

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1309 Child Maintenance Restitution

**SPONSOR(S):** Criminal Justice Subcommittee, Bankson

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1092

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Restitution is a form of redress for a crime victim that may be ordered as part of the sentence issued by a criminal or juvenile court. Restitution's primary purpose is to compensate a victim for lost or destroyed property, and may be monetary or non-monetary in form. In determining monetary restitution, a court must consider: the amount of the loss sustained by the victim; the defendant's financial resources; the defendant's present and potential future financial needs and earning ability and those of his or her dependents; and any other factors the court deems appropriate.

CS/HB 1309 creates s. 775.088, F.S., to authorize a court to order a defendant who is convicted of DUI manslaughter under 316.193(3)(c)3., F.S., murder under s. 782.04, F.S., manslaughter under s. 782.07(1), F.S., or vehicular homicide under s. 782.071(1), F.S., to make child maintenance restitution to the surviving parent or guardian of a minor child, if the deceased victim of the offense was the parent or guardian of the child. Under the bill, such restitution must be paid monthly, unless otherwise ordered by the court, until the child reaches 18 years of age. The bill defines "child maintenance restitution" as a court-ordered obligation for monetary support for the care, maintenance, training, and education of a child younger than 18 years of age whose parent or guardian is a deceased victim of a specified offense.

Under the bill, if a sentencing court orders a defendant to pay child maintenance restitution, the court must determine an amount that is reasonable and necessary for the support of each child of the deceased victim after considering all relevant factors. The bill places the burden of demonstrating an amount that is reasonable and necessary for the support of a victim's child on the state attorney. The bill authorizes a court to enter an income deduction order directing a defendant's employer to deduct a specified amount from the defendant's income required for the defendant to meet his or her restitution obligation.

Under the bill, a court may not order child maintenance restitution if a surviving parent or guardian obtains a judgment in a civil action prior to the court ordering child maintenance restitution. If a court orders child maintenance restitution and a surviving parent or guardian subsequently obtains a judgment in a civil action, the court must offset the child maintenance restitution order by the amount of the judgment awarded in the civil action.

If a defendant is ordered to pay child maintenance restitution and is incarcerated and unable to pay such restitution, the defendant must begin payment for restitution no later than one year after his or her release. A defendant's child maintenance restitution payments must continue until the entire amount of restitution is paid, regardless of whether the defendant's child maintenance restitution payments are scheduled to terminate.

A court may modify a child maintenance restitution order if it finds that modification is reasonable and necessary based on a substantial change in circumstances. A court may retain jurisdiction over a defendant who is ordered to pay child maintenance restitution until the restitution order is satisfied or until court otherwise chooses to relinquish jurisdiction.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h1309a.CRJ

**DATE:** 3/29/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Restitution

###### *Court Proceedings*

Restitution is a form of redress for a crime victim<sup>1</sup> that may be ordered as part of the criminal sentence issued by a court. Restitution is “full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.”<sup>2</sup> The primary purpose of restitution is to compensate a victim for lost or destroyed property, but it also serves the rehabilitative and deterrent goals of the criminal justice system.<sup>3</sup>

Unless the court finds clear and compelling reasons not to order restitution, the sentencing court must, in addition to any punishment, order a defendant to make restitution to a victim for any damage or loss:

- Caused directly or indirectly by the defendant’s actions; and
- Related to the defendant’s criminal episode.<sup>4</sup>

If the court does not order restitution, or orders restitution for only a portion of the damages caused by the defendant’s actions and related to the criminal episode, the court must provide detailed reasons for its decision on the record.<sup>5</sup>

Restitution may be monetary or non-monetary in form.<sup>6</sup> For the purpose of determining the amount of monetary restitution, s. 775.089(6), F.S., requires a court to consider:

- The amount of the loss sustained by the victim;
- The defendant’s financial resources;
- The defendant’s present and potential future financial needs and earning ability and those of his or her dependents; and
- Any other factors the court deems appropriate.<sup>7</sup>

If a defendant’s actions result in bodily injury to the victim, a court must order restitution to include medical expenses, therapy and rehabilitation expenses, and lost wages and income. If the offense caused a victim’s death, a court must order restitution to include an amount equal to the cost of necessary funeral services.<sup>8</sup> Where an offense did not cause a victim bodily injury, a court may still award restitution to include a victim’s lost income and wages which resulted from the offense.<sup>9</sup>

If a court sentences a defendant to probation or the defendant is paroled, any restitution order must be satisfied as a required condition of his or her probation or parole.<sup>10</sup>

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<sup>1</sup> “Victim” means each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct result or indirect result of the defendant’s offense or criminal episode, and also includes the victim’s estate if the victim is deceased, and the victim’s next of kin if the victim is deceased as a result of the offense. The term also includes governmental entities and political subdivisions, as those terms are defined in s. 11.45, when such entities are a direct victim of the defendant’s offense or criminal episode and not merely providing public services in response to the offense or criminal episode. S. 775.089(1)(c), F.S.

