

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 400

SPONSOR: Appropriations Subcommittee on Public Safety and Judiciary, Children and Families Committee, Senators Horne, Campbell and others

SUBJECT: The Support Owed to a Child or Spouse

DATE: April 3, 2001

REVISED: \_\_\_\_\_

|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE                   | ACTION                      |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Dowds</u>                | <u>Whiddon</u>              | <u>CF</u>                   | <u>Favorable/CS</u>         |
| 2. | <u>Gardner</u>              | <u>Cannon</u>               | <u>CJ</u>                   | <u>Favorable</u>            |
| 3. | <u>Mannelli</u>             | <u>Beck</u>                 | <u>APJ</u>                  | <u>Favorable/CS</u>         |
| 4. | <u>                    </u> | <u>                    </u> | <u>AP</u>                   | <u>                    </u> |
| 5. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| 6. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |

## I. Summary:

CS/CS/SB 400 eliminates the prohibition against prosecution for nonsupport of dependents if a court has jurisdiction in a proceeding for child support; adds the prerequisite that a person has been previously adjudged in contempt for failure to comply with a court order before prosecution can commence; requires mandatory restitution in an amount equal to the total unpaid support obligation upon conviction for misdemeanor or felony under s. 827.06, F.S.; reinstates the notice requirement before commencement of prosecution by state attorney and changes notice to regular mail instead of certified mail; changes the criteria of what constitutes evidence of ability to pay; changes the criteria concerning what constitutes knowledge of the legal obligation of support; creates mandatory punishments for misdemeanor violations of s. 827.06, F.S.; and adds a felony level offense for nonpayment of support.

This bill substantially amends section 827.06 of the Florida Statutes.

## II. Present Situation:

Section 409.2551, F.S., declares that children are to be maintained from the resources of their parents in order to relieve, at least in part, the burden of the citizens of this state through public assistance programs. Child support can be ordered by the court as part of the dissolution of marriage proceeding (s. 61.13, F.S.). In addition, the Department of Revenue, as the designated state agency responsible for the administration of the child support enforcement program required by Title IV-D of the Social Security Act, has the authority to establish paternity and support obligations and for the modification, enforcement and collection of support obligations (s. 409.2557, F.S.). Support obligations include not only child support but support for a spouse if the support obligation has been established for the spouse and the child support obligation is

being enforced under Title IV-D of the Social Security Act. Recipients of public assistance are required to cooperate with the Department of Revenue in establishing and collecting child support for their minor children (s. 409.2572, F.S.). Parents not receiving public assistance can also request the department's child support enforcement services.

Child support is ordered in accordance with the child support guidelines in s. 61.30, F.S. Section 409.2564, F.S., provides for consideration of a parent's reasonable ability to pay when the Department of Revenue undertakes action for enforcement of support. For parents who fail to pay their ordered child support, Florida Statutes provide a number of enforcement strategies to collect owed child support. Examples of enforcement strategies available include the following:

- Income deduction orders (s. 61.1301, F.S.) which is also often entered upon establishment of an order for child support.
- Suspension or denial of professional licenses or certificates (ss. 61.13015 and 409.2598, F.S.).
- Suspension of driver's license and motor vehicle registration (s. 61.13016, F.S.).
- Levy upon personal property and bank accounts (ss. 409.25656 and 409.25657, F.S.).

Section 61.14(6)(a), F.S., provides that when a parent is 15 days delinquent in making payment on the child support, the local depository operated by the Clerks of the Circuit Court shall notify the parent of the delinquency, its amount, the impending judgment of operation of law and the parent's rights. When a parent receiving Title IV-D services through the Department of Revenue fails to make regular child support payments, the department is required to initiate action to secure payment and arrearage within 30 days after determining the parent's ability to pay (s. 409.2564, F.S.). Actions to secure payment of child support can include a court finding a parent in contempt for refusal to obey the child support order. At the contempt hearing the original child support order creates a presumption that the parent is able to pay the child support and to purge himself from the contempt (s. 61.14, F.S.). The parent has the opportunity and burden of proof to demonstrate an inability to pay the purge amount for the contempt.

Currently, the criminal charges available for non-payment of child support include s. 827.06, F.S., for child support owed to a child residing in Florida and Title 18 of the U.S. Code, Section 228 for child support owed to a child residing in another state. Title 18 of the U.S. Code, Section 228 provides that a person who fails to pay a child support obligation for a child in another state for a period longer than 1 year or the amount is greater than \$5,000 faces punishment of a fine and/or imprisonment for not more than 6 months. Persons who travel interstate with the intent to evade payment of child support and the child support remains unpaid for 1 year or longer or is greater than \$5,000, or persons who fail to pay a child support obligation for 2 years or longer and the amount owed is greater than \$10,000, face a fine or imprisonment for not more than 2 years or both.

