



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB0354

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-25
730 ILCS 5/5-5-6

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

Amends the Criminal Code of 2012 and the Unified Code of Corrections. Provides that a person sentenced for retail theft of property the full retail value of which does not exceed \$300, other than motor fuel, who has 2 or more prior convictions (rather than one prior conviction) of any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools, home invasion, unlawful use of a credit card, or forgery commits a Class 4 felony and shall be required to make full restitution to the merchant.

LRB099 03948 RLC 23965 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 2012 is amended by changing
5 Section 16-25 as follows:

6 (720 ILCS 5/16-25)

7 Sec. 16-25. Retail theft.

8 (a) A person commits retail theft when he or she knowingly:

9 (1) Takes possession of, carries away, transfers or
10 causes to be carried away or transferred any merchandise
11 displayed, held, stored or offered for sale in a retail
12 mercantile establishment with the intention of retaining
13 such merchandise or with the intention of depriving the
14 merchant permanently of the possession, use or benefit of
15 such merchandise without paying the full retail value of
16 such merchandise; or

17 (2) Alters, transfers, or removes any label, price tag,
18 marking, indicia of value or any other markings which aid
19 in determining value affixed to any merchandise displayed,
20 held, stored or offered for sale in a retail mercantile
21 establishment and attempts to purchase such merchandise at
22 less than the full retail value with the intention of
23 depriving the merchant of the full retail value of such

1 merchandise; or

2 (3) Transfers any merchandise displayed, held, stored
3 or offered for sale in a retail mercantile establishment
4 from the container in or on which such merchandise is
5 displayed to any other container with the intention of
6 depriving the merchant of the full retail value of such
7 merchandise; or

8 (4) Under-rings with the intention of depriving the
9 merchant of the full retail value of the merchandise; or

10 (5) Removes a shopping cart from the premises of a
11 retail mercantile establishment without the consent of the
12 merchant given at the time of such removal with the
13 intention of depriving the merchant permanently of the
14 possession, use or benefit of such cart; or

15 (6) Represents to a merchant that he, she, or another
16 is the lawful owner of property, knowing that such
17 representation is false, and conveys or attempts to convey
18 that property to a merchant who is the owner of the
19 property in exchange for money, merchandise credit or other
20 property of the merchant; or

21 (7) Uses or possesses any theft detection shielding
22 device or theft detection device remover with the intention
23 of using such device to deprive the merchant permanently of
24 the possession, use or benefit of any merchandise
25 displayed, held, stored or offered for sale in a retail
26 mercantile establishment without paying the full retail

1 value of such merchandise; or

2 (8) Obtains or exerts unauthorized control over
3 property of the owner and thereby intends to deprive the
4 owner permanently of the use or benefit of the property
5 when a lessee of the personal property of another fails to
6 return it to the owner, or if the lessee fails to pay the
7 full retail value of such property to the lessor in
8 satisfaction of any contractual provision requiring such,
9 within 10 days after written demand from the owner for its
10 return. A notice in writing, given after the expiration of
11 the leasing agreement, by registered mail, to the lessee at
12 the address given by the lessee and shown on the leasing
13 agreement shall constitute proper demand.

14 (b) Theft by emergency exit. A person commits theft by
15 emergency exit when he or she commits a retail theft as defined
16 in subdivisions (a)(1) through (a)(8) of this Section and to
17 facilitate the theft he or she leaves the retail mercantile
18 establishment by use of a designated emergency exit.

19 (c) Permissive inference. If any person:

20 (1) conceals upon his or her person or among his or her
21 belongings unpurchased merchandise displayed, held, stored
22 or offered for sale in a retail mercantile establishment;
23 and

24 (2) removes that merchandise beyond the last known
25 station for receiving payments for that merchandise in that
26 retail mercantile establishment,

1 then the trier of fact may infer that the person possessed,
2 carried away or transferred such merchandise with the intention
3 of retaining it or with the intention of depriving the merchant
4 permanently of the possession, use or benefit of such
5 merchandise without paying the full retail value of such
6 merchandise.

7 To "conceal" merchandise means that, although there may be
8 some notice of its presence, that merchandise is not visible
9 through ordinary observation.

10 (d) Venue. Multiple thefts committed by the same person as
11 part of a continuing course of conduct in different
12 jurisdictions that have been aggregated in one jurisdiction may
13 be prosecuted in any jurisdiction in which one or more of the
14 thefts occurred.

