

2019 DRAFTING REQUEST

Bill

For: **Administration-Budget** Drafter: **elunder**
 By: **Gilchrist** Secondary Drafters:
 Date: **2/11/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**
erika.lunder@legis.wisconsin.gov
joseph.kreye@legis.wisconsin.gov
marc.shovers@legis.wisconsin.gov

Pre Topic:

DOA:.....Gilchrist, BB0317 -

Topic:

Technical changes to improve clarity and scope of TRIP and debt collection statutes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	elunder 2/15/2019	wjackson 2/15/2019			
/P1	elunder 2/19/2019	wjackson 2/19/2019	wjackson 2/15/2019		State
/P2	elunder 2/21/2019	kfollett 2/21/2019	lparisi 2/19/2019		State
/P3			dwalker		State

Vers. Drafted

Reviewed

Submitted
2/21/2019

Jacketed

Required

FE Sent For:

<END>

Lunder, Erika

From: Hanaman, Cathlene
Sent: Monday, February 11, 2019 9:04 AM
To: Shovers, Marc; Lunder, Erika; Kreye, Joseph
Subject: FW: Statutory Language Drafting Request - 2019-21
Attachments: TRIP.docx

From: john.gilchcrist@wisconsin.gov <john.gilchcrist@wisconsin.gov>
Sent: Friday, February 08, 2019 5:29 PM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Ziegler, Paul - DOA <Paul2.Ziegler@wisconsin.gov>; Gilchrist, John M - DOA <John.Gilchrist@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Definitions and TRIP

Tracking Code: BB0317

SBO Team: TLGED

SBO Analyst: Gilchrist, John
Phone: 608-266-7597
E-mail: john.gilchcrist@wisconsin.gov

Agency Acronym: 566

Agency Number: 566

Priority: Low

Intent:

To make technical changes to improve clarity and scope of TRIP and debt collection statutes.

Attachments: True

Please send completed drafts to SBOStatlanguage@spsmail.enterprise.wisstate.us

DRAFTING INSTRUCTIONS

Amend, repeal, and renumber sec. 71.935, Wis. Stats. to read:

✓ 71.93 Setoffs for ~~other~~ state agencies and debt collection for state agencies, municipalities and counties.

(1) DEFINITIONS. In this section:

(a) "Debt" means all of the following:

1. An amount owed to a state agency, if the amount has been reduced to a judgment or if the state agency has provided the debtor reasonable notice and an opportunity to be heard with regard to the amount owed.
2. A delinquent child support or spousal support obligation that has been reduced to a judgment and has been submitted by an agency of another state to the department of children and families for certification under this section.
- ✓ 3. ~~An amount that the department of health services may recover under s. 49.45 (2) (a) 10., 49.497, 49.793, or 49.847, if the department of health services has certified the amount under s. 49.85.~~
- ✓ 4. ~~An amount that the department of children and families may recover under s. 49.138 (5), 49.161, or 49.195 (3) or collect under s. 49.147 (6) (cm), if the department of children and families has certified the amount under s. 49.85.~~
- ✓ 5. ~~An amount owed to the department of corrections under s. 304.074 (2).~~
- ✓ 6. ~~An amount owed to the department of military affairs under s. 321.40 (5).~~
- 37m. An amount owed pursuant to an order under s. 973.20 (1r), if the department of corrections has certified the amount under s. 973.20 (10) (b).
- ✓ 48. ~~Any amount owed to a state agency and collected pursuant to a written agreement between the department of revenue and the state agency as provided under sub. (8) (b), if the debt has been reduced to a judgment or if the state agency or the department has provided the debtor reasonable notice and an opportunity to be heard with regard to the amount owed.~~
- ✓ 5. A delinquent child support or spousal support obligation that is owed to or may be recovered by the department of children and families on behalf of a custodial parent, former spouse, or other person, certified under 49.855.
- ✓ 6. Restitution that is owed to or may be recovered by the department of corrections, or a court or a clerk of court on behalf of a victim.

✓ (b) "Debtor" means any person or entity owing a debt as defined under s. 71.93(1)(a) ~~to a state agency and any person who owes a delinquent child support or spousal support obligation to an agency of another state.~~

(c) "Department" means the department of revenue.

(cm) "Disbursement" means any payment to a person who provides goods and services to the state under subch. IV or V of ch. 16 or under ch. 84.

(d) "Refund" means any of the following:

1. The excess amount by which any payments, refundable credits, or both exceed a debtor's Wisconsin tax liability or any other liability owed to the department.
2. The amount owed to a debtor under s. 177.24 (3) for the return of abandoned property under s. 177.24 which exceeds a debtor's Wisconsin tax liability or any other liability owed to the department.

✓ (e) "State agency" ~~has the meaning set forth under s. 20.001 (1).~~ means any of the following:

1. Any office, department or independent agency in the executive branch of the Wisconsin state government, the legislature and the courts.
2. The State of Wisconsin.

✓ (2) CERTIFICATION OF STATE AGENCY DEBTS.

(a) A state agency may certify to the department any properly identified debt exceeding \$20 so that the department may set off the amount of the debt against a refund to the debtor or so that the department of administration may reduce a disbursement to the debtor by the amount of the debt. At least 30 days prior to certification each debtor shall be sent a notice by the state agency of its intent to certify the debt to the department for setoff or reduction and of the debtor's right of appeal. At the time of certification, the certifying state agency shall furnish the social security number or operator's license number of individual debtors and the federal employer identification number of other debtors.

✓ (b) Any state agency wishing to certify debts to the department shall enter into a written agreement with the department prior to any certification of debt. Any certification of debts by a state agency or changes to certified debts shall be in a manner and form prescribed by the department. The secretary of revenue shall be the final authority in the resolution of any interagency disputes in regard to certification of debts. If a refund or disbursement is adjusted after a setoff or reduction, the department may readjust any erroneous settlement with a certifying state agency.

✓ (3) ADMINISTRATION SETOFF.

(a) The department of revenue shall setoff any debt or other amount owed to the department, regardless of the origin of the debt or of the amount, its nature or its date, against a refund owed to the debtor. The department's setoff shall include the use of unclaimed property owed to the debtor under s. 177.24. If after the setoff there remains a refund in excess of \$10, the department shall set off the remaining refund against certified debts of other entities in the following order:

1. Debt under s. 49.855 (1), certified by the department of children and families under sub. (2).

✓ 1m. Debt certified under s. 973.20 (10) (b) or restitution that is owed to or may be recovered by the department of corrections, or a court or a clerk of court on behalf of a victim.

2. State agency debt collected pursuant to an agreement under sub. (8) and debt owed to the courts, the legislature, or an authority, as defined in s. 16.41 (4), collected pursuant to an agreement under sub. (8).

✓ 3. Debt owed to local units of government a municipality or county as defined under s. 71.935 and collected pursuant to an agreement under sub. (8).

4. Debt certified under sub. (2), other than child support debt certified by the department of children and families.

5. Child support or spousal support obligations submitted by an agency of another state.

6. Debt certified under s. 71.935 (2).

✓ 7. Federal tax obligations collected pursuant to an agreement under s. 73.03 (52) (a) and (b).

8. Tribal obligations collected pursuant to an agreement under s. 73.03 (52n).

9. Tax and nontax obligations of other states, and of the local governmental units within those states, collected pursuant to an agreement under s. 73.03 (52m).

(am) If more than one certified debt exists for any debtor for the same type of debt specified under par. (a) 1. to 9., the refund shall be first set off against the earliest debt certified, except that no child support or spousal support obligation submitted by an agency of another state may be set off until all debts owed to and certified by state agencies of this state have been set off. When all debts have been satisfied, any remaining refund shall be refunded to the debtor by the department. Any legal action contesting a setoff under this paragraph shall be brought against the entity that certified the debt.

(b) The department shall provide the information obtained under sub. (2) to the department of administration. Before reducing any disbursement as provided under this paragraph, the department of administration shall contact the department to verify whether a certified debt that is the basis of the reduction has been collected by other means. If the certified debt remains uncollected, the department of administration shall reduce the disbursement by the amount of the debtor's certified debt under sub. (2), notify the department of such reduction and disbursement, and remit the amount of the reduction to the department in the manner prescribed by the department. If more than one certified debt exists for any debtor, the disbursement shall be reduced first by any debts certified under s. 73.12 then by the earliest debt certified. Any legal action contesting a reduction under this paragraph shall be brought against the state agency that certified the debt under sub. (2).

(c) No person has any right to, or interest in, any overpayment, refundable credit, or refund, including any interest allowed, under this chapter until setoff under this section and ss. 49.855 and 71.935 has been completed.

