

7004

I N S E N A T E

March 5, 2010

Introduced by Sens. LANZA, PADAVAN, GOLDEN -- 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:

1 Section 1. Section 260.05 of the penal law, as amended by chapter 397
2 of the laws of 1997, the opening paragraph and subdivision 1 as amended
3 and subdivision 2 as added by chapter 70 of the laws of 2008, is amended
4 to read as follows:
5 S 260.05 Non-support of a child in the second degree.
6 A person is guilty of non-support of a child when:
7 1. being a parent, guardian or other person legally charged with the
8 care or custody of a child less than sixteen years old, he or she fails
9 or refuses without lawful excuse to provide support for such child [when
10 he or she is able to do so, or becomes unable to do so, when, though
11 employable, he or she voluntarily terminates his or her employment,
12 voluntarily reduces his or her earning capacity, or fails to diligently
13 seek employment]; or
14 2. being a parent, guardian or other person obligated to make child
15 support payments by an order of child support entered by a court of
16 competent jurisdiction for a child less than eighteen years old, he or
17 she knowingly fails or refuses without lawful excuse to provide support
18 for such child [when he or she is able to do so, or becomes unable to do
19 so, when, though employable, he or she voluntarily terminates his or her
20 employment, voluntarily reduces his or her earning capacity, or fails to
21 diligently seek employment].
22 IN ANY PROSECUTION UNDER THIS SECTION, IT IS AN AFFIRMATIVE DEFENSE
23 THAT THE DEFENDANT IS UNABLE TO PROVIDE SUPPORT FOR THE CHILD. PROVIDED
24 THAT NOTHING IN THIS PARAGRAPH SHALL CONSTITUTE A DEFENSE TO A PROSE-
25 CUTION FOR OR PRECLUDE CONVICTION OF THE OFFENSE DEFINED IN THIS SECTION
26 WHERE THE DEFENDANT BECOMES UNABLE TO PROVIDE SUPPORT WHEN, THOUGH
27 EMPLOYABLE, HE OR SHE VOLUNTARILY TERMINATES HIS OR HER EMPLOYMENT,
28 VOLUNTARILY REDUCES HIS OR HER EARNING CAPACITY, OR FAILS TO DILIGENTLY
29 SEEK EMPLOYMENT.

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

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

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

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

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

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

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

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

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

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

27 S 3. This act shall take effect on the first of November next succeed-
28 ing the date on which it shall have become a law.