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DATE: June 23, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
FINAL ANALYSIS**

BILL #: CS/HB 13

RELATING TO: Restitution

SPONSOR(S): Committee on Crime & Punishment and Representative Heyman

COMPANION BILL(S):

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (2) JUDICIARY YEAS 6 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

CS/HB 13 was approved by the Governor on June 17, 1999, and became Chapter 99-358, Laws of Florida

II. SUMMARY:

The bill provides that in misdemeanor cases, the court shall retain jurisdiction for any specified period not to exceed five years. Currently, in misdemeanor cases a court does not have authority to enforce restitution orders after 6 months for a second degree misdemeanor or after 1 year for a first degree misdemeanor.

The bill has an effective date of October 1 of the year in which enacted.

III. 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.

Judiciary Committee Comments:

Justice Grimes concurrence in Hewett v. State, supra, did not receive the support of a majority of the Supreme Court. It also appears that subparagraph (5) mentioned above was removed in 1984 from Section 775.089. The amendment was apparently in response to a case testing the Federal Witness Protection Act of 1982 which included sections on victim restitution. Staff analysis of CS/SB 238 (1984) indicates concerns with the 1983 decision by a federal district court which held the restitution portions of the federal act violated the defendant's due process and equal protection rights. U.S. v. Weldon, 568 F. Supp 516 (ND. Ala. 1983). If subparagraph (5) of Section 775.089 was removed as a result of these concerns, there may exist little support for contempt as a sanction in certain restitution actions, and this bill may be challenged in the future on similar grounds.

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 court shall retain jurisdiction for any specified period not to exceed five years. Currently, in misdemeanor cases a court does not have authority to enforce restitution orders after 6 months for a second degree misdemeanor or after 1 year for a first degree misdemeanor.

The bill has an effective date of October 1 of the year in which enacted.

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?

Yes. Expanding the provisions relating to criminal restitution may result in increased costs associated with the criminal judicial system.

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

Judiciary Committee Comment:

Yes. Crime victims may potentially look to criminal court judicial intervention for collection of their restitution rather than rely upon the civil lien/ judgment system. A mechanism already exists for civil recovery of restitution.

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?

Judiciary Committee Comment:

No. The bill may serve to take responsibility for collection of restitution out of the individual's hands and place it back with the criminal judicial system.

- 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.

IV. 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.

Judiciary Committee Comment:

Expanding the provisions relating to restitution may result in increased costs associated with the criminal judicial system.

V. 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.

VI. COMMENTS:

Judiciary Committee Comment:

PROPONENTS would state that victim restitution is a vital part of punishment for the crime, and that it should continue to be enforced by the criminal court system for a length of time sufficient for the victim to gain the restitution awarded.

OPPONENTS would assert that the cost of implementing continued criminal enforcement would reveal a need for yet more judges, prosecutors, and personnel in the criminal clerk's office. Expanding this provision may also result in delay of other criminal court hearings.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute adopted by the Crime and Punishment Committee changed the original bill by limiting jurisdiction for restitution for misdemeanors to 5 years if the extended time period is ordered when the restitution is ordered. The committee substitute also changed the original bill by giving circuit courts the same extended jurisdiction that the original bill gave to county courts for the occasions when the circuit courts sentence persons for misdemeanors.

An amendment was adopted in the Senate to move the new language to a different subsection of section 775.089, F.S.

VIII. SIGNATURES:

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