



1999 ASSEMBLY BILL 247

March 25, 1999 - Introduced by Representatives GOETSCH, LADWIG, GUNDRUM, VRAKAS, POWERS, KLUSMAN, OWENS, MUSSER, PORTER, HAHN, OLSEN, ZIEGELBAUER, SYKORA, GROTHMAN, BRANDEMUEHL, ALBERS, KELSO, JOHNSRUD, SERATTI, SPILLNER, F. LASEE, SUDER, GUNDERSON, M. LEHMAN and STASKUNAS, cosponsored by Senators ROESSLER, HUELSMAN, DRZEWIECKI, SCHULTZ, COWLES and DARLING. Referred to Committee on Criminal Justice.

1 **AN ACT** *to renumber* 938.245 (2) (a) 5. b., 938.245 (2g), 938.32 (1t) (a) 2. and
2 938.32 (1t) (b); *to renumber and amend* 938.245 (2) (a) (intro.), 938.245 (2)
3 (a) 1., 938.245 (2) (a) 2., 938.245 (2) (a) 3., 938.245 (2) (a) 4., 938.245 (2) (a) 5.
4 a., am. and c., 938.245 (2) (a) 6., 938.245 (2) (a) 7., 938.245 (2) (a) 8., 938.245 (2)
5 (a) 9., 938.32 (1t) (a) 1., 1m. and 3. and 938.343 (4); *to amend* 38.24 (1s) (a),
6 103.67 (2) (j), 103.70 (1), 895.035 (2m) (a), 895.035 (6), 938.245 (2) (b), 938.245
7 (2) (c), 938.245 (3), 938.245 (4), 938.245 (5), 938.34 (5) (a), 938.346 (1) (h) 2.,
8 938.45 (1r) (a), 938.547 (4), 949.15 (1), 949.165 (7) and 950.04 (1v) (q); and *to*
9 **create** 938.245 (2t) (d), 938.245 (2t) (e), 938.245 (2t) (f), 938.245 (2t) (g), 938.245
10 (2t) (h), 938.245 (2t) (i), 938.245 (2t) (j), 938.32 (1t) (d), 938.32 (1t) (e), 938.32
11 (1t) (f), 938.32 (1t) (g), 938.32 (1t) (h), 938.32 (1t) (i), 938.32 (1t) (j), 938.34 (5)
12 (d), 938.34 (5) (e), 938.34 (5) (f), 938.34 (5) (g), 938.34 (5) (h), 938.34 (5) (i), 938.34
13 (5) (j), 938.343 (4) (b), 938.343 (4) (c), 938.343 (4) (d), 938.343 (4) (e), 938.343 (4)
14 (f), 938.343 (4) (g), 938.45 (1r) (c), 938.45 (1r) (d), 938.45 (1r) (e), 938.45 (1r) (f),

ASSEMBLY BILL 247

1 938.45 (1r) (g), 938.45 (1r) (h) and 938.45 (1r) (i) of the statutes; **relating to:**
2 the making of restitution by a juvenile or by a parent who has custody of a
3 juvenile.

Analysis by the Legislative Reference Bureau

Under current law, a juvenile who has committed an act that has resulted in damage to the property of another or in actual physical injury to another excluding pain and suffering may, under a deferred prosecution agreement, consent decree or dispositional order, be required to repair the damage to property or to make reasonable restitution for the damage or injury if the court assigned to exercise jurisdiction under the juvenile justice code (juvenile court), after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile. Currently, a parent who has custody of such a juvenile (parent) may also be required to make reasonable restitution for any damage or injury resulting from the juvenile's act, subject to a maximum limitation of \$5,000 and subject to reduction by the amount recovered from the juvenile.

This bill changes the law relating to the restitution that a juvenile or parent may be required to make to bring that law into closer conformity with the law relating to the restitution that an adult may be required to make. Specifically, the bill permits a juvenile or parent to be required to make restitution not only when the juvenile's act results in damage to property, but also when the act results in *loss or destruction of* property, and to make restitution not when the act results in actual physical injury to another, but when the act results in *bodily* injury to another. The bill also permits a juvenile or parent to be required to make restitution when death results from the juvenile's act. Further, the bill changes the standard that the juvenile court must consider in determining whether to order the payment of restitution. The bill changes that standard from whether that payment is beneficial to the well-being *and* behavior of the juvenile to whether that payment is beneficial to the well-being *or* behavior of the juvenile.

In addition, the bill specifies what restitution a juvenile or parent may be required to make. Specifically, the bill provides that:

1. If the juvenile's act has resulted in damage to or loss or destruction of property, the juvenile or parent may be required to return the property to the owner or, if return of the property is impossible, impractical or inadequate, to pay the owner the reasonable repair or replacement cost of the property or the greater of the following:

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

b. The current value of the property, less the value of any part of the property returned as of the date of its return.

2. If the juvenile's act has resulted in bodily injury, the juvenile or parent may be required to do any one or more of the following:

ASSEMBLY BILL 247

a. Pay the cost of the victim's physical, psychiatric and psychological care and treatment.

b. Pay the cost of the victim's physical and occupational therapy and rehabilitation.

c. Reimburse the victim for lost income.

d. If the victim is solely employed as a homemaker, pay an amount sufficient to ensure that the victim's homemaker duties are continued until the victim is able to resume those duties.

3. If the juvenile's act has resulted in death, the juvenile or parent may be required to pay the cost of the victim's funeral expenses, including the cost of a cemetery lot, grave marker and care of the lot.

4. If the juvenile's act constitutes sexual assault, sexual assault of a child, repeated sexual assault of a child, sexual exploitation of a child, incest with a child, child enticement or soliciting a child for prostitution, but the act does not result in bodily injury, the juvenile may be required to pay the cost, not to exceed \$10,000, or the parent may be required to pay the cost, not to exceed \$5,000, of the victim's psychiatric and psychological care and treatment.

5. In any case, the juvenile or parent may be required to pay the cost, not to exceed \$5,000, may be required to do any one or more of the following:

a. Pay all damages that the victim could recover from the juvenile in a civil action.

b. Pay for the victim's lost income and reasonable out-of-pocket expenses incurred resulting from the filing of a petition or cooperating in the investigation and prosecution of the juvenile's act.

c. Reimburse any person or agency for amounts paid as rewards for information leading to the apprehension or successful prosecution of the juvenile.

d. If justice so requires, reimburse any insurer who has compensated the victim for a loss otherwise compensable as restitution.

6. If the victim has been paid a crime victim's award by the department of justice, any restitution received up to the amount of the award must be paid into the general fund and the balance must be paid to the victim.

