



State of Wisconsin  
1997 - 1998 LEGISLATURE

LRBa1052/1  
GMM:jlg:jf

**ASSEMBLY AMENDMENT 2,  
TO 1997 ASSEMBLY BILL 455**

November 6, 1997 - Offered by Representative KRUG.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 11: after "juvenile" insert "or by a parent who has custody of a  
3 juvenile".

4 **2.** Page 4, line 3: after that line insert:

5 "SECTION 3m. 895.035 (2m) (a) of the statutes is amended to read:

6 895.035 (2m) (a) If a child or a parent with custody of a child fails to pay  
7 restitution under s. 938.245, 938.32, 938.34 (5), 938.343 (4) ~~or~~, 938.345 or 938.45 (1r)  
8 (a) as ordered by a court assigned to exercise jurisdiction under chs. 48 and 938 or  
9 a municipal court or as agreed to in a deferred prosecution agreement or if it appears  
10 likely that the child or parent will not pay restitution as ordered or agreed to, the  
11 victim, the victim's insurer, the representative of the public interest under s. 938.09  
12 or the agency, as defined in s. 938.38 (1) (a), supervising the child may petition the  
13 court assigned to exercise jurisdiction under chs. 48 and 938 to order that the amount

1 of restitution unpaid by the child or parent be entered and docketed as a judgment  
2 against the child and the parent with custody of the child and in favor of the victim  
3 or the victim's insurer, or both. A petition under this paragraph may be filed after  
4 the expiration of the deferred prosecution agreement, consent decree, dispositional  
5 order or sentence under which the restitution is payable, but no later than one year  
6 after the expiration of the deferred prosecution agreement, consent decree,  
7 dispositional order or sentence or any extension of the consent decree, dispositional  
8 order or sentence. A judgment rendered under this paragraph does not bar the  
9 victim or the victim's insurer, or both, from commencing another action seeking  
10 compensation from the child or the parent, or both, if the amount of restitution  
11 ordered under this paragraph is less than the total amount of damages claimed by  
12 the victim or the victim's insurer.

13 **SECTION 3p.** 895.035 (6) of the statutes is amended to read:

14 895.035 (6) Any recovery of restitution under this section shall be reduced by  
15 the amount recovered as restitution for the same act under s. 938.245, 938.32, 938.34  
16 (5) ~~or~~, 938.343 (4) or 938.45 (1r) (a).”

17 **3.** Page 6, line 2: after “payment.” insert “Any recovery under this paragraph  
18 shall be reduced by the amount recovered as restitution for the same act under par.  
19 (am).”

20 **4.** Page 6, line 5: after “restitution.” insert “Except for recovery for retail theft  
21 under s. 943.51, a deferred prosecution agreement may not require a parent who has  
22 custody, as defined in s. 895.035 (1), of a juvenile to make more than the amount  
23 specified in s. 799.01 (1) (d) in restitution for any damage, injury or death resulting

1 from any one act of the juvenile or from the same act committed by 2 or more juveniles  
2 in the custody of that parent.”.

3 **5.** Page 7, line 13: after that line insert:

4 “**SECTION 12m.** 938.245 (2t) (am) of the statutes is created to read:

5 938.245 (2t) (am) If the act for which the deferred prosecution agreement is  
6 being entered into has resulted in damage to or loss or destruction of the property  
7 of another, in bodily injury to another excluding pain and suffering or in death and  
8 if the intake worker, after taking into consideration the well-being and needs of the  
9 victim, considers it beneficial to the well-being and behavior of the juvenile, the  
10 deferred prosecution agreement may, subject to par. (c), require the parent who has  
11 custody, as defined in s. 895.035 (1), of the juvenile to make reasonable restitution  
12 for the damage, injury or death as provided in pars. (d) to (h). Any order under this  
13 paragraph shall include a determination that the parent who has custody of the  
14 juvenile is financially able to pay the amount ordered and may allow up to the date  
15 of the expiration of the deferred prosecution agreement for the payment. Any  
16 recovery under this paragraph shall be reduced by the amount recovered as  
17 restitution for the same act under par. (a).”.

18 **6.** Page 7, line 17: after “juvenile” insert “or the parent who has custody, as  
19 defined in s. 895.035 (1), of the juvenile”.

20 **7.** Page 8, line 3: after “juvenile” insert “or the parent who has custody, as  
21 defined in s. 895.035 (1), of the juvenile”.

22 **8.** Page 8, line 17: after “juvenile” insert “or the parent who has custody, as  
23 defined in s. 895.035 (1), of the juvenile”.

1           **9.** Page 8, line 22: after “juvenile” insert “or the parent who has custody, as  
2 defined in s. 895.035 (1), of the juvenile”.

