



Rep. Tom Demmer

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1 AMENDMENT TO HOUSE BILL 3529

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3529 on page 6, by  
3 inserting immediately below line 5 the following:

4 "Section 10. 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 the Criminal Code of 2012 or of  
9 Section 11-501 of the Illinois Vehicle Code in which the person  
10 received any injury to his or her person or damage to his or  
11 her real or personal property as a result of the criminal act  
12 of the defendant, the court shall order restitution as provided  
13 in this Section. In all other cases, except cases in which  
14 restitution is required under this Section, the court must at  
15 the sentence hearing determine whether restitution is an  
16 appropriate sentence to be imposed on each defendant convicted

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

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

23 (b) In fixing the amount of restitution to be paid in  
24 cash, the court shall allow credit for property returned in  
25 kind, for property damages ordered to be repaired by the  
26 defendant, and for property ordered to be restored by the

1 defendant; and after granting the credit, the court shall  
2 assess the actual out-of-pocket expenses, losses, damages,  
3 and injuries suffered by the victim named in the charge and  
4 any other victims who may also have suffered out-of-pocket  
5 expenses, losses, damages, and injuries proximately caused  
6 by the same criminal conduct of the defendant, and  
7 insurance carriers who have indemnified the named victim or  
8 other victims for the out-of-pocket expenses, losses,  
9 damages, or injuries, provided that in no event shall  
10 restitution be ordered to be paid on account of pain and  
11 suffering. When a victim's out-of-pocket expenses have  
12 been paid pursuant to the Crime Victims Compensation Act,  
13 the court shall order restitution be paid to the  
14 compensation program. If a defendant is placed on  
15 supervision for, or convicted of, domestic battery, the  
16 defendant shall be required to pay restitution to any  
17 domestic violence shelter in which the victim and any other  
18 family or household members lived because of the domestic  
19 battery. The amount of the restitution shall equal the  
20 actual expenses of the domestic violence shelter in  
21 providing housing and any other services for the victim and  
22 any other family or household members living at the  
23 shelter. If a defendant fails to pay restitution in the  
24 manner or within the time period specified by the court,  
25 the court may enter an order directing the sheriff to seize  
26 any real or personal property of a defendant to the extent

1 necessary to satisfy the order of restitution and dispose  
2 of the property by public sale. All proceeds from such sale  
3 in excess of the amount of restitution plus court costs and  
4 the costs of the sheriff in conducting the sale shall be  
5 paid to the defendant. The defendant convicted of domestic  
6 battery, if a person under 18 years of age was present and  
7 witnessed the domestic battery of the victim, is liable to  
8 pay restitution for the cost of any counseling required for  
9 the child at the discretion of the court.

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

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

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

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

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

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

25          (e) The court may require the defendant to apply the  
26          balance of the cash bond, after payment of court costs, and

1 any fine that may be imposed to the payment of restitution.

2 (f) Taking into consideration the ability of the  
3 defendant to pay, including any real or personal property  
4 or any other assets of the defendant, the court shall  
5 determine whether restitution shall be paid in a single  
6 payment or in installments, and shall fix a period of time  
7 not in excess of 5 years, except for violations of Sections  
8 16-1.3 and 17-56 of the Criminal Code of 1961 or the  
9 Criminal Code of 2012, or the period of time specified in  
10 subsection (f-1), not including periods of incarceration,  
11 within which payment of restitution is to be paid in full.  
12 Complete restitution shall be paid in as short a time  
13 period as possible. However, if the court deems it  
14 necessary and in the best interest of the victim, the court  
15 may extend beyond 5 years the period of time within which  
16 the payment of restitution is to be paid. If the defendant  
17 is ordered to pay restitution and the court orders that  
18 restitution is to be paid over a period greater than 6  
19 months, the court shall order that the defendant make  
20 monthly payments; the court may waive this requirement of  
21 monthly payments only if there is a specific finding of  
22 good cause for waiver.

23 (f-1) (1) In addition to any other penalty prescribed by  
24 law and any restitution ordered under this Section that did  
25 not include long-term physical health care costs, the court  
26 may, upon conviction of any misdemeanor or felony, order a

1           defendant to pay restitution to a victim in accordance with  
2           the provisions of this subsection (f-1) if the victim has  
3           suffered physical injury as a result of the offense that is  
4           reasonably probable to require or has required long-term  
5           physical health care for more than 3 months. As used in  
6           this subsection (f-1) "long-term physical health care"  
7           includes mental health care.

8           (2) The victim's estimate of long-term physical health  
9           care costs may be made as part of a victim impact statement  
10          under Section 6 of the Rights of Crime Victims and  
11          Witnesses Act or made separately. The court shall enter the  
12          long-term physical health care restitution order at the  
13          time of sentencing. An order of restitution made under this  
14          subsection (f-1) shall fix a monthly amount to be paid by  
15          the defendant for as long as long-term physical health care  
16          of the victim is required as a result of the offense. The  
17          order may exceed the length of any sentence imposed upon  
18          the defendant for the criminal activity. The court shall  
19          include as a special finding in the judgment of conviction  
20          its determination of the monthly cost of long-term physical  
21          health care.

22          (3) After a sentencing order has been entered, the  
23          court may from time to time, on the petition of either the  
24          defendant or the victim, or upon its own motion, enter an  
25          order for restitution for long-term physical care or modify  
26          the existing order for restitution for long-term physical

1 care as to the amount of monthly payments. Any modification  
2 of the order shall be based only upon a substantial change  
3 of circumstances relating to the cost of long-term physical  
4 health care or the financial condition of either the  
5 defendant or the victim. The petition shall be filed as  
6 part of the original criminal docket.

7 (g) In addition to the sentences provided for in  
8 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,  
9 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,  
10 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of  
11 Section 11-14.4, of the Criminal Code of 1961 or the  
12 Criminal Code of 2012, the court may order any person who  
13 is convicted of violating any of those Sections or who was  
14 charged with any of those offenses and which charge was  
15 reduced to another charge as a result of a plea agreement  
16 under subsection (d) of this Section to meet all or any  
17 portion of the financial obligations of treatment,  
18 including but not limited to medical, psychiatric, or  
19 rehabilitative treatment or psychological counseling,  
20 prescribed for the victim or victims of the offense.

21 (g-1) In addition to the sentence provided for in  
22 Section 17-56 of the Criminal Code of 2012, the State's  
23 Attorney of the county that prosecuted the defendant shall  
24 request that the court order a person convicted of  
25 financial exploitation of an elderly person or a person  
26 with a disability under subsection (a-5) of Section 17-56



1       of the Criminal Code of 2012, to pay restitution to the  
2       facility where the elderly person or a person with a  
3       disability is a resident of all amounts misappropriated  
4       from the elderly person or a person with a disability that  
5       are owed to the facility to pay for the care of the elderly  
6       person or a person with a disability if the facility is  
7       licensed under the Nursing Home Care Act or the ID/DD  
8       Community Care Act.

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

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

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

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

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

24 (k) Nothing contained in this Section shall preclude  
25 the right of any party to proceed in a civil action to  
26 recover for any damages incurred due to the criminal

1 misconduct of the defendant.

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

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

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

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

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

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

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

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

25 (1) Damages that the court did not require the  
26 person to pay to the victim under the restitution order

1           but arise from an injury or property damages that is  
2           the basis of restitution ordered by the court; and

3                   (2) Other damages suffered by the victim.

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

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

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

14          (Source: P.A. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;  
15          97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.  
16          1-25-13.)".