

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1225 Restitution for Juvenile Offenses

**SPONSOR(S):** Zika

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Frost	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### 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. 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.

HB 1225 allows a court with jurisdiction over a child to order, as part of the child's probation program, restitution to be paid by the child and the child's parent or guardian. If restitution is ordered, the bill requires the court to order the child and the child's parent or guardian to be responsible for the restitution due. The bill authorizes the court to establish a payment plan for the child or the child's parent or guardian to pay restitution.

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; or the victim entitled to restitution is the child's parent or guardian.

The bill limits the court's ability to order restitution by a parent or guardian to only a parent or guardian who has current custody of and parental responsibility for the child. The bill exempts certain individuals, agencies, and facilities from being ordered to pay restitution for a dependent child's delinquent acts.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove the court's specific authority to order a child's parent or guardian to pay restitution separate from the restitution a child is ordered to pay.

The bill may have an impact on state attorney and public defender caseloads and may increase a private citizen's collection of restitution.

The bill provides an effective date of July 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 Jan. 24, 2020).

<sup>4</sup> 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, the court may order the child into:

- Residential commitment with DJJ at a specified restrictive level;<sup>12</sup>
- Residential commitment with DJJ at a specified restrictive level, followed by community-based sanctions;<sup>13</sup> or
- A probation program which must include a penalty component, such as community-based sanctions,<sup>14, 15</sup> and a rehabilitative component.<sup>16</sup>

Community-based sanctions may include, but are not limited to:<sup>17</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>18</sup> If the court withholds adjudication, the child may not be committed to DJJ, but the court may order the child into a probation program, and may impose any of the following as a penalty:

- 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.

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>19</sup>

### *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>20</sup> or guardian,<sup>21</sup> or in kind in an amount or manner the court finds reasonable.<sup>22, 23</sup> The restitution ordered must not be an amount greater than the child or the child's parent or guardian could reasonably pay.<sup>24</sup> However, a parent or guardian may be released from liability for restitution if the court

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<sup>12</sup> S. 985.433(7)(b), F.S.

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

<sup>14</sup> S. 985.433(8), F.S.

<sup>15</sup> S. 985.435(2), F.S.

<sup>16</sup> S. 985.435(3), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> S. 985.35, F.S.

<sup>19</sup> S. 985.0301(5)(a), F.S.

<sup>20</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). 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>21</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>22</sup> Ss. 985.437(1)-(2), F.S.

<sup>23</sup> A victim may also seek crime victim compensation under ch. 960, F.S.

<sup>24</sup> S. 985.437(2), F.S.

finds the parent or guardian made diligent, good faith efforts to prevent the child from committing delinquent acts.<sup>25</sup>

When the court adjudicates a child delinquent, the court may order the child's parent or guardian to:<sup>26</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.

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>27</sup>

A parent or legal guardian who fails to comply with the terms of a restitution order may be held in contempt.<sup>28</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>29</sup> and if properly recorded, may become a lien on real estate owned by the child's parent or legal guardian.<sup>30</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**

HB 1225 amends s. 985.437, F.S., to allow a court with jurisdiction over a child to order, as part of the child's probation program, restitution to be paid by the child and the child's parent or guardian. If restitution is ordered, the bill requires the court to order the child and the child's parent or guardian to be responsible for the restitution due. The bill authorizes the court to establish a payment plan for the child or the child's parent or guardian to pay restitution in installments.

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; or
- Victim entitled to restitution is the child's parent or guardian.

The bill further amends s. 985.437, F.S., to allow the court to order restitution payment only by a parent or guardian who has current custody of and parental responsibility for the child. 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 makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove the court's specific authority to order a child's parent or guardian to pay restitution separate from the restitution a child is ordered to pay.

This bill is effective July 1, 2020.

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<sup>25</sup> S. 985.437(4), F.S.

<sup>26</sup> S. 985.513(1)(b), F.S.

<sup>27</sup> S. 985.0301(5)(d), F.S.

<sup>28</sup> S. 985.513(2), F.S.

<sup>29</sup> In accordance with s. 55.03, F.S.

<sup>30</sup> Ss. 985.0301(5)(d) and 775.089(5), F.S.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.

**Section 2:** Amends s. 985.437, F.S., relating to restitution.

**Section 3:** Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.

**Section 4:** Provides an effective date of July 1, 2020.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Because the bill requires a juvenile probation order to include restitution obligations for a child and the child's parent or guardian, a child's probation may technically be violated based on a parent or guardian's failure to make restitution. This may result in more cases being placed on the court's juvenile docket for a violation of probation, which may lead to increased costs for state attorneys and public defenders in disposing of these cases.

**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 always be liable for any restitution ordered, 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. Additionally, some victims may not receive restitution 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:**

The bill requires a child's parent or guardian to be liable for restitution owed to a victim of the child's delinquent acts in all cases, with limited exceptions for certain types of guardians and certain scenarios. However, the bill places this requirement in s. 985.437, F.S., which governs restitution ordered as part of a child's probation program or post-commitment community sanctions. Since the requirement involves the court's power over the child's parent or guardian, it may be more appropriate within s. 985.513, F.S., which provides the court's powers over a parent or guardian at disposition.

Requiring restitution to be ordered only for a parent or guardian who has "current custody" is unclear and may lead to confusion regarding which parent or guardian should be responsible for the mandatory restitution order.

While the bill does not create or affect a substantive criminal law, it will impact court processes and juvenile restitution orders. As such, an effective date of October 1, 2020, may be more appropriate.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**