



1995 ASSEMBLY BILL 10

January 13, 1995 - Introduced by Representatives CARPENTER, NOTESTEIN, GARD, GROBSCHMIDT, LADWIG, R. POTTER, TURNER, OTT, ZIEGELBAUER, HAHN, SERATTI, LA FAVE, SCHNEIDERS, RYBA, MUSSER, KREUSER, NASS, AINSWORTH, RILEY, WILDER and HASENOHRL, cosponsored by Senators BURKE, ROSENZWEIG, PLEWA, LEEAN, CHVALA and DARLING. Referred to Committee on Criminal Justice and Corrections.

- 1 **AN ACT to amend** 102.07 (14), 895.035 (2), 943.012 (intro.) and 973.09 (7m) (a);
2 **and to create** 943.017 of the statutes; **relating to:** marking property of others
3 without the owner's consent and providing penalties.

Analysis by the Legislative Reference Bureau

Current law provides various penalties for crimes against property. The crime of criminal damage to property provides that any person who intentionally causes damage, without consent, to the physical property of another is guilty of a Class A misdemeanor. Upon conviction, the person may be fined not more than \$10,000 or imprisoned for not more than 9 months or both. Higher penalties may apply depending on the type of property involved or other circumstances. This bill creates a crime relating to graffiti. A person is guilty of a Class A misdemeanor if the person intentionally marks, draws or writes, without consent, on the physical property of another. In addition to any other penalties that may apply, a court must require a graffiti offender to perform 100 hours of community service. Also, higher penalties, based on the current criminal damage to property law, apply depending on the circumstances of the offense. For example, if it would cost more than \$1,000 to repair or replace the property or remove the marking, drawing or writing, a convicted violator may be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

Under current law, a parent who has custody of a child is generally liable in an amount not to exceed \$2,500 for damage to property, the value of unrecovered stolen property or personal injury attributable to a wilful, malicious or wanton act of the child. This bill makes the parent similarly liable for replacement, repair or removal costs relating to graffiti damage.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 102.07 (14) of the statutes is amended to read:

2 102.07 (14) An adult performing uncompensated community service work
3 under s. 943.017 (3), 971.38, 973.03 (3), 973.05 (3) or 973.09 is an employe of the
4 county in which the district attorney requiring or the court ordering the community
5 service work is located. No compensation may be paid to that employe for temporary
6 disability during the healing period.

7 **SECTION 2.** 895.035 (2) of the statutes is amended to read:

8 895.035 (2) The parent or parents with custody of a minor child, in any
9 circumstances where he, she or they may not be liable under the common law, are
10 liable for damages to property, for the cost of repairing or replacing property or
11 removing the marking, drawing or writing from property regarding a violation under
12 s. 943.017, for the value of unrecovered stolen property or for personal injury
13 attributable to a wilful, malicious or wanton act of the child. The parent or parents
14 with custody of their minor child are jointly and severally liable with the child for the
15 damages imposed under s. 943.51 for their child's violation of s. 943.50.

16 **SECTION 3.** 943.012 (intro.) of the statutes is amended to read:

17 **943.012** (title) **Criminal damage to or graffiti on religious and other**
18 **property.** (intro.) Whoever intentionally causes damage to or intentionally marks,
19 draws or writes with ink or another substance on any physical property of another,
20 without the person's consent and with knowledge of the character of the property, is
21 guilty of a Class E felony if the property consists of one or more of the following:

1 **SECTION 4.** 943.017 of the statutes is created to read:

2 **943.017 Graffiti.** (1) Whoever intentionally marks, draws or writes with
3 paint, ink or another substance on the physical property of another without the other
4 person's consent is guilty of a Class A misdemeanor.

5 (2) Any person violating sub. (1) under any of the following circumstances is
6 guilty of a Class D felony:

7 (a) The property under sub. (1) is a vehicle or a highway, as defined in s. 943.01
8 (2) (a) 1., and the marking, drawing or writing is of a kind which is likely to cause
9 injury to a person or further property damage.

10 (b) The property under sub. (1) belongs to a public utility or common carrier and
11 the marking, drawing or writing is of a kind which is likely to impair the services of
12 the public utility or common carrier.

13 (c) The property under sub. (1) belongs to a person who is or was a witness, as
14 defined in s. 940.41 (3), or a grand or petit juror and the marking, drawing or writing
15 was caused by reason of the owner's having attended or testified as a witness or by
16 reason of any verdict or indictment assented to by the owner.

17 (d) If the total property affected in violation of sub. (1) is reduced in value by
18 more than \$1,000. For the purposes of this paragraph, property is reduced in value
19 by the amount which it would cost to repair or replace it or to remove the marking,
20 drawing or writing, whichever is less.

21 (e) The property affected is on state-owned land and is listed on the registry
22 under s. 943.01.

23 (3) (a) In addition to any other penalties that may apply to a crime under this
24 section, the court shall require that a convicted defendant perform 100 hours of
25 community service work for an individual, a public agency or a nonprofit charitable

1 organization. The court shall order community service work that is designed to show
2 the defendant the impact of his or her wrongdoing. The court shall allow the victim
3 to make suggestions regarding appropriate community service work. The court shall
4 ensure that the defendant receives a written statement of the community service
5 order and that the community service order is monitored.

6 (b) Any individual, organization or agency acting in good faith to whom or to
7 which a defendant is assigned pursuant to an order under this subsection has
8 immunity from any civil liability in excess of \$25,000 for acts or omissions by or
9 impacting on the defendant.

10 (c) This subsection applies whether the court imposes a sentence or places the
11 defendant on probation.

12 (4) If more than one item of property is marked, drawn or written upon under
13 a single intent and design, the markings, drawings or writings on all the property
14 may be prosecuted as a single forfeiture crime.

15 (5) In any case under this section involving more than one act of marking,
16 drawing or writing but prosecuted as a single crime, it is sufficient to allege generally
17 that unlawful marking, drawing or writing on property was committed between
18 certain dates. At the trial, evidence may be given of any such unlawful marking,
19 drawing or writing that was committed on or between the dates alleged.

20 **SECTION 5.** 973.09 (7m) (a) of the statutes is amended to read:

21 973.09 (7m) (a) The Except as provided in s. 943.017 (3), the court may require
22 as a condition of probation that the probationer perform community service work for
23 a public agency or a nonprofit charitable organization. The number of hours of work
24 required may not exceed what would be reasonable considering the seriousness of the
25 offense and any other offense which is read into the record at the time of conviction.

1 An order may only apply if agreed to by the probationer and the organization or
2 agency. The court shall ensure that the probationer is provided a written statement
3 of the terms of the community service order and that the community service order
4 is monitored. If the court requires the conditions provided in this subsection and sub.
5 (4), the probationer reduces the period of confinement under sub. (4) at a rate of one
6 day for each 3 days of work performed. A day of work equals 8 hours of work
7 performed.

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(END)