



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB3102

Introduced 2/19/2016, by Sen. Dale A. Righter

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 cases involving the Cannabis Control Act, the Illinois Controlled Substances Act, and the Methamphetamine Control and Community Protection Act, restitution shall be ordered for any United States Currency Official Advanced Funds (OAF) expended by law enforcement officers or task force members to purchase the cannabis, controlled substances, or methamphetamine or substance to produce or manufacture, or both, methamphetamine. Provides that restitution shall include not only United States currency that was used in the offense charged, but any currency that was previously used in the investigation leading to the arrest and subsequent conviction. Provides that restitution shall be awarded only to the law enforcement agency or task force responsible for the expenditure of United States currency. Provides that restitution shall not exceed the actual amount expended, minus any OAF recovered, by the law enforcement agency or task force during the investigation. Provides that restitution shall be in addition to any other fine, fee, or cost authorized by law. Provides that restitution shall apply to any agreed or contested sentence and may be submitted to the court by way of affidavit setting forth the amount of restitution requested, the name of the defendant, and the name of the law enforcement agency or task force. Provides that bond posted by the defendant may be used for restitution.

LRB099 19029 RLC 43418 b

FISCAL 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 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 cases involving the Cannabis Control Act,
14 the Illinois Controlled Substances Act, and the
15 Methamphetamine Control and Community Protection Act,
16 restitution shall be ordered for any United States Currency
17 Official Advanced Funds (OAF) expended by law enforcement
18 officers or task force members to purchase the cannabis,
19 controlled substances, or methamphetamine or substance to
20 produce or manufacture, or both, methamphetamine. Restitution
21 shall include not only United States currency that was used in
22 the offense charged, but any currency that was previously used
23 in the investigation leading to the arrest and subsequent

1 conviction. Restitution shall be awarded only to the law
2 enforcement agency or task force responsible for the
3 expenditure of United States currency. Restitution shall not
4 exceed the actual amount expended, minus any OAF recovered, by
5 the law enforcement agency or task force during the
6 investigation. Restitution shall be in addition to any other
7 fine, fee, or cost authorized by law. Restitution shall apply
8 to any agreed or contested sentence and may be submitted to the
9 court by way of affidavit setting forth the amount of
10 restitution requested, the name of the defendant, and the name
11 of the law enforcement agency or task force. Bond posted by the
12 defendant may be used for restitution. In all other cases,
13 except cases in which restitution is required under this
14 Section, the court must at the sentence hearing determine
15 whether restitution is an appropriate sentence to be imposed on
16 each defendant convicted of an offense. If the court determines
17 that an order directing the offender to make restitution is
18 appropriate, the offender may be sentenced to make restitution.
19 The court may consider restitution an appropriate sentence to
20 be imposed on each defendant convicted of an offense in
21 addition to a sentence of imprisonment. The sentence of the
22 defendant to a term of imprisonment is not a mitigating factor
23 that prevents the court from ordering the defendant to pay
24 restitution. If the offender is sentenced to make restitution
25 the Court shall determine the restitution as hereinafter set
26 forth:

1 (a) At the sentence hearing, the court shall determine
2 whether the property may be restored in kind to the
3 possession of the owner or the person entitled to
4 possession thereof; or whether the defendant is possessed
5 of sufficient skill to repair and restore property damaged;
6 or whether the defendant should be required to make
7 restitution in cash, for out-of-pocket expenses, damages,
8 losses, or injuries found to have been proximately caused
9 by the conduct of the defendant or another for whom the
10 defendant is legally accountable under the provisions of
11 Article 5 of the Criminal Code of 1961 or the Criminal Code
12 of 2012.

