

**2015 DRAFTING REQUEST**

**Bill**

Received: 12/18/2015 Received By: phurley  
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May Contact: By/Representing: Lauren  
Subject: Criminal Law - victims Drafter: phurley  
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Submit via email: YES  
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**Pre Topic:**

No specific pre topic given

**Topic:**

Restitution changes

**Instructions:**

See attached

**Drafting History:**

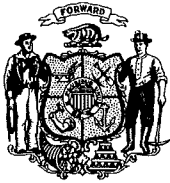
<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 12/18/2015	kfollett 12/21/2015	_____	lparisi 12/21/2015	mbarman 12/21/2015	

Per PJH ?

FE Sent For:

None  
Needed

<END>



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1513/1  
PJH:kjf

2015 BILL

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1 **AN ACT** *to renumber* 973.20 (10); *to amend* 71.935 (1) (b), 71.935 (2), 301.32 (1),  
2 302.13, 304.074 (2), 812.44 (3), 814.62 (1) and 973.20 (12) (a); and *to create*  
3 71.93 (1) (a) 7m., 71.93 (3) (a) 1m., 71.935 (1) (ar), 304.074 (3m), 812.405, 973.20  
4 (10) (b), 973.20 (11) (c), 973.20 (11) (d) and 973.20 (11) (e) of the statutes;  
5 **relating to:** restitution owed to victims of crime.

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***Analysis by the Legislative Reference Bureau***

This bill makes changes to the procedures for providing restitution to victims of crime. Under current law, when a court imposes a sentence on a defendant for the commission of a crime, the court may order the defendant to make full or partial restitution to any victim of a crime considered at sentencing (or his or her estate, if the victim is deceased). A court may require the defendant to pay the amount ordered immediately, to pay the amount ordered in full by a particular date, or to make specified payments. Under current law, restitution may be collected from the defendant by the clerk of courts or, if the defendant is under the supervision of the Department of Corrections (DOC), by DOC.

If the defendant still owes unpaid restitution at the time he or she has completed his or her sentence and is no longer supervised by DOC, the victim who is owed restitution may collect payments by garnishing wages earned by the defendant. Under current law, a garnishment order lasts for 13 weeks, after which time it may be renewed for additional 13-week periods until the restitution is paid in full.

**BILL**

Under current law, DOC may collect from a prisoner a portion of the wages a prisoner earns and a portion of other moneys held by the prisoner in order to pay restitution if a court orders DOC to do so. Additionally, under current law, DOC is required to collect a fee from certain probationers, parolees, and persons on extended supervision to reimburse DOC partially for its costs in providing supervision and services (supervision fees). Currently, DOC may certify to the Department of Revenue (DOR) any amount a person owes toward supervision fees so that DOR may withhold that amount from any state tax refund the person receives.

This bill allows DOC to charge, but prohibits DOC from collecting, a reimbursement fee from a probationer, parolee, or person on extended supervision unless all restitution payments due from the person have been paid by the time the reimbursement fee is collected. Additionally, the bill requires a court to order a defendant to authorize DOC to withhold a portion of any wages earned or any other moneys held by the defendant while he or she is in prison in order to pay restitution.

Under the bill, if restitution remains unpaid and a victim seeks garnishment of a defendant's wages, any garnishment order remains in place until the restitution is paid in full. Additionally, under the bill, if a defendant fails to make restitution payment in full within the time period ordered by the court, or if the defendant is delinquent in making payments toward restitution as ordered, the clerk of courts or DOC may certify to DOR the amount of restitution owed, and DOR may withhold that amount from any state tax refund the defendant receives. The bill also requires DOC and any clerk of court that collects restitution to submit an annual report to the legislature that sets forth the amounts of restitution it collects each year.

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

1           **SECTION 1.** 71.93 (1) (a) 7m. of the statutes is created to read:

2           71.93 (1) (a) 7m. An amount owed pursuant to an order under s. 973.20 (1r),  
3 if the department of corrections has certified the amount under s. 973.20 (10) (b).