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

1 **SECTION 1.** 38.24 (1s) (a) of the statutes is amended to read:

2 38.24 (1s) (a) A court-approved alcohol or other drug abuse education program

3 offered to individuals under s. 48.245 (2) (a) 4., 48.345 (13) (b), 48.347 (5) (b), 938.245

4 ~~(2) (a) 4. (2g)~~, 938.32 (1g) (b), 938.34 (6r) (b) or (14s) (b) 3., 938.343 (10) (c) or 938.344

5 (2g) (a).

ASSEMBLY BILL 247

1 **SECTION 2.** 103.67 (2) (j) of the statutes is amended to read:

2 103.67 **(2)** (j) Minors under 14 years of age may be employed as participants
3 in a restitution project under s. 938.245 ~~(2) (a) 5. (2t)~~, 938.32 (1t) ~~(a)~~, 938.34 (5),
4 938.343 (4) or 938.345 or a supervised work program or other community service
5 work under s. 938.245 ~~(2) (a) 6. (2u)~~, 938.32 (1t) ~~(b) (1u)~~, 938.34 (5g), 938.343 (3) or
6 938.345.

7 **SECTION 3.** 103.70 (1) of the statutes is amended to read:

8 103.70 **(1)** Except as otherwise provided in sub. (2) and in ss. 103.21 to 103.31,
9 103.78, 938.245 ~~(2) (a) 5. b. (2t) (b)~~, 938.32 (1t) ~~(a) 2. and (b)~~, 938.34 (5) (b) and (5g)
10 (c) and 938.343 (4) (b), and as may be provided under s. 103.79, a minor, unless
11 indentured as an apprentice in accordance with s. 106.01, or unless 12 years and over
12 and engaged in agricultural pursuits, or unless 14 years and over and enrolled in a
13 youth apprenticeship program under s. 106.13, shall not be employed or permitted
14 to work at any gainful occupation or employment unless there is first obtained from
15 the department or a permit officer a written permit authorizing the employment of
16 the minor within those periods of time stated in the permit, which shall not exceed
17 the maximum hours prescribed by law.

18 **SECTION 4.** 895.035 (2m) (a) of the statutes is amended to read:

19 895.035 **(2m)** (a) If a juvenile or a parent with custody of a ~~child~~ juvenile fails
20 to pay restitution under s. 938.245 (2t), 938.32 (1t), 938.34 (5), 938.343 (4), 938.345
21 or 938.45 (1r) (a) as ordered by a court assigned to exercise jurisdiction under chs.
22 48 and 938, a court of criminal jurisdiction or a municipal court or as agreed to in a
23 deferred prosecution agreement or if it appears likely that the juvenile or parent will
24 not pay restitution as ordered or agreed to, the victim, the victim's insurer, the
25 representative of the public interest under s. 938.09 or the agency, as defined in s.

ASSEMBLY BILL 247

1 938.38 (1) (a), supervising the juvenile may petition the court assigned to exercise
2 jurisdiction under chs. 48 and 938 to order that the amount of restitution unpaid by
3 the juvenile or parent be entered and docketed as a judgment against the juvenile
4 and the parent with custody of the juvenile and in favor of the victim or the victim's
5 insurer, or both. A petition under this paragraph may be filed after the expiration
6 of the deferred prosecution agreement, consent decree, dispositional order or
7 sentence under which the restitution is payable, but no later than one year after the
8 expiration of the deferred prosecution agreement, consent decree, dispositional order
9 or sentence or any extension of the consent decree, dispositional order or sentence.
10 A judgment rendered under this paragraph does not bar the victim or the victim's
11 insurer, or both, from commencing another action seeking compensation from the
12 child or the parent, or both, if the amount of restitution ordered under this paragraph
13 is less than the total amount of damages claimed by the victim or the victim's insurer.

14 **SECTION 5.** 895.035 (6) of the statutes is amended to read:

15 895.035 (6) Any recovery of restitution under this section shall be reduced by
16 the amount recovered as restitution for the same act under s. 938.245 (2t), 938.32
17 (1t), 938.34 (5), 938.343 (4) or 938.45 (1r) (a). Any recovery of a forfeiture under this
18 section shall be reduced by the amount recovered as a forfeiture for the same act
19 under s. 938.34 (8), 938.343 (2) or 938.45 (1r) (b). Any recovery of a surcharge under
20 this section shall be reduced by the amount recovered as a surcharge under s. 938.34
21 (8d).

22 **SECTION 6.** 938.245 (2) (a) (intro.) of the statutes is renumbered 938.245 (2) (a)
23 and amended to read:

24 938.245 (2) (a) A deferred prosecution agreement may provide for any one or
25 more of the following: conditions specified in subs. (2b) to (2z) that are applicable.

ASSEMBLY BILL 247

1 **SECTION 7.** 938.245 (2) (a) 1. of the statutes is renumbered 938.245 (2b) and
2 amended to read:

3 938.245 **(2b)** ~~That~~ The deferred prosecution agreement may require that the
4 juvenile and the juvenile’s parent, guardian or legal custodian participate in
5 individual, family or group counseling and that the parent, guardian or legal
6 custodian participate in parenting skills training.

7 **SECTION 8.** 938.245 (2) (a) 2. of the statutes is renumbered 938.245 (2c) and
8 amended to read:

9 938.245 **(2c)** ~~That~~ The deferred prosecution agreement may require that the
10 juvenile and a parent, guardian and legal custodian abide by such obligations,
11 including supervision, curfews and school attendance requirements, as will tend to
12 ensure the juvenile’s rehabilitation, protection or care.