3           **10.** Page 9, line 5: after “juvenile” insert “or the parent who has custody, as  
4 defined in s. 895.035 (1), of the juvenile”.

5           **11.** Page 9, line 18: after that line insert:

6           “**SECTION 17g.** 938.245 (2t) (i) of the statutes is created to read:

7           938.245 (2t) (i) 1. If a victim of the act for which the deferred prosecution  
8 agreement is entered into is paid an award under ch. 949 for any loss arising out of  
9 the act, the state is subrogated to the rights of the victim to any restitution required  
10 by the court. The rights of the state are subordinate to the claims of victims who have  
11 suffered a loss arising out of the offenses or any transaction which is part of the same  
12 continuous scheme of delinquent activity.

13           2. When restitution is ordered, the court shall inquire to determine if an award  
14 has been made under ch. 949 and if the department of justice is subrogated to the  
15 cause of action under s. 949.15. If the restitution ordered is less than or equal to the  
16 award under ch. 949, the restitution shall be paid only to the general fund. If the  
17 restitution ordered is greater than the award under ch. 949, the general fund shall  
18 receive an amount equal to the award under ch. 949 and the balance shall be paid  
19 to the victim.”.

20           **12.** Page 10, line 14: after “restitution” insert “by a juvenile”.

21           **13.** Page 10, line 18: after “decree.” insert “Any recovery under this paragraph  
22 shall be reduced by the amount recovered as restitution for the same act under par.  
23 (am).”.

1           **14.** Page 10, line 21: after “restitution.” insert “Except for recovery for retail  
2 theft under s. 943.51, a judge or juvenile court commissioner may not order a parent  
3 who has custody, as defined in s. 895.035 (1), of a juvenile to make more than the  
4 amount specified in s. 799.01 (1) (d) in restitution for any damage, injury or death  
5 resulting from any one act of the juvenile or from the same act committed by 2 or more  
6 juveniles in the custody of that parent.”.

7           **15.** Page 10, line 22: after that line insert:

8           “**SECTION 20m.** 938.32 (1t) (am) of the statutes is created to read:

9           938.32 **(1t)** (am) If the petition alleges that the juvenile committed a delinquent  
10 act that has resulted in damage to or loss or destruction of the property of another,  
11 in bodily injury to another excluding pain and suffering or in death and if the judge  
12 or juvenile court commissioner, after taking into consideration the well-being and  
13 needs of the victim, considers it beneficial to the well-being and behavior of the  
14 juvenile, the judge or juvenile court commissioner may, subject to par. (c), require the  
15 parent who has custody, as defined in s. 895.035 (1), of the juvenile, as a condition  
16 of the consent decree, to make reasonable restitution for the damage, injury or death  
17 as provided in pars. (d) to (h). Any consent decree that includes a condition of  
18 restitution by a parent who as custody of the juvenile shall include a finding that the  
19 parent who has custody of the juvenile is financially able to pay the amount ordered  
20 any may allow up to the date of the expiration of the consent decree for the payment.  
21 Objection by the parent to the amount of damages claimed shall entitle the parent  
22 to a hearing on the question of damages before the amount of restitution is made part  
23 of the consent decree. Any recovery under this paragraph shall be reduced by the  
24 amount recovered as restitution for the same act under par. (a).”.

1           **16.** Page 11, line 2: after “juvenile” insert “or the parent who has custody, as  
2 defined in s. 895.035 (1), of the juvenile”.

3           **17.** Page 11, line 12: after “juvenile” insert “or the parent who has custody, as  
4 defined in s. 895.035 (1), of the juvenile”.

5           **18.** Page 12, line 2: after “juvenile” insert “or the parent who has custody, as  
6 defined in s. 895.035 (1), of the juvenile”.

7           **19.** Page 12, line 7: after “juvenile” insert “or the parent who has custody, as  
8 defined in s. 895.035 (1), of the juvenile”.

9           **20.** Page 12, line 13: after “juvenile” insert “or the parent who has custody, as  
10 defined in s. 895.035 (1), of the juvenile”.

11           **21.** Page 13, line 2: after that line insert:

12           “**SECTION 26g.** 938.32 (1t) (i) of the statutes is created to read:

13           938.32 (1t) (i) 1. If a victim of the delinquent act is paid an award under ch. 949  
14 for any loss arising out of the delinquent act, the state is subrogated to the rights of  
15 the victim to any restitution required by the court. The rights of the state are  
16 subordinate to the claims of victims who have suffered a loss arising out of the  
17 offenses or any transaction which is part of the same continuous scheme of  
18 delinquent activity.

