



1997 ASSEMBLY BILL 300

April 17, 1997 - Introduced by Representatives GREEN, KEDZIE, MUSSER, M. LEHMAN, FREESE, SKINDRUD, SCHAFFER, HAHN, RYBA, OTTE, BRANDEMUEHL, PLALE, LAZICH, SYKORA, KRUSICK, SERATTI, OTT, JESKEWITZ, JENSEN, GARD, HOVEN, POWERS, HARS DORF, LADWIG, VRAKAS, F. LASEE, ALBERS, HANDRICK, PORTER, AINSWORTH, GOETSCH, HASENOHRL and GUNDERSON, cosponsored by Senators RUDE, WIRCH, DRZEWIECKI, ZIEN, SCHULTZ, ROSENZWEIG, WELCH, COWLES, BUETTNER and FARROW. Referred to Committee on Judiciary.

1 **AN ACT to amend** 938.245 (2) (a) 5., 938.32 (1t) (a), 938.34 (5) (a), (b) and (c) and
2 938.343 (4) of the statutes; **relating to:** the performance of services for the
3 victim by a juvenile as restitution for the juvenile's act.

Analysis by the Legislative Reference Bureau

Under current law, a dispositional order, consent decree or deferred prosecution agreement of the court assigned to exercise jurisdiction under the juvenile justice code (juvenile court) may require a juvenile who has caused damage to property or actual physical injury to another to repair the damage to the property or to make reasonable restitution to the victim for the damage or injury. A dispositional order, consent decree or deferred prosecution agreement that requires a juvenile to make restitution must include a determination that the juvenile alone is financially able to pay and may allow up to the date of expiration of the dispositional order, consent decree or deferred prosecution agreement for the payment. This bill permits a juvenile court to require a juvenile who has caused damage to property or physical injury to a victim to make restitution to the victim in the form of services to the victim. Under the bill, a dispositional order, consent decree or deferred prosecution agreement that requires a juvenile to make restitution in the form of services for the victim must include a determination that the juvenile alone is physically able to perform the services, may allow up to the date of expiration of the dispositional order, consent decree or deferred prosecution agreement for the completion of those

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services and may include a schedule for the performance and completion of the services.

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

1 **SECTION 1.** 938.245 (2) (a) 5. of the statutes is amended to read:

2 938.245 (2) (a) 5. a. That the juvenile participate in a restitution project if the
3 act for which the deferred prosecution agreement is being entered into has resulted
4 in damage to the property of another, or in actual physical injury to another
5 excluding pain and suffering. Subject to subd. 5. c., the deferred prosecution
6 agreement may require the juvenile to repair the damage to property or to make
7 reasonable restitution for the damage or injury, either in the form of cash payments
8 or, if the victim agrees, the performance of services for the victim, or both, if the
9 intake worker, after taking into consideration the well-being and needs of the victim,
10 considers it beneficial to the well-being and behavior of the juvenile. Any such
11 deferred prosecution agreement shall include a determination that the juvenile
12 alone is financially able to pay and or physically able to perform the services, may
13 allow up to the date of the expiration of the deferred prosecution agreement for the
14 payment or for the completion of the services and may include a schedule for the
15 performance and completion of the services.

16 b. In addition to any other employment or duties permitted under ch. 103 or
17 any rule or order under ch. 103, a juvenile under 14 years of age who is participating
18 in a restitution project provided by the county or who is performing services for the
19 victim as restitution may, for the purpose of making restitution, be employed or
20 perform any duties under any circumstances in which a juvenile 14 or 15 years of age
21 is permitted to be employed or to perform duties under ch. 103 or any rule or order

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1 under ch. 103. A juvenile who is participating in a restitution project provided by the
2 county or who is performing services for the victim as restitution is exempt from the
3 permit requirement under s. 103.70 (1).

4 c. Under this subdivision, a deferred prosecution agreement may not require
5 a juvenile who is under 14 years of age to make more than \$250 in restitution or to
6 perform more than 40 total hours of services for the victim as restitution.

7 **SECTION 2.** 938.32 (1t) (a) of the statutes is amended to read:

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

24 2. In addition to any other employment or duties permitted under ch. 103 or
25 any rule or order under ch. 103, a juvenile under 14 years of age who is participating

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1 in a restitution project provided by the county or who is performing services for the
2 victim as restitution may, for the purpose of making restitution under the consent
3 decree, be employed or perform any duties under any circumstances in which a
4 juvenile 14 or 15 years of age is permitted to be employed or to perform duties under
5 ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a
6 restitution project provided by the county or who is performing services for the victim
7 as restitution is exempt from the permit requirement under s. 103.70 (1).

8 3. Under this paragraph, a judge or juvenile court commissioner may not order
9 a juvenile who is under 14 years of age to make more than \$250 in restitution or to
10 perform more than 40 total hours of services for the victim as restitution.

11 **SECTION 3.** 938.34 (5) (a), (b) and (c) of the statutes are amended to read:

12 938.34 (5) (a) Subject to par. (c), if the juvenile is found to have committed a
13 delinquent act which has resulted in damage to the property of another, or actual
14 physical injury to another excluding pain and suffering, order the juvenile to repair
15 the damage to property or to make reasonable restitution for the damage or injury,
16 either in the form of cash payments or, if the victim agrees, the performance of
17 services for the victim, or both, if the court, after taking into consideration the
18 well-being and needs of the victim, considers it beneficial to the well-being and
19 behavior of the juvenile. Any such order shall include a finding that the juvenile
20 alone is financially able to pay and or physically able to perform the services, may
21 allow up to the date of the expiration of the order for the payment or for the
22 completion of the services and may include a schedule for the performance and
23 completion of the services. Objection by the juvenile to the amount of damages
24 claimed shall entitle the juvenile to a hearing on the question of damages before the
25 amount of restitution is ordered.

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1 (b) In addition to any other employment or duties permitted under ch. 103 or
2 any rule or order under ch. 103, a juvenile under 14 years of age who is participating
3 in a restitution project provided by the county or who is performing services for the
4 victim as restitution may, for the purpose of making restitution ordered by the court
5 under this subsection, be employed or perform any duties under any circumstances
6 in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties
7 under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in
8 a restitution project provided by the county or who is performing services for the
9 victim as restitution is exempt from the permit requirement under s. 103.70 (1).

10 (c) Under this subsection, a court may not order a juvenile who is under 14 years
11 of age to make more than \$250 in restitution or to perform more than 40 total hours
12 of services for the victim as restitution.

13 **SECTION 4.** 938.343 (4) of the statutes is amended to read:

14 938.343 (4) If the violation has resulted in damage to the property of another,
15 or in actual physical injury to another excluding pain and suffering, the court may
16 order the juvenile to make repairs of the damage to property or reasonable
17 restitution for the damage or injury, either in the form of cash payments or, if the
18 victim agrees, the performance of services for the victim, or both, if the court, after
19 taking into consideration the well-being and needs of the victim, considers it
20 beneficial to the well-being and behavior of the juvenile. Any such order requiring
21 payment for repairs or restitution shall include a finding that the juvenile alone is
22 financially able to pay and or physically able to perform the services, may allow up
23 to the date of the expiration of the order for the payment or for the completion of the
24 services and may include a schedule for the performance and completion of the
25 services. Objection by the juvenile to the amount of damages claimed shall entitle

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SECTION 4

1 the juvenile to a hearing on the question of damages before the amount of restitution
2 is ordered.

3 **SECTION 5. Initial applicability.**

4 (1) This act first applies to acts committed by a juvenile on the effective date
5 of this subsection.

6 (END)