

JUVENILE RESTITUTION

A Summary of Chapter 938 Provisions And Interpretive Case Law

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Restitution Statutes in the Juvenile Justice Code

I.	Restitution in delinquency dispositions—Wis. Stat. § 938.34(5)	3
	A. 938.34(5)(a)—General explanation of restitution	3
	B. 938.34(5)(am)—Contribute percentage of income	4
	C. 938.34(5)(b)—Employment, under age 14, restitution project	4
	D. 938.34(5)(c)—Maximum restitution for a juvenile under age 14	4
	E. 938.538(3)(a)7.—Serious juvenile offender program	4
	F. Case law	4
II.	Restitution in consent decrees—Wis. Stat. § 938.32(1t)	7
	A. 938.32(1t)(a)1.—General explanation of restitution	7
	B. 938.32(1t)(a)1m.—Parental restitution	7
	C. 938.32(1t)(a)3.—Maximum restitution for a juvenile under age 14	8
III.	Deferred prosecution & restitution projects—Wis. Stat. § 938.245(2)(a)5.	8
	A. 938.245(2)(a)5.1.—Restitution project authority	8
	B. 938.245(2)(a)5.am.—Parental restitution	8
	C. 938.245(2)(a)5.c.—Maximum restitution for a juvenile under age 14	9
IV.	Restitution for civil law and ordinance violations—Wis. Stat. § 938.343(4)	9
	A. 938.343(4)—Restitution	9
	B. Interaction with municipal court procedure	9
V.	Orders applicable to adults in juvenile cases—Wis. Stat. § 938.45(1r)(a)	10
VI.	Parental liability—Wis. Stat. § 895.035	11
	A. 895.035(2m)(a)—General liability for unpaid restitution	11
	B. 895.035(2m)(bm)—Hearing on unpaid restitution	12
	C. 895.035(2m)(c)—Community service alternative	12
	D. 895.035(3)—Preclusive effect of delinquency adjudication	13
	E. 895.035(4) and (4)(a)—Maximum recovery from parent	13
	F. 895.035(5) and (6)—Other effects	13
	G. 938.396(1)(c)7.—Juvenile records available to victim’s insurer	13
VII.	Notice & victims’ rights—Wis. Stat. §§ 938.346(1)(h)2., 950.04(1v)(q) & (r)	14
	A. 938.346(1)(h)2.—Notice to victims	14
	B. 950.04(1v)(q) and (r)—Victims’ rights	14
VIII.	The statutes	15

I. **Restitution in delinquency dispositions – Wis. Stat. § 938.34(5)**

FUN FACT!

Wis. Stat. § 938.34(5)(a)'s predecessor was Wis. Stat. § 48.34(5)(a).

A. **Wis. Stat. § 938.34(5)(a) – General explanation of juvenile restitution**

(1) Recoverable losses. A court may require a juvenile found delinquent to make restitution for the following damages or injuries that occurred as a result of the delinquent act if the court “considers it beneficial to the well-being and behavior of the juvenile,” as well as to the victim:

- “damage to the property of another;”
- “actual physical injury to another excluding pain and suffering.”

(2) Repair or restitution. The court may order the juvenile to do either of the following:

- “repair the damage to property”; or
- “make reasonable restitution for the damage or injury.”

(3) Forms of restitution. With respect to making restitution for the damage or injury, the court may order the following “forms” of restitution:

- “cash payments” to the victim; or
- “if the victim agrees, the performance of services for the victim”; or
- both cash payments and performance of services.

(4) Ability to pay. In ordering restitution, the court must find “that the juvenile alone is financially able to pay or physically able to perform the services.”

(5) Time limit. In ordering restitution, the court “may allow up to the date of the expiration of the [delinquency] order for the payment or the completion of the services and may include a schedule for the performance and completion of the services.”

(6) Contested hearing on damages. If the juvenile objects to the amount of damages claimed, a hearing on damages must be held before restitution is ordered.

(7) Offset. If an adult also is ordered to pay restitution on behalf of the juvenile under Wis. Stat. § 938.45(1r)(a), the amount of restitution recovered under Wis. Stat. § 938.34(5)(a) is reduced accordingly.

B. Wis. Stat. § 938.34(5)(am) – Contribute percentage of income

If the juvenile “is receiving income while placed in a juvenile correctional facility, residential care center for children and youth or other out-of-home placement,” the court may order the juvenile “to contribute a specified percentage of that income towards th[e] [ordered] restitution.”

C. Wis. Stat. § 938.34(5)(b) – Employment, under age 14, restitution project

(1) Under Wis. Stat. § 103.67(2)(j), a juvenile under age 14 “may be employed as participants in a restitution project[.]”

(2) Under Wis. Stat. § 938.34(5)(b), a juvenile under age 14 who is employed in a restitution project or performing services for the victim as restitution may “be employed or perform any duties under any circum-stances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103.”

(3) Under Wis. Stat. § 938.34(5)(b), a juvenile who is employed in a restitution project or performing services for the victim as restitution “is exempt from the permit requirement under s. 103.70(1).”

