

# HOUSE BILL No. 5369

December 11, 2003, Introduced by Reps. Robertson, Amos, Voorhees, Milosch, LaJoy, Pastor, Casperson, Howell, Hummel, Brandenburg, Emmons, Woronchak, Nitz, Gaffney, Huizenga, Vander Veen, Farhat and Taub and referred to the Committee on Judiciary.

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.

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

5 (c) The individual violates subsection (3)(a) and has 2 or  
6 more prior convictions for committing or attempting to commit an  
7 offense under this section. For purposes of this subdivision,  
8 however, a prior conviction does not include a conviction for a  
9 violation or attempted violation of subsection (4)(b) or (5).

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

14 (a) The amount of unpaid support is \$1,000.00 or more but  
15 less than \$20,000.00.

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

18 (c) The individual violates subsection (4)(a) and has 1 or  
19 more prior convictions for committing or attempting to commit an  
20 offense under this section. For purposes of this subdivision,  
21 however, a prior conviction does not include a conviction for a  
22 violation or attempted violation of subsection (4)(b) or (5).

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

27 (a) The amount of unpaid support is less than \$1,000.00.

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

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

13 (a) A copy of the judgment of conviction.

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

16 (c) Information contained in a presentence report.

17 (d) The defendant's statement.

18 (6) If the sentence for a conviction under this section is  
19 enhanced by 1 or more prior convictions, those prior convictions  
20 shall not be used to further enhance the sentence for the  
21 conviction under section 10, 11, or 12 of chapter IX of the code  
22 of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and  
23 769.12.

24 (7) ~~-(2)-~~ This section does not apply unless the individual  
25 ordered to pay support appeared in, or received notice by  
26 personal service of, the action in which the support order was  
27 issued.

1           **(8)** ~~-(3)-~~ The court may suspend the sentence of an individual  
2 convicted under this section if the individual files with the  
3 court a bond in the amount and with the sureties the court  
4 requires. At a minimum, the bond must be conditioned on the  
5 individual's compliance with the support order. If the court  
6 suspends a sentence under this subsection and the individual does  
7 not comply with the support order or another condition on the  
8 bond, the court may order the individual to appear and show cause  
9 why the court should not impose the sentence and enforce the  
10 bond. After the hearing, the court may enforce the bond or  
11 impose the sentence, or both, or may permit the filing of a new  
12 bond and again suspend the sentence. The court shall order a  
13 support amount enforced under this section to be paid to the  
14 clerk or friend of the court or to the state disbursement unit.

15           **(9)** ~~-(4)-~~ As used in this section, "state disbursement unit"  
16 or "SDU" means the entity established in section 6 of the office  
17 of child support act, 1971 PA 174, MCL 400.236.