

***FOR YOUR INFORMATION***

**News for School Clients**

**RESTITUTION**

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**Restitution**

This article will outline the steps by which restitution for student acts of vandalism can be obtained from students and parents. Beginning with the Juvenile Court process, and, then, by obtaining a civil judgment, schools now have access to a simplified, low-cost means of recovering loss for property damage.

Whenever an incident occurs, the first step is to document the costs of repair or replacement with written estimates. Staff time spent on clean-up should also be recorded with specificity as to the work and supplies required. When the case is referred to law enforcement for review and prosecution, this information will be needed for an itemized restitution claim. Without this information readily and completely available, the attorney representing the state in juvenile court proceedings may well overlook the restitution issue. It is true that prosecutors can and do reduce restitution claims from the amount sought by a victim in order to resolve cases with a negotiated plea. However, undifferentiated, lump sum requests are far more likely to be given away or reduced to arbitrary dollar amounts than carefully detailed, documented statements based on proof. A simple checklist, maintained as part of each case file, will help insure that all the elements of damage are included and supported when the claim is submitted.

If omitted from the juvenile court process, a claim for damages may only be pursued to judgment by commencement of an independent action in civil court. Filing fees alone may outweigh the value of any recovery. Therefore, the goal of this first step is to be sure that payment is specifically included in an order from the Juvenile Court. Restitution obligations may be ordered as part of a Deferred Prosecution Agreement, a Consent Decree, or a Dispositional Order adjudicating a student delinquent. These various types of orders provide the prosecuting authority with alternative means of resolving juvenile court charges. However, all may require a student to pay a set sum of money to a victim for damages.

A juvenile's failure to pay as required under any one of these orders provides a basis for obtaining a civil judgment against the juvenile and the parents under Wis. Stat. § 895.035. A "Petition for Judgment," available as a standard court form, may be filed at any time "it appears likely that the juvenile or parent will not pay" the restitution as ordered. The Petition may be filed after the order has expired, but no later than one year after the expiration date. Identifying students with existing juvenile court orders and determining payment history may reveal opportunities

for immediate filings that may be coming close to being barred.

Once filed, the Petition will be set for hearing before the court. While local court scheduling procedures may vary county by county, standard court forms are available state-wide for sending the juvenile and parent Notice of the hearing. As a general rule, clerk of court staff will provide copies of the form and assistance in obtaining a court date. However, proof that copies of the Notice and the Petition were delivered to the juvenile and the parent must be available at the hearing. Neither the court nor the clerk will provide this service. At the very least, certified mail with return receipt is recommended. Without proof of delivery, the court is unlikely to grant judgment if the juvenile or parent fail to appear. A representative of the school district should be prepared to appear in court, ready to explain how much is still owed and why it is likely payment will not be made unless a judgment is granted. Therefore, accurate records of partial payment are crucial to this process.

Even if the juvenile or parents do appear at the hearing, the only evidence the court will consider is related to the amount unpaid and the reason for non-payment. The original amount of the obligation may not be disputed or revised. Neither the juvenile nor the parents are entitled to court appointed counsel or a Public Defender for these proceedings. By statute, the court may consider the income and assets of both the juvenile and the parents, including “future ability” to pay. Community service hours in lieu of payment may be permitted only if the claimant agrees. A final form, the “Judgment for Unpaid Restitution” should be completed and ready for the judge's signature at the end of the hearing.

Unfortunately, even entry of judgment does not always produce immediate payment. However, unlike a juvenile court order, civil judgments can be docketed as a lien against real estate. Civil judgments are also collectable by garnishment of wages or other assets. Both are “involuntary,” but highly effective, means of obtaining payment. Documenting claims and preserving these legal remedies are worthwhile investments in obtaining restitution due and owing from students and parents.

*If you have any questions regarding this topic, please call Ann C. Krummel of Lathrop & Clark LLP at 608-286-7160. She joins Lathrop and Clark after ten years on the bench presiding as Court Commissioner in Family, Juvenile and Small Claims for Columbia County. Attorney Krummel focuses her practice on family issues and conflict resolution.*

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