



## 1995 ASSEMBLY BILL 134

February 14, 1995 - Introduced by Representatives KRUSICK, AINSWORTH, BOCK, BRANDEMUEHL, CARPENTER, DOBYNS, GOETSCH, GROBSCHMIDT, GROTHMAN, HANDRICK, HASENOHRL, KREIBICH, LADWIG, MUSSER, NASS, NOTESTEIN, OTT, RYBA, SCHNEIDERS, SERATTI, SKINDRUD, URBAN, WASSERMAN and ZIEGELBAUER, cosponsored by Senators PLEWA, FARROW, ANDREA, BUETTNER, BURKE, COWLES, DARLING, FITZGERALD, A. LASEE, LEEAN, C. POTTER, ROSENZWEIG and SCHULTZ. Referred to Committee on Judiciary.

1     **AN ACT to amend** 800.04 (2) (c), 800.09 (1) and 800.09 (2) (b); and **to create**  
2             800.02 (2) (a) 8r., 800.03 (6), 800.04 (1) (b) 1. e., 800.094 and 911.01 (5) (c) of the  
3             statutes; **relating to:** restitution for graffiti vandalism.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a municipal court finds a person guilty of violating an ordinance that prohibits conduct that is the same or similar to conduct prohibited by a state statute that is punishable by a fine or imprisonment or both, the court may order the violator to pay restitution for damages to property or physical injury to a person. The amount of restitution may not exceed \$200, except that in cases involving worthless checks and retail theft, the amount of restitution is limited only to the extent of the losses and expenses incurred by the persons injured by the action of the defendant.

This bill allows a municipal court to order the parent or legal guardian having custody and control of a minor to pay restitution if the minor violates an ordinance that prohibits marking, drawing or writing with paint, ink or other substance on the physical property of another without the other person's consent. The amount of the restitution may not exceed \$5,000. The court may permit the parent or legal guardian to perform community service work instead of paying restitution.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

4             **SECTION 1.** 800.02 (2) (a) 8r. of the statutes is created to read:

1           800.02 (2) (a) 8r. Notice that if the court finds that the violation was committed  
2 by a minor and involves an ordinance that prohibits intentionally marking, drawing  
3 or writing with paint, ink or other substance on the physical property of another  
4 without the other person's consent, the court may summon the parent or legal  
5 guardian having custody and control of the minor into court to determine if  
6 restitution shall be ordered unders s. 800.094.

7           **SECTION 2.** 800.03 (6) of the statutes is created to read:

8           800.03 (6) Notwithstanding sub. (1), a court appearance may be required if the  
9 court finds that the violation was committed by a minor and involves an ordinance  
10 that prohibits intentionally marking, drawing or writing with paint, ink or other  
11 substance on the physical property of another without the other person's consent.

12           **SECTION 3.** 800.04 (1) (b) 1. e. of the statutes is created to read:

13           800.04 (1) (b) 1. e. That if the violation was committed by a minor and involves  
14 an ordinance that prohibits intentionally marking, drawing or writing with paint,  
15 ink or other substance on the physical property of another without the other person's  
16 consent, the court may summon the parent or legal guardian having custody and  
17 control of the minor into court to determine if restitution shall be ordered under s.  
18 800.094.

19           **SECTION 4.** 800.04 (2) (c) of the statutes is amended to read:

20           800.04 (2) (c) If the defendant has made a deposit under par. (b) or s. 800.03  
21 and does not appear, he or she is deemed to have tendered a plea of no contest and  
22 submits to a forfeiture, a penalty assessment imposed by s. 165.87, a jail assessment  
23 imposed by s. 302.46 (1) and any applicable domestic abuse assessment imposed by  
24 s. 973.055 (1) plus costs, including the fee prescribed in s. 814.65 (1), not exceeding  
25 the amount of the deposit. The court may either accept the plea of no contest and

1 enter judgment accordingly, or reject the plea and issue a summons. If the court finds  
2 that the violation meets the conditions in s. 800.093 (1), the court may summon the  
3 alleged violator into court to determine if restitution shall be ordered under s.  
4 800.093. If the court finds that the violation meets the conditions in s. 800.094 (1),  
5 the court may summon the alleged violator and his or her parent or legal guardian  
6 into court to determine if restitution shall be ordered under s. 800.094. If the  
7 defendant or his or her parent or legal guardian fails to appear in response to the  
8 summons, the court shall issue a warrant under s. 968.09. If the defendant has made  
9 a deposit but does appear, the court shall allow the defendant to withdraw the plea  
10 of no contest.

