

ASSEMBLY BILL NO. 617—COMMITTEE ON JUDICIARY

(ON BEHALF OF DISTRICT ATTORNEY’S ASSOCIATION)

MARCH 18, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning crime of nonpayment of child support or spousal support. (BDR 15-589)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

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. A defendant may not claim the affirmative defense set forth in this subsection 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

1 *obligation, unless the spending, indebtedness or other legal obligation*
2 *was not within the control of the defendant.*

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

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

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

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

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

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

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

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

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

35 201.015 For the purposes of NRS 201.020 to 201.080, inclusive, *and*
36 *section 1 of this act*, “minor child” means a person who has not reached the
37 age of majority as provided in NRS 129.010 and has not been declared
38 emancipated pursuant to NRS 129.080 to 129.140, inclusive.

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

40 201.020 1. ~~[A husband or wife who, without just cause, deserts,~~
41 ~~willfully neglects or refuses]~~ *Except as otherwise provided in subsection 2,*
42 *a person who knowingly fails* to provide for the support ~~[and maintenance]~~
43 of his :

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

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

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

13 ~~—(a) If the conduct for which the defendant was convicted persisted for~~
14 ~~less than 6 months, for]~~

15 *as ordered by a court, is guilty of* a misdemeanor . ~~[or, if such conduct~~
16 ~~persisted for more than 6 months, for a gross misdemeanor or, if for more~~
17 ~~than 1 year, for a category C felony by imprisonment in the state prison for~~
18 ~~a minimum term of not less than 1 year and a maximum term of not more~~
19 ~~than 5 years, or by a fine of not more than \$5,000, or by both fine and~~
20 ~~imprisonment.~~

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

22 *2. A person who violates the provisions of subsection 1 is guilty of* a
23 category C felony *and shall be punished* as provided in NRS 193.130 ~~[.~~

24 ~~—2.— In addition to other orders which the court may make relative to the~~
25 ~~defendant's obligation to provide support to his spouse and children, the~~
26 ~~court may impose an intermittent sentence on a person found guilty of a~~
27 ~~violation of subsection 1 if it finds that such a sentence would be in the best~~
28 ~~interest of the defendant's spouse and child or children.] if:~~

29 (a) *It is a second or subsequent violation of subsection 1 or an offense*
30 *committed in another jurisdiction that, if committed in this state, would*
31 *be a violation of subsection 1; or*

32 (b) *His arrearages for nonpayment of the child support or spousal*
33 *support ordered by a court total \$5,000 or more and have accrued over*
34 *any period since the date that a court first ordered the defendant to*
35 *provide for such support.*

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

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

40 (b) *The defendant resides;*

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

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

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

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

5 201.030 Proceedings under NRS 201.020 to 201.080, inclusive, may
6 be instituted upon complaint made under oath or affirmation by the spouse
7 or child or children, or by any other person, including the district attorney ,
8 ~~as provided in NRS 201.025,~~ against any person guilty of ~~either of the~~
9 ~~offenses~~ *an offense* named in NRS 201.020.

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

11 201.070 1. No other or greater evidence is required to prove the
12 marriage of the husband and wife, or that the defendant is the father or
13 mother of the child or children, than is required to prove such facts in a
14 civil action.

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

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

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

28 126.041 The parent and child relationship between a child and:

29 1. The natural mother may be established by proof of her having given
30 birth to the child, or under this chapter, or NRS *125B.150 or* 130.701 . ~~or~~
31 ~~201.025.~~

32 2. The natural father may be established under this chapter, or NRS
33 *125B.150*, 130.701 ~~or 201.025~~ or 425.382 to 425.3852, inclusive.

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

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

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

TEXT OF REPEALED SECTIONS

201.025 District attorney to establish parentage of child and take legal action against deserting or nonsupporting parent.

1. The district attorney of the county of residence of a spouse or minor child who has been deserted, neglected or for whom support and maintenance are refused as prescribed by NRS 201.020 shall take such action as is necessary to establish the parentage of such child and locate, apprehend and take legal action against the deserting or nonsupporting parent.

2. In a county where the district attorney has deputies to aid him in the performance of his duties, such district attorney shall designate himself or a particular deputy as responsible for performing the duties imposed by subsection 1.

201.040 Temporary order for support. Notwithstanding provisions to the contrary in a premarital agreement between the spouses which is otherwise enforceable pursuant to chapter 123A of NRS, at any time before proceedings are conducted pursuant to NRS 201.020 to 201.080, inclusive, upon petition of the complainant and upon notice to the defendant, the court may enter such a temporary order as seems just, providing for support of the deserted spouse or children, or both, pendente lite, and may punish for the violation of such an order as for contempt.

201.050 Powers of court in addition to imposition of criminal penalty; recognizance of defendant.

1. Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty or guilty but mentally ill, or after conviction, instead of imposing the penalty provided in NRS 201.020, or in addition thereto, the court, having regard to the circumstances and to the financial ability or earning capacity of the defendant, may:

(a) Make an order, which is subject to change by the court from time to time as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding 2 years, to the spouse or the guardian, curator or custodian of the minor child or children, or to an organization or natural person approved by the court as trustee.

(b) Release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court may order and approve.

2. The condition of the recognizance must be such that if the defendant makes his personal appearance in court whenever ordered to do so, and

complies with the terms of the order of support, or of any subsequent modification thereof, then the recognizance is void.

201.060 Trial of defendant upon proof of violation of court order.

If the court is satisfied by information and due proof, under oath, that at any time during the period of 2 years the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction.

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