4           **SECTION 2.** 71.93 (3) (a) 1m. of the statutes is created to read:

5           71.93 (3) (a) 1m. Debt certified under s. 973.20 (10) (b).

6           **SECTION 3.** 71.935 (1) (ar) of the statutes is created to read:

7           71.935 (1) (ar) "Debt related to victim restitution" means amount owed  
8 pursuant to an order under s. 973.20 (1r), if a clerk of court for a county has certified  
9 the amount under s. 973.20 (10) (b).

10          **SECTION 4.** 71.935 (1) (b) of the statutes is amended to read:

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1           71.935 (1) (b) “Debtor” means a person who owes a debt related to victim  
2 restitution or who owes a debt to a municipality or county.

3           **SECTION 5.** 71.935 (2) of the statutes is amended to read:

4           71.935 (2) A municipality or county may certify to the department any debt  
5 owed to it. Not later than 5 days after certification under this section or under s.  
6 973.20 (10) (b), the municipality or county shall notify the debtor in writing of its  
7 certification of the debt to the department, of the basis of the certification and of the  
8 debtor’s right to appeal and, in the case of parking citations, of the debtor’s right to  
9 contest the citation. At the time of certification, the municipality or county shall  
10 furnish to the department the name and social security number or operator’s license  
11 number of each individual debtor and the name and federal employer identification  
12 number of each other debtor.

13           **SECTION 6.** 301.32 (1) of the statutes is amended to read:

14           301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.  
15 All money and other property delivered to an employee of any state correctional  
16 institution for the benefit of a prisoner or resident shall be delivered to the warden  
17 or superintendent, who shall enter the property upon his or her accounts to the credit  
18 of the prisoner or resident. The property may be used only under the direction and  
19 with the approval of the superintendent or warden and for the crime victim and  
20 witness assistance surcharge under s. 973.045 (4), the delinquency victim and  
21 witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid  
22 analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s.  
23 973.042, the drug offender diversion surcharge under s. 973.043, victim restitution  
24 under s. 973.20 (11) (c), or the benefit of the prisoner or resident. If the money  
25 remains uncalled for for one year after the prisoner’s or resident’s death or departure

**BILL****SECTION 6**

1 from the state correctional institution, the superintendent shall deposit it in the  
2 general fund. If any prisoner or resident leaves property, other than money, uncalled  
3 for at a state correctional institution for one year, the superintendent shall sell the  
4 property and deposit the proceeds in the general fund, donate the property to a public  
5 agency or private, nonprofit organization or destroy the property. If any person  
6 satisfies the department, within 5 years after the deposit, of his or her right to the  
7 deposit, the department shall direct the department of administration to draw its  
8 warrant in favor of the claimant and it shall charge the same to the appropriation  
9 made by s. 20.913 (3) (bm).

10 **SECTION 7.** 302.13 of the statutes is amended to read:

11 **302.13 Preservation of property an inmate brings to prison.** The  
12 department shall preserve money and effects, except clothes, in the possession of an  
13 inmate when admitted to the prison and, subject to the crime victim and witness  
14 assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis  
15 surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042,  
16 ~~and the drug offender diversion surcharge under s. 973.043, and victim restitution~~  
17 under s. 973.20 (11) (c) shall restore the money and effects to the inmate when  
18 discharged.

19 **SECTION 8.** 304.074 (2) of the statutes, as affected by 2015 Wisconsin Act 55,  
20 is amended to read:

21 304.074 (2) The department shall charge a reasonable fee as determined by the  
22 department to probationers, parolees, and persons on extended supervision to  
23 partially reimburse the department for the costs of providing supervision and  
24 services. ~~The~~ Subject to sub. (3m), the department shall collect moneys for the fees

**BILL**

1 charged under this subsection and credit those moneys to the appropriation account  
2 under s. 20.410 (1) (gf).

