

1 AN ACT in relation to 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
8 of the Criminal Code of 1961 in which the person received any
9 injury to their person or damage to their real or personal
10 property as a result of the criminal act of the defendant,
11 the court shall order restitution as provided in this
12 Section. In all other cases, except cases in which
13 restitution is required under this Section, the court must at
14 the sentence hearing determine whether restitution is an
15 appropriate sentence to be imposed on each defendant
16 convicted of an offense. If the court determines that an
17 order directing the offender to make restitution is
18 appropriate, the offender may be sentenced to make
19 restitution. If the offender is sentenced to make
20 restitution the Court shall determine the restitution as
21 hereinafter set forth:

22 (a) At the sentence hearing, the court shall
23 determine whether the property may be restored in kind to
24 the possession of the owner or the person entitled to
25 possession thereof; or whether the defendant is possessed
26 of sufficient skill to repair and restore property
27 damaged; or whether the defendant should be required to
28 make restitution in cash, for out-of-pocket expenses,
29 damages, losses, or injuries found to have been
30 proximately caused by the conduct of the defendant or
31 another for whom the defendant is legally accountable

1 under the provisions of Article V of the Criminal Code of
2 1961.

3 (b) In fixing the amount of restitution to be paid
4 in cash, the court shall allow credit for property
5 returned in kind, for property damages ordered to be
6 repaired by the defendant, and for property ordered to be
7 restored by the defendant; and after granting the credit,
8 the court shall assess the actual out-of-pocket expenses,
9 losses, damages, and injuries suffered by the victim
10 named in the charge and any other victims who may also
11 have suffered out-of-pocket expenses, losses, damages,
12 and injuries proximately caused by the same criminal
13 conduct of the defendant, and insurance carriers who have
14 indemnified the named victim or other victims for the
15 out-of-pocket expenses, losses, damages, or injuries,
16 provided that in no event shall restitution be ordered to
17 be paid on account of pain and suffering. If a defendant
18 is placed on supervision for, or convicted of, domestic
19 battery, the defendant shall be required to pay
20 restitution to any domestic violence shelter in which the
21 victim and any other family or household members lived
22 because of the domestic battery. The amount of the
23 restitution shall equal the actual expenses of the
24 domestic violence shelter in providing housing and any
25 other services for the victim and any other family or
26 household members living at the shelter. If a defendant
27 fails to pay restitution in the manner or within the time
28 period specified by the court, the court may enter an
29 order directing the sheriff to seize any real or personal
30 property of a defendant to the extent necessary to
31 satisfy the order of restitution and dispose of the
32 property by public sale. All proceeds from such sale in
33 excess of the amount of restitution plus court costs and
34 the costs of the sheriff in conducting the sale shall be

1 paid to the defendant. The defendant convicted of
2 domestic battery, if a person under 18 years of age who
3 is the child of the offender or of the victim was present
4 and witnessed the domestic battery of the victim, is
5 liable to pay restitution for the cost of any counseling
6 required for the child at the discretion of the court.

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

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

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

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

27 (4) As between the defendants, each defendant
28 shall be entitled to a pro rata reduction in the
29 total restitution required to be paid to the victim
30 for amounts of restitution actually paid by
31 co-defendants, and defendants who shall have paid
32 more than their pro rata share shall be entitled to
33 refunds to be computed by the court as additional
34 amounts are paid by co-defendants.

1 (d) In instances where a defendant has more than
2 one criminal charge pending against him in a single case,
3 or more than one case, and the defendant stands convicted
4 of one or more charges, a plea agreement negotiated by
5 the 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
9 under the agreement, the court may impose a sentence of
10 restitution on the charge or charges of which the
11 defendant has been convicted that would require the
12 defendant to make restitution to victims of other
13 offenses as provided in the plea agreement.

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

18 (f) Taking into consideration the ability of the
19 defendant to pay, the court shall determine whether
20 restitution shall be paid in a single payment or in
21 installments, and shall fix a period of time not in
22 excess of 5 years, not including periods of
23 incarceration, within which payment of restitution is to
24 be paid in full. Complete restitution shall be paid in as
25 short a time period as possible. However, if the court
26 deems it necessary and in the best interest of the
27 victim, the court may extend beyond 5 years the period of
28 time within which the payment of restitution is to be
29 paid. If the defendant is ordered to pay restitution and
30 the court orders that restitution is to be paid over a
31 period greater than 6 months, the court shall order that
32 the defendant make monthly payments; the court may waive
33 this requirement of monthly payments only if there is a
34 specific finding of good cause for waiver.

1 (g) The court shall, after determining that the
2 defendant has the ability to pay, require the defendant
3 to pay for the victim's counseling services if:

4 (1) the defendant was convicted of an offense
5 under Sections 11-19.2, 11-20.1, 12-13, 12-14,
6 12-14.1, 12-15 or 12-16 of the Criminal Code of
7 1961, or was charged with such an offense and the
8 charge was reduced to another charge as a result of
9 a plea agreement under subsection (d) of this
10 Section, and

11 (2) the victim was under 18 years of age at
12 the time the offense was committed and requires
13 counseling as a result of the offense.

14 The payments shall be made by the defendant to the
15 clerk of the circuit court and transmitted by the clerk
16 to the appropriate person or agency as directed by the
17 court. The order may require such payments to be made
18 for a period not to exceed 5 years after sentencing, not
19 including periods of incarceration.

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

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

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

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

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

30 (1) Attaches to the property of the person
31 subject to the order;

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

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

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

7 When a restitution order is issued under this
 8 Section, the issuing court shall send a certified copy of
 9 the order to the clerk of the circuit court in the county
 10 where the charge was filed. Upon receiving the order,
 11 the clerk shall enter and index the order in the circuit
 12 court judgment docket. Amounts collected by the clerk,
 13 whether in lump sum or installments, after payment of
 14 finer and court costs, shall be used to satisfy the order
 15 of restitution before any other disbursements, including
 16 any other disbursements under Section 27.5 of the Clerks
 17 of Courts Act.

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

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

25 (2) Other damages suffered by the victim.

26 The restitution order is not discharged by the completion
 27 of the sentence imposed for the offense.

28 A restitution order under this Section is not discharged
 29 by the liquidation of a person's estate by a receiver. A
 30 restitution order under this Section may be enforced in the
 31 same manner as judgment liens are enforced under Article XII
 32 of the Code of Civil Procedure.

33 The provisions of Section 2-1303 of the Code of Civil
 34 Procedure, providing for interest on judgments, apply to

1 judgments for restitution entered under this Section.
2 (Source: P.A. 90-465, eff. 1-1-98; 91-153, eff. 1-1-00;
3 91-262, eff. 1-1-00; 91-420, eff. 1-1-00; revised 9-30-99.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.