

SB1816



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1816

Introduced 2/20/2009, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-6

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

Amends the Unified Code of Corrections. Provides that in all convictions for driving under the influence in which the person received any injury to his or her person or damage to his or her real or personal property as a result of the criminal act of the defendant, the court shall order restitution. Effective immediately.

LRB096 08945 RLC 19083 b

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

1 defendant to pay restitution. If the offender is sentenced to
2 make restitution the Court shall determine the restitution as
3 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 V of the Criminal Code of 1961.

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

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

25 (c) In cases where more than one defendant is
26 accountable for the same criminal conduct that results in

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

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

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

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

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

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

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

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

1 necessary and in the best interest of the victim, the court
2 may extend beyond 5 years the period of time within which
3 the payment of restitution is to be paid. If the defendant
4 is ordered to pay restitution and the court orders that
5 restitution is to be paid over a period greater than 6
6 months, the court shall order that the defendant make
7 monthly payments; the court may waive this requirement of
8 monthly payments only if there is a specific finding of
9 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 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1, 12-15,
22 and 12-16 of the Criminal Code of 1961, the court may order
23 any person who is convicted of violating any of those
24 Sections or who was charged with any of those offenses and
25 which charge was reduced to another charge as a result of a
26 plea agreement under subsection (d) of this Section to meet

1 all or any portion of the financial obligations of
2 treatment, including but not limited to medical,
3 psychiatric, or rehabilitative treatment or psychological
4 counseling, prescribed for the victim or victims of the
5 offense.

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

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

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

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

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

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

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

1 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 subject
5 to the order;

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

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

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

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

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

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

26 (2) Other damages suffered by the victim.

1 The restitution order is not discharged by the completion
2 of the sentence imposed for the offense.

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

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

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

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.