D. Wis. Stat. § 938.34(5)(c) – Maximum restitution for juveniles under age 14

A juvenile under age 14 cannot be ordered “to make more than \$250 in restitution or to perform more than 40 total hours of services for the victim as total restitution.”

E. Wis. Stat. § 938.538(3)(a)7. – Serious juvenile offender program

Under Wis. Stat. § 938.538(3)(a)7., if the court orders a juvenile to participate in a serious juvenile offender program under sec. 938.34(4h), one possible sanction includes “restitution.”

F. Interpretive delinquency cases

▪ **Published Cases**

(Cases that can be cited to a court as authority)

(1) Read-in. Court can order juvenile to pay restitution for offense that formed basis for delinquency petition when juvenile admits offense and delinquency

petition is dismissed under read-in procedure. *R.W.S. v. State*, 162 Wis. 2d 862, 471 N.W.2d 16 (1991).

(2) Insurer. Court can order juvenile to pay restitution directly to insurer that reimbursed victim for loss. *R.W.S. v. State*, 162 Wis. 2d 862, 471 N.W.2d 16 (1991).

(3) Lost wages. Unlike for adult defendants, court **cannot** order juvenile to pay restitution for lost wages incurred by victim, who missed work to testify at restitution hearing. *State v. B.S.*, 133 Wis. 2d 136, 394 N.W.2d 750 (Ct. App. 1986).

(4) Lapsed order. Double jeopardy prohibits reimposing a restitution order from a previously lapsed probation order. *R.L.C. v. State*, 114 Wis. 2d 223, 338 N.W.2d 506 (Ct. App. 1983).

(5) Unrecovered property. Court can order juvenile to pay restitution for unrecovered stolen property. *I.V. v. State*, 109 Wis. 2d 407, 326 N.W.2d 127 (Ct. App. 1982).

(6) Ability to pay. Wisconsin Stat. § 938.34(5)(a) prohibits the court from ordering restitution in an amount higher than what the juvenile alone can pay. *State v. Anthony D.*, 2006 WI App 218, 296 Wis. 2d 771, 723 N.W.2d 775.

(7) Converting to civil judgment. Under Wis. Stat. § 895.035(2m)(a), only unpaid restitution may be converted to civil judgment; the “total damage” sustained by the victim cannot be converted to a civil judgment. *State v. Anthony D.*, 2006 WI App 218, 296 Wis. 2d 771, 723 N.W.2d 775.

▪ **Unpublished court of appeals cases AFTER July 1, 2009**

(May cite these one-judge cases for their persuasive value. *See* Wis. Stat. § 809.23(3)(b).)

(1) Age at disposition controls. A circuit court may order a juvenile to pay restitution in excess of \$250 if s/he is 14 years or older at the time of disposition. *In the Interest of J.J.S.*, No. 2016AP1519, 2017 WL 1484589, ¶ 8 (Wis. Ct. App. Apr. 25, 2017) (unpublished).

(2) Requirement that the court find a delinquent act. In order to have the authority to impose restitution, the circuit court must first find that the juvenile committed a delinquent act. *In re B.A.H.*, No. 2015AP1256, 2015 WL 6181079, ¶¶ 1, 9–10 (Wis. Ct. App. Oct. 22, 2015) (unpublished).

(3) Nexus requirement. Like in adult restitution cases, there must be a nexus between the delinquent act and the claim of restitution. *In re Lance F.*, No. 2014AP1881, 2014 WL 7270263 ¶¶ 9 (Wis. Ct. App. Dec. 23, 2014) (unpublished).

(4) School district as victim. Court had the authority to order a juvenile adjudicated delinquent for disorderly conduct stemming from a school bomb scare to perform community service. *In re Michael S.L.*, No. 2010AP2342, 2011 WL 148905, ¶¶ 5–7 (Wis. Ct. App. Jan. 19, 2011) (unpublished).

▪ **Unpublished court of appeals cases BEFORE July 1, 2009**

(Cannot cite the case as authority, but can use the underlying rationale. All of these unpublished cases were decided by a single court of appeals judge.)

(1) Juvenile as passenger. Court can order juvenile who was passenger in stolen car to pay restitution for damage to the car occurring after juvenile got in it. *State v. Michael L., Jr.*, No. 02-1457, 2002 WL 31688958 (Wis. Ct. App. Dec. 3, 2002); also *Torrey Y. v. State*, No. 98-3427, 1999 WL 366588 (Wis. Ct. App. Mar. 10, 1999).

(2) Towing expenses. Court **cannot** order juvenile to pay restitution for cost of towing stolen car. *State v. Joseph G.*, No. 97-2987, 1998 WL 40055 (Wis. Ct. App. Feb. 4, 1998).

(3) Cost of “re-keying” burglarized building. Court can order juvenile to pay cost of re-keying burglarized building. *K.M.Z. II v. State*, No. 89-0632, 1989 WL 129467 (Wis. Ct. App. Aug. 23, 1989).