✓ (4) ~~(d) SETTLEMENT REPORTS.~~ Within 30 days after the close of each calendar quarter, the department shall settle with each state agency that has certified a debt. Each settlement shall note the opening balance of debts certified, any additions or deletions, reductions or amounts set off, and the ending balance at the close of the settlement period. The department may provide each state agency a summary report upon demand that details each active debt and the ending balance. The department may provide each state agency a weekly report of amounts collected and disburse payments through electronic funds transfer or state account system general ledger transfer.

✓ (5) ~~(e) DEBTOR CHARGED FOR COSTS COLLECTION FEE.~~ Each debtor shall be charged for ~~administration expenses a collection fee,~~ and the amounts charged shall be credited to the department's appropriation under s. 20.566 (1) (h). The department may set off amounts charged to the debtor under this subsection against any refund owed to the debtor, in the manner provided in sub. (3). ~~Annually on or before November 1, the department shall review its costs incurred during the previous fiscal year in administering state agency setoffs and reductions and shall adjust its subsequent charges to each debtor to reflect that experience.~~

✓ (6) ~~WRITTEN AGREEMENT AND AUTHORITY OF DEPARTMENT.~~ Any state agency wishing to certify debts to the department shall enter into a written agreement with the department prior to any certification of debt. Any certification of debts by a state agency or changes to certified debts shall be in a manner and form prescribed by the department. The secretary of revenue shall be the final authority in the resolution of any interagency disputes in regard to certification of debts. If a refund or

~~disbursement is adjusted after a setoff or reduction, the department may readjust any erroneous settlement with a certifying state agency.~~

✓ (7) ~~(f)~~ EXCHANGE OF INFORMATION. Information relative to changes to any debt certified shall be exchanged promptly by each agency. Setoff of refunds and reduction of disbursements against debts certified by agencies, and any report of the setoff or reduction to state agencies, is not a violation of ss. 71.78, 72.06, 77.61 (5), 78.80 (3), and 139.38 (6).

✓ (8) ~~STATE AGENCY DEBT COLLECTION AGREEMENTS.~~

✓ (a) ~~Upon request by a state agency, the department of revenue may enter into an agreement with individuals who owe debts to the state agency. With the consent of the debtor, the department of revenue may arrange with the debtor's employer for the withholding from the debtor's pay of a specified amount to be applied against the debt.~~

(b)

✓ 1. Except as provided in subd. 2., and for debts under 71.93(1)(a)2. and 5., a state agency and the department of revenue shall enter into a written agreement to have the department collect ~~any amount owed to the state agency~~ a debt that is more than 90 days past due, unless negotiations between the agency and debtor are actively ongoing, the debt is the subject of legal action or administrative proceedings, or the agency determines that the debtor is adhering to an acceptable payment arrangement. At least 30 days before the department pursues the collection of any debt referred by a state agency, either the department or the agency shall provide the debtor with a written notice that the debt will be referred to the department for collection. Any legal action contesting the validity of a debt shall be brought against the entity that referred the debt. The department may collect amounts owed, pursuant to the written agreement, from the debtor in addition to offsetting the amounts as provided under sub. (3). The department shall charge each debtor whose debt is subject to collection under this paragraph a collection fee and that amount shall be credited to the appropriation under s. 20.566 (1) (h).

✓ 2. The department may enter into agreements described under subd. 1. with the courts, the legislature, authorities, as defined in s. 16.41 (4), and a municipality or county as defined under s. 71.935 local units of government.

✓ 3. ~~Agreements required under subd. 1. shall be completed no later than July 1, 2010, except that an agreement may allow a delay or phase in of referrals.~~

✓ 4. The secretary of revenue may waive the referral of certain types of debt. The department's determination that a debt is not collectable does not prevent the referring agency from taking additional collection actions.

✓ 5. The department may collect debts and assess interest on delinquent amounts under this paragraph in the same manner that it collects taxes and assesses interest under ss. 71.82 (2), 71.91, 71.92, and 73.03 (20). The department's use of tax returns and related information to collect debts under this paragraph is not a violation of s. 71.78, 72.06, 77.61 (5), 78.80 (3), or 139.38 (6).

✓ 6. If the debtor owes debt to the department and to other entities, payments shall first apply to debts owed to the department then to the other entities in the order determined under sub. (3) (a).

Amend and repeal sec. 71.935, Wis. Stats., to read:

71.935 Setoffs for municipalities and counties.

(1) In this section:

(a) "Debt" means a parking citation of at least \$20 that is unpaid and for which there has been no court appearance by the date specified in the citation or, if no date is specified, that is unpaid for at least 28 days; an unpaid fine, fee, restitution or forfeiture of at least \$20; and any other debt that is at least \$20, including debt related to property taxes, if the debt has been reduced to a judgment or the municipality or county to which the debt is owed has provided the debtor reasonable notice and an opportunity to be heard with regard to the debt. For purposes of this subsection, a debt owed to an ambulance service provider operating pursuant to a contract with a municipality or county under s. 59.54 (1), 60.565, 61.64, or 62.133, is considered a debt owed to the municipality or county, if the debt relates to providing ambulance services to individuals in that municipality or county as a result of responding to requests that originate from a government-operated 911 call center.

(am) "Debt related to property taxes" means delinquent general property taxes, as defined in s. 74.01 (1), special assessments, as defined in s. 74.01 (3), special charges, as defined in s. 74.01 (4), and special taxes, as defined in s. 74.01 (5). The term "debt related to property taxes" includes any interest and penalty charged as a result of the delinquency.

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

(b) "Debtor" means a person who owes a debt ~~related to victim restitution or who owes a debt to a~~ municipality or county.

(4)

~~(a) Within 30 days after the end of each calendar quarter, the department shall settle with each municipality and county for the amounts set off or reduced against certified debts for the municipality or county during that calendar quarter. The department may provide each state agency a summary report upon demand that details each active debt and the ending balance. The department may provide each state agency a weekly report of amounts collected and disburse payments through electronic funds transfer or state account system general ledger transfer.~~

(b) Within 30 days after the end of each calendar quarter, each municipality and county that has received amounts from the department during that calendar quarter for debts owed to an ambulance service provider operating pursuant to a contract under s. 59.54 (1), 60.565, 61.64, or 62.133 shall pay the amounts to the ambulance service provider.

(5) Each debtor shall be charged for ~~administration expenses collection fee~~, and the amounts charged shall be credited to the appropriation account under s. 20.566 (1) (h). The department may set off amounts charged to the debtor under this subsection against any refund owed to the debtor, in the manner provided in sub. (3). ~~Annually on or before November 1, the department shall review its costs incurred during the previous fiscal year in administering setoffs and reductions under this section and shall adjust its subsequent charges to each debtor to reflect that experience.~~

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Effective the day after publication



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1932/?

EKL:...

WLj

DOA:.....Gilchrist, BB0317 - Technical changes to improve clarity and scope of TRIP and debt collection statutes

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

GENERAL TAXATION

Modifications to state debt collection programs

This bill modifies the programs under which DOR is authorized to collect debt owed to state agencies, municipalities, and counties by offsetting tax refunds and other state payments due the debtor. The bill consolidates provisions under which a state agency, municipality, or county refers a debt to DOR for collection and includes the State of Wisconsin in the definition of "state agency" for purposes of the debt collection programs. Under the bill, any legal action contesting the validity of a debt must be brought against the state agency that referred the debt. The bill repeals the requirement that DOR provide quarterly status updates to a state agency, municipality, or county regarding the debt collection. Under the bill, DOR may provide, upon request, information to a state agency, municipality, or county about each debt's status and may provide weekly reports of the amounts collected and payments disbursed. The bill replaces the current requirement that DOR charge debtors for administration expenses with a requirement that debtors pay a collection fee, and repeals the requirement that DOR annually review its prior year's administrative costs and adjust the charges accordingly.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 49.855 (3) of the statutes is amended to read:

2 49.855 (3) Receipt of a certification by the department of revenue shall
3 constitute a lien, equal to the amount certified, on any state tax refunds or credits
4 owed to the obligor. The lien shall be foreclosed by the department of revenue as a
5 setoff under s. 71.93 (3), (6),[✓] and (7). When the department of revenue determines
6 that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the
7 obligor that the state intends to reduce any state tax refund or credit due the obligor
8 by the amount the obligor is delinquent under the support, maintenance, or receiving
9 and disbursing fee order or obligation, by the outstanding amount for past support,
10 medical expenses, or birth expenses under the court order, or by the amount due
11 under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20
12 days the obligor may request a hearing before the circuit court rendering the order
13 under which the obligation arose. Within 10 days after receiving a request for
14 hearing under this subsection, the court shall set the matter for hearing. Pending
15 further order by the court or a circuit court commissioner, the department of children
16 and families or its designee, whichever is appropriate, is prohibited from disbursing
17 the obligor's state tax refund or credit. A circuit court commissioner may conduct the
18 hearing. The sole issues at that hearing shall be whether the obligor owes the
19 amount certified and, if not and it is a support or maintenance order, whether the
20 money withheld from a tax refund or credit shall be paid to the obligor or held for
21 future support or maintenance, except that the obligor's ability to pay shall also be

1 an issue at the hearing if the obligation relates to an order under s. 767.805 (4) (d)
2 1. or 767.89 (3) (e) 1. and the order specifies that the court found that the obligor's
3 income was at or below the poverty line established under 42 USC 9902 (2).

