

NON-SUPPORT OF A CHILD SECOND DEGREE
Penal Law § 260.05
(Committed on or after Sept. 1, 1997)

The (*specify*) countis Non-support of a Child in the Second Degree.

Under our law, a person is guilty of Non-support of a Child in the Second Degree when, being a parent, guardian or other person legally charged with the care or custody of a child¹ 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.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date) , in the County of (county) , the defendant, (defendant's name) , failed or refused to provide support for (*specify*), a child less than sixteen years old;
2. That the defendant did so without lawful excuse;
3. That the defendant was able to provide such support or became unable to do so, when, though employable, he or she voluntarily terminated his or her employment, voluntarily reduced his or her

¹ Although the language of the statute does not include a legal obligation of support, that requirement is inherent in the element of “without lawful excuse.” A “person legally charged with the care and custody of a child” is not further defined because, in the context of this crime, the broad implications of anyone responsible for the “care and custody” is modified by the inherent requirement that such person be legally obligated to support the child.

earning capacity or failed to diligently seek employment; and

4. That the defendant was a [parent] [guardian] [person legally charged with the care or custody] of (specify).

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.