
FOR YOUR INFORMATION

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News For School Clients

Court-ordered Restitution for Districts Victimized by Student Crimes

School districts may hold students and their parents financially responsible when the district is victimized by certain student crimes. A district may recover court-ordered restitution for loss of instruction time and loss of productivity when the school is closed down because of these crimes regardless of whether or not the district pays additional compensation to its employees.

In *State v. Vanbeek*, the Wisconsin Court of Appeals upheld a trial court ruling in which the judge ordered a student to pay restitution of \$15,796 representing salaries paid to teachers and staff for lost services during a bomb scare and the resulting evacuation of the school facilities.

In *Vanbeek*, at about 10 a.m., the school district discovered a note in the lunch room that stated, "there is a *bomb* in locker #190 you have until 11:00." The back of the note contained the words, "Secret note anonous [sic]." District officials evacuated the building, moved the students to off campus sites, and lost four and one-half hours of instructional time. A student eventually acknowledged writing the note and was convicted of the crime of making a bomb scare. The student was sentenced and ordered to pay restitution to the school district in the amount of \$15,796.89 for staff salaries and benefits. On appeal, the student objected to the amount of restitution ordered and argued the district did not suffer any monetary loss because the staff was paid on a salaried basis and the school district was not required to pay any additional sum in salary or benefits due to the evacuation. The court rejected that

argument, concluded the school district received no services from the teachers and staff during the evacuation, and reiterated the decision from another case that explained that "[t]he deprivation of an employee's productivity is a loss in itself that may or may not have an end result of lost profits. . . . It is reasonable to compensate an employer for this loss with the amount that it paid the employees during the time they were diverted."

The *Vanbeek* ruling is important because it clarified several issues, some of which had been addressed previously only in unpublished opinions. First, it ruled the school district itself was the direct victim of the bomb scare. This is significant because victims have special rights, including the right to be notified about case developments, the right to provide input regarding sentencing, and the right to request restitution. Second, it ruled a school district does experience a monetary loss when it must evacuate its facilities due to a bomb scare that disrupts the delivery of district services, resulting in the loss of instructional time and staff services.

The student in *Vanbeek* was convicted of the adult offense of making a bomb scare, intentionally conveying a false threat to destroy property by means of explosives, so restitution was ordered pursuant to the adult restitution statute, Wis. Stat. § 973.20. This law requires the court, during sentencing, to order full or partial restitution to any direct victim of the crime unless the court finds a substantial reason not to do so and states that reason on the record. In making any such order of restitution,

the court must consider the amount of loss suffered by the victim, the financial resources of the defendant, present and future earnings ability of the defendant, needs and earning ability of the defendant's dependents, and any other appropriate factors.

State law provides other opportunities for victims to recover damages due to the acts of minor children. School districts may seek restitution from juveniles and/or damages from their parents to compensate the district for the acts of minor children against the district, or school districts may sue the students or his parents for damages in civil court.

The juvenile code is intended to hold juvenile offenders directly accountable for their acts and to ensure that the victims of juvenile crimes are afforded the same rights as victims of crimes committed by adults. A juvenile is defined as a person who is less than 18-years-old, except that a 17-year-old who has committed a state or federal crime is treated as an adult. A juvenile who has violated a state or federal criminal law is determined to be delinquent.

If a juvenile is found to have committed a delinquent act that resulted in damage to the property of another, the court may order the juvenile to repair the damage to the property, or pay for the damage in cash, or, if the victim agrees, perform services for the victim, or both. In making a restitution order, the court must consider the well-being and needs of the victim and whether it is beneficial to the well being and behavior of the juvenile.

If cash payments are ordered, the court must include a determination of the amount the

juvenile is able to pay alone. Juveniles who are under the age of 14 may not be ordered to pay more than \$250 in restitution or perform more than 40 hours of service for the victim as total restitution as part of a juvenile delinquency procedure.

Because of a juvenile's usual lack of financial resources, juvenile restitution is more limited than the parental liability provision which can be enforced in a civil action. Generally, the maximum recovery from parents may not exceed \$5,000 for damages resulting from any one act of a juvenile, in addition to reasonable attorney fees and any costs and disbursements assigned to the parents by the court that are related to the expense of bringing the civil lawsuit. However, the maximum recovery by a school district from parents with custody of a minor child may not exceed \$20,000 for damages resulting from any one act of the minor child when certain conditions are met. This applies to damages caused to a school district for an act or threat that endangers the property, health or safety of persons at school or under the supervision of a school authority, or that damages the property of a school district, and that results in a substantial disruption of a school day or a school activity.

The \$20,000 cap also applies to acts resulting in violations of state law due to damage to any physical property of another, due to arson of property, including buildings, or damage of property due to explosives, or bomb scares.

All of these options offer school districts an opportunity to recover some of their losses when students cause damage or personal injury in the school context.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

Michael J. Julka (608) 286-7238

Frank C. Sutherland (608) 286-7243

Carrie M. Benedon (608) 286-7208

William L. Fahey (608) 286-7234

Joanne Harmon Curry (608) 286-7248

Todd J. Hepler (608) 286-7160

David E. Rohrer (608) 286-7249

Shana R. Lewis (608) 286-7202

Nicole J. Thibodeau (608) 286-7157

Richard F. Versteegen (608) 286-7233

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