History: 1981 c. 20, 391; 1983 a. 27; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 421; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 279; 1995 a. 404 ss. 50 to 59; Stats. 1995 s. 49.855; 1997 a. 3, 27, 35, 237, 252; 1999 a. 9, 32; 2001 a. 16, 61, 105; 2005 a. 22, 25, 304; 2005 a. 443 s. 265; 2007 a. 20 ss. 1711 to 1718, 9121 (6) (a); 2007 a. 96; 2009 a. 113, 180; 2015 a. 55, 172.

4 **SECTION 2.** 59.40 (4) of the statutes is amended to read:

5 **59.40 (4) CLERK OF CIRCUIT COURT; DEBT COLLECTOR CONTRACT.** If authorized by
6 the board under s. 59.52 (28), the clerk of circuit court may contract with a debt
7 collector, as defined in s. 427.103 (3), or enter into an agreement with the department
8 of revenue under s. 71.93 (8) for the collection of debt. Any contract entered into with
9 a debt collector shall provide that the debt collector shall be paid from the proceeds
10 recovered by the debt collector. Any contract entered into with the department shall
11 provide that the department shall charge a collection fee, as provided under s. 71.93
12 (8) ~~(b) 1~~ ^(a). The net proceeds received by the clerk of circuit court after the payment
13 to the debt collector shall be considered the amount of debt collected for purposes of
14 distribution to the state and county under sub. (2) (m).

History: 1995 a. 27 ss. 3290, 3291; 1995 a. 201 ss. 311 to 318, 320 to 322, 325; 1995 a. 224 ss. 11 to 13; 1995 a. 227 s. 203; 1995 a. 279 s. 8; 1995 a. 404 s. 185; 1995 a. 438; 1995 a. 448 s. 61; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 3, 27; 1997 a. 35 ss. 185, 186; 1997 a. 39, 135, 148, 191, 237, 248, 252; 1999 a. 9, 32; 1999 a. 150 s. 672; 2001 a. 16, 56, 61, 105; 2003 a. 33, 139, 321, 326; 2005 a. 25, 59, 204; 2007 a. 20; 2013 a. 107, 164; 2015 a. 55, 196; 2017 a. 207 s. 5.

Cross-reference: See ss. 69.01 (5), 69.12 (1), 69.14 (1) (h), 69.15 (1) (b), 69.16 (2), 69.17, 69.19, and 69.21 (4) (b) as to furnishing information to the state registrar of vital statistics.

Cross-reference: See s. 758.13 as to furnishing information to the judicial council.

Cross-reference: See ss. 753.30, 801.61, 809.15, 889.08, and 889.09 as to authenticating, certifying, and transmitting documents.

Cross-reference: See chs. 818 and 969 as to receiving bail.

Cross-reference: See ch. 756 as to performing duties with respect to jurors.

Cross-reference: See s. 757.40 as to care for the county law library.

Cross-reference: See ch. 814 as to taxing costs and collecting fees.

Cross-reference: See ch. 815 as to issuing executions and writs of assistance.

Cross-reference: See s. 885.01 as to issuing and signing subpoenas.

Cross-reference: See s. 779.07 as to keeping a lien docket.

15 **SECTION 3.** 71.93 (title) of the statutes is amended to read:

16 **71.93 (title) Setoffs for other state agencies and debt collection for state**
17 **agencies, municipalities, and counties.**

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

18 **SECTION 4.** 71.93 (1) (a) 3. of the statutes is repealed.

1 **SECTION 5.** 71.93 (1) (a) 4. of the statutes is repealed.

2 **SECTION 6.** 71.93 (1) (a) 5. of the statutes is repealed.

3 **SECTION 7.** 71.93 (1) (a) 6. of the statutes is repealed.

4 **SECTION 8.** 71.93 (1) (a) 8. of the statutes is repealed.

5 **SECTION 9.** 71.93 (1) (a) 9. of the statutes is created to read:

6 71.93 (1) (a) 9. A delinquent child support or spousal support obligation that
7 is certified under s. 49.855 and is owed to, or may be recovered by the department
8 of children and families on behalf of, a custodial parent, former spouse, or other
9 person.

10 **SECTION 10.** 71.93 (1) (a) 10. of the statutes is created to read:

11 71.93 (1) (a) 10. Restitution that is owed to or may be recovered from the
12 department of corrections, a court, or a clerk of court on behalf of a victim.

13 **SECTION 11.** 71.93 (1) (b) of the statutes is amended to read:

14 71.93 (1) (b) "Debtor" means any person owing a debt to a state agency and any
15 person who owes a delinquent child support or spousal support obligation to an
16 agency of another state.

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

17 **SECTION 12.** 71.93 (1) (e) of the statutes is amended to read:

18 71.93 (1) (e) "State agency" has the meaning set forth under s. 20.001 (1).
19 means any of the following:

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

20 **SECTION 13.** 71.93 (1) (e) 1. of the statutes is created to read:

21 71.93 (1) (e) 1. An office, department, or independent agency in the executive
22 branch of the Wisconsin state government, the legislature, or the courts.

23 **SECTION 14.** 71.93 (1) (e) 2. of the statutes is created to read:

renumbered 71.93 (1) (e) (intro.) and

^

1 71.93 (1) (e) 2. The State of Wisconsin.

2 **SECTION 15.** 71.93 (2) (title) of the statutes is amended to read:

3 71.93 (2) (title) CERTIFICATION OF STATE AGENCY DEBTS.

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

4 **SECTION 16.** 71.93 (2) of the statutes is renumbered 71.93 (2) (a) and amended
5 to read:

6 71.93 (2) (a) A state agency may certify to the department any properly
7 identified debt exceeding \$20 so that the department may set off the amount of the
8 debt against a refund to the debtor or so that the department of administration may
9 reduce a disbursement to the debtor by the amount of the debt. At least 30 days prior
10 to certification each debtor shall be sent a notice by the state agency of its intent to
11 certify the debt to the department for setoff or reduction and of the debtor's right of
12 appeal. At the time of certification, the certifying state agency shall furnish the
13 social security number or operator's license number of individual debtors and the
14 federal employer identification number of other debtors.

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

15 **SECTION 17.** 71.93 (2) (b) of the statutes is created to read:

16 71.93 (2) (b) A state agency wishing to certify a debt to the department shall
17 enter into a written agreement with the department prior to any certification under
18 par. (a). A certification of debt by a state agency, or changes to a certification, shall
19 be in a manner and form prescribed by the department. The secretary of revenue
20 shall be the final authority in the resolution of an interagency dispute regarding the
21 certification of a debt. If a refund or disbursement is adjusted after a setoff or
22 reduction, the department may readjust any erroneous settlement with the
23 certifying state agency.

repealed and recreated

1 SECTION 18. 71.93 (3) (title) of the statutes is amended to read:

2 71.93 (3) (title) ~~ADMINISTRATION SETOFF~~ ^{plain}

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

3 SECTION 19. 71.93 (3) (a) (intro.) of the statutes is amended to read:

4 71.93 (3) (a) (intro.) The department of revenue shall ~~setoff~~ ^{sets off} any debt or other
5 amount owed to the department, regardless of the origin of the debt or of the amount,
6 its nature or its date, ~~against a refund owed to the debtor.~~ ^{strike period} The department's ~~setoff~~ ^{plain}
7 shall include the use of unclaimed property owed to the debtor under s. 177.24. If
8 after the setoff there remains a refund in excess of \$10, the department shall set off
9 the remaining refund against certified debts of other entities in the following order:

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

10 SECTION 20. 71.93 (3) (a) 1. of the statutes is amended to read:

11 71.93 (3) (a) 1. Debt under s. 49.855 (1), certified by the department of children
12 and families under sub. (2) (a). ✓

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

13 SECTION 21. 71.93 (3) (a) 1m. of the statutes is amended to read:

14 71.93 (3) (a) 1m. Debt certified under s. 973.20 (10) (b) or restitution that is
15 owed to or may be recovered by the department of corrections, a court, or a clerk of
16 court on behalf of a victim.

