

HOUSE BILL No. 1257

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-46-3-7; IC 35-50-5-3.

Synopsis: Animal neglect and abandonment. Increases the penalty for animal cruelty based on neglect or abandonment of an animal to a Level 6 felony if the neglect or abandonment results in serious bodily injury or death to the animal. Requires a court to order an individual convicted of certain animal cruelty offenses to make restitution to any person who suffered property damage, paid veterinary expenses, or incurred remediation and clean up costs as a result of the offense.

Effective: July 1, 2014.

Austin, Lutz, Lawson L

January 14, 2014, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1257

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 35-46-3-7, AS AMENDED BY P.L.158-2013,
2 SECTION 558, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) A person who:
4 (1) has a vertebrate animal in the person's custody; and
5 (2) recklessly, knowingly, or intentionally abandons or neglects
6 the animal;
7 commits cruelty to an animal, a Class A misdemeanor. However,
8 except for a conviction under section 1 of this chapter, the offense is a
9 Level 6 felony if the person has a prior unrelated conviction under this
10 chapter, **or if the abandonment or neglect results in serious bodily**
11 **injury or death to the vertebrate animal.**
12 (b) It is a defense to a prosecution for abandoning a vertebrate
13 animal under this section that the person who had the animal in the
14 person's custody reasonably believed that the vertebrate animal was
15 capable of surviving on its own.
16 (c) For purposes of this section, an animal that is feral is not in a



1 person's custody.

2 SECTION 2. IC 35-50-5-3, AS AMENDED BY P.L.73-2012,
 3 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2014]: Sec. 3. (a) Except as provided in subsection (i), (j), (l),
 5 **or (m), or (n)**, in addition to any sentence imposed under this article for
 6 a felony or misdemeanor, the court may, as a condition of probation or
 7 without placing the person on probation, order the person to make
 8 restitution to the victim of the crime, the victim's estate, or the family
 9 of a victim who is deceased. The court shall base its restitution order
 10 upon a consideration of:

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

25 (b) A restitution order under subsection (a), (i), (j), (l), **or (m), or**
 26 **(n)**, is a judgment lien that:

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

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

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

- 37 (1) the victim services division of the Indiana criminal justice
- 38 institute in an amount not exceeding:
 - 39 (A) the amount of the award, if any, paid to the victim under
 - 40 IC 5-2-6.1; and
 - 41 (B) the cost of the reimbursements, if any, for emergency
 - 42 services provided to the victim under IC 16-10-1.5 (before its



- 1 repeal) or IC 16-21-8; or
 2 (2) a probation department that shall forward restitution or part of
 3 restitution to:
 4 (A) a victim of a crime;
 5 (B) a victim's estate; or
 6 (C) the family of a victim who is deceased.
- 7 The victim services division of the Indiana criminal justice institute
 8 shall deposit the restitution it receives under this subsection in the
 9 violent crime victims compensation fund established by IC 5-2-6.1-40.
- 10 (d) When a restitution order is issued under subsection (a), (i), (j),
 11 (l), ~~or~~ (m), **or** (n), the issuing court shall send a certified copy of the
 12 order to the clerk of the circuit court in the county where the felony or
 13 misdemeanor charge was filed. The restitution order must include the
 14 following information:
 15 (1) The name and address of the person that is to receive the
 16 restitution.
 17 (2) The amount of restitution the person is to receive.
- 18 Upon receiving the order, the clerk shall enter and index the order in
 19 the circuit court judgment docket in the manner prescribed by
 20 IC 33-32-3-2. The clerk shall also notify the department of insurance
 21 of an order of restitution under subsection (i).
- 22 (e) An order of restitution under subsection (a), (i), (j), (l), ~~or~~ (m),
 23 **or** (n), does not bar a civil action for:
 24 (1) damages that the court did not require the person to pay to the
 25 victim under the restitution order but arise from an injury or
 26 property damage that is the basis of restitution ordered by the
 27 court; and
 28 (2) other damages suffered by the victim.
- 29 (f) Regardless of whether restitution is required under subsection (a)
 30 as a condition of probation or other sentence, the restitution order is not
 31 discharged by the completion of any probationary period or other
 32 sentence imposed for a felony or misdemeanor.
- 33 (g) A restitution order under subsection (a), (i), (j), (l), ~~or~~ (m), **or**
 34 **(n)**, is not discharged by the liquidation of a person's estate by a
 35 receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5,
 36 IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).
- 37 (h) The attorney general may pursue restitution ordered by the court
 38 under subsections (a) and (c) on behalf of the victim services division
 39 of the Indiana criminal justice institute established under IC 5-2-6-8.
- 40 (i) The court may order the person convicted of an offense under
 41 IC 35-43-9 to make restitution to the victim of the crime. The court
 42 shall base its restitution order upon a consideration of the amount of



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

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

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

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

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

35 (A) the federal Fair Labor Standards Act of 1938, as amended
36 (29 U.S.C. 201-209); or

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

38 whichever is greater.

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

40 (1) is convicted of dealing in methamphetamine under
41 IC 35-48-4-1.1(a)(1)(A); and

42 (2) manufactured the methamphetamine on property owned by



1 another person, without the consent of the property owner;
2 to pay liquidated damages to the property owner in the amount of ten
3 thousand dollars (\$10,000).

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

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

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

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

11 **(n) The court shall order a person convicted of an offense under**
12 **IC 35-46-3-7 or IC 35-46-3-12 to make restitution to any person,**
13 **including a unit and the property owner of the property where the**
14 **offense was committed, in an amount equal to:**

15 **(1) property damage incurred as a result of the crime, based**
16 **on the actual cost of repair, remediation, or clean up;**

17 **(2) veterinary expenses paid by the person (before the date of**
18 **sentencing) as a result of the crime; and**

19 **(3) other clean up and remediation costs incurred as a result**
20 **of the crime, based on the actual cost of clean up and**
21 **remediation.**