(4) Psychological counseling. Court can order juvenile to pay restitution for victim’s psychological counseling. *State v. Peter J.F.*, No. 94-3357, 1995 WL 168989 (Wis. Ct. App. Apr. 12, 1995).

(5) School bomb scare. Court can order juvenile to pay restitution to school district for salaries of school staff for lost half-day of school due to bomb scare. *State v. Cassandra M.*, No. 01-1940, 2001 WL 1404156 (Wis. Ct. App. Nov. 13, 2001); also *State v. Matthew D.B.*, No. 00-0616, 2000 WL 994992 (Wis. Ct. App. July 18, 2000) (but restitution **not** allowed for **police** expenditures).

(6) Causation. Court can order juvenile to pay restitution for injuries to another for disorderly conduct even though juvenile did not target specific victim. *State v. Michael E.H.*, No. 97-1007, 1997 WL 603441 (Wis. Ct. App. Oct. 2, 1997).

** Where juvenile’s admission to theft of property under \$2,500 encompasses an additional item (a third fire extinguisher) that the delinquency petition

did not specifically list, restitution for that additional item is proper. *State v. Aaryn C.*, No. 2007AP2897, 2008 WL 1809072 (Wis. Ct. App. Apr. 23, 2008).

(8) Ability to pay. Court can order restitution from juvenile based on future job prospects. *State v. Christopher L.*, No. 97-2671, 1998 WL 28004 (Wis. Ct. App. Jan. 28, 1998); *see also State v. Michael L. W.*, 2007 WL 1427440 (Waukesha County); *State v. Jared J.*, Nos. 97-2253 & 97-2254, 1997 WL 792940 (Wis. Ct. App. Dec. 23, 1997); *State v. Matthew W.*, No. 94-1697, 1994 WL 668053 (Wis. Ct. App., Nov. 29, 1994); *but see State v. Charles E.*, No. 95-2101, 1995 WL 697456 (Wis. Ct. App. Nov. 28, 1995) (full restitution may be unreasonable concerning juvenile’s ability to pay).

II. Restitution in consent decrees—Wis. Stat. § 938.32(1t)

A. Wis. Stat. § 938.32(1t)(a)1.—General explanation of restitution

(1) Consent decrees. In delinquency cases, the court can order—as a condition of a “consent decree”—that the juvenile make the same sort of reparations as allowed under the general juvenile restitution provision set forth in sec. 938.34(5)(a).

(2) Similar to general juvenile restitution. The same considerations outlined above in Section I.A. of this outline apply to consent decrees—that is, recoverable losses, forms of restitution, ability-to-pay determination, time limit, contested hearing and offset of amount paid by parent.

B. Wis. Stat. § 938.32(1t)(a)1m. – Parental restitution

(1) Authority. In delinquency cases, the court can “require a parent who has custody . . . of the juvenile, as a condition of the consent decree, to make reasonable restitution for the damage or injury” caused by the juvenile.

(2) Maximum amounts:

(a) General rule. In requiring parental restitution as part of a consent decree, “the maximum amount . . . for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed \$5,000.”

(b) Retail theft exception. Under § 943.51(1), a victim of retail theft may bring a civil action to recover “[t]he retail value of the merchandise unless it is returned undamaged and unused,” plus any other “actual damages.” Under § 943.51(2), if the civil action is brought against a juvenile or the custodial parent, the civil judgment may grant “exemplary damages” not to exceed twice the amount of damages recovered under § 943.51(1). Under § 943.51(3r), any recovery under such a civil judgment is

reduced by the amount recovered as restitution for the same act under § 800.093 (municipal cases) and § 973.20 (adult restitution).

(3) Parental ability to pay. The court must determine that the parent “is financially able to pay” the ordered amount of restitution.

(4) Time limit. The court “may allow up to the date of the expiration of the consent decree for the [parental] payment.”

(5) Contested hearing on damages. If the parent objects to the amount of damages claimed, a hearing on damages must be held “before an amount of restitution is made part of the consent decree.”

(6) Offset. Any recovery from the parent as part of a consent decree is reduced by the amount recovered from the juvenile as part of the consent decree.

C. Wis. Stat. § 938.32(1t)(a)3.—Maximum restitution for a juvenile under age 14

A juvenile under age 14 cannot be ordered to pay more than \$250 in restitution or perform more than 40 hours of services as total restitution for each consent decree.

III. Deferred prosecution and restitution projects — Wis. Stat. § 938.245(2)(a)5.

A. Wis. Stat. § 938.245(2)(a)5.a.—Restitution project authority

(1) Under Wis. Stat. § 938.245(1), in a delinquency case, or in a JIPS case that involves a delinquent act committed by a child under age 10, an intake worker may enter into a written deferred prosecution agreement with “all parties.”

(2) Under Wis. Stat. § 938.245(2)(a)5.a., the deferred prosecution agreement may provide that the juvenile “participate in a restitution project” if the underlying act resulted in property damage or physical injury, excluding pain and suffering.

