

By Senator Burgess

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1                                   A bill to be entitled  
2           An act relating to child maintenance restitution;  
3           creating s. 775.088, F.S.; defining the term "child  
4           maintenance restitution"; authorizing a court to order  
5           a defendant to pay child maintenance restitution to  
6           the surviving parent or guardian of a minor if the  
7           defendant is convicted of violating specified  
8           provisions of law and the deceased victim of the  
9           offense was the parent or guardian of a child;  
10          requiring monthly payments; providing an exception;  
11          requiring the court to determine an amount that is  
12          reasonable and necessary based on specified relevant  
13          factors if it sentences the defendant to pay child  
14          maintenance restitution; providing for the resolution  
15          of disputes as to the proper amount of child  
16          maintenance restitution; providing for the collection,  
17          disbursement, and enforcement of child maintenance  
18          restitution; providing requirements for the issuance  
19          of income deduction orders with an order for  
20          restitution; specifying requirements for a notice that  
21          is required to accompany income deduction orders;  
22          providing for enforcement of income deduction orders;  
23          prohibiting a person from discharging, refusing to  
24          employ, or taking disciplinary action against an  
25          employee subject to child maintenance restitution;  
26          providing civil penalties; providing requirements for  
27          payors; providing civil penalties; providing for  
28          payments after a defendant's incarceration; providing  
29          circumstances under which child maintenance

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30 restitution may not be ordered or under which there  
31 must be an offset by a judgment award; providing that  
32 a court may modify an order of child maintenance  
33 restitution; providing for jurisdiction of the  
34 defendant; providing an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Section 775.088, Florida Statutes, is created to  
39 read:

40 775.088 Child maintenance restitution.-

41 (1) "Child maintenance restitution" means a court-ordered  
42 obligation for monetary support for the care, maintenance,  
43 training, and education of a child younger than 18 years of age  
44 whose parent or guardian is a deceased victim of an offense  
45 specified in subsection (2).

46 (2) In addition to any punishment, the court may order a  
47 defendant convicted of a violation of s. 316.193(3)(c)3., s.  
48 782.04, s. 782.07(1), or s. 782.071(1) to make child maintenance  
49 restitution to the surviving parent or guardian of a minor  
50 child, if the deceased victim of the offense was the parent or  
51 guardian of such child. Such obligation must be paid monthly,  
52 unless otherwise ordered by the court, until such child reaches  
53 18 years of age.

54 (3) If a sentencing court orders the defendant to pay child  
55 maintenance restitution, the court must determine an amount that  
56 is reasonable and necessary for the support of each child of the  
57 deceased victim after considering all relevant factors,  
58 including, but not limited to, all of the following:

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- 59       (a) The financial needs and resources of the child.
- 60       (b) The financial needs and resources of the surviving  
61 parent or guardian of the child, including the state if the  
62 child is in the custody of the Department of Children and  
63 Families.
- 64       (c) The standard of living to which the child is  
65 accustomed.
- 66       (d) The physical and emotional condition of the child and  
67 the child's educational needs.
- 68       (e) The child's physical and legal custody arrangements.
- 69       (f) The reasonable work-related child care expenses of the  
70 surviving parent or guardian.
- 71       (4) Any dispute as to the proper amount of child  
72 maintenance restitution must be resolved by the court by the  
73 preponderance of the evidence. The court may consider hearsay  
74 evidence for this purpose, provided that it finds that the  
75 hearsay evidence has a minimal indicia of reliability. The  
76 burden of demonstrating an amount that is reasonable and  
77 necessary for the support of the victim's child or children is  
78 on the state attorney.
- 79       (5) The court may order the clerk of the court to collect,  
80 enforce, and dispense child maintenance restitution payments.
- 81       (6) (a) Issuance of income deduction order with an order for  
82 restitution.—
- 83           1. Upon the entry of an order for restitution, the court  
84 shall enter a separate order for income deduction if one has not  
85 been entered.
- 86           2. The income deduction order shall direct a payor to  
87 deduct from all income due and payable to the defendant the

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88 amount required by the court to meet the defendant's obligation.

89 3. The income deduction order must be effective as long as  
90 the order for restitution upon which it is based is effective or  
91 until further order of the court.

92 4. When the court orders the income deduction, the court  
93 shall furnish to the defendant a statement of his or her rights,  
94 remedies, and duties in regard to the income deduction order.

95 The statement must include all of the following:

96 a. All fees or interest imposed.

97 b. The total amount of income to be deducted for each pay  
98 period.

99 c. A statement that the income deduction order applies to  
100 current and subsequent payors and periods of employment.

101 d. A statement that a copy of the income deduction order  
102 will be served on the defendant's payor or payors.

103 e. A statement that the defendant is required to notify the  
104 clerk of the court within 7 days after changes in the  
105 defendant's address or payors, or the addresses of his or her  
106 payors.

107 (b) Enforcement of income deduction orders.—

108 1. The clerk of the court or the defendant's probation  
109 officer shall serve an income deduction order and the notice  
110 described in subparagraph 4. to each of the defendant's payors,  
111 unless the defendant has applied for a hearing to contest the  
112 enforcement of the income deduction order.

