

## 1985 Wisconsin Act 311

AN ACT to renumber and amend 895.035 (1) and 895.035 (2) and (3); to amend 48.299 (1), 48.34 (5), 48.343 (4), 48.396 (1), 49.90 (4) (a) 1, 49.90 (11) (a), 814.04 (intro.), 950.02 (1m), 950.04 (8) and 950.055 (1) and (2) (intro.); and to create 48.01 (1) (h), 48.21 (3m), 48.243 (1m), 48.245 (10), 48.32 (6), 48.346, 48.396 (5), 632.895 (5m), 895.035 (1), 895.035 (2m) and 895.035 (3), (6) and (7) of the statutes, relating to parental liability for acts of children, required insurance coverage of grandchildren, rights of victims and witnesses in children's court proceedings, payment of restitution by children and disclosure of certain juvenile records.

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

SECTION 1. 48.01 (1) (h) of the statutes is created to read:

48.01 (1) (h) To ensure that victims and witnesses of acts committed by children that result in proceedings under this chapter are, to the extent consistent with the provisions and procedures of this chapter, afforded the same rights as victims and witnesses of crimes under ss. 950.04 and 950.055 and that victims and witnesses are treated with dignity, respect, courtesy and sensitivity throughout those proceedings.

SECTION 2. 48.21 (3m) of the statutes is created to read:

48.21 (3m) PARENTAL NOTICE REQUIRED. If the child has been taken into custody because he or she committed an act which resulted in personal injury or damage to or loss of the property of another, the court, prior to the commencement of any hearing under this section, shall attempt to notify the child's parents of the possibility of disclosure of the identity of the child and the parents, of the child's police records and of the outcome of proceedings against the child for use in civil actions for damages against the child or the parents and of the parents' potential liability for acts of their children. If the court is unable to provide the notice before commencement of the hearing, it shall provide the child's parents with the specified information in writing as soon as possible after the hearing.

SECTION 3. 48.243 (1m) of the statutes is created to read:

48.243 (1m) If the child who is the subject of the intake inquiry is alleged to have committed an act which resulted in personal injury or damage to or loss of the property of another, the intake worker shall inform the child's parents in writing of the possibility of disclosure of the identity of the child and the parents, of the child's police records and of the outcome of proceedings against the child for use in civil actions for damages against the child or the parents and of the parents' potential liability for acts of their children.

SECTION 4. 48.245 (10) of the statutes is created to read:

48.245 (10) If the informal disposition arises out of an act which resulted in personal injury or damage to or loss of the property of another, the intake worker shall notify in writing each known victim of the child's act of all of the following, unless the victim has indicated that he or she does not want to be notified:

(a) The procedure under s. 48.396 (5) for obtaining the identity of the child and the child's parents and the child's police records.

(b) The potential liability of the child's parents for damages under s. 895.035.

(c) Any responsibility under the informal disposition for making restitution or repair of damages to property.

SECTION 6. 48.299 (1) of the statutes is amended to read:

48.299 (1) (a) The general public shall be excluded from hearings under this chapter and from hearings by courts exercising jurisdiction under s. 48.17 (2) unless a public fact-finding hearing is demanded by a child through his or her counsel. However, the court shall refuse to grant the public hearing if the victim of an alleged sexual assault objects or, in a nondelinquency proceeding, if a parent or guardian objects. If a public hearing is not held, only the parties, their counsel, witnesses and other persons requested by a party and approved by the court may be present. Any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may be admitted by the court.

(b) Any person who divulges any information which would identify the child or the family involved in any proceeding under this chapter shall be subject to ch. 785. This paragraph does not preclude a victim of the child's act from commencing an action under s. 895.035.

SECTION 7. 48.32 (6) of the statutes is created to read:

48.32 (6) If the consent decree arises out of a petition under s. 48.12, 48.125 or 48.13 (12) alleging that the child committed an act which resulted in personal injury or damage to or loss of the property of another, the court shall designate a person or agency to notify in writing each known victim of the child's act of all of

the following, unless the victim has indicated that he or she does not want to be notified:

(a) The procedure under s. 48.396 (5) for obtaining the identity of the child and the child's parents and the child's police records.

(b) The potential liability of the child's parents for damages under s. 895.035.

(c) Any responsibility under the consent decree for making restitution or repair of damages to property.

SECTION 7g. 48.34 (5) of the statutes is amended to read:

48.34 (5) If the child is found to have committed a delinquent act which has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, the judge may order the child to repair damage to property or to make reasonable restitution for the damage or injury if the judge, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the child. Any such order shall include a finding that the child alone is financially able to pay and shall allow up to ~~12~~ 10 months for the payment. Objection by the child to the amount of damages claimed shall entitle the child to a hearing on the question of damages before the amount of restitution is ordered.

SECTION 7r. 48.343 (4) of the statutes is amended to read:

48.343 (4) If the violation has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, the court may order the child to make repairs of the damage to property or reasonable restitution for the damage or injury if the court, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the child. Any such order requiring payment for repairs or restitution shall include a finding that the child alone is financially able to pay and shall allow up to ~~12~~ 10 months for the payment. Objection by the child to the amount of damages claimed shall entitle the child to a hearing on the question of damages before the amount of restitution is ordered.