(3) No contested hearing on damages. Unlike general juvenile restitution and restitution under a consent decree, restitution under a deferred prosecution agreement does not provide for a contested hearing on the amount of damages.

(4) Similar to general juvenile restitution. But for the absence of a contested hearing on damages, the same considerations outlined above in Section I.A. of this outline apply to restitution as part of deferred prosecution agreements—that is, recoverable losses, forms of restitution, ability-to-pay determination, time limit and offset of amount paid by parent.

B. Wis. Stat. § 938.245(2)(a)5.am. – Parental restitution

(1) Under Wis. Stat. § 938.245(2)(a)5.am., the deferred prosecution agreement may provide that the custodial parent “make reasonable restitution.”

(2) Except for the absence of a contested hearing on damages, all of the considerations that apply to parental restitution as part of a consent decree apply to parental restitution that is part of a deferred prosecution agreement—that is, maximum amounts (\$5,000), parental ability to pay, time limit (based on length of deferred prosecution agreement) and offset of amount paid by juvenile (pursuant to the deferred prosecution agreement).

C. Wis. Stat. § 938.245(2)(a)5.c. – Maximum restitution for a juvenile under age 14

For a juvenile under age 14, a deferred prosecution agreement cannot require the juvenile to pay more than \$250 in total restitution or perform more than 40 total hours of services.

IV. Civil law and ordinance violations – Wis. Stat. § 938.343(4)

A. Wis. Stat. § 938.343(4) – Restitution

(1) Non-criminal violations. Under Wis. Stat. § 938.343(4), “if the court finds that the juvenile violated a civil law or an ordinance,” the court may order the juvenile to make the same sort of reparations as allowed under the general juvenile restitution provision set forth in Wis. Stat. § 938.34(5)(a).

(2) Similar to general juvenile restitution. The same considerations outlined above in Section I.A. of this outline apply to juvenile restitution in cases of non-criminal violations—that is, recoverable losses, forms of restitution, ability-to-pay determination, time limit, contested hearing and offset of amount paid by parent (albeit, under sec. 938.45(1r)(a), discussed below in Section V. of this outline).

B. Interaction with municipal court procedure

(1) Jurisdiction:

(a) In general. Under Wis. Stat. § 938.125, the juvenile court “has exclusive jurisdiction over any juvenile alleged to have violated a law punishable by forfeiture or a county, town or other municipal ordinance.”

(b) Exceptions: Wis. Stat. § 938.17:

(i) Under Wis. Stat. § 938.17(1), courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings against juveniles age 16 or older in certain specified cases where the juvenile is charged with traffic, boating, snowmobile or all-terrain vehicle offenses. Generally, in such cases, the juvenile, if convicted, “shall be treated as an adult for sentencing purposes.”

(ii) Except as provided in § 938.17(1), municipal courts have concurrent jurisdiction with juvenile courts in proceedings against juveniles age 12 or older for violations of county, town or other municipal ordinances.

(2) Wis. Stat. § 800.093 – Restitution in municipal court cases.

(a) In general. In cases where the juvenile is properly treated as an adult for a civil law or ordinance violation, and where the ordinance prohibits conduct “the same as or similar to conduct prohibited by” a criminal statute, Wis. Stat. § 800.093(1) permits the municipal court to order restitution to the victim for damage to property or physical injury.

(b) Maximum amount. Under § 800.093(2), the court generally “may not order a defendant to pay more than \$4,000 in restitution.” Exceptions are found in worthless-check cases under Wis. Stat. § 943.24 and retail-theft cases under § 943.50.

(c) Restitution determinations. Wis. Stat. §§ 800.093(3) to (8) identify recoverable losses, set forth procedures for determining restitution and allow for the victim to pursue a separate civil action. These procedures are similar to adult restitution procedures set forth in Wis. Stat. § 973.20.

V. Orders applicable to adults in juvenile cases – Wis. Stat. § 938.45(1r)(a)

(1) Authority. Under Wis. Stat. § 938.45(1r)(a), in delinquency cases and cases of a civil law or ordinance violation by a juvenile, the court can “order a parent who has custody . . . of the juvenile to make reasonable restitution for the damage or injury” caused by the juvenile.

(2) Maximum amounts:

(a) General rule. For parental restitution under Wis. Stat. § 938.45(1r)(a), “the maximum amount . . . for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed \$5,000.”

(b) Retail theft exception. Under Wis. Stat. § 943.51(1), a victim of retail theft may bring a civil action to recover “[t]he retail value of the merchandise

unless it is returned undamaged and unused,” plus any other “actual damages.” Under Wis. Stat. § 943.51(2), if the civil action is brought against a juvenile or the custodial parent, the civil judgment may grant “exemplary damages” not to exceed twice the amount of damages recovered under sub. (1). Under Wis. Stat. § 943.51(3r), any recovery under such a civil judgment is reduced by the amount recovered as restitution for the same act under Wis. Stat. § 800.093 (municipal cases) and Wis. Stat. § 973.20 (adult restitution).

