

TRAFFIC ACCIDENT RESTITUTION ACT

House Bill 490 became effective January 1, 2004. The 342-page bill is based upon the Ohio Sentencing Commission's misdemeanor sentencing proposals. The bill was unanimously approved by the Senate and House and signed by Governor Taft on January 2, 2003.

The Bill overhauls the misdemeanor sentencing provisions of the Ohio Revised Code. Of significance to civil practitioners are the restitution provisions. A municipal or county court judge may order the offender to make restitution to the victim in misdemeanor sentencing, including traffic infractions. The restitution is for economic loss only, i.e. property damage, lost wages and, presumably, medical expenses. Although occurring in a criminal proceeding, the Bill provides that the order of restitution shall become a civil judgment against the offender. In the event the victim files a civil lawsuit, there is a provision for a set-off of sums paid in restitution.

Numerous questions arise out the impact of House Bill 490. First of all, municipal and county courts are limited in jurisdiction to \$15,000.00. May restitution be ordered in excess of \$15,000.00?

Secondly, in a criminal proceeding there is limited discovery. In the event of disputed facts or the disputed value of economic loss, will the courts permit discovery as in a civil case?

In minor misdemeanor cases there is no right to a jury trial, since the fine does not exceed \$100.00 (now changed to \$150.00 by H.B. 490). Although the fine may not exceed \$150.00, is there a right to jury trial on the restitution issue, since that may greatly surpass \$150.00?

In other misdemeanor sentencing there is no right to a jury trial unless the sentence may involve prison or jail time or the fine exceeds \$1,000.00. Again, an order of restitution may exceed \$1,000.00. Is there a right to a jury trial?

What about the proximate cause issue? Maybe the traffic violation did not cause the accident or the economic loss.

Does the offender's insurance carrier have an obligation to defend the offender in the criminal proceeding to mitigate the obligation of restitution? Does an offender's insurance carrier have an obligation to pay the order of restitution?

Will plaintiffs and their attorneys use the restitution remedy to obtain quick payment of property damage claims, lost wage claims and medical bills?

As can be seen, there are numerous questions about the constitutionality and procedures to be followed and how the courts will apply the new remedy of restitution. It will probably be sometime before the courts work through all of the restitution provisions of H.B. 490. We will continue to monitor decisions involving these provisions to determine how courts address the issues mentioned above.

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