13 **SECTION 9.** 938.245 (2) (a) 3. of the statutes is renumbered 938.245 (2f) and
14 amended to read:

15 938.245 **(2f)** ~~That~~ If the multidisciplinary screen conducted under s. 938.24 (2)
16 shows that the juvenile is at risk of having needs and problems related to the use of
17 alcohol beverages, controlled substances or controlled substance analogs and the
18 medical, personal, family or social effects of that use, the deferred prosecution
19 agreement may require that the juvenile submit to an alcohol and other drug abuse
20 assessment that conforms to the criteria specified under s. 938.547 (4) and that is
21 conducted by an approved treatment facility for an examination of the juvenile’s use
22 of alcohol beverages, controlled substances or controlled substance analogs and any
23 medical, personal, family or social effects caused by its use, ~~if the multidisciplinary~~
24 ~~screen conducted under s. 938.24 (2) shows that the juvenile is at risk of having needs~~
25 ~~and problems related to the use of alcohol beverages, controlled substances or~~

ASSEMBLY BILL 247

1 ~~controlled substance analogs and its medical, personal, family or social effects that~~
2 ~~use.~~

3 **SECTION 10.** 938.245 (2) (a) 4. of the statutes is renumbered 938.245 (2g) and
4 amended to read:

5 938.245 (2g) ~~That the juvenile participate in a restitution project if~~ If the act
6 for which the deferred prosecution agreement is being entered into has resulted in
7 damage to the property of another, or in actual physical in bodily injury to another
8 excluding pain and suffering. Subject to subd. 5. e. or in death and if the intake
9 worker after taking into consideration the well-being and needs of the victim,
10 considers it beneficial to the well-being or behavior of, the juvenile, the deferred
11 prosecution agreement may require the juvenile to repair the damage to property or,
12 subject to par. (c), to make reasonable restitution for the damage or injury or death
13 as provided in pars. (d) to (j), either in the form of cash payments or, if the victim
14 agrees, the performance of services for the victim, or both, if the intake worker, after
15 taking into consideration the well-being and needs of the victim, considers it
16 beneficial to the well-being and behavior of the juvenile. Any such deferred
17 prosecution agreement shall include a determination that the juvenile alone is
18 financially able to pay or physically able to perform the services, may allow up to the
19 date of the expiration of the deferred prosecution agreement for the payment or for
20 the completion of the services and may include a schedule for the performance and
21 completion of the services. Any recovery under this subd. 5. a. paragraph shall be
22 reduced by the amount recovered as restitution for the same act under subd. 5. ~~am.~~
23 par. (am).

24 **SECTION 11.** 938.245 (2) (a) 5. a., am. and c. of the statutes are renumbered
25 938.245 (2t) (a), (am) and (c) and amended to read:

ASSEMBLY BILL 247**SECTION 11**

1 938.245 (2t) (a) ~~That the juvenile participate in a restitution project if~~ If the
2 act for which the deferred prosecution agreement is being entered into has resulted
3 in damage to or loss or destruction of the property of another, or in actual physical
4 in bodily injury to another excluding pain and suffering. Subject to subd. 5. c. or in
5 death and if the intake worker, after taking into consideration the well-being and
6 needs of the victim, considers it beneficial to the well-being or behavior of, the
7 juvenile, the deferred prosecution agreement may require the juvenile to repair the
8 damage to property or, subject to par. (c), to make reasonable restitution for the
9 damage ~~or, injury or death as provided in pars. (d) to (j),~~ either in the form of cash
10 payments or, if the victim agrees, the performance of services for the victim, or both,
11 ~~if the intake worker, after taking into consideration the well-being and needs of the~~
12 victim, ~~considers it beneficial to the well-being and behavior of the juvenile.~~ Any
13 such deferred prosecution agreement shall include a determination that the juvenile
14 alone is financially able to pay or physically able to perform the services, may allow
15 up to the date of the expiration of the deferred prosecution agreement for the
16 payment or for the completion of the services and may include a schedule for the
17 performance and completion of the services. Any recovery under this ~~subd. 5.a.~~
18 paragraph. shall be reduced by the amount recovered as restitution for the same act
19 under ~~subd. 5. am~~ par. (am).

20 (am) ~~That the parent who has custody, as defined in s. 895.035 (1), of the~~
21 juvenile ~~make reasonable restitution for~~ If the act for which the deferred prosecution
22 agreement is being entered into has resulted in any damage to or loss or destruction
23 of the property of another, or for any actual physical in bodily injury to another
24 excluding pain and suffering, ~~resulting from the act for which the deferred~~
25 prosecution agreement is being entered into or in death and if the intake worker,

ASSEMBLY BILL 247

1 after taking into consideration the well-being and needs of the victim, considers it
2 beneficial to the well-being or behavior of the juvenile, the deferred prosecution
3 agreement may require the parent who has custody, as defined in s. 895.035 (1), of
4 the juvenile to make reasonable restitution, subject to the limit specified in this
5 paragraph, for the damage, injury or death as provided in pars. (d) to (j). Except for
6 recovery for retail theft under s. 943.51, the maximum amount of any restitution
7 ordered under this ~~subd. 5. am. paragraph~~ for damage ~~or~~, injury or death resulting
8 from any one act of a juvenile or from the same act committed by 2 or more juveniles
9 in the custody of the same parent may not exceed the amount specified in s. 799.01
10 (1) (d). Any order under this ~~subd. 5. am. paragraph~~ shall include a finding that the
11 parent who has custody of the juvenile is financially able to pay the amount ordered
12 and may allow up to the date of the expiration of the deferred prosecution agreement
13 for the payment. Any recovery under this ~~subd. 5. am. paragraph~~ shall be reduced
14 by the amount recovered as restitution for the same act under ~~subd. 5. a par. (a)~~.

15 (c) Under this subdivision subsection, a deferred prosecution agreement may
16 not require a juvenile who is under 14 years of age to make more than \$250 in
17 restitution or to perform more than 40 hours of services for the victim as restitution.

18 **SECTION 12.** 938.245 (2) (a) 5. b. of the statutes is renumbered 938.245 (2t) (b).

19 **SECTION 13.** 938.245 (2) (a) 6. of the statutes is renumbered 938.245 (2u) and
20 amended to read:

21 938.245 (2u) ~~That~~ The deferred prosecution agreement may require that the
22 juvenile participate in a supervised work program or other community service work
23 in accordance with s. 938.34 (5g).

24 **SECTION 14.** 938.245 (2) (a) 7. of the statutes is renumbered 938.245 (2d) and
25 amended to read:

ASSEMBLY BILL 247**SECTION 14**

1 938.245 (2d) ~~That the juvenile be placed with a volunteers in probation~~
2 ~~program under such conditions as the intake worker determines are reasonable and~~
3 ~~appropriate, if~~ If the juvenile is alleged to have committed an act that would
4 constitute a misdemeanor if committed by an adult, if the chief judge of the judicial
5 administrative district has approved under s. 973.11 (2) a volunteers in probation
6 program established in the juvenile's county of residence and if the intake worker
7 determines that volunteer supervision under that volunteers in probation program
8 will likely benefit the juvenile and the community, the deferred prosecution
9 agreement may require that the juvenile be placed with a volunteers in probation
10 program under such conditions that the intake worker determines are reasonable
11 and appropriate. The conditions that the intake worker may establish under this
12 subdivision subsection may include, but need not be limited to, a request to a
13 volunteer to provide for the juvenile a role model, informal counseling, general
14 monitoring and monitoring of the conditions established by the intake worker, or any
15 combination of these functions, and any other deferred prosecution condition that
16 the intake worker may establish under this ~~paragraph~~ section.