13 (b) In fixing the amount of restitution to be paid in
14 cash, the court shall allow credit for property returned in
15 kind, for property damages ordered to be repaired by the
16 defendant, and for property ordered to be restored by the
17 defendant; and after granting the credit, the court shall
18 assess the actual out-of-pocket expenses, losses, damages,
19 and injuries suffered by the victim named in the charge and
20 any other victims who may also have suffered out-of-pocket
21 expenses, losses, damages, and injuries proximately caused
22 by the same criminal conduct of the defendant, and
23 insurance carriers who have indemnified the named victim or
24 other victims for the out-of-pocket expenses, losses,
25 damages, or injuries, provided that in no event shall
26 restitution be ordered to be paid on account of pain and

1 suffering. When a victim's out-of-pocket expenses have
2 been paid pursuant to the Crime Victims Compensation Act,
3 the court shall order restitution be paid to the
4 compensation program. If a defendant is placed on
5 supervision for, or convicted of, domestic battery, the
6 defendant shall be required to pay restitution to any
7 domestic violence shelter in which the victim and any other
8 family or household members lived because of the domestic
9 battery. The amount of the restitution shall equal the
10 actual expenses of the domestic violence shelter in
11 providing housing and any other services for the victim and
12 any other family or household members living at the
13 shelter. If a defendant fails to pay restitution in the
14 manner or within the time period specified by the court,
15 the court may enter an order directing the sheriff to seize
16 any real or personal property of a defendant to the extent
17 necessary to satisfy the order of restitution and dispose
18 of the property by public sale. All proceeds from such sale
19 in excess of the amount of restitution plus court costs and
20 the costs of the sheriff in conducting the sale shall be
21 paid to the defendant. The defendant convicted of domestic
22 battery, if a person under 18 years of age was present and
23 witnessed the domestic battery of the victim, is liable to
24 pay restitution for the cost of any counseling required for
25 the child at the discretion of the court.

26 (c) In cases where more than one defendant is

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

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

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

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

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

1 co-defendants.

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

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

18 (f) Taking into consideration the ability of the
19 defendant to pay, including any real or personal property
20 or any other assets of the defendant, the court shall
21 determine whether restitution shall be paid in a single
22 payment or in installments, and shall fix a period of time
23 not in excess of 5 years, except for violations of Sections
24 16-1.3 and 17-56 of the Criminal Code of 1961 or the
25 Criminal Code of 2012, or the period of time specified in
26 subsection (f-1), not including periods of incarceration,

1 within which payment of restitution is to be paid in full.
2 Complete restitution shall be paid in as short a time
3 period as possible. However, if the court deems it
4 necessary and in the best interest of the victim, the court
5 may extend beyond 5 years the period of time within which
6 the payment of restitution is to be paid. If the defendant
7 is ordered to pay restitution and the court orders that
8 restitution is to be paid over a period greater than 6
9 months, the court shall order that the defendant make
10 monthly payments; the court may waive this requirement of
11 monthly payments only if there is a specific finding of
12 good cause for waiver.

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

24 (2) The victim's estimate of long-term physical health
25 care costs may be made as part of a victim impact statement
26 under Section 6 of the Rights of Crime Victims and

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

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

23 (g) In addition to the sentences provided for in
24 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
25 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,
26 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of

1 Section 11-14.4, of the Criminal Code of 1961 or the
2 Criminal Code of 2012, the court may order any person who
3 is convicted of violating any of those Sections or who was
4 charged with any of those offenses and which charge was
5 reduced to another charge as a result of a plea agreement
6 under subsection (d) of this Section to meet all or any
7 portion of the financial obligations of treatment,
8 including but not limited to medical, psychiatric, or
9 rehabilitative treatment or psychological counseling,
10 prescribed for the victim or victims of the offense.

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

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

21 (i) A sentence of restitution may be modified or
22 revoked by the court if the offender commits another
23 offense, or the offender fails to make restitution as
24 ordered by the court, but no sentence to make restitution
25 shall be revoked unless the court shall find that the
26 offender has had the financial ability to make restitution,

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

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

26 (k) Nothing contained in this Section shall preclude

1 the right of any party to proceed in a civil action to
2 recover for any damages incurred due to the criminal
3 misconduct of the defendant.

4 (l) Restitution ordered under this Section shall not be
5 subject to disbursement by the circuit clerk under Section
6 27.5 of the Clerks of Courts Act.

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

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

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

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

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

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

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

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

5 (2) Other damages suffered by the victim.

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

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

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

16 (Source: P.A. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;
17 97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.
18 1-25-13.)