



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

**HB3449**

Introduced 2/23/2005, by Rep. Aaron Schock

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-3.2  
730 ILCS 5/5-5-6

from Ch. 38, par. 12-3.2  
from Ch. 38, par. 1005-5-6

Amends the Criminal Code of 1961 and the Unified Code of Corrections. Provides that a person convicted of domestic battery in which the domestic battery is committed in the presence of a child must pay the counseling costs of any child under 18 (rather than 16) years of age in whose presence the domestic battery was committed (rather than a child who is the defendant's or victim's child or step-child or who is a minor child residing within the household of the defendant or victim).

LRB094 09070 RLC 39294 b

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 Criminal Code of 1961 is amended by changing  
5 Section 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 intentionally  
9 or knowingly without legal justification by any means:

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

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

17 (b) Sentence. Domestic battery is a Class A misdemeanor.  
18 Domestic battery is a Class 4 felony if the defendant has any  
19 prior conviction under this Code for domestic battery (Section  
20 12-3.2) or violation of an order of protection (Section 12-30),  
21 or any prior conviction under the law of another jurisdiction  
22 for an offense which is substantially similar. Domestic battery  
23 is a Class 4 felony if the defendant has any prior conviction  
24 under this Code for first degree murder (Section 9-1), attempt  
25 to commit first degree murder (Section 8-4), aggravated  
26 domestic battery (Section 12-3.3), aggravated battery (Section  
27 12-4), heinous battery (Section 12-4.1), aggravated battery  
28 with a 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  
32 stalking (Section 12-7.4), criminal sexual assault (Section

1 12-13), aggravated criminal sexual assault (12-14), kidnapping  
2 (Section 10-1), aggravated kidnapping (Section 10-2),  
3 predatory criminal sexual assault of a child (Section 12-14.1),  
4 aggravated criminal sexual abuse (Section 12-16), unlawful  
5 restraint (Section 10-3), aggravated unlawful restraint  
6 (Section 10-3.1), aggravated arson (Section 20-1.1), or  
7 aggravated discharge of a firearm (Section 24-1.2), or any  
8 prior conviction under the law of another jurisdiction for any  
9 offense that is substantially similar to the offenses listed in  
10 this Section, when any of these offenses have been committed  
11 against a family or household member as defined in Section  
12 112A-3 of the Code of Criminal Procedure of 1963. In addition  
13 to any other sentencing alternatives, for any second or  
14 subsequent conviction of violating this Section, the offender  
15 shall be mandatorily sentenced to a minimum of 72 consecutive  
16 hours of imprisonment. The imprisonment shall not be subject to  
17 suspension, nor shall the person be eligible for probation in  
18 order to reduce the sentence.

19 (c) Domestic battery committed in the presence of a child.  
20 In addition to any other sentencing alternatives, a defendant  
21 who commits, in the presence of a child, a felony domestic  
22 battery (enhanced under subsection (b)), aggravated domestic  
23 battery (Section 12-3.3), aggravated battery (Section 12-4),  
24 unlawful restraint (Section 10-3), or aggravated unlawful  
25 restraint (Section 10-3.1) against a family or household  
26 member, as defined in Section 112A-3 of the Code of Criminal  
27 Procedure of 1963, shall be required to serve a mandatory  
28 minimum imprisonment of 10 days or perform 300 hours of  
29 community service, or both. The defendant shall further be  
30 liable for the cost of any counseling required for the child at  
31 the discretion of the court in accordance with subsection (b)  
32 of Section 5-5-6 of the Unified Code of Corrections. For  
33 purposes of this Section, "child" means a person under 18 ~~16~~  
34 years of age ~~who is the defendant's or victim's child or~~  
35 ~~step-child or who is a minor child residing within the~~  
36 ~~household of the defendant or victim.~~ For purposes of this

1 Section, "in the presence of a child" means in the physical  
2 presence of a child or knowing or having reason to know that a  
3 child is present and may see or hear an act constituting one of  
4 the offenses listed in this subsection.

5 (Source: P.A. 92-16, eff. 6-28-01; 92-827, eff. 8-22-02; P.A.  
6 93-336, eff. 1-1-04; 93-809, eff. 1-1-05.)

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

9 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

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

24 (a) At the sentence hearing, the court shall determine  
25 whether the property may be restored in kind to the  
26 possession of the owner or the person entitled to  
27 possession thereof; or whether the defendant is possessed  
28 of sufficient skill to repair and restore property damaged;  
29 or whether the defendant should be required to make  
30 restitution in cash, for out-of-pocket expenses, damages,  
31 losses, or injuries found to have been proximately caused  
32 by the conduct of the defendant or another for whom the  
33 defendant is legally accountable under the provisions of  
34 Article V of the Criminal Code of 1961.