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

17 SECTION 22. 71.93 (3) (a) 3. of the statutes is amended to read:

18 71.93 (3) (a) 3. Debt under s. 71.935 [✓] ~~owed to local units of government a~~
19 municipality or county and collected pursuant to an agreement under sub. (8).

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

20 SECTION 23. 71.93 (3) (a) 4. of the statutes is amended to read:

1 71.93 (3) (a) 4. Debt certified under sub. (2) (a),[✓] other than child support debt
2 certified by the department of children and families.

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

3 **SECTION 24.** 71.93 (3) (a) 7. of the statutes is amended to read:

4 71.93 (3) (a) 7. Federal ~~tax~~ obligations collected pursuant to an agreement
5 under s. 73.03 (52) (a) or (b).[✓]

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

6 **SECTION 25.** 71.93 (3) (b) of the statutes is amended to read:

7 71.93 (3) (b) The department shall provide the information obtained under sub.
8 (2) (a) to the department of administration. Before reducing any disbursement as
9 provided under this paragraph, the department of administration shall contact the
10 department to verify whether a certified debt that is the basis of the reduction has
11 been collected by other means. If the certified debt remains uncollected, the
12 department of administration shall reduce the disbursement by the amount of the
13 debtor's certified debt under sub. (2) (a),[✓] notify the department of such reduction and
14 disbursement, and remit the amount of the reduction to the department in the
15 manner prescribed by the department. If more than one certified debt exists for any
16 debtor, the disbursement shall be reduced first by any debts certified under s. 73.12
17 then by the earliest debt certified. Any legal action contesting a reduction under this
18 paragraph shall be brought against the state agency that certified the debt under
19 sub. (2) (a).[✓]

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

20 **SECTION 26.** 71.93 (3) (d) of the statutes is created to read:

21 71.93 (3) (d) The department may provide, upon request by a state agency, a
22 report that details each active debt subject to this section of the state agency,

1 including the ending balance. The department may provide a weekly report to a state
2 agency of amounts collected and payments through electronic funds transfer or state
3 account system general ledger transfer.

4 SECTION 27. 71.93 (4) of the statutes is repealed.

5 SECTION 28. 71.93 (5) of the statutes is renumbered 71.93 (3) (e) and amended
6 to read:

7 71.93 (3) (e) ~~Debtor charged for costs.~~ Each debtor shall be charged for
8 administration expenses a collection fee, and the amounts charged shall be credited
9 to the department's appropriation under s. 20.566 (1) (h). The department may set
10 off amounts charged to the debtor under this subsection against any refund owed to
11 the debtor, in the manner provided in sub. (3). ~~Annually on or before November 1,~~
12 ~~the department shall review its costs incurred during the previous fiscal year in~~
13 ~~administering state agency setoffs and reductions and shall adjust its subsequent~~
14 ~~charges to each debtor to reflect that experience.~~

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

15 SECTION 29. 71.93 (6) of the statutes is repealed.

16 # 71.93 (7) (title) is repealed.

17 SECTION 30. 71.93 (7) of the statutes is renumbered 71.93 (3) (f) and amended

18 to read:

19 71.93 (3) (f) ~~Exchange of information.~~ Information relative to changes to any
20 debt certified shall be exchanged promptly by each agency. Setoff of refunds and
21 reduction of disbursements against debts certified by agencies, and any report of the
22 setoff or reduction to state agencies, is not a violation of ss. 71.78, 72.06, 77.61 (5),
78.80 (3), and 139.38 (6).

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

23 SECTION 31. 71.93 (8) (title) of the statutes is amended to read:

DEBT

1 71.93 (8) (title) ~~STATE AGENCY DEBT~~ COLLECTION AGREEMENTS.

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

2 SECTION 32. 71.93 (8) (a) of the statutes is repealed.

3 SECTION 33. 71.93 (8) (b) ^{e1.} (1) of the statutes is renumbered 71.93 (8) (a) ^m and
4 amended to read:

5 71.93 (8) ^{eam} (a) Except for debts defined in ^{e under} sub. (1) (a) 2. and 9. and except as
6 provided in subd. 2. par. (b), ^{e (bm)} a state agency and the department of revenue shall enter
7 into a written agreement to have the department collect any amount owed to the
8 state agency a debt that is more than 90 days past due, unless negotiations between
9 the agency and debtor are actively ongoing, the debt is the subject of legal action or
10 administrative proceedings, or the agency determines that the debtor is adhering to
11 an acceptable payment arrangement. At least 30 days before the department
12 pursues the collection of any debt referred by a state agency, either the department
13 or the agency shall provide the debtor with a written notice that the debt will be
14 referred to the department for collection. Any legal action contesting the validity of
15 a debt shall be brought against the state agency that referred the debt. The
16 department may collect amounts owed, pursuant to the written agreement, from the
17 debtor in addition to offsetting the amounts as provided under sub. (3). The
18 department shall charge each debtor whose debt is subject to collection under this
19 paragraph a collection fee and that amount shall be credited to the appropriation
20 under s. 20.566 (1) (h).

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

21 SECTION 34. 71.93 (8) (b) ^{e2.} (2) of the statutes is renumbered 71.93 (8) ^{e (bm)} (b) and
22 amended to read:

1 [@] 71.93 (8) ^(b) (b) The department may enter into agreements described under subd. 1. par.
 2 ^(a) (a) with the courts, the legislature, authorities, as defined in s. 16.41 (4), and local
 3 units of government, to collect debt under s. 71.935, municipalities and counties.

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308; 2015 a. 55, 355.

4 SECTION 35. 71.93 (8) (b) 3. of the statutes is repealed.

5 SECTION 36. 71.93 (8) (b) 4. of the statutes is renumbered 71.93 (8) (c). ✓

6 SECTION 37. 71.93 (8) (b) 5. of the statutes is renumbered 71.93 (8) (d). ✓

7 SECTION 38. 71.93 (8) (b) 6. of the statutes is renumbered 71.93 (8) (e). ✓

8 SECTION 39. 71.935 (1) (ar) ✓ of the statutes is repealed.

9 SECTION 40. 71.935 (1) (b) of the statutes is amended to read:

10 71.935 (1) (b) "Debtor" means a person who owes a debt related to victim
 11 ~~restitution or who owes a debt~~ ✓ to a municipality or county.

History: 1995 a. 27; 1997 a. 27; 2003 a. 177; 2005 a. 25, 59, 254, 454; 2007 a. 96, 97; 2011 a. 32, 142; 2015 a. 55, 59, 355. Repealed and recreated

12 SECTION 41. 71.935 (4) (a) of the statutes is amended to read:

13 71.935 (4) (a) Within 30 days after the end of each calendar quarter, the
 14 department shall settle with each municipality and county for the amounts set off
 15 or reduced against certified debts for the municipality or county during that calendar
 16 quarter. The department may provide, upon request by a municipality or county, a
 17 report that details each active debt subject to this section of the municipality or
 18 county, including the ending balance. The department may provide a weekly report
 19 to a municipality or county of amounts collected and payments disbursed through
 20 electronic funds transfer or state account system general ledger transfer.

plain text

History: 1995 a. 27; 1997 a. 27; 2003 a. 177; 2005 a. 25, 59, 254, 454; 2007 a. 96, 97; 2011 a. 32, 142; 2015 a. 55, 59, 355.

21 SECTION 42. 71.935 (5) of the statutes is amended to read:

22 71.935 (5) Each debtor shall be charged for ~~administration expenses~~ a
 23 collection fee, and the amounts charged shall be credited to the appropriation

1 account under s. 20.566 (1) (h). The department may set off amounts charged to the
2 debtor under this subsection against any refund owed to the debtor, in the manner
3 provided in sub. (3). ~~Annually on or before November 1, the department shall review~~
4 ~~its costs incurred during the previous fiscal year in administering setoffs and~~
5 ~~reductions under this section and shall adjust its subsequent charges to each debtor~~
6 ~~to reflect that experience.~~

History: 1995 a. 27; 1997 a. 27; 2003 a. 177; 2005 a. 25, 59, 254, 454; 2007 a. 96, 97; 2011 a. 32, 142; 2015 a. 55, 59, 355.

