

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1184

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Terrorism

DATE: March 10, 2002 REVISED: 03/12/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Johnson</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1184 provides that the court shall order a defendant to pay restitution to any person injured directly or indirectly from the defendant falsely reporting a bomb or planting a hoax bomb or hoax weapon of mass destruction, if the offense is an act of terrorism or has been reclassified to the next higher degree of offense because it facilitated or furthered an act of terrorism.

The CS also provides that a law enforcement agency or other emergency services agency that responds to an incident caused by or resulting from a hoax weapon of mass destruction violation that is an act of terrorism or that is reclassified to the next higher degree of offense because it facilitated or furthered an act of terrorism has a cause of action against the violator for treble damages and for any costs incurred by the agency in responding to the incident.

The CS reenacts ss. 775.30 and 775.31, F.S., and amends the following sections of the Florida Statutes: 790.163, 790.164, 790.165, and 790.166.

II. Present Situation:

A. "Terrorism" Defined

Section 775.30, F.S., which was created by the Legislature in 2001 Special Session C (chapters 2001-356, 2001-365, and 2001-366, L.O.F.), defines "terrorism" as an activity that:

- Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
- Involves a violation of s. 815.06 relating to offenses against computer users; and

- Is intended to:
 - Intimidate, injure, or coerce a civilian population;
 - Influence the policy of a government by intimidation or coercion; or
 - Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

B. Felony or Misdemeanor Reclassification

Section 775.31, F.S., was also created by the Legislature in 2001 Special Session C (ch. 2001-357, L.O.F.). The statute reclassifies the degree of a felony or misdemeanor of any offense to the next higher degree if that offense facilitates or furthers an act of terrorism, as that term is defined in s. 775.30, F.S.

C. Restitution

Section 775.089, F.S., provides that, in addition to any punishment for a criminal violation, the court shall 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 such restitution. The courts have examined damage or loss directly or indirectly caused by the defendant's offense on a case-by-case basis. *See cases cited 775.089, F.S.A.* Restitution may be monetary or nonmonetary restitution. The court must make the payment of restitution a condition of probation in accordance with s. 948.03, F.S, providing for the terms and conditions of community control.

The term "victim" is defined in paragraph (1)(c) for purposes of this section and any other provision of law related to restitution to mean 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, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense.

The court, in determining whether to order restitution and the amount of such restitution, must consider the amount of the loss sustained by any victim as a result of the offense. Further, paragraph (6)(b) requires the court, at the time of enforcement of the restitution order, to consider the financial resources of the defendant, the present and potential future financial needs and earning ability of the defendant and his or her dependents, and such other factors that it deems appropriate. The Florida Supreme Court has held that:

[B]efore a person on probation can be imprisoned for failing to make restitution, there must be a determination that that person has, or has had, the ability to pay but has willfully refused to do so.

Stephens v. State, 630 So. 2d 1090 (Fla. 1994).

Where the defendant does not have the ability to pay Sanctions for failure of a defendant to pay restitution when he or she is unable to pay can have constitutional implications (due process,

equal protection, imprisonment for debt). *See Hamrick v. State*, 519 So. 2d 81 (Fla. 3d DCA 1988).

The conviction of a defendant for an offense involving the act giving rise to restitution estops the defendant from denying the essential allegations of that offense in any subsequent civil proceeding. An order of restitution does not bar any subsequent civil remedy or recovery, but the amount of such restitution must be set off against any subsequent independent civil recovery.

Various other statutes contain requirements or authorizations for restitution specific to a criminal offense in those statutes. *See, e.g.*, s. 287.0585, F.S. (late payments by contractors to subcontractors and suppliers); s. 784.08, F.S. (assault or battery on person 65 years of age or older); s. 775.0844, F.S. (white collar crimes); and s. 817.5621, F.S. (unlawful subleasing of a motor vehicle).

Statutes with a restitution requirement or authorization may or may not specify costs and damages as included within restitution. Compare s. 63.212, F.S. (adoption violations) (providing that “[d]amages may be awarded through restitution in any related criminal prosecution or by filing a separate civil action”); s. 287.0585, F.S. (“restitution for attorney’s fees and all related costs”), and s. 817.568, F.S. (criminal use of personal identification information) (“restitution pursuant to s. 775.089 to any victim of the offense” and “[i]n addition to the victim’s out-of-pocket costs, such restitution may include payment of any other costs, including attorney’s fees incurred by the victim in clearing the victim’s credit history or credit rating, or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as the result of the actions of the defendant”) with s. 784.08, F.S. (simply providing for “restitution to the victim of such offense”).