11 **SECTION 5.** 800.09 (1) of the statutes is amended to read:

12 800.09 (1) JUDGMENT. If a municipal court finds a defendant guilty it may  
13 render judgment by ordering restitution under s. 800.093, or s. 800.094 if  
14 appropriate, and payment of a forfeiture, the penalty assessment imposed by s.  
15 165.87, the jail assessment imposed by s. 302.46 (1) and any applicable domestic  
16 abuse assessment imposed by s. 973.055 (1) plus costs of prosecution, including the  
17 fee prescribed in s. 814.65 (1). The court shall apply any payment received on a  
18 judgment that includes restitution to first satisfy any payment of restitution  
19 ordered, then to pay the forfeiture, assessments and costs. If the judgment is not  
20 paid, the court may proceed under par. (a), (b) or (c) or any combination of those  
21 paragraphs, as follows:

22 (a) The court may defer payment of any judgment or provide for instalment  
23 payments. At the time the judgment is rendered, the court shall inform the  
24 defendant, orally and in writing, of the date by which restitution under s. 800.093  
25 and the payment of the forfeiture, the penalty assessment, the jail assessment and

1 any applicable domestic abuse assessment plus costs must be made, and of the  
2 possible consequences of failure to do so in timely fashion, including imprisonment,  
3 as provided in s. 800.095, or suspension of the defendant's motor vehicle operating  
4 privilege, as provided in par. (c), if applicable. If the defendant is not present, the  
5 court shall ensure that the information is sent to the defendant by mail. If restitution  
6 is ordered under s. 800.094, at the time that the judgment is rendered under this  
7 subsection, the court shall inform the parent or legal guardian subject to the  
8 restitution orally and in writing of the date when the restitution must be paid. If  
9 restitution is ordered under s. 800.094 and the parent or legal guardian is not  
10 present, the court shall ensure that the information is sent to the parent or legal  
11 guardian by mail. In 1st class cities, all of the written information required by this  
12 paragraph shall be printed in English and Spanish and provided to each defendant.

13 (b) If the parent or legal guardian agrees to perform community service work  
14 in lieu of making restitution or if the defendant agrees to perform community service  
15 work in lieu of making either restitution or paying the forfeiture, assessments and  
16 costs, or both, the court may order that the defendant, parent or legal guardian  
17 perform community service work for a public agency or a nonprofit charitable  
18 organization that is designated by the court. Community service work may be in lieu  
19 of restitution only if also agreed to by the public agency or nonprofit charitable  
20 organization and by the person to whom restitution is owed. The court may utilize  
21 any available resources, including any community service work program, in ordering  
22 the defendant, parent or legal guardian to perform community service work. The  
23 number of hours of community service work required may not exceed the number  
24 determined by dividing the amount owed on the forfeiture by the minimum wage  
25 established under ch. 104 for adults in nonagriculture, nontipped employment. The

1 court shall ensure that the defendant, parent or legal guardian is provided a written  
2 statement of the terms of the community service order and that the community  
3 service order is monitored.

4 (c) The court may suspend the defendant's operating privilege, as defined in s.  
5 340.01 (40), until restitution is made under s. 800.093 and the forfeiture,  
6 assessments and costs are paid, if the defendant has not done so within 60 days after  
7 the date the restitution or payments or both are to be made under par. (a) and has  
8 not notified the court that he or she is unable to comply with the judgment, as  
9 provided under s. 800.095 (4) (a), except that the suspension period may not exceed  
10 5 years. The court shall take possession of the suspended license and shall forward  
11 the license, along with a notice of the suspension clearly stating that the suspension  
12 is for failure to comply with a judgment of the court, to the department of  
13 transportation.

14 **SECTION 6.** 800.09 (2) (b) of the statutes is amended to read:

15 800.09 (2) (b) If the person charged fails to appear personally or by an attorney  
16 at the time fixed for hearing of the case, the defendant may be deemed to have  
17 entered a plea of no contest and the money deposited, if any, or such portion thereof  
18 as the court determines to be an adequate penalty, plus the penalty assessment, the  
19 jail assessment and any applicable domestic abuse assessment plus costs, including  
20 the fee prescribed in s. 814.65 (1), may be declared forfeited by the court or may be  
21 ordered applied upon the payment of any penalty which may be imposed, together  
22 with the penalty assessment, the jail assessment and any applicable domestic abuse  
23 assessment plus costs. If the court finds that the violation meets the conditions in  
24 s. 800.093 (1), the court may summon the alleged violator into court to determine if  
25 restitution shall be ordered under s. 800.093. If the court finds that the violation

1 meets the conditions in s. 800.094 (1), the court may summon the parent or legal  
2 guardian of the minor into court to determine if restitution shall be ordered under  
3 s. 800.094. Any money remaining after payment of any penalties, assessments, costs  
4 and restitution shall be refunded to the person who made the deposit.

