

SENATE BILL No. 384

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-3-2; IC 5-11-21; IC 31-37-19-5; IC 33-39-2-8; IC 35-50-5-3.

Synopsis: Annual review of unpaid restitution orders. Requires a governmental entity that is the beneficiary of a criminal or juvenile restitution order issued by a state or federal court to file annually with the court and with the state board of accounts a payment status report. Provides that the payment status report must include information on the status of the restitution order, including, if applicable, information concerning any arrearage. Requires the state board of accounts to review the status of a restitution order if it conducts an audit of a governmental entity that is the beneficiary of the restitution order. Grants the issuing court authority to facilitate enforcement of the restitution order. Allows the: (1) attorney general (in the case of a restitution order issued on behalf of the state); or (2) prosecuting attorney (in the case of a restitution order issued on behalf of a political subdivision); to bring an action to collect the amount owed under a restitution order that is more than one year in arrears. Allows the attorney general or prosecuting attorney to retain not more than 20% of the unpaid restitution order as reimbursement for the costs of bringing the action.

Effective: July 1, 2016.

Mrvan

January 12, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 384

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-6-3-2, AS AMENDED BY P.L.136-2012,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2016]: Sec. 2. (a) The attorney general shall have charge of
- 4 and direct the prosecution of all civil actions that are brought in the
- 5 name of the state of Indiana or any state agency.
- 6 (b) In no instance under this section shall the state or a state agency
- 7 be required to file a bond.
- 8 (c) This section does not affect the authority of prosecuting
- 9 attorneys to prosecute civil actions.
- 10 (d) This section does not affect the authority of the inspector general
- 11 to prosecute a civil action under IC 4-2-7-6 for the recovery of any of
- 12 the following:
- 13 (1) Funds misappropriated, diverted, missing, or unlawfully
- 14 gained.
- 15 (2) A civil penalty imposed by the state ethics commission under
- 16 IC 4-2-6-12.
- 17 (e) The attorney general may bring an action to collect unpaid



1 registration fees owed by a commercial dog broker or a commercial
2 dog breeder under IC 15-21.

3 **(f) The attorney general may bring an action to collect the**
4 **amount owed under a restitution order issued in favor of the state**
5 **if the restitution order is more than one (1) year in arrears. If the**
6 **attorney general prevails in an action brought under this**
7 **subsection, the attorney general may retain not more than twenty**
8 **percent (20%) of the amount recovered as reimbursement for the**
9 **reasonable expenses of bringing the action.**

10 SECTION 2. IC 5-11-21 IS ADDED TO THE INDIANA CODE AS
11 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2016]:

13 **Chapter 21. Restitution Orders**

14 **Sec. 1. As used in this chapter, "governmental entity" means:**

- 15 (1) the state; or
16 (2) a political subdivision (as defined in IC 36-1-2-13).

17 **Sec. 2. A governmental entity that is the beneficiary of a**
18 **restitution order issued as part of a criminal or juvenile proceeding**
19 **by a:**

- 20 (1) state court; or
21 (2) federal court;

22 **shall file annually with the court and with the state board of**
23 **accounts a payment status report.**

24 **Sec. 3. The payment status report described in section 2 of this**
25 **chapter must include the following:**

- 26 (1) A copy of the restitution order.
27 (2) The amount of restitution originally ordered.
28 (3) The amount of restitution that remains unpaid.
29 (4) The name of the person ordered to pay the restitution.
30 (5) The governmental entity entitled to receive the restitution.
31 (6) A statement regarding whether the person ordered to pay
32 restitution has met the person's obligations under the
33 restitution order in a timely manner.
34 (7) If the restitution order is in arrears, the amount of the
35 arrearage.
36 (8) Any other information relevant to the restitution order.

37 **Sec. 4. If the state board of accounts performs an audit of a**
38 **governmental entity that is the beneficiary of a restitution order**
39 **issued as part of a criminal or juvenile proceeding by a:**

- 40 (1) state court; or
41 (2) federal court;

42 **the state board of accounts shall review the status of the restitution**



1 order as part of its audit.