D. Cause of Action for Treble Damages

Florida law provides a cause of action for treble damages for various violations. *See* s. 68.082, F.S. (false claims against the state); s. 403.413, F.S. (“Florida Litter Law”); s. 456.082, F.S. (willful disclosure of confidential information); s. 468.4562, F.S. (specified damages incurred by college or university); s. 475.452, F.S. (unlawful advance-fee transaction for the listing of real property); s. 542.22, F.S. (injury from restraint of trade or monopolization); s. 626.9543 (Holocaust victims); s. 772.11, F.S. (injuries from theft); ch. 772, F.S. (“Civil Remedies for Criminal Practices Act”; “Drug Dealer Liability Act”); s. 775.085, F.S. (hate crimes); and s. 874.06, F.S. (gang activity); s. 895.05, F.S. (racketeering).

III. Effect of Proposed Changes:

The committee substitute provides that the court shall order a defendant to pay restitution to any person injured directly or indirectly from the defendant falsely reporting a bomb or planting a hoax bomb or hoax weapon of mass destruction, if the offense is an act of terrorism or has been reclassified to the next higher degree of offense because it facilitated or furthered an act of terrorism. Restitution is to be made for all costs and damages incurred by a person because of the violation. A non-inclusive list of who is a “person” for purposes of recovery is provided. Payment of restitution must be made a condition of any probation. The restitution order has priority over any civil penalty. Restitution cannot be imposed in lieu of a fine or sentence. The court retains jurisdiction to enforce its restitution order.

The CS also provides that a law enforcement agency or other emergency services agency that responds to an incident caused by or resulting from a hoax weapon of mass destruction violation that is an act of terrorism or that is reclassified to a higher degree offense because it facilitated or furthered an act of terrorism has a cause of action against the violator for treble damages and for any costs incurred by the agency in responding to the incident. A non-inclusive list of those agencies or entities constituting an “emergency services agency” is provided and includes:

- a. A governmental agency responsible for preventing and detecting crime and for enforcing penal, traffic, regulatory, game, immigration, postal, customs, or controlled-substance laws,
- b. Any agency or entity providing fire or emergency medical services and support;
- c. Any agency or entity providing transportation, communications, public works, or engineering services; or,
- d. Any agency or entity providing building-code inspections, planning assistance, information assistance, mass care, resource support, health and medical services, or search and rescue services.

The CS takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In interpreting the right of the courts to revoke a criminal’s probation for a failure to make restitution under s. 775.089, F.S., the Florida Supreme Court has held that:

[B]efore a person on probation can be imprisoned for failing to make restitution, there must be a determination that that person has, or has had, the ability to pay but has willfully refused to do so.

Stephens v. State, 630 So. 2d 1090 (Fla. 1994).

Where the defendant does not have the ability to pay, sanctions for failure of a defendant to pay restitution when he or she is unable to pay can have constitutional implications (due process, equal protection, imprisonment for debt). See *Hamrick v. State*, 519 So. 2d 81 (Fla. 3d DCA 1988).

Section 775.089 F.S., specifically provides for the court, at the time of enforcement of the restitution order, to consider the defendant's present and future ability to pay. The sections amended in this bill do not provide this direction to the courts. However, the courts may independently provide this review as a constitutional requirement.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute may increase the amount and type of restitution required of defendant's to any person injured directly or indirectly from the defendant falsely reporting a bomb or planting a hoax bomb or hoax weapon of mass destruction, if the offense is an act of terrorism or has been reclassified to the next higher degree of offense because it facilitated or furthered an act of terrorism.

C. Government Sector Impact:

Governmental entities currently receiving civil fines for any commission of falsely reporting a bomb or planting a hoax bomb or hoax weapon of mass destruction where the offense is an act of terrorism or has been reclassified to the next higher degree of offense because it facilitated or furthered an act of terrorism may see a temporary or permanent decrease in fine revenue. The committee substitute requires that the restitution will have priority over any civil penalty for each of the violations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that restitution will have priority over any civil penalty for each violation. However, the sections related to each violation do not appear to provide for any civil penalty only criminal penalties.

VIII. Amendments:

#1 by Judiciary

The amendment removes the requirement that an order of restitution will take precedence over any civil penalty for the violation. This requirement is removed from sections 790.163, 790.164, 790.165, and 790.166, Florida Statutes, because there are no civil penalties for these criminal acts.