
HOUSE BILL No. 1538

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2; IC 35-33-5-5; IC 35-50-5.

Synopsis: Disposition of stolen secondhand goods. Provides that if secondhand property held by a secondhand goods merchant or pawnbroker becomes the subject of a criminal proceeding, upon the final disposition of the criminal proceeding, the secondhand property must be returned to: (1) the rightful owner of the secondhand property; or (2) if the secondhand goods merchant or pawnbroker is not the rightful owner of the secondhand property and the rightful owner cannot be ascertained, the secondhand goods merchant or pawnbroker. Provides that if: (1) a defendant in the criminal proceeding who sold the secondhand property to the secondhand goods merchant or pawnbroker is convicted of stealing the secondhand property or receiving the stolen secondhand property; and (2) the secondhand property is not returned to the secondhand goods merchant or pawnbroker; the court shall order the defendant to pay restitution to the secondhand goods merchant or pawnbroker in the amount that the secondhand goods merchant or pawnbroker paid to the defendant to acquire the secondhand property. Makes conforming amendments.

Effective: July 1, 2013.

Price, Burton

January 22, 2013, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1538



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 35-31.5-2-288.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2013]: **Sec. 288.5. (a) "Secondhand goods**
4 **merchant", for purposes of IC 35-50-5-3.5, means a person who**
5 **purchases secondhand property for resale.**

6 **(b) The term includes the following:**
7 **(1) A dealer in secondhand watches (IC 24-4-3).**
8 **(2) A dealer in used jewelry (IC 24-4-13).**
9 **(3) An architectural salvage material dealer (IC 24-4-16).**
10 **(4) A valuable metal dealer (IC 25-37.5).**
11 **(c) The term does not include a person who purchases**
12 **secondhand property for resale on fewer than five (5) days per**
13 **calendar year.**

14 SECTION 2. IC 35-31.5-2-288.6 IS ADDED TO THE INDIANA
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2013]: **Sec. 288.6. (a) "Secondhand**
17 **property", for purposes of:**



1 **(1) section 288.5 of this chapter; and**
 2 **(2) IC 35-50-5-3.5;**
 3 **means a used or secondhand item of tangible personal property.**
 4 **(b) The term does not include property:**
 5 **(1) sold on consignment; or**
 6 **(2) required to be titled or registered.**
 7 SECTION 3. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,
 8 SECTION 225, IS AMENDED TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) All items of property seized
 10 by any law enforcement agency as a result of an arrest, search warrant,
 11 or warrantless search shall be securely held by the law enforcement
 12 agency under the order of the court trying the cause, except as provided
 13 in this section.
 14 (b) Evidence that consists of property obtained unlawfully from its
 15 owner may be returned by the law enforcement agency to the owner
 16 before trial, in accordance with IC 35-43-4-4(h).
 17 (c) **Subject to IC 35-50-5-3.5**, following the final disposition of the
 18 cause at trial level or any other final disposition the following shall be
 19 done:
 20 (1) Property which may be lawfully possessed shall be returned
 21 to its rightful owner, if known. If ownership is unknown, a
 22 reasonable attempt shall be made by the law enforcement agency
 23 holding the property to ascertain ownership of the property. After
 24 ninety (90) days from the time:
 25 (A) the rightful owner has been notified to take possession of
 26 the property; or
 27 (B) a reasonable effort has been made to ascertain ownership
 28 of the property;
 29 the law enforcement agency holding the property shall, at a
 30 convenient time, dispose of this property at a public auction. The
 31 proceeds of this property shall be paid into the county general
 32 fund.
 33 (2) Except as provided in subsection (e), property, the possession
 34 of which is unlawful, shall be destroyed by the law enforcement
 35 agency holding it sixty (60) days after final disposition of the
 36 cause.
 37 (3) A firearm that has been seized from a person who is
 38 dangerous (as defined in IC 35-47-14-1) shall be retained,
 39 returned, or disposed of in accordance with IC 35-47-14.
 40 (d) If any property described in subsection (c) was admitted into
 41 evidence in the cause, the property shall be disposed of in accordance
 42 with an order of the court trying the cause.

