

**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 Children, Families, and Elder Affairs

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**BILL:** CS/SB 312

**INTRODUCER:** Children, Families, and Elder Affairs Committee and Senators Detert and Gaetz

**SUBJECT:** Restitution for Juvenile Offenses

**DATE:** March 25, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.	Preston	Hendon	CF	<b>Fav/CS</b>
3.			JU	
4.			FP	

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 312 expands the authority of the court to order restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

It requires, rather than authorizes, the child and the child’s parent or guardian, to pay restitution when the court has determined that restitution is appropriate. It also authorizes the court to do the following:

- Set up a payment plan if the child and the parents or guardians are unable to pay the restitution in one lump-sum payment;
- Absolve the parent or guardian of any liability for restitution if after a hearing, the court finds that the current offense 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 restitution is the child’s parent or guardian; and
- Order restitution to be paid by the parents or guardians who have current custody and parental responsibility.

The bill clarifies that the Department of Children and Families (DCF or department), a foster parent with whom the child is placed, the community-based care lead agency supervising the placement of the child or a facility registered under s. 409.176, F.S., is not considered a guardian responsible for restitution for the delinquent acts of a dependent child.

The bill is anticipated to have an insignificant fiscal impact on state government and has an effective date of July 1, 2015.

## II. Present Situation:

Section 985.437, F.S., authorizes a court with jurisdiction over a child who has been adjudicated delinquent to order the child to pay restitution to the victim for any damage<sup>1</sup> or loss caused by the child's offense<sup>2</sup> in a reasonable amount or manner.<sup>3</sup> Section 985.35, F.S., authorizes the court to place a child whose adjudication of delinquency is withheld in a probation program.<sup>4</sup> The probation program may include paying restitution in money or in kind.<sup>5</sup> The court determines the amount and manner of restitution that is reasonable.<sup>6</sup>

Before entering an order of restitution, the 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.<sup>7</sup> A restitution hearing is not required if the child previously entered into an agreement to pay<sup>8</sup> or has waived his or her right to attend a restitution hearing.<sup>9</sup> When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or his parents or guardian<sup>10</sup> can reasonably be expected to pay.<sup>11</sup>

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

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<sup>1</sup> "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).

<sup>2</sup> 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).

<sup>3</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, s. 985.437(1), F.S.

<sup>4</sup> Section 985.35(4), F.S.

<sup>5</sup> Section 985.437(2), F.S.

<sup>6</sup> *Id.*

<sup>7</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>8</sup> *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

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

<sup>10</sup> In chapter 985, F.S., the term "legal custody or guardian" means a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

<sup>11</sup> Section 985.437(2), F.S.

<sup>12</sup> *Id.* 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 pay. See *S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So.2d 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); and *C.D.D. v. State*, 684 So.2d 866, 867 (Fla. 2nd DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

child from engaging in delinquent acts.”<sup>13</sup> This provision is not limited to first offenses by the child.

The clerk of the circuit court receives and dispenses restitution payments and must notify the court if restitution is not made.<sup>14</sup> The Department of Juvenile Justice (DJJ) is responsible for monitoring restitution payments by the child, including notifying the court when restitution payments are not being made.<sup>15</sup> 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>16</sup> According to the DJJ, many jurisdictions will not terminate the department’s supervision until the child’s restitution obligation is paid.<sup>17</sup>

If a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the real property of the child or parent.<sup>18</sup> The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.<sup>19</sup>

Current law does not specifically exempt the DCF, a foster parent, or a community-based care organization supervising a child from paying restitution when the court requires the child’s parent or legal guardian to be held accountable for the dependent child’s delinquent acts.

### III. Effect of Proposed Changes:

**Section 1** amends s. 985.35, F.S., to specify that an order of restitution made in a delinquency case, including one in which the court withholds adjudication of delinquency, is the responsibility of the child and the child’s parent or guardian.

**Section 2** amends s. 985.437, F.S., to expand the responsibility for payment of restitution to the parent or guardian of the child if the court enters an order of restitution in a juvenile case, regardless of whether the court adjudicates the child delinquent or withholds such adjudication. If the court finds it appropriate and orders restitution, the court may set up a payment plan for the child and the parent or guardian if they are unable to pay in one lump-sum payment.

The bill absolves the parent or guardian of liability for restitution if:

- After a hearing, the court finds that it is the child’s first referral to the delinquency system and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or
- The victim is the child’s parent or guardian.

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<sup>13</sup> Section 985.437(4), F.S.

<sup>14</sup> Section 985.437(3), F.S.

<sup>15</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (2015) (on file with the Senate Criminal Justice Committee).

<sup>16</sup> Section 985.437(5), F.S.

<sup>17</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (2015) (on file with the Senate Criminal Justice Committee).

<sup>18</sup> Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

<sup>19</sup> Section 985.045, F.S., provides that this is also allowed in a case where the circuit court has retained jurisdiction over the child and the child’s parent or legal guardian.

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

Finally, the bill specifies that the DCF, a foster parent with whom the child is placed, the community-based care lead agency supervising the placement of the child pursuant to a contract with the DCF, or a facility registered under s. 409.176, F.S., is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

**Section 3** amends s. 985.513, F.S., to remove duplicative language relating to the restitution obligations of parents and guardians.

**Section 4** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There exists a greater potential for victims to receive all or a portion of the restitution owed them as a result of changes made by the bill. On the other hand, parents ordered to pay restitution on behalf of their child under the bill will most likely be negatively impacted.<sup>20</sup>

C. Government Sector Impact:

To the extent there are more restitution hearings conducted as a result of the bill, there may also be an additional workload increase on the court system.<sup>21</sup>

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<sup>20</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312 (2015)* (on file with the Senate Criminal Justice Committee), Department of Children and Families, *2015 Bill Analysis for SB 312 (2015)* (on file with the Senate Committee on Children, Families and Elder Affairs).

<sup>21</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 312 (2015)* (on file with the Senate Committee on Children, Families and Elder Affairs).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 85-87 provide that the court may order both of the child's parents or guardians responsible for restitution, regardless of whether one parent or guardian has sole parental responsibility. The court currently has the ability to order sole parental responsibility for a child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child. An exception in cases where sole parental responsibility is awarded to one parent with no visitation for the other parent might need to be created in the bill.

It is unclear if "the community-based care lead agency supervising the placement of the child pursuant to a contract with the Department of Children and Families" on lines 90-92 would include residential group home providers under contract with a lead agency that are providing care for a child. Homes licensed or registered under ss. 409.175 and 409.176, F.S., might need to be referenced in the bill.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.35, 985.437, and 985.513.

**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 Children, Families, and Elder Affairs on March 26, 2015:**

- Adds that facilities registered under s. 409.176, F.S., are not considered a guardian for purposes of being responsible for restitution.
- Requires that the court may only order restitution to be paid by parents or guardians who have current custody or parental responsibility.

- B. **Amendments:**

None.