7 **SECTION 43.** 73.03 (67) of the statutes is amended to read:

8 73.03 (67) To submit a request for a supplement under s. 16.515 for
9 administering the debt collection program under s. 71.93 (8) (b) that includes a
10 detailed plan for implementing the program, a listing of agencies and other entities
11 that would participate in the program, an estimate of the amount of debt collections
12 under the program, and the fees that the debtors would pay under the program.

History: 1971 c. 40, 215; 1973 c. 90; 1975 c. 39; 1977 c. 143; 1977 c. 196 s. 130 (7); 1977 c. 313; 1979 c. 34; 1979 c. 110 s. 60 (13); 1979 c. 221, 350; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 275 s. 15 (4); 1983 a. 524; 1983 a. 538 s. 269 (3); 1985 a. 12, 29, 273; 1987 a. 4, 27, 186; 1987 a. 312 s. 17; 1987 a. 328, 378, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 74, 335; 1991 a. 39, 219, 313, 316; 1993 a. 16, 112, 205, 490; 1995 a. 27 ss. 3434g to 3440m, 9145 (1); 1995 a. 209, 233; 1997 a. 27, 35, 191, 237, 252; 1999 a. 9, 31, 185; 2001 a. 16, 44, 104, 107, 109; 2003 a. 33, 127; 2005 a. 25, 259; 2007 a. 20, 86; 2009 a. 2, 28, 180, 401; 2011 a. 10, 32, 257; 2013 a. 20, 54; 2015 a. 55, 216, 254, 295; 2017 a. 59, 270, 324, 358, 368.

13 **SECTION 44.** 77.59 (5) of the statutes is amended to read:

14 77.59 (5) The department may offset the amount of any refund for a period,
15 together with interest on the refund, against deficiencies for another period, and
16 against penalties and interest on the deficiencies, or against any amount of whatever
17 kind, due and owing on the books of the department from the person who is entitled
18 to the refund. If the refund is to be paid to a buyer, the department may also set off
19 amounts in the manner in which it sets off income tax and franchise tax refunds
20 under s. 71.93 and may set off amounts for child support or maintenance or both in
21 the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3), (6) and

1 (7). No person has any right to, or interest in, any refund under this chapter until
2 setoff under ss. 49.855, 71.93, and 71.935 has been completed.

History: 1975 c. 186; 1979 c. 174, 203, 221; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1985 a. 261 ss. 13g, 13m, 13t; 1987 a. 312 s. 17; 1991 a. 39, 269; 1993 a. 308, 437; 1995 a. 404; 2003 a. 33; 2005 a. 49; 2007 a. 20; 2009 a. 2 ss. 386, 493 to 498; 2009 a. 28, 330; 2013 a. 20; 2015 a. 55, 216; 2017 a. 59, 324.

3 **SECTION 45.** 806.11 (1) (intro) of the statutes is amended to read:

4 806.11 (1) (intro) At the time of filing the warrant provided by s. 71.74 (14),
5 71.91 (5), or 71.93 (8) ~~(b) 5.~~ (d), the clerk of circuit court shall enter the warrant in
6 the judgment and lien docket, including:

History: Sup. Ct. Order, 67 Wis. 2d 585, 730 (1975); 1975 c. 218; 1985 a. 145; 1987 a. 312 s. 17; 1991 a. 39; 1995 a. 224; 2009 a. 28.

7 **SECTION 46.** 806.11 (2) of the statutes is amended to read:

8 806.11 (2) If a warrant provided by s. 71.74 (14), 71.91 (5), or 71.93 (8) ~~(b) 5.~~ (d)
9 is against several persons, the warrant shall be entered, in accordance with the
10 procedure under sub. (1), in the judgment and lien docket under the name of each
11 person against whom the warrant was issued.

History: Sup. Ct. Order, 67 Wis. 2d 585, 730 (1975); 1975 c. 218; 1985 a. 145; 1987 a. 312 s. 17; 1991 a. 39; 1995 a. 224; 2009 a. 28.

12 **SECTION 47.** 806.115 of the statutes is amended to read:

13 **806.115 Filing of duplicate copy of warrant.** The department of revenue
14 may file in any county a duplicate copy of a warrant filed under s. 71.74 (14), 71.91
15 (5), or 71.93 (8) ~~(b) 5.~~ (d) and the clerk of circuit court shall enter the duplicate copy
16 on the judgment and lien docket as provided in s. 806.11. When so entered, the
17 duplicate copy shall have the same legal effect as the warrant filed under s. 71.91 (5).

History: 1975 c. 224; 1987 a. 312 s. 17; 1987 a. 403 s. 256; 1995 a. 224; 2009 a. 28.

18 (END)

Lunder, Erika

From: Gilchrist, John M - DOA
Sent: Monday, February 18, 2019 2:52 PM
To: Lunder, Erika
Subject: Technical Changes and TRIP
Attachments: 19-1932_P1 (2).pdf

Good afternoon Erika,

After reviewing the first draft we are requesting several changes.

LRB 1932/P1 Modifications to state debt collection programs

- ✓ • Page 3 line 21 – after Section 7, insert: "Section 7m. 71.93(1)(a)7m. of the statutes is repealed."
- ✓ • Page 4, lines 4-5 – modify the language as follows. The modification will allow DOR to collect restitution for a victim once the debtor is no longer subject to probation or parole.

.09

"71.93(1)(a)10. Restitution ~~that is owed pursuant to an order or judgment under s. 973(3)(b) or 973.20(1r), which may be owed to, paid to, or recovered by the victim, from the~~ department of corrections, a court, or a clerk of court."
- ✓ • Page 5 line 24 - remove "of other entities"
- ✓ • Page 6, lines 5-7, modify as follows:

"71.93(3)(a)1m. ~~Debt certified under s. 973.20 (10) (b) or restitution that is owed to or may be recovered~~ Restitution under sub. (1)(a)10. certified by the department of corrections, a court or a clerk of court. on behalf of a victim."
- ✓ • Page 9, line 2, add the following sentence:

"Any legal action contesting the validity of a debt shall be brought against the court, legislature, or authority as defined in s. 16.41 (4), or local unit of government that referred the debt."
- ✓ • Page 9, line 6, after Section 39, insert:

"Section 39m. 71.935(1)(a) is amended to read:

"(a) "Debt" means a parking citation of at least \$20 that is unpaid and for which there has been no court appearance by the date specified in the citation or, if no date is specified, that is unpaid for at least 28 days; an unpaid fine, fee, restitution or forfeiture of at least \$20; delinquent general property taxes, as defined in s. 74.01 (1), special assessments, as defined in s. 74.01 (3), special charges, as defined in s. 74.01 (4), and special taxes, as defined in s. 74.01 (5), and any interest and penalty charged as a result of the delinquency, charge, assessment or tax; and any other debt that is at least \$20, including debt related to property taxes, if the debt has been reduced to a judgment or the municipality or county to which the debt is owed has provided the debtor reasonable notice and an opportunity to be heard with regard to the debt. For purposes of this subsection, a debt owed to an ambulance service provider operating pursuant to a contract with a municipality or county under s. 59.54 (1), 60.565, 61.64, or 62.133, is considered a debt owed to the municipality or county, if the debt

relates to providing ambulance services to individuals in that municipality or county as a result of responding to requests that originate from a government-operated 911 call center.

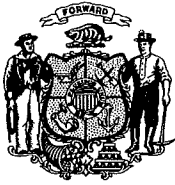
✓ **Section 39n.** 71.935(1)(am) of the statutes is repealed."

✓ • Page 11 – add new section as follows:

"Section 49. 973.20(1r) of the statutes is amended to read:

(1r) When imposing sentence or ordering probation for any crime, other than a crime involving conduct that constitutes domestic abuse under s. 813.12 (1) (am) or 968.075 (1) (a), for which the defendant was convicted, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing or, if the victim is deceased, to his or her estate, unless the court finds substantial reason not to do so and states the reason on the record. When imposing sentence or ordering probation for a crime involving conduct that constitutes domestic abuse under s. 813.12 (1) (am) or 968.075 (1) (a) for which the defendant was convicted or that was considered at sentencing, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime or, if the victim is deceased, to his or her estate, unless the court finds that imposing full or partial restitution will create an undue hardship on the defendant or victim and describes the undue hardship on the record. Restitution ordered under this section is a condition of probation, extended supervision, or parole served by the defendant for a crime for which the defendant was convicted. After the termination of probation, extended supervision, or parole, or if the defendant is not placed on probation, extended supervision, or parole, restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution or enforced under ch. 785, and the department or clerk of court may certify the restitution to the department of revenue in accordance with s. 71.93."

