

N.D.A.G. Letter to Riha (Aug. 25, 1992)

August 25, 1992

Mr. Richard J. Riha
Assistant State's Attorney
Office of State's Attorney
Courthouse
514 E. Thayer Ave.
Bismarck, ND 58501

Dear Mr. Riha:

Thank you for your letter of July 10, 1992, wherein you request an interpretation of N.D.C.C. § 14-07-15.

N.D.C.C. § 14-07-15 provides, in relevant part:

14-07-15. Abandonment or nonsupport of child - Penalty. Every parent or other person legally responsible for the care or support of a child who is unable to support himself by lawful employment, who wholly abandons such child or willfully fails to furnish food, shelter, clothing, and medical attention reasonably necessary and sufficient to keep the child's life from danger and discomfort and his health from injury is guilty of a class C felony.

Any food, shelter, clothing, or medical attentions, furnished by or through a welfare or charitable program of any governmental agency, civic or religious organization, or a combination thereof, or any intervening third party, on the basis of need, does not avoid, excuse, relieve, or discharge, either parent, or person legally responsible for care and support of a child, from the criminal penalty for the willful failure or neglect to provide such support.

Neither may a parent be relieved, excused, nor discharged from such responsibility and criminal penalty provided for herein, for the willful neglect or failure to provide such care and support, if the other parent is providing the child with care and support to the best of his or her ability, but where such care and support is not sufficient to keep the child's life from danger or discomfort, or its health from injury.

(Emphasis added.) The statute requires a showing of a willful failure to furnish food, shelter, clothing, and medical attention reasonably necessary and sufficient to keep the child's life from danger and discomfort and the child's health from injury. If the child's

second parent provides care and support to the best of the second parent's ability, and that care and support is sufficient to keep the child's life from danger and discomfort and the child's health from injury, the abandoning parent's willful nonsupport appears to be excused. However, when the source of the parent's support for the child is "a welfare or charitable program of any governmental agency, civic or religious organization, or a combination thereof, or any intervening third party," and where that food, shelter, clothing, or medical attention is furnished on the basis of need, the law specifically does not excuse an abandoning parent.

If the facts available to the prosecution reveal that a child has been abandoned, that the abandoning parent has apparent means to provide support to the child, that the child has not been supported by the abandoning parent, and that the child's life has been subject to danger and discomfort or the child's health has been subject to injury, and that it is likely those facts can be proved beyond a reasonable doubt, prosecution is appropriate. If the facts are the same, except that the child's life has not been subject to danger and discomfort and the child's health has not been subject to injury, a prosecution would not be appropriate unless it can also be shown that food, shelter, clothing, or medical attention was furnished by or through a welfare or charitable program of any governmental agency, civic or religious organization, or a combination thereof, or any intervening third party, on the basis of need.

Finally, the concluding paragraph of section 14-07-15 provides that compliance with the terms of provisions for child support in a decree of divorce is deemed compliance with the support obligations of the noncustodial parent. Thus, even though the support actually provided is insufficient to keep the child's life from danger and discomfort or the child's health from injury, or even though the danger, discomfort, and injury are avoided through the furnishing of food, shelter, clothing, or medical attention by a welfare or charitable program of a governmental agency, civic or religious organization, or any combination thereof, or any intervening third party, no prosecution is appropriate in a case in which the "abandoning" parent is actually in compliance with the child support provision of a divorce decree.

I hope this provides sufficient response to your inquiry.

Sincerely,

Nicholas J. Spaeth
Attorney General