17 **SECTION 15.** 938.245 (2) (a) 8. of the statutes is renumbered 938.245 (2m), and
18 938.245 (2m) (intro.), as renumbered, is amended to read:

19 938.245 (2m) (intro.) ~~That~~ The deferred prosecution agreement may require
20 that the juvenile be placed in a teen court program if all of the following conditions
21 apply:

22 **SECTION 16.** 938.245 (2) (a) 9. of the statutes is renumbered 938.245 (2z) and
23 amended to read:

24 938.245 (2z) ~~That~~ The deferred prosecution agreement may require that the
25 juvenile be placed in a youth village program as described in s. 118.42. Upon the

ASSEMBLY BILL 247

1 motion of the court or the application of the juvenile, parent, guardian, legal
2 custodian, intake worker or any agency supervising the juvenile under a deferred
3 prosecution agreement under this ~~subdivision~~ subsection, the court may, after giving
4 notice to the parties to the deferred prosecution agreement and their counsel, if any,
5 extend the agreement for up to an additional one year in the absence of an objection
6 to extension by the parties to the initial deferred prosecution agreement. If the
7 juvenile or the parent, guardian or legal custodian object to the extension, the court
8 shall schedule a hearing and make a determination on the issue of extension. A
9 deferred prosecution agreement under this ~~subdivision~~ subsection may be extended
10 no more than twice.

11 **SECTION 17.** 938.245 (2) (b) of the statutes is amended to read:

12 938.245 (2) (b) A deferred prosecution agreement, other than an agreement
13 under ~~par. (a) 9. sub. (2z)~~, may not include any form of out-of-home placement and
14 may not exceed one year.

15 **SECTION 18.** 938.245 (2) (c) of the statutes is amended to read:

16 938.245 (2) (c) If the deferred prosecution agreement provides for alcohol and
17 other drug abuse outpatient treatment under ~~par. (a) 4. sub. (2g)~~, the juvenile and
18 the juvenile's parent, guardian or legal custodian shall execute an informed consent
19 form that indicates that they are voluntarily and knowingly entering into a deferred
20 prosecution agreement for the provision of alcohol and other drug abuse outpatient
21 treatment.

22 **SECTION 19.** 938.245 (2g) of the statutes is renumbered 938.245 (2x).

23 **SECTION 20.** 938.245 (2t) (d) of the statutes is created to read:

24 938.245 (2t) (d) If the act for which the deferred prosecution agreement is
25 entered into has resulted in damage to or loss or destruction of property, the deferred

ASSEMBLY BILL 247**SECTION 20**

1 prosecution agreement may require the juvenile or the parent who has custody, as
2 defined in s. 895.035 (1), of the juvenile to return the property to the owner or the
3 owner's designee or, if return of the property is impossible, impractical or
4 inadequate, to pay the owner or the owner's designee the reasonable repair or
5 replacement cost of the property or the greater of the following:

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

7 2. The value of the property on the date of the deferred prosecution agreement,
8 less the value of any part of the property returned as of the date of its return. The
9 value of any retail merchandise shall be its retail value.

10 **SECTION 21.** 938.245 (2t) (e) of the statutes is created to read:

11 938.245 (2t) (e) If the act for which the deferred prosecution agreement is
12 entered into has resulted in bodily injury, the deferred prosecution agreement may
13 require that the juvenile or the parent who has custody, as defined in s. 895.035 (1),
14 of the juvenile do any one or more of the following:

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

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

20 3. Reimburse the injured person for income lost as a result of the act for which
21 the deferred prosecution agreement is entered into.

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

25 **SECTION 22.** 938.245 (2t) (f) of the statutes is created to read:

ASSEMBLY BILL 247

1 938.245 (2t) (f) If the act for which the deferred prosecution agreement is
2 entered into has resulted in death, the deferred prosecution agreement may require
3 that the juvenile or the parent who has custody, as defined in s. 895.035 (1), of the
4 juvenile pay an amount equal to the cost of necessary funeral and related services
5 under s. 895.04 (5).

6 **SECTION 23.** 938.245 (2t) (g) of the statutes is created to read:

7 938.245 (2t) (g) If the juvenile violated s. 940.225, 948.02, 948.025, 948.05,
8 948.06, 948.07 or 948.08 and par. (e) 1. does not apply, the deferred prosecution
9 agreement may require that the juvenile pay an amount, not to exceed \$10,000, or
10 that the parent who has custody, as defined in s. 895.035 (1), of the juvenile pay an
11 amount, not to exceed the amount specified in par. (am), equal to the cost of necessary
12 professional services relating to psychiatric and psychological care and treatment.
13 The \$10,000 limit under this paragraph does not apply to the amount of any
14 restitution agreed to under par. (e) or (h) for the cost of necessary professional
15 services relating to psychiatric and psychological care and treatment.

16 **SECTION 24.** 938.245 (2t) (h) of the statutes is created to read:

17 938.245 (2t) (h) In any case, the deferred prosecution agreement may require
18 that the juvenile or the parent who has custody, as defined in s. 895.035 (1), of the
19 juvenile do any one or more of the following:

20 1. Pay all special damages, but not general damages, substantiated by evidence
21 in the record, which could be recovered in a civil action against the juvenile for his
22 or her conduct in the commission of the act for which the deferred prosecution
23 agreement is entered into.

24 2. Pay to the person against whom the act for which the deferred prosecution
25 agreement is entered into was committed an amount equal to the income lost and

ASSEMBLY BILL 247

1 reasonable out-of-pocket expenses incurred as a result of the filing of charges or that
2 person's cooperation in the investigation and prosecution of the act.

3 3. Reimburse any person or agency for amounts paid as rewards for
4 information leading to the apprehension of the juvenile for the act for which the
5 deferred prosecution agreement is entered into.

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

8 **SECTION 25.** 938.245 (2t) (i) of the statutes is created to read:

9 938.245 (2t) (i) Any order under par. (h) 3. or 4. shall require that all restitution
10 to victims be paid before restitution to other persons.