SECTION 7t. 48.346 of the statutes is created to read:

**48.346 Notice to victims of children's acts.** At the conclusion of any proceedings in which a child is adjudged delinquent, adjudged to have violated a civil law or ordinance or adjudged to be in need of protection or services under s. 48.13 (12) on the basis of an act which resulted in personal injury or damage to or loss of the property of another, the court shall designate a person or agency to notify in writing each known victim of the child's act of all of the following, unless the victim has indicated that he or she does not want to be notified:

- (1) The identity of the child and the child's parents.
- (2) The procedure under s. 48.396 (5) for obtaining the child's police records.

(3) The potential liability of the child's parents for damages under s. 895.035.

(4) Any provisions of the dispositional order relating to restitution or repair of damages to property.

SECTION 9. 48.396 (1) of the statutes is amended to read:

48.396 (1) Peace officers' records of children shall be kept separate from records of persons 18 or older and shall not be open to inspection or their contents disclosed except under s. 48.293, by order of the court or according to s. 48.293 assigned to exercise jurisdiction under this chapter or by order of the circuit court under sub. (5). This subsection shall not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child involved or to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 16 or older who are transferred to the criminal courts.

SECTION 10. 48.396 (5) of the statutes is created to read:

48.396 (5) (a) If a child has entered into an informal disposition agreement under s. 48.245 or a consent decree under s. 48.32, has been adjudged delinquent, has been found in need of protection or services on the basis of a petition under s. 48.13 (12) or has been found to have violated a civil law or ordinance, and the act upon which the agreement, decree, adjudication or finding was based was one which resulted in personal injury or damage to or loss of the property of another, any victim of the child's act who has filed, or who states that he or she intends to file a civil action for damages against the child, the child's parents or both may petition the circuit court in which the civil action was commenced to order the disclosure of the names of the child and the child's parents, disclosure of the records governed by sub. (1) that relate to the child's act or disclosure of the final judgment or order of the court in any proceedings arising out of the act.

(b) The petition shall be in writing, shall be accompanied by a copy of the complaint or proposed complaint in the civil action, and shall describe as specifically as possible all of the following:

1. The type of information sought.
2. The basis for the petitioner's belief that the information is contained in the records.
3. The relevance of the information sought to the petitioner's cause of action.
4. The probability that the information will be admitted as evidence in the civil action.
5. The petitioner's efforts to obtain the information from other sources.
6. The hardship to the petitioner's cause if the records are not disclosed.

(c) The circuit court shall notify the child, the child's counsel and the child's parents in writing of the

petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(d) The circuit court shall make an inspection, which may be in camera, of the child's records. If the court determines that the information sought is essential to the petitioner's cause and that it cannot be obtained with reasonable effort from other sources, it shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making this determination, the court shall balance the following private and societal interests:

1. The petitioner's interest in recovering for the injury, damage or loss he or she has suffered against the child's interest in rehabilitation and in avoiding the stigma that might result from disclosure.

2. The public's interest in the redress of private wrongs through private litigation against the public's interest in protecting the integrity of the juvenile justice system.

(e) If the circuit court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to permit the petitioner to prosecute the civil action.

(f) The circuit court shall record the reasons for its decision to disclose or not to disclose the child's records. All records related to a decision under this subsection are confidential.

SECTION 10m. 49.90 (4) (a) 1 of the statutes, as affected by 1985 Wisconsin Acts 29 and 56, is amended to read:

49.90 (4) (a) 1. The circuit court shall in a summary way hear the allegations and proofs of the parties and by order require maintenance from these relatives, if they have sufficient ability (considering their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age) in the following order: First the husband or wife; then the father and the mother; and then the grandparents in the instances in which sub. (1) (a) 2 applies. The order shall specify a sum which will be sufficient for the support of the dependent person, to be paid weekly or monthly, during a period fixed by the order or until the further order of the court. If the court is satisfied that any such relative is unable wholly to maintain the dependent person, but is able to contribute to the person's support, the court may direct 2 or more of the relatives to maintain the person and prescribe the proportion each shall contribute. If the court is satisfied that these relatives are unable together wholly to maintain the dependent person, but are able to contribute to the person's support, the court shall direct a sum to be paid weekly or monthly by each relative in proportion to ability. Contributions directed by court order, if for less than full support, shall be paid to the department of health and social services and distributed as required by state

and federal law. An order under this subdivision that relates to maintenance required under sub. (1) (a) 2 shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses, subject to the limitations under subs. (1) (a) 2 and (11) (a). Upon application of any party affected by the order and upon like notice and procedure, the court may modify such an order. Obedience to such an order may be enforced by proceedings for contempt.

