

# 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/SB 400

SPONSOR: Children and Families Committee, Senators Horne, Campbell and others

SUBJECT: The Support Owed to a Child or Spouse

DATE: March 21, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	Gardner	Cannon	CJ	Favorable
3.			APJ	
4.			AP	
5.				
6.				

## I. Summary:

Committee Substitute for Senate Bill 400 eliminates the jurisdictional and notice of impending prosecution requirements for the crime of persistent non-support and adds a felony level of offense. Specifically, the requirement that a person cannot be prosecuted for the crime of persistent non-support if there is a court that has jurisdiction for the child support or dissolution of marriage is removed. A felony offense of the third degree is established for the failure to pay support to a child or spouse, if the person who was legally obligated and able to provide the support owed more than 1 year of support in an amount equal to or greater than \$5,000. The requirement that the person responsible for the support be provided with notice of the impending prosecution is eliminated.

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 judgement 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 persistent 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:**

Committee Substitute for Senate Bill 400 eliminates the jurisdictional and notice of impending prosecution requirements for the crime of persistent non-support and adds a felony level of offense.

Subsection (1) eliminates the current requirement that persons cannot be prosecuted for the crime of persistent non-support if there is a court that has jurisdiction for the child support or dissolution of marriage. The current barrier to prosecuting for non-payment of support if a civil court has jurisdiction, which applied in most cases, would be removed. However, there would also be no requirement for the court with jurisdiction for modification of the child or spousal support order to hear and consider the circumstances surrounding non-payment in lieu of or prior to criminal prosecution. The misdemeanor committed when a person has failed to provide support is retained. However, the prerequisites for the misdemeanor of ability to pay and knowledge of the child support obligation have been eliminated.

Subsection (2) establishes as a felony offense of the third degree the failure to pay support, after notice, to a child or spouse by persons who are legally obligated but have owed for more than one year support 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 addition, the specific requirement that persons be provided with notice of the impending prosecution if delinquent payment is not made or if a satisfactory explanation for non-payment is provided, is eliminated.

Section (3) sets forth the standard for determining a person's ability, but willful refusal, to pay the court ordered support. The standard established is the defendant's failure to make efforts to acquire the resources to pay the support. The criterion of *ability to pay*, however, has been removed from the misdemeanor charge of persistent nonsupport and not included in the felony charge. This section also provides that the court order obligating the person to pay the support constitutes *notice* for the purpose of determining when the felony has been committed.

Committee Substitute for Senate Bill 400 has removed the primary barrier to the current inability to criminally prosecute cases for persistent non-payment of child support by eliminating the prohibition to criminal prosecution if there is a court with jurisdiction. The higher level of a felony offense for persistent non-payment of child support is being added which may provide a disincentive for willfully choosing not to pay support. 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, a person convicted of a felony under s. 827.06, F.S., could be imprisoned up to 5 years compared with the 6 months provided for the federal offense.

A number of enforcement strategies exist to garner payment of support, including civil contempt; however, there is no requirement that any of these measures be exhausted prior to resorting to criminal charges. While such a requirement is not contained in current law, this bill is broadening the applicability of the provision and adding a felony penalty which raises the question regarding what, if any, actions to enforce payment should be utilized prior to applying a criminal charge.

Finally, although a notice is required for a felony to have been committed, there is no longer a requirement for notification of the impending prosecution and, in turn, no expressly required mechanism for ensuring that the person responsible for the support knows that the delinquency in support has reached the threshold of a criminal offense.

#### **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:**

None.

**C. Government Sector Impact:**

The Office of the State Courts Administrator reports that this legislation could result in a significant but indeterminate increase in the use of judicial resources, with an attendant increase in judicial costs. Since the possibility of incarceration exists, the defendant would be entitled to court-appointed counsel. Prosecutorial time would be increased as well, and there would be associated costs for the other courtroom personnel such as deputy clerks and bailiffs. An impact analysis of this legislation was requested from the Criminal Justice Estimating Conference but was not received at the time this analysis was completed.

Both the Florida Prosecutors Association and the Florida Public Defenders Association reported that the legislation would have a potentially significant workload impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.