113 2.a. Service by or upon any person who is a party to a  
114 proceeding under this paragraph must be made in the manner  
115 prescribed in the Florida Rules of Civil Procedure for service  
116 upon parties.

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117 b. Service upon the defendant's payor or successor payor  
118 under this paragraph must be made by prepaid certified mail,  
119 return receipt requested, or in the manner prescribed in chapter  
120 48.

121 3. Within 15 days after having an income deduction order  
122 entered against him or her, the defendant may apply for a  
123 hearing to contest the enforcement of the income deduction order  
124 on the ground of mistake of fact regarding the amount of  
125 restitution owed. The timely request for a hearing stays the  
126 service of an income deduction order on all payors of the  
127 defendant until a hearing is held and a determination is made as  
128 to whether the enforcement of the income deduction order is  
129 proper.

130 4. The notice to each payor may contain only that  
131 information necessary for the payor to comply with the income  
132 deduction order. The notice must:

133 a. Require the payor to deduct from the defendant's income  
134 the amount specified in the income deduction order and to pay  
135 that amount to the clerk of the court;

136 b. Instruct the payor to implement the income deduction  
137 order no later than the first payment date that occurs more than  
138 14 days after the date the income deduction order was served on  
139 the payor;

140 c. Instruct the payor to forward within 2 days after each  
141 payment date to the clerk of the court the amount deducted from  
142 the defendant's income and a statement as to whether the amount  
143 totally or partially satisfies the periodic amount specified in  
144 the income deduction order;

145 d. Specify that, if a payor fails to deduct the proper

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146 amount from the defendant's income, the payor is liable for the  
147 amount the payor should have deducted plus costs, interest, and  
148 reasonable attorney fees;

149 e. State that the income deduction order and the notice to  
150 payor are binding on the payor until further notice by the court  
151 or until the payor no longer provides income to the defendant;

152 f. Instruct the payor that, when he or she no longer  
153 provides income to the defendant, the payor must notify the  
154 clerk of the court and must also provide the defendant's last  
155 known address and the name and address of the defendant's new  
156 payor, if known, and that, if the payor violates this sub-  
157 subparagraph, the payor is subject to a civil penalty not to  
158 exceed \$250 for the first violation or \$500 for any subsequent  
159 violation;

160 g. State that the payor may not discharge, refuse to  
161 employ, or take disciplinary action against the defendant  
162 because of an income deduction order and that a violation of  
163 this sub-subparagraph subjects the payor to a civil penalty not  
164 to exceed \$250 for the first violation or \$500 for any  
165 subsequent violation;

166 h. Inform the payor that, when he or she receives income  
167 deduction orders requiring that the income of two or more  
168 defendants be deducted and sent to the same clerk of the court,  
169 the payor may combine the amounts that are to be paid to the  
170 depository in a single payment as long as he or she identifies  
171 the portion of the payment attributable to each defendant; and

172 i. Inform the payor that if the payor receives more than  
173 one income deduction order against the same defendant, he or she  
174 must contact the court for further instructions.

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175 5. The clerk of the court shall enforce income deduction  
176 orders against the defendant's successor payor who is located in  
177 this state in the same manner prescribed in this subsection for  
178 the enforcement of an income deduction order against an original  
179 payor.

180 6. A person may not discharge, refuse to employ, or take  
181 disciplinary action against an employee because of the  
182 enforcement of an income deduction order. An employer who  
183 violates this subparagraph is subject to a civil penalty not to  
184 exceed \$250 for the first violation or \$500 for any subsequent  
185 violation.

186 7. When a payor no longer provides income to a defendant,  
187 the payor must notify the clerk of the court and must provide  
188 the defendant's last known address and the name and address of  
189 the defendant's new payor, if known. A payor who violates this  
190 subparagraph is subject to a civil penalty not to exceed \$250  
191 for the first violation or \$500 for a subsequent violation.

192 (7) A defendant who is ordered to pay child maintenance  
193 restitution and is incarcerated and unable to pay such  
194 restitution may have up to 1 year after release from  
195 incarceration to begin payment. Such defendant must enter into a  
196 payment plan with the clerk of the court to address any  
197 arrearage. If a defendant's child maintenance restitution  
198 payments are set to terminate but the defendant's obligation is  
199 not paid in full, such payments must continue until the entire  
200 arrearage is paid.

201 (8) (a) If the surviving parent or guardian of the child  
202 brings a civil action against the defendant before the  
203 sentencing court orders child maintenance restitution and the

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204 surviving parent or guardian obtains a judgment in a civil suit,  
205 child maintenance restitution may not be ordered under this  
206 section.

207 (b) If the court orders the defendant to make child  
208 maintenance restitution under this section and the surviving  
209 parent or guardian subsequently brings a civil action and  
210 obtains a judgment, the child maintenance restitution order must  
211 be offset by the amount of the judgment awarded in the civil  
212 action.

213 (9) The court may modify an order of child maintenance  
214 restitution upon finding that such modification is reasonable  
215 and necessary, based on a substantial change in circumstance.

216 (10) The court may retain jurisdiction over a defendant  
217 whom the court has ordered to pay child maintenance restitution  
218 until such restitution order is satisfied or until the court  
219 orders otherwise.

220 Section 2. This act shall take effect July 1, 2023.