entitles the opposing party to a continuance to allow for preparation. If the court finds that a
65 party's failure to comply is the result of bad faith, it may impose appropriate sanctions.