<sup>2</sup> Black’s L. Dictionary (11<sup>th</sup> ed. 2019).

<sup>3</sup> *Toole v. State*, 270 So.3d 371, 373-374 (Fla. 4th DCA 2019), review dismissed, No. SC19-456, 2019 WL 2275025 (Fla. May 29, 2019).

<sup>4</sup> S. 775.089(1)(a), F.S.

<sup>5</sup> S. 775.089(1)(b)1., F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 775.089(6), F.S.

<sup>8</sup> S. 775.089(2)(a), F.S.

<sup>9</sup> S. 775.089(2)(b), F.S.

<sup>10</sup> S. 775.089(4), F.S.

## *Income Deduction Orders*

If a court enters an order for restitution, the court must enter a separate income deduction order (Order), which directs a payor<sup>11</sup> to deduct from all income due and payable to the defendant the amount required by the court to meet the defendant's restitution obligation.<sup>12</sup> The Order remains in effect as long as the order for restitution upon which it is based is effective or unless a court orders otherwise.<sup>13</sup> When the court issues such an Order, the court must inform a defendant of his or her rights, remedies, and duties in regard to such Order, including notifying the defendant:

- Of all fees or interest which may be imposed.
- Of the total amount of the defendant's income to be deducted for each pay period.
- That the Order applies to current and subsequent payors and periods of employment.
- That a copy of the Order will be served on the defendant's payor or payors.
- That enforcement of the Order may only be contested on the ground of mistake of fact regarding the amount of restitution owed.
- That the defendant is required to notify the clerk of court within seven days after the defendant changes his or her address, his or her payors, and the addresses of his or her payors.<sup>14</sup>

A defendant, within 15 days after having an Order entered against him or her, may apply for a hearing to contest the enforcement of the Order on the ground of mistake of fact regarding the amount of restitution owed.<sup>15</sup> A request for such a hearing stays the service of the Order on all payors until a hearing is held and a determination is made as to whether the enforcement of the Order is proper.<sup>16</sup>

The notice to payor must contain information necessary for the payor to comply with the Order, including:

- Requiring the payor to deduct from the defendant's income the amount specified in the Order and to pay such amount to the clerk of court.
- Instructing the payor to implement the Order no later than the first payment date which occurs more than 14 days after the date the Order was served on the payor.
- Instructing the payor to forward within two days after each payment date to the clerk of court the amount deducted from the defendant's income and a statement as to whether the amount totally or partially satisfies the periodic amount specified in the Order.
- Specifying that, if a payor fails to deduct the proper amount from the defendant's income, the payor is liable for the amount the payor should have deducted plus costs, interest, and reasonable attorney's fees.
- Providing that the payor may collect up to \$5 against the defendant's income to reimburse the payor for administrative costs for the first income deduction and up to \$2 for each deduction thereafter.
- Stating that the Order and the notice to payor are binding on the payor until further notice by the court or until the payor no longer provides income to the defendant.
- Instructing the payor that, when he or she no longer provides income to the defendant, the payor must notify the clerk of court and must provide the defendant's last known address and the name and address of the defendant's new payor, if known, and that, if the payor violates this provision, the payor is subject to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation.
- Stating that the payor must not discharge, refuse to employ, or take disciplinary action against the defendant because of the Order and that a violation will subject the payor to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation.
- Informing the payor that, when he or she receives income deduction orders requiring that the income of two or more defendants be deducted and sent to the same clerk of court, the payor

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<sup>11</sup> The "payor" is a defendant's employer.

<sup>12</sup> S. 775.089(12)(a), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> S. 775.089(12)(b)3., F.S.

<sup>16</sup> *Id.*

may combine the amounts that are to be paid to the depository in a single payment as long as he or she identifies that portion of the payment attributable to each defendant.

