

DLS:jal;ksm

10/25/2004

1 **AN ACT** *to amend* 938.44, 938.45 (1) and 938.45 (1m) (a), (1r), (2) and (3); and *to*
2 *create* 938.45 (1m) (title) of the statutes; **relating to:** jurisdiction over persons 17
3 years of age or older.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on recodification of ch. 938, the juvenile justice code. The draft proposes initial language for the recodification of subchapter IX, relating to jurisdiction over persons 17 years of age or older.

4 **SECTION 1.** 938.44 of the statutes is amended to read:

5 **938.44 Jurisdiction over persons 17 or older.** The court has jurisdiction over persons
6 17 years of age or ~~over as provided~~ older under ss. 938.355 (4) and 938.45 and as otherwise
7 specifically provided specified in this chapter.

8 **SECTION 2.** 938.45 (1) of the statutes is amended to read:

9 938.45 (1) ORDERS WHERE ADULT CONTRIBUTED TO OR ENCOURAGED JUVENILE'S ACTS. (a)
10 If in the hearing of a case of a juvenile alleged to be delinquent under s. 938.12 or in need of
11 protection or services under s. 938.13 it appears that any person 17 years of age or ~~over~~ older
12 has been guilty of contributing to, encouraging, or tending to cause by any act or omission,
13 such condition of the juvenile, the court may make orders with respect to the conduct of ~~such~~
14 that person in his or her relationship to the juvenile, including orders relating to determining
15 the ability of the person to provide for the maintenance or care of the juvenile and directing
16 when, how, and where funds for the maintenance or care shall be paid.

1 (b) An act or failure to act contributes to a condition of a juvenile as described in s.
2 938.12 or 938.13, ~~although~~ even if the juvenile is not ~~actually adjudicated~~ found to come
3 within the provisions of s. 938.12 or 938.13, if the natural and probable consequences of that
4 act or failure to act would be to cause the juvenile to come within the provisions of s. 938.12
5 or 938.13.

6 **SECTION 3.** 938.45 (1m) (title) of the statutes is created to read:

7 938.45 **(1m)** (title) ORDERS RELATING TO JUVENILE'S PARENT, GUARDIAN, OR LEGAL
8 CUSTODIAN.

9 **SECTION 4.** 938.45 (1m) (a), (1r), (2) and (3) of the statutes are amended to read:

10 938.45 **(1m)** (a) In a proceeding in which a juvenile has been adjudicated delinquent
11 or has been found to be in need of protection or services under s. 938.13, the court may order
12 the juvenile's parent, guardian or legal custodian to comply with any conditions determined
13 by the court to be necessary for the juvenile's welfare. An order ~~under this paragraph~~ may
14 include ~~an order to participate~~ participation in mental health treatment, anger management,
15 individual or family counseling or parent training and education, ~~and to make a requirement~~
16 for a reasonable contribution, based on ability to pay, toward the cost of those services.

17 **(1r)** ORDER FOR PARENT TO PAY RESTITUTION, FORFEITURE. (a) In a proceeding in which
18 a juvenile ~~has been~~ is found to have committed a delinquent act or a civil law or ordinance
19 violation that has resulted in damage to the property of another, or in actual physical injury
20 to another excluding pain and suffering, the court may order a parent who has custody, as
21 defined in s. 895.035 (1), of the juvenile to make reasonable restitution for the damage or
22 injury. Except for recovery for retail theft under s. 943.51, the maximum amount of any
23 restitution ordered ~~under this paragraph~~ for damage or injury resulting from any one act of a
24 juvenile or from the same act committed by 2 or more juveniles in the custody of the same

1 parent may not exceed \$5,000. ~~Any~~ The order under this paragraph shall include a finding
2 that the parent who has custody of the juvenile is financially able to pay the amount ordered
3 and may allow up to the date of expiration of the order for the payment. Any recovery under
4 this paragraph shall be reduced by the amount recovered as restitution for the same act under
5 s. 938.34 (5) or 938.343 (4).

6 (b) In a proceeding in which the court has determined under s. 938.34 (8) or 938.343
7 (2) that the imposition of a forfeiture would be in the best interest of the juvenile and in aid
8 of rehabilitation, the court may order a parent who has custody, as defined in s. 895.035 (1),
9 of the juvenile to pay the forfeiture. The amount of any forfeiture ordered ~~under this paragraph~~
10 may not exceed \$5,000. ~~Any~~ The order under this paragraph shall include a finding that the
11 parent who has custody of the juvenile is financially able to pay the amount ordered and shall
12 allow up to 12 months after the date of the order for the payment. Any recovery under this
13 paragraph shall be reduced by the amount recovered as a forfeiture for the same act under s.
14 938.34 (8) or 938.343 (2).

15 (2) RIGHT TO HEARING ON ORDERS. No order under sub. (1) (a), (1m) (a), or (1r) (a) or
16 (b) may be entered until the person who is the subject of the contemplated order is given an
17 opportunity to be heard on the contemplated order. The court shall cause notice of the time,
18 place, and purpose of the hearing to be served on the person personally at least 10 days before
19 the date of hearing. [The procedure in these cases shall, as far as practicable, be the same as
20 in other cases in the court.] At the hearing the person may be represented by counsel and may
21 produce and cross-examine witnesses. ~~Any~~ A person who fails to comply with ~~any~~ an order
22 issued by a court under sub. (1) (a), (1m) (a) or (1r) (a) or (b) may be proceeded against for
23 contempt of court. If the person's conduct involves a crime, the person may be proceeded
24 against under the criminal law.

COMMENT: In sub. (2), what does the bracketed 3rd sentence mean (“The procedure in these cases shall, as far as practicable, be the same as in other cases in the court.”)? Can this sentence be clarified? Is it necessary? If not, it should be deleted.

(3) ACTION IF ADULT CONTRIBUTING TO DELINQUENCY OF JUVENILE. If it appears at a court hearing that any person 17 years of age or older has violated s. 948.40, the court shall refer the record to the district attorney for criminal proceedings as may be warranted in the district attorney's judgment. This subsection does not ~~prevent~~ prohibit prosecution of violations of s. 948.40 without the prior reference by the court to the district attorney, ~~as in other criminal cases.~~

(END)