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1 (e) A law enforcement agency may destroy or cause to be destroyed
2 chemicals, controlled substances, or chemically contaminated
3 equipment (including drug paraphernalia as described in
4 IC 35-48-4-8.5) associated with the illegal manufacture of drugs or
5 controlled substances without a court order if all the following
6 conditions are met:

7 (1) The law enforcement agency collects and preserves a
8 sufficient quantity of the chemicals, controlled substances, or
9 chemically contaminated equipment to demonstrate that the
10 chemicals, controlled substances, or chemically contaminated
11 equipment was associated with the illegal manufacture of drugs
12 or controlled substances.

13 (2) The law enforcement agency takes photographs of the illegal
14 drug manufacturing site that accurately depict the presence and
15 quantity of chemicals, controlled substances, and chemically
16 contaminated equipment.

17 (3) The law enforcement agency completes a chemical inventory
18 report that describes the type and quantities of chemicals,
19 controlled substances, and chemically contaminated equipment
20 present at the illegal manufacturing site.

21 The photographs and description of the property shall be admissible
22 into evidence in place of the actual physical evidence.

23 (f) For purposes of preserving the record of any conviction on
24 appeal, a photograph demonstrating the nature of the property, and an
25 adequate description of the property must be obtained before the
26 disposition of the property. In the event of a retrial, the photograph and
27 description of the property shall be admissible into evidence in place
28 of the actual physical evidence. All other rules of law governing the
29 admissibility of evidence shall apply to the photographs.

30 (g) The law enforcement agency disposing of property in any
31 manner provided in subsection (b), (c), or (e) shall maintain certified
32 records of any disposition under subsection (b), (c), or (e). Disposition
33 by destruction of property shall be witnessed by two (2) persons who
34 shall also attest to the destruction.

35 (h) This section does not affect the procedure for the disposition of
36 firearms seized by a law enforcement agency.

37 (i) A law enforcement agency that disposes of property by auction
38 under this section shall permanently stamp or otherwise permanently
39 identify the property as property sold by the law enforcement agency.

40 (j) Upon motion of the prosecuting attorney, the court shall order
41 property seized under IC 34-24-1 transferred, subject to the perfected
42 liens or other security interests of any person in the property, to the

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1 appropriate federal authority for disposition under 18 U.S.C. 981(e), 19
 2 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted
 3 by the United States Department of Justice.

4 SECTION 4. IC 35-50-5-3, AS AMENDED BY P.L.73-2012,
 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2013]: Sec. 3. (a) **Subject to section 3.5 of this chapter and**
 7 except as provided in subsection (i), (j), (l), or (m), in addition to any
 8 sentence imposed under this article for a felony or misdemeanor, the
 9 court may, as a condition of probation or without placing the person on
 10 probation, order the person to make restitution to the victim of the
 11 crime, the victim's estate, or the family of a victim who is deceased.
 12 The court shall base its restitution order upon a consideration of:

- 13 (1) property damages of the victim incurred as a result of the
 14 crime, based on the actual cost of repair (or replacement if repair
 15 is inappropriate);
- 16 (2) medical and hospital costs incurred by the victim (before the
 17 date of sentencing) as a result of the crime;
- 18 (3) the cost of medical laboratory tests to determine if the crime
 19 has caused the victim to contract a disease or other medical
 20 condition;
- 21 (4) earnings lost by the victim (before the date of sentencing) as
 22 a result of the crime including earnings lost while the victim was
 23 hospitalized or participating in the investigation or trial of the
 24 crime; and
- 25 (5) funeral, burial, or cremation costs incurred by the family or
 26 estate of a homicide victim as a result of the crime.

