SENATE BILL No. 373

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-3-2; IC 5-11-20; 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 annually file a payment status report with the court and with the state board of accounts. 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 a restitution order. Grants the issuing court authority to facilitate enforcement of the restitution order, and provides that the attorney general (in the case of a restitution order issued on behalf of the state) or the prosecuting attorney (in the case of a restitution order issued on behalf of a political subdivision) may bring an action to collect a restitution order that is more than one year in arrears. Permits the attorney general or prosecuting attorney to retain not more than 10% of the unpaid restitution order as reimbursement for the costs of bringing the action.

Effective: July 1, 2011.

Mrvan

January 11, 2011, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 373

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:

SECTION 1. IC 4-6-3-2, AS AMENDED BY P.L.111-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

(b) In no instance under this section shall the state or a state agency be required to file a bond.

(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

(e) The attorney general may bring an action to collect unpaid registration fees owed by a commercial dog broker or a commercial dog breeder under IC 15-21.

(f) The attorney general may bring an action to collect a restitution order issued in favor of the state if the restitution order

is more than one (1) year in arrears. If the attorney general prevails in an action brought under this subsection, the attorney general may retain not more than ten percent (10%) of the amount recovered as reimbursement for the reasonable expenses of bringing the action.

SECTION 2. IC 5-11-20 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 20. Restitution Orders

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

(1) the state; or

(2) a political subdivision (as defined in IC 36-1-2-13).

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

(1) state court; or

(2) federal court;

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

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

(1) A copy of the restitution order.

(2) The amount of restitution originally ordered.

(3) The amount of restitution that remains unpaid.

(4) The name of the person ordered to pay the restitution.

(5) The governmental entity entitled to receive the restitution.

(6) A statement regarding whether the person ordered to pay restitution has met the person's obligations under the restitution order in a timely manner.

(7) If the restitution order is in arrears, the amount of the arrearage.

(8) Any other information relevant to the restitution order.

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

(1) state court; or

(2) federal court;

the state board of accounts shall review the status of the restitution order as part of its audit.

Sec. 5. If a restitution order is more than one (1) year in arrears, the governmental entity may request that the attorney general (in accordance with IC 4-6-3-2) or the prosecuting attorney (in

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accordance with IC 33-39-2-8) bring an action to collect the amount owed under the unpaid restitution order.

SECTION 3. IC 31-37-19-5, AS AMENDED BY P.L.146-2008, SECTION 650, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) This section applies if a child is a delinquent child under IC 31-37-1.

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

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

(2) Order the child to receive outpatient treatment:

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

(B) from an individual practitioner.

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

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

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

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

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

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

(c) If a payment status report received by a juvenile court under IC 5-11-20-2 from a governmental entity that is the beneficiary of a restitution order issued by the court shows that the child ordered to make restitution has failed to comply with the court's restitution order, the court, on its own motion or upon motion of the governmental entity, may take one (1) or more of the following actions:

(1) Issue an order to show cause.

(2) Following a hearing, find the child to be in contempt of court if the child has knowingly or intentionally failed to

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comply with the restitution order.

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

SECTION 4. IC 33-39-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8. The prosecuting attorney may bring an action to collect a restitution order issued in favor of a political subdivision (as defined in IC 36-1-2-13) if the restitution order is more than one (1) year in arrears. If the prosecuting attorney prevails in an action brought under this section, the prosecuting attorney may retain not more than ten percent (10%) of the amount recovered as reimbursement for the reasonable expenses of bringing the action.**

SECTION 5. IC 35-50-5-3, AS AMENDED BY P.L.173-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) Except as provided in subsection (i) or (j), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

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

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

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

(4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a), ~~or~~ (i), or (j) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order

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is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

(1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or

(2) a probation department that shall forward restitution or part of restitution to:

(A) a victim of a crime;

(B) a victim's estate; or

(C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a), (i), or (j), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

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

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

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

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other

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sentence imposed for a felony or misdemeanor.

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

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

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

(j) The court may order the person convicted of an offense under IC 35-43-5-3.5 to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of the amount of fraud or harm caused by the convicted person and any reasonable expenses (including lost wages) incurred by the victim in correcting the victim's credit report and addressing any other issues caused by the commission of the offense under IC 35-43-5-3.5. If, after a person is sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's estate, or the family of a victim discovers or incurs additional expenses that result from the convicted person's commission of the offense under IC 35-43-5-3.5, the court may issue one (1) or more restitution orders to require the convicted person to make restitution, even if the court issued a restitution order at the time of sentencing. For purposes of entering a restitution order after sentencing, a court has continuing jurisdiction over a person convicted of an offense under IC 35-43-5-3.5 for five (5) years after the date of sentencing. Each restitution order issued for a violation of IC 35-43-5-3.5 must comply with subsections (b), (d), (e), and (g) and is not discharged by the completion of any probationary period or other sentence imposed for an offense under IC 35-43-5-3.5.

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

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

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or services.

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

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

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

whichever is greater.

(l) If a payment status report received by the court under IC 5-11-20-2 from a governmental entity that is the beneficiary of a restitution order issued by the court shows that the person ordered to make restitution has failed to comply with the court's restitution order, the court, on its own motion or upon motion of the governmental entity, may take one (1) or more of the following actions:

(1) Issue an order to show cause.

(2) Following a hearing, find the person ordered to make restitution to be in contempt of court if the person has knowingly or intentionally failed to comply with the restitution order.

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

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