

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 235 Restitution
SPONSOR(S): Health & Human Services Committee; Eagle
TIED BILLS: None **IDEN./SIM. BILLS:** SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Cox	Cunningham
2) Health & Human Services Committee	15 Y, 2 N, As CS	Guzzo	Calamas
3) Justice Appropriations Subcommittee	12 Y, 0 N	Schrader	Lloyd
4) 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 monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service. 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."

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 in cases where court has determined that restitution is appropriate. 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;
- Absolve a parent or guardian of any liability for restitution if, after a hearing:
 - The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
 - If the victim entitled to the restitution is that child's parent or guardian;
- Authorize the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility; and
- Specify that the Department of Children and Families, a foster parent, the community-based care lead agency supervising the placement of a child while under contract with the department, a residential child-caring agency, or a family foster home is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

The bill would not necessarily increase the number of cases where restitution is ordered, but would likely increase the amounts recovered for victims where restitution was ordered. It cannot be determined how judicial or court workload will be impacted. Restitution cannot be ordered without a restitution hearing that determines the amount of restitution owed and the ability to pay. Restitution issues can be heard as part of the disposition hearing if the parties are noticed. However, the decision whether or not to impose restitution remains discretionary with the court.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Restitution in Juvenile Criminal Cases

Currently, s. 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* damage¹ or loss caused by the child's offense² in a reasonable amount or manner.³ Similarly, s. 985.35, F.S., authorizes the court to place a child found to have committed a violation of law in a probation program.⁴ The probation program may include restitution in money or in kind.⁵ The court determines the amount or manner of restitution that is reasonable.⁶

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 to which the victim is entitled.⁷ A restitution hearing is not required if the child previously entered into an agreement to pay⁸ or has waived his or her right to attend a restitution hearing.⁹ 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.¹⁰

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service.¹¹ However, a parent or guardian may be absolved of any liability for restitution if, after a hearing, the court finds that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."¹²

The clerk of the circuit court receives and dispenses restitution payments, and 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.¹³

¹ "Any damage" has been interpreted by Florida's courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

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

³ 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.

⁴ Section 985.35(4) and (5), F.S.

⁵ Section 985.35(4)(a), F.S.

⁶ Section 985.437(2), F.S.

⁷ *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.

⁸ *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

⁹ *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

¹⁰ Section 985.437(2), F.S.

¹¹ 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. 2d DCA 1998); and *M.H. v. State*, 698 So.2d 395 (Fla. 4th DCA 1997).

¹² Section 985.437(4), F.S.

¹³ Section 985.437(5), F.S.

Court's Powers over a 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.¹⁴

Current law does not specifically exempt the Department of Children and Families (DCF), a foster parent, or a community-based care organization supervising a dependent child from paying restitution when a court requires the child's parent or legal guardian to be responsible for restitution ordered against the child.

Failing to Pay Restitution Order

Section 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.¹⁵ The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.¹⁶

Effect of Proposed Changes

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 in cases where court has determined that restitution is appropriate. 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 ability of a child and the child's parent or legal guardian to pay the restitution amount.

The bill absolves a parent or guardian of any liability for restitution if, after a hearing:

- The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
- The victim entitled to the restitution is the child's parent or guardian.

The bill authorizes the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility.

The bill specifies certain individuals, agencies, and facilities that are not considered guardians responsible for restitution for the delinquent acts of a child who is found to be dependent, including:

- DCF;
- A foster parent;
- A community-based care lead agency supervising the placement of the child pursuant to a contract with DCF;
- A residential child-caring agency; and
- A family foster home.

¹⁴ Section 985.513(1)(b), F.S.

¹⁵ Section 775.089(5), F.S.

¹⁶ 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.

As a result, a victim may incur the costs associated with a delinquent act committed by a child under the care of any of the non-responsible parties provided above.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

B. SECTION DIRECTORY:

Section 1: Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.

Section 2: Amends s. 985.437, F.S., relating to restitution.

Section 3: Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.

Section 4: Provides an effective date of July 1, 2015.

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 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 in cases where court has determined that restitution is appropriate. The bill would not necessarily increase the number of cases where restitution is ordered, but would likely increase the amounts recovered for victims where restitution was ordered. It cannot be determined how judicial or court workload will be impacted. Restitution cannot be ordered without a restitution hearing that determines the amount of restitution owed and the ability to pay. Restitution issues can be heard as part of the disposition hearing if the parties are noticed. However, the decision whether or not to impose restitution remains discretionary with the court.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

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. Therefore, a victim of a child's offense may be more likely to receive restitution.

A victim may incur the costs associated with a delinquent act committed by a child under the care of any of the non-responsible parties provided in the bill.

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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2015, the Health and Human Services Committee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Authorized the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility.
- Provided that residential child-caring agencies and family foster homes are not considered guardians responsible for restitution for the delinquent acts of dependent children.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.