3 **SECTION 9.** 304.074 (3m) of the statutes is created to read:

4 304.074 (3m) The department may not collect a fee charged under this section  
5 until all restitution payments due pursuant to any order under s. 973.20 from the  
6 probationer, parolee, or person on extended supervision have been paid.

7 **SECTION 10.** 812.405 of the statutes is created to read:

8 **812.405 Garnishment of earnings to satisfy an order for restitution.**

9 Notwithstanding ss. 812.35 and 812.40, a garnishment of earnings payable to a  
10 debtor who owes victim restitution ordered under s. 973.20 (1r) remains valid and  
11 effective until the judgment is satisfied, unless sooner terminated by order of the  
12 court.

13 **SECTION 11.** 812.44 (3) of the statutes is amended to read:

14 812.44 (3) The earnings garnishment form issued by the clerk under s. 812.35  
15 (2) shall be in substantially the following form:

16 STATE OF WISCONSIN

17 CIRCUIT COURT: .... County

18 \_\_\_\_\_

19 A.B., Creditor

20 vs.

File or Reference Number ....

21 C.D., Debtor

EARNINGS

22 and

GARNISHMENT

23 E.F., Garnishee

24 \_\_\_\_\_

25 THE STATE OF WISCONSIN, To the garnishee:

**BILL****SECTION 11**

1           The creditor has been awarded a court judgment that has not been paid. As a  
2 result, the creditor claims that a total of \$.... is owed by the debtor, as follows:

3           A. Unpaid balance on judgment   \$....

4           B. Unpaid postjudgment interest   \$....

5           C. Costs of this earnings garnishment  
6             (estimated)   \$....

7           **TOTAL**   \$....

8           The creditor believes that you will owe the debtor for earnings within the next  
9 13 weeks. If the \$15 fee is tendered with these papers, you are directed by the court  
10 to do the following:

11   **DETERMINE WHETHER YOU WILL**  
12   **OWE THE DEBTOR EARNINGS**

13           1. Determine if you are likely to owe the debtor for earnings in pay periods  
14 beginning within the next 13 weeks.

15           2. If you are not likely to owe the debtor for earnings in pay periods beginning  
16 within the next 13 weeks, send a statement stating that fact to the creditor by the  
17 end of the 7th business day after receiving the earnings garnishment forms.

18   **IF THE DEBTOR SENDS YOU AN ANSWER**

19           3. Whenever you receive a debtor’s answer form from the debtor, mail a copy  
20 of the answer form to the creditor by the end of the 3rd business day after receipt of  
21 that form. Include the date you received the answer form on the copy sent to the  
22 creditor.

23           4. If the debtor’s answer form claims a complete exemption or defense, do not  
24 withhold or pay to the creditor any part of the debtor’s earnings under this  
25 garnishment unless you receive an order of the court directing you to do so.

**BILL**

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**MULTIPLE EARNINGS GARNISHMENTS**

5. If the debtor's earnings are already being garnisheed when you receive this earnings garnishment, place this earnings garnishment into effect the pay period after the last of any prior earnings garnishments terminates. Notify the debtor of the amount of the garnishment and notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after you receive these forms. If there are no prior pending earnings garnishments against the debtor's earnings, place this earnings garnishment into effect the pay period after you receive it.

**EARNINGS GARNISHMENTS LAST 13 WEEKS,  
EXCEPT FOR PUBLIC EMPLOYEES  
AND EXCEPT FOR GARNISHMENTS TO  
SATISFY AN ORDER FOR VICTIM RESTITUTION**

6. The garnishment of the earnings of employees of the state of Wisconsin and its political subdivisions ~~remain, and a garnishment to satisfy an order for victim restitution under s. 973.20 (1r) for victim restitution remains~~ in effect until the judgment is satisfied. The garnishment of earnings of other employees will affect the debtor's earnings for all pay periods beginning within 13 weeks after you receive it, unless the debtor's earnings are already being garnisheed. If this earnings garnishment is delayed under paragraph 5, above, it will affect the debtor's earnings for all pay periods beginning within 13 weeks after the first day of the pay period that you put this earnings garnishment into effect. If the amount claimed by the creditor is fully paid before the end of the 13 weeks, this earnings garnishment will terminate at that point.

