

**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 1438

INTRODUCER: Senator Simpson

SUBJECT: Juvenile Restitution

DATE: March 22, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1438 makes it mandatory for a juvenile court judge to order an adjudicated delinquent youth and his or her parent or guardian to make restitution in money or in kind to the victim. If the youth and parent or guardian are unable to pay in one lump-sum payment, the bill allows the court to set up a payment plan reflecting their ability to pay restitution. Furthermore, the bill deletes the provision absolving a parent or guardian of their restitution liability if the parent or guardian has made diligent and good faith efforts to prevent the youth from engaging in delinquent acts.

This bill substantially amends sections 985.437 and 985.513 of the Florida Statutes.

**II. Present Situation:**

It is currently discretionary whether a judge in juvenile court orders an adjudicated delinquent youth and his or her parent or guardian to make restitution to the victim.<sup>1</sup> The court can order restitution to be made in money, through a promissory note cosigned by the parent or guardian, or in kind for any damage or loss caused by the youth's offense in a reasonable amount or manner to be determined by the court.<sup>2</sup> The amount of restitution may not exceed an amount the

<sup>1</sup> Section 985.437, F.S.

<sup>2</sup> The court can establish the amount of restitution owed by the youth, but only at a restitution hearing and upon proper notice to the youth. *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). Moreover, it is a denial of due process not to afford a youth a formal hearing on the amount of restitution. *L.S. v. State*, 975 So.2d 554, 555 (Fla. 4th DCA 2008). *See also A.B. v. State*, 910 So.2d 415, 417 (Fla. 4th DCA 2005) (the trial court should have held a restitution hearing first addressing the youth's ability to pay and setting the restitution amount; failure to do so was reversible error.) Just as the court is required to give proper notice and opportunity to be heard before imposing a restitution order against a youth, it is also required to do so for a parent

youth and parent or guardian can reasonably be expected to pay or make.<sup>3</sup> The clerk of the circuit court serves as the receiving and dispensing agent for restitution under this section.<sup>4</sup>

If after a restitution hearing, the court finds that the parent or guardian has made diligent and good faith efforts to prevent the youth from engaging in delinquent acts, it can absolve the parent or guardian of any restitution liability under the statute.<sup>5</sup> The court may also retain jurisdiction over the youth and parent or guardian until the restitution order is satisfied or until the court orders otherwise, as provided in s. 985.0301, F.S.<sup>6</sup>

The statutory authority of the court to make a parent or guardian of an adjudicated delinquent youth responsible for restitution is also reiterated under s. 985.513, F.S.<sup>7</sup>

### III. Effect of Proposed Changes:

This bill makes it mandatory for a juvenile court judge to order an adjudicated delinquent youth and his or her parent or guardian to make restitution in money or in kind to the victim.<sup>8</sup> If the youth and parent or guardian are unable to pay in one lump-sum payment, the bill allows the court to set up a payment plan reflecting their ability to pay restitution. Furthermore, the bill deletes the provision absolving a parent or guardian of their restitution liability if the parent or guardian has made diligent and good faith efforts to prevent the youth from engaging in delinquent acts.

Finally, the bill amends s. 985.513, F.S., conforming it to changes made in the bill, namely requiring the court to order the youth and parent or guardian to make restitution to the victim.

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or guardian. *S.B.L. v. State*, 737 So.2d 1131 (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.)

<sup>3</sup> Section 985.437(2), F.S. Just as the court is required to consider the youth's ability to pay before ordering restitution, it must do the same when considering the parent or guardian's ability to pay restitution. *A.T. v. State*, 706 So.2d 109 (Fla. 2nd 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.) *See also C.D.D. v. State*, 684 So.2d 866, 867 (Fla. 2nd 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.)

<sup>4</sup> Section 985.437(3), F.S. A youth, parent or guardian must pay the office of the clerk an amount not exceeding the actual cost incurred by the clerk as a result of receiving and dispensing restitution payments. The clerk must notify the court if restitution is not made so the court can take appropriate action against the youth, parent, or guardian.

<sup>5</sup> Section 985.437(4), F.S.

<sup>6</sup> Section 985.437(5), F.S. Subsection 985.0301(5)(h), F.S., provides that the terms of the restitution order are subject to subsection 775.089(5), F.S. Subsection 775.089(5), F.S., states that a restitution order may be enforced in the same manner as a judgment in a civil action, meaning the amount owed becomes a lien on the real property of the youth or parent. Moreover, the court is not prohibited from providing a restitution order to a collection court or a private collection agency to collect unpaid restitution under s. 985.045(5), F.S.

<sup>7</sup> Section 985.513(1)(b), F.S. This section allows the court to order the parent or guardian to make restitution for any damage or loss caused by the youth's offense. In addition, it allows the court to require the parent or guardian to be responsible for any restitution ordered against the youth, as provided in s. 985.437, F.S.

<sup>8</sup> It appears that under the bill, a parent or guardian could be ordered to make restitution even when he or she is the victim of the offense.

**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:

Adjudicated delinquent youth and their parents or guardians will be required to make restitution to victims in money or in kind for damages caused by the youth's offense under the bill. As a result, there exists a greater potential for victims to receive restitution.

## C. Government Sector Impact:

To the extent there are more mandatory restitution hearings conducted as a result of the bill, there may also be an additional workload on the courts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial 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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