

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 732

INTRODUCER: Senator Abruzzo

SUBJECT: Sentencing/Restitution

DATE: March 27, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	FP	_____

I. Summary:

SB 732 amends the definition of “victim” in s. 775.089(1)(c), F.S., to clarify that it includes governmental entities and political subdivisions when such entities are a direct victim of the defendant’s offense or criminal episode and are not merely providing public services in response to the offense or criminal episode.

The bill also requires a judge to order a person convicted of any offense relating to bribery and misuse of public office in ch. 838, F.S., or of any offense by public officers and employees in ch. 839, F.S., to make restitution to the victim and perform 250 hours of community service work. Restitution will be ordered if the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person’s offense or an actual financial loss related to the person’s criminal episode.

II. Present Situation:

Restitution

Section 775.089, F.S., requires a judge to order a defendant convicted of any criminal offense to make monetary or non-monetary restitution to a victim for damage or loss caused directly or indirectly by the defendant’s offense and damage or loss related to the defendant’s criminal episode. Restitution must be ordered unless the judge finds clear and compelling reasons not to do so.¹ The trial court must first conduct a restitution hearing to determine by competent evidence the amount owed to the victim and the defendant’s ability to pay.²

Currently, the restitution statute defines “victim,” in part, as “each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the

¹ Section 775.089, F.S.

² *Exilorme v. State*, 857 So.2d 339 (Fla. 2d DCA 2003) and *Graham v. State*, 720 So.2d 294 (Fla. 5th DCA 1998).

defendant's offense or criminal episode."³ It does not define the word "person." Person, however, is defined in s. 1.01(3), F.S., to include "individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Read together, it appears that governmental entities and political subdivisions could be "victims" for purposes of restitution. However, several of Florida's district courts of appeal are somewhat split on the issue.

Some district courts of appeal have held that governmental entities are barred from obtaining an order of restitution because they are not considered "victims" for purposes of restitution.⁴ It appears that these holdings resulted from restitution being ordered in favor of these entities for conducting investigations or performing other public services that were within the normal scope of their duties as an entity, agency, or subdivision, rather than for actual damages suffered.⁵

Other district courts of appeal have held that governmental entities are "victims" for losses other than investigative costs, such as travel expenses incurred for trial, when the losses are a direct result of the defendant's criminal episode.⁶ In *Childers v. State*, the First District Court held that because the definition of "person" included a list of individuals and entities, the Legislature did not intend the list to be limiting and exclusive, but rather illustrative.⁷

Offenses by Public Officials

Chapter 838, F.S., relating to bribery and misuse of public office, and ch. 839, F.S., relating to offenses by public officers and employees, create numerous criminal offenses involving public officials or employees and the performance of their official duties. Chapter 838, F.S., provides felony penalties for the following offenses:

- Bribery involving a public servant;⁸
- Unlawful compensation or reward for official behavior;⁹
- Corruption by threat against a public servant;¹⁰
- Official misconduct;¹¹
- Bribery in athletic contests;¹²
- Soliciting, accepting, or agreeing to accept a commercial bribe;¹³
- Conferring, offering to confer, or agreeing to offer a commercial bribe;¹⁴

³ The definition also includes the victim's estate if the victim is deceased, the victim's next of kin if the victim is deceased as a result of the offense, as well as the victim's trade association if the offense is a violation of s. 540.11(3)(a)3., F.S., involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf.

⁴ See *Sims v. State*, 746 So.2d 546 (Fla. 2d DCA 1999); *Bain v. State*, 559 So.2d 106 (Fla. 4th DCA 1990); *T.H. Taylor v. State*, 672 So.2d 605 (Fla. 4th DCA 1996); and *Rodriguez v. State*, 691 So.2d 568 (Fla. 2d DCA 1997).

⁵ *Id.*

⁶ *Smith v. State*, 801 So.2d 1043 (Fla. 5th DCA 2001); *Childers v. State*, 936 So.2d 585 (Fla. 1st DCA 2006).

⁷ *Childers*, at 597.

⁸ Section 838.015, F.S., second degree felony offense.

⁹ Section 838.016, F.S., second degree felony offense.

¹⁰ Section 838.021, F.S., second and third degree felony offenses.

¹¹ Section 838.022, F.S., third degree felony offense.

¹² Section 838.12, F.S., third degree felony offenses.

¹³ Section 838.15, F.S., third degree felony offense.

¹⁴ Section 838.16, F.S., third degree felony offense.