19           2. When restitution is ordered, the court shall inquire to determine if an award  
20 has been made under ch. 949 and if the department of justice is subrogated to the  
21 cause of action under s. 949.15. If the restitution ordered is less than or equal to the  
22 award under ch. 949, the restitution shall be paid only to the general fund. If the  
23 restitution ordered is greater than the award under ch. 949, the general fund shall

1 receive an amount equal to the award under ch. 949 and the balance shall be paid  
2 to the victim.”.

3 **22.** Page 13, line 17: after “ordered.” insert “Any recovery under this  
4 paragraph shall be reduced by the amount recovered as restitution for the same act  
5 under s. 938.45 (1r) (a)”.

6 **23.** Page 15, line 21: after that line insert:

7 “**SECTION 32g.** 938.34 (5) (i) of the statutes is created to read:

8 938.34 (5) (i) 1. If a victim of the delinquent act is paid an award under ch. 949  
9 for any loss arising out of the delinquent act, the state is subrogated to the rights of  
10 the victim to any restitution required by the court. The rights of the state are  
11 subordinate to the claims of victims who have suffered a loss arising out of the  
12 offenses or any transaction which is part of the same continuous scheme of  
13 delinquent activity.

14 2. When restitution is ordered, the court shall inquire to determine if an award  
15 has been made under ch. 949 and if the department of justice is subrogated to the  
16 cause of action under s. 949.15. If the restitution ordered is less than or equal to the  
17 award under ch. 949, the restitution shall be paid only to the general fund. If the  
18 restitution ordered is greater than the award under ch. 949, the general fund shall  
19 receive an amount equal to the award under ch. 949 and the balance shall be paid  
20 to the victim.”.

21 **24.** Page 16, line 12: after “ordered.” insert “Any recovery under this  
22 paragraph shall be reduced by the amount recovered as restitution for the same act  
23 under s. 938.45 (1r) (a)”.

24 **25.** Page 18, line 18: after that line insert:

1           “**SECTION 39m.** 938.45 (1r) of the statutes is created to read:

2           938.45 (1r) (a) In a proceeding in which a juvenile has been found to have  
3 committed a delinquent act or a civil law or ordinance violation that has resulted in  
4 damage to or loss or destruction of the property of another, in bodily injury to another  
5 excluding pain and suffering, the court may order a parent who has custody, as  
6 defined in s. 895.035 (1), of the juvenile to make reasonable restitution for the  
7 damage or injury as provided in pars. (b) to (g) if the court, after taking into  
8 consideration the well-being and needs of the victim, considers it beneficial to the  
9 well-being and behavior of the juvenile. Except for recovery for retail theft under  
10 s. 943.51, the maximum amount of any restitution ordered under this paragraph for  
11 damage, injury or death resulting from any one act of a juvenile or from the same act  
12 committed by 2 or more juveniles in the custody of the same parent may not exceed  
13 the amount specified in s. 799.01 (1) (d). Any order under this paragraph shall  
14 include a finding that the parent who has custody of the juvenile is financially able  
15 to pay the amount ordered and may allow up to the date of expiration of the order  
16 for the payment. Any recovery under this paragraph shall be reduced by the amount  
17 recovered as restitution for the same act under s. 938.34 (5) or 938.343 (4).

18           (b) If the delinquent act or civil law or ordinance violation resulted in damage  
19 to or loss or destruction of property, the restitution order may require the parent who  
20 has custody, as defined in s. 895.035 (1), of the juvenile to return the property to the  
21 owner or the owner’s designee or, if return of the property is impossible, impractical  
22 or inadequate, pay the owner or the owner’s designee the reasonable repair or  
23 replacement cost of the property or the greater of the following:

24           1. The value of the property on the date of its damage, loss or destruction.



1           2. The value of the property on the date of disposition, less the value of any part  
2 of the property returned as of the date of its return. The value of any retail  
3 merchandise shall be its retail value.

4           (c) If the delinquent act or civil law or ordinance violation resulted in bodily  
5 injury, the restitution order may require that the parent who has custody, as defined  
6 in s. 895.035 (1), of the juvenile do any one or more of the following:

7           1. Pay an amount equal to the cost of necessary medical and related  
8 professional services and devices relating to physical, psychiatric and psychological  
9 care and treatment.

10          2. Pay an amount equal to the cost of necessary physical and occupational  
11 therapy and rehabilitation.

12          3. Reimburse the injured person for income lost as a result of a delinquent act  
13 considered at disposition.

14          4. If the injured person's sole employment at the time of the injury was  
15 performing the duties of a homemaker, pay an amount sufficient to ensure that the  
16 duties are continued until the person is able to resume performance of the duties.

17          (d) If the delinquent act or civil law or ordinance violation resulted in death,  
18 the restitution order may require that the parent who has custody, as defined in s.  
19 895.035 (1), of the juvenile pay an amount equal to the cost of necessary funeral and  
20 related services under s. 895.04 (5).

