**§ 246. Persons financially unable to comply with orders or judgments directing the payment of alimony.** 1. Any person who, by an order or judgment made or entered in an action for divorce, separation, annulment or declaration of the nullity of a void marriage or an action for the enforcement in this state of a judgment for divorce, separation or annulment or declaring the nullity of a void marriage rendered in another state, is directed to make payment of any sum or sums of money and against whom an order to punish for a contempt of court has been made pursuant to the provisions of section two hundred forty-five of this chapter or the judiciary law may, if financially unable to comply with the order or judgment to make such payment, upon such notice to such parties as the court may direct, make application to the court for an order relieving him from such payment and such contempt order. The court, upon the hearing of such application, if satisfied from the proofs and evidence offered and submitted that the applicant is financially unable to make such payment may, upon a showing of good cause, until further order of the court, modify the order or judgment to make such payment and relieve him from such contempt order. No such modification shall reduce or annul unpaid sums or installments accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgement or order directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc based on newly discovered evidence.

2. Whenever, upon application to the court by an interested party, it appears to the satisfaction of the court that any person, who has been relieved totally or partially from making any such payment pursuant to the provisions of this section, is no longer financially unable to comply with the order or judgment to make such payment, then the court may, upon a showing of good cause, modify or revoke its order relieving him totally or partially from making such payment.

3. Any person may assert his financial inability to comply with the directions contained in an order or judgment made or entered in an action for divorce, separation, annulment or declaration of the nullity of a void marriage or an action for the enforcement in this state of a

judgment for divorce, separation or annulment or declaring the nullity of a void marriage rendered in another state, as a defense in a proceeding instituted against him under section two hundred forty-five or under the judiciary law to punish him for his failure to comply with such directions and, if the court, upon the hearing of such contempt proceeding, is satisfied from the proofs and evidence offered and submitted that the defendant is financially unable to comply with such order or judgment, it may, in its discretion, until further order of the court, make an order modifying such order or judgment and denying the application to punish the defendant for contempt. No such modification shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc as of the date of the application based on newly discovered evidence. Any retroactive amount of support due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid.