

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 732

INTRODUCER: Senator Abruzzo

SUBJECT: Sentencing/Restitution

DATE: April 14, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Dugger</u> | <u>Cannon</u> | <u>CJ</u> | Favorable |
| 2. | <u>Brown</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 3. | _____ | _____ | <u>FP</u> | _____ |

I. Summary:

SB 732 expands the class of victims who are entitled to restitution resulting from a defendant's criminal conduct. Under the bill, governmental entities and political subdivisions can be victims that are entitled to restitution to the extent that they are a direct victim of the defendant's offense or criminal episode and not merely providing public services in response to the offense or criminal episode.

The bill requires the court to order a person convicted of bribery or misuse of public office under ch. 838, F.S., or a crime committed by public officers and employees under ch. 839, F.S., to provide restitution to the victim and perform 250 hours of community service work. The court must order restitution if the court finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode.

II. Present Situation:

Restitution

Section 775.089, F.S., requires a judge to order a defendant convicted of a criminal offense to provide monetary or non-monetary restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense or criminal episode. Restitution must be ordered unless the judge finds clear and compelling reasons not to do so.¹ The trial court must first conduct a restitution hearing to determine by competent evidence the amount owed to the victim and the defendant's ability to pay.²

¹ Section 775.089(1)(a), F.S.

² *Exilorme v. State*, 857 So. 2d 339, 340 (Fla. 2d DCA 2003) and *Graham v. State*, 720 So. 2d 294, 294 (Fla. 5th DCA 1998).

Currently, the restitution statute defines “victim,” in part, as “each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode.”³ The statute does not define “person.” A person, however, is defined in s. 1.01(3), F.S., to include “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.” Read together, it appears that governmental entities and political subdivisions could be “victims” for purposes of restitution. However, several of Florida’s district courts of appeal are split on the issue.

Some courts have held that governmental entities are barred from obtaining an order of restitution because they are not considered “victims” for purposes of restitution.⁴ These cases involved restitution requests by police departments, sheriff’s agencies, and a probation office. As such, the entities likely requested restitution for conducting investigations or performing other public services within the normal scope of their duties, rather than for actual damages suffered.⁵

Other district courts of appeal have held that governmental entities are “victims” for losses other than investigative costs, such as travel expenses incurred for trial, when the losses are a direct result of the defendant’s criminal episode.⁶ In *Childers v. State*, the First District Court held that because the definition of “person” included a list of individuals and entities, the Legislature did not intend the list to be limiting and exclusive, but rather illustrative.⁷

Offenses by Public Officials

Chapter 838, F.S., relating to bribery and misuse of public office, and ch. 839, F.S., relating to offenses by public officers and employees, create numerous criminal offenses involving public officials or employees in the performance of their official duties. Chapter 838, F.S., authorizes felony penalties for the following:

- Bribery involving a public servant;⁸
- Unlawful compensation or reward for official behavior;⁹
- Corruption by threat against a public servant;¹⁰
- Official misconduct;¹¹
- Bribery in athletic contests;¹²
- Soliciting, accepting, or agreeing to accept a commercial bribe;¹³
- Conferring, offering to confer, or agreeing to confer a commercial bribe;¹⁴

³ The definition also includes the victim’s estate if the victim is deceased, the victim’s next of kin if the victim is deceased as a result of the offense, as well as the victim’s trade association in certain instances. Section 775.089(1)(c), F.S.

⁴ See *Sims v. State*, 746 So. 2d 546, 547 (Fla. 2d DCA 1999); *Bain v. State*, 559 So. 2d 106, 106 (Fla. 4th DCA 1990); *T.H. Taylor v. State*, 672 So. 2d 605, 606 (Fla. 4th DCA 1996); and *Rodriguez v. State*, 691 So. 2d 568, 569 (Fla. 2d DCA 1997).

⁵ *Id.*

⁶ *Smith v. State*, 801 So. 2d 1043, 1046 (Fla. 5th DCA 2001); *Childers v. State*, 936 So. 2d 585, 597 (Fla. 1st DCA 2006).

⁷ *Childers*, supra note 6, at 597-599.

⁸ Section 838.015, F.S., 2nd degree felony.

⁹ Section 838.016, F.S., 2nd degree felony.

¹⁰ Section 838.021, F.S., 2nd and 3rd degree felonies.

¹¹ Section 838.022, F.S., 3rd degree felony.

¹² Section 838.12, F.S., 3rd degree felony.

¹³ Section 838.15, F.S., 3rd degree felony.

¹⁴ Section 838.16, F.S., 3rd degree felony.

- Disclosure or use of confidential criminal justice information;¹⁵ and
- Bid tampering.¹⁶

Chapter 839, F.S., authorizes misdemeanor and felony penalties for the following:

- County officers speculating in county warrants or certificates;¹⁷
- Municipal officers speculating in municipal scrip;¹⁸
- Tax collectors buying or receiving a lesser than face value amount of warrant or order;¹⁹
- Extortion by officers of the state;²⁰
- Clerk of court, sheriff, or county judge failing to keep records of costs;²¹
- Public official or employee falsifying records;²²
- Officer withholding records from successor;²³
- Judicial officer withholding records;²⁴
- Fraud of clerk in drawing a jury;²⁵
- Misappropriation of moneys by commissioners to make sales;²⁶
- Officer assuming to perform duties of office prior to qualification;²⁷
- Sheriff or officer willfully or corruptly refusing or neglecting to execute process;²⁸
- Officer refusing to execute criminal process;²⁹
- Jailer or officer refusing to receive prisoner;³⁰
- Officer taking insufficient bail;³¹
- Willful failure of officer to perform any duty required under criminal procedure law;³² and
- Misuse of confidential information.³³

As previously discussed, under s. 775.089, F.S., courts generally must order defendants to make restitution for damages or losses caused by criminal conduct. However, some criminal statutes contain restitution and community service requirements that are specific to those particular offenses.³⁴ Chapters 838 and 839, F.S., do not currently have specific restitution or community service requirements.