(3) Parental ability to pay. The court must determine that the parent “is financially able to pay” the ordered amount of restitution.

(4) Time limit. The court “may allow up to the date of the expiration of the order for the [parental] payment.”

(5) Contested hearing on damages. Under Wis. Stat. § 938.45(2), a parent must be “given an opportunity to be heard on the contemplated [restitution] order.” The parent “may be represented by counsel and may produce and cross-examine witnesses” at the hearing.

(6) Contempt. A parent’s failure to comply with a restitution order is punishable by contempt of court.

(7) Offset. Any recovery from the parent under such a restitution order is reduced by the amount recovered from the juvenile under the general juvenile restitution provision (Wis. Stat. § 938.34(5)) or under the civil law and ordinance provision for juveniles (Wis. Stat. § 938.343(4)).

VI. Parental liability – Wis. Stat. § 895.035

A. Wis. Stat. § 895.035(2m)(a) – General liability for unpaid restitution

(1) Authority. If a juvenile or custodial parent fails to pay ordered or agreed-to restitution, or “it if appears likely that the juvenile or parent will not pay [such] restitution,” . . . the victim, the victim’s insurer, the representative of the public interest under Wis. Stat. § 938.09 or the agency, as defined in Wis. Stat. § 938.38(1)(a), supervising the juvenile may petition the court . . . to order that the amount of [unpaid] restitution . . . be entered and docketed as a judgment against the juvenile and the [custodial] parent and in favor of the victim or the victim’s insurer, or both.

(2) Timing of petition. A petition for such unpaid restitution “may be filed after the expiration of the deferred prosecution agreement, consent decree, dispositional order or sentence under which the restitution is payable, but no later than one year after the expiration of” such document or event.

(3) Other action for compensation. A judgment for such unpaid restitution “does not bar the victim or the victim’s insurer, or both, from commencing another action seeking compensation from the juvenile or the parent, or both, if the amount of restitution ordered [in the judgment] is less than the total amount of damages claimed by the victim or the victim’s insurer.”

B. Wis. Stat. § 895.035(2m)(bm) – Hearing on unpaid restitution

(1) In general. Before issuing an order to be docketed as a judgment for unpaid restitution, court must give notice to juvenile and parent and an opportunity for them to be heard.

(2) Amount unpaid. Juvenile and parent can present evidence as to the amount “unpaid,” but cannot challenge the amount originally ordered.

(3) Reason for not paying. Juvenile and parent can present evidence as to “the reason for the failure to pay the restitution.”

(4) Ability to pay. Court should consider ability of the juvenile or parent to pay the unpaid restitution, by considering their assets, income and future ability to pay with the 20-year limitations period set forth in Wis. Stat. § 893.40.

(5) Judicial notice. Court may take judicial notice “of any deferred prosecution agreement, consent decree, dispositional order, sentence, extension of a consent decree, dispositional order or sentence or any other finding or order in the records of the juvenile maintained by that court or the municipal court.”

(6) Counsel. Juvenile and parent “may retain counsel of their own choosing at their own expense, but a juvenile or a parent has no right to be represented by appointed counsel in a proceeding [for unpaid restitution].”

C. Wis. Stat. § 890.035(2m)(c) – Community service alternative

(1) In general. Court “may order that the juvenile perform community service work for a public agency or nonprofit charitable organization . . . in lieu of making restitution.” Also, if parent agrees, the court may order the parent to perform such community service in lieu of making restitution. In either case, the agency or organization and person to whom restitution is owed all must agree to it.

(2) Hours of service. The number of hours of such community service “may not exceed the number determined by dividing the amount owed on the restitution . . .

by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment.”

(3) Written terms. The court shall ensure that the juvenile or parent receives “a written statement of the terms of the community service order and that the . . . order is monitored.”

D. Wis. Stat. § 895.035(3) – Preclusive effect of delinquency adjudication

A delinquency adjudication precludes a parent from denying that the juvenile committed the act that resulted in the injury, damage or loss.

E. Wis. Stat. § 895.035(4) and (4)(a) – Maximum recovery from parent

(1) In general. Except for retail theft under Wis. Stat. § 943.51 and school cases under Wis. Stat. § 895.035(4)(a), the maximum recovery for unpaid restitution from a parent or parents is \$5,000 for damages resulting from any one act of one or more juveniles in the custody of the same parent or parents – in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court.

(2) School cases. In school cases, the school board or governing body of a private school can recover up to \$20,000 from a parent or parents.

F. Wis. Stat. § 895.035(5) and (6) – Other effects

(1) Civil action. Wis. Stat. § 895.035(5) “does not limit the amount of damages recoverable by an action against a child or children except that any amount so recovered shall be reduced and apportioned by the amount received from the parent or parents” under Wis. Stat. § 895.035.

(2) Offset. Under Wis. Stat. § 895.035(6), “[a]ny recovery of restitution under this section shall be reduced by the amount recovered as restitution for the same act” under one of the foregoing juvenile justice code provisions.

