



Legislation Details (With Text)

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**Title:** Resolution in support of pending legislation in the New York State Legislature intended to amend the penal law in relation to the offense of non-support of a child.

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Res. No. 249

Resolution in support of pending legislation in the New York State Legislature intended to amend the penal law in relation to the offense of non-support of a child.

By Council Members Vallone, Jr., Van Bramer, Halloran and Koo

Whereas, Child support payments are designed to help cover essential living expenses associated with raising a child such as medical, educational, and food expenses; and

Whereas, Every year, however, some noncustodial parents fail to pay for child support even though they are required to do so by a court; and

Whereas, When a noncustodial parent does not meet this critical financial obligation, it places a huge burden on a custodial parent; and

Whereas, In some instances, custodial parents have to resort to applying for public assistance; and

Whereas, A custodial parent should not have to endure this burden or worry about finding other ways to obtain money; and

Whereas, In order to discourage such behavior, New York State has a system in place to penalize noncustodial parents for failing to comply with child support orders; and

Whereas, The court may enforce a child support order against a noncustodial parent by garnishing wages, intercepting unemployment compensation, and withholding state or federal income tax refund refunds, among other sanctions; and

Whereas, By intercepting unemployment checks and the like, the court ensures that child support payments are made; and

Whereas; Another action the state can take against a noncustodial parent is, in appropriate circumstances, to charge them with the crime of non-support of a child; and

Whereas, Under the current law, when such crime is charged, the prosecutor has the burden of proof to show that the noncustodial parent has the ability to pay and that the case is in arrears; and

Whereas, Frequently, however, proving the noncustodial parent's ability to pay is difficult, often because that individual successfully hides his or her assets; and

Whereas, Daniel Donovan, the District Attorney for Richmond County, stated at a New York City Council Public Safety Committee hearing on March 11, 2010 that exposing the assets of a noncustodial parent can be difficult; and

Whereas, Laws pending in the State Legislature, S.7004 and A.10169, would remedy this issue; and

Whereas, These bills, sponsored by Senator Andrew Lanza and Assemblywoman Janele Hyer-Spencer respectively, seek to amend the penal law by transferring the burden of proving ability or inability to pay child support to the noncustodial parent; and

Whereas, If enacted, these bills would create an affirmative defense to the offense of non-support of a child; and

Whereas, Instead of relying on a prosecutor to prove that a noncustodial parent has the ability to pay child support, these bills would force that parent to prove that he or she does not have the ability to pay; and

Whereas, By transferring this burden to the party with the most knowledge of the noncustodial parent's personal finances, which is the noncustodial parent him- or herself, these bills would increase the likelihood that noncustodial parents would comply with their child support obligations; now, therefore, be it

Resolved, That the Council of the City of New York supports pending legislation in the New York State Legislature intended to amend the penal law in relation to the offense of non-support of a child.

SA  
5/4/10  
LS# 813