

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1880

INTRODUCER: Senator Perry

SUBJECT: Restitution for Juvenile Offenses

DATE: January 27, 2020

REVISED: 02/03/20

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wagoner	Jones	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 1880 adopts a uniform set of conditions of restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill requires the court to order the child and the child's parent or guardian who has current custody of and parental responsibility for the child to pay restitution when the court has determined that restitution is appropriate. The bill authorizes the court to:

- Set up a payment plan if the child and the parent or legal guardian are unable to pay the restitution in one lump-sum payment; and
- 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.

The bill clarifies that the following entities are not considered a guardian responsible for restitution for the delinquent acts of a child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency or family foster home.

The bill's fiscal impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Juvenile Cases in which the Court enters an Adjudication of Delinquency

A court may order children who are adjudicated delinquent of a crime into a probation program or a postcommitment probation program.¹ If the court orders probation for the child, the probation program must include a penalty component such as restitution in money or in kind, community service, a curfew, revocation or suspension of the child's driver license, or other appropriate punishment that is non-residential.² Additionally, the probation program must include a rehabilitative component such as participation in substance abuse treatment or in a school or educational program.³ The probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation.⁴

Restitution

Section 985.437, F.S., authorizes a court with jurisdiction over a child who has been adjudicated delinquent to order the child to pay restitution to the victim for any damage⁵ or loss caused by the child's offense⁶ in a reasonable amount or manner. The court may order the child to make restitution in money, through a promissory note cosigned by the child's parent or guardian⁷, or in kind.⁸ When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the child's parent or guardian could reasonably be expected to pay or make.⁹ However, the child's parent or guardian may be absolved of any such liability for restitution if the court finds, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts.¹⁰ Additionally, s. 985.513, F.S., provides that the court may order the parent or guardian of a child adjudicated delinquent to make restitution in money or in kind for any damage or loss caused by the child's offense.

¹ Section 985.435(1), F.S.

² Section 985.435(2), F.S.

³ Section 985.435(3), F.S.

⁴ Section 985.435(4), F.S.

⁵ "Any damage" has been interpreted by Florida courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

⁶ 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).

⁷ Section 985.437, F.S., does not specifically exempt the Department of Children and Families, a foster parent, or any other entity considered a guardian of a dependent child from the restitution requirements of this section.

⁸ Section 985.437(2), F.S. A parent or guardian cannot be ordered to pay restitution for offenses committed by their minor child without the court providing the parent meaningful notice, an opportunity to be heard, and a determination of the parent or guardian's ability to pay. See *S.B.L. v. State*, 737 So. 2d 1131, 1132-33 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So. 2d 109, 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); *C.D.D. v. State*, 684 So. 2d 866, 867 (Fla. 2d DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

⁹ Section 985.437(2), F.S.

¹⁰ Section 985.437(4), F.S.

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.¹¹ A restitution hearing is not required if the child previously entered into an agreement to pay¹² or has waived his or her right to attend a restitution hearing.¹³

The clerk of the circuit court receives and dispenses restitution payment.¹⁴ If restitution is not made, the clerk must notify the court.¹⁵ 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.¹⁶ 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.¹⁷ The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.¹⁸

Juvenile Cases in which the Court enters a Withheld of Adjudication

Section 985.35, F.S., provides that if the court finds that the child has committed a delinquent act, it may enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency. Upon withholding adjudication of delinquency, the court may place the child in a probation program.¹⁹ The court may impose, as a condition of the program, a penalty component, including restitution in money or in kind, or a rehabilitative component.²⁰ Such components are identical to those available for adjudications of delinquency, however, the imposition of program conditions are not mandatory when the court withholds adjudication.²¹

III. Effect of Proposed Changes:

The bill adopts a uniform set of conditions of restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill requires the court to order the child *and* the child's parent or guardian *who has current custody of and parental responsibility for the child* to pay restitution when the court has determined that restitution is appropriate.

¹¹ *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.

¹² *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

¹³ *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

¹⁴ Section 985.437(3), F.S.

¹⁵ *Id.*

¹⁶ Section 985.0301(5)(d), F.S.

¹⁷ Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

¹⁸ Section 985.045(5), F.S.

¹⁹ Section 985.35(4), F.S.

²⁰ *Id.*

²¹ *Id.*

The bill provides that a court may establish a payment plan that reflects ability to pay the restitution amount when the child and the child's parent or guardian are unable to make restitution in kind or to pay the restitution in one lump-sum payment.

Currently, a child's parent or guardian who the court finds has made diligent and good faith efforts to prevent the child's delinquency is absolved from liability for restitution. Under the bill, this ground for avoiding liability is limited to circumstances in which the child is making his or her first referral to the delinquency system. Additionally, the bill provides that a parent or guardian is not liable for damages or losses if a parent or guardian is the victim of the child's offense.

The bill provides that the following entities are not considered a guardian responsible for restitution for the delinquent acts of a child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency²² or family foster home.²³

The bill amends s. 985.35, F.S., to conform to the changes made in the act.

The bill amends s. 985.513, F.S., to remove duplicative provisions.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²² "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth. Section 409.175, F.S.

²³ "Family foster home" means a residence licensed by the Department of Children and Families in which children who are unattended by a parent or legal guardian are provided 24-hour care. Section 409.175, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide greater potential for victims to receive all or a portion of restitution. Parents ordered to pay restitution on behalf of a child may avoid a civil lien if they cannot pay restitution in a lump-sum as the bill authorizes payment plans.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reports that the fiscal impact of the bill is indeterminate. The bill expands on the types of cases that qualify for court-ordered restitution by including when adjudication is withheld, resulting in a likely increase in the number of post-judgment and compliance hearings. Additionally, the bill limits those parents and guardians that may seek to be absolved from liability for restitution by showing diligent and good faith efforts to prevent the child from further delinquent acts by requiring an additional finding that it is the child's first referral to the delinquency system. This would significantly reduce the number of parents and guardians eligible to seek to be absolved from liability for restitution. Further, the OSCA reports that the establishment of payment plans will likely result in fewer court hearings for parties failing to pay full amounts of restitution.²⁴

The OSCA further reports that the length of hearings will increase due to the following procedural changes under the bill:

- Judges will be required to inform a child's parent or guardian of the consequences of failing to pay restitution.
- Courts will be required to further ascertain the child's parent or guardian's ability to pay restitution.
- Judges will have to address evidentiary issues and hear testimony to determine whether the parties' have current custody and parental responsibility of the child in cases where the parents are separated, divorced, or if the child is living with a relative.²⁵

VI. Technical Deficiencies:

None.

²⁴ Office of the State Courts Administrator, *2020 Judicial Impact Statement for SB 1880*, (January 27, 2020) (on file with the Senate Criminal Justice Committee).

²⁵ *Id.*

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