2 **Sec. 5. If a restitution order is more than one (1) year in arrears,**
 3 **the governmental entity that is the beneficiary of the restitution**
 4 **order may request that the:**

5 **(1) attorney general (in accordance with IC 4-6-3-2(f)); or**

6 **(2) prosecuting attorney (in accordance with IC 33-39-2-8);**

7 **bring an action to collect the amount owed under the unpaid**
 8 **restitution order.**

9 SECTION 3. IC 31-37-19-5, AS AMENDED BY P.L.147-2012,
 10 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2016]: Sec. 5. (a) This section applies if a child is a delinquent
 12 child under IC 31-37-1.

13 (b) The juvenile court may, in addition to an order under section 6
 14 of this chapter, enter at least one (1) of the following dispositional
 15 decrees:

16 (1) Order supervision of the child by the probation department as
 17 a condition of probation under this subdivision. The juvenile court
 18 shall after a determination under IC 11-8-8-5 require a child who
 19 is adjudicated a delinquent child for an act that would be an
 20 offense described in IC 11-8-8-5 if committed by an adult to
 21 register with the local law enforcement authority under IC 11-8-8.

22 (2) Order the child to receive outpatient treatment:

23 (A) at a social service agency or a psychological, a psychiatric,
 24 a medical, or an educational facility; or

25 (B) from an individual practitioner.

26 (3) Order the child to surrender the child's driver's license to the
 27 court for a specified period of time.

28 (4) Order the child to pay restitution if the victim provides
 29 reasonable evidence of the victim's loss, which the child may
 30 challenge at the dispositional hearing.

31 (5) Partially or completely emancipate the child under section 27
 32 of this chapter.

33 (6) Order the child to attend an alcohol and drug services program
 34 established under IC 12-23-14.

35 (7) Order the child to perform community restitution or service
 36 for a specified period of time.

37 (8) Order wardship of the child as provided in section 9 of this
 38 chapter.

39 (c) If the juvenile court orders supervision of the child by the
 40 probation department under subsection (b)(1), the child or the child's
 41 parent, guardian, or custodian is responsible for any costs resulting
 42 from the participation in a rehabilitative service or educational class



1 provided by the probation department. Any costs collected for services
 2 or classes provided by the probation department shall be deposited in
 3 the county supplemental juvenile probation services fund.

4 **(d) If a payment status report received by a juvenile court under**
 5 **IC 5-11-21-2 from a governmental entity that is the beneficiary of**
 6 **a restitution order issued by the court shows that the child ordered**
 7 **to make restitution has failed to comply with the court's restitution**
 8 **order, the court, on its own motion or upon motion of the**
 9 **governmental entity, may take one (1) or more of the following**
 10 **actions:**

11 **(1) Issue an order to show cause.**

12 **(2) Following a hearing, find the child to be in contempt of**
 13 **court if the child has knowingly or intentionally failed to**
 14 **comply with the restitution order.**

15 **(3) Take any other judicial action to facilitate compliance with**
 16 **the restitution order.**

17 SECTION 4. IC 33-39-2-8 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2016]: **Sec. 8. (a) The prosecuting attorney may bring an action**
 20 **to collect the amount owed under a restitution order issued in favor**
 21 **of a political subdivision (as defined in IC 36-1-2-13) if the**
 22 **restitution order is more than one (1) year in arrears.**

23 **(b) If the prosecuting attorney prevails in an action brought**
 24 **under this section, the prosecuting attorney may retain not more**
 25 **than twenty percent (20%) of the amount recovered as**
 26 **reimbursement for the reasonable expenses of bringing the action.**

27 SECTION 5. IC 35-50-5-3, AS AMENDED BY P.L.180-2014,
 28 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2016]: **Sec. 3. (a) Except as provided in subsection (i), (j), (l),**
 30 **or (m), in addition to any sentence imposed under this article for a**
 31 **felony or misdemeanor, the court may, as a condition of probation or**
 32 **without placing the person on probation, order the person to make**
 33 **restitution to the victim of the crime, the victim's estate, or the family**
 34 **of a victim who is deceased. The court shall base its restitution order**
 35 **upon a consideration of:**

36 **(1) property damages of the victim incurred as a result of the**
 37 **crime, based on the actual cost of repair (or replacement if repair**
 38 **is inappropriate);**

39 **(2) medical and hospital costs incurred by the victim (before the**
 40 **date of sentencing) as a result of the crime;**

41 **(3) the cost of medical laboratory tests to determine if the crime**
 42 **has caused the victim to contract a disease or other medical**



- 1 condition;
- 2 (4) earnings lost by the victim (before the date of sentencing) as
- 3 a result of the crime including earnings lost while the victim was
- 4 hospitalized or participating in the investigation or trial of the
- 5 crime; and
- 6 (5) funeral, burial, or cremation costs incurred by the family or
- 7 estate of a homicide victim as a result of the crime.
- 8 (b) A restitution order under subsection (a), (i), (j), (l), or (m), is a
- 9 judgment lien that:
- 10 (1) attaches to the property of the person subject to the order;
- 11 (2) may be perfected;
- 12 (3) may be enforced to satisfy any payment that is delinquent
- 13 under the restitution order by the person in whose favor the order
- 14 is issued or the person's assignee; and
- 15 (4) expires;
- 16 in the same manner as a judgment lien created in a civil proceeding.
- 17 (c) When a restitution order is issued under subsection (a), the
- 18 issuing court may order the person to pay the restitution, or part of the
- 19 restitution, directly to:
- 20 (1) the victim services division of the Indiana criminal justice
- 21 institute in an amount not exceeding:
- 22 (A) the amount of the award, if any, paid to the victim under
- 23 IC 5-2-6.1; and
- 24 (B) the cost of the reimbursements, if any, for emergency
- 25 services provided to the victim under IC 16-10-1.5 (before its
- 26 repeal) or IC 16-21-8; or
- 27 (2) a probation department that shall forward restitution or part of
- 28 restitution to:
- 29 (A) a victim of a crime;
- 30 (B) a victim's estate; or
- 31 (C) the family of a victim who is deceased.
- 32 The victim services division of the Indiana criminal justice institute
- 33 shall deposit the restitution it receives under this subsection in the
- 34 violent crime victims compensation fund established by IC 5-2-6.1-40.
- 35 (d) When a restitution order is issued under subsection (a), (i), (j),
- 36 (l), or (m), the issuing court shall send a certified copy of the order to
- 37 the clerk of the circuit court in the county where the felony or
- 38 misdemeanor charge was filed. The restitution order must include the
- 39 following information:
- 40 (1) The name and address of the person that is to receive the
- 41 restitution.
- 42 (2) The amount of restitution the person is to receive.



1 Upon receiving the order, the clerk shall enter and index the order in
2 the circuit court judgment docket in the manner prescribed by
3 IC 33-32-3-2. The clerk shall also notify the department of insurance
4 of an order of restitution under subsection (i).

5 (e) An order of restitution under subsection (a), (i), (j), (l), or (m),
6 does not bar a civil action for:

7 (1) damages that the court did not require the person to pay to the
8 victim under the restitution order but arise from an injury or
9 property damage that is the basis of restitution ordered by the
10 court; and

11 (2) other damages suffered by the victim.

12 (f) Regardless of whether restitution is required under subsection (a)
13 as a condition of probation or other sentence, the restitution order is not
14 discharged by the completion of any probationary period or other
15 sentence imposed for a felony or misdemeanor.

16 (g) A restitution order under subsection (a), (i), (j), (l), or (m), is not
17 discharged by the liquidation of a person's estate by a receiver under
18 IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6,
19 IC 34-1-12, or IC 34-2-7 before their repeal).

20 (h) The attorney general may pursue restitution ordered by the court
21 under subsections (a) and (c) on behalf of the victim services division
22 of the Indiana criminal justice institute established under IC 5-2-6-8.

23 (i) The court may order the person convicted of an offense under
24 IC 35-43-9 to make restitution to the victim of the crime. The court
25 shall base its restitution order upon a consideration of the amount of
26 money that the convicted person converted, misappropriated, or
27 received, or for which the convicted person conspired. The restitution
28 order issued for a violation of IC 35-43-9 must comply with
29 subsections (b), (d), (e), and (g), and is not discharged by the
30 completion of any probationary period or other sentence imposed for
31 a violation of IC 35-43-9.

32 (j) The court may order the person convicted of an offense under
33 IC 35-43-5-3.5 to make restitution to the victim of the crime, the
34 victim's estate, or the family of a victim who is deceased. The court
35 shall base its restitution order upon a consideration of the amount of
36 fraud or harm caused by the convicted person and any reasonable
37 expenses (including lost wages) incurred by the victim in correcting the
38 victim's credit report and addressing any other issues caused by the
39 commission of the offense under IC 35-43-5-3.5. If, after a person is
40 sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's
41 estate, or the family of a victim discovers or incurs additional expenses
42 that result from the convicted person's commission of the offense under



1 IC 35-43-5-3.5, the court may issue one (1) or more restitution orders
 2 to require the convicted person to make restitution, even if the court
 3 issued a restitution order at the time of sentencing. For purposes of
 4 entering a restitution order after sentencing, a court has continuing
 5 jurisdiction over a person convicted of an offense under IC 35-43-5-3.5
 6 for five (5) years after the date of sentencing. Each restitution order
 7 issued for a violation of IC 35-43-5-3.5 must comply with subsections
 8 (b), (d), (e), and (g), and is not discharged by the completion of any
 9 probationary period or other sentence imposed for an offense under
 10 IC 35-43-5-3.5.

11 (k) The court shall order a person convicted of an offense under
 12 IC 35-42-3.5 to make restitution to the victim of the crime in an amount
 13 equal to the greater of the following:

14 (1) The gross income or value to the person of the victim's labor
 15 or services.

16 (2) The value of the victim's labor as guaranteed under the
 17 minimum wage and overtime provisions of:

18 (A) the federal Fair Labor Standards Act of 1938, as amended
 19 (29 U.S.C. 201-209); or

20 (B) IC 22-2-2 (Minimum Wage);

21 whichever is greater.

22 (l) The court shall order a person who:

23 (1) is convicted of dealing in methamphetamine under
 24 IC 35-48-4-1.1; and

25 (2) manufactured the methamphetamine on property owned by
 26 another person, without the consent of the property owner;

27 to pay liquidated damages to the property owner in the amount of ten
 28 thousand dollars (\$10,000) or to pay actual damages to the property
 29 owner, including lost rent and the costs of decontamination by an
 30 inspector approved under IC 13-14-1-15.

31 (m) The court shall order a person who:

32 (1) is convicted of dealing in marijuana under
 33 IC 35-48-4-10(a)(1)(A); and

34 (2) manufactured the marijuana on property owned by another
 35 person, without the consent of the property owner;

36 to pay liquidated damages to the property owner in the amount of two
 37 thousand dollars (\$2,000).

38 **(n) If a payment status report received by the court under**
 39 **IC 5-11-21-2 from a governmental entity that is the beneficiary of**
 40 **a restitution order issued by the court shows that the person**
 41 **ordered to make restitution has failed to comply with the court's**
 42 **restitution order, the court, on its own motion or upon motion of**



1 the governmental entity, may take one (1) or more of the following
2 actions:

- 3 (1) Issue an order to show cause.
4 (2) Following a hearing, find the person ordered to make
5 restitution to be in contempt of court if the person has
6 knowingly or intentionally failed to comply with the
7 restitution order.
8 (3) Take any other judicial action to facilitate compliance with
9 the restitution order.

