

**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.)

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

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BILL: SB 118

INTRODUCER: Senator Burgess

SUBJECT: Fees/Child Maintenance Restitution

DATE: February 5, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 118 amends s. 775.088, F.S., to require that notice to a payor must provide that the payor may collect up to \$5 from the defendant’s income to reimburse the payor for administrative costs for the first income deduction and up to \$2 for each deduction thereafter.

Section 775.088, F.S., provides for the enforcement of income deduction orders when child maintenance is ordered. The clerk of the court or the defendant’s probation officer must serve an income deduction order and the notice to each payor. Such notice must contain only that information necessary for the payor to comply with the income deduction order.

SB 116 is a linked bill that creates s. 775.088, F.S., authorizing a court to order a defendant to pay child maintenance restitution to the surviving parent or guardian of a minor if the defendant is convicted of violating specified provisions of law and the deceased victim of the offense was the parent or guardian of a child.

The bill is effective on the same date that SB 116 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

**II. Present Situation:**

Restitution is a form of redress for a crime victim that may be ordered as part of the sentence issued by a criminal or juvenile court. Restitution’s primary purpose is to compensate a victim for lost or destroyed property, and may be monetary or non-monetary in form.<sup>1</sup> In determining monetary restitution, a court must consider: the amount of the loss sustained by the victim;<sup>2</sup> the

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<sup>1</sup> Section 775.089(7)(a), F.S.

<sup>2</sup> Section 775.089(6)(a), F.S.

defendant's financial resources; the defendant's present and potential future financial needs and earning ability and those of his or her dependents; and any other factors the court deems appropriate.<sup>3</sup>

### **Restitution – In General**

Restitution is “full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.”<sup>4</sup> “Unlike civil damages, restitution is a criminal sanction. The purpose of restitution is not only to compensate the victim, but also to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.”<sup>5</sup>

A crime victim has a state constitutional right to restitution. The State Constitution provides that a victim has the “right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.”<sup>6</sup>

A sentencing court must order the defendant to make restitution to the 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, unless the court finds clear and compelling reasons not to order restitution. If ordered, restitution is a mandatory condition of probation.<sup>7</sup>

### **How Restitution is Proved and Calculated**

In general, the fair market value at the time of the offense is the appropriate value for purposes of restitution. However, the Florida Supreme Court in *Hawthorne*<sup>8</sup> ruled that “a court is not tied to fair market value as the sole standard for determining restitution amounts, but rather may exercise such discretion as required to further the purposes of restitution.”<sup>9</sup> The court found that fair market value can be established either through direct testimony of the victim or through evidence of the following four factors:

- Original market cost;
- Manner in which the item was used;
- The general condition and quality of the item; and
- The percentage of depreciation.<sup>10</sup>

A criminal trial and conviction must (unless waived) be heard before a jury and guilt must be proved beyond a reasonable doubt. Restitution, however, is a part of the sentencing process. A

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<sup>3</sup> Section 775.089(6)(b), F.S.

<sup>4</sup> BLACK'S L. DICTIONARY (11th ed. 2019).

<sup>5</sup> *Tolbert v. State*, 268 So.3d 947 (1st DCA 2019).

<sup>6</sup> Art. I, s. 16(b)(9), FLA. CONST.

<sup>7</sup> Section 775.089(1)(a), F.S.

<sup>8</sup> *State v. Hawthorne*, 573 So. 2d 330 (Fla. 1991).

<sup>9</sup> *Id.* at 333.

<sup>10</sup> *Id.* at 332-33.

sentencing hearing is tried before the judge alone, and the essential facts need only be proved by a preponderance of the evidence.<sup>11</sup>

### **Bentley's Law**

Bentley's Law requires that drivers under the influence, who cause the death of parents with children below the age of 18, provide financial restitution in the form of child support. This obligation extends not just to the surviving spouse, but also to any relative who assumes the responsibility of raising the affected children.<sup>12</sup> The law was named after the young son of two Missourian parents who were victims of an intoxicated driver.<sup>13</sup>

To date, Tennessee, Missouri, Kentucky, Maine, and Texas have passed legislation modeled after Bentley's Law:

- Tennessee is the first state to pass "Bentley's Law." It passed the Tennessee House and Senate on April 20, 2022, and was renamed "Ethan, Hailey's and Bentley's Law" to add the names of Tennessee Officer Nicholas Galinger's children. It was signed into law on May 25, 2022.<sup>14</sup>
- "Melanie's Law" was signed in Kentucky on April 4, 2023. This is similar to Bentley's Law but expands the restitution requirement to include children whose parents or guardians were severely and permanently injured in an impaired driving crash.<sup>15</sup>
- Texas bill HB 393 was signed into law on June 2, 2023.<sup>16</sup>
- Maine bill LD 1512 was signed into law on June 23, 2023.<sup>17</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 775.088, F.S., to require that notice to a payor must provide that the payor may collect up to \$5 from the defendant's income to reimburse the payor for administrative costs for the first income deduction and up to \$2 for each deduction thereafter.

Section 775.088, F.S., provides for the enforcement of income deduction orders when child maintenance is ordered. The clerk of the court or the defendant's probation officer must serve an income deduction order and the notice to each payor. Such notice must contain only that information necessary for the payor to comply with the income deduction order.

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<sup>11</sup> Section 775.089(7), F.S.

<sup>12</sup> Enjuris, "Bentley's Law: Protecting Children after Dui Tragedies," September 8, 2023, available at, [www.enjuris.com/car-accident/bentleys-law-explained/](http://www.enjuris.com/car-accident/bentleys-law-explained/) (last visited on February 3, 2024).

<sup>13</sup> *Id.*

<sup>14</sup> Tennessee State General Assembly, *HB 1834 (2022)*, available at, <https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB1834&GA=112>, (last visited on February 3, 2024).

<sup>15</sup> Kentucky General Assembly, *Senate Bill 268 (2023)*, available at, <https://apps.legislature.ky.gov/record/23rs/sb268.html>, (last visited on February 3, 2024).

<sup>16</sup> Texas State Legislature, *H.B. 393 (2023)*, available at, <https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB1834&GA=112> (last visited on February 3, 2024).

<sup>17</sup> Maine State Legislature, *L.D. 1512 (2023)*, available at, <https://legiscan.com/ME/bill/LD1512/2023> (last visited February 3, 2024).

is convicted of violating specified provisions of law and the deceased victim of the offense was the parent or guardian of a child.

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#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19, Art. VII of the State Constitution limits the authority of the Legislature to enact legislation that imposes or raises a state tax or fee by requiring such legislation to be approved by a 2/3 vote of each chamber of the Legislature. Such state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject. For purposes of this limitation, the term “fee” is defined, in pertinent part, to mean any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes that a payor may collect up to \$5 from the defendant’s income to reimburse the payor for administrative costs for the first income deduction and up to \$2 for each deduction thereafter.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 775.088 of the Florida Statutes.

**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.