Respectfully,
John Gilchrist
Executive Policy & Budget Analyst
State Budget Office
Wisconsin Department of Administration
608-266-7597



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1932/P1 (P2)
EKL:wlj

DOA:.....Gilchrist, BB0317 – Technical changes to improve clarity and scope of TRIP and debt collection statutes

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

IN 2/19

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

GENERAL TAXATION

1. Modifications to state debt collection programs

This bill modifies the programs under which DOR is authorized to collect debt owed to state agencies, municipalities, and counties by offsetting tax refunds and other state payments due the debtor. The bill consolidates provisions under which a state agency, municipality, or county refers a debt to DOR for collection and includes the State of Wisconsin in the definition of "state agency" for purposes of the debt collection programs. Under the bill, any legal action contesting the validity of a debt must be brought against the state agency that referred the debt. The bill repeals the requirement that DOR provide quarterly status updates to a state agency, municipality, or county regarding the debt collection. Under the bill, DOR may provide, upon request, information to a state agency, municipality, or county about each debt's status and may provide weekly reports of the amounts collected and payments disbursed. The bill replaces the current requirement that DOR charge debtors for administration expenses with a requirement that debtors pay a collection fee, and repeals the requirement that DOR annually review its prior year's administrative costs and adjust the charges accordingly.

unit of government

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 49.855 (3) of the statutes is amended to read:

2 49.855 (3) Receipt of a certification by the department of revenue shall
3 constitute a lien, equal to the amount certified, on any state tax refunds or credits
4 owed to the obligor. The lien shall be foreclosed by the department of revenue as a
5 setoff under s. 71.93 (3), ~~(6), and (7)~~. When the department of revenue determines
6 that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the
7 obligor that the state intends to reduce any state tax refund or credit due the obligor
8 by the amount the obligor is delinquent under the support, maintenance, or receiving
9 and disbursing fee order or obligation, by the outstanding amount for past support,
10 medical expenses, or birth expenses under the court order, or by the amount due
11 under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20
12 days the obligor may request a hearing before the circuit court rendering the order
13 under which the obligation arose. Within 10 days after receiving a request for
14 hearing under this subsection, the court shall set the matter for hearing. Pending
15 further order by the court or a circuit court commissioner, the department of children
16 and families or its designee, whichever is appropriate, is prohibited from disbursing
17 the obligor's state tax refund or credit. A circuit court commissioner may conduct the
18 hearing. The sole issues at that hearing shall be whether the obligor owes the
19 amount certified and, if not and it is a support or maintenance order, whether the
20 money withheld from a tax refund or credit shall be paid to the obligor or held for
21 future support or maintenance, except that the obligor's ability to pay shall also be

1 an issue at the hearing if the obligation relates to an order under s. 767.805 (4) (d)
2 1. or 767.89 (3) (e) 1. and the order specifies that the court found that the obligor's
3 income was at or below the poverty line established under 42 USC 9902 (2).

4 **SECTION 2.** 59.40 (4) of the statutes is amended to read:

5 59.40 (4) CLERK OF CIRCUIT COURT; DEBT COLLECTOR CONTRACT. If authorized by
6 the board under s. 59.52 (28), the clerk of circuit court may contract with a debt
7 collector, as defined in s. 427.103 (3), or enter into an agreement with the department
8 of revenue under s. 71.93 (8) for the collection of debt. Any contract entered into with
9 a debt collector shall provide that the debt collector shall be paid from the proceeds
10 recovered by the debt collector. Any contract entered into with the department shall
11 provide that the department shall charge a collection fee, as provided under s. 71.93
12 (8) ~~(b) 1.~~ (am). The net proceeds received by the clerk of circuit court after the
13 payment to the debt collector shall be considered the amount of debt collected for
14 purposes of distribution to the state and county under sub. (2) (m).

15 **SECTION 3.** 71.93 (title) of the statutes is amended to read:

16 **71.93 (title) Setoffs for other state agencies and debt collection for state**
17 **agencies, municipalities, and counties.**

18 **SECTION 4.** 71.93 (1) (a) 3. of the statutes is repealed.

19 **SECTION 5.** 71.93 (1) (a) 4. of the statutes is repealed.

20 **SECTION 6.** 71.93 (1) (a) 5. of the statutes is repealed.

21 **SECTION 7.** 71.93 (1) (a) 6. of the statutes is repealed.

22 **SECTION 8.** 71.93 (1) (a) 8. of the statutes is repealed.

23 **SECTION 9.** 71.93 (1) (a) 9. of the statutes is created to read:

24 71.93 (1) (a) 9. A delinquent child support or spousal support obligation that
25 is certified under s. 49.855 and is owed to, or may be recovered by the department

INS 3-22 →

1 of children and families on behalf of, a custodial parent, former spouse, or other
2 person.

3 SECTION 10. 71.93 (1) (a) 10. of the statutes is created to read:

4 71.93 (1) (a) 10. Restitution that is owed to or may be recovered from the
5 department of corrections, a court, or a clerk of court on behalf of a victim.

6 SECTION 11. 71.93 (1) (b) of the statutes is amended to read:

7 71.93 (1) (b) "Debtor" means any person owing a debt to a state agency and any
8 person who owes a delinquent child support or spousal support obligation to an
9 agency of another state.

10 SECTION 12. 71.93 (1) (e) of the statutes is renumbered 71.93 (1) (e) (intro.) and
11 amended to read:

12 71.93 (1) (e) (intro.) "State agency" has the meaning set forth under s. 20.001
13 (1). means any of the following:

14 SECTION 13. 71.93 (1) (e) 1. of the statutes is created to read:

15 71.93 (1) (e) 1. An office, department, or independent agency in the executive
16 branch of the Wisconsin state government, the legislature, or the courts.

17 SECTION 14. 71.93 (1) (e) 2. of the statutes is created to read:

18 71.93 (1) (e) 2. The State of Wisconsin.

19 SECTION 15. 71.93 (2) (title) of the statutes is amended to read:

20 71.93 (2) (title) CERTIFICATION OF STATE AGENCY DEBTS.

21 SECTION 16. 71.93 (2) of the statutes is renumbered 71.93 (2) (a) and amended
22 to read:

23 71.93 (2) (a) A state agency may certify to the department any properly
24 identified debt exceeding \$20 so that the department may set off the amount of the
25 debt against a refund to the debtor or so that the department of administration may

INS 4-6 ->

1 reduce a disbursement to the debtor by the amount of the debt. At least 30 days prior
2 to certification each debtor shall be sent a notice by the state agency of its intent to
3 certify the debt to the department for setoff or reduction and of the debtor's right of
4 appeal. At the time of certification, the certifying state agency shall furnish the
5 social security number or operator's license number of individual debtors and the
6 federal employer identification number of other debtors.

7 **SECTION 17.** 71.93 (2) (b) of the statutes is created to read:

8 71.93 (2) (b) A state agency wishing to certify a debt to the department shall
9 enter into a written agreement with the department prior to any certification under
10 par. (a). A certification of debt by a state agency, or changes to a certification, shall
11 be in a manner and form prescribed by the department. The secretary of revenue
12 shall be the final authority in the resolution of an interagency dispute regarding the
13 certification of a debt. If a refund or disbursement is adjusted after a setoff or
14 reduction, the department may readjust any erroneous settlement with the
15 certifying state agency.

16 **SECTION 18.** 71.93 (3) (title) of the statutes is repealed and recreated to read:

17 71.93 (3) (title) SETOFF.

18 **SECTION 19.** 71.93 (3) (a) (intro.) of the statutes is amended to read:

19 71.93 (3) (a) (intro.) The department of revenue shall ~~setoff~~ set off any debt or
20 other amount owed to the department, regardless of the origin of the debt or of the
21 amount, its nature or its date. ~~The department's setoff shall include the use of~~
22 ~~unclaimed property owed to the debtor under s. 177.24, against a refund owed to the~~
23 debtor. If after the setoff there remains a refund in excess of \$10, the department
24 shall set off the remaining refund against certified debts of ~~other entities~~ [↓] in the
25 following order:

1 SECTION 20. 71.93 (3) (a) 1. of the statutes is amended to read:

2 71.93 (3) (a) 1. Debt under s. 49.855 (1), certified by the department of children
3 and families under sub. (2) (a).