G. Wis. Stat. § 938.396(1t) – Juvenile records available to victim’s insurer

Under Wis. Stat. § 938.396(1t), if a juvenile has failed to make restitution within one year after entry of the restitution order, the victim’s insurer may obtain from a law enforcement agency any information in the agency’s records relating to the injury, loss or damage. The insurer may use such information only for the purpose of investigating a claim arising out of the juvenile’s act.

VII. Notice & victims' rights – Wis. Stat. §§ 938.346(1)(h)2., 950.04(1v)(q) & (r)

A. Wis. Stat. § 938.346(1)(h)2. – Notice to victims

Under Wis. Stat. § 938.346(1)(h)2., “[e]ach known victim of a juvenile’s act shall receive timely notice of . . . [t]he right to restitution, as provided under ss. 938.245, 938.32(1t) and 938.34(5).”

B. Wis. Stat. § 950.04(1v)(q) and (r) – Victims’ rights

(1) Under Wis. Stat. § 950.04(1v)(q), which is part of the “Basic bill of rights for victims and witnesses,” victims of crime have the right “[t]o restitution, as provided under ss. 938.245(2)(a)5., 938.32(1t), 938.34(5), 938.345 [the aforementioned juvenile provisions], 943.212 [fraud on hotel or restaurant keeper, recreational attraction, taxicab operator or gas station], 943.23(6) [vehicle theft], 943.245 [worthless check], 943.51 [retail theft] and 973.20 [general adult restitution].”

(2) Under Wis. Stat. § 950.04(1v)(r), victims of crime also have the right “[t]o a judgment for unpaid restitution, as provided under ss. 895.035(2m) [parental liability provision] and 973.09(3)(b) [probation statute].”

VIII. The statutes reproduced

938.34. Disposition of juvenile adjudged delinquent. If the court adjudges a juvenile delinquent, the court shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. A disposition under sub. (4m) must be combined with a disposition under sub. (4n). In deciding the dispositions for a juvenile who is adjudicated delinquent, the court shall consider the seriousness of the act for which the juvenile is adjudicated delinquent and may consider any other delinquent act that is read into the record and dismissed at the time of the adjudication. The dispositions under this section are:

938.34(5) RESTITUTION. (a) Subject to par. (c), if the juvenile is found to have committed a delinquent act that resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, order the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the 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. The order shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this paragraph shall be reduced by the amount recovered as restitution under s.938.45(1r)(a).

(am) Subject to par. (c), order a juvenile who owes restitution under par. (a) and who is receiving income while placed in a juvenile correctional facility, residential care center for children and youth or other out-of-home placement to contribute a specified percentage of that income towards that restitution.

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

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

938.32. Consent decree.

938.32(1t) RESTITUTION. (a)1. Subject to subd. 3., if the petition alleges that the juvenile committed a delinquent act that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may require the juvenile as a condition of the consent decree, to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the 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. Any consent decree that includes a condition of restitution by a juvenile shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the consent decree for the payment or for the completion of the services and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, a hearing shall be held to determine the amount damages before an amount of restitution is made part of the consent decree. Any recovery under this subdivision shall be reduced by the amount recovered as restitution for the same act under subd. 1m.

1m. If the petition alleges that the juvenile has committed a delinquent act that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may require a parent who has custody, as defined in s. 895.035(1), of the juvenile, as a condition of the consent decree, to make reasonable restitution for the damage or injury. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered under this subdivision for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed \$5,000. Any consent decree that includes a condition of restitution by a parent under this subsection shall include a finding that the parent is financially able to pay the amount ordered and may allow up to the date of the expiration of the consent decree for the payment. If the parent objects to the amount of damages claimed, a hearing shall be held to determine the amount of damages before an amount of restitution is made part of the consent decree. Any recovery under this subdivision shall be reduced by the amount recovered as restitution for the same act under subd. 1.

2. In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution under the consent decree, be

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

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

938.245. Deferred prosecution.

938.245(2) Contents of Agreement. (a) *Specific conditions.* A deferred prosecution agreement may provide for any one or more of the following:

....

5. RESTITUTION. a. That the juvenile participate in a restitution project if the act for which the agreement is being entered into resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering. Subject to subd. 5.c., the agreement may require the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the intake worker, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile. The agreement shall include a determination that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the agreement for the payment or for the completion of the services and may include a schedule for the performance and completion of the services. Any recovery under this subd. 5. a. shall be reduced by the amount recovered for the same act under subd. 5. am.

am. That the parent who has custody, as defined in s. 895. 035(1), of the juvenile make reasonable restitution for any damage to the property of another, or for any actual physical injury to another excluding pain and suffering, resulting from the act for which the agreement is being entered into. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered under this subd. 5. am. for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed \$5,000. Any order under this subd. 5. am. shall include a finding that the parent is financially able to pay the amount ordered and may allow up to the date of the expiration of the agreement for the payment. Any recovery under this subd. 5. am. shall be reduced by the amount recovered for the same act under subd. 5. a.