11 **SECTION 26.** 938.245 (2t) (j) of the statutes is created to read:

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

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

25 **SECTION 27.** 938.245 (3) of the statutes is amended to read:

ASSEMBLY BILL 247

1 938.245 (3) The obligations imposed under a deferred prosecution agreement
2 and its effective date shall be set forth in writing. If the deferred prosecution
3 agreement places the juvenile in a youth village program under sub. ~~(2) (a) 9. (2z)~~,
4 the judge or juvenile court commissioner shall receive written notice that a deferred
5 prosecution agreement has been entered into and, on receipt of that notice, shall
6 enter an order requiring compliance with that agreement. The juvenile and a parent,
7 guardian and legal custodian shall receive a copy of the agreement and order, as shall
8 any agency providing services under the agreement.

9 **SECTION 28.** 938.245 (4) of the statutes is amended to read:

10 938.245 (4) The intake worker shall inform the juvenile and the juvenile's
11 parent, guardian and legal custodian in writing of their right to terminate or, if the
12 juvenile is subject to a deferred prosecution agreement under sub. ~~(2) (a) 9. (2z)~~, to
13 request the court to terminate the deferred prosecution agreement at any time or to
14 object at any time to the fact or terms of the deferred prosecution agreement. If an
15 objection arises the intake worker may alter the terms of the agreement or request
16 the district attorney or corporation counsel to file a petition. If the deferred
17 prosecution agreement is terminated the intake worker may request the district
18 attorney or corporation counsel to file a petition.

19 **SECTION 29.** 938.245 (5) of the statutes is amended to read:

20 938.245 (5) A deferred prosecution agreement, other than a deferred
21 prosecution agreement under sub. ~~(2) (a) 1. to 8., (2g) or (2v). (2z)~~, may be terminated
22 upon the request of the juvenile, parent, guardian or legal custodian. A deferred
23 prosecution agreement under sub. ~~(2) (a) 9. (2z)~~ may be terminated by the court upon
24 the request of the juvenile, parent, guardian or legal custodian.

ASSEMBLY BILL 247**SECTION 30**

1 **SECTION 30.** 938.32 (1t) (a) 1., 1m. and 3. of the statutes are renumbered 938.32
2 (1t) (a), (am) and (c) and amended to read:

3 938.32 **(1t)** (a) ~~Subject to subd. 3., if~~ If the petition alleges that the juvenile
4 committed a delinquent act that has resulted in damage to or loss or destruction of
5 the property of another, ~~or in actual physical in bodily~~ in bodily injury to another excluding
6 pain and suffering ~~or in death and if the judge or juvenile court commissioner, after~~
7 taking into consideration the well-being and needs of the victim, considers it
8 beneficial to the well-being or behavior of the juvenile, the judge or juvenile court
9 commissioner may require the juvenile as a condition of the consent decree, to repair
10 the damage to property or, subject to par. (c), to make reasonable restitution for the
11 damage ~~or~~, injury or death as provided in pars. (d) to (j), either in the form of cash
12 payments or, if the victim agrees, the performance of services for the victim, or both,
13 ~~if the judge or juvenile court commissioner, after taking into consideration the~~
14 ~~well-being and needs of the victim, considers it beneficial to the well-being and~~
15 ~~behavior of the juvenile.~~ Any consent decree that includes a condition of restitution
16 by a juvenile shall include a finding that the juvenile alone is financially able to pay
17 or physically able to perform the services, may allow up to the date of the expiration
18 of the consent decree for the payment or for the completion of the services and may
19 include a schedule for the performance and completion of the services. Objection by
20 the juvenile to the amount of damages claimed shall entitle the juvenile to a hearing
21 on the question of damages before the amount of restitution is made part of the
22 consent decree. Any recovery under this ~~subdivision~~ paragraph shall be reduced by
23 the amount recovered as restitution for the same act under ~~subd. 1m. par. (am)~~.

24 (am) If the petition alleges that the juvenile has committed a delinquent act
25 that has resulted in damage to or loss or destruction of the property of another, ~~or in~~

ASSEMBLY BILL 247

1 ~~actual physical~~ in bodily injury to another excluding pain and suffering or in death
2 and if the judge or juvenile court commissioner, after taking into consideration the
3 well-being and needs of the victim, considers it beneficial to the well-being or
4 behavior of the juvenile, the judge or juvenile court commissioner may require a
5 parent who has custody, as defined in s. 895.035 (1), of the juvenile, as a condition
6 of the consent decree, to make reasonable restitution, subject to the limit specified
7 in this paragraph, for the damage ~~or~~, injury or death as provided in pars. (d) to (j).
8 Except for recovery for retail theft under s. 943.51, the maximum amount of any
9 restitution ordered under this ~~subdivision~~ paragraph for damage ~~or~~, injury or death
10 resulting from any one act of a juvenile or from the same act committed by 2 or more
11 juveniles in the custody of the same parent may not exceed the amount specified in
12 s. 799.01 (1) (d). Any consent decree that includes a condition of restitution by a
13 parent who has custody of the juvenile shall include a finding that the parent who
14 has custody of the juvenile is financially able to pay the amount ordered and may
15 allow up to the date of the expiration of the consent decree for the payment. Objection
16 by the parent to the amount of damages claimed shall entitle the parent to a hearing
17 on the question of damages before the amount of restitution is made part of the
18 consent decree. Any recovery under this ~~subdivision~~ paragraph shall be reduced by
19 the amount recovered as restitution for the same act under ~~subd. 1.~~ par. (a).

20 (c) Under this ~~paragraph~~ subsection, a judge or juvenile court commissioner
21 may not order a juvenile who is under 14 years of age to make more than \$250 in
22 restitution or to perform more than 40 total hours of services for the victim as
23 restitution.

24 **SECTION 31.** 938.32 (1t) (a) 2. of the statutes is renumbered 938.32 (1t) (b).

25 **SECTION 32.** 938.32 (1t) (b) of the statutes is renumbered 938.32 (1u).

ASSEMBLY BILL 247

1 **SECTION 33.** 938.32 (1t) (d) of the statutes is created to read:

2 938.32 (1t) (d) If the delinquent act resulted in damage to or loss or destruction
3 of property, the consent decree may require the juvenile or the parent who has
4 custody, as defined in s. 895.035 (1), of the juvenile to return the property to the owner
5 or the owner's designee or, if return of the property is impossible, impractical or
6 inadequate, to pay the owner or the owner's designee the reasonable repair or
7 replacement cost of the property or the greater of the following:

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

9 2. The value of the property on the date of the consent decree, less the value
10 of any part of the property returned as of the date of its return. The value of any retail
11 merchandise shall be its retail value.

12 **SECTION 34.** 938.32 (1t) (e) of the statutes is created to read:

13 938.32 (1t) (e) If the delinquent act resulted in bodily injury, the consent decree
14 may require that the juvenile or the parent who has custody, as defined in s. 895.035
15 (1), of the juvenile do any one or more of the following:

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

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

21 3. Reimburse the injured person for income lost as a result of the delinquent
22 act.

