

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1225 Restitution for Juvenile Offenses  
**SPONSOR(S):** Judiciary Committee, Criminal Justice Subcommittee, Zika  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 3 N, As CS	Frost	Hall
2) Judiciary Committee	11 Y, 4 N, As CS	Frost	Luczynski

### SUMMARY ANALYSIS

When a child is adjudicated delinquent for a criminal offense, the sentencing court may order the child to pay restitution, in a reasonable amount or manner, to a victim for any damage or loss resulting from the child's offense. Restitution may be satisfied by: making monetary payments; a promissory note cosigned by the child's parent or guardian; or performing community service.

When a child is adjudicated delinquent, the court may also order the child's parent or guardian to make restitution 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. However, a child's parent or guardian may be released from liability for restitution in the child's case if the court finds that the parent or guardian has made diligent and good faith efforts to prevent the child's delinquency. If the court finds that a child committed a delinquent act, but the court withholds adjudication, the child's parent or guardian may not be ordered to make restitution or be responsible for restitution ordered against his or her child.

CS/CS/HB 1225 requires a court that orders restitution in a juvenile proceeding, regardless of whether adjudication is imposed or withheld, to order restitution to be made by the child and the child's parent or guardian. The bill authorizes the court to establish a payment plan for the child or the child's parent or guardian to pay restitution, and requires the clerk of court to notify the court if a restitution payment plan is not followed. The bill also authorizes the court to order a child's parent or guardian to participate in community service as an alternative to monetary restitution, regardless of whether adjudication is imposed or withheld.

The bill allows the court to remove a parent or guardian's liability for restitution if, after a hearing, the court finds that:

- The child has no previous referral to the delinquency system and the child's parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts;
- The victim entitled to restitution is the child's parent or guardian;
- The parent or guardian did not have custody of or parental responsibility for the child at any time relevant to the juvenile proceeding in which restitution was ordered; or
- There is otherwise good cause to exempt the parent or guardian from liability for restitution, and the court enters such findings on the record.

The bill exempts certain individuals, agencies, and facilities from being ordered to pay restitution for a dependent child's delinquent acts.

The bill provides an effective date of October 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

The Department of Juvenile Justice (DJJ) manages Florida's juvenile justice system, and the juvenile delinquency process is governed primarily by ch. 985, F.S. The circuit courts have exclusive original jurisdiction over juvenile delinquency proceedings.<sup>1</sup> Generally, a child alleged to have committed a delinquent act or violation of law is taken to a juvenile assessment center (JAC) for intake<sup>2</sup> screening to assess if a form of detention is needed and whether judicial handling is appropriate.<sup>3, 4</sup> If DJJ determines detention is necessary, the child is transported to the nearest JAC or DJJ facility. However, with some minor offenses, a child may be released to a parent or guardian.<sup>5</sup>

If a child is detained, a detention hearing must take place within 24 hours, for the court to determine if there is probable cause that the child committed a delinquent act or violation of law and whether further detention is necessary.<sup>6</sup> Unless the court finds that certain factors are met,<sup>7</sup> the child must be released. However, if a child meets the factors for continued detention, he or she may not be detained for longer than 21 days without an adjudicatory hearing, unless the court grants an extension for good cause.<sup>8</sup> Regardless of whether a child remains in detention or is released, the State Attorney decides whether to proceed judicially or non-judicially. If the State Attorney decides to proceed non-judicially, a child is placed into a diversionary program. If the child successfully completes the diversionary program, the delinquency case is dismissed.

If the State Attorney proceeds judicially, a delinquency petition is filed and a child must enter a plea of not guilty, guilty, or nolo contendere at an arraignment. If a child pleads guilty or nolo contendere to the alleged activity, the case proceeds directly to a disposition hearing. If a child pleads not guilty, the case proceeds instead to an adjudicatory hearing, similar to a criminal trial but determined by a judge rather than a jury. If the judge finds, based on the evidence presented during the adjudicatory hearing, that the child committed a delinquent act, the judge determines whether to withhold adjudication or adjudicate the child delinquent.<sup>9</sup> Regardless of adjudication, the child's case then proceeds to a disposition hearing.

#### Juvenile Disposition

A juvenile disposition hearing is comparable to criminal sentencing. The court must review DJJ's predisposition report which recommends the most appropriate placement and treatment plan.<sup>10</sup> The court may deviate from DJJ's recommendations but must include appropriate written findings in the disposition order.<sup>11</sup>

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<sup>1</sup> S. 985.0301(1), F.S.

