

**SUBSTITUTE FOR
HOUSE BILL NO. 5369**

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 165 (MCL 750.165), as amended by 1999 PA
152.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 165. (1) If the court orders an individual to pay
2 support for the individual's former or current spouse, or for a
3 child of the individual, and the individual does not pay the
4 support in the amount or at the time stated in the order, the
5 individual is guilty of ~~a felony punishable by imprisonment for~~
6 ~~not more than 4 years or by a fine of not more than \$2,000.00, or~~
7 ~~both~~ **criminal nonsupport.**
8 (2) If any of the following apply, the individual is guilty
9 of a felony punishable by imprisonment for not more than 10 years
10 or a fine of not more than \$15,000.00 or 3 times the unpaid

1 support, whichever is greater, or both imprisonment and a fine:

2 (a) The amount of unpaid support is \$20,000.00 or more prior
3 to the time that the individual has petitioned for and had a
4 final determination on a petition to modify or reduce the support
5 ordered.

6 (b) The individual has failed to pay the support ordered by
7 the court for more than 5 years.

8 (c) The individual violates subsection (3)(a) and has 2 or
9 more prior convictions for committing or attempting to commit an
10 offense under this section. For purposes of this subdivision,
11 however, a prior conviction does not include a conviction for a
12 violation or attempted violation of subsection (4)(b).

13 (3) If any of the following apply, the individual is guilty
14 of a felony punishable by imprisonment for not more than 5 years
15 or a fine of not more than \$10,000.00 or 3 times the unpaid
16 support, whichever is greater, or both imprisonment and a fine:

17 (a) The amount of unpaid support is \$3,000.00 or more but
18 less than \$20,000.00 prior to the time that the individual has
19 petitioned for and had a final determination on a petition to
20 modify or reduce the support ordered.

21 (b) The individual has failed to pay the support ordered by
22 the court for more than 3 years.

23 (c) The individual violates subsection (4)(a) and has 1 or
24 more prior convictions for committing or attempting to commit an
25 offense under this section. For purposes of this subdivision,
26 however, a prior conviction does not include a conviction for a
27 violation or attempted violation of subsection (4)(b).

1 (4) If any of the following apply, the individual is guilty
2 of a misdemeanor punishable by imprisonment for not more than 1
3 year or a fine of not more than \$2,000.00 or 3 times the unpaid
4 support, whichever is greater, or both imprisonment and a fine:

5 (a) The amount of unpaid support is less than \$3,000.00 prior
6 to the time that the individual has petitioned for and had a
7 final determination on a petition to modify or reduce the support
8 ordered.

9 (b) The individual has failed to pay the support ordered by
10 the court for more than 90 days.

11 (5) If the prosecuting attorney intends to seek an enhanced
12 sentence based upon the defendant having 1 or more prior
13 convictions, the prosecuting attorney shall include on the
14 complaint and information a statement listing the prior
15 conviction or convictions. The existence of the defendant's
16 prior conviction or convictions shall be determined by the court,
17 without a jury, at sentencing or at a separate hearing for that
18 purpose before sentencing. The existence of a prior conviction
19 may be established by any evidence relevant for that purpose,
20 including, but not limited to, 1 or more of the following:

21 (a) A certified copy of the judgment of conviction.

22 (b) A transcript of a prior trial, plea-taking, or
23 sentencing.

24 (c) Information contained in a presentence report.

25 (d) The defendant's statement.

26 (6) If the sentence for a conviction under this section is
27 enhanced by 1 or more prior convictions, those prior convictions

1 shall not be used to further enhance the sentence for the
2 conviction under section 10, 11, or 12 of chapter IX of the code
3 of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and
4 769.12.

5 (7) ~~-(2)-~~ This section ~~does not apply unless~~ **applies if any**
6 **of the following apply to** the individual ordered to pay support
7 ~~appeared in, or received notice by personal service of, in~~ the
8 action in which the support order was issued: ~~—~~

9 (a) **The individual was apprehended on a bench warrant.**

10 (b) **The individual appeared at a show cause hearing.**

11 (c) **The individual made any voluntary or involuntary child**
12 **support payment.**

13 (d) **The individual responded to a pleading.**

14 (e) **The individual objected to any child support enforcement**
15 **action.**

16 (f) **The individual received notice by personal service or**
17 **certified mail.**

18 (8) ~~-(3)-~~ The court may suspend the sentence of an individual
19 convicted under this section if the individual files with the
20 court a bond in the amount and with the sureties the court
21 requires. At a minimum, the bond must be conditioned on the
22 individual's compliance with the support order. If the court
23 suspends a sentence under this subsection and the individual does
24 not comply with the support order or another condition on the
25 bond, the court may order the individual to appear and show cause
26 why the court should not impose the sentence and enforce the
27 bond. After the hearing, the court may enforce the bond or

1 impose the sentence, or both, or may permit the filing of a new
2 bond and again suspend the sentence. The court shall order a
3 support amount enforced under this section to be paid to the
4 clerk or friend of the court or to the state disbursement unit.

5 **(9)** ~~-(4)-~~ As used in this section, "state disbursement unit"
6 or "SDU" means the entity established in section 6 of the office
7 of child support act, 1971 PA 174, MCL 400.236.