- Disclosure or use of confidential criminal justice information;¹⁵ and
- Bid tampering.¹⁶

Chapter 839, F.S., provides misdemeanor and felony penalties for the following offenses:

- County officers speculating in county warrants or certificates;¹⁷
- Municipal officers speculating in municipal scrip;¹⁸
- Tax collectors buying or receiving a lesser than face value amount of warrant or order;¹⁹
- Extortion by officers of the state;²⁰
- Clerk of court, sheriff, or county judge failing to keep records of costs;²¹
- Public official or employee falsifying records;²²
- Officer withholding records from successor;²³
- Judicial officer withholding records;²⁴
- Fraud of clerk in drawing a jury;²⁵
- Misappropriation of moneys by commissioners to make sales;²⁶
- Officer assuming to perform duties of office prior to qualification;²⁷
- Sheriff or officer willfully or corruptly refusing or neglecting to execute process;²⁸
- Officer refusing to execute criminal process;²⁹
- Jailer or officer refusing to receive prisoner;³⁰
- Officer taking insufficient bail;³¹
- Willful failure of officer to perform any duty required under criminal procedure law;³² and
- Misuse of confidential information.³³

As previously discussed, restitution is generally ordered under s. 775.089, F.S. However, some criminal statutes contain restitution and community service provisions that are specific to those particular offenses.³⁴ Chapters 838 and 839, F.S., do not currently have such specific restitution or community service provisions.

¹⁵ Section 838.21, F.S., third degree felony offense.

¹⁶ Section 838.22, F.S., second degree felony offense.

¹⁷ Section 839.04, F.S., second degree misdemeanor offense.

¹⁸ Section 839.05, F.S., second degree misdemeanor offense.

¹⁹ Section 839.06, F.S., first degree misdemeanor offense.

²⁰ Section 839.11, F.S., first degree misdemeanor offense.

²¹ Section 839.12, F.S., second degree misdemeanor offense.

²² Section 839.13, F.S., second degree felony, third degree felony, and first degree misdemeanor offenses.

²³ Section 839.14, F.S., second degree misdemeanor offense.

²⁴ Section 839.15, F.S., first degree misdemeanor offense.

²⁵ Section 839.16, F.S., second degree misdemeanor offense.

²⁶ Section 839.17, F.S., second degree felony offense.

²⁷ Section 839.18, F.S., second degree misdemeanor offense.

²⁸ Section 839.19, F.S., first degree misdemeanor offense.

²⁹ Section 839.20, F.S., first degree misdemeanor offense.

³⁰ Section 839.21, F.S., first degree misdemeanor offense.

³¹ Section 839.23, F.S., second degree misdemeanor offense.

³² Section 839.24, F.S., second degree misdemeanor offense.

³³ Section 839.26, F.S., first degree misdemeanor offense.

³⁴ Some examples of the statutes which include specified restitution provisions include: s. 267.13, F.S., relating to prohibition on unauthorized archeological excavation (provides a specified definition of restitution); s. 784.08, F.S., relating to assault or battery of a person 65 years or older (defendant shall be fined not more than \$10,000, ordered to pay restitution, and perform up to 500 hours of community service); s. 812.0145, F.S., relating to theft from a person 65 years or older (defendant shall be

III. Effect of Proposed Changes:

Restitution

The bill amends the definition of “victim” in s. 775.089(1)(c), F.S., to clarify that it includes governmental entities and political subdivisions when such entities are a direct victim of the defendant’s offense or criminal episode and are not merely providing public services in response to the offense or criminal episode. (“Governmental entities” and “political subdivisions” are defined under the bill as they are currently defined in s. 11.45, F.S.³⁵)

Offenses by Public Officials

The bill creates ss. 838.23 and 839.27, F.S., to require a judge to order a person convicted of any offense in chs. 838 or 839, F.S., to make restitution to the victim and perform 250 hours of community service work. Restitution will be ordered if the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person’s offense or an actual financial loss related to the person’s criminal episode.

These conditions of restitution and community service work are in addition to any fine or sentence that may be imposed and they may not be substituted for such fine or sentence under the bill.

The effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

ordered to pay restitution and perform up to 500 hours of community service); and s. 817.568, F.S., relating to criminal use of personal identification (provides a specified definition of restitution).

³⁵ “Governmental entity” means a state agency, county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function. “Political subdivision” means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State and local governmental entities will now be able to recover restitution under the bill, resulting in a positive fiscal impact.

According to the Department of Corrections (DOC), the bill's new requirement that an offender perform 250 hours of community service work could be enforced by a DOC probation officer as part of the probationer's reporting requirements if the offender is sentenced to community supervision with the special condition imposed to complete 250 community service hours. Any fiscal impact to the department as a result of this new requirement is indeterminate at this time. (In FY 2013-14, there were 64 offenders sentenced to community supervision for violations of chs. 838 and 839, F.S.)³⁶

This requirement could also be enforced by a DOC probation officer on an offender who is released from prison to post release supervision if a special condition is imposed and the length of supervision is long enough for the offender to complete the mandated hours. According to the department, any fiscal impact as a result of this new requirement is also indeterminate at this time. (In FY 2013-14 there were 13 offenders sentenced to state prison for a violation of chs. 838 and 839, F.S.)³⁷

The bill's restitution and community service requirements may have a negative fiscal impact on local governments that will now be required to supervise the community service hours and restitution payments. (In FY 2013-14, there were 77 offenders sentenced statewide for a violation of chs. 838 and 839, F.S.)³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁶ Department of Corrections, *2015 Bill Analysis for HB115* (2015) (on file with the Senate Criminal Justice Committee). (HB 115 is the identical companion to SB 732.)

³⁷ *Id.*

³⁸ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 775.089 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 838.23 and 839.27.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
