S T A T E O F N E W Y O R K

5086

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. LEIBELL -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, the criminal procedure law, the family court act and the penal law, in relation to making it a criminal offense to violate a support order in certain situations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 111-b of the social services law is amended by adding a new subdivision 15-a to read as follows:

15-A. WHEN A SUPPORT OBLIGOR WHO IS OR WAS UNDER A COURT ORDER TO PAY CHILD SUPPORT OR COMBINED CHILD AND SPOUSAL SUPPORT TO A SUPPORT COLLECTION UNIT ON BEHALF OF PERSONS RECEIVING SERVICES UNDER THIS TITLE HAS ACCUMULATED SUPPORT ARREARS EQUIVALENT TO OR GREATER THAN THE AMOUNT OF SUPPORT DUE PURSUANT TO SUCH ORDER FOR A PERIOD OF FOUR MONTHS, THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL NOTIFY THE DISTRICT ATTORNEY IN THE COUNTY WHERE THE COURT ORDER OF SUPPORT WAS ENTERED OF THE SUPPORT OBLIGOR'S FAILURE TO FULLY PAY THE SUPPORT ARREARS. UPON SUCH NOTIFICATION, THE DISTRICT ATTORNEY IS AUTHORIZED TO COMMENCE AN ACTION AGAINST THE SUPPORT OBLIGOR PURSUANT TO SECTIONS 260.36 AND 260.38 OF THE PENAL LAW. FOR PURPOSES OF DETERMINING WHETHER A SUPPORT OBLIGOR HAS ACCUMULATED SUPPORT ARREARS EQUIVALENT TO OR GREATER THAN THE AMOUNT OF SUPPORT DUE FOR A PERIOD OF FOUR MONTHS, THE AMOUNT OF ANY RETROACTIVE SUPPORT, OTHER THAN PERIODIC PAYMENTS OF RETROACTIVE SUPPORT WHICH ARE PAST DUE, SHALL NOT BE INCLUDED IN THE CALCULATION OF SUPPORT ARREARS PURSUANT TO THIS SECTION; HOWEVER, IF AT LEAST FOUR MONTHS OF SUPPORT ARREARS HAVE ACCUMULATED SUBSEQUENT TO THE DATE OF THE COURT ORDER, THE ENTIRE AMOUNT OF ANY RETROACTIVE SUPPORT MAY BE COLLECTED PURSUANT TO THE PROVISIONS OF THIS SECTION OR AS OTHERWISE AUTHORIZED BY LAW.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 2. The opening paragraph of subdivision 1 of section 530.11 of the criminal procedure law, as amended by chapter 326 of the laws of 2008, is amended to read as follows:

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, assault in the second degree, assault in the third degree [or], VIOLATING A SUPPORT ORDER IN THE SECOND DEGREE, OR VIOLATING A SUPPORT ORDER IN THE FIRST DEGREE, an attempted assault between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. For purposes of this section, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:

S 3. The opening paragraph of subdivision 1 of section 812 of the family court act, as amended by chapter 326 of the laws of 2008, is amended to read as follows:

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, assault in the second degree, assault in the third degree [or], VIOLATING A SUPPORT ORDER IN THE SECOND DEGREE, OR VIOLATING A SUPPORT ORDER IN THE FIRST DEGREE, an attempted assault between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

S 4. The penal law is amended by adding two new sections 260.36 and 260.38 to read as follows:

S 260.36 VIOLATING A SUPPORT ORDER IN THE SECOND DEGREE.

A PERSON IS GUILTY OF VIOLATING A SUPPORT ORDER IN THE SECOND DEGREE WHEN, BEING ORDERED TO PAY SUPPORT, HE OR SHE FAILS OR REFUSES, WITHOUT LAWFUL EXCUSE, TO PAY SUPPORT UNDER A SUPPORT OBLIGATION:

1. FOR A PERIOD LONGER THAN ONE YEAR;

2. IN AN AMOUNT GREATER THAN FIVE THOUSAND DOLLARS;

3. IN A MANNER SPECIFIED BY SUBDIVISION FIFTEEN-A OF SECTION ONE HUNDRED ELEVEN-B OF THE SOCIAL SERVICES LAW.

VIOLATING A SUPPORT ORDER IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 260.38 VIOLATING A SUPPORT ORDER IN THE FIRST DEGREE.

A PERSON IS GUILTY OF VIOLATING A SUPPORT ORDER IN THE FIRST DEGREE WHEN BEING ORDERED TO PAY SUPPORT, HE OR SHE FAILS OR REFUSES, WITHOUT LAWFUL EXCUSE, TO PAY SUPPORT UNDER A SUPPORT OBLIGATION:

1. FOR A PERIOD LONGER THAN TWO YEARS OR IN AN AMOUNT GREATER THAN TEN THOUSAND DOLLARS;

2. FOR A PERIOD LONGER THAN ONE YEAR OR IN AN AMOUNT GREATER THAN FIVE THOUSAND DOLLARS AND HE OR SHE HAS PREVIOUSLY BEEN CONVICTED IN THE PRECEDING FIVE YEARS OF A CRIME DEFINED IN SECTION 260.36 OF THIS ARTICLE OR A CRIME DEFINED IN THE PROVISIONS OF THIS SECTION; OR

3. IN A MANNER SPECIFIED BY SUBDIVISION FIFTEEN-A OF SECTION ONE HUNDRED ELEVEN-B OF THE SOCIAL SERVICES LAW.

VIOLATING A SUPPORT ORDER IN THE FIRST DEGREE IS A CLASS E FELONY.

S 5. This act shall take effect on the ninetieth day after it shall have become a law.