<sup>2</sup> "Intake" means initial acceptance and screening by DJJ or juvenile assessment center personnel of a complaint or a law enforcement report or probable cause affidavit of delinquency to determine the recommendation to be taken in the best interests of the child, the family, and the community. The emphasis of intake is on diversion and the least restrictive available services. As such, intake includes alternatives, such as: the disposition of the complaint, report, or probable cause affidavit without court or public agency action or judicial handling when appropriate; referral of the child to another public or private agency when appropriate; or DJJ's recommendation of judicial handling of the case when appropriate and warranted. S. 985.03(24), F.S.

<sup>3</sup> In counties that do not have an assessment center, the law enforcement officer calls a DJJ "on-call screener" to assess the juvenile's risk and determine if detention is necessary. Office of the State Court's Administrator, *Florida's Juvenile Delinquency Benchbook* (Nov. 2016), <https://www.flcourts.org/content/download/215962/1961718/DelinquencyBenchbook.pdf> (last visited Feb. 19, 2020).

<sup>4</sup> S. 985.03(24), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> S. 985.26, F.S. This type of hearing is similar to a first appearance in an adult criminal case.

<sup>7</sup> See s. 985.255(1), F.S.

<sup>8</sup> S. 985.26(2), F.S.

<sup>9</sup> S. 985.35(4), F.S.

<sup>10</sup> S. 985.433(7)(a), F.S.

<sup>11</sup> S. 985.433(7)(b), F.S.

A juvenile disposition order is similar to a judgment and sentence in criminal court. Under s. 985.433, F.S., if the court finds that a child should be adjudicated delinquent,<sup>12</sup> the court may order the child into:

- Residential commitment with DJJ at a specified restrictive level;<sup>13</sup>
- Residential commitment with DJJ at a specified restrictive level, followed by community-based sanctions;<sup>14</sup> or
- A probation program which must include a penalty component, such as community-based sanctions,<sup>15, 16</sup> and a rehabilitative component.<sup>17</sup>

Community-based sanctions may include, but are not limited to:<sup>18</sup>

- Participation in substance abuse treatment;
- Participation in a day-treatment program;
- Restitution in money or in kind;
- A curfew;
- Revocation or suspension of the child's driver license;
- Community service; and
- Appropriate educational programs.

However, under s. 985.35, F.S., even if the court finds that the child committed a delinquent act, the court may enter an order stating the facts supporting the finding but withholding adjudication.<sup>19</sup> If the court withholds adjudication, the child may not be committed to DJJ, but the court may order the child into a community-based probation program, and may impose any of the following as a condition:

- Restitution in money or in kind;
- Community service;
- A curfew;
- Urine monitoring;
- Revocation or suspension of the child's driver license;
- Any other non-residential punishment appropriate for the offense; and
- Mandatory attendance at school or other educational programs.

If the court later finds that the child has not complied with the rules, restrictions, or conditions of the community-based probation program, the court may, after a hearing to establish the lack of compliance, but without further evidence of delinquency, remove the withhold of adjudication and enter an adjudication of delinquency, after which time the court has full authority to deal with the child as adjudicated.

When a child is ordered into residential commitment or a probation program, the court retains jurisdiction to dispose of the child's case until the child turns 19-years-old, unless jurisdiction is relinquished by court order.<sup>20</sup>

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<sup>12</sup> Except as the term "conviction" is used in ch. 322, F.S., and except for use in a subsequent proceeding under ch. 985, F.S., an adjudication of delinquency shall not be deemed a conviction; nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication; nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or to disqualify or prejudice the child in any civil service application or appointment, with the exception of the use of records of proceedings under ch. 985, F.S., as provided in s. 985.045(4), F.S. S. 985.35(6), F.S.

<sup>13</sup> S. 985.433(7)(b), F.S.

<sup>14</sup> S. 985.433(7)(c), F.S.

<sup>15</sup> S. 985.433(8), F.S.

<sup>16</sup> S. 985.435(2), F.S.

<sup>17</sup> S. 985.435(3), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> S. 985.35, F.S.

<sup>20</sup> S. 985.0301(5)(a), F.S.

## Restitution

Section 985.437, F.S., allows the court with jurisdiction over a child adjudicated delinquent to order the child, as part of a probation program, to make restitution in money, by promissory note cosigned by the child's parent<sup>21</sup> or guardian,<sup>22</sup> or in kind in an amount or manner the court finds reasonable.<sup>23, 24</sup> The restitution ordered must not be an amount greater than the child or the child's parent or guardian could reasonably pay.<sup>25</sup> When a child is adjudicated delinquent and restitution is ordered to be paid by the child and the child's parent or guardian, the court may order the child and the child's parent or guardian to participate in a community work project, either as an alternative to monetary restitution or as part of a rehabilitative or probation program.<sup>26</sup> However, a parent or guardian may be released from liability for restitution if the court finds the parent or guardian made diligent, good faith efforts to prevent the child from committing delinquent acts.<sup>27</sup>

When the court adjudicates a child delinquent, the court may order the child's parent or guardian to:<sup>28</sup>

- Make restitution in money or in kind for any damage or loss caused by the child's offense; and
- Be responsible for any restitution ordered against the child.