1 (b) In fixing the amount of restitution to be paid in  
2 cash, the court shall allow credit for property returned in  
3 kind, for property damages ordered to be repaired by the  
4 defendant, and for property ordered to be restored by the  
5 defendant; and after granting the credit, the court shall  
6 assess the actual out-of-pocket expenses, losses, damages,  
7 and injuries suffered by the victim named in the charge and  
8 any other victims who may also have suffered out-of-pocket  
9 expenses, losses, damages, and injuries proximately caused  
10 by the same criminal conduct of the defendant, and  
11 insurance carriers who have indemnified the named victim or  
12 other victims for the out-of-pocket expenses, losses,  
13 damages, or injuries, provided that in no event shall  
14 restitution be ordered to be paid on account of pain and  
15 suffering. If a defendant is placed on supervision for, or  
16 convicted of, domestic battery, the defendant shall be  
17 required to pay restitution to any domestic violence  
18 shelter in which the victim and any other family or  
19 household members lived because of the domestic battery.  
20 The amount of the restitution shall equal the actual  
21 expenses of the domestic violence shelter in providing  
22 housing and any other services for the victim and any other  
23 family or household members living at the shelter. If a  
24 defendant fails to pay restitution in the manner or within  
25 the time period specified by the court, the court may enter  
26 an order directing the sheriff to seize any real or  
27 personal property of a defendant to the extent necessary to  
28 satisfy the order of restitution and dispose of the  
29 property by public sale. All proceeds from such sale in  
30 excess of the amount of restitution plus court costs and  
31 the costs of the sheriff in conducting the sale shall be  
32 paid to the defendant. The defendant convicted of domestic  
33 battery, if a person under 18 years of age ~~who is the child~~  
34 ~~of the offender or of the victim~~ was present and witnessed  
35 the domestic battery of the victim, is liable to pay  
36 restitution for the cost of any counseling required for the

1 child at the discretion of the court.

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

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

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

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

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

30 (d) In instances where a defendant has more than one  
31 criminal charge pending against him in a single case, or  
32 more than one case, and the defendant stands convicted of  
33 one or more charges, a plea agreement negotiated by the  
34 State's Attorney and the defendants may require the  
35 defendant to make restitution to victims of charges that  
36 have been dismissed or which it is contemplated will be

1 dismissed under the terms of the plea agreement, and under  
2 the agreement, the court may impose a sentence of  
3 restitution on the charge or charges of which the defendant  
4 has been convicted that would require the defendant to make  
5 restitution to victims of other offenses as provided in the  
6 plea agreement.

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

10 (f) Taking into consideration the ability of the  
11 defendant to pay, the court shall determine whether  
12 restitution shall be paid in a single payment or in  
13 installments, and shall fix a period of time not in excess  
14 of 5 years, not including periods of incarceration, within  
15 which payment of restitution is to be paid in full.  
16 Complete restitution shall be paid in as short a time  
17 period as possible. However, if the court deems it  
18 necessary and in the best interest of the victim, the court  
19 may extend beyond 5 years the period of time within which  
20 the payment of restitution is to be paid. If the defendant  
21 is ordered to pay restitution and the court orders that  
22 restitution is to be paid over a period greater than 6  
23 months, the court shall order that the defendant make  
24 monthly payments; the court may waive this requirement of  
25 monthly payments only if there is a specific finding of  
26 good cause for waiver.

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

30 (1) the defendant was convicted of an offense under  
31 Sections 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1,  
32 12-15 or 12-16 of the Criminal Code of 1961, or was  
33 charged with such an offense and the charge was reduced  
34 to another charge as a result of a plea agreement under  
35 subsection (d) of this Section, and

36 (2) the victim was under 18 years of age at the

1           time the offense was committed and requires counseling  
2           as a result of the offense.

3           The payments shall be made by the defendant to the  
4           clerk of the circuit court and transmitted by the clerk to  
5           the appropriate person or agency as directed by the court.  
6           The order may require such payments to be made for a period  
7           not to exceed 5 years after sentencing, not including  
8           periods of incarceration.

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

12          (i) A sentence of restitution may be modified or  
13          revoked by the court if the offender commits another  
14          offense, or the offender fails to make restitution as  
15          ordered by the court, but no sentence to make restitution  
16          shall be revoked unless the court shall find that the  
17          offender has had the financial ability to make restitution,  
18          and he has wilfully refused to do so. When the offender's  
19          ability to pay restitution was established at the time an  
20          order of restitution was entered or modified, or when the  
21          offender's ability to pay was based on the offender's  
22          willingness to make restitution as part of a plea agreement  
23          made at the time the order of restitution was entered or  
24          modified, there is a rebuttable presumption that the facts  
25          and circumstances considered by the court at the hearing at  
26          which the order of restitution was entered or modified  
27          regarding the offender's ability or willingness to pay  
28          restitution have not materially changed. If the court shall  
29          find that the defendant has failed to make restitution and  
30          that the failure is not wilful, the court may impose an  
31          additional period of time within which to make restitution.  
32          The length of the additional period shall not be more than  
33          2 years. The court shall retain all of the incidents of the  
34          original sentence, including the authority to modify or  
35          enlarge the conditions, and to revoke or further modify the  
36          sentence if the conditions of payment are violated during



1 the additional period.

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

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

11 (l) Restitution ordered under this Section shall not be  
12 subject to disbursement by the circuit clerk under Section  
13 27.5 of the Clerks of Courts Act.

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

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

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

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

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

26 When a restitution order is issued under this Section,  
27 the issuing court shall send a certified copy of the order  
28 to the clerk of the circuit court in the county where the  
29 charge was filed. Upon receiving the order, the clerk shall  
30 enter and index the order in the circuit court judgment  
31 docket.

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

34 (1) Damages that the court did not require the  
35 person to pay to the victim under the restitution order  
36 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. 91-153, eff. 1-1-00; 91-262, eff. 1-1-00; 91-420,  
14 eff. 1-1-00; 92-16, eff. 6-28-01.)