

1987 Assembly Bill 577

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1987 Wisconsin Act 347

AN ACT *to amend* 973.09 (1) (b), 973.09 (1m) (a), 973.09 (1m) (c), 973.09 (1m) (d) and 973.09 (3) (b); and *to create* 973.06 (1) (f) and 973.09 (1x) of the statutes, *relating to* conditions of probation and costs in a criminal action.

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

SECTION 1. 973.06 (1) (f) of the statutes is created to read:

973.06 (1) (f) An amount determined by the court to make a reasonable contribution to a crime prevention organization, if the court determines that the person has the financial ability to make the contribution and the contribution is appropriate.

SECTION 2. 973.09 (1) (b) of the statutes is amended to read:

973.09 (1) (b) If the court places the person on probation, the court shall require restitution designed to compensate the victim's pecuniary loss resulting from

the crime to the extent possible, unless the court finds there is substantial reason not to order restitution as a condition of probation. If the court does not require restitution to be paid to a victim, the court shall state its reason on the record. A court may require that restitution be paid to an insurer or surety which has paid any claims or benefits to or on behalf of the victim. If the court does require restitution, it shall specify the amount consistent with sub. (1m) and shall notify the department of justice of its decision if the victim may be eligible for compensation under ch. 949. If the court places the person on probation, it shall require the probationer to pay a surcharge equal to 5% of the total amount of any restitution, contribu-

tions under sub. (1x), costs, attorney fees and any fines and related payments ordered under s. 973.05 (1) to the clerk of circuit court or the department of health and social services, as applicable under sub. (1m), for administrative expenses under this section.

SECTION 3. 973.09 (1m) (a) of the statutes is amended to read:

973.09 (1m) (a) In determining the amount and method of payment of restitution, the court shall consider the financial resources and future ability of the probationer to pay. The court may provide for payment of restitution to the victim up to but not in excess of the pecuniary loss caused by the offense. The probationer may assert any defense that he or she could raise in a civil action for the loss sought to be compensated by the restitution order. If the court also orders payment of fines, related payments under s. 973.05 and costs under s. 973.06, it shall set the amount of fines, related payments and costs in conjunction with the amount of restitution and any contributions under sub. (1x) and issue a single order, signed by the judge, covering all payments required as a condition of probation. If the costs for legal representation by a private attorney appointed under s. 977.08 are not established at the time of issuance of the order, the court may revise the order to include those costs at a later time. The court shall consider the interest of the victim in receiving restitution when determining whether to order payment of costs.

SECTION 4. 973.09 (1m) (c) of the statutes is amended to read:

973.09 (1m) (c) The court shall not establish a payment schedule extending beyond the maximum term of probation that could have been imposed for the offense under sub. (2). Except as provided in par. (cm), payments shall be applied first to satisfy the ordered restitution and any contributions under sub. (1x) in full, then to pay any fines and related payments under s. 973.05, then to pay costs other than attorney fees and finally to reimburse county or state costs of legal representation.

SECTION 5. 973.09 (1m) (d) of the statutes is amended to read:

973.09 (1m) (d) Payment of restitution, contributions under sub. (1x), costs, attorney fees, fines and related payments under s. 973.05 ordered under this section shall be to the department of health and social services, unless the county board authorizes that payments in the county shall be to the clerk of circuit court. The clerk or the department shall establish a separate account for each probationer for the collection and disbursement of funds. A portion of each payment shall be considered the surcharge for administrative expenses under sub. (1) (b).

SECTION 6. 973.09 (1x) of the statutes is created to read:

973.09 (1x) If the court places a person on probation, the court may require that the probationer make a contribution to a crime prevention organization if the court determines that the probationer has the financial ability to make the contribution.

SECTION 7. 973.09 (3) (b) of the statutes is amended to read:

973.09 (3) (b) The clerk or the department, as applicable under sub. (1m), shall notify the sentencing court of the status of the ordered payments unpaid at least 90 days before the probation expiration date. If the clerk is acting under sub. (1m), he or she shall give the department the same notification. If payment as ordered has not been made, the court shall hold a probation review hearing prior to the expiration date, unless the hearing is voluntarily waived by the probationer with the knowledge that waiver may result in an extension of the probation period or in a revocation of probation. A probationer shall not be discharged from probation until payment of the ordered restitution, contributions under sub. (1x), costs, attorney fees, fines and related payments under s. 973.05 has been made or the court determines that there is substantial reason not to continue to require payment.