

CHAPTER 827

ABUSE OF CHILDREN

827.01 Definitions.

827.03 Abuse, aggravated abuse, and neglect of a child; penalties.

827.035 Newborn infants.

827.04 Contributing to the delinquency or dependency of a child; penalty.

827.06 Nonsupport of dependents.

827.071 Sexual performance by a child; penalties.

827.08 Misuse of child support money.

827.01 Definitions.--As used in this chapter:

- (1) "Caregiver" means a parent, adult household member, or other person responsible for a child's welfare.
- (2) "Child" means any person under the age of 18 years.
- (3) "Placement" means the giving or transferring of possession or custody of a child by any person to another person for adoption or with the intent or purpose of surrendering the control of the child.

History.--s. 48, ch. 74-383; s. 1, ch. 77-174; s. 7, ch. 96-322.

827.03 Abuse, aggravated abuse, and neglect of a child; penalties.--

- (1) "Child abuse" means:
 - (a) Intentional infliction of physical or mental injury upon a child;
 - (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
 - (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- (2) "Aggravated child abuse" occurs when a person:
 - (a) Commits aggravated battery on a child;
 - (b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or
 - (c) Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

A person who commits aggravated child abuse commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- (3)(a) "Neglect of a child" means:

1. A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
2. A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Neglect of a child may be based on repeated conduct or on a single incident or omission that

results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

(b) A person who willfully or by culpable negligence neglects a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who willfully or by culpable negligence neglects a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) For purposes of this section, "maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

History.--s. 1, ch. 4721, 1899; s. 1, ch. 4971, 1901; GS 3236, 3238; RGS 5069, 5071; s. 1, ch. 9331, 1923; CGL 7171, 7173; s. 1, ch. 65-113; s. 1, ch. 70-8; s. 940, ch. 71-136; s. 49, ch. 74-383; s. 30, ch. 75-298; s. 1, ch. 84-238; s. 8, ch. 96-322; s. 16, ch. 99-168; s. 1, ch. 2003-130.

Note.--Former s. 828.04.

827.035 Newborn infants.--It shall not constitute neglect of a child pursuant to s. 827.03 or contributing to the dependency of a child pursuant to s. 827.04, if a parent leaves a newborn infant at a hospital, emergency medical services station, or fire station or brings a newborn infant to an emergency room and expresses an intent to leave the infant and not return, in compliance with s. 383.50.

History.--s. 8, ch. 2000-188; s. 24, ch. 2001-53.

827.04 Contributing to the delinquency or dependency of a child; penalty.--

(1) Any person who:

(a) Commits any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or

(b) Induces or endeavors to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to remain a dependent or delinquent child or a child in need of services,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It is not necessary for any court exercising juvenile jurisdiction to make an adjudication that any child is delinquent or dependent or a child in need of services in order to prosecute a violation of this section. An adjudication that a child is delinquent or dependent or a child in need of services shall not preclude a subsequent prosecution of a violation of this section.

(3) A person 21 years of age or older who impregnates a child under 16 years of age commits an act of child abuse which constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who impregnates a child in violation of this

subsection commits an offense under this subsection regardless of whether the person is found to have committed, or has been charged with or prosecuted for, any other offense committed during the course of the same criminal transaction or episode, including, but not limited to, an offense proscribed under s. 800.04, relating to lewd, lascivious, or indecent assault or act upon any person under 16 years of age. Neither the victim's lack of chastity nor the victim's consent is a defense to the crime proscribed under this subsection.

History.--s. 50, ch. 74-383; s. 30, ch. 75-298; s. 1, ch. 77-73; s. 1, ch. 77-429; s. 4, ch. 88-151; s. 8, ch. 90-53; s. 2, ch. 96-215; s. 10, ch. 96-322.

827.06 Nonsupport of dependents.--

(1) The Legislature finds that most noncustodial parents want to support their children and remain connected to their families. The Legislature also finds that while many noncustodial parents lack the financial resources and other skills necessary to provide that support, some parents willfully fail to provide support to their children even when they are aware of the obligation and have the ability to do so. The Legislature further finds that existing statutory provisions for civil enforcement of support have not proven sufficiently effective or efficient in gaining adequate support for all children. Recognizing that it is the public policy of this state that children shall be maintained primarily from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs, it is the intent of the Legislature that the criminal penalties provided for in this section are to be pursued in all appropriate cases where civil enforcement has not resulted in payment.

(2) Any person who willfully fails to provide support which he or she has the ability to provide to a child or a spouse whom the person knows he or she is legally obligated to support commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

(5)(a) Evidence that the defendant willfully failed to make sufficient good faith efforts to legally acquire the resources to pay legally ordered support may be sufficient to prove that he or she had the ability to provide support but willfully failed to do so, in violation of this section.

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

(6) It is the intent of the Legislature for the state attorneys, the Florida Prosecuting Attorneys Association, and the Department of Revenue to work collaboratively to identify strategies that allow the criminal penalties provided for in this section to be pursued in all appropriate cases, including, but not limited to, strategies that would assist the state attorneys in obtaining additional resources from available federal Title IV-D funds to initiate prosecution pursuant to this section. The Florida Prosecuting Attorneys Association and the Department of Revenue shall submit a joint report to the Governor, the President of the Senate, and the Speaker of the

House of Representatives by December 31, 2005, that includes identified strategies and recommendations for implementing such strategies.

History.--s. 52, ch. 74-383; s. 31, ch. 75-298; s. 200, ch. 91-224; s. 1282, ch. 97-102; s. 1, ch. 2001-51; s. 14, ch. 2002-173; s. 41, ch. 2005-39.

827.071 Sexual performance by a child; penalties.--

(1) As used in this section, the following definitions shall apply:

(a) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(c) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

(d) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(e) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(f) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(g) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(h) "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(i) "Simulated" means the explicit depiction of conduct set forth in paragraph (g) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 4, ch. 83-75; s. 1, ch. 85-273; s. 1, ch. 86-38; s. 1, ch. 91-33; s. 1, ch. 92-83; s. 1283, ch. 97-102; s. 1, ch. 2001-54.

827.08 Misuse of child support money.--Any person who willfully misapplies funds paid by another or by any governmental agency for the purpose of support of a child shall, for the first offense, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and for a second or subsequent conviction under this section, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person shall be deemed to have misapplied child support funds when such funds are spent for any purpose other than for necessary and proper home, food, clothing, and the necessities of life, which expenditure results in depriving the child of the above named necessities. All public welfare agencies shall give notice of the provisions of this section at least once to each payee of any public grant made for the benefit of any child and shall report violations of this section to the proper prosecuting officer.

History.--s. 1, ch. 61-216; s. 956, ch. 71-136; s. 65, ch. 74-383.