

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 785 Restitution for Juvenile Offenses  
**SPONSOR(S):** Criminal Justice Subcommittee; Eagle and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 985.437, F.S., authorizes a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for any damage or loss caused by the child's offense in a reasonable amount or manner. Restitution may be satisfied by performing community service, or by monetary payments, with a promissory note cosigned by the child's parent or guardian. A parent or guardian may be absolved of liability for restitution in their child's criminal case if the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

Section 985.513, F.S., authorizes a court to order the parent or legal guardian to make restitution payments, in money or in kind, for any damage or loss caused by the child's offense; and to be responsible for any restitution ordered against the child, as provided under s. 985.437, F.S.

The bill amends s. 985.437, F.S., to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. The bill further amends s. 985.437, F.S., to:

- Authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment; and
- Remove the provision absolving a parent or guardian of any liability for restitution in their child's criminal case when the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

The bill amends s. 985.513, F.S., to remove duplicative language relating to authority the court has to order a parent or guardian to be responsible for the child's restitution.

To the extent that the bill increases the number and/or length of restitution hearings, which must be conducted by the court prior to entering an order of restitution, it could create an increased workload on the courts.

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Restitution in Juvenile Criminal Cases**

Section 985.437, F.S., authorizes, but does not require, a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for any damage or loss caused by the child's offense<sup>1</sup> in a reasonable amount or manner.<sup>2</sup> The court determines the amount or manner of restitution that is reasonable.<sup>3</sup>

To enter an order of restitution, a trial court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution the victim is entitled to,<sup>4</sup> unless the child previously entered into an agreement to pay<sup>5</sup> or has waived their right to attend a restitution hearing.<sup>6</sup> When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the parent or guardian could reasonably be expected to pay or make.<sup>7</sup>

Restitution may be satisfied by performing community service, or by monetary payments, with a promissory note cosigned by the child's parent or guardian.<sup>8</sup> However, a parent or guardian may be absolved of any liability for restitution in their child's criminal case if, through a hearing, the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."<sup>9</sup>

The clerk of the circuit court receives and dispenses restitution payments. The clerk must notify the court if restitution is not made. 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.<sup>10</sup>

##### **Court's Powers over Juvenile Offender's Parent or Guardian**

Section 985.513, F.S., authorizes, but does not require, a court that has jurisdiction over a child that has been adjudicated delinquent to order the parents or guardians of such child to perform community service and participate in family counseling. The statute also authorizes the court to:

- Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense; and
- Require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437, F.S.

#### **Failing to Pay Restitution Order**

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<sup>1</sup> The damage or loss or damage must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2nd DCA 2009).

<sup>2</sup> If restitution is ordered, it becomes a condition of probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program. Section 985.437(1), F.S.

<sup>3</sup> Section 985.437(2), F.S.

<sup>4</sup> *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

<sup>5</sup> *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

<sup>6</sup> *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

<sup>7</sup> Section 985.437(2), F.S.

<sup>8</sup> Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child, without the court providing the parent with meaningful notice and an opportunity to be heard, or without making a determination of the parents' ability to do so. *See, S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999); *A.T. v. State*, 706 So.2d 109 (Fla. 2nd DCA 1998); and *M.H. v. State*, 698 So.2d 395 (Fla. 4th DCA 1997).

<sup>9</sup> Section 985.437(4), F.S.

<sup>10</sup> Section 985.437(5), F.S.

Sections 985.0301(h), F.S., states that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. Section 775.089, F.S., provides that a restitution order may be enforced in the same manner as a judgment in a civil lien. Thus, if a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the parent or child's real property.<sup>11</sup> The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.<sup>12</sup>

### **Effect of the Bill**

The bill amends s. 985.437, F.S., to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. The bill further amends s. 985.437, F.S., to authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment. The payment plan must reflect the child and child's parent or legal guardian's ability to pay the restitution amount.

The bill removes the provision in s. 985.437(4), F.S., absolving a parent or guardian of any liability for restitution in their child's criminal case when the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

The bill amends s. 985.513, F.S., to remove duplicative language relating to the authority the court has to order a parent or guardian to be responsible for the child's restitution, ensuring the requirement that a parent and child both be responsible for restitution is addressed solely in s. 985.437, F.S.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 985.437, F.S., relating to restitution.

Section 2. Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.

Section 3. Provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill amends ss. 985.437 and 985.513, F.S., to *require* the court to order a child and the child's parent or legal guardian to pay restitution. To enter an order of restitution, the court must conduct a restitution hearing. To the extent that bill increases the number and/or length of restitution hearings, the bill may result in an increased workload on the court system.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

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<sup>11</sup> Section 775.089(5), F.S.

<sup>12</sup> Section 985.045, F.S., also states that this is allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents and legal guardians of children that have been adjudicated delinquent will be liable for restitution in money or in kind for damages caused by the child's offense. Additionally, victims of a child's offense may be more likely to receive restitution.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

To be in compliance with the due process clause requirements of the Fourteenth Amendment,<sup>13</sup> of the U.S. Constitution, the court must conduct a restitution hearing to determine if restitution is necessary, how much shall be ordered, and the ability of the juvenile and parent to make payments.<sup>14</sup> Both the juvenile and the parent must be notified and have the opportunity to present evidence to the court about what, if any, restitution amount should be owed and their ability to pay.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the court to enter a restitution order against both the child and parent for a victim's losses resulting from the child's criminal episode. This could result in a court being required to enter an order of restitution against a parent when the parent was the victim of the child's criminal offense.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the favorably as a committee substitute. The amendment removes duplicative language in s. 985.513, F.S., relating to the court's authority to order a parent or guardian to be responsible for restitution for any damage or loss caused by the child's offense.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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<sup>13</sup> Art. XIV, Sec. 1, U.S. CONST.

<sup>14</sup> *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008).