

Assembly Bill No. 617—Committee on Judiciary

CHAPTER.....

AN ACT relating to crimes; providing an affirmative defense under certain circumstances for a defendant who is charged with the crime of knowingly failing to provide child support or spousal support; making various changes concerning such a crime; providing penalties; and providing other matters properly relating thereto.

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

Section 1. Chapter 201 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this subsection, in a prosecution for a violation of NRS 201.020, the defendant may claim as an affirmative defense that he was unable to provide the child support or spousal support ordered by a court.

2. In addition to the written notice required by NRS 174.234, a defendant who intends to offer the affirmative defense described in subsection 1 shall, not less than 20 days before trial or at such other time as the court directs, file and serve upon the prosecuting attorney a written notice of his intent to claim the affirmative defense. The written notice must include:

(a) The specific affirmative defense that the defendant is asserting; and

(b) The name and last known address of each witness by whom the defendant proposes to establish the affirmative defense.

3. Not later than 10 days after receiving the written notice set forth in subsection 2 or at such other time as the court directs, the prosecuting attorney shall file and serve upon the defendant a written notice that includes the name and last known address of each witness the prosecuting attorney proposes to offer in rebuttal at trial to discredit the affirmative defense claimed by the defendant.

4. Each party has a continuing duty to file and serve upon the opposing party any change in the last known address of any witness that the party proposes to offer to establish or discredit the affirmative defense described in subsection 1.

5. Each party has a continuing duty to disclose promptly the names and last known addresses of any additional witnesses which come to the attention of that party and which that party proposes to offer to establish or discredit the affirmative defense described in subsection 1.

6. If the defendant or prosecuting attorney fails to comply with the requirements set forth in this section, in addition to any sanctions or protective orders otherwise provided in chapter 174 of NRS, the court may grant a continuance to permit the opposing party time to prepare.

7. A prosecuting attorney shall provide notice of the requirements of this section to a defendant when a complaint is served upon the defendant for a violation of NRS 201.020.

8. For the purposes of this section, a defendant is not “unable to provide the child support or spousal support ordered by a court” if, during the period that the defendant was obligated to provide and failed to provide child support or spousal support, the defendant was:

(a) Voluntarily unemployed or underemployed without good cause or to avoid payment of child support or spousal support, including, without limitation, not using reasonable diligence to secure sufficient employment; or

(b) Unable to pay the child support or spousal support ordered by a court because of his excessive spending, indebtedness or other legal obligation, unless the spending, indebtedness or other legal obligation was not within the control of the defendant.

Sec. 2. NRS 201.015 is hereby amended to read as follows:

201.015 For the purposes of NRS 201.020 to 201.080, inclusive, *and section 1 of this act*, “minor child” means a person who has not reached the age of majority as provided in NRS 129.010 and has not been declared emancipated pursuant to NRS 129.080 to 129.140, inclusive.

Sec. 3. NRS 201.020 is hereby amended to read as follows:

201.020 1. ~~[A husband or wife who, without just cause, deserts, willfully neglects or refuses]~~ *Except as otherwise provided in subsection 2, a person who knowingly fails* to provide for the support ~~[and maintenance]~~ of his :

(a) *Spouse or former* spouse ~~[in destitute or necessitous circumstances, or any parent who without lawful excuse deserts or willfully neglects or refuses to provide for the support and maintenance of his legitimate or illegitimate minor] ;~~

(b) *Minor child* ; or ~~[children, or any parent who without lawful excuse deserts or willfully neglects or refuses to provide for the support and maintenance of his legitimate or illegitimate child or children]~~

(c) *Child* who upon arriving at the age of majority ~~[are]~~ *is* unable to provide ~~[themselves with support and maintenance]~~ *support for himself* because of *his* infirmity, incompetency or other legal disability *that was* contracted before ~~[their reaching]~~ *he reached* the age of majority, ~~[shall be punished:]~~

~~—(a) If the conduct for which the defendant was convicted persisted for less than 6 months, for]~~
as ordered by a court, is guilty of a misdemeanor . ~~[or, if such conduct persisted for more than 6 months, for a gross misdemeanor or, if for more than 1 year, for a category C felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.~~

~~—(b) For any subsequent offense for~~
~~]~~

2. A person who violates the provisions of subsection 1 is guilty of a category C felony *and shall be punished* as provided in NRS 193.130 ~~[-2.-2. In addition to other orders which the court may make relative to the defendant's obligation to provide support to his spouse and children, the court may impose an intermittent sentence on a person found guilty of a violation of subsection 1 if it finds that such a sentence would be in the best interest of the defendant's spouse and child or children.] if:~~

(a) *His arrearages for nonpayment of the child support or spousal support ordered by a court total \$10,000 or more and have accrued over any period since the date that a court first ordered the defendant to provide for such support; or*

(b) *It is a second or subsequent violation of subsection 1 or an offense committed in another jurisdiction that, if committed in this state, would be a violation of subsection 1, and his arrearages for nonpayment of the child support or spousal support ordered by a court total \$5,000 or more and have accrued over any period since the date that a court first ordered the defendant to provide for such support.*

3. A prosecution for a violation of subsection 1 may be brought in a court of competent jurisdiction in any county in which:

(a) *A court has issued a valid order for the defendant to pay child support or spousal support;*

(b) *The defendant resides;*

(c) *The custodial parent or custodian of the child for whom the defendant owes child support resides;*

(d) *The spouse or former spouse to whom the defendant owes spousal support resides; or*

(e) *The child for whom the defendant owes child support resides.*

Sec. 4. NRS 201.030 is hereby amended to read as follows:

201.030 Proceedings under NRS 201.020 to 201.080, inclusive, may be instituted upon complaint made under oath or affirmation by the spouse or child or children, or by any other person, including the district attorney, ~~[as provided in NRS 201.025,]~~ against any person guilty of ~~[either of the offenses]~~ *an offense* named in NRS 201.020.

Sec. 5. NRS 201.070 is hereby amended to read as follows:

201.070 1. No other or greater evidence is required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, than is required to prove such facts in a civil action.

2. In no prosecution under NRS 201.020 to 201.080, inclusive, does any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife are competent witnesses to testify against each other to any and all relevant matters, including the fact of the marriage and the parentage of any child or children, ~~[;]~~ but neither may be compelled to give evidence incriminating himself or herself.

3. Proof of the ~~{desertion of a spouse, child or children, in destitute or necessitous circumstances, or of neglect or refusal}~~ **failure of the defendant** to provide for the support ~~{and maintenance}~~ of the spouse, child or children, is prima facie evidence that such ~~{desertion, neglect or refusal is willful.}~~ **failure was knowing.**

Sec. 6. NRS 126.041 is hereby amended to read as follows:

126.041 The parent and child relationship between a child and:

1. The natural mother may be established by proof of her having given birth to the child, or under this chapter, or NRS **125B.150 or** 130.701 . ~~{or 201.025.}~~

2. The natural father may be established under this chapter, or NRS **125B.150**, 130.701 ~~{, 201.025}~~ or 425.382 to 425.3852, inclusive.

3. An adoptive parent may be established by proof of adoption.

Sec. 7. NRS 201.025, 201.040, 201.050 and 201.060 are hereby repealed.

Sec. 8. The amendatory provisions of this act do not apply to offenses committed before October 1, 1999.

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