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

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

938.343. Disposition of juvenile adjudged to have violated a civil law or an ordinance. Except as provided by ss. 938.342 and 938.344, if the court finds that the juvenile violated a civil law or an ordinance, the court shall enter an order making one or more of the following dispositions:

....

(4) RESTITUTION. If the violation has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may order the juvenile to make repairs of the damage to property or reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the 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. An order requiring payment for repairs or restitution shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this subsection shall be reduced by the amount recovered as restitution for the same act under s. 938.45(1r)(a).

938.45. Orders applicable to adults.

(1r) ORDER FOR PARENT TO PAY RESTITUTION OR FORFEITURE. (a) In a proceeding in which a juvenile is found to have committed a delinquent act or a civil law or ordinance violation that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may order a parent who has custody, as defined in s. 895.035 (1), of the juvenile to make reasonable restitution for the damage or injury. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed \$5,000. The order shall include a finding that the parent is financially able to pay the amount ordered and may allow up to the date of expiration of the order for the payment. Any recovery under this paragraph shall be reduced by the amount recovered as restitution for the same act under s. 938.34(5) or 938.343(4).

895.035 Parental liability for acts of minor child. (1) (a) In this section:

1. "Custody" means either legal custody of a child under a court order under s. 767.225 or 767.41, custody of a child under a stipulation under s. 767.34 or actual physical custody of a child. "Custody" does not include legal custody, as defined under s. 48.02(12), by an agency or a person other than a child's birth or adoptive parent.

...

(b) In determining which parent has custody of a child for purposes of this section, the court shall consider which parent had responsibility for caring for and supervising the child at the time the act that caused the injury, damage or loss occurred.

(2) (a) The parent or parents with custody of a minor child, in any circumstances where he, she, or they may not be liable under the common law, are liable for damages to property, for the cost of repairing or replacing property or removing the marking, drawing, writing, or etching from property regarding a violation under s. 943.017, for the value of unrecovered stolen property, or for personal injury attributable to a willful, malicious, or wanton act of the child.

(b) 1. The parent or parents with custody of their minor child are jointly and severally liable with the child for the damages imposed under s. 943.51 for their child's violation of s. 943.50.

2. If a parent is jointly and severally liable under this paragraph and has physical placement of the child, the parent's liability is limited to that percentage representing the time that the child actually spends with that parent.

3. Notwithstanding sub. (1), a parent does not have custody of a child for purposes of this paragraph if at the time of the violation the child has been freed from the care, custody, and control of the parent through marriage or emancipation or if at the time of the violation the parent does not reasonably have the ability to exercise supervision and control of the child because the child is uncontrollable or because another person has interfered with that parent's exercise of supervision and control.

(2g) The parent or parents with custody of a minor child are liable for the cost of the repair or replacement of, or the removal of the etching, marking, drawing or writing from, property damaged as the result of a violation of an ordinance that prohibits intentional etching or marking, drawing or writing with paint, ink or other substance on the physical property of another without the other's consent.

(2m) (a) If a juvenile or a parent with custody of a juvenile fails to pay restitution under s. 938.245, 938.32, 938.34(5), 938.343(4), 938.345 or 938.45(1r)(a) as ordered by a court assigned to exercise jurisdiction under chs. 48 and 938, a court of criminal jurisdiction or a municipal court or as agreed to in a deferred prosecution agreement or if it appears likely that the juvenile or parent will not pay restitution as ordered or agreed to, the victim, the victim's insurer, the representative of the public interest under s. 938.09 or the agency, as defined in s. 938.38(1)(a), supervising the juvenile may petition the court assigned to exercise jurisdiction under chs. 48 and 938 to order that the amount of restitution unpaid by the juvenile or parent be entered and docketed as a judgment against the juvenile and the parent with custody of the juvenile and in favor of the victim or the victim's insurer, or both. A petition under this paragraph may be filed after the expiration of the deferred prosecution agreement, consent decree, dispositional order or sentence under which the restitution is payable, but no later than one year after the expiration of the deferred prosecution agreement, consent decree, dispositional order or sentence or any extension of the consent decree, dispositional order or sentence. A judgment rendered under this paragraph does not bar the victim or the victim's insurer, or both, from commencing another action seeking compensation from the juvenile or the parent, or both, if the amount of restitution ordered under this paragraph is less than the total amount of damages claimed by the victim or the victim's insurer.

(b) If a juvenile or a parent with custody of a juvenile fails to pay a forfeiture as ordered by a court assigned to exercise jurisdiction under chs. 48 and 938, a court of criminal jurisdiction or a municipal court, if a juvenile or a parent with custody of a juvenile fails to pay costs as ordered by the court assigned to exercise jurisdiction under chs. 48 and 938 or a municipal court, if a juvenile fails to pay a surcharge as ordered by a court assigned to exercise jurisdiction under chs. 48 and 938 or a court of criminal jurisdiction or if it appears likely that the juvenile or the parent will not pay the forfeiture or surcharge as ordered, the representative of the public interest under s. 938.09, the agency, as defined in s. 938.38 (1) (a), supervising the juvenile or the law enforcement agency that issued the citation to the juvenile may petition the court

assigned to exercise jurisdiction under chs. 48 and 938 to order that the amount of the forfeiture, surcharge or costs unpaid by the juvenile or parent be entered and docketed as a judgment against the juvenile and the parent with custody of the juvenile and in favor of the county or appropriate municipality. A petition under this paragraph may be filed after the expiration of the dispositional order or sentence under which the forfeiture or, surcharge or costs is payable, but no later than one year after the expiration of the dispositional order or sentence or any extension of the dispositional order or sentence.