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

ASSEMBLY BILL 247

1 **SECTION 35.** 938.32 (1t) (f) of the statutes is created to read:

2 938.32 (1t) (f) If the delinquent act resulted in death, the consent decree may
3 require that the juvenile or the parent who has custody, as defined in s. 895.035 (1),
4 of the juvenile pay an amount equal to the cost of necessary funeral and related
5 services under s. 895.04 (5).

6 **SECTION 36.** 938.32 (1t) (g) of the statutes is created to read:

7 938.32 (1t) (g) If the juvenile violated s. 940.225, 948.02, 948.025, 948.05,
8 948.06, 948.07 or 948.08 and par. (e) 1. does not apply, the consent decree may require
9 that the juvenile pay an amount, not to exceed \$10,000, or that the parent who has
10 custody, as defined in s. 895.035 (1), of the juvenile pay an amount, not to exceed the
11 amount specified in par. (am), equal to the cost of necessary professional services
12 relating to psychiatric and psychological care and treatment. The \$10,000 limit
13 under this paragraph does not apply to the amount of any restitution ordered under
14 par. (e) or (h) for the cost of necessary professional services relating to psychiatric and
15 psychological care and treatment.

16 **SECTION 37.** 938.32 (1t) (h) of the statutes is created to read:

17 938.32 (1t) (h) In any case, the consent decree may require that the juvenile
18 or the parent who has custody, as defined in s. 895.035 (1), of the juvenile do any one
19 or more of the following:

20 1. Pay all special damages, but not general damages, substantiated by evidence
21 in the record, which could be recovered in a civil action against the juvenile for his
22 or her conduct in the commission of the delinquent act.

23 2. Pay to the person against whom the delinquent act was committed an
24 amount equal to the income lost and reasonable out-of-pocket expenses incurred as

ASSEMBLY BILL 247

1 a result of the filing charges or that person's cooperation in the investigation and
2 prosecution of the delinquent act.

3 3. Reimburse any person or agency for amounts paid as rewards for
4 information leading to the apprehension or successful prosecution of the juvenile for
5 the delinquent act.

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

8 **SECTION 38.** 938.32 (1t) (i) of the statutes is created to read:

9 938.32 (1t) (i) Any order under par. (h) 3. or 4. shall require that all restitution
10 to victims be paid before restitution to other persons.

11 **SECTION 39.** 938.32 (1t) (j) of the statutes is created to read:

12 938.32 (1t) (j) 1. If a victim of the delinquent act is paid an award under ch. 949
13 for any loss arising out of the delinquent act, the state is subrogated to the rights of
14 the victim to any restitution required by the court. The rights of the state are
15 subordinate to the claims of victims who have suffered a loss arising out of the
16 offenses or any transaction which is part of the same continuous scheme of
17 delinquent activity.

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

25 **SECTION 40.** 938.34 (5) (a) of the statutes is amended to read:

ASSEMBLY BILL 247

1 938.34 (5) (a) ~~Subject to par. (e), if~~ If the juvenile is found to have committed
2 a delinquent act which has resulted in damage to or loss or destruction of the
3 property of another, ~~or actual physical~~ in bodily injury to another excluding pain and
4 suffering, or in death and if the court, after taking into consideration the well-being
5 and needs of the victim, considers it beneficial to the well-being or behavior of the
6 juvenile, the court may order the juvenile to repair the damage to property or, subject
7 to par. (c), to make reasonable restitution for the damage ~~or~~, injury or death as
8 provided in pars. (d) to (j), either in the form of cash payments or, if the victim agrees,
9 the performance of services for the victim, or both, ~~if the court, after taking into~~
10 ~~consideration the well-being and needs of the victim, considers it beneficial to the~~
11 ~~well-being and behavior of the juvenile.~~ Any such order shall include a finding that
12 the juvenile alone is financially able to pay or physically able to perform the services,
13 may allow up to the date of the expiration of the order for the payment or for the
14 completion of the services and may include a schedule for the performance and
15 completion of the services. Objection by the juvenile to the amount of damages
16 claimed shall entitle the juvenile to a hearing on the question of damages before the
17 amount of restitution is ordered. Any recovery under this paragraph shall be reduced
18 by the amount recovered as restitution under s. 938.45 (1r) (a).

19 **SECTION 41.** 938.34 (5) (d) of the statutes is created to read:

20 938.34 (5) (d) If a delinquent act considered at disposition resulted in damage
21 to or loss or destruction of property, the restitution order may require the juvenile
22 to return the property to the owner or the owner's designee or, if return of the
23 property is impossible, impractical or inadequate, to pay the owner or the owner's
24 designee the reasonable repair or replacement cost of the property or the greater of
25 the following:

ASSEMBLY BILL 247**SECTION 41**

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

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

5 **SECTION 42.** 938.34 (5) (e) of the statutes is created to read:

6 938.34 (5) (e) If a delinquent act considered at disposition resulted in bodily
7 injury, the restitution order may require that the juvenile do any one or more of the
8 following:

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

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

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

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

19 **SECTION 43.** 938.34 (5) (f) of the statutes is created to read:

20 938.34 (5) (f) If a delinquent act considered at disposition resulted in death, the
21 restitution order may require that the juvenile pay an amount equal to the cost of
22 necessary funeral and related services under s. 895.04 (5).

23 **SECTION 44.** 938.34 (5) (g) of the statutes is created to read:

24 938.34 (5) (g) If the juvenile violated s. 940.225, 948.02, 948.025, 948.05,
25 948.06, 948.07 or 948.08 and par. (e) 1. does not apply, the restitution order may

ASSEMBLY BILL 247

1 require that the juvenile pay an amount, not to exceed \$10,000, equal to the cost of
2 necessary professional services relating to psychiatric and psychological care and
3 treatment. The \$10,000 limit under this paragraph does not apply to the amount of
4 any restitution ordered under par. (e) or (h) for the cost of necessary professional
5 services relating to psychiatric and psychological care and treatment.

6 **SECTION 45.** 938.34 (5) (h) of the statutes is created to read:

7 938.34 (5) (h) In any case, the restitution order may require that the juvenile
8 do any one or more of the following:

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

12 2. Pay to the person against whom a delinquent act considered at disposition
13 was committed an amount equal to the income lost and reasonable out-of-pocket
14 expenses incurred as a result of the filing of charges or that person's cooperation in
15 the investigation and prosecution of the delinquent act.