¹⁵ Section 838.21, F.S., 3rd degree felony offense.

¹⁶ Section 838.22, F.S., 2nd degree felony offense.

¹⁷ Section 839.04, F.S., 2nd degree misdemeanor offense.

¹⁸ Section 839.05, F.S., 2nd degree misdemeanor offense.

¹⁹ Section 839.06, F.S., 1st degree misdemeanor offense.

²⁰ Section 839.11, F.S., 1st degree misdemeanor offense.

²¹ Section 839.12, F.S., 2nd degree misdemeanor offense.

²² Section 839.13, F.S., 2nd degree felony, 3rd degree felony, and 1st degree misdemeanor offenses.

²³ Section 839.14, F.S., 2nd degree misdemeanor offense.

²⁴ Section 839.15, F.S., 1st degree misdemeanor offense.

²⁵ Section 839.16, F.S., 2nd degree misdemeanor offense.

²⁶ Section 839.17, F.S., 2nd degree felony offense.

²⁷ Section 839.18, F.S., 2nd degree misdemeanor offense.

²⁸ Section 839.19, F.S., 1st degree misdemeanor offense.

²⁹ Section 839.20, F.S., 1st degree misdemeanor offense.

³⁰ Section 839.21, F.S., 1st degree misdemeanor offense.

³¹ Section 839.23, F.S., 2nd degree misdemeanor offense.

³² Section 839.24, F.S., 2nd degree misdemeanor offense.

³³ Section 839.26, F.S., 1st degree misdemeanor offense.

³⁴ Statutes that include restitution provisions are: s. 267.13(1)(b), F.S., prohibition on unauthorized archeological excavation (provides a specified definition of restitution); s. 784.08(1), F.S., assault or battery of a person 65 years or older (defendant

III. Effect of Proposed Changes:

Restitution

The bill amends the definition of “victim” in s. 775.089(1)(c), F.S., to include governmental entities and political subdivisions. The entities must have been a direct victim of the defendant’s offense or criminal episode and not merely providing public services in response to the offense or criminal episode. (“Governmental entities” and “political subdivisions” are defined under the bill as they are currently defined in s. 11.45, F.S.³⁵) By expanding the definition of victim to include governmental entities and political subdivisions, these entities are entitled to compensation for damages or losses caused by a defendant’s criminal conduct.

Offenses by Public Officials

The bill creates ss. 838.23 and 839.27, F.S., to require a court to order a public official or employee convicted of any offense in chs. 838 or 839, F.S., to make restitution to the victim and perform 250 hours of community service work. Restitution must be ordered if the court finds that the victim suffered an actual financial loss caused directly or indirectly by the person’s offense or an actual financial loss related to the person’s criminal episode.

Restitution and community service work provided in this bill are in addition to any fine or sentence that may be imposed.

The effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 10 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

shall be fined not more than \$10,000, ordered to pay restitution, and perform up to 500 hours of community service); s. 812.0145(1), F.S., theft from a person 65 years or older (defendant shall be ordered to pay restitution and perform up to 500 hours of community service); and s. 817.568(15)(a), F.S., criminal use of personal identification (specifies that the court may order restitution as payment of attorney’s fees incurred by the victim in correcting his or her credit, or costs incurred for a civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim due to actions of the defendant).

³⁵ “Governmental entity” means a state agency, county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function. “Political subdivision” means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill enables state and local governmental entities to recover restitution under the bill, resulting in a positive fiscal impact.

According to the Department of Corrections (DOC), the bill's new requirement that an offender perform 250 hours of community service work could be enforced by a DOC probation officer if the offender is placed on community supervision. In FY 2013-14, the court sentenced 64 offenders to community supervision for violations of chs. 838 and 839, F.S.³⁶

This requirement could also be enforced by a DOC probation officer if the length of supervision provides enough time to complete community service for an offender released from prison to post release supervision. According to the department, any fiscal impact as a result of this new requirement is also indeterminate at this time. In FY 2013-14, there were 13 offenders sentenced to state prison for a violation of chs. 838 and 839, F.S.³⁷

Any fiscal impact to the department as a result of this bill is indeterminate.

The bill's restitution and community service requirements may have a negative fiscal impact on local governments that are required to supervise the community service hours and restitution payments. In FY 2013-14, there were 77 offenders sentenced statewide for a violation of chs. 838 and 839, F.S.³⁸

VI. Technical Deficiencies:

None.

³⁶ Department of Corrections, *2015 Bill Analysis for HB115* (2015) (on file with the Senate Judiciary Committee). HB 115 is the identical companion to SB 732.

³⁷ *Id.*

³⁸ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.089 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 838.23 and 839.27.

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.