

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:

1 Section 1. Section 111-b of the social services law is amended by  
2 adding a new subdivision 15-a to read as follows:  
3 15-A. WHEN A SUPPORT OBLIGOR WHO IS OR WAS UNDER A COURT ORDER TO PAY  
4 CHILD SUPPORT OR COMBINED CHILD AND SPOUSAL SUPPORT TO A SUPPORT  
5 COLLECTION UNIT ON BEHALF OF PERSONS RECEIVING SERVICES UNDER THIS TITLE  
6 HAS ACCUMULATED SUPPORT ARREARS EQUIVALENT TO OR GREATER THAN THE AMOUNT  
7 OF SUPPORT DUE PURSUANT TO SUCH ORDER FOR A PERIOD OF FOUR MONTHS, THE  
8 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL NOTIFY THE DISTRICT  
9 ATTORNEY IN THE COUNTY WHERE THE COURT ORDER OF SUPPORT WAS ENTERED OF  
10 THE SUPPORT OBLIGOR'S FAILURE TO FULLY PAY THE SUPPORT ARREARS. UPON  
11 SUCH NOTIFICATION, THE DISTRICT ATTORNEY IS AUTHORIZED TO COMMENCE AN  
12 ACTION AGAINST THE SUPPORT OBLIGOR PURSUANT TO SECTIONS 260.36 AND  
13 260.38 OF THE PENAL LAW. FOR PURPOSES OF DETERMINING WHETHER A SUPPORT  
14 OBLIGOR HAS ACCUMULATED SUPPORT ARREARS EQUIVALENT TO OR GREATER THAN  
15 THE AMOUNT OF SUPPORT DUE FOR A PERIOD OF FOUR MONTHS, THE AMOUNT OF ANY  
16 RETROACTIVE SUPPORT, OTHER THAN PERIODIC PAYMENTS OF RETROACTIVE SUPPORT  
17 WHICH ARE PAST DUE, SHALL NOT BE INCLUDED IN THE CALCULATION OF SUPPORT  
18 ARREARS PURSUANT TO THIS SECTION; HOWEVER, IF AT LEAST FOUR MONTHS OF  
19 SUPPORT ARREARS HAVE ACCUMULATED SUBSEQUENT TO THE DATE OF THE COURT  
20 ORDER, THE ENTIRE AMOUNT OF ANY RETROACTIVE SUPPORT MAY BE COLLECTED  
21 PURSUANT TO THE PROVISIONS OF THIS SECTION OR AS OTHERWISE AUTHORIZED BY  
22 LAW.

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

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

4 The family court and the criminal courts shall have concurrent juris-  
5 diction over any proceeding concerning acts which would constitute  
6 disorderly conduct, harassment in the first degree, harassment in the  
7 second degree, aggravated harassment in the second degree, stalking in  
8 the first degree, stalking in the second degree, stalking in the third  
9 degree, stalking in the fourth degree, criminal mischief, menacing in  
10 the second degree, menacing in the third degree, reckless endangerment,  
11 assault in the second degree, assault in the third degree [or], VIOLAT-  
12 ING A SUPPORT ORDER IN THE SECOND DEGREE, OR VIOLATING A SUPPORT ORDER  
13 IN THE FIRST DEGREE, an attempted assault between spouses or former  
14 spouses, or between parent and child or between members of the same  
15 family or household except that if the respondent would not be criminal-  
16 ly responsible by reason of age pursuant to section 30.00 of the penal  
17 law, then the family court shall have exclusive jurisdiction over such  
18 proceeding. Notwithstanding a complainant's election to proceed in fami-  
19 ly court, the criminal court shall not be divested of jurisdiction to  
20 hear a family offense proceeding pursuant to this section. For purposes  
21 of this section, "disorderly conduct" includes disorderly conduct not in  
22 a public place. For purposes of this section, "members of the same fami-  
23 ly or household" with respect to a proceeding in the criminal courts  
24 shall mean the following:

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

28 The family court and the criminal courts shall have concurrent juris-  
29 diction over any proceeding concerning acts which would constitute  
30 disorderly conduct, harassment in the first degree, harassment in the  
31 second degree, aggravated harassment in the second degree, stalking in  
32 the first degree, stalking in the second degree, stalking in the third  
33 degree, stalking in the fourth degree, criminal mischief, menacing in  
34 the second degree, menacing in the third degree, reckless endangerment,  
35 assault in the second degree, assault in the third degree [or], VIOLAT-  
36 ING A SUPPORT ORDER IN THE SECOND DEGREE, OR VIOLATING A SUPPORT ORDER  
37 IN THE FIRST DEGREE, an attempted assault between spouses or former  
38 spouses, or between parent and child or between members of the same  
39 family or household except that if the respondent would not be criminal-  
40 ly responsible by reason of age pursuant to section 30.00 of the penal  
41 law, then the family court shall have exclusive jurisdiction over such  
42 proceeding. Notwithstanding a complainant's election to proceed in fami-  
43 ly court, the criminal court shall not be divested of jurisdiction to  
44 hear a family offense proceeding pursuant to this section. For purposes  
45 of this article, "disorderly conduct" includes disorderly conduct not in  
46 a public place. For purposes of this article, "members of the same  
47 family or household" shall mean the following:

48 S 4. The penal law is amended by adding two new sections 260.36 and  
49 260.38 to read as follows:

50 S 260.36 VIOLATING A SUPPORT ORDER IN THE SECOND DEGREE.

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

54 1. FOR A PERIOD LONGER THAN ONE YEAR;

55 2. IN AN AMOUNT GREATER THAN FIVE THOUSAND DOLLARS;

1 3. IN A MANNER SPECIFIED BY SUBDIVISION FIFTEEN-A OF SECTION ONE  
2 HUNDRED ELEVEN-B OF THE SOCIAL SERVICES LAW.  
3 VIOLATING A SUPPORT ORDER IN THE SECOND DEGREE IS A CLASS A MISDEMEA-  
4 NOR.  
5 S 260.38 VIOLATING A SUPPORT ORDER IN THE FIRST DEGREE.  
6 A PERSON IS GUILTY OF VIOLATING A SUPPORT ORDER IN THE FIRST DEGREE  
7 WHEN BEING ORDERED TO PAY SUPPORT, HE OR SHE FAILS OR REFUSES, WITHOUT  
8 LAWFUL EXCUSE, TO PAY SUPPORT UNDER A SUPPORT OBLIGATION:  
9 1. FOR A PERIOD LONGER THAN TWO YEARS OR IN AN AMOUNT GREATER THAN TEN  
10 THOUSAND DOLLARS;  
11 2. FOR A PERIOD LONGER THAN ONE YEAR OR IN AN AMOUNT GREATER THAN FIVE  
12 THOUSAND DOLLARS AND HE OR SHE HAS PREVIOUSLY BEEN CONVICTED IN THE  
13 PRECEDING FIVE YEARS OF A CRIME DEFINED IN SECTION 260.36 OF THIS ARTI-  
14 CLE OR A CRIME DEFINED IN THE PROVISIONS OF THIS SECTION; OR  
15 3. IN A MANNER SPECIFIED BY SUBDIVISION FIFTEEN-A OF SECTION ONE  
16 HUNDRED ELEVEN-B OF THE SOCIAL SERVICES LAW.  
17 VIOLATING A SUPPORT ORDER IN THE FIRST DEGREE IS A CLASS E FELONY.  
18 S 5. This act shall take effect on the ninetieth day after it shall  
19 have become a law.