SECTION 10p. 49.90 (11) (a) of the statutes, as created by 1985 Wisconsin Act 56, is amended to read:

49.90 (11) (a) The parent of a dependent person who is under the age of 18 and is alleged to be the father of a child is responsible for maintenance of that child only if the paternity of the child has been determined to be that of the dependent person as provided in subch. VIII of ch. 48 or under ss. 767.45 to 767.60. Subject to the limitations under sub. (1) (a), if a parent of the dependent person is liable for the health care expenses of the dependent person's child under sub. (4) (a) 1, this liability extends to all expenses of the child's medical care and treatment, including those associated with the childbirth, regardless of whether they were incurred prior to the determination of paternity, except that the court may limit the liability of the dependent person's parent for the child's medical expenses if the expenses exceed 5% of the parent's federal adjusted gross income for the previous taxable year, if the parent files separately, or 5% of the sum of the parents' federal adjusted gross income for the previous taxable year, if the parents file jointly.

SECTION 10x. 632.895 (5m) of the statutes is created to read:

632.895 (5m) COVERAGE OF GRANDCHILDREN. Every disability insurance policy issued or renewed on or after the effective date of this subsection ... [revisor inserts date], that provides coverage for any child of the insured shall provide the same coverage for all children of that child until that child is 18 years of age.

SECTION 11g. 814.04 (intro.) of the statutes, as affected by 1985 Wisconsin Act 52, is amended to read:

**814.04 Items of costs.** (intro.) Except as provided in ss. 814.025 ~~and~~, 814.245 ~~and~~ 895.035 (4), when allowed costs shall be as follows:

SECTION 12. 895.035 (1) of the statutes is renumbered 895.035 (2) and amended to read:

895.035 (2) The parent or parents ~~having legal with~~ custody of an unemancipated minor child, in any circumstances where he, ~~she~~ or they may not be otherwise liable under the common law, ~~shall be held~~ are liable for damages to property, for the value of unrecovered stolen property or for personal injury attributable to a wilful, malicious or wanton act of the child ~~not to exceed \$1,000, in addition to taxable costs and disbursements directly attributable to any wilful, malicious or wanton act of the child.~~

SECTION 13. 895.035 (1) of the statutes is created to read:

895.035 (1) (a) In this section, "custody" means either legal custody of a child under a court order under s. 767.23 or 767.24, custody of a child under a stipulation under s. 767.10 or actual physical custody of a child. "Custody" does not include legal custody, as defined under s. 48.02 (12), by an agency or a person other than a child's birth or adoptive parent.

(b) In determining which parent has custody of a child for purposes of this section, the court shall consider which parent had responsibility for caring for and supervising the child at the time the act that caused the injury, damage or loss occurred.

SECTION 14. 895.035 (2) and (3) of the statutes are renumbered 895.035 (4) and (5) and amended to read:

895.035 (4) ~~Maximum~~ The maximum recovery from any parent or parents ~~of any child~~ may not exceed ~~the limitation provided in sub. (1) \$2,500 for damages resulting from any one wilful, malicious or wanton act of such a child and if in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court. If 2 or more children in the custody of the same parent or parents having legal custody~~ commit the same act the total recovery may not exceed ~~in the aggregate \$1,000~~ \$2,500, in addition to taxable costs and disbursements.

(5) This section ~~shall~~ does not limit the amount of damages recoverable by an action against ~~the a~~ child or children except that any amount so recovered shall be reduced and apportioned by the ~~amounts~~ amount received from the parent or parents under this section.

SECTION 14m. 895.035 (2m) of the statutes is created to read:

895.035 (2m) No person may file a claim under sub. (2) if the child who committed the act that resulted in the injury, damage or loss is subject to an informal disposition under s. 48.245, a consent decree under s. 48.32 or a dispositional order under s. 48.34 (5) or 48.343 (4), which requires the child to make repairs or pay restitution for the injury, damage or loss and if the child is in compliance with any such condition.

SECTION 15. 895.035 (3), (6) and (7) of the statutes are created to read:

895.035 (3) An adjudication under s. 48.31 that the child violated a civil law or ordinance, is delinquent or is in need of protection and services under s. 48.13

(12), based on proof that the child committed the act, subject to its admissibility under s. 904.10, shall, in an action under sub. (1), stop a child's parent or parents from denying that the child committed the act that resulted in the injury, damage or loss.

(6) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under s. 48.245, 48.32, 48.34 (5) or 48.343 (4).

(7) This section does not affect or limit any liability of a parent under s. 167.10 (7) or 343.15 (2).

SECTION 16. 950.02 (1m) of the statutes is amended to read:

950.02 (1m) "Crime" means an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12, or which, if committed by a responsible child, would constitute a delinquent act under ch. 48.

SECTION 17. 950.04 (8) of the statutes is amended to read:

950.04 (8) To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employe's loss of pay and other benefits resulting from court appearances.

SECTION 18. 950.055 (1) and (2) (intro.) of the statutes are amended to read:

950.055 (1) LEGISLATIVE INTENT. The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice or juvenile justice system. The legislature urges the news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases.

(2) ADDITIONAL SERVICES. (intro.) In addition to all rights afforded to victims and witnesses under s. 950.04 and services provided under s. 950.05, counties are encouraged to provide the following additional services on behalf of children who are involved in criminal or delinquency proceedings as victims or witnesses:

SECTION 19. **Initial applicability.** This act first applies to acts committed on the effective date of this SECTION.