

1979 Assembly Bill 732

Date published: May 9, 1980

## CHAPTER 238, Laws of 1979

AN ACT to amend 973.09 (1); to repeal and recreate 973.09 (3); and to create 20.435 (3) (kg) and 973.09 (1m) and (6) to (8) of the statutes, relating to requiring restitution as a requirement of probation and creating an appropriation.

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

SECTION 1. 20.435 (3) (kg) of the statutes is created to read:

20.435 (3) (kg) *Administration of restitution.* All moneys received under s. 973.09 (1) for the administration of court-ordered restitution programs under s. 973.09.

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

973.09 (1) ~~When~~ If a person is convicted of a crime, the court ~~may~~, by order, may withhold sentence or impose sentence and stay its execution, and in either case place ~~him~~ the person on probation to the department for a stated period, stating in the order the reasons therefor, and may impose any conditions which appear to be reasonable and appropriate. 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, it shall require the probationer to pay a surcharge equal to 10% of the amount of restitution 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 2. 973.09 (1m) and (6) to (8) of the statutes are created to read:

973.09 (1m) In determining the amount and method of payment, the court shall consider the financial resources and future ability of the probationer to pay. The court may provide for payment to the victim up to but not in excess of the pecuniary loss caused by the offense. Upon the order of the court, the district attorney or an official of a law enforcement agency, as defined in s. 165.83 (1) (b), shall document 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. 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). Payment of restitution 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 for the collection and disbursement of funds. The clerk or the department shall notify the court if the probationer does not comply with 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.

(6) If a crime victim is paid an award under ch. 949 for any loss arising out of a criminal act, the state is subrogated to the rights of the victim to any restitution required as a condition of probation by the court. The rights of the state are subordinate to the claims of victims who have suffered a loss arising out of the offenses or any transaction which is part of the same continuous scheme of criminal activity.

(7) Requiring restitution as a condition of probation does not limit or impair the right of a victim to sue and recover damages from the probationer in a civil action. The facts that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action. Any restitution paid by the probationer to the victim shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(8) In this section, "pecuniary loss" means:

(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;

(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

(c) Interest at the legal rate on the amount of pecuniary loss from the time of loss until payment is made.

SECTION 3. 973.09 (3) of the statutes is repealed and recreated to read:

973.09 (3) (a) Prior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof.

(b) If restitution has been required, the probationer, after 6 months have elapsed since the imposition of the order of restitution, may petition the sentencing court to adjust or otherwise waive payment or performance of any ordered restitution or any unpaid or unperformed portion of restitution. The court shall schedule a probation review hearing before the court and give the victim notice of the hearing, date, place and time and inform the victim that he or she will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition or amount and method of payment ordered no longer exist or that it otherwise would be unjust to require payment, the court may adjust or waive payment of the unpaid portion thereof or modify the time or payment schedule for making restitution.

(c) If a probationer who is required to make restitution defaults for 30 days, the court upon the motion of the attorney general, the district attorney, the victim or its own motion may issue an order requiring the probationer to show cause why the default should not be treated as a violation of a condition of probation under s. 973.10 (2). The court may order the probationer to appear at a time, date and place for a review hearing before the court or, upon failure to appear, issue a warrant for the probationer's arrest. The order or

warrant shall be accompanied by written notice of the right to a review hearing and the rights and procedures applicable to the hearing.

(d) 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 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 has not been made, the court shall hold a probation review hearing prior to the expiration date. A probationer shall not be discharged from probation until the court determines that the restitution has been made or that there is substantial reason not to continue to require the payment of restitution.

**SECTION 4. Applicability.** This act applies only to persons committing crimes on or after the effective date of this act.

**SECTION 5. Effective date.** This act takes effect on the first day of the 2nd month commencing after its publication.

---