



Sen. Toi W. Hutchinson

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1 AMENDMENT TO HOUSE BILL 1689

2 AMENDMENT NO. _____. Amend House Bill 1689, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Criminal Code of 1961 is amended by
6 changing Section 17-56 as follows:

7 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

8 (This Section may contain text from a Public Act with a
9 delayed effective date)

10 Sec. 17-56. Financial exploitation of an elderly person or
11 a person with a disability.

12 (a) A person commits financial exploitation of an elderly
13 person or a person with a disability when he or she stands in a
14 position of trust or confidence with the elderly person or a
15 person with a disability and he or she knowingly and by
16 deception or intimidation obtains control over the property of

1 an elderly person or a person with a disability or illegally
2 uses the assets or resources of an elderly person or a person
3 with a disability.

4 (b) Sentence. Financial exploitation of an elderly person
5 or a person with a disability is: (1) a Class 4 felony if the
6 value of the property is \$300 or less, (2) a Class 3 felony if
7 the value of the property is more than \$300 but less than
8 \$5,000, (3) a Class 2 felony if the value of the property is
9 \$5,000 or more but less than \$50,000 ~~\$100,000~~, and (4) a Class
10 1 felony if the value of the property is \$50,000 ~~\$100,000~~ or
11 more or if the elderly person is over 70 years of age and the
12 value of the property is \$15,000 or more or if the elderly
13 person is 80 years of age or older and the value of the
14 property is \$5,000 or more.

15 (c) For purposes of this Section:

16 (1) "Elderly person" means a person 60 years of age or
17 older.

18 (2) "Person with a disability" means a person who
19 suffers from a physical or mental impairment resulting from
20 disease, injury, functional disorder or congenital
21 condition that impairs the individual's mental or physical
22 ability to independently manage his or her property or
23 financial resources, or both.

24 (3) "Intimidation" means the communication to an
25 elderly person or a person with a disability that he or she
26 shall be deprived of food and nutrition, shelter,

1 prescribed medication or medical care and treatment.

2 (4) "Deception" means, in addition to its meaning as
3 defined in Section 15-4 of this Code, a misrepresentation
4 or concealment of material fact relating to the terms of a
5 contract or agreement entered into with the elderly person
6 or person with a disability or to the existing or
7 pre-existing condition of any of the property involved in
8 such contract or agreement; or the use or employment of any
9 misrepresentation, false pretense or false promise in
10 order to induce, encourage or solicit the elderly person or
11 person with a disability to enter into a contract or
12 agreement.

13 The illegal use of the assets or resources of an elderly
14 person or a person with a disability includes, but is not
15 limited to, the misappropriation of those assets or resources
16 by undue influence, breach of a fiduciary relationship, fraud,
17 deception, extortion, or use of the assets or resources
18 contrary to law.

19 A person stands in a position of trust and confidence with
20 an elderly person or person with a disability when he (i) is a
21 parent, spouse, adult child or other relative by blood or
22 marriage of the elderly person or person with a disability,
23 (ii) is a joint tenant or tenant in common with the elderly
24 person or person with a disability, (iii) has a legal or
25 fiduciary relationship with the elderly person or person with a
26 disability, or (iv) is a financial planning or investment

1 professional.

2 (d) Limitations. Nothing in this Section shall be construed
3 to limit the remedies available to the victim under the
4 Illinois Domestic Violence Act of 1986.

5 (e) Good faith efforts. Nothing in this Section shall be
6 construed to impose criminal liability on a person who has made
7 a good faith effort to assist the elderly person or person with
8 a disability in the management of his or her property, but
9 through no fault of his or her own has been unable to provide
10 such assistance.

11 (f) Not a defense. It shall not be a defense to financial
12 exploitation of an elderly person or person with a disability
13 that the accused reasonably believed that the victim was not an
14 elderly person or person with a disability.

15 (g) Civil Liability. A person who is charged by information
16 or indictment with the offense of financial exploitation of an
17 elderly person or person with a disability and who fails or
18 refuses to return the victim's property within 60 days
19 following a written demand from the victim or the victim's
20 legal representative shall be liable to the victim or to the
21 estate of the victim in damages of treble the amount of the
22 value of the property obtained, plus reasonable attorney fees
23 and court costs. The burden of proof that the defendant
24 unlawfully obtained the victim's property shall be by a
25 preponderance of the evidence. This subsection shall be
26 operative whether or not the defendant has been convicted of

1 the offense.

