

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1318  
SPONSOR: Senator Fasano  
SUBJECT: Juvenile Court Orders/Appeals by the State  
DATE: February 25, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Senate Bill 1318 expands the right of the state to appeal an order of the court in a juvenile delinquency case that denies restitution.

This bill substantially amends the following section of the Florida Statutes: 985.234.

## II. Present Situation:

### *Juvenile Court Jurisdiction in Matters of Restitution*

The court in a juvenile delinquency case has jurisdiction over a delinquent child until his or her nineteenth birthday, as a general rule. s. 985.201, F.S. However, a special provision is made in cases where a child or his or her parent has been ordered to pay restitution. Specifically, s. 985.201(4)(c), F.S., states, in pertinent part:

“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. If the court retains such jurisdiction after the date upon which the court’s jurisdiction would cease under this section, it shall do so solely for the purpose of enforcing the restitution order. ...” *Id.*; See also *J.D. v. State*, 849 So.2d 458 (Fla. 4th DCA 2003).

### *Powers of Disposition*

In juvenile delinquency matters the court has the power to “order the child to make restitution in money, through a promissory note cosigned by the child’s parent or guardian, or in kind for any damage or loss caused by the child’s offense in a reasonable amount or manner to be determined by the court. ... A finding by the court, after a hearing, that the parent or guardian has made

diligent and good faith efforts to prevent the child from engaging in delinquent acts absolves the parent or guardian of liability for restitution...”. s. 985.231(1)(a)6., F.S.

***Appeals by the State in Matters of Restitution***

In the adult criminal system, the state has statutory authority to appeal a court’s order denying restitution. s. 924.07(1)(k), F.S.

Although the state has many of the same appellate rights in juvenile cases, the right to appeal an order denying restitution is not among those rights. Section 985.234, F.S., sets forth the orders from which the state may appeal as follows:

- order dismissing a delinquency petition;
- order granting a new adjudicatory hearing;
- order arresting judgment;
- ruling on a question of law where child is adjudicated delinquent and appeals;
- an illegal disposition;
- a judgment discharging the child on habeas corpus;
- order adjudicating a child insane; and
- preadjudicatory hearings.

The state may not take more than one of the appeals listed above. s. 985.234(1)(b), F.S. The Office of the Attorney General represents the state on appeal. s. 985.234(2), F.S.

In the adult criminal system, the right of the state to appeal from an order denying restitution was added to s. 924.07, F.S., by the Legislature after the case of *State v. MacLeod*, which found the district court lacked jurisdiction to hear such an appeal because that right was not conferred to the state by statute. *State v. MacLeod*, 600 So.2d 1096 (Fla. 1992).

In *State v. M.K.*, 786 So.2d 24 (Fla. 1st DCA 2001), Judge Padovano recognized that the state’s right to appeal is *purely statutory*, and opined that had the Legislature intended the state to have the comparable right of appeal orders denying restitution in juvenile delinquency matters, it would have amended s. 985.234(1)(b), F.S., to reflect that intent.

**III. Effect of Proposed Changes:**

Senate Bill 1318 amends s. 985.234(1)(b), F.S., to confer upon the state the same right to appeal orders denying restitution in juvenile delinquency cases as it currently has in adult criminal cases.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill could have a positive effect on victims in juvenile delinquency cases who are entitled to restitution, but the court denies it. If a legal reason exists upon which an appeal can be brought by the state, this bill would provide that opportunity.

**C. Government Sector Impact:**

The Attorney General's Office and the Public Defender's Office (Appellate Divisions) may be affected by this bill, in that those offices would pursue and respond to the new grounds for state appeals in juvenile delinquency restitution matters.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.