Section 827.06, F.S., provides that a person who is able but fails to pay support to a child or spouse is guilty of a misdemeanor of the first degree, if there is no court that has jurisdiction in any proceedings for the child support or dissolution of marriage. The state attorney is required to advise the person responsible for paying the support by certified mail that prosecution will be initiated if the support payments are not made or a satisfactory explanation for the non-payment is not provided.

Section 61.13, F.S., provides that the court in which the child support order was initially entered shall have continuing jurisdiction for any modifications determined necessary to the child support order. For those cases for which the Department of Revenue is providing child support enforcement services, s. 409.2564, F.S., provides that the procedures established under ch. 61, F.S., as well as other chapters relating to proceedings involving children, may govern the actions instituted under the provisions related to Title IV-D child support services. These provisions provide for continuing jurisdiction for most orders of support, therefore restricting to a large extent the cases to which the current criminal charge of non-support under s. 827.06, F.S., could be applied. The Department of Revenue reports that the jurisdictional requirement of the criminal non-support provision has limited criminal prosecution for delinquent child support for Florida children. In fact, over a 3-year period, this criminal penalty was used only once.

Other states have implemented prosecutable criminal non-support laws, two of which are Texas and Massachusetts. Texas has adjudicated 92 cases since December 31, 1999, and collected an estimated \$511,500. Massachusetts made 48 arrests in 1998, 39 of which were resolved with lump sum payments made totaling \$600,000.

In Florida, persons convicted of a misdemeanor of the first degree can be sentenced to a term of imprisonment not to exceed 1 year (s. 775.082, F.S.) or a fine not to exceed \$1,000 (s. 775.083, F.S.). A third degree felony conviction can be punished with a term of imprisonment of up to 5 years (s. 775.082, F.S.) or a fine of \$5,000 (s. 775.083, F.S.). With a felony conviction, a person's civil rights are also suspended until restored by a pardon or the restoration of civil rights through the granting of clemency (s. 944.292, F.S.). The civil rights lost include the right to vote, to hold office and to possess firearms (section 4 of article VI of the Florida Constitution and s. 790.23, F.S.).

### **III. Effect of Proposed Changes:**

Subsection (1) eliminates the current requirement that persons cannot be prosecuted for the crime of non-support while a court has jurisdiction for the child support or dissolution of marriage. The bill retains the provisions for misdemeanor prosecution when a person has failed to provide support. Prosecution can only be commenced, however, if the person has an ability to pay and has been previously adjudged in contempt for failure to comply with a support order. Subsection (1) also creates a mandatory schedule of fines and imprisonment for misdemeanor violations of s. 827.06, F.S., in lieu of those specified in ss. 775.082 and 775.083, F.S.

Subsection (2) creates a felony offense of the third degree for failure to pay support to a child or spouse if the persons who are legally obligated have committed a fourth violation of s. 827.06, F.S., or have owed support for more than one year in an amount equal to or greater than \$5,000. The felony offense is punishable as provided in ss. 775.082 and 775.083, F.S., which provide for imprisonment of up to 5 years or a fine of up to \$5,000. In comparing the felony offense and penalty with that of the federal offense that applies when children reside in another state, the proposed threshold is less stringent than the federal threshold because it requires both a 1 year delinquency *and* that the amount owed is equal to or greater than \$5,000, compared with the federal offense of 1 year delinquency *or* an amount equal to or greater than \$5,000. However, the maximum punishment is greater under Florida law.

Subsection (3) requires the court to order restitution for offenders convicted for either a misdemeanor or felony violation of this section. The amount of restitution must be equal to the amount of unpaid support obligation at the time of sentencing.

Subsection (4) adopts criteria which may demonstrate a person's ability to pay the court ordered support and which may demonstrate the defendant's knowledge of the requirement to provide support. In the former instance, the standard established is the defendant's failure to make efforts to acquire the resources to pay the support. The element of knowledge may be satisfied if a court has entered an order obligating the defendant to provide support.

Subsection (5) changes the requirement for notice by the state attorney prior to commencing prosecution under s. 827.06, F.S. The current requirement for "certified mail, return receipt requested" is eliminated and replaced by "regular mail at the person's last known address."

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

To the extent that the enhanced penalties induce greater compliance in child support payments, there could be a positive impact on those not currently receiving court-ordered payments.

##### **C. Government Sector Impact:**

The Office of the State Courts Administrator, the Florida Prosecuting Attorneys Association and the Florida Public Defenders Association have reported that this legislation has a potentially significant workload impact, since the possibility of incarceration exists. However, since this bill requires a previous judgment of contempt before prosecution may proceed, it is anticipated that the pool of potential offenders will not significantly increase.

and that, therefore, judicial, prosecutorial, or public defender workload would not significantly increase either.

The Department of Revenue estimates that 13,162 of its 381,580 cases would qualify for felony prosecution. However, since the department provides services to only approximately 60 percent of the total cases, this number could increase.

The Criminal Justice Impact Conference has reviewed this bill and determined that it will have an insignificant fiscal impact on the prison population.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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