

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 authorizing payors to collect a fee for income
24 deduction orders; prohibiting a person from
25 discharging, refusing to employ, or taking

26 disciplinary action against an employee subject to
 27 child maintenance restitution; providing civil
 28 penalties; providing requirements for payors;
 29 providing civil penalties; providing for payments
 30 after a defendant's incarceration; providing
 31 circumstances under which child maintenance
 32 restitution may not be ordered or under which there
 33 must be an offset by a judgment award; providing that
 34 a court may modify an order of child maintenance
 35 restitution; providing for jurisdiction of the
 36 defendant; providing an effective date.

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38 Be It Enacted by the Legislature of the State of Florida:

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40 Section 1. Section 775.088, Florida Statutes, is created
 41 to read:

42 775.088 Child maintenance restitution.—

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

48 (2) In addition to any punishment, the court may order a
 49 defendant convicted of a violation of s. 316.193(3)(c)3., s.
 50 782.04, s. 782.07(1), or s. 782.071(1) to make child maintenance

51 restitution to the surviving parent or guardian of a minor
52 child, if the deceased victim of the offense was the parent or
53 guardian of such child. Such obligation must be paid monthly,
54 unless otherwise ordered by the court, until such child reaches
55 18 years of age.

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

61 (a) The financial needs and resources of the child.

62 (b) The financial needs and resources of the surviving
63 parent or guardian of the child, including the state if the
64 child is in the custody of the Department of Children and
65 Families.

66 (c) The standard of living to which the child is
67 accustomed.

68 (d) The physical and emotional condition of the child and
69 the child's educational needs.

70 (e) The child's physical and legal custody arrangements.

71 (f) The reasonable work-related child care expenses of the
72 surviving parent or guardian.

73 (4) Any dispute as to the proper amount of child
74 maintenance restitution must be resolved by the court by the
75 preponderance of the evidence. The court may consider hearsay

76 evidence for this purpose, provided that it finds that the
77 hearsay evidence has a minimal indicia of reliability. The
78 burden of demonstrating an amount that is reasonable and
79 necessary for the support of the victim's child or children is
80 on the state attorney.

81 (5) The court may order the clerk of the court to collect,
82 enforce, and dispense child maintenance restitution payments.

83 (6)(a) Issuance of income deduction order with an order
84 for restitution.—

85 1. Upon the entry of an order for restitution, the court
86 shall enter a separate order for income deduction if one has not
87 been entered.

88 2. The income deduction order shall direct a payor to
89 deduct from all income due and payable to the defendant the
90 amount required by the court to meet the defendant's obligation.

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

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

97 The statement must include all of the following:

98 a. All fees or interest imposed.

99 b. The total amount of income to be deducted for each pay
100 period.

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

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

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

109 (b) Enforcement of income deduction orders.—

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

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

119 b. Service upon the defendant's payor or successor payor
 120 under this paragraph must be made by prepaid certified mail,
 121 return receipt requested, or in the manner prescribed in chapter
 122 48.

123 3. Within 15 days after having an income deduction order
 124 entered against him or her, the defendant may apply for a
 125 hearing to contest the enforcement of the income deduction order

126 on the ground of mistake of fact regarding the amount of
127 restitution owed. The timely request for a hearing stays the
128 service of an income deduction order on all payors of the
129 defendant until a hearing is held and a determination is made as
130 to whether the enforcement of the income deduction order is
131 proper.

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

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

138 b. Instruct the payor to implement the income deduction
139 order no later than the first payment date that occurs more than
140 14 days after the date the income deduction order was served on
141 the payor.

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

147 d. Specify that, if a payor fails to deduct the proper
148 amount from the defendant's income, the payor is liable for the
149 amount the payor should have deducted plus costs, interest, and
150 reasonable attorney fees.

151 e. Provide that the payor may collect up to \$5 from the
152 defendant's income to reimburse the payor for administrative
153 costs for the first income deduction and up to \$2 for each
154 deduction thereafter.

155 f. State that the income deduction order and the notice to
156 payor are binding on the payor until further notice by the court
157 or until the payor no longer provides income to the defendant.

158 g. Instruct the payor that, when he or she no longer
159 provides income to the defendant, the payor must notify the
160 clerk of the court and must also provide the defendant's last
161 known address and the name and address of the defendant's new
162 payor, if known, and that, if the payor violates this sub-
163 subparagraph, the payor is subject to a civil penalty not to
164 exceed \$250 for the first violation or \$500 for any subsequent
165 violation.

166 h. State that the payor may not discharge, refuse to
167 employ, or take disciplinary action against the defendant
168 because of an income deduction order and that a violation of
169 this sub-subparagraph subjects the payor to a civil penalty not
170 to exceed \$250 for the first violation or \$500 for any
171 subsequent violation.

172 i. Inform the payor that, when he or she receives income
173 deduction orders requiring that the income of two or more
174 defendants be deducted and sent to the same clerk of the court,
175 the payor may combine the amounts that are to be paid to the

176 depository in a single payment as long as he or she identifies
177 the portion of the payment attributable to each defendant.

178 j. Inform the payor that if the payor receives more than
179 one income deduction order against the same defendant, he or she
180 must contact the court for further instructions.

181 5. The clerk of the court shall enforce income deduction
182 orders against the defendant's successor payor who is located in
183 this state in the same manner prescribed in this subsection for
184 the enforcement of an income deduction order against an original
185 payor.

186 6. A person may not discharge, refuse to employ, or take
187 disciplinary action against an employee because of the
188 enforcement of an income deduction order. An employer who
189 violates this subparagraph is subject to a civil penalty not to
190 exceed \$250 for the first violation or \$500 for any subsequent
191 violation.

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

198 (7) A defendant who is ordered to pay child maintenance
199 restitution and is incarcerated and unable to pay such
200 restitution may have up to 1 year after release from

201 incarceration to begin payment. Such defendant must enter into a
202 payment plan with the clerk of the court to address any
203 arrears. If a defendant's child maintenance restitution
204 payments are set to terminate but the defendant's obligation is
205 not paid in full, such payments must continue until the entire
206 arrears is paid.

207 (8)(a) If the surviving parent or guardian of the child
208 brings a civil action against the defendant before the
209 sentencing court orders child maintenance restitution and the
210 surviving parent or guardian obtains a judgment in a civil suit,
211 child maintenance restitution may not be ordered under this
212 section.

213 (b) If the court orders the defendant to make child
214 maintenance restitution under this section and the surviving
215 parent or guardian subsequently brings a civil action and
216 obtains a judgment, the child maintenance restitution order must
217 be offset by the amount of the judgment awarded in the civil
218 action.

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

222 (10) The court may retain jurisdiction over a defendant
223 whom the court has ordered to pay child maintenance restitution
224 until such restitution order is satisfied or until the court
225 orders otherwise.

HB 1309

2023

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