

**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 Judiciary

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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:** April 6, 2015                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.	Preston	Hendon	CF	<b>Fav/CS</b>
3.	Brown	Cibula	JU	<b>Pre-meeting</b>
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 adopts a uniform set of conditions of restitution for children whose criminal cases are disposed of in delinquency court. The same conditions apply regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill also revises provisions on parental liability for restitution by:

- Absolving a parent or guardian of liability if the court finds that the current offense is the child’s first referral to delinquency court; and
- Authorizing liability to be imposed only on parents and guardians who have current custody and parental responsibility of a child who caused a loss or damage; and
- Authorizing payment plans for restitution by parents who are unable to afford a single, lump-sum payment.

The bill, however, provides that the following entities are not liable for damages or losses caused by child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency or family foster home.

## II. Present Situation:

### Restitution

#### *Juvenile Cases in which the Court enters an Adjudication of Delinquency*

A court may order children who are adjudicated delinquent of a crime into a probation program.<sup>1</sup> If the court does order probation for the child, the probation program *must* include a penalty component such as:

- Restitution in money or in kind;
- Community service;
- A curfew;
- Revocation or suspension of the child’s driver license; or
- Other appropriate punishment that is non-residential.<sup>2</sup>

The court may alternatively order restitution at a disposition hearing as part of community-based sanctions or before the child’s release from a commitment program.<sup>3</sup>

The court determines the amount and manner of restitution.<sup>4</sup> In so doing, the court may order the child to pay restitution to the victim for any damage<sup>5</sup> or loss caused by the child’s offense.<sup>6</sup> The amount of restitution ordered is limited to an amount that the child and the parent or guardian could reasonably be expected to pay.<sup>7</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>8</sup> A restitution hearing is not required if the child previously entered into an agreement to pay<sup>9</sup> or has waived his or her right to attend a restitution hearing.<sup>10</sup> If restitution is ordered by the court, the amount of restitution may not exceed an amount the child or his parents or guardian<sup>11</sup> can reasonably be expected to pay.<sup>12</sup>

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<sup>1</sup> Section 985.435(1), F.S.

<sup>2</sup> Section 985.435(2), F.S.

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

<sup>4</sup> *Id.*

<sup>5</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, 89 (Fla. 1995). “Pain and suffering has long been recognized as a compensable damage in Florida.”

<sup>6</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>7</sup> Section 985.437(2), F.S.

<sup>8</sup> *J.G. v. State*, 978 So. 2d 270, 272 (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>9</sup> *T.P.H. v. State*, 739 So. 2d 1180, 1181 (Fla. 4th DCA 1999).

<sup>10</sup> *T.L. v. State*, 967 So. 2d 421, 421 (Fla. 1st DCA 2007).

<sup>11</sup> Section 985.03(28), F.S., defines a “legal custody or guardian” as a legal status created by a court order or letter of guardianship which vests in a custodian of the person or guardian, as an agency or individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and provide food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

<sup>12</sup> Section 985.437(2), F.S.

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or in kind.<sup>13</sup> However, a parent or guardian may be absolved of liability for restitution in his or her 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 child from delinquency.<sup>14</sup>

The clerk of the circuit court receives and dispenses restitution payments. If restitution is not made, the clerk must notify the court.<sup>15</sup> The Department of Juvenile Justice (DJJ) monitors restitution payments for children under the supervision of the DJJ.<sup>16</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>17</sup> According to the DJJ, many jurisdictions do not terminate the department's supervision until the child's restitution obligation is paid.<sup>18</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>19</sup> The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.<sup>20</sup>

### ***Juvenile Cases in which the Court enters a Withheld of Adjudication***

If a court withholds an adjudication of delinquency for a child charged with a crime, the court may still order the child into a probation program. However, unlike cases in which a child is adjudicated delinquent, a court is not required to order a penalty as a condition of a program if adjudication is withheld. Nevertheless, penalties may include:

- Restitution, in money or in kind;
- Community service;
- A curfew;
- Urine monitoring;
- Revocation or suspension of the driver license of the child; or
- Other appropriate punishment that is nonresidential.<sup>21</sup>

<sup>13</sup> Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution for offenses committed by their minor child without the court providing the parent meaningful notice, an opportunity to be heard, and a determination of the parents' ability to pay. *See S.B.L. v. State*, 737 So. 2d 1131, 1132-33 (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, 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).

<sup>14</sup> Section 985.437(4), F.S.

<sup>15</sup> Section 985.437(3), F.S.

<sup>16</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (on file with the Senate Judiciary Committee).

<sup>17</sup> Section 985.437(5), F.S.

<sup>18</sup> Department of Juvenile Justice, *supra* note 16, at 2.

<sup>19</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>20</sup> Section 985.045(5), F.S.

<sup>21</sup> Section 985.35(4)(a), F.S.

**III. Effect of Proposed Changes:**

This bill provides the same conditions of restitution for cases in which a child is adjudicated delinquent as for cases in which adjudication is withheld.

The court is authorized to set up a payment plan for restitution if the child and the parent or guardian are unable to satisfy restitution in a lump-sum payment. Allowing children and parents to pay restitution through a payment plan may make it more likely that a victim will be fully compensated.

The bill provides that responsibility for restitution may be imposed only on parents or guardians who have current custody and parental responsibility of the child who caused the damages or losses. However, these entities and individuals who otherwise might be a child's guardian are not liable for restitution: 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 residential child-caring facility or family foster home.

Under current law, a parent or guardian who has made diligent and good faith efforts to prevent a child's delinquency are absolved from liability for restitution. Under the bill, this ground for avoiding liability is limited to circumstances in which the child is making his or her first appearance to the delinquency system. However, a parent or guardian is not liable for damages or losses if a parent or guardian is also the victim.

This bill takes effect July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not appear to require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 10 of the Florida Constitution.

**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:**

This bill may provide greater potential for victims to receive all or a portion of restitution. Parents ordered to pay restitution on behalf of a child may avoid a civil lien if they cannot pay restitution in a lump-sum as the bill authorizes payment plans.

**C. Government Sector Impact:**

The Office of the State Courts Administrator indicates that judicial or workload impact cannot be determined. However, any increase in the number of hearings to impose restitution will likely result in additional hearings to address non-payment of restitution.<sup>22</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>22</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 312* (on file with the Senate Committee on Judiciary).