15 (e) For the purposes of this Section, "theft detection
16 shielding device" means any laminated or coated bag or device
17 designed and intended to shield merchandise from detection by
18 an electronic or magnetic theft alarm sensor.

19 (f) Sentence.

20 (1) A violation of any of subdivisions (a)(1) through
21 (a)(6) and (a)(8) of this Section, the full retail value of
22 which does not exceed \$300 for property other than motor
23 fuel or \$150 for motor fuel, is a Class A misdemeanor. A
24 violation of subdivision (a)(7) of this Section is a Class
25 A misdemeanor for a first offense and a Class 4 felony for
26 a second or subsequent offense. Theft by emergency exit of

1 property, the full retail value of which does not exceed
2 \$300, is a Class 4 felony.

3 (2) A person who has been convicted of retail theft of
4 property under any of subdivisions (a)(1) through (a)(6)
5 and (a)(8) of this Section, the full retail value of which
6 does not exceed \$300 for property other than motor fuel or
7 \$150 for motor fuel, and who has 2 or more prior
8 convictions ~~been previously convicted~~ of any type of theft,
9 robbery, armed robbery, burglary, residential burglary,
10 possession of burglary tools, home invasion, unlawful use
11 of a credit card, or forgery is guilty of a Class 4 felony.
12 A person who has been convicted of theft by emergency exit
13 of property, the full retail value of which does not exceed
14 \$300, and who has been previously convicted of any type of
15 theft, robbery, armed robbery, burglary, residential
16 burglary, possession of burglary tools, home invasion,
17 unlawful use of a credit card, or forgery is guilty of a
18 Class 3 felony.

19 (3) Any retail theft of property under any of
20 subdivisions (a)(1) through (a)(6) and (a)(8) of this
21 Section, the full retail value of which exceeds \$300 for
22 property other than motor fuel or \$150 for motor fuel in a
23 single transaction, or in separate transactions committed
24 by the same person as part of a continuing course of
25 conduct from one or more mercantile establishments over a
26 period of one year, is a Class 3 felony. Theft by emergency

1 exit of property, the full retail value of which exceeds
2 \$300 in a single transaction, or in separate transactions
3 committed by the same person as part of a continuing course
4 of conduct from one or more mercantile establishments over
5 a period of one year, is a Class 2 felony. When a charge of
6 retail theft of property or theft by emergency exit of
7 property, the full value of which exceeds \$300, is brought,
8 the value of the property involved is an element of the
9 offense to be resolved by the trier of fact as either
10 exceeding or not exceeding \$300.

11 (4) A person sentenced under subdivision (f) (2) of this
12 Section for theft of property the full retail value of
13 which does not exceed \$300 shall be required to make full
14 restitution to the merchant.

15 (Source: P.A. 97-597, eff. 1-1-12.)

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

18 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

19 Sec. 5-5-6. In all convictions for offenses in violation of
20 the Criminal Code of 1961 or the Criminal Code of 2012 or of
21 Section 11-501 of the Illinois Vehicle Code in which the person
22 received any injury to his or her person or damage to his or
23 her real or personal property as a result of the criminal act
24 of the defendant, the court shall order restitution as provided

1 in this Section. In all other cases, except cases in which
2 restitution is required under this Section, the court must at
3 the sentence hearing determine whether restitution is an
4 appropriate sentence to be imposed on each defendant convicted
5 of an offense. If the court determines that an order directing
6 the offender to make restitution is appropriate, the offender
7 may be sentenced to make restitution. The court may consider
8 restitution an appropriate sentence to be imposed on each
9 defendant convicted of an offense in addition to a sentence of
10 imprisonment. The sentence of the defendant to a term of
11 imprisonment is not a mitigating factor that prevents the court
12 from ordering the defendant to pay restitution. If the offender
13 is sentenced to make restitution the Court shall determine the
14 restitution as hereinafter set forth:

15 (a) At the sentence hearing, the court shall determine
16 whether the property may be restored in kind to the
17 possession of the owner or the person entitled to
18 possession thereof; or whether the defendant is possessed
19 of sufficient skill to repair and restore property damaged;
20 or whether the defendant should be required to make
21 restitution in cash, for out-of-pocket expenses, damages,
22 losses, or injuries found to have been proximately caused
23 by the conduct of the defendant or another for whom the
24 defendant is legally accountable under the provisions of
25 Article 5 of the Criminal Code of 1961 or the Criminal Code
26 of 2012.

