

SB3004



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB3004

Introduced 2/18/2016, by Sen. Neil Anderson

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-3
730 ILCS 5/5-5-6

from Ch. 38, par. 16-3
from Ch. 38, par. 1005-5-6

Amends the Criminal Code of 2012. Includes in the theft of rental property renting or leasing equipment including tools, construction or industry equipment, and such items as linens, tableware, tents, tables, chairs and other equipment specially rented for a party or special event. Changes the property value threshold for theft of rental property from \$500 to \$50. Allows the trier of fact to infer evidence that the person is without good cause for failure to return the property if the person signs the agreement with a name or address other than his or her own. Changes the penalty for theft of rental property from a Class 4 felony to a Class 3 felony. Amends the Unified Code of Corrections. Provides in addition to the available sentences for theft of labor services or use of property, the court shall order any person convicted of any of those offenses to pay restitution for any outstanding balance due and the reasonable loss of revenue, including but not limited to loss of future rental revenue for the property, for the failure to return the rental property on the date specified for its return. Effective immediately.

LRB099 19152 SLF 43541 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 Criminal Code of 2012 is amended by changing
5 Section 16-3 as follows:

6 (720 ILCS 5/16-3) (from Ch. 38, par. 16-3)

7 Sec. 16-3. Theft of labor or services or use of property.

8 (a) A person commits theft when he or she knowingly obtains
9 the temporary use of property, labor or services of another
10 which are available only for hire, by means of threat or
11 deception or knowing that such use is without the consent of
12 the person providing the property, labor or services. For the
13 purposes of this subsection, library material is available for
14 hire.

15 (b) A person commits theft when after (1) renting or
16 leasing a motor vehicle, (2) obtaining a motor vehicle through
17 a "driveaway" service mode of transportation, (3) renting or
18 leasing equipment including tools, construction or industry
19 equipment, and such items as linens, tableware, tents, tables,
20 chairs and other equipment specially rented for a party or
21 special event, or (4) renting or leasing any other type of
22 personal property, exceeding \$50 ~~\$500~~ in value, under an
23 agreement in writing which provides for the return of the

1 vehicle, equipment, or other personal property to a particular
2 place at a particular time, he or she without good cause
3 knowingly fails to return the vehicle, equipment, or other
4 personal property to that place within the time specified, and
5 is thereafter served or sent a written demand mailed to the
6 last known address, made by certified mail return receipt
7 requested, to return the ~~such~~ vehicle, equipment, or other
8 personal property within 3 days from the mailing of the written
9 demand, and who without good cause knowingly fails to return
10 the vehicle, equipment, or any other personal property to any
11 place of business of the lessor within the return ~~such~~ period.
12 The trier of fact may infer evidence that the person is without
13 good cause if the person signs the agreement with a name or
14 address other than his or her own.

15 (c) A person commits theft when he or she borrows from a
16 library facility library material which has an aggregate value
17 of \$50 or more pursuant to an agreement with or procedure
18 established by the library facility for the return of such
19 library material, and knowingly without good cause fails to
20 return the library material so borrowed in accordance with such
21 agreement or procedure, and further knowingly without good
22 cause fails to return such library material within 30 days
23 after receiving written notice by certified mail from the
24 library facility demanding the return of such library material.

25 (d) Sentence.

26 A person convicted of theft under subsection (a) is guilty

1 of a Class A misdemeanor, except that the theft of library
2 material where the aggregate value exceeds \$300 is a Class 3
3 felony. A person convicted of theft under subsection (b) of
4 this Section is guilty of a Class 3 4 felony. A person
5 convicted of theft under subsection (c) is guilty of a petty
6 offense for which the offender may be fined an amount not to
7 exceed \$500 and shall be ordered to reimburse the library for
8 postage costs, attorney's fees, and actual replacement costs of
9 the materials not returned, except that theft under subsection
10 (c) where the aggregate value exceeds \$300 is a Class 3 felony.

11 For the purpose of sentencing on theft of library material,
12 separate transactions totalling more than \$300 within a 90-day
13 period shall constitute a single offense.

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

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

17 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

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

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

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

26 (b) In fixing the amount of restitution to be paid in

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

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

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

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

26 (2) As between the defendants, the court may

1 apportion the restitution that is payable in
2 proportion to each co-defendant's culpability in the
3 commission of the offense.

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

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

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

1 plea agreement.

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

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

26 (f-1) (1) In addition to any other penalty prescribed by

1 law and any restitution ordered under this Section that did
2 not include long-term physical health care costs, the court
3 may, upon conviction of any misdemeanor or felony, order a
4 defendant to pay restitution to a victim in accordance with
5 the provisions of this subsection (f-1) if the victim has
6 suffered physical injury as a result of the offense that is
7 reasonably probable to require or has required long-term
8 physical health care for more than 3 months. As used in
9 this subsection (f-1) "long-term physical health care"
10 includes mental health care.

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

25 (3) After a sentencing order has been entered, the
26 court may from time to time, on the petition of either the

1 defendant or the victim, or upon its own motion, enter an
2 order for restitution for long-term physical care or modify
3 the existing order for restitution for long-term physical
4 care as to the amount of monthly payments. Any modification
5 of the order shall be based only upon a substantial change
6 of circumstances relating to the cost of long-term physical
7 health care or the financial condition of either the
8 defendant or the victim. The petition shall be filed as
9 part of the original criminal docket.

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

24 The payments shall be made by the defendant to the
25 clerk of the circuit court and transmitted by the clerk to
26 the appropriate person or agency as directed by the court.

1 Except as otherwise provided in subsection (f-1), the order
2 may require such payments to be made for a period not to
3 exceed 5 years after sentencing, not including periods of
4 incarceration.

5 (g-1) In addition to the sentences provided in Section
6 16-3 of the Criminal Code of 2012, the court shall order
7 any person convicted of violating Section 16-3 to pay
8 restitution for any outstanding balance due and the
9 reasonable loss of revenue, including but not limited to
10 loss of future rental revenue for the property, for the
11 failure to return the rental property on the date specified
12 for its return.

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.)

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