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

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

23 **SECTION 46.** 938.34 (5) (i) of the statutes is created to read:

24 938.34 (5) (i) Any order under par. (h) 3. or 4. shall require that all restitution
25 to victims be paid before restitution to other persons.

ASSEMBLY BILL 247

1 **SECTION 47.** 938.34 (5) (j) of the statutes is created to read:

2 938.34 (5) (j) 1. If a victim of the delinquent act is paid an award under ch. 949
3 for any loss arising out of the delinquent act, the state is subrogated to the rights of
4 the victim to any restitution required by the court. The rights of the state are
5 subordinate to the claims of victims who have suffered a loss arising out of the
6 offenses or any transaction which is part of the same continuous scheme of
7 delinquent activity.

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

15 **SECTION 48.** 938.343 (4) of the statutes is renumbered 938.343 (4) (a) and
16 amended to read:

17 938.343 (4) (a) If the violation has resulted in damage to or loss or destruction
18 the property of another, or in ~~actual physical~~ bodily injury to another excluding pain
19 and suffering and if the court, after taking into consideration the well-being and
20 needs of the victim, considers it beneficial to the well-being or behavior of the
21 juvenile, the court may order the juvenile to make repairs of the damage to property
22 or, subject to par. (c), to make reasonable restitution for the damage or injury as
23 provided in pars. (d) to (g), either in the form of cash payments or, if the victim agrees,
24 the performance of services for the victim, or both, ~~if the court, after taking into~~
25 ~~consideration the well-being and needs of the victim, considers it beneficial to the~~

ASSEMBLY BILL 247

1 ~~well-being and behavior of the juvenile.~~ Any such order requiring payment for
2 repairs or restitution shall include a finding that the juvenile alone is financially able
3 to pay or physically able to perform the services, may allow up to the date of the
4 expiration of the order for the payment or for the completion of the services and may
5 include a schedule for the performance and completion of the services. Objection by
6 the juvenile to the amount of damages claimed shall entitle the juvenile to a hearing
7 on the question of damages before the amount of restitution is ordered. Any recovery
8 under this subsection shall be reduced by the amount recovered as restitution for the
9 same act under s. 938.45 (1r) (a).

10 **SECTION 49.** 938.343 (4) (b) of the statutes is created to read:

11 938.343 (4) (b) In addition to any other employment or duties permitted under
12 ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is
13 participating in a restitution project provided by the county may, for the purpose of
14 making restitution ordered by the court under this subsection, be employed or
15 perform any duties under any circumstances in which a juvenile 14 or 15 years of age
16 is permitted to be employed or perform duties under ch. 103 or any rule or order
17 under ch. 103. A juvenile who is participating in a restitution project provided by the
18 county is exempt from the permit requirement under s. 103.70 (1).

19 **SECTION 50.** 938.343 (4) (c) of the statutes is created to read:

20 938.343 (4) (c) Under this subsection, a court may not order a juvenile who is
21 under 14 years of age to make more than \$250 in restitution.

22 **SECTION 51.** 938.343 (4) (d) of the statutes is created to read:

23 938.343 (4) (d) If the violation resulted in damage to or loss or destruction of
24 property, the restitution order may require the juvenile to return the property to the
25 owner or the owner's designee or, if return of the property is impossible, impractical

ASSEMBLY BILL 247**SECTION 51**

1 or inadequate, to pay the owner or the owner's designee the reasonable repair or
2 replacement cost of the property or the greater of the following:

- 3 1. The value of the property on the date of its damage, loss or destruction.
- 4 2. The value of the property on the date of disposition, less the value of any part
5 of the property returned as of the date of its return. The value of any retail
6 merchandise shall be its retail value.

7 **SECTION 52.** 938.343 (4) (e) of the statutes is created to read:

8 938.343 (4) (e) If the violation resulted in bodily injury, the restitution order
9 may require that the juvenile do any one or more of the following:

- 10 1. Pay an amount equal to the cost of necessary medical and related
11 professional services and devices relating to physical, psychiatric and psychological
12 care and treatment.
- 13 2. Pay an amount equal to the cost of necessary physical and occupational
14 therapy and rehabilitation.
- 15 3. Reimburse the injured person for income lost as a result of a violation
16 considered at disposition.
- 17 4. If the injured person's sole employment at the time of the injury was
18 performing the duties of a homemaker, pay an amount sufficient to ensure that the
19 duties are continued until the person is able to resume performance of the duties.

20 **SECTION 53.** 938.343 (4) (f) of the statutes is created to read:

21 938.343 (4) (f) In any case, the restitution order may require that the juvenile
22 do any one or more of the following:

- 23 1. Pay all special damages, but not general damages, substantiated by evidence
24 in the record, which could be recovered in a civil action against the juvenile for his
25 or her conduct in the commission of a violation considered at disposition.

ASSEMBLY BILL 247

1 2. Pay to the person against whom a violation considered at disposition was
2 committed an amount equal to the income lost and reasonable out-of-pocket
3 expenses incurred as a result of the filing of charges or that person's cooperation in
4 the investigation and prosecution of the violation.

5 3. Reimburse any person or agency for amounts paid as rewards for
6 information leading to the apprehension or successful prosecution of the juvenile for
7 the violation.

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

10 **SECTION 54.** 938.343 (4) (g) of the statutes is created to read:

11 938.343 (4) (g) Any order under par. (f) 3. or 4. shall require that all restitution
12 to victims be paid before restitution to other persons.

13 **SECTION 55.** 938.346 (1) (h) 2. of the statutes is amended to read:

14 938.346 (1) (h) 2. The right to restitution, as provided under ss. 938.245 (2t),
15 938.32 (1t) and, 938.34 (5), 938.343 (4) and 938.45 (1r) (a).

16 **SECTION 56.** 938.45 (1r) (a) of the statutes is amended to read:

17 938.45 (1r) (a) In a proceeding in which a juvenile has been found to have
18 committed a delinquent act or a civil law or ordinance violation that has resulted in
19 damage to or loss or destruction of the property of another, ~~or in actual physical in~~
20 bodily injury to another excluding pain and suffering or in death and if the court,
21 after taking into consideration the well-being and needs of the victim, considers it
22 beneficial to the well-being or behavior of the juvenile, the court may order a parent
23 who has custody, as defined in s. 895.035 (1), of the juvenile to make reasonable
24 restitution, subject to the limit specified in this paragraph, for the damage ~~or~~, injury
25 or death as provided in pars. (c) to (i). Except for recovery for retail theft under s.

