

1981 Senate Bill 621

Date published: May 6, 1982

CHAPTER 352 , Laws of 1981

AN ACT to repeal 973.09 (3) (b) and (c) and (8) (c); to renumber 973.09 (1) (b); to renumber and amend 973.09 (3) (d); to amend 973.09 (1) (a), (1g), (1m) and (8) (a) and (b); and to create 973.05 (1m) and 973.06 (3) of the statutes, relating to restitution and other payments as a condition of probation.

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

PREFATORY NOTE: This proposal makes several changes in the law relating to payment of restitution and costs by probationers.

Current law: Under current law, a sentencing court is required to order an offender to pay restitution as a condition of probation unless the court finds there is substantial reason not to order restitution. The district attorney or a law enforcement officer may be ordered by the court to document the amount of the victim's loss for purposes of setting the amount of restitution. No limit is set on the amount of time that can be taken to document the loss.

The amount of loss includes 5% interest from the time of loss until payment is made. In addition, a 10% surcharge is added to the amount of restitution and is paid to the clerk of circuit court or the department of health and social services for administrative expenses in processing the restitution payments.

A sentencing court may order a probationer to pay court costs in addition to restitution. Costs may include such items as attorney fees paid by the county or state, clerk of court fees, witness travel allowances and witness fees. The department of health and social services usually collects reimbursement for attorney fees paid by the state. Payment for other costs is usually made to the county.

The probationer may petition the court to adjust the amount of restitution ordered at any time after 6 months have elapsed since imposition of the restitution order. If the ordered restitution has not been made by the end of the term of probation, the court must hold a hearing to determine what action to take.

Proposed changes: This proposal requires the sentencing court, when ordering restitution as a condition of probation, to set any amount of fines, related payments and costs in conjunction with the amount of restitution. The court is required to consider the interest of the victim in receiving restitution when determining whether to order payment of costs. The court must combine in a single order restitution and all other payments required as a condition of probation.

The 5% interest currently included in the amount of the victim's loss is eliminated. In addition, the 10% surcharge on restitution is reduced to 5% of the total amount of restitution, costs, attorney fees, fines and related payments. The surcharge is collected and disbursed by the department of health and social services unless the county board authorizes the clerk of circuit court to handle all payments.

The department of health and social services is added to the list of entities which the court may use to document the amount of the victim's loss. A limit of 30 days is set for documentation of the victim's loss, unless a different limit is set by the court. A statement of attorney fees to be taxed against the probationer must be filed by the county or the state public defender with the court and defendant within this time limit, if the county or the state public defender desires reimbursement.

Priorities are set for application of the probationer's payments. Payments must be applied first to fully satisfy the restitution ordered to the victim. Payments are next applied to fully pay any fines and related payments, then to pay costs other than attorney fees and finally to reimburse the county or state for attorney fees paid on behalf of the defendant. The department of health and social services or clerk of circuit court is required to establish a separate account for each probationer.

The proposal would repeal the provision which allows the probationer to petition the court after 6 months to adjust the amount of restitution ordered. However, under s. 973.09 (3) (a), a court currently has the authority to modify the terms and conditions of probation. It would also repeal the provision which permits the victim, attorney general or district attorney to ask the court to consider a 30-day default in restitution payments, to be a violation of a condition of probation. Also, under this proposal, a probationer may waive the right to a probation review hearing held at the end of the term of probation if restitution has not been made. Any waiver, to be valid, must be made with the knowledge that the probation period may be extended for failure to pay or that probation may be revoked.

The proposal would permit a probationer to petition the court to modify a restitution order imposed prior to the effective date of this bill to remove any interest required or to reduce any surcharge ordered. However, the probationer would not be entitled to a refund for interest or surcharges paid under the provisions of any previous law.

SECTION 1. 973.05 (1m) of the statutes is created to read:

973.05 (1m) If the court orders payment of restitution and a fine and related payments under s. 973.09 (1) (b), the court may authorize a payment period in excess of 60 days.

SECTION 2. 973.06 (3) of the statutes is created to read:

973.06 (3) If the court orders payment of restitution as a condition of probation, collection of costs shall be as provided under s. 973.09 (1g) and (1m).

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

973.09 (1) (a) Except as provided in par. ~~(b)~~ (c) or if probation is prohibited for a particular offense by statute, if a person is convicted of a crime, the court, by order, may withhold sentence or impose sentence and stay its execution, and in either case place the person on probation to the department for a stated period, stating in the order the reasons therefor, and The court may impose any conditions which appear to be reasonable and appropriate. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously.

(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 ~~does require restitution~~ places the person on probation, it shall require the probationer to pay a surcharge equal to ~~10%~~ 5% of the total amount of any restitution, 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. ~~The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously.~~

SECTION 4. 973.09 (1) (b) of the statutes is renumbered 973.09 (1) (c).

SECTION 5. 973.09 (1g) and (1m) of the statutes are amended to read:

973.09 (1g) If the court places the person on probation, the court may require that the probationer reimburse the county or the state, as applicable, for any costs for legal representation to the county or the state for the defense of the case. In order to receive this

reimbursement, the county or the state public defender shall provide a statement of its costs of legal representation to the defendant and court within the time period set for documenting the pecuniary loss of the victim under sub. (1m) (b). The time period does not apply to statements of costs for legal representation by private attorneys appointed under s. 977.08.

(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 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.

(b) Upon the order of the court, the district attorney, the department of health and social services or an official of a law enforcement agency, as defined in s. 165.83 (1) (b), shall document, within 30 days or a different period of time specified by the court, the nature and amount of the victim's pecuniary loss. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense or the amount of any payment ordered under par. (a). No hearing is required unless this application is made.

(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). Payments shall be applied first to satisfy the ordered restitution 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.

(d) Payment of restitution, 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 of restitution in the county shall be to the clerk of circuit court. The clerk or the department shall establish a separate account for each victim 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).

(e) The clerk or the department shall notify the court if the probationer does not comply with make the restitution payments required by the court. If the clerk is acting under this subsection, he or she shall notify the department of any such noncompliance. The probationer is entitled to assert any defense that he or she could raise in a civil action for the loss sought to be compensated by the restitution order.

SECTION 6. 973.09 (3) (b) and (c) of the statutes are repealed.

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

973.09 (3) (b) If restitution has been required, the clerk or the department, as applicable under sub. (1m), shall notify the sentencing court of the status of restitution the ordered payments 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 restitution 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 the court determines that payment of the ordered restitution, costs, attorney fees, fines and related payments under s. 973.05 has been made or that there is substantial reason not to continue to require ~~the payment of restitution.~~

SECTION 8. 973.09 (8) (a) and (b) of the statutes are amended to read:

973.09 (8) (a) All special damages, but not general damages, substantiated by evidence in the record, which a person could recover against the probationer in a civil action arising out of the facts or events constituting the probationer's criminal activities, including, without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses; and

(b) Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the offense; ~~and.~~

SECTION 9. 973.09 (8) (c) of the statutes is repealed.

SECTION 10. **Initial applicability.** (1) Except as provided in subsection (2), the provisions of this act shall apply only to probation orders made under section 973.09 of the statutes for crimes committed on or after the effective date of this act.

(2) Any person ordered to pay restitution prior to the effective date of this act may petition the court for modification of the restitution order to remove any interest requirement under section 973.09 (8) (c), 1979 stats., or reduce any surcharge ordered under section 973.09 (1) (a), 1979 stats., to make the surcharge consistent with the provisions of this act. No person may receive a refund for interest or surcharges paid under the provisions of any law in effect prior to the effective date of this act.
