

State of Wisconsin



2015 Assembly Bill 663

Date of enactment: **April 11, 2016**
Date of publication*: **April 12, 2016**

2015 WISCONSIN ACT 355

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

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

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

71.93 (1) (a) 7m. 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).

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

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

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

71.935 (1) (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).

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

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

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

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

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

301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT. All money and other property delivered to an employee of any state correctional institution for the benefit of a prisoner or resident shall be delivered to the warden or superintendent, who shall enter the property upon his or her accounts to the credit of the prisoner or resident. The property may be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. 973.045 (4), the

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, victim restitution under s. 973.20 (11) (c), or the benefit of the prisoner or resident. If the money remains uncalled for for one year after the prisoner's or resident's death or departure from the state correctional institution, the superintendent shall deposit it in the general fund. If any prisoner or resident leaves property, other than money, uncalled for at a state correctional institution for one year, the superintendent shall sell the property and deposit the proceeds in the general fund, donate the property to a public agency or private, nonprofit organization or destroy the property. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

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

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

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

304.074 (2) The department shall charge a reasonable fee as determined by the department to probationers, parolees, and persons on extended supervision to partially reimburse the department for the costs of providing supervision and services. ~~The Subject to sub. (3m), the~~ department shall collect moneys for the fees charged under this subsection and credit those moneys to the appropriation account under s. 20.410 (1) (gf).

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

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

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

812.405 Garnishment of earnings to satisfy an order for restitution. Notwithstanding ss. 812.35 and 812.40, a garnishment of earnings payable to a debtor who owes victim restitution ordered under s. 973.20 (1r)

remains valid and effective until the judgment is satisfied, unless sooner terminated by order of the court.

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

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

STATE OF WISCONSIN
CIRCUIT COURT: County

A.B., Creditor	
vs.	File or Reference Number
C.D., Debtor	EARNINGS
and	GARNISHMENT
E.F., Garnishee	

THE STATE OF WISCONSIN, To the garnishee:

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

A. Unpaid balance on judgment	\$....
B. Unpaid postjudgment interest	\$....
C. Costs of this earnings garnishment	
(estimated)	\$....
TOTAL	\$....

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

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

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

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

IF THE DEBTOR SENDS YOU AN ANSWER

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

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

MULTIPLE EARNINGS GARNISHMENTS

5. If the debtor's earnings are already being garnished 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 garnished. 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

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

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

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

EXTENSIONS

9. The debtor and creditor may agree in writing to extend this earnings garnishment for additional pay periods beginning within 13 weeks after this earnings garnishment would otherwise terminate. If you receive a written extension stipulation, and an additional garnishee fee for each extension, you must honor it unless a different garnishment against this debtor's earnings is served

upon you before the extension takes effect. In that case, the extension is void and you must return the extension fee to the party who paid it to you.

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

814.62 (1) GARNISHMENT ACTIONS. The fee for commencing a garnishment action under ch. 812, including actions under s. 799.01 (1) (d) 2., is \$20, except that there is no fee for commencing a garnishment action to satisfy an order for victim restitution under s. 973.20 (1r). Of the fees received by the clerk under this subsection, the county treasurer shall pay \$12.50 to the secretary of administration for deposit in the general fund and shall retain the balance for the use of the county. The secretary of administration shall credit \$5 of the \$12.50 to the appropriation under s. 20.680 (2) (j).

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

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

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

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

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

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

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

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

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

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

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

973.20 (11) (e) The department and each clerk of court that collects restitution under this section shall annually submit a report to the legislature under s. 13.172 (2) that specifies, for each fiscal year, the total amounts of restitution ordered for the department and each clerk of court to collect, the administrative fee the department and each clerk of court collects under par. (a), and the

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amounts of restitution collected by the department and by the clerk of court and dispersed to victims.

SECTION 18. 973.20 (12) (a) of the statutes is amended to read:

973.20 (12) (a) If the court orders restitution in addition to the payment of fines, costs, fees, and surcharges under ss. 973.05 and 973.06 and ch. 814, it shall set the amount of fines, costs, fees, and surcharges in conjunction with the amount of restitution and issue a single

order, signed by the judge, covering all of the payments and any amounts due under s. 304.074. If the costs for legal representation by a private attorney appointed under s. 977.08 or the fees due under s. 304.074 are not established at the time of issuance of the order, the court may revise the order to include those costs at a later time.

SECTION 18m. Effective date.

(1) This act takes effect on July 1, 2016.
