

**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: CS/SB 116

INTRODUCER: Criminal Justice Committee and Senator Burgess

SUBJECT: Child Maintenance Restitution

DATE: February 7, 2024

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 116 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 any offense where the deceased victim of the offense was the parent or guardian of a child.

The bill requires the court to determine an amount that is reasonable and necessary based on specified relevant factors if the defendant is ordered to pay child maintenance restitution.

Relevant factors include, but are not limited to, all of the following:

- The financial needs and resources of the child.
- The financial needs and resources of the surviving parent or guardian of the child including the state if the child is in the custody of the Department of Children and Families.
- The standard of living to which the child is accustomed.
- The physical and emotional condition of the child and the child's educational needs.
- The child's physical and legal custody arrangements.
- The reasonable work-related child care expenses of the surviving parent or guardian.

The bill permits the court to order the clerk of the court to collect, enforce, and dispense child maintenance restitution payments. The bill provides the requirements for the issuance of an income deduction order with an order for restitution and specifies the requirements for notice that is required to accompany income deduction orders. Additionally, the bill provides for the enforcement of income deduction orders.

The bill provides for payments to begin after a defendant's period of incarceration. A defendant who is ordered to pay child maintenance restitution and is incarcerated and unable to pay such restitution may have up to 1 year after release from incarceration to begin payment. If a defendant's child maintenance restitution payments are set to terminate but the defendant's obligation is not paid in full, such payments must continue until the entire arrearage is paid.

The court may modify an order of child maintenance restitution upon finding that such modification is reasonable and necessary, based on a substantial change in circumstance. Additionally, the court may retain jurisdiction over a defendant whom the court has ordered to pay child maintenance restitution until such restitution order is satisfied or until the court orders otherwise.

The bill becomes effective July 1, 2024.

## 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 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

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

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

<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.

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 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>

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<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.

<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).

- “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 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 the following provisions of law and the deceased victim of the offense was the parent or guardian of a child:

- DUI Manslaughter.<sup>18</sup>
- Murder.<sup>19</sup>
- Manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.<sup>20</sup>
- Vehicular Homicide.<sup>21</sup>
- Any offense resulting in the death of a parent or guardian.

The bill requires the court to determine an amount that is reasonable and necessary based on specified relevant factors if the defendant is ordered to pay child maintenance restitution. Relevant factors include, but are not limited to, all of the following:

- The financial needs and resources of the child.
- The financial needs and resources of the surviving parent or guardian of the child including the state if the child is in the custody of the Department of Children and Families.
- The standard of living to which the child is accustomed.
- The physical and emotional condition of the child and the child’s educational needs.
- The child’s physical and legal custody arrangements.
- The reasonable work-related child care expenses of the surviving parent or guardian.

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<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).

<sup>18</sup> Section 316.193(3)(c)3., F.S., Any person who is in violation of this section who operates a vehicle; and who by reason of such operation, causes or contributes to causing the death of any human being or unborn child commits DUI manslaughter.

<sup>19</sup> Section 782.04, F.S.

<sup>20</sup> Section 782.07(1), F.S., the killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of ch. 776, F.S., and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

<sup>21</sup> Section 782.071(1), F.S., Vehicular homicide is the killing of a human being, or the killing of an unborn child by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another. Vehicular homicide is a felony of the second degree.

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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:

None.

E. Other Constitutional Issues:

None identified.

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

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 775.088 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on February 6, 2024:**

The committee substitute:

- Provides that the court may order a defendant convicted of any offense that resulted in the death of a parent or guardian of a minor child to pay child maintenance restitution to the surviving parent or guardian until such child reaches 18 years of age.

**B. Amendments:**

None.