2 (Source: P.A. 95-798, eff. 1-1-09; 96-1551, eff. 7-1-11.)

3 Section 10. The Unified Code of Corrections is amended by
4 changing Section 5-5-6 as follows:

5 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

6 (Text of Section after amendment by P.A. 96-1551)

7 Sec. 5-5-6. In all convictions for offenses in violation of
8 the Criminal Code of 1961 or of Section 11-501 of the Illinois
9 Vehicle Code in which the person received any injury to his or
10 her person or damage to his or her real or personal property as
11 a result of the criminal act of the defendant, the court shall
12 order restitution as provided in this Section. In all other
13 cases, except cases in which restitution is required under this
14 Section, the court must at the sentence hearing determine
15 whether restitution is an appropriate sentence to be imposed on
16 each defendant convicted of an offense. If the court determines
17 that an order directing the offender to make restitution is
18 appropriate, the offender may be sentenced to make restitution.
19 The court may consider restitution an appropriate sentence to
20 be imposed on each defendant convicted of an offense in
21 addition to a sentence of imprisonment. The sentence of the
22 defendant to a term of imprisonment is not a mitigating factor
23 that prevents the court from ordering the defendant to pay
24 restitution. If the offender is sentenced to make restitution

1 the Court shall determine the restitution as hereinafter set
2 forth:

3 (a) At the sentence hearing, the court shall determine
4 whether the property may be restored in kind to the
5 possession of the owner or the person entitled to
6 possession thereof; or whether the defendant is possessed
7 of sufficient skill to repair and restore property damaged;
8 or whether the defendant should be required to make
9 restitution in cash, for out-of-pocket expenses, damages,
10 losses, or injuries found to have been proximately caused
11 by the conduct of the defendant or another for whom the
12 defendant is legally accountable under the provisions of
13 Article V of the Criminal Code of 1961.

14 (b) In fixing the amount of restitution to be paid in
15 cash, the court shall allow credit for property returned in
16 kind, for property damages ordered to be repaired by the
17 defendant, and for property ordered to be restored by the
18 defendant; and after granting the credit, the court shall
19 assess the actual out-of-pocket expenses, losses, damages,
20 and injuries suffered by the victim named in the charge and
21 any other victims who may also have suffered out-of-pocket
22 expenses, losses, damages, and injuries proximately caused
23 by the same criminal conduct of the defendant, and
24 insurance carriers who have indemnified the named victim or
25 other victims for the out-of-pocket expenses, losses,
26 damages, or injuries, provided that in no event shall

1 restitution be ordered to be paid on account of pain and
2 suffering. If a defendant is placed on supervision for, or
3 convicted of, domestic battery, the defendant shall be
4 required to pay restitution to any domestic violence
5 shelter in which the victim and any other family or
6 household members lived because of the domestic battery.
7 The amount of the restitution shall equal the actual
8 expenses of the domestic violence shelter in providing
9 housing and any other services for the victim and any other
10 family or household members living at the shelter. If a
11 defendant fails to pay restitution in the manner or within
12 the time period specified by the court, the court may enter
13 an order directing the sheriff to seize any real or
14 personal property of a defendant to the extent necessary to
15 satisfy the order of restitution and dispose of the
16 property by public sale. All proceeds from such sale in
17 excess of the amount of restitution plus court costs and
18 the costs of the sheriff in conducting the sale shall be
19 paid to the defendant. The defendant convicted of domestic
20 battery, if a person under 18 years of age was present and
21 witnessed the domestic battery of the victim, is liable to
22 pay restitution for the cost of any counseling required for
23 the child at the discretion of the court.

24 (c) In cases where more than one defendant is
25 accountable for the same criminal conduct that results in
26 out-of-pocket expenses, losses, damages, or injuries, each

1 defendant shall be ordered to pay restitution in the amount
2 of the total actual out-of-pocket expenses, losses,
3 damages, or injuries to the victim proximately caused by
4 the conduct of all of the defendants who are legally
5 accountable for the offense.

6 (1) In no event shall the victim be entitled to
7 recover restitution in excess of the actual
8 out-of-pocket expenses, losses, damages, or injuries,
9 proximately caused by the conduct of all of the
10 defendants.