4 SECTION 21. 71.93 (3) (a) 1m. of the statutes is amended to read:

5 71.93 (3) (a) 1m. Debt certified under s. ~~973.20 (10) (b)~~ or restitution that is
6 owed to or may be recovered by the department of corrections, a court, or a clerk of
7 court on behalf of a victim. *Restitution*
Sub. (1)(a) (10) that is certified

8 SECTION 22. 71.93 (3) (a) 3. of the statutes is amended to read:

9 71.93 (3) (a) 3. Debt under s. 71.935 owed to local units of government a
10 municipality or county and collected pursuant to an agreement under sub. (8). *2 10.*

11 SECTION 23. 71.93 (3) (a) 4. of the statutes is amended to read:

12 71.93 (3) (a) 4. Debt certified under sub. (2) (a), other than child support debt
13 certified by the department of children and families.

14 SECTION 24. 71.93 (3) (a) 7. of the statutes is amended to read:

15 71.93 (3) (a) 7. Federal tax obligations collected pursuant to an agreement
16 under s. 73.03 (52) (a) or (b).

17 SECTION 25. 71.93 (3) (b) of the statutes is amended to read:

18 71.93 (3) (b) The department shall provide the information obtained under sub.
19 (2) (a) to the department of administration. Before reducing any disbursement as
20 provided under this paragraph, the department of administration shall contact the
21 department to verify whether a certified debt that is the basis of the reduction has
22 been collected by other means. If the certified debt remains uncollected, the
23 department of administration shall reduce the disbursement by the amount of the
24 debtor's certified debt under sub. (2) (a), notify the department of such reduction and
25 disbursement, and remit the amount of the reduction to the department in the

1 manner prescribed by the department. If more than one certified debt exists for any
2 debtor, the disbursement shall be reduced first by any debts certified under s. 73.12
3 then by the earliest debt certified. Any legal action contesting a reduction under this
4 paragraph shall be brought against the state agency that certified the debt under
5 sub. (2) (a).

6 **SECTION 26.** 71.93 (3) (d) of the statutes is created to read:

7 71.93 (3) (d) The department may provide, upon request by a state agency, a
8 report that details each active debt subject to this section of the state agency,
9 including the ending balance. The department may provide a weekly report to a state
10 agency of amounts collected and payments through electronic funds transfer or state
11 account system general ledger transfer.

12 **SECTION 27.** 71.93 (4) of the statutes is repealed.

13 **SECTION 28.** 71.93 (5) of the statutes is renumbered 71.93 (3) (e) and amended
14 to read:

15 71.93 (3) (e) ~~Debtor charged for costs.~~ Each debtor shall be charged for
16 ~~administration expenses~~ a collection fee, and the amounts charged shall be credited
17 to the department's appropriation under s. 20.566 (1) (h). The department may set
18 off amounts charged to the debtor under this subsection against any refund owed to
19 the debtor, in the manner provided in sub. (3). ~~Annually on or before November 1,~~
20 ~~the department shall review its costs incurred during the previous fiscal year in~~
21 ~~administering state agency setoffs and reductions and shall adjust its subsequent~~
22 ~~charges to each debtor to reflect that experience.~~

23 **SECTION 29.** 71.93 (6) of the statutes is repealed.

24 **SECTION 30.** 71.93 (7) (title) of the statutes is repealed.

25 **SECTION 31.** 71.93 (7) of the statutes is renumbered 71.93 (3) (f).

1 **SECTION 32.** 71.93 (8) (title) of the statutes is amended to read:

2 71.93 (8) (title) ~~STATE AGENCY DEBT~~ DEBT COLLECTION AGREEMENTS.

3 **SECTION 33.** 71.93 (8) (a) of the statutes is repealed.

4 **SECTION 34.** 71.93 (8) (b) 1. of the statutes is renumbered 71.93 (8) (am) and
5 amended to read:

6 71.93 (8) (am) Except for debts under sub. (1) (a) 2. and 9. and except as
7 provided in ~~subd. 2. par. (bm)~~, a state agency and the department of revenue shall
8 enter into a written agreement to have the department collect ~~any amount owed to~~
9 ~~the state agency~~ a debt that is more than 90 days past due, unless negotiations
10 between the agency and debtor are actively ongoing, the debt is the subject of legal
11 action or administrative proceedings, or the agency determines that the debtor is
12 adhering to an acceptable payment arrangement. At least 30 days before the
13 department pursues the collection of any debt referred by a state agency, either the
14 department or the agency shall provide the debtor with a written notice that the debt
15 will be referred to the department for collection. Any legal action contesting the
16 validity of a debt shall be brought against the state agency that referred the debt.
17 The department may collect amounts owed, pursuant to the written agreement, from
18 the debtor in addition to offsetting the amounts as provided under sub. (3). The
19 department shall charge each debtor whose debt is subject to collection under this
20 paragraph a collection fee and that amount shall be credited to the appropriation
21 under s. 20.566 (1) (h).

22 **SECTION 35.** 71.93 (8) (b) 2. of the statutes is renumbered 71.93 (8) (bm) and
23 amended to read:

24 71.93 (8) (bm) The department may enter into agreements described under
25 ~~subd. 1. par. (am)~~ with the courts, the legislature, authorities, as defined in s. 16.41

1 (4), and local units of government, to collect debt under s. 71.935, municipalities and
2 counties.

INS 9-2 →

3 SECTION 36. 71.93 (8) (b) 3. of the statutes is repealed.

4 SECTION 37. 71.93 (8) (b) 4. of the statutes is renumbered 71.93 (8) (c).

5 SECTION 38. 71.93 (8) (b) 5. of the statutes is renumbered 71.93 (8) (d).

6 SECTION 39. 71.93 (8) (b) 6. of the statutes is renumbered 71.93 (8) (e).

INS 9-7 →

7 SECTION 40. 71.935 (1) (ar) of the statutes is repealed.

8 SECTION 41. 71.935 (1) (b) of the statutes is amended to read:

9 71.935 (1) (b) "Debtor" means a person who owes a debt related to victim
10 restitution or who owes a debt to a municipality or county.

11 SECTION 42. 71.935 (4) (a) of the statutes is repealed and recreated to read:

12 71.935 (4) (a) The department may provide, upon request by a municipality or
13 county, a report that details each active debt subject to this section of the
14 municipality or county, including the ending balance. The department may provide
15 a weekly report to a municipality or county of amounts collected and payments
16 disbursed through electronic funds transfer or state account system general ledger
17 transfer.

18 SECTION 43. 71.935 (5) of the statutes is amended to read:

19 71.935 (5) Each debtor shall be charged for ~~administration expenses a~~
20 collection fee, and the amounts charged shall be credited to the appropriation
21 account under s. 20.566 (1) (h). The department may set off amounts charged to the
22 debtor under this subsection against any refund owed to the debtor, in the manner
23 provided in sub. (3). ~~Annually on or before November 1, the department shall review~~
24 ~~its costs incurred during the previous fiscal year in administering setoffs and~~

1 ~~reductions under this section and shall adjust its subsequent charges to each debtor~~
2 ~~to reflect that experience.~~

3 **SECTION 44.** 73.03 (67) of the statutes is amended to read:

4 73.03 (67) To submit a request for a supplement under s. 16.515 for
5 administering the debt collection program under s. 71.93 (8) (b) that includes a
6 detailed plan for implementing the program, a listing of agencies and other entities
7 that would participate in the program, an estimate of the amount of debt collections
8 under the program, and the fees that the debtors would pay under the program.

9 **SECTION 45.** 77.59 (5) of the statutes is amended to read:

10 77.59 (5) The department may offset the amount of any refund for a period,
11 together with interest on the refund, against deficiencies for another period, and
12 against penalties and interest on the deficiencies, or against any amount of whatever
13 kind, due and owing on the books of the department from the person who is entitled
14 to the refund. If the refund is to be paid to a buyer, the department may also set off
15 amounts in the manner in which it sets off income tax and franchise tax refunds
16 under s. 71.93 and may set off amounts for child support or maintenance or both in
17 the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3), (6) and
18 (7). No person has any right to, or interest in, any refund under this chapter until
19 setoff under ss. 49.855, 71.93, and 71.935 has been completed.

20 **SECTION 46.** 806.11 (1) (intro.) of the statutes is amended to read:

21 806.11 (1) (intro.) At the time of filing the warrant provided by s. 71.74 (14),
22 71.91 (5), or 71.93 (8) (b) ~~5~~, (d), the clerk of circuit court shall enter the warrant in
23 the judgment and lien docket, including:

24 **SECTION 47.** 806.11 (2) of the statutes is amended to read:

1 806.11 (2) If a warrant provided by s. 71.74 (14), 71.91 (5), or 71.93 (8) ~~(b) 5.~~ (d)
2 is against several persons, the warrant shall be entered, in accordance with the
3 procedure under sub. (1), in the judgment and lien docket under the name of each
4 person against whom the warrant was issued.

