

By the Committee on Criminal Justice; and 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 the 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 requirements for payors; providing civil  
27          penalties; providing for payments after a defendant's  
28          incarceration; specifying circumstances under which  
29          child maintenance restitution may not be ordered or

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30 under which child maintenance restitution must be an  
31 offset by a judgment award; providing that a court may  
32 modify an order of child maintenance restitution;  
33 providing for jurisdiction of the defendant; providing  
34 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) As used in this section, the term "child maintenance  
42 restitution" means a court-ordered obligation for monetary  
43 support for the care, maintenance, training, and education of a  
44 child younger than 18 years of age whose parent or guardian is a  
45 deceased victim of an offense 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), or any offense resulting  
49 in the death of a parent or guardian, to make child maintenance  
50 restitution to the surviving parent or guardian of a minor child  
51 if the deceased victim of the offense was the parent or guardian  
52 of such child. Such obligation must be paid monthly, unless  
53 otherwise ordered by the court, until such child reaches 18  
54 years of age.

55 (3) If a sentencing court orders the defendant to pay child  
56 maintenance restitution, the court must determine an amount that  
57 is reasonable and necessary for the support of each child of the  
58 deceased victim after considering all relevant factors,

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59 including, but not limited to, all of the following:

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

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

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

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

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

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

72 (4) Any dispute as to the proper amount of child  
73 maintenance restitution must be resolved by the court by the  
74 preponderance of the evidence. The court may consider hearsay  
75 evidence for this purpose, provided that it finds that the  
76 hearsay evidence has a minimal indicia of reliability. The  
77 burden of demonstrating an amount that is reasonable and  
78 necessary for the support of the victim's child or children is  
79 on the state attorney.

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

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

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

87 2. The income deduction order must direct a payor to deduct

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88 from all income due and payable to the defendant the amount  
89 required by the court to meet the defendant's obligation.

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

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

96 The statement must include all of the following:

97 a. All fees or interest imposed.

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

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

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

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

108 (b) Enforcement of income deduction orders.-

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

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

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117 upon parties.

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

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

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

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

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

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

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

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

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

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

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

173 i. Inform the payor that if the payor receives more than  
174 one income deduction order against the same defendant, he or she

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175 must contact the court for further instructions.

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

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

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

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

202 (8) (a) If the surviving parent or guardian of the child  
203 brings a civil action against the defendant before the

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

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

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

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

221 Section 2. This act shall take effect July 1, 2024.