11 (2) As between the defendants, the court may
12 apportion the restitution that is payable in
13 proportion to each co-defendant's culpability in the
14 commission of the offense.

15 (3) In the absence of a specific order apportioning
16 the restitution, each defendant shall bear his pro rata
17 share of the restitution.

18 (4) As between the defendants, each defendant
19 shall be entitled to a pro rata reduction in the total
20 restitution required to be paid to the victim for
21 amounts of restitution actually paid by co-defendants,
22 and defendants who shall have paid more than their pro
23 rata share shall be entitled to refunds to be computed
24 by the court as additional amounts are paid by
25 co-defendants.

26 (d) In instances where a defendant has more than one

1 criminal charge pending against him in a single case, or
2 more than one case, and the defendant stands convicted of
3 one or more charges, a plea agreement negotiated by the
4 State's Attorney and the defendants may require the
5 defendant to make restitution to victims of charges that
6 have been dismissed or which it is contemplated will be
7 dismissed under the terms of the plea agreement, and under
8 the agreement, the court may impose a sentence of
9 restitution on the charge or charges of which the defendant
10 has been convicted that would require the defendant to make
11 restitution to victims of other offenses as provided in the
12 plea agreement.

13 (e) The court may require the defendant to apply the
14 balance of the cash bond, after payment of court costs, and
15 any fine that may be imposed to the payment of restitution.

16 (f) Taking into consideration the ability of the
17 defendant to pay, including any real or personal property
18 or any other assets of the defendant, the court shall
19 determine whether restitution shall be paid in a single
20 payment or in installments, and shall fix a period of time
21 not in excess of 5 years, except for violations of Sections
22 16-1.3 and 17-56 of the Criminal Code of 1961, or the
23 period of time specified in subsection (f-1), not including
24 periods of incarceration, within which payment of
25 restitution is to be paid in full. Complete restitution
26 shall be paid in as short a time period as possible.

1 However, if the court deems it necessary and in the best
2 interest of the victim, the court may extend beyond 5 years
3 the period of time within which the payment of restitution
4 is to be paid. If the defendant is ordered to pay
5 restitution and the court orders that restitution is to be
6 paid over a period greater than 6 months, the court shall
7 order that the defendant make monthly payments; the court
8 may waive this requirement of monthly payments only if
9 there is a specific finding of good cause for waiver.

10 (f-1) (1) In addition to any other penalty prescribed by
11 law and any restitution ordered under this Section that did
12 not include long-term physical health care costs, the court
13 may, upon conviction of any misdemeanor or felony, order a
14 defendant to pay restitution to a victim in accordance with
15 the provisions of this subsection (f-1) if the victim has
16 suffered physical injury as a result of the offense that is
17 reasonably probable to require or has required long-term
18 physical health care for more than 3 months. As used in
19 this subsection (f-1) "long-term physical health care"
20 includes mental health care.

21 (2) The victim's estimate of long-term physical health
22 care costs may be made as part of a victim impact statement
23 under Section 6 of the Rights of Crime Victims and
24 Witnesses Act or made separately. The court shall enter the
25 long-term physical health care restitution order at the
26 time of sentencing. An order of restitution made under this

1 subsection (f-1) shall fix a monthly amount to be paid by
2 the defendant for as long as long-term physical health care
3 of the victim is required as a result of the offense. The
4 order may exceed the length of any sentence imposed upon
5 the defendant for the criminal activity. The court shall
6 include as a special finding in the judgment of conviction
7 its determination of the monthly cost of long-term physical
8 health care.

9 (3) After a sentencing order has been entered, the
10 court may from time to time, on the petition of either the
11 defendant or the victim, or upon its own motion, enter an
12 order for restitution for long-term physical care or modify
13 the existing order for restitution for long-term physical
14 care as to the amount of monthly payments. Any modification
15 of the order shall be based only upon a substantial change
16 of circumstances relating to the cost of long-term physical
17 health care or the financial condition of either the
18 defendant or the victim. The petition shall be filed as
19 part of the original criminal docket.

