

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 744

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Restitution

DATE: March 4, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides that a court that has ordered restitution for a misdemeanor offense shall retain jurisdiction for the purpose of enforcing the restitution. The bill allows the court to retain jurisdiction for any period, not to exceed 5 years, that the court pronounced at the time restitution is ordered.

Currently, a court would lose jurisdiction over the restitution order in a misdemeanor case after one year, in a case where probation was imposed.

This bill shall take effect on October 1, 1999.

This bill substantially amends the following section of the Florida Statutes: 775.089.

II. Present Situation:

Restitution. Crime victims have the right to recover damages against defendants through civil actions. However, “[s]entencing judges have long used their discretion in imposing criminal sanctions to give victims of crime an additional benefit by conditioning criminal sanctions upon payment of restitution.” *Daniels v. State*, 581 So.2d 970 (Fla. 5th DCA 1991).

Section 775.089, F.S., sets out the parameters for imposing restitution as part of a criminal case. Section 775.089, F.S., requires the trial court to order the defendant to make restitution to the victim, in addition to any punishment. Section 775.089, F.S., defines victim and describes the type of restitution to which a victim is entitled.

Time period to make restitution; generally. Subsection (3) of s. 775.089, F.S., provides payment schedules for making restitution. It authorizes the court to require the defendant to make restitution within specified periods and provides that the end of such period or the last restitution installment shall not be later than:

1. The end of the period of probation if probation is ordered;
2. Five years after the end of the term of imprisonment imposed if the court does not order probation; or
3. Five years after the date of sentencing in any other case.

“If not otherwise provided by the court under this subsection, restitution must be made immediately.” s. 775.089(3)c., F.S.

Time period to make restitution when probation ordered. Section 948.032, F.S., provides that when a defendant is placed on probation, any restitution order shall be a condition of the probation. Section 948.06 (5), F.S., provides that where a probationer has made a good-faith effort to pay restitution, but is unable to do so, the court must first consider alternate measures of punishment other than imprisonment. In *Hewett v. State*, 613 So.2d 1305 (Fla. 1993), the Court held that extending a defendant's probation was not an alternate measure authorized by s. 948.06(5), F.S.

Further, where probation is ordered, a trial court does not have authority or jurisdiction to enter an order requiring a defendant to make restitution after termination of probation. *Daniels v. State*, 581 So.2d 970, (Fla. 5th DCA 1991), citing to s. 775.089(3), F.S.

For a misdemeanor offense, probation may not be ordered for a period of time greater than one year. *See* s. 948.15, F.S. This means that on a misdemeanor offense where probation has been imposed, the court will have jurisdiction over the restitution order for only one year.

In *Hewett, supra*, Justice Grime, in a concurring opinion, stated:

If the statute authorized it [s.948.06], I would see no objection to extending the time within which the defendant could make restitution beyond the probationary period. Then, if there was a failure to pay the restitution despite the ability to do so, the defendant could be held in contempt.

613 So.2d 1305, 1307.

Time period to make restitution in juvenile cases. The court loses jurisdiction over a juvenile case when the juvenile turns 19. s. 985.201(4)(s), F.S. However, the court “may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.” s. 985.201(4)(c), F.S. The court may retain such jurisdiction, “solely for the purpose of enforcing the restitution order.” *Id.*

Civil judgment authorized if restitution not made within specified period. If restitution is not made within the specified time period, “the court may continue the restitution order through the duration of the civil judgment provision” contained in subsection (5) of s. 775.089, F.S. and as provided in s. 55.10, F.S. *See Sims v. State*, 637 So.2d 21, 23 (Fla. 4th DCA. 1994).

Subsection (5) of s. 775.089, F.S., provides that the state or a victim may enforce a restitution order in the same manner as a judgment in a civil action. Subsection (5), states that any

outstanding unpaid amount will bear interest in accordance with s. 55.03, F.S., and when properly recorded, becomes a lien on the defendant's real estate. Finally, subsection (5), makes defendants liable for costs and attorney's fees incurred by the victim in enforcing the order.

III. Effect of Proposed Changes:

This bill amends subsection (3) of s. 775.089, F.S., to provide that a court that has ordered restitution for a misdemeanor offense shall retain jurisdiction for the purpose of enforcing the restitution. The bill allows the court to retain jurisdiction for any period, not to exceed 5 years, that the court pronounced at the time restitution is ordered.

After probation has terminated, presumably, the court will be able to enforce the restitution order by requiring that the defendant appear in court for status hearings and subjecting the defendant to contempt sanctions for a failure to pay the restitution when the defendant has the ability to do so. Currently, a court would lose jurisdiction over the restitution order in a misdemeanor case after one year, in a case where probation was imposed.

This bill shall take effect on October 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that this bill will serve to increase restitution payments to crime victims, they will experience a positive fiscal impact.

C. Government Sector Impact:

Since this bill will lengthen the time a court may retain jurisdiction, the court system may experience an impact, mainly by way of an increase in court hearings. Although the bill contains mandatory language specifying that the court “*shall* retain jurisdiction for the purpose of enforcing the restitution order,” it appears the courts will be able to control the impact by specifying a period of jurisdiction up to 5 years which the court could accommodate within existing judicial resources.

The Office of the State Court Administrator analyzed SB 744. That analysis states:

The bill requires that the county court, "shall enforce the payment of such restitution". This may lead to considerably more involvement by county courts, if the expectation is that county courts will be pro-active in the enforcement of restitution orders. *If county courts are merely required to react upon application for enforcement of restitution, the impact of this legislation should be insignificant.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.