

By the Committees on Appropriations; Children and Families; and Senators Horne, Campbell, Mitchell, Sanderson, Sullivan, Smith, Burt, Bronson, Peaden, Lee and Crist

309-1712-01

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A bill to be entitled  
An act relating to support of dependents;  
amending s. 827.06, F.S.; providing alternative  
punishment for nonsupport of dependents;  
providing a felony penalty for fourth or  
subsequent violations; providing for the amount  
of restitution due; providing requirements with  
respect to certain evidence; providing for  
satisfaction of the element of notice under  
certain circumstances; providing an effective  
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 827.06, Florida Statutes, is amended to read:

827.06 ~~Persistent~~ Nonsupport of dependents.--

(1) Any person who, after notice as specified in subsection (5), and who has been previously adjudged in contempt for failure to comply with a support order, willfully fails to provide support which he or she has the ability is able to provide to a child children or a spouse whom the person knows he or she is legally obligated to support commits, and over whom no court has jurisdiction in any proceedings for child support or dissolution of marriage, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In lieu of any punishment imposed pursuant to s. 775.082 or s. 775.083, any person who is convicted of a violation of this subsection shall be punished:

(a) By a fine to be paid after restitution for:

1           1. Not less than \$250 or more than \$500 for a first  
2 conviction.

3           2. Not less than \$500 or more than \$1,000 for a second  
4 conviction.

5           3. Not less than \$1,000 or more than \$1,500 for a  
6 third conviction; and

7           (b) By imprisonment for:

8           1. Not less than 15 days or more than 1 month for a  
9 first conviction.

10           2. Not less than 1 month or more than 3 months for a  
11 second conviction.

12           3. Not less than 3 months or more than 6 months for a  
13 third conviction.

14           (2) Any person who is convicted of a fourth or  
15 subsequent violation of subsection (1) or who violates  
16 subsection (1) and who has owed to that child or spouse for  
17 more than 1 year support in an amount equal to or greater than  
18 \$5,000 commits a felony of the third degree, punishable as  
19 provided in s. 775.082, s. 775.083, or s. 775.084.

20           (3) Upon a conviction under this section, the court  
21 shall order restitution in an amount equal to the total unpaid  
22 support obligation as it exists at the time of sentencing.

23           (4)(a) Evidence that the defendant willfully failed to  
24 make sufficient bona fide efforts to legally acquire the  
25 resources to pay legally ordered support may be sufficient to  
26 prove that he or she had the ability to provide support but  
27 willfully failed to do so, in violation of this section.

28           (b) The element of knowledge may be satisfied if a  
29 court or tribunal as defined by s. 88.1011(22) has entered an  
30 order that obligates the defendant to provide the support.

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1           ~~(5)(2)~~ Prior to commencing prosecution under this  
2 section, the state attorney must notify ~~advise~~ the person  
3 responsible for support by regular mail to the person's last  
4 known address ~~certified mail, return receipt requested,~~ that a  
5 prosecution under this section will be commenced against him  
6 or her unless the person pays the total unpaid support  
7 obligation ~~makes such delinquent support payments~~ or provides  
8 a satisfactory explanation as to why he or she has not made  
9 such payments.

10           Section 2. This act shall take effect October 1, 2001.

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12                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
13   COMMITTEE SUBSTITUTE FOR  
14   CS/SB 400

15 Adds the prerequisite that a person has been previously  
16 adjudged in contempt for failure to comply with a court order  
before prosecution can commence;

17 Requires mandatory restitution in an amount equal to the total  
18 unpaid support obligation upon conviction for misdemeanor or  
felony under s.827.06, F.S.;

19 Reinstates the notice requirement before commencement of  
20 prosecution by state attorney and changes notice to regular  
mail instead of certified mail;

21 Changes the criteria of what constitutes evidence of ability  
22 to pay;

23 Changes the criteria concerning what constitutes knowledge of  
the legal obligation of support;

24 Creates mandatory punishments for misdemeanor violations of s.  
25 827.06, F.S.; and

26 Authorizes a felony prosecution for the fourth violation for  
failure to provide support.