- Informing the payor that if the payor receives more than one Order against the same defendant, he or she shall contact the court for further instructions.

## **Effect of Proposed Changes**

### Child Maintenance Restitution

#### *Court Proceedings*

CS/HB 1309 creates s. 775.088, F.S., to authorize a court to order a defendant who is convicted of DUI manslaughter under 316.193(3)(c)3., F.S., murder under s. 782.04, F.S., manslaughter under s. 782.07(1), F.S., or vehicular homicide under s. 782.071(1), F.S., to make child maintenance restitution to the surviving parent or guardian of a minor child, if the deceased victim of the offense was the parent or guardian of the child. Under the bill, such restitution must be paid monthly, unless otherwise ordered by the court, until the child reaches 18 years of age.

The bill defines “child maintenance restitution” as a court-ordered obligation for monetary support for the care, maintenance, training, and education of a child younger than 18 years of age whose parent or guardian is a deceased victim of a specified offense.

Under the bill, if a sentencing court orders a defendant to pay child maintenance restitution, the court must determine an amount that is reasonable and necessary for the support of each child of the deceased victim after considering all relevant factors, including, but not limited to:

- The financial needs and resources of the child.
- The financial needs and resources of the surviving parent or guardian of the child, including the state if the child is in the custody of the Department of Children and Families.
- The standard of living to which the child is accustomed.
- The physical and emotional condition of the child and the child's educational needs.
- The child's physical and legal custody arrangements.
- The reasonable work-related child care expenses of the surviving parent or guardian.

The bill places the burden of demonstrating an amount that is reasonable and necessary for the support of a victim's child on the state attorney. The bill requires a court to resolve any dispute as to the proper amount of child maintenance restitution by a preponderance of the evidence, and allows a court to consider hearsay evidence in resolving such a dispute, provided the hearsay evidence has a minimal indicia of reliability. The court may order the clerk of the court to collect, enforce, and dispense child maintenance restitution payments.

Under the bill, a court may not order child maintenance restitution if a surviving parent or guardian obtains a judgment in a civil action prior to the court ordering child maintenance restitution. If a court orders child maintenance restitution and a surviving parent or guardian subsequently obtains a judgment in a civil action, the court must offset the child maintenance restitution order by the amount of the judgment awarded in the civil action.

If a defendant is ordered to pay child maintenance restitution and is incarcerated and unable to pay such restitution, the defendant must begin payment for restitution no later than one year after his or her release. A defendant's child maintenance restitution payments must continue until the entire amount of restitution is paid, regardless of whether the defendant's child maintenance restitution payments are scheduled to terminate.

A court may modify a child maintenance restitution order if it finds that modification is reasonable and necessary based on a substantial change in circumstances. A court may retain jurisdiction over a defendant who is ordered to pay child maintenance restitution until the restitution order is satisfied or until court otherwise chooses to relinquish jurisdiction.

## *Income Deduction Orders*

Under the bill, the process for a court to issue an income deduction order to enforce a child maintenance restitution order and the procedures relating to such income deduction orders are the same as current law for income deduction orders in all other types of restitution cases pursuant to s. 775.089(12), F.S., with the exception that a payor who receives more than one income deduction order against the same defendant, including an income deduction order or notice for child support, must allocate payments equally for all such orders or notices if there is not enough disposable income to fully satisfy each order or notice.

The bill provides an effective date of July 1, 2023.

### B. SECTION DIRECTORY:

**Section 1:** Creates s. 775.088, F.S., related to child maintenance restitution.

**Section 2:** Provides an effective date of July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill does not appear to have a fiscal impact on state or local governments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes a court to order a defendant who is convicted of specified offenses to pay child maintenance restitution to the surviving parent or guardian of a minor child if the deceased victim of the offense was the parent or guardian of the child. Thus, a surviving parent or guardian of a minor child may be eligible to receive monetary support for the care, maintenance, training, and education of such child that he or she is currently unable to receive through the criminal justice system.

### D. FISCAL COMMENTS:

None.

## **III. COMMENTS**

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

#### 2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2023, the Criminal Justice subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required a payor who receives more than one income deduction order against the same defendant, including an income deduction order or notice for child support, to allocate payments equally for all such notices or orders if there is not enough disposable income to fully satisfy each order or notice.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.