

By the Committee on Judiciary; and Senator Harrell

590-02143-21

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1                   A bill to be entitled  
2       An act relating to restitution; amending s. 775.089,  
3       F.S.; providing for the purposes of restitution in a  
4       criminal proceeding; specifying the standards for  
5       valuation of a restitution order; authorizing a court  
6       to consider hearsay evidence regarding valuation of a  
7       restitution award; amending s. 985.437, F.S.;  
8       providing for the purposes of restitution in a  
9       delinquency proceeding; specifying the standards for  
10      valuation of a restitution order; authorizing a court  
11      to consider hearsay evidence regarding valuation of a  
12      restitution award; providing an effective date.

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14 Be It Enacted by the Legislature of the State of Florida:

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16       Section 1. Subsection (7) of section 775.089, Florida  
17       Statutes, is amended to read:

18       775.089 Restitution.—

19       (7) (a) While the primary purpose of restitution is to  
20       compensate the victim, it also serves the rehabilitative and  
21       deterrent goals of the criminal justice system.

22       (b) Restitution must be determined on a fair market value  
23       basis unless the state, victim, or defendant shows that using  
24       another basis, including, but not limited to, replacement cost,  
25       purchase price less depreciation, or actual cost of repair, is  
26       equitable and better furthers the purposes of restitution.

27       (c) Any dispute as to the proper amount or type of  
28       restitution shall be resolved by the court by the preponderance  
29       of the evidence. The court may consider hearsay evidence for

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30 this purpose. The burden of demonstrating the amount of the loss  
31 sustained by a victim as a result of the offense is on the state  
32 attorney. The burden of demonstrating the present financial  
33 resources and the absence of potential future financial  
34 resources of the defendant and the financial needs of the  
35 defendant and his or her dependents is on the defendant. The  
36 burden of demonstrating such other matters as the court deems  
37 appropriate is upon the party designated by the court as justice  
38 requires.

39 Section 2. Subsection (2) of section 985.437, Florida  
40 Statutes, is amended to read:

41 985.437 Restitution.—

42 (2) (a) While the primary purpose of restitution is to  
43 compensate the victim, it also serves the rehabilitative and  
44 deterrent goals of the juvenile justice system.

45 (b) The court may order the child to make restitution in  
46 money, through a promissory note cosigned by the child's parent  
47 or guardian, or in kind for any damage or loss caused by the  
48 child's offense in a reasonable amount or manner to be  
49 determined by the court. Restitution must be determined on a  
50 fair market value basis unless the state, victim, or child shows  
51 that using another basis, including, but not limited to,  
52 replacement cost, purchase price less depreciation, or actual  
53 cost of repair, is equitable and better furthers the purposes of  
54 restitution. The court may consider hearsay evidence for this  
55 purpose.

56 (c) When restitution is ordered by the court, the amount of  
57 restitution may not exceed an amount the child and the parent or  
58 guardian could reasonably be expected to pay or make.

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Section 3. This act shall take effect July 1, 2021.