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

2819

2015-2016 Regular Sessions

I N S E N A T E

January 29, 2015

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to non-support of a child

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

Section 1. Section 260.05 of the penal law, as amended by chapter 397 of the laws of 1997, the opening paragraph and subdivision 1 as amended and subdivision 2 as added by chapter 70 of the laws of 2008, is amended to read as follows:

S 260.05 Non-support of a child in the second degree.

A person is guilty of non-support of a child when:

1. being a parent, guardian or other person legally charged with the care or custody of a child less than sixteen years old, he or she fails or refuses without lawful excuse to provide support for such child [when he or she is able to do so, or becomes unable to do so, when, though employable, he or she voluntarily terminates his or her employment, voluntarily reduces his or her earning capacity, or fails to diligently seek employment]; or

2. being a parent, guardian or other person obligated to make child support payments by an order of child support entered by a court of competent jurisdiction for a child less than eighteen years old, he or she knowingly fails or refuses without lawful excuse to provide support for such child [when he or she is able to do so, or becomes unable to do so, when, though employable, he or she voluntarily terminates his or her employment, voluntarily reduces his or her earning capacity, or fails to diligently seek employment].

IN ANY PROSECUTION UNDER THIS SECTION, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS UNABLE TO PROVIDE SUPPORT FOR THE CHILD. PROVIDED THAT NOTHING IN THIS PARAGRAPH SHALL CONSTITUTE A DEFENSE TO A PROSECUTION FOR OR PRECLUDE CONVICTION OF THE OFFENSE DEFINED IN THIS SECTION WHERE THE DEFENDANT BECOMES UNABLE TO PROVIDE SUPPORT WHEN, THOUGH

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

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EMPLOYABLE, HE OR SHE VOLUNTARILY TERMINATES HIS OR HER EMPLOYMENT, VOLUNTARILY REDUCES HIS OR HER EARNING CAPACITY, OR FAILS TO DILIGENTLY SEEK EMPLOYMENT.

Non-support of a child in the second degree is a class A misdemeanor.

S 2. Section 260.06 of the penal law, as amended by chapter 70 of the laws of 2008, is amended to read as follows:

S 260.06 Non-support of a child in the first degree.

A person is guilty of non-support of a child in the first degree when:

1. (a) being a parent, guardian or other person legally charged with the care or custody of a child less than sixteen years old, he or she fails or refuses without lawful excuse to provide support for such child [when he or she is able to do so]; or

(b) being a parent, guardian or other person obligated to make child support payments by an order of child support entered by a court of competent jurisdiction for a child less than eighteen years old, he or she fails or refuses without lawful excuse to provide support for such child [when he or she is able to do so]; and

2. he or she has previously been convicted in the preceding five years of a [crime defined in] VIOLATION OF section 260.05 of this article or [a crime defined by the provisions] of this section.

IN ANY PROSECUTION UNDER THIS SECTION, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS UNABLE TO PROVIDE SUPPORT FOR THE CHILD. PROVIDED THAT NOTHING IN THIS PARAGRAPH SHALL CONSTITUTE A DEFENSE TO A PROSECUTION FOR OR PRECLUDE CONVICTION OF THE OFFENSE DEFINED IN THIS SECTION WHERE THE DEFENDANT BECOMES UNABLE TO PROVIDE SUPPORT WHEN, THOUGH EMPLOYABLE, HE OR SHE VOLUNTARILY TERMINATES HIS OR HER EMPLOYMENT, VOLUNTARILY REDUCES HIS OR HER EARNING CAPACITY, OR FAILS TO DILIGENTLY SEEK EMPLOYMENT.

Non-support of a child in the first degree is a class E felony.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.