ASSEMBLY BILL 247

1 943.51, the maximum amount of any restitution ordered under this paragraph for
2 damage or injury resulting from any one act of a juvenile or from the same act
3 committed by 2 or more juveniles in the custody of the same parent may not exceed
4 the amount specified in s. 799.01 (1) (d). Any order under this paragraph shall
5 include a finding that the parent who has custody of the juvenile is financially able
6 to pay the amount ordered and may allow up to the date of expiration of the order
7 for the payment. Any recovery under this paragraph shall be reduced by the amount
8 recovered as restitution for the same act under s. 938.34 (5) or 938.343 (4).

9 **SECTION 57.** 938.45 (1r) (c) of the statutes is created to read:

10 938.45 (1r) (c) If the delinquent act or civil law or ordinance violation resulted
11 in damage to or loss or destruction of property, the restitution order may require the
12 parent who has custody, as defined in s. 895.035 (1), of the juvenile to return the
13 property to the owner or the owner's designee or, if return of the property is
14 impossible, impractical or inadequate, to pay the owner or the owner's designee the
15 reasonable repair or replacement cost of the property or the greater of the following:

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

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

20 **SECTION 58.** 938.45 (1r) (d) of the statutes is created to read:

21 938.45 (1r) (d) If the delinquent act or civil law or ordinance violation resulted
22 in bodily injury, the restitution order may require that the parent who has custody,
23 as defined in s. 895.035 (1), of the juvenile do any one or more of the following:

ASSEMBLY BILL 247

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

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

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

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

11 **SECTION 59.** 938.45 (1r) (e) of the statutes is created to read:

12 938.45 (1r) (e) If the delinquent act or civil law or ordinance violation resulted
13 in death, the restitution order may require that the parent who has custody, as
14 defined in s. 895.035 (1), of the juvenile pay an amount equal to the cost of necessary
15 funeral and related services under s. 895.04 (5).

16 **SECTION 60.** 938.45 (1r) (f) of the statutes is created to read:

17 938.45 (1r) (f) If the juvenile violated s. 940.225, 948.02, 948.025, 948.05,
18 948.06, 948.07 or 948.08 and par. (d) 1. does not apply, the restitution order may
19 require that the parent who has custody, as defined in s. 895.035 (1), of the juvenile
20 pay an amount, not to exceed the amount specified in par. (a), equal to the cost of
21 necessary professional services relating to psychiatric and psychological care and
22 treatment. The limit under this paragraph does not apply to the amount of any
23 restitution ordered under par. (d) or (g) for the cost of necessary professional services
24 relating to psychiatric and psychological care and treatment.

25 **SECTION 61.** 938.45 (1r) (g) of the statutes is created to read:

ASSEMBLY BILL 247**SECTION 61**

1 938.45 (1r) (g) In any case, the restitution order may require that the parent
2 who has custody, as defined in s. 895.035 (1), of the juvenile do any one or more of the
3 following:

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

7 2. Pay to the person against whom a delinquent act considered at disposition
8 was committed an amount equal to the income lost and reasonable out-of-pocket
9 expenses incurred as a result of the filing of charges or that person's cooperation in
10 the investigation and prosecution of the delinquent act.

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

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

18 **SECTION 62.** 938.45 (1r) (h) of the statutes is created to read:

19 938.45 (1r) (h) Any order under par. (g) 3. or 4. shall require that all restitution
20 to victims be paid before restitution to other persons.

21 **SECTION 63.** 938.45 (1r) (i) of the statutes is created to read:

22 938.45 (1r) (i) 1. If a victim of a delinquent act is paid an award under ch. 949
23 for any loss arising out of the delinquent act, the state is subrogated to the rights of
24 the victim to any restitution required by the court. The rights of the state are
25 subordinate to the claims of victims who have suffered a loss arising out of the

ASSEMBLY BILL 247

1 offenses or any transaction which is part of the same continuous scheme of
2 delinquent activity.

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

10 **SECTION 64.** 938.547 (4) of the statutes is amended to read:

11 938.547 (4) ASSESSMENT CRITERIA. The uniform alcohol and other drug abuse
12 assessment criteria that the department developed shall be used in the pilot program
13 under ss. 938.245 (2) ~~(a)~~ 3. (2f), 938.295 (1), 938.32 (1g), 938.343 (10) and 938.344
14 (2g). An approved treatment facility that assesses a person under ss. 938.245 (2) ~~(a)~~
15 3. (2f), 938.295 (1), 938.32 (1g), 938.343 (10) and 938.344 (2g) may not also provide
16 the person with treatment unless the department permits the approved treatment
17 facility to do both in accordance with the criteria established by rule by the
18 department.

19 **SECTION 65.** 949.15 (1) of the statutes is amended to read:

20 949.15 (1) Whenever the department orders the payment of an award under
21 this chapter as a result of the occurrence of an event that creates a cause of action
22 on the part of a claimant against any person, the department is subrogated to the
23 rights of the claimant and may bring an action against the person for the amount of
24 the damages sustained by the claimant. If an amount greater than that paid under
25 the award order is recovered and collected in any such action, the department shall

ASSEMBLY BILL 247

1 pay the balance to the claimant. If the person responsible for the injury or death or
2 the person's parent has previously made restitution payments to the general fund
3 under s. 938.245 (2t) (j), 938.32 (1t) (j), 938.34 (5) (j), 938.45 (1r) (i) or 973.20, any
4 judgment obtained by the department under this section shall be reduced by the
5 amount of the restitution payments to the general fund.

6 **SECTION 66.** 949.165 (7) of the statutes is amended to read:

7 949.165 (7) THIRD PRIORITY PAYMENTS; LEGAL FEES AND RESTITUTION. The
8 department shall make payments from an escrow account for any governmental
9 entity for the reimbursement for or recoupment of the costs of legal representation
10 of the person charged with the serious crime or for any unpaid restitution under s.
11 938.245 (2t), 938.32 (1t), 938.34 (5), 938.45 (1r) (a) or 973.20. The governmental
12 entity shall file a claim for the applicable amount with the department.

13 **SECTION 67.** 950.04 (1v) (q) of the statutes is amended to read:

14 950.04 (1v) (q) To restitution, as provided under ss. 938.245 ~~(2) (a) 5. (2t)~~,
15 938.32 (1t), 938.34 (5), 938.345, 938.45 (1r) (a), 943.212, 943.23 (6), 943.245, 943.51
16 and 973.20.

17 **SECTION 68. Initial applicability.**

18 (1) This act first applies to delinquent acts and civil law or ordinance violations
19 committed on the effective date of this subsection.

20 (END)