5 **SECTION 7.** 800.094 of the statutes is created to read:

6 **800.094 Parental restitution for graffiti by minor.** (1) The municipal  
7 court, in addition to ordering any payment authorized by law, may, if the violation  
8 was committed by a minor and involves an ordinance that prohibits intentionally  
9 marking, drawing or writing with paint, ink or other substance on the physical  
10 property of another without the other person's consent, order the parent or legal  
11 guardian having custody and control of the minor to make full or partial restitution  
12 to any person whose property was damaged or, if the person whose property was  
13 damaged is deceased, to his or her estate.

14 (2) Restitution ordered under this section is enforceable in a civil action by the  
15 person named in the order to receive restitution. A court may not order a parent or  
16 legal guardian to pay more than \$5,000 in restitution under this section.

17 (3) The restitution order may require that the defendant do one or more of the  
18 following, subject to the \$5,000 limit in sub. (2):

19 (a) Pay all special damages, but not general damages, including, but without  
20 limitation because of enumeration, the money equivalent of loss resulting from  
21 property destroyed or otherwise harmed and out-of-pocket losses that could be  
22 recovered in a civil action against the defendant for his or her conduct in the  
23 commission of the violation.

24 (b) Pay an amount equal to the income lost, and reasonable out-of-pocket  
25 expenses incurred, by the person against whom the violation was committed as a

1 result of the commencement of the action or of cooperating in the investigation and  
2 prosecution of the violation.

3 (c) If justice so requires, reimburse any insurer, surety or other person who has  
4 compensated a person whose property was damaged for a loss otherwise  
5 compensable under this section.

6 (4) If the court orders that restitution be paid to more than one person, the court  
7 may direct the sequence in which payments are to be made. If more than one parent  
8 or legal guardian is ordered to make payments to the same person, the court may  
9 apportion liability between those ordered to pay or specify joint and several liability.  
10 If the court specifies that 2 or more persons are jointly and severally liable, the court  
11 shall distribute any overpayments so that each person who is ordered to pay, as  
12 closely as possible, pays the same proportion of the ordered restitution.

13 (5) Restitution ordered under this section does not limit or impair the right of  
14 a person whose property was damaged to sue and recover damages from the  
15 defendant in a civil action. The fact that restitution was required or made is not  
16 admissible as evidence in that civil action and has no legal effect on the merits of the  
17 civil action. Any restitution made by payment or community service shall be set off  
18 against any judgment in favor of the person whose property was damaged in a civil  
19 action arising out of the facts or events that were the basis for the restitution. The  
20 court trying that civil action shall hold a separate hearing to determine the validity  
21 and amount of any setoff asserted by a parent or legal guardian.

22 (6) (a) The court, in determining whether to order restitution and the amount  
23 thereof, shall consider all of the following:

24 1. The amount of loss suffered by any person whose property was damaged as  
25 a result of the violation.

1           2. The financial resources of the parent or legal guardian.

2           3. The present and future earning ability of the parent or legal guardian.

3           4. The needs and earning ability of the dependents of the parent or legal  
4 guardian.

5           5. Any other factors which the court considers appropriate.

6           (b) If the court finds that the conditions in sub. (1) are met, the court may hold  
7 the restitution hearing at the time of any appearance by the parent or legal guardian  
8 having custody and control of the minor defendant before the court or may summon  
9 the parent or legal guardian to appear to determine if restitution shall be ordered.

10 The court shall give the person whose property was damaged an opportunity to  
11 present evidence and arguments pertaining to the factor specified in par. (a) 1. The  
12 court shall give the parent or legal guardian the opportunity to present evidence and  
13 arguments on the factors specified in par. (a). The person whose property was  
14 damaged has the burden of demonstrating by the preponderance of the evidence the  
15 amount of loss sustained as a result of the violation. The parent or legal guardian  
16 has the burden of demonstrating by the preponderance of the evidence the factors  
17 specified in par. (a) 2. to 5. When hearing evidence as to the factors specified in par.  
18 (a), the court may waive the rules of practice, procedure, pleading and evidence,  
19 except provisions relating to privileged communications and personal transactions  
20 or communication with a decedent or mentally ill person.

21           **SECTION 8.** 911.01 (5) (c) of the statutes is created to read:



