

**STORAGE NAME:** h0013.cp

**DATE:** December 22, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME AND PUNISHMENT  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 13

**RELATING TO:** Restitution

**SPONSOR(S):** Representative Heyman

**COMPANION BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME AND PUNISHMENT
  - (2) JUDICIARY
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

The bill provides that in misdemeanor cases, the county court shall "retain jurisdiction (authority over the case and the offender) for the specified period of restitution."

This bill as an effective date of October 1 of the year in which enacted.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Restitution as a Condition of Probation**

Section 948.032, Florida Statutes, requires any restitution ordered by the trial court to be made a condition of probation if probation is ordered. Ordinarily, offenders are placed on a period of probation and required to make monthly payments toward satisfaction of the financial portion of their sentence. The maximum period of time that an offender may be placed on probation depends on the severity of the offense and may be categorized as follows:

1. 2nd degree misdemeanor - 6 months.
2. 1st degree misdemeanor - 1 year.
3. 3rd degree felony - 5 years.
4. 2nd degree felony - 15 years.
5. 1st degree felony - 30 years.
6. Life felony - life.

Florida Statutes, Section 775.082. The maximum period of probation is the same as the maximum period of incarceration, except that the maximum period of incarceration for a second degree misdemeanor is 60 days in jail. Id.

If an offender fails to make the necessary payments, he or she is reported to the court by their supervising probation officer and a hearing is conducted to determine that the offender refused to pay, then the court may impose any sentence that the court could have imposed at the original sentencing with credit only for the time spent incarcerated for the offense. However, if the offender does not have the ability to pay, an offender may not be punished for the failure to pay fines or restitution. See, *Coxon v. State*, 365 So. 2d 1067 (Fla. 2nd DCA 1979). America has no debtors' prison. See Article 1, Section 11 of the Florida Constitution ("No person shall be imprisoned for debt, except in cases of fraud.") Furthermore, it is exceedingly difficult to prove that a defendant has the ability to pay restitution if the offender asserts an inability to pay the money owed. Most criminal defendants are indigent and may not be incarcerated for their poverty.

Section 775.089(3), F.S., provides for time limits for the payment of restitution:

- (3)(a) The court may require that the defendant make restitution under this section within a specified period or in specified installments.

(b) The end of such period or the last such installment shall not be later than:

1. The end of the period of probation if probation is ordered:
2. Five years after the end of the term of imprisonment imposed if the court does not order probation; or
3. Five years after the date of sentencing in any other case.

(c) If not otherwise provided by the court under this subsection, restitution must be made immediately.

This section limits the total time period in which the court may enforce the restitution order. For example, if probation is ordered, the court may not order restitution beyond the period of probation. Daniels v. State, 581 So. 2d 790 (5th DCA 1991). However, the limitations provided by this section are not very significant in misdemeanor cases because the court loses all authority to impose an additional criminal penalty after six months for a second degree misdemeanor and after one year for a first degree misdemeanor.

If restitution is not made within the above referenced time limits, if the defendant is unable to pay, or if the court loses jurisdiction over a case, then the court may enter a "civil restitution lien" against the offender which may be collected in civil court if the offender should ever acquire wealth. See, Sections 775.089 and 960.29, et. seq., F.S. The civil judgement must be ordered before the statutory maximum period for probation expires because the court's jurisdiction or authority over the case and the offender expires at the end of the statutory maximum period.

### **Contempt Powers to Enforce Restitution**

Section 775.089 used to have a provision that explicitly provided that a court may hold a person in contempt for failing to pay restitution:

- (5) If a defendant who is required to make restitution defaults in any payment of restitution or installment thereof, the court may hold him in contempt unless such defendant has made good faith effort to make restitution.

This section has been removed from Florida law; however, there is still some authority for holding a person in contempt for failing to pay restitution so long as the court still has jurisdiction (authority over the case and the offender). Hewett v. State, 613 so. 2d 1305 (Fla. 1993). Justice Grimes, in a concurring opinion in Hewett suggested that a statute should be able to extend the time period for collecting restitution:

If the statute authorized it, I would see no objection to extending the time within which the defendant could make restitution beyond the probationary period. Then, if there was a failure to do so, the defendant could be held in contempt. Id.

**Juveniles**

Section 985.201(3)(c), Florida Statutes, provides for the court to retain jurisdiction "solely for the purpose of enforcing the restitution order." This provision was necessary because the courts lose jurisdiction over a juvenile case once the juvenile turns 19 years of age.

**B. EFFECT OF PROPOSED CHANGES:**

The bill provides that in misdemeanor cases, the county court shall "retain jurisdiction (authority over the case and the offender) for the specified period of restitution." The phrase "the specified period" appears to be referring to a period of time that would be ordered by the court when the order to pay restitution is imposed.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

The bill amends s. 775.089, Florida Statutes.

**E. SECTION-BY-SECTION ANALYSIS:**

**Section 1** Specifying retention of jurisdiction by county courts to enforce restitution and the collection of restitution.

**Section 2** Providing for an effective date.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

The bill does not create or enhance any felony penalties, therefore the Criminal Justice Estimating Conference can not give the bill a fiscal impact. The bill could have a slight impact on the cost of the county courts since it could add to the number of cases on the docket. The bill should have a net positive impact for victims of crimes because it gives the courts a longer period of time to collect restitution.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The bill provides that in misdemeanor cases, the court shall "retain jurisdiction (authority over the case and the offender) for the specified period of restitution." It is not clear whether the phrase "the specified period of restitution" would permit the court to retain jurisdiction for a period of time of any length specified by the court. A period of time in excess of five years would give courts a longer period of jurisdiction for restitution in misdemeanor cases than the courts have in third-degree felony cases. Section 775.089(3), F.S. [quoted in PRESENT SITUATION]. Furthermore, the term "the specified period" could be interpreted not to conflict with the statutory maximum period for the offense in which case "the specified period" would have to be less than six months for a second degree misdemeanor.

Occasionally, the circuit judges sentence persons for misdemeanors. The bill gives authority to county judges to retain jurisdiction, but the bill does not give the same authority to the circuit judges.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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