20 (g) In addition to the sentences provided for in
21 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
22 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,
23 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of
24 Section 11-14.4, of the Criminal Code of 1961, the court
25 may order any person who is convicted of violating any of
26 those Sections or who was charged with any of those

1 offenses and which charge was reduced to another charge as
2 a result of a plea agreement under subsection (d) of this
3 Section to meet all or any portion of the financial
4 obligations of treatment, including but not limited to
5 medical, psychiatric, or rehabilitative treatment or
6 psychological counseling, prescribed for the victim or
7 victims of the offense.

8 The payments shall be made by the defendant to the
9 clerk of the circuit court and transmitted by the clerk to
10 the appropriate person or agency as directed by the court.
11 Except as otherwise provided in subsection (f-1), the order
12 may require such payments to be made for a period not to
13 exceed 5 years after sentencing, not including periods of
14 incarceration.

15 (h) The judge may enter an order of withholding to
16 collect the amount of restitution owed in accordance with
17 Part 8 of Article XII of the Code of Civil Procedure.

18 (i) A sentence of restitution may be modified or
19 revoked by the court if the offender commits another
20 offense, or the offender fails to make restitution as
21 ordered by the court, but no sentence to make restitution
22 shall be revoked unless the court shall find that the
23 offender has had the financial ability to make restitution,
24 and he has wilfully refused to do so. When the offender's
25 ability to pay restitution was established at the time an
26 order of restitution was entered or modified, or when the

1 offender's ability to pay was based on the offender's
2 willingness to make restitution as part of a plea agreement
3 made at the time the order of restitution was entered or
4 modified, there is a rebuttable presumption that the facts
5 and circumstances considered by the court at the hearing at
6 which the order of restitution was entered or modified
7 regarding the offender's ability or willingness to pay
8 restitution have not materially changed. If the court shall
9 find that the defendant has failed to make restitution and
10 that the failure is not wilful, the court may impose an
11 additional period of time within which to make restitution.
12 The length of the additional period shall not be more than
13 2 years. The court shall retain all of the incidents of the
14 original sentence, including the authority to modify or
15 enlarge the conditions, and to revoke or further modify the
16 sentence if the conditions of payment are violated during
17 the additional period.

18 (j) The procedure upon the filing of a Petition to
19 Revoke a sentence to make restitution shall be the same as
20 the procedures set forth in Section 5-6-4 of this Code
21 governing violation, modification, or revocation of
22 Probation, of Conditional Discharge, or of Supervision.

23 (k) Nothing contained in this Section shall preclude
24 the right of any party to proceed in a civil action to
25 recover for any damages incurred due to the criminal
26 misconduct of the defendant.

1 (1) Restitution ordered under this Section shall not be
2 subject to disbursement by the circuit clerk under Section
3 27.5 of the Clerks of Courts Act.

4 (m) A restitution order under this Section is a
5 judgment lien in favor of the victim that:

6 (1) Attaches to the property of the person subject
7 to the order;

8 (2) May be perfected in the same manner as provided
9 in Part 3 of Article 9 of the Uniform Commercial Code;

10 (3) May be enforced to satisfy any payment that is
11 delinquent under the restitution order by the person in
12 whose favor the order is issued or the person's
13 assignee; and

14 (4) Expires in the same manner as a judgment lien
15 created in a civil proceeding.

16 When a restitution order is issued under this Section,
17 the issuing court shall send a certified copy of the order
18 to the clerk of the circuit court in the county where the
19 charge was filed. Upon receiving the order, the clerk shall
20 enter and index the order in the circuit court judgment
21 docket.

22 (n) An order of restitution under this Section does not
23 bar a civil action for:

24 (1) Damages that the court did not require the
25 person to pay to the victim under the restitution order
26 but arise from an injury or property damages that is

1 the basis of restitution ordered by the court; and

2 (2) Other damages suffered by the victim.

3 The restitution order is not discharged by the completion
4 of the sentence imposed for the offense.

5 A restitution order under this Section is not discharged by
6 the liquidation of a person's estate by a receiver. A
7 restitution order under this Section may be enforced in the
8 same manner as judgment liens are enforced under Article XII of
9 the Code of Civil Procedure.

10 The provisions of Section 2-1303 of the Code of Civil
11 Procedure, providing for interest on judgments, apply to
12 judgments for restitution entered under this Section.

13 (Source: P.A. 95-331, eff. 8-21-07; 96-290, eff. 8-11-09;
14 96-1551, eff. 7-1-11.)".