21          (e) If the juvenile violated s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.07  
22 or 948.08 and par. (c) 1. does not apply, the restitution order may require that the  
23 parent who has custody, as defined in s. 895.035 (1), of the juvenile pay an amount,  
24 not to exceed \$10,000, equal to the cost of necessary professional services relating to  
25 psychiatric and psychological care and treatment. The \$10,000 limit under this

1 paragraph does not apply to the amount of any restitution ordered under par. (c) or  
2 (f) for the cost of necessary professional services relating to psychiatric and  
3 psychological care and treatment.

4 (f) In any case, the restitution order may require that the parent who has  
5 custody, as defined in s. 895.035 (1), of the juvenile do any one or more of the  
6 following:

7 1. Pay all special damages, but not general damages, substantiated by evidence  
8 in the record, which could be recovered in a civil action against the juvenile for his  
9 or her conduct in the commission of a delinquent act considered at disposition.

10 2. Pay an amount equal to the income lost, and reasonable out-of-pocket  
11 expenses incurred, by the person against whom a delinquent act considered at  
12 disposition was committed resulting from the filing of charges or cooperating in the  
13 investigation and prosecution of the delinquent act.

14 3. Reimburse any person or agency for amounts paid as rewards for  
15 information leading to the apprehension or successful prosecution of the juvenile for  
16 a delinquent act for which the juvenile was adjudicated delinquent or to the  
17 apprehension or prosecution of the juvenile for a delinquent act that was read into  
18 the record and dismissed at the time of adjudication.

19 4. If justice so requires, reimburse any insurer, surety or other person who has  
20 compensated a victim for a loss otherwise compensable under this subsection.

21 (g) 1. If a victim of a delinquent act is paid an award under ch. 949 for any loss  
22 arising out of the delinquent act, the state is subrogated to the rights of the victim  
23 to any restitution required by the court. The rights of the state are subordinate to  
24 the claims of victims who have suffered a loss arising out of the offenses or any  
25 transaction which is part of the same continuous scheme of delinquent activity.

1           2. When restitution is ordered, the court shall inquire to determine if an award  
2 has been made under ch. 949 and if the department of justice is subrogated to the  
3 cause of action under s. 949.15. If the restitution ordered is less than or equal to the  
4 award under ch. 949, the restitution shall be paid only to the general fund. If the  
5 restitution ordered is greater than the award under ch. 949, the general fund shall  
6 receive an amount equal to the award under ch. 949 and the balance shall be paid  
7 to the victim.

8           **SECTION 39p.** 938.45 (2) of the statutes is amended to read:

9           938.45 (2) No order under sub. (1) (a) ~~or~~, (1m) (a) or (1r) (a) may be entered until  
10 the person who is the subject of the contemplated order is given an opportunity to be  
11 heard on the contemplated order. The court shall cause notice of the time, place and  
12 purpose of the hearing to be served on the person personally at least 10 days before  
13 the date of hearing. The procedure in these cases shall, as far as practicable, be the  
14 same as in other cases in the court. At the hearing the person may be represented  
15 by counsel and may produce and cross-examine witnesses. Any person who fails to  
16 comply with any order issued by a court under sub. (1) (a) ~~or~~, (1m) (a) or (1r) (a) may  
17 be proceeded against for contempt of court. If the person's conduct involves a crime,  
18 the person may be proceeded against under the criminal law.”.

19           **26.** Page 19, line 2: after that line insert:

20           **“SECTION 40m.** 949.15 (1) of the statutes is amended to read:

21           949.15 (1) Whenever the department orders the payment of an award under  
22 this chapter as a result of the occurrence of an event that creates a cause of action  
23 on the part of a claimant against any person, the department is subrogated to the  
24 rights of the claimant and may bring an action against the person for the amount of

1 the damages sustained by the claimant. If an amount greater than that paid under  
2 the award order is recovered and collected in any such action, the department shall  
3 pay the balance to the claimant. If the person responsible for the injury or death has  
4 previously made restitution payments to the general fund under s. 938.245, 938.32,  
5 938.34 or 973.20 or if his or her parent has previously made restitution payments to  
6 the general fund under s. 938.45, any judgment obtained by the department under  
7 this section shall be reduced by the amount of the restitution payments to the general  
8 fund.

9 **SECTION 40p.** 949.165 (7) of the statutes is amended to read:

10 949.165 (7) THIRD PRIORITY PAYMENTS; LEGAL FEES AND RESTITUTION. The  
11 department shall make payments from an escrow account for any governmental  
12 entity for the reimbursement for or recoupment of the costs of legal representation  
13 of the person charged with the serious crime or for any unpaid restitution under s.  
14 938.245, 938.32, 938.34, 938.45 or 973.20. The governmental entity shall file a claim  
15 for the applicable amount with the department.”.

16 (END)