

1 AN ACT in relation to criminal law.

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

4 Section 5. The Criminal Code of 1961 is amended by
5 changing 12-3.2 as follows:

6 (720 ILCS 5/12-3.2) (from Ch. 38, par. 12-3.2)

7 Sec. 12-3.2. Domestic Battery.

8 (a) A person commits domestic battery if he
9 intentionally or knowingly without legal justification by any
10 means:

11 (1) Causes bodily harm to any family or household
12 member as defined in subsection (3) of Section 112A-3 of
13 the Code of Criminal Procedure of 1963, as amended;

14 (2) Makes physical contact of an insulting or
15 provoking nature with any family or household member as
16 defined in subsection (3) of Section 112A-3 of the Code
17 of Criminal Procedure of 1963, as amended.

18 (b) Sentence. Domestic battery is a Class A
19 Misdemeanor. Domestic battery is a Class 4 felony if the
20 defendant has any prior conviction under this Code for
21 domestic battery (Section 12-3.2) or violation of an order of
22 protection (Section 12-30). Domestic battery is a Class 4
23 felony if the defendant has any prior conviction under this
24 Code for first degree murder (Section 9-1), attempt to commit
25 first degree murder (Section 8-4), aggravated domestic
26 battery (Section 12-3.3), aggravated battery (Section 12-4),
27 heinous battery (Section 12-4.1), aggravated battery with a
28 firearm (Section 12-4.2), aggravated battery of a child
29 (Section 12-4.3), aggravated battery of an unborn child
30 (Section 12-4.4), aggravated battery of a senior citizen
31 (Section 12-4.6), stalking (Section 12-7.3), aggravated

1 stalking (Section 12-7.4), criminal sexual assault (Section
2 12-13), aggravated criminal sexual assault (12-14),
3 kidnapping (Section 10-1), aggravated kidnapping (Section
4 10-2), predatory criminal sexual assault of a child (Section
5 12-14.1), aggravated criminal sexual abuse (Section 12-16),
6 unlawful restraint (Section 10-3), aggravated unlawful
7 restraint (Section 10-3.1), aggravated arson (Section
8 20-1.1), or aggravated discharge of a firearm (Section
9 24-1.2), when any of these offenses have been committed
10 against a family or household member as defined in Section
11 112A-3 of the Code of Criminal Procedure of 1963. In addition
12 to any other sentencing alternatives, for any second
13 conviction of violating this Section within 5 years of a
14 previous conviction for violating this Section, the offender
15 shall be mandatorily sentenced to a minimum of 48 consecutive
16 hours of imprisonment. The imprisonment shall not be subject
17 to suspension, nor shall the person be eligible for probation
18 in order to reduce the sentence.

19 (c) Domestic battery committed in the presence of a
20 child. In addition to any other sentencing alternatives, a
21 defendant who commits, in the presence of a child, a felony
22 domestic battery (enhanced under subsection (b)), aggravated
23 domestic battery (Section 12-3.3), aggravated battery
24 (Section 12-4), unlawful restraint (Section 10-3), or
25 aggravated unlawful restraint (Section 10-3.1) against a
26 family or household member, as defined in Section 112A-3 of
27 the Code of Criminal Procedure of 1963, shall be required to
28 serve a mandatory minimum imprisonment of 10 days or perform
29 300 hours of community service, or both. The defendant shall
30 further be liable for the cost of any counseling required for
31 the child at the discretion of the court in accordance with
32 subsection (b) of Section 5-5-6 of the Unified Code of
33 Corrections. For purposes of this Section, "child" means a
34 person under 16 years of age who--is--the--defendant's--er

1 ~~victim's child or step child or who is a minor child residing~~
 2 ~~within the household of the defendant or victim.~~ For
 3 purposes of this Section, "in the presence of a child" means
 4 in the physical presence of a child or knowing or having
 5 reason to know that a child is present and may see or hear an
 6 act constituting one of the offenses listed in this
 7 subsection.

8 (Source: P.A. 91-112, eff. 10-1-99; 91-262, eff. 1-1-00;
 9 91-928, eff. 6-1-01; 92-16, eff. 6-28-01; 92-827, eff.
 10 8-22-02.)

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

13 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

14 Sec. 5-5-6. In all convictions for offenses in violation
 15 of the Criminal Code of 1961 in which the person received any
 16 injury to their person or damage to their real or personal
 17 property as a result of the criminal act of the defendant,
 18 the court shall order restitution as provided in this
 19 Section. In all other cases, except cases in which
 20 restitution is required under this Section, the court must at
 21 the sentence hearing determine whether restitution is an
 22 appropriate sentence to be imposed on each defendant
 23 convicted of an offense. If the court determines that an
 24 order directing the offender to make restitution is
 25 appropriate, the offender may be sentenced to make
 26 restitution. If the offender is sentenced to make restitution
 27 the Court shall determine the restitution as hereinafter set
 28 forth:

29 (a) At the sentence hearing, the court shall
 30 determine whether the property may be restored in kind to
 31 the possession of the owner or the person entitled to
 32 possession thereof; or whether the defendant is possessed

1 of sufficient skill to repair and restore property
2 damaged; or whether the defendant should be required to
3 make restitution in cash, for out-of-pocket expenses,
4 damages, losses, or injuries found to have been
5 proximately caused by the conduct of the defendant or
6 another for whom the defendant is legally accountable
7 under the provisions of Article V of the Criminal Code of
8 1961.

