



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2515

Introduced 2/20/2009, by Rep. Robert F. Flider - Paul D. Froehlich

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-6

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

Amends the Unified Code of Corrections relating to restitution. Provides that if the defendant is convicted of a violent crime, the court may sentence the defendant to pay lifetime restitution to the crime victim. Provides that the court shall base its decision to order lifetime restitution upon (i) the age of the defendant, (ii) the severity of the crime, and (iii) the income of the defendant.

LRB096 09489 RLC 19646 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 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 in which the person received any
9 injury to their person or damage to their real or personal
10 property as a result of the criminal act of the defendant, the
11 court shall order restitution as provided in this Section. If
12 the defendant is convicted of a violent crime, the court may
13 sentence the defendant to pay lifetime restitution to the crime
14 victim. The court shall base its decision to order lifetime
15 restitution upon (i) the age of the defendant, (ii) the
16 severity of the crime, and (iii) the income of the defendant.

17 In all other cases, except cases in which restitution is
18 required under this Section, the court must at the sentence
19 hearing determine whether restitution is an appropriate
20 sentence to be imposed on each defendant convicted of an
21 offense. If the court determines that an order directing the
22 offender to make restitution is appropriate, the offender may
23 be sentenced to make restitution. The court may consider

1 restitution an appropriate sentence to be imposed on each
2 defendant convicted of an offense in addition to a sentence of
3 imprisonment. The sentence of the defendant to a term of
4 imprisonment is not a mitigating factor that prevents the court
5 from ordering the defendant to pay restitution. If the offender
6 is sentenced to make restitution the Court shall determine the
7 restitution as hereinafter set forth:

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

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

1 expenses, losses, damages, and injuries proximately caused
2 by the same criminal conduct of the defendant, and
3 insurance carriers who have indemnified the named victim or
4 other victims for the out-of-pocket expenses, losses,
5 damages, or injuries, provided that in no event shall
6 restitution be ordered to be paid on account of pain and
7 suffering. If a defendant is placed on supervision for, or
8 convicted of, domestic battery, the defendant shall be
9 required to pay restitution to any domestic violence
10 shelter in which the victim and any other family or
11 household members lived because of the domestic battery.
12 The amount of the restitution shall equal the actual
13 expenses of the domestic violence shelter in providing
14 housing and any other services for the victim and any other
15 family or household members living at the shelter. If a
16 defendant fails to pay restitution in the manner or within
17 the time period specified by the court, the court may enter
18 an order directing the sheriff to seize any real or
19 personal property of a defendant to the extent necessary to
20 satisfy the order of restitution and dispose of the
21 property by public sale. All proceeds from such sale in
22 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) The court may require the defendant to apply the
19 balance of the cash bond, after payment of court costs, and
20 any fine that may be imposed to the payment of restitution.

21 (f) Taking into consideration the ability of the
22 defendant to pay, including any real or personal property
23 or any other assets of the defendant, the court shall
24 determine whether restitution shall be paid in a single
25 payment or in installments, and shall fix a period of time
26 not in excess of 5 years or the period of time specified in

1 subsection (f-1), not including periods of incarceration,
2 within which payment of restitution is to be paid in full.
3 Complete restitution shall be paid in as short a time
4 period as possible. However, if the court deems it
5 necessary and in the best interest of the victim, the court
6 may extend beyond 5 years the period of time within which
7 the payment of restitution is to be paid. If the defendant
8 is ordered to pay restitution and the court orders that
9 restitution is to be paid over a period greater than 6
10 months, the court shall order that the defendant make
11 monthly payments; the court may waive this requirement of
12 monthly payments only if there is a specific finding of
13 good cause for waiver.

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

25 (2) The victim's estimate of long-term physical health
26 care costs may be made as part of a victim impact statement

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

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

24 (g) In addition to the sentences provided for in
25 Sections 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1, 12-15,
26 and 12-16 of the Criminal Code of 1961, the court may order

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

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

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

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

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

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

25 (k) Nothing contained in this Section shall preclude
26 the right of any party to proceed in a civil action to

1 recover for any damages incurred due to the criminal
2 misconduct of the defendant.

3 (l) Restitution ordered under this Section shall not be
4 subject to disbursement by the circuit clerk under Section
5 27.5 of the Clerks of Courts Act.

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

8 (1) Attaches to the property of the person subject
9 to the order;

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

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

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

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

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

26 (1) Damages that the court did not require the

1 person to pay to the victim under the restitution order
2 but arise from an injury or property damages that is
3 the basis of restitution ordered by the court; and

4 (2) Other damages suffered by the victim.

5 The restitution order is not discharged by the completion
6 of the sentence imposed for the offense.

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

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

15 For the purposes of this Section, "crime victim" and
16 "violent crime" have the meanings ascribed to them in Section 3
17 of the Rights of Crime Victims and Witnesses Act.

18 (Source: P.A. 94-148, eff. 1-1-06; 94-397, eff. 1-1-06; 95-331,
19 eff. 8-21-07.)