

**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 Children, Families, and Elder Affairs

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BILL: SB 1040

INTRODUCER: Senator Detert

SUBJECT: Restitution for Juvenile Offenses

DATE: April 7, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	<b>Pre-meeting</b>
2.			CJ	
3.			JU	

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**I. Summary:**

SB 1040 expands the authority of the court to order restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

It requires, rather than authorizes, the child and the child's parent or legal guardian, to pay restitution when the court has determined that restitution is appropriate. It authorizes the court to:

- Set up a payment plan if the child and the parents or legal guardians are unable to pay the restitution in one lump-sum payment;
- Absolve the parent or guardian of any liability for restitution if after a hearing, the court finds that the current offense is the child's first referral and the 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 legal guardian; and
- Order both of the child's parents or guardians liable for restitution, regardless of whether one parent or guardian has sole custody of the child.

The bill clarifies that the Department of Children and Families, a foster parent with whom the child is placed, or the community-based care lead agency supervising the placement of the child is not considered a guardian responsible for the delinquent acts of a child who is found to be delinquent.

The bill has an indeterminate fiscal impact and has an effective date of July 1, 2014.

**II. Present Situation:**

Section 985.437, F.S., authorizes, but does not require, a court with jurisdiction over a child who has been adjudicated delinquent to order the child to pay restitution to the victim for any

damage<sup>1</sup> or loss caused by the child's offense<sup>2</sup> in a reasonable amount or manner.<sup>3</sup> Similarly, s. 985.35, F.S., authorizes the court to place a child found to have committed a violation of law in a probation program.<sup>4</sup> The probation program may include restitution in money or in kind.<sup>5</sup> The court determines the amount and manner of restitution that is reasonable.<sup>6</sup>

To enter an order of restitution, a 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>7</sup> A restitution hearing is not required if the child previously entered into an agreement to pay<sup>8</sup> or has waived his or her right to attend a restitution hearing.<sup>9</sup> When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or his parents or guardian could reasonably be expected to pay.<sup>10</sup>

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service.<sup>11</sup> However, a parent or guardian may be absolved of any liability for restitution in their 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 engaging in delinquent acts."<sup>12</sup> This provision is not limited to first offenses by the child.

The clerk of the circuit court receives and dispenses restitution payments and must notify the court if restitution is not made. 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>13</sup>

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<sup>1</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 (Fla. 1995).

<sup>2</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>3</sup> If restitution is ordered, it becomes a condition or probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program, s. 985.437(1), F.S.

<sup>4</sup> Section 985.35(4) and (5), F.S.

<sup>5</sup> Section 985.437(2), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *J.G. v. State*, 978 So.2d 270 (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>8</sup> *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

<sup>9</sup> *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

<sup>10</sup> Section 985.437(2), F.S.

<sup>11</sup> *Id.* Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child without the court providing the parent with meaningful notice and an opportunity to be heard or without making a determination of the parents' ability to pay. See *S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999; *A.T. v. State*, 706 So.2d 109 (Fla. 2d DCA 1998); and *M.H. v. State*, 698 So.2d 395 (Fla. 4th DCA 1997).

<sup>12</sup> Section 985.437(4), F.S.

<sup>13</sup> Section 985.437(5), F.S.

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>14</sup> The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.<sup>15</sup>

Current law does not specifically exempt the Department of Children and Families, a foster parent, or a community-based care organization supervising a child from paying restitution when a court requires the child's parent or legal guardian to be responsible for restitution against the child.

### III. Effect of Proposed Changes:

**Section 1** amends s. 985.35, F.S., to clarify that an order of restitution made in a delinquency case is to be paid by the child and the child's parent or guardian.

**Section 2** amends s. 985.437, F.S., to provide that an order of restitution may be made in a juvenile case, regardless of whether adjudication of delinquency is made or withheld. It requires that, if an order of restitution is entered, the court shall (rather than may, as currently) order the child and the child's parent to make the restitution. It expands the responsibility for payment of restitution to the parent or legal guardian of the child. It provides that if a court orders restitution, and the child and the child's parent or legal guardian are unable to pay the restitution in one lump-sum payment, the court may set up a payment plan that reflects their ability to pay.

The bill absolves the parent or guardian of liability for restitution if:

- After a hearing, the court finds that it is the child's first referral to the delinquency system and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or
- The victim is entitled to restitution as a result of damage or loss caused by the child's offense is that child's parent or guardian.

The bill authorizes the court to order both of the child's parents or guardians liable for the restitution, regardless of whether one parent has sole parental responsibility for the child.

The bill specifies that the Department of Children and Families, a foster parent with whom the child is placed, or the community-based care lead agency supervising the placement of the child pursuant to a contract with the Department of Children and Families is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

**Section 3** amends . s. 985.513, F.S., to remove duplicative language.

**Section 4** provides an effective date of July 1, 2014.

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<sup>14</sup> Section 985.0301(h), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. That section provides that a restitution order may be enforced in the same manner as a judgment on a civil lien.

<sup>15</sup> Section 985.045, F.S., provides that this is also allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## 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:

Parents and legal guardians of children who have been adjudicated delinquent will be liable for restitution for damages caused by the child's offense. Therefore, a victim of a child's offense may be more likely to receive restitution.

## C. Government Sector Impact:

The bill requires, rather than authorizes, the court to order a child and the child's parent or legal guardian to pay restitution after the court has determined that an order of restitution is appropriate. To order restitution, the court must hold a restitution hearing. The bill may increase the number of restitution hearings, resulting in a workload increase for the court system.

**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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**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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