9 (b) In fixing the amount of restitution to be paid
10 in cash, the court shall allow credit for property
11 returned in kind, for property damages ordered to be
12 repaired by the defendant, and for property ordered to be
13 restored by the defendant; and after granting the credit,
14 the court shall assess the actual out-of-pocket expenses,
15 losses, damages, and injuries suffered by the victim
16 named in the charge and any other victims who may also
17 have suffered out-of-pocket expenses, losses, damages,
18 and injuries proximately caused by the same criminal
19 conduct of the defendant, and insurance carriers who have
20 indemnified the named victim or other victims for the
21 out-of-pocket expenses, losses, damages, or injuries,
22 provided that in no event shall restitution be ordered to
23 be paid on account of pain and suffering. If a defendant
24 is placed on supervision for, or convicted of, domestic
25 battery, the defendant shall be required to pay
26 restitution to any domestic violence shelter in which the
27 victim and any other family or household members lived
28 because of the domestic battery. The amount of the
29 restitution shall equal the actual expenses of the
30 domestic violence shelter in providing housing and any
31 other services for the victim and any other family or
32 household members living at the shelter. If a defendant
33 fails to pay restitution in the manner or within the time
34 period specified by the court, the court may enter an

1 order directing the sheriff to seize any real or personal
2 property of a defendant to the extent necessary to
3 satisfy the order of restitution and dispose of the
4 property by public sale. All proceeds from such sale in
5 excess of the amount of restitution plus court costs and
6 the costs of the sheriff in conducting the sale shall be
7 paid to the defendant. The defendant convicted of an
8 offense listed in subsection (c) of Section 12-3.2 of the
9 Criminal Code of 1961 domestic-battery, if a person under
10 16 to 18 years of age who is the child of the offender or of
11 the victim was present and witnessed the offense against
12 domestic-battery of the victim, is liable to pay
13 restitution for the cost of any counseling required for
14 the child at the discretion of the court.

15 (c) In cases where more than one defendant is
16 accountable for the same criminal conduct that results in
17 out-of-pocket expenses, losses, damages, or injuries,
18 each defendant shall be ordered to pay restitution in the
19 amount of the total actual out-of-pocket expenses,
20 losses, damages, or injuries to the victim proximately
21 caused by the conduct of all of the defendants who are
22 legally accountable for the offense.

23 (1) In no event shall the victim be entitled
24 to recover restitution in excess of the actual
25 out-of-pocket expenses, losses, damages, or
26 injuries, proximately caused by the conduct of all
27 of the defendants.

28 (2) As between the defendants, the court may
29 apportion the restitution that is payable in
30 proportion to each co-defendant's culpability in the
31 commission of the offense.

32 (3) In the absence of a specific order
33 apportioning the restitution, each defendant shall
34 bear his pro rata share of the restitution.

1 (4) As between the defendants, each defendant
2 shall be entitled to a pro rata reduction in the
3 total restitution required to be paid to the victim
4 for amounts of restitution actually paid by
5 co-defendants, and defendants who shall have paid
6 more than their pro rata share shall be entitled to
7 refunds to be computed by the court as additional
8 amounts are paid by co-defendants.

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

22 (e) The court may require the defendant to apply
23 the balance of the cash bond, after payment of court
24 costs, and any fine that may be imposed to the payment of
25 restitution.

26 (f) Taking into consideration the ability of the
27 defendant to pay, the court shall determine whether
28 restitution shall be paid in a single payment or in
29 installments, and shall fix a period of time not in
30 excess of 5 years, not including periods of
31 incarceration, within which payment of restitution is to
32 be paid in full. Complete restitution shall be paid in as
33 short a time period as possible. However, if the court
34 deems it necessary and in the best interest of the

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

9 (g) The court shall, after determining that the
10 defendant has the ability to pay, require the defendant
11 to pay for the victim's counseling services if:

12 (1) the defendant was convicted of an offense
13 under Sections 11-19.2, 11-20.1, 12-13, 12-14,
14 12-14.1, 12-15 or 12-16 of the Criminal Code of
15 1961, or was charged with such an offense and the
16 charge was reduced to another charge as a result of
17 a plea agreement under subsection (d) of this
18 Section, and

19 (2) the victim was under 18 years of age at
20 the time the offense was committed and requires
21 counseling as a result of the offense.

22 The payments shall be made by the defendant to the
23 clerk of the circuit court and transmitted by the clerk
24 to the appropriate person or agency as directed by the
25 court. The order may require such payments to be made
26 for a period not to exceed 5 years after sentencing, not
27 including periods of incarceration.

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

31 (i) A sentence of restitution may be modified or
32 revoked by the court if the offender commits another
33 offense, or the offender fails to make restitution as
34 ordered by the court, but no sentence to make restitution

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

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

29 (k) Nothing contained in this Section shall
30 preclude the right of any party to proceed in a civil
31 action to recover for any damages incurred due to the
32 criminal misconduct of the defendant.

33 (l) Restitution ordered under this Section shall
34 not be subject to disbursement by the circuit clerk under

1 Section 27.5 of the Clerks of Courts Act.

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

4 (1) Attaches to the property of the person
5 subject to the order;

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

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

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

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

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

23 (1) Damages that the court did not require the
24 person to pay to the victim under the restitution
25 order but arise from an injury or property damages
26 that is the basis of restitution ordered by the
27 court; and

28 (2) Other damages suffered by the victim.

29 The restitution order is not discharged by the completion
30 of the sentence imposed for the offense.

31 A restitution order under this Section is not discharged
32 by the liquidation of a person's estate by a receiver. A
33 restitution order under this Section may be enforced in the
34 same manner as judgment liens are enforced under Article XII

1 of the Code of Civil Procedure.

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

5 (Source: P.A. 91-153, eff. 1-1-00; 91-262, eff. 1-1-00;
6 91-420, eff. 1-1-00; 92-16, eff. 6-28-01.)