

HOUSE BILL NO. 546  
INTRODUCED BY P. WAGMAN

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING FROM 2 YEARS TO 10 YEARS THE MAXIMUM INCARCERATION FOR THE OFFENSE OF FAILURE TO PROVIDE SUPPORT FOR 6 MONTHS OR FAILURE TO PROVIDE SUPPORT IN A CUMULATIVE AMOUNT EQUAL TO OR IN EXCESS OF 6 MONTHS' SUPPORT; PROVIDING THAT A COURT SHALL GIVE PRIORITY TO A PROCEEDING FOR ENFORCEMENT OF A SUPPORT ORDER ISSUED PURSUANT TO A DISSOLUTION OF MARRIAGE; AND AMENDING SECTION 45-5-621, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Priority of proceeding to enforce child support.** A proceeding for the enforcement of child support ordered under this part must be given priority on the court's calendar.

**Section 2.** Section 45-5-621, MCA, is amended to read:

**"45-5-621. Nonsupport.** (1) A person commits the offense of nonsupport if the person fails to provide support that the person can provide and that the person knows the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if the person has:

(i) left the state without making reasonable provisions for the support of a spouse, child, or other dependent; or

(ii) been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure a person's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed ~~2~~ 10 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty or nolo contendere, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of ~~2 years or, in the case of aggravated nonsupport, for a period of~~ 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) is forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the offender to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the offender has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the offender.

(12) When a payment of public assistance money has been made for the benefit of a child by the department of public health and human services under the provisions of Title 53, a representative of the department may sign a criminal complaint against the person obligated by law to support the child who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The offender, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the offender's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject an offender referred by the sentencing court."

**NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, apply to [section 1].

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