If the court finds that a child committed a delinquent act, but the court withholds adjudication, the child's parent or guardian may not be ordered to make restitution or be responsible for restitution ordered against his or her child.

The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court orders to pay restitution until the restitution order is satisfied. However, to retain jurisdiction, the court must hold a restitution hearing to determine the amount owed to a victim and the child's ability to pay. Following a restitution hearing, the court may only retain jurisdiction by entering a separate restitution order unconnected with the child's disposition order or commitment order, on or before the date the court's jurisdiction would otherwise end.<sup>29</sup>

A parent or legal guardian who fails to comply with the terms of a restitution order may be held in contempt.<sup>30</sup> A juvenile restitution order may be enforced in the same manner as a civil lien, meaning any outstanding unpaid amount of restitution bears interest,<sup>31</sup> and if properly recorded, may become a lien on real estate owned by the child's parent or legal guardian.<sup>32</sup> If a restitution order is enforced civilly, the parent or legal guardian is also liable for the victim's costs and attorney fees.

### Effect of Proposed Changes

CS/CS/HB 1225 extends the juvenile court's jurisdiction over the parent or guardian of a child who commits a delinquent act by requiring the court, regardless of whether adjudication is imposed or withheld in the child's case, to order any restitution to be paid by the child and the child's parent or guardian. The bill authorizes the court to establish a payment plan for the child and the child's parent or guardian to pay restitution, and requires the clerk of court to notify the court if a restitution payment plan

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<sup>21</sup> "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1), F.S. If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of either s. 39.503(1) or s. 63.062(1), F.S. S. 985.03(38), F.S.

<sup>22</sup> "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. S. 985.03(28), F.S.

<sup>23</sup> Ss. 985.437(1)-(2), F.S.

<sup>24</sup> A victim may also seek crime victim compensation under ch. 960, F.S.

<sup>25</sup> S. 985.437(2), F.S.

<sup>26</sup> S. 985.455(1)(b), F.S.

<sup>27</sup> S. 985.437(4), F.S.

<sup>28</sup> S. 985.513(1)(b), F.S.

<sup>29</sup> S. 985.0301(5)(d), F.S.

<sup>30</sup> S. 985.513(2), F.S.

<sup>31</sup> In accordance with s. 55.03, F.S.

<sup>32</sup> Ss. 985.0301(5)(d) and 775.089(5), F.S.

is not followed. The bill also authorizes the court to order a child's parent or guardian to participate in community service as an alternative to monetary restitution, regardless of whether adjudication is imposed or withheld.

The bill allows the court to remove a parent or guardian's liability for restitution if, after a hearing, the court finds that:

- The child has no previous referral to the delinquency system and the child's parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts;
- The victim entitled to restitution is the child's parent or guardian;
- The parent or guardian did not have custody of or parental responsibility for the child at any time relevant to the juvenile proceeding in which restitution was ordered; or
- There is otherwise good cause to exempt the parent or guardian from liability for restitution, and the court enters such findings on the record.

The bill exempts certain individuals, agencies, and facilities from being ordered to pay restitution for a dependent child's delinquent act, including:

- The Department of Children and Families (DCF);
- A foster parent;
- A community-based care lead agency supervising the child's placement by contract with DCF;
- A family foster home;
- A residential child-caring agency; and
- A child placement agency.

The bill provides an effective date of October 1, 2020.

#### 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 October 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Because a delinquent child's parent or legal guardian will be liable for any restitution ordered, unless the court finds good cause to remove liability, a victim of the child's offense may be more likely to receive restitution. However, by removing the court's discretion to determine whether a parent or guardian should be liable for restitution, and allowing a parent or guardian to be absolved from liability only when it is the child's first referral to the juvenile system, the bill may result in an increase in civil liens against parents. Additionally, some victims may not receive restitution from a parent or guardian if the child is dependent and is in the care of any party exempt from liability under the bill.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Moved the bill's provisions to a more appropriate statutory section.
- Required the clerk of court to notify the court if a restitution payment plan is not followed.
- Clarified that a child's parent or guardian may be absolved of liability for restitution if he or she did not have custody of or parental responsibility for the child at any time relevant to the juvenile proceeding.
- Changed the effective date of the bill to October 1, 2020.
- Made other technical, clarifying, and stylistic changes.

On February 18, 2020, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that a child's parent or guardian is responsible for restitution ordered as part of the child's probation program when adjudication is withheld.
- Authorized the court to order a child's parent or guardian to participate in community service as an alternative to monetary restitution, regardless of whether adjudication is imposed or withheld.
- Authorized the court to make a finding on the record exempting a child's parent or guardian from liability for restitution for good cause.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.