27 (b) A restitution order under subsection (a), (i), (j), (l), or (m), is a
 28 judgment lien that:

- 29 (1) attaches to the property of the person subject to the order;
- 30 (2) may be perfected;
- 31 (3) may be enforced to satisfy any payment that is delinquent
 32 under the restitution order by the person in whose favor the order
 33 is issued or the person's assignee; and
- 34 (4) expires;

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

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

- 39 (1) the victim services division of the Indiana criminal justice
 40 institute in an amount not exceeding:
 - 41 (A) the amount of the award, if any, paid to the victim under
 42 IC 5-2-6.1; and

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1 (B) the cost of the reimbursements, if any, for emergency
 2 services provided to the victim under IC 16-10-1.5 (before its
 3 repeal) or IC 16-21-8; or
 4 (2) a probation department that shall forward restitution or part of
 5 restitution to:
 6 (A) a victim of a crime;
 7 (B) a victim's estate; or
 8 (C) the family of a victim who is deceased.

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

12 (d) When a restitution order is issued under subsection (a), (i), (j),
 13 (l), or (m), the issuing court shall send a certified copy of the order to
 14 the clerk of the circuit court in the county where the felony or
 15 misdemeanor charge was filed. The restitution order must include the
 16 following information:
 17 (1) The name and address of the person that is to receive the
 18 restitution.
 19 (2) The amount of restitution the person is to receive.

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

24 (e) An order of restitution under subsection (a), (i), (j), (l), or (m),
 25 does not bar a civil action for:
 26 (1) damages that the court did not require the person to pay to the
 27 victim under the restitution order but arise from an injury or
 28 property damage that is the basis of restitution ordered by the
 29 court; and
 30 (2) other damages suffered by the victim.

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

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

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

42 (i) The court may order the person convicted of an offense under

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

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

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

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

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

37 (A) the federal Fair Labor Standards Act of 1938, as amended
 38 (29 U.S.C. 201-209); or

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

40 whichever is greater.

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

42 (1) is convicted of dealing in methamphetamine under

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1 IC 35-48-4-1.1(a)(1)(A); and
 2 (2) manufactured the methamphetamine on property owned by
 3 another person, without the consent of the property owner;
 4 to pay liquidated damages to the property owner in the amount of ten
 5 thousand dollars (\$10,000).

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

7 (1) is convicted of dealing in marijuana under
 8 IC 35-48-4-10(a)(1)(A); and
 9 (2) manufactured the marijuana on property owned by another
 10 person, without the consent of the property owner;
 11 to pay liquidated damages to the property owner in the amount of two
 12 thousand dollars (\$2,000).

13 SECTION 5. IC 35-50-5-3.5 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2013]: **Sec. 3.5. (a) If:**

16 **(1) secondhand property held by a:**

17 **(A) secondhand goods merchant; or**

18 **(B) pawnbroker licensed under IC 28-7-5;**

19 **becomes the subject of a criminal proceeding; and**

20 **(2) a defendant in the criminal proceeding:**

21 **(A) sold the secondhand property to the:**

22 **(i) secondhand goods merchant; or**

23 **(ii) pawnbroker; and**

24 **(B) is charged with:**

25 **(i) stealing the secondhand property; or**

26 **(ii) receiving the stolen secondhand property;**

27 **upon the final disposition of the criminal proceeding, the**
 28 **secondhand property must be returned as provided in subsection**
 29 **(b).**

30 **(b) Secondhand property described in subsection (a) must be**
 31 **returned:**

32 **(1) to the rightful owner of the secondhand property as**
 33 **provided in IC 35-33-5-5; or**

34 **(2) if:**

35 **(A) the:**

36 **(i) secondhand goods merchant; or**

37 **(ii) pawnbroker;**

38 **is not the rightful owner of the secondhand property; and**

39 **(B) the rightful owner cannot be ascertained as provided**
 40 **under IC 35-33-5-5(c);**

41 **to the secondhand goods merchant or pawnbroker.**

42 **(c) If:**

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1 **(1) a defendant described in subsection (a) is convicted of:**
2 **(A) stealing the secondhand property; or**
3 **(B) receiving the stolen secondhand property; and**
4 **(2) the secondhand property is not returned to the:**
5 **(A) secondhand goods merchant; or**
6 **(B) pawnbroker;**
7 **under subsection (b);**
8 **the court shall order the defendant to pay restitution to the**
9 **secondhand goods merchant or pawnbroker as provided in section**
10 **3 of this chapter in the amount that the secondhand goods**
11 **merchant or pawnbroker paid to the defendant to acquire the**
12 **secondhand property.**

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