(bm) 1. Before issuing an order under par. (a) or (b), the court assigned to exercise jurisdiction under chs. 48 and 938 shall give the juvenile and the parent notice of the intent to issue the order and an opportunity to be heard regarding the order. The court shall give the juvenile and the parent an opportunity to present evidence as to the amount of the restitution, forfeiture or surcharge unpaid, but not as to the amount of the restitution, forfeiture or surcharge originally ordered. The court shall also give the juvenile and the parent an opportunity to present evidence as to the reason for the failure to pay the restitution, forfeiture or surcharge and the ability of the juvenile or the parent to pay the restitution, forfeiture or surcharge. In considering the ability of the juvenile or the parent to pay the restitution, forfeiture or surcharge, the court may consider the assets, as well as the income, of the juvenile or the parent and may consider the future ability of the juvenile or parent to pay the restitution, forfeiture or surcharge within the time specified in s. 893.40.

2. In proceedings under this subsection, the court assigned to exercise jurisdiction under chs. 48 and 938 may take judicial notice of any deferred prosecution agreement, consent decree, dispositional order, sentence, extension of a consent decree, dispositional order or sentence or any other finding or order in the records of the juvenile maintained by that court or the municipal court.

3. In proceedings under this subsection, the juvenile and the parent may retain counsel of their own choosing at their own expense, but a juvenile or a parent has no right to be represented by appointed counsel in a proceeding under this subsection.

(c) The court assigned to exercise jurisdiction under chs. 48 and 938 may order that the juvenile perform community service work for a public agency or nonprofit charitable organization that is designated by the court in lieu of making restitution or paying the forfeiture or surcharge. If the parent agrees to perform community service work in lieu of making restitution or paying the forfeiture or surcharge, the court may order that the parent perform community service work for a public agency or a nonprofit charitable organization that is designated by the court. Community service work may be in lieu of restitution only if also agreed to by the public agency or nonprofit charitable organization and by the person to whom restitution is owed. The court may utilize any available resources, including any community service work

program, in ordering the juvenile or parent to perform community service work. The number of hours of community service work required may not exceed the number determined by dividing the amount owed on the restitution, forfeiture or surcharge by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment. The court shall ensure that the juvenile or parent is provided with a written statement of the terms of the community service order and that the community service order is monitored.

(3) An adjudication under s. 938.183 or 938.34 that the juvenile violated a civil law or ordinance, is delinquent or is in need of protection and services under s. 938.13(12), based on proof that the juvenile committed the act, subject to its admissibility under s. 904.10, shall, in an action under sub. (1), stop a juvenile's parent or parents from denying that the juvenile committed the act that resulted in the injury, damage or loss.

(4) Except for recovery under sub. (4a) or for retail theft under s. 943.51, the maximum recovery under this section from any parent or parents may not exceed \$5,000 for damages resulting from any one act of a juvenile in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court. If 2 or more juveniles in the custody of the same parent or parents commit the same act the total recovery under this section may not exceed \$5,000, in addition to taxable costs and disbursements. The maximum recovery from any parent or parents for retail theft by their minor child is established under s. 943.51.

(4a) (a) The maximum recovery under this section by a school board or a governing body of a private school from any parent or parents with custody of a minor child may not exceed \$20,000 for damages resulting from any one act of the minor child in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court, for damages caused to the school board or the governing body of a private school by any of the following actions of the minor child:

1. An act or threat that endangers the property, health or safety of persons at the school or under the supervision of a school authority or that damages the property of a school board or the governing body of a private school and that results in a substantial disruption of a school day or a school activity.

2. An act resulting in a violation of s. 943.01, 943.02, 943.03, 943.05, 943.06 or 947.015.

(b) In addition to other recoverable damages, damages under par. (a) may include the cost to the school board or the governing body of a private school in loss of instructional time directly resulting from the action of the minor child under par. (a).

(c) If 2 or more minor children in the custody of the same parent or parents are involved in the same action under par. (a), the total recovery may not exceed \$20,000, in addition to taxable costs, disbursements and reasonable attorney fees, as determined by the court.

(d) If an insurance policy does not explicitly provide coverage for actions under par. (a), the issuer of that policy is not liable for the damages resulting from those actions.

(5) This section does not limit the amount of damages recoverable by an action against a child or children except that any amount so recovered shall be reduced and apportioned by the amount received from the parent or parents under this section.

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

(7) This section does not affect or limit any liability of a parent under s. 167.10(7) or 343.15(2).