5 **SECTION 48.** 806.115 of the statutes is amended to read:

6 **806.115 Filing of duplicate copy of warrant.** The department of revenue
7 may file in any county a duplicate copy of a warrant filed under s. 71.74 (14), 71.91
8 (5), or 71.93 (8) ~~(b) 5.~~ (d) and the clerk of circuit court shall enter the duplicate copy
9 on the judgment and lien docket as provided in s. 806.11. When so entered, the
10 duplicate copy shall have the same legal effect as the warrant filed under s. 71.91 (5).

INS 11-11 →
11

(END)

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1932/P1ins
EKL:wlj

1 INS 3-22

2 **SECTION 1.** 71.93 (1) (a) 7m. of the statutes is repealed.

3 INS 4-6

4 71.93 (1) (a) 10. Restitution owed pursuant to an order or judgment under s.
5 973.09 (3) (b) or 973.20 (1r) that may be owed to, paid to, or recovered by the victim,
6 the department of corrections, a court, or a clerk of court.

7 INS 9-2

8 . Any legal action contesting the validity of a debt shall be brought against the
9 unit of government that referred the debt to the department

10 INS 9-7

11 **SECTION 2.** 71.935 (1) (a) of the statutes is amended to read:

12 71.935 (1) (a) "Debt" means a parking citation of at least \$20 that is unpaid and
13 for which there has been no court appearance by the date specified in the citation or,
14 if no date is specified, that is unpaid for at least 28 days; an unpaid fine, fee,
15 restitution or forfeiture of at least \$20; delinquent general property taxes, as defined
16 in s. 74.01 (1), or a delinquent special assessment, as defined in s. 74.01 (3), special
17 charge, as defined in s. 74.01 (4), or special tax, as defined in s. 74.01 (5), and any
18 interest or penalty charged due to the ^edelinquency; and any other debt that is at least
19 \$20, including debt related to property taxes, if the debt has been reduced to a
20 judgment or the municipality or county to which the debt is owed has provided the
21 debtor reasonable notice and an opportunity to be heard with regard to the debt. For
22 purposes of this subsection, a debt owed to an ambulance service provider operating
23 pursuant to a contract with a municipality or county under s. 59.54 (1), 60.565, 61.64,

1 or 62.133, is considered a debt owed to the municipality or county, if the debt relates
2 to providing ambulance services to individuals in that municipality or county as a
3 result of responding to requests that originate from a government-operated 911 call
4 center.

History: 1995 a. 27; 1997 a. 27; 2003 a. 177; 2005 a. 25, 59, 254, 454; 2007 a. 96, 97; 2011 a. 32, 142; 2015 a. 55, 59, 355.

5 **SECTION 3.** 71.935 (1) (am) of the statutes is repealed.

6 INS 11-11

7 **SECTION 4.** 973.20 (1r) of the statutes is amended to read:

8 973.20 (1r) When imposing sentence or ordering probation for any crime, other
9 than a crime involving conduct that constitutes domestic abuse under s. 813.12 (1)
10 (am) or 968.075 (1) (a), for which the defendant was convicted, the court, in addition
11 to any other penalty authorized by law, shall order the defendant to make full or
12 partial restitution under this section to any victim of a crime considered at
13 sentencing or, if the victim is deceased, to his or her estate, unless the court finds
14 substantial reason not to do so and states the reason on the record. When imposing
15 sentence or ordering probation for a crime involving conduct that constitutes
16 domestic abuse under s. 813.12 (1) (am) or 968.075 (1) (a) for which the defendant was
17 convicted or that was considered at sentencing, the court, in addition to any other
18 penalty authorized by law, shall order the defendant to make full or partial
19 restitution under this section to any victim of a crime or, if the victim is deceased, to
20 his or her estate, unless the court finds that imposing full or partial restitution will
21 create an undue hardship on the defendant or victim and describes the undue
22 hardship on the record. Restitution ordered under this section is a condition of
23 probation, extended supervision, or parole served by the defendant for a crime for
24 which the defendant was convicted. After the termination of probation, extended

1 supervision, or parole, or if the defendant is not placed on probation, extended
 2 supervision, or parole, restitution ordered under this section is enforceable in the
 3 same manner as a judgment in a civil action by the victim named in the order to
 4 receive restitution or enforced under ch. 785, and the department or clerk of court
 5 may certify the restitution to the department of revenue in accordance with s. 71.93.

History: 1987 a. 398 ss. 39 to 41, 43; 1989 a. 31, 188; 1991 a. 39, 269; 1993 a. 213; 1995 a. 141, 161; 1997 a. 283; 2001 a. 16, 61; 2003 a. 139, 321; 2005 a. 277, 447; 2007 a. 20, 116; 2009 a. 105; 2015 a. 355; 2017 a. 246.

Judicial Council Note, 1987: Sub. (1) allows restitution to be ordered although the defendant is not placed on probation. It allows restitution to be made payable to the estate of a deceased victim. It requires restitution ordered to be a condition of probation or parole served by the defendant for the offense. Finally, it allows restitution unpaid at the time probation or parole supervision terminates to be enforced by the victim as a judgment creditor. See 18 USC 3662 (a), (c) and (h).

Sub. (2) is patterned on 18 USC 3663 (b) (1) and prior s. 973.09 (1r), stats.

Sub. (3) is patterned on 18 USC 3663 (b) (2). Paragraph (d) is patterned on s. 949.06 (1) (b) 3., stats.

Sub. (4) is patterned on 18 USC 3663 (b) (3).

Sub. (5) (a) and (b) is based on prior s. 973.09 (8) (a) and (b), stats. A new provision allows the court to order restitution of income lost by the victim while participating in the investigation and prosecution of the offense.

Sub. (5) (c) is new. It allows the court to order restitution of rewards paid for information which helps solve or prosecute the offense.

Sub. (5) (d) carries forward the provision of prior s. 973.09 (1) (b), stats., allowing restitution to insurers, sureties, etc.

Sub. (6) is based on 18 USC 3663 (e) (1).

Sub. (7) is new. It allows the court to direct the order of payment when there is more than one victim, and to apportion liability when more than one defendant is ordered to make restitution to the same person, or to specify joint and several liability.

Sub. (10) is based on 18 USC 3663 (f).

Sub. (11) (a) is based on prior s. 973.09 (1) (b) and (1m) (c), stats.

Sub. (11) (b) is based on prior s. 973.09 (1m) (d), stats.

Sub. (12) (a) is based on prior s. 973.09 (1m) (a), stats.

Sub. (12) (b) is based on prior s. 973.09 (1m) (c), stats.

Sub. (12) (c) is based on prior s. 973.09 (1m) (cm), stats.

Sub. (13) (a) is patterned on 18 USC 3664 (a). Prior s. 973.09 (1m) (a), stats., similarly required the court to consider the defendant's ability to pay when determining the amount of restitution.

Sub. (13) (b) is new. It makes the district attorney primarily responsible for obtaining information relating to the amount of loss suffered by any crime victim. Law enforcement, probation and parole, and victim assistance agencies must cooperate with the district attorney in this regard. The department of justice is directed to develop model forms and procedures for collecting victim loss data. See legislative audit bureau report No. 85-10, April 15, 1985, at 14-18.

Sub. (13) (c) creates several optional procedures for resolving disputes over the amount of restitution without resort to a judicial evidentiary hearing as provided by prior s. 973.09 (1m) (b), stats. First, the defendant may stipulate to the district attorney's determination of the amount of victim loss, while reserving the right to seek a lower amount of restitution based on ability-to-pay factors. Second, the court may hear the dispute at the sentencing proceeding, or adjourn the matter for later hearing prior to imposing sentence. Third, the court may order restitution of items not in dispute, referring disputed issues for subsequent resolution. Fourth, the court, with the consent of the parties, may refer disputed restitution issues to an arbitrator, whose determination is final and binding. Fifth, the court may appoint a referee to conduct fact-finding into the disputed restitution issues, whose proposed findings must be presented to the court within 60 days.

Sub. (14) (a) to (c) is based on 18 USC 3664 (d) and prior s. 973.09 (1m) (a), stats.

Sub. (14) (d) is new. It is intended to allow restitution disputes to be heard in an informal way so that parties may participate effectively without the need for legal counsel. Restitution hearings are not governed by the rules of evidence. State v. Pope, 107 Wis. 2d 726 (Ct. App. 1982). [87 Act 398]