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. When a victim's out-of-pocket expenses have
16 been paid pursuant to the Crime Victims Compensation Act,
17 the court shall order restitution be paid to the
18 compensation program. If a defendant is placed on
19 supervision for, or convicted of, domestic battery, the
20 defendant shall be required to pay restitution to any
21 domestic violence shelter in which the victim and any other
22 family or household members lived because of the domestic
23 battery. The amount of the restitution shall equal the
24 actual expenses of the domestic violence shelter in
25 providing housing and any other services for the victim and
26 any other family or household members living at the

1 shelter. If a defendant fails to pay restitution in the
2 manner or within the time period specified by the court,
3 the court may enter an order directing the sheriff to seize
4 any real or personal property of a defendant to the extent
5 necessary to satisfy the order of restitution and dispose
6 of the property by public sale. All proceeds from such sale
7 in excess of the amount of restitution plus court costs and
8 the costs of the sheriff in conducting the sale shall be
9 paid to the defendant. The defendant convicted of domestic
10 battery, if a person under 18 years of age was present and
11 witnessed the domestic battery of the victim, is liable to
12 pay restitution for the cost of any counseling required for
13 the child at the discretion of the court.

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

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

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

5 (3) In the absence of a specific order apportioning
6 the restitution, each defendant shall bear his pro rata
7 share of the restitution.

8 (4) As between the defendants, each defendant
9 shall be entitled to a pro rata reduction in the total
10 restitution required to be paid to the victim for
11 amounts of restitution actually paid by co-defendants,
12 and defendants who shall have paid more than their pro
13 rata share shall be entitled to refunds to be computed
14 by the court as additional amounts are paid by
15 co-defendants.

16 (d) In instances where a defendant has more than one
17 criminal charge pending against him in a single case, or
18 more than one case, and the defendant stands convicted of
19 one or more charges, a plea agreement negotiated by the
20 State's Attorney and the defendants may require the
21 defendant to make restitution to victims of charges that
22 have been dismissed or which it is contemplated will be
23 dismissed under the terms of the plea agreement, and under
24 the agreement, the court may impose a sentence of
25 restitution on the charge or charges of which the defendant
26 has been convicted that would require the defendant to make

1 restitution to victims of other offenses as provided in the
2 plea agreement.

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

6 (e-1) A person sentenced under subdivision (f)(2) of
7 Section 16-25 of the Criminal Code of 2012 for theft of
8 property the full retail value of which does not exceed
9 \$300 shall be required to make full restitution to the
10 merchant. For purposes of this paragraph (e-1), "merchant"
11 has the meaning ascribed to the term in Section 16-0.1 of
12 the Criminal Code of 2012.

13 (f) Taking into consideration the ability of the
14 defendant to pay, including any real or personal property
15 or any other assets of the defendant, the court shall
16 determine whether restitution shall be paid in a single
17 payment or in installments, and shall fix a period of time
18 not in excess of 5 years, except for violations of Sections
19 16-1.3 and 17-56 of the Criminal Code of 1961 or the
20 Criminal Code of 2012, or the period of time specified in
21 subsection (f-1), not including periods of incarceration,
22 within which payment of restitution is to be paid in full.
23 Complete restitution shall be paid in as short a time
24 period as possible. However, if the court deems it
25 necessary and in the best interest of the victim, the court
26 may extend beyond 5 years the period of time within which

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

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

19 (2) The victim's estimate of long-term physical health
20 care costs may be made as part of a victim impact statement
21 under Section 6 of the Rights of Crime Victims and
22 Witnesses Act or made separately. The court shall enter the
23 long-term physical health care restitution order at the
24 time of sentencing. An order of restitution made under this
25 subsection (f-1) shall fix a monthly amount to be paid by
26 the defendant for as long as long-term physical health care

1 of the victim is required as a result of the offense. The
2 order may exceed the length of any sentence imposed upon
3 the defendant for the criminal activity. The court shall
4 include as a special finding in the judgment of conviction
5 its determination of the monthly cost of long-term physical
6 health care.

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

18 (g) In addition to the sentences provided for in
19 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
20 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,
21 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of
22 Section 11-14.4, of the Criminal Code of 1961 or the
23 Criminal Code of 2012, the court may order any person who
24 is convicted of violating any of those Sections or who was
25 charged with any of those offenses and which charge was
26 reduced to another charge as a result of a plea agreement

1 under subsection (d) of this Section to meet all or any
2 portion of the financial obligations of treatment,
3 including but not limited to medical, psychiatric, or
4 rehabilitative treatment or psychological counseling,
5 prescribed for the victim or victims of the 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. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;
12 97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.
13 1-25-13.)