**PAYING THE CREDITOR**



**BILL****SECTION 11**

1           7. Between 5 and 10 business days after each payday of a pay period affected  
2 by this earnings garnishment, pay the creditor 20% of the debtor's disposable  
3 earnings for that pay period. Payment is complete upon mailing.

**EFFECT OF COURT-ORDERED****ASSIGNMENTS FOR SUPPORT**

6           8. If the debtor has assigned his or her earnings for support by court order, those  
7 support payments take priority over this earnings garnishment. If 25% or more of  
8 the debtor's disposable earnings is assigned for support by court order, do not pay any  
9 part of the debtor's earnings to the creditor. Instead, send the creditor a statement  
10 of that fact by the end of the 7th business day after you receive these forms. If less  
11 than 25% of the debtor's earnings is assigned for support by court order, the amount  
12 the creditor must be paid is reduced so that the total of earnings assigned and  
13 garnisheed does not exceed 25% of the debtor's disposable earnings.

**EXTENSIONS**

15           9. The debtor and creditor may agree in writing to extend this earnings  
16 garnishment for additional pay periods beginning within 13 weeks after this  
17 earnings garnishment would otherwise terminate. If you receive a written extension  
18 stipulation, and an additional garnishee fee for each extension, you must honor it  
19 unless a different garnishment against this debtor's earnings is served upon you  
20 before the extension takes effect. In that case, the extension is void and you must  
21 return the extension fee to the party who paid it to you.

22           **SECTION 12.** 814.62 (1) of the statutes is amended to read:

23           814.62 (1) GARNISHMENT ACTIONS. The fee for commencing a garnishment action  
24 under ch. 812, including actions under s. 799.01 (1) (d) 2., is \$20, except that there  
25 is no fee for commencing a garnishment action to satisfy an order for victim

**BILL**

1 restitution under s. 973.20 (1r). Of the fees received by the clerk under this  
2 subsection, the county treasurer shall pay \$12.50 to the secretary of administration  
3 for deposit in the general fund and shall retain the balance for the use of the county.  
4 The secretary of administration shall credit \$5 of the \$12.50 to the appropriation  
5 under s. 20.680 (2) (j).

6 **SECTION 13.** 973.20 (10) of the statutes is renumbered 973.20 (10) (a).

7 **SECTION 14.** 973.20 (10) (b) of the statutes is created to read:

8 973.20 (10) (b) The department or the clerk of court may certify an amount  
9 owed under par. (a) to the department of revenue if any of the following apply:

10 1. The court required that restitution be paid immediately and more than 30  
11 days have passed since the order was entered.

12 2. The court required that restitution be paid within a specified period and  
13 more than 30 days have passed since the expiration of that period.

14 3. The court required that restitution be paid in specified installments and the  
15 defendant is delinquent in making any of those payments.

16 **SECTION 15.** 973.20 (11) (c) of the statutes is created to read:

17 973.20 (11) (c) If a defendant who is in a state prison or who is sentenced to a  
18 state prison is ordered to pay restitution, the court order shall require the defendant  
19 to authorize the department to collect, from the defendant's wages and from other  
20 moneys held in the defendant's prisoner's account, an amount or a percentage the  
21 department determines is reasonable for payment to victims.

22 **SECTION 16.** 973.20 (11) (d) of the statutes is created to read:

23 973.20 (11) (d) Each clerk of court who collects restitution under this section  
24 shall notify the department when a defendant has satisfied an order for restitution.

25 **SECTION 17.** 973.20 (11) (e) of the statutes is created to read:

