

By Senator Burgess

23-00401B-23

20231092__

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

23-00401B-23

20231092__

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:

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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:

23-00401B-23

20231092__

- 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

23-00401B-23

20231092__

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.

23-00401B-23

20231092__

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

23-00401B-23

20231092__

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.

23-00401B-23

20231092__

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

23-00401B-23

20231092__

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.