

By the Committees on Rules; and Judiciary; and Senator Harrell

595-03390-21

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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 under certain circumstances;
8 amending s. 985.437, F.S.; providing for the purposes
9 of restitution in a delinquency proceeding; specifying
10 the standards for valuation of a restitution order;
11 authorizing a court to consider hearsay evidence
12 regarding valuation of a restitution award under
13 certain circumstances; providing an effective date.

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

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

19 775.089 Restitution.—

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

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

28 (c) Any dispute as to the proper amount or type of
29 restitution shall be resolved by the court by the preponderance

595-03390-21

2021354c2

30 of the evidence. The court may consider hearsay evidence for
31 this purpose, provided it finds that the hearsay evidence has a
32 minimal indicia of reliability. The burden of demonstrating the
33 amount of the loss sustained by a victim as a result of the
34 offense is on the state attorney. The burden of demonstrating
35 the present financial resources and the absence of potential
36 future financial resources of the defendant and the financial
37 needs of the defendant and his or her dependents is on the
38 defendant. The burden of demonstrating such other matters as the
39 court deems appropriate is upon the party designated by the
40 court as justice requires.

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

43 985.437 Restitution.—

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

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

595-03390-21

2021354c2

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

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