

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 2011 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1091

AN ACT to amend the Indiana Code concerning property.

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

SECTION 1. IC 32-30-6-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 9.5. (a) If a court finds that an agricultural operation that is the subject of a nuisance action:**

**(1) was not a nuisance under section 9 of this chapter and that the nuisance action was frivolous, the court shall award court costs and reasonable attorney's fees, to the defendant in the action; or**

**(2) was a nuisance under this chapter and that the defense of the nuisance action was frivolous, the court shall award court costs, including reasonable attorney's fees, to the plaintiff in the action.**

**(b) Reasonable attorney's fees under subsection (a):**

**(1) shall be calculated based on the reasonable and customary hourly rates charged in the county in which the action occurred; and**

**(2) may include fees for only one (1) attorney, no matter how many attorneys were actually employed by the party.**

**(c) The determination that an action was initiated or maintained frivolously may not be based on the mere fact that a party did not prevail.**

SECTION 2. IC 35-50-5-3, AS AMENDED BY P.L.173-2006,

HEA 1091 — Concur+



C  
O  
P  
Y

SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Except as provided in subsection (i), ~~or (j), (l), or (m)~~, 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), (l), or (m)~~, 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 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

C  
O  
P  
Y



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), **(l), or (m)**, 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), **(l), or (m)**, 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 sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a), (i), ~~or~~ (j), **(l), or (m)**, 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

C  
O  
P  
Y



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 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) The court shall order a person who:**

- (1) is convicted of dealing in methamphetamine under IC 35-48-4-1.1(a)(1)(A); and**
  - (2) manufactured the methamphetamine on property owned by another person, without the consent of the property owner;**
- to pay liquidated damages to the property owner in the amount of**

C  
O  
P  
Y



**ten thousand dollars (\$10,000).**

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

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

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

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

**C  
o  
p  
y**



\_\_\_\_\_  
Speaker of the House of Representatives

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
President Pro Tempore

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

C  
O  
P  
Y

HEA 1091 — Concur+

