

HB4726



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4726

by Rep. Thomas M. Bennett

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-6

from Ch. 38, par. 1005-5-6

Amends the Unified Code of Corrections. Provides that restitution shall be paid to the victim before any court or law imposed cost, fine, fee, assessment, or other payment by the defendant is paid. Deletes language providing that the court may require the defendant to apply the balance of the cash bond, after payment of court costs, and any fine that may be imposed to the payment of restitution.

LRB100 17062 SLF 32213 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

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

7 Sec. 5-5-6. In all convictions for offenses in violation of
8 the Criminal Code of 1961 or the Criminal Code of 2012 or of
9 Section 11-501 of the Illinois Vehicle Code in which the person
10 received any injury to his or her person or damage to his or
11 her real or personal property as a result of the criminal act
12 of the defendant, the court shall order restitution as provided
13 in this Section. In all other cases, except cases in which
14 restitution is required under this Section, the court must at
15 the sentence hearing determine whether restitution is an
16 appropriate sentence to be imposed on each defendant convicted
17 of an offense. If the court determines that an order directing
18 the offender to make restitution is appropriate, the offender
19 may be sentenced to make restitution. The court may consider
20 restitution an appropriate sentence to be imposed on each
21 defendant convicted of an offense in addition to a sentence of
22 imprisonment. The sentence of the defendant to a term of
23 imprisonment is not a mitigating factor that prevents the court

1 from ordering the defendant to pay restitution. If the offender
2 is sentenced to make restitution the Court shall determine the
3 restitution as hereinafter set forth:

4 (a) At the sentence hearing, the court shall determine
5 whether the property may be restored in kind to the
6 possession of the owner or the person entitled to
7 possession thereof; or whether the defendant is possessed
8 of sufficient skill to repair and restore property damaged;
9 or whether the defendant should be required to make
10 restitution in cash, for out-of-pocket expenses, damages,
11 losses, or injuries found to have been proximately caused
12 by the conduct of the defendant or another for whom the
13 defendant is legally accountable under the provisions of
14 Article 5 of the Criminal Code of 1961 or the Criminal Code
15 of 2012.

16 (b) In fixing the amount of restitution to be paid in
17 cash, the court shall allow credit for property returned in
18 kind, for property damages ordered to be repaired by the
19 defendant, and for property ordered to be restored by the
20 defendant; and after granting the credit, the court shall
21 assess the actual out-of-pocket expenses, losses, damages,
22 and injuries suffered by the victim named in the charge and
23 any other victims who may also have suffered out-of-pocket
24 expenses, losses, damages, and injuries proximately caused
25 by the same criminal conduct of the defendant, and
26 insurance carriers who have indemnified the named victim or

1 other victims for the out-of-pocket expenses, losses,
2 damages, or injuries, provided that in no event shall
3 restitution be ordered to be paid on account of pain and
4 suffering. When a victim's out-of-pocket expenses have
5 been paid pursuant to the Crime Victims Compensation Act,
6 the court shall order restitution be paid to the
7 compensation program. If a defendant is placed on
8 supervision for, or convicted of, domestic battery, the
9 defendant shall be required to pay restitution to any
10 domestic violence shelter in which the victim and any other
11 family or household members lived because of the domestic
12 battery. The amount of the restitution shall equal the
13 actual expenses of the domestic violence shelter in
14 providing housing and any other services for the victim and
15 any other family or household members living at the
16 shelter. If a defendant fails to pay restitution in the
17 manner or within the time period specified by the court,
18 the court may enter an order directing the sheriff to seize
19 any real or personal property of a defendant to the extent
20 necessary to satisfy the order of restitution and dispose
21 of the property by public sale. All proceeds from such sale
22 in excess of the amount of restitution plus court costs and
23 the costs of the sheriff in conducting the sale shall be
24 paid to the defendant. The defendant convicted of domestic
25 battery, if a person under 18 years of age was present and
26 witnessed the domestic battery of the victim, is liable to

1 pay restitution for the cost of any counseling required for
2 the child at the discretion of the court.

3 (c) In cases where more than one defendant is
4 accountable for the same criminal conduct that results in
5 out-of-pocket expenses, losses, damages, or injuries, each
6 defendant shall be ordered to pay restitution in the amount
7 of the total actual out-of-pocket expenses, losses,
8 damages, or injuries to the victim proximately caused by
9 the conduct of all of the defendants who are legally
10 accountable for the offense.

11 (1) In no event shall the victim be entitled to
12 recover restitution in excess of the actual
13 out-of-pocket expenses, losses, damages, or injuries,
14 proximately caused by the conduct of all of the
15 defendants.

16 (2) As between the defendants, the court may
17 apportion the restitution that is payable in
18 proportion to each co-defendant's culpability in the
19 commission of the offense.

20 (3) In the absence of a specific order apportioning
21 the restitution, each defendant shall bear his pro rata
22 share of the restitution.

23 (4) As between the defendants, each defendant
24 shall be entitled to a pro rata reduction in the total
25 restitution required to be paid to the victim for
26 amounts of restitution actually paid by co-defendants,

1 and defendants who shall have paid more than their pro
2 rata share shall be entitled to refunds to be computed
3 by the court as additional amounts are paid by
4 co-defendants.

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

18 (e) Restitution shall be paid to the victim before any
19 court or law imposed cost, fine, fee, assessment, or other
20 payment by the defendant is paid. ~~The court may require the~~
21 ~~defendant to apply the balance of the cash bond, after~~
22 ~~payment of court costs, and any fine that may be imposed to~~
23 ~~the payment of restitution.~~

24 (f) Taking into consideration the ability of the
25 defendant to pay, including any real or personal property
26 or any other assets of the defendant, the court shall

1 determine whether restitution shall be paid in a single
2 payment or in installments, and shall fix a period of time
3 not in excess of 5 years, except for violations of Sections
4 16-1.3 and 17-56 of the Criminal Code of 1961 or the
5 Criminal Code of 2012, or the period of time specified in
6 subsection (f-1), not including periods of incarceration,
7 within which payment of restitution is to be paid in full.
8 Complete restitution shall be paid in as short a time
9 period as possible. However, if the court deems it
10 necessary and in the best interest of the victim, the court
11 may extend beyond 5 years the period of time within which
12 the payment of restitution is to be paid. If the defendant
13 is ordered to pay restitution and the court orders that
14 restitution is to be paid over a period greater than 6
15 months, the court shall order that the defendant make
16 monthly payments; the court may waive this requirement of
17 monthly payments only if there is a specific finding of
18 good cause for waiver.

19 (f-1) (1) In addition to any other penalty prescribed by
20 law and any restitution ordered under this Section that did
21 not include long-term physical health care costs, the court
22 may, upon conviction of any misdemeanor or felony, order a
23 defendant to pay restitution to a victim in accordance with
24 the provisions of this subsection (f-1) if the victim has
25 suffered physical injury as a result of the offense that is
26 reasonably probable to require or has required long-term

1 physical health care for more than 3 months. As used in
2 this subsection (f-1) "long-term physical health care"
3 includes mental health care.

4 (2) The victim's estimate of long-term physical health
5 care costs may be made as part of a victim impact statement
6 under Section 6 of the Rights of Crime Victims and
7 Witnesses Act or made separately. The court shall enter the
8 long-term physical health care restitution order at the
9 time of sentencing. An order of restitution made under this
10 subsection (f-1) shall fix a monthly amount to be paid by
11 the defendant for as long as long-term physical health care
12 of the victim is required as a result of the offense. The
13 order may exceed the length of any sentence imposed upon
14 the defendant for the criminal activity. The court shall
15 include as a special finding in the judgment of conviction
16 its determination of the monthly cost of long-term physical
17 health care.

18 (3) After a sentencing order has been entered, the
19 court may from time to time, on the petition of either the
20 defendant or the victim, or upon its own motion, enter an
21 order for restitution for long-term physical care or modify
22 the existing order for restitution for long-term physical
23 care as to the amount of monthly payments. Any modification
24 of the order shall be based only upon a substantial change
25 of circumstances relating to the cost of long-term physical
26 health care or the financial condition of either the

1 defendant or the victim. The petition shall be filed as
2 part of the original criminal docket.

3 (g) In addition to the sentences provided for in
4 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
5 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,
6 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of
7 Section 11-14.4, of the Criminal Code of 1961 or the
8 Criminal Code of 2012, the court may order any person who
9 is convicted of violating any of those Sections or who was
10 charged with any of those offenses and which charge was
11 reduced to another charge as a result of a plea agreement
12 under subsection (d) of this Section to meet all or any
13 portion of the financial obligations of treatment,
14 including but not limited to medical, psychiatric, or
15 rehabilitative treatment or psychological counseling,
16 prescribed for the victim or victims of the offense.

17 The payments shall be made by the defendant to the
18 clerk of the circuit court and transmitted by the clerk to
19 the appropriate person or agency as directed by the court.
20 Except as otherwise provided in subsection (f-1), the order
21 may require such payments to be made for a period not to
22 exceed 5 years after sentencing, not including periods of
23 incarceration.

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

1 (i) A sentence of restitution may be modified or
2 revoked by the court if the offender commits another
3 offense, or the offender fails to make restitution as
4 ordered by the court, but no sentence to make restitution
5 shall be revoked unless the court shall find that the
6 offender has had the financial ability to make restitution,
7 and he has wilfully refused to do so. When the offender's
8 ability to pay restitution was established at the time an
9 order of restitution was entered or modified, or when the
10 offender's ability to pay was based on the offender's
11 willingness to make restitution as part of a plea agreement
12 made at the time the order of restitution was entered or
13 modified, there is a rebuttable presumption that the facts
14 and circumstances considered by the court at the hearing at
15 which the order of restitution was entered or modified
16 regarding the offender's ability or willingness to pay
17 restitution have not materially changed. If the court shall
18 find that the defendant has failed to make restitution and
19 that the failure is not wilful, the court may impose an
20 additional period of time within which to make restitution.
21 The length of the additional period shall not be more than
22 2 years. The court shall retain all of the incidents of the
23 original sentence, including the authority to modify or
24 enlarge the conditions, and to revoke or further modify the
25 sentence if the conditions of payment are violated during
26 the additional period.

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

6 (k) Nothing contained in this Section shall preclude
7 the right of any party to proceed in a civil action to
8 recover for any damages incurred due to the criminal
9 misconduct of the defendant.

10 (l) Restitution ordered under this Section shall not be
11 subject to disbursement by the circuit clerk under Section
12 27.5 of the Clerks of Courts Act.

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

15 (1) Attaches to the property of the person subject
16 to the order;

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

19 (3) May be enforced to satisfy any payment that is
20 delinquent under the restitution order by the person in
21 whose favor the order is issued or the person's
22 assignee; and

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

25 When a restitution order is issued under this Section,
26 the issuing court shall send a certified copy of the order

1 to the clerk of the circuit court in the county where the
2 charge was filed. Upon receiving the order, the clerk shall
3 enter and index the order in the circuit court judgment
4 docket.

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

7 (1) Damages that the court did not require the
8 person to pay to the victim under the restitution order
9 but arise from an injury or property damages that is
10 the basis of restitution ordered by the court; and

11 (2) Other damages suffered by the victim.

12 The restitution order is not discharged by the completion
13 of the sentence imposed for the offense.

14 A restitution order under this Section is not discharged by
15 the liquidation of a person's estate by a receiver. A
16 restitution order under this Section may be enforced in the
17 same manner as judgment liens are enforced under Article XII of
18 the Code of Civil Procedure.

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

22 (Source: P.A. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;
23 97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.
24 1-25-13.)