

NON-SUPPORT OF A CHILD FIRST DEGREE
Penal Law § 260.06
(Committed on or after Sept. 1, 1997)

The (specify) count is Non-support of a Child in the First Degree.

Under our law, a person is guilty of Non-support of a Child in the First 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.²

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;

¹ Although the language of the statute does 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.

² An additional element of this crime is that the defendant "has previously been convicted in the preceding five years of" non-support of a child in the second degree. The defendant must be arraigned upon a special information alleging the previous conviction in accordance with the procedure set forth in CPL § 200.60(3). If upon such arraignment, the defendant admits the previous conviction, the court must not make any reference to it in the definition of the crime or in listing its elements. But if the defendant denies the previous conviction or remains mute, the court must add the following to the definition of the crime: "and the defendant "has previously been convicted in the preceding five years of" non-support of a child in the second degree. See *People v. Cooper*, 78 N.Y.2d 476 (1991).

2. That the defendant did so without lawful excuse;
3. That the defendant was able to provide such support;
and
4. That the defendant was the [parent] [guardian] [other 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.