

AN ACT concerning criminal law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Criminal Code of 1961 is amended by changing Section 17-56 as follows:

(720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 17-56. Financial exploitation of an elderly person or a person with a disability.

(a) A person commits financial exploitation of an elderly person or a person with a disability when he or she stands in a position of trust or confidence with the elderly person or a person with a disability and he or she knowingly and by deception or intimidation obtains control over the property of an elderly person or a person with a disability or illegally uses the assets or resources of an elderly person or a person with a disability.

(b) Sentence. Financial exploitation of an elderly person or a person with a disability is: (1) a Class 4 felony if the value of the property is \$300 or less, (2) a Class 3 felony if the value of the property is more than \$300 but less than \$5,000, (3) a Class 2 felony if the value of the property is

\$5,000 or more but less than \$50,000 ~~\$100,000~~, and (4) a Class 1 felony if the value of the property is \$50,000 ~~\$100,000~~ or more or if the elderly person is over 70 years of age and the value of the property is \$15,000 or more or if the elderly person is 80 years of age or older and the value of the property is \$5,000 or more.

(c) For purposes of this Section:

(1) "Elderly person" means a person 60 years of age or older.

(2) "Person with a disability" means a person who suffers from a physical or mental impairment resulting from disease, injury, functional disorder or congenital condition that impairs the individual's mental or physical ability to independently manage his or her property or financial resources, or both.

(3) "Intimidation" means the communication to an elderly person or a person with a disability that he or she shall be deprived of food and nutrition, shelter, prescribed medication or medical care and treatment.

(4) "Deception" means, in addition to its meaning as defined in Section 15-4 of this Code, a misrepresentation or concealment of material fact relating to the terms of a contract or agreement entered into with the elderly person or person with a disability or to the existing or pre-existing condition of any of the property involved in such contract or agreement; or the use or employment of any

misrepresentation, false pretense or false promise in order to induce, encourage or solicit the elderly person or person with a disability to enter into a contract or agreement.

The illegal use of the assets or resources of an elderly person or a person with a disability includes, but is not limited to, the misappropriation of those assets or resources by undue influence, breach of a fiduciary relationship, fraud, deception, extortion, or use of the assets or resources contrary to law.

A person stands in a position of trust and confidence with an elderly person or person with a disability when he (i) is a parent, spouse, adult child or other relative by blood or marriage of the elderly person or person with a disability, (ii) is a joint tenant or tenant in common with the elderly person or person with a disability, (iii) has a legal or fiduciary relationship with the elderly person or person with a disability, or (iv) is a financial planning or investment professional.

(d) Limitations. Nothing in this Section shall be construed to limit the remedies available to the victim under the Illinois Domestic Violence Act of 1986.

(e) Good faith efforts. Nothing in this Section shall be construed to impose criminal liability on a person who has made a good faith effort to assist the elderly person or person with a disability in the management of his or her property, but

through no fault of his or her own has been unable to provide such assistance.

(f) Not a defense. It shall not be a defense to financial exploitation of an elderly person or person with a disability that the accused reasonably believed that the victim was not an elderly person or person with a disability.

(g) Civil Liability. A person who is charged by information or indictment with the offense of financial exploitation of an elderly person or person with a disability and who fails or refuses to return the victim's property within 60 days following a written demand from the victim or the victim's legal representative shall be liable to the victim or to the estate of the victim in damages of treble the amount of the value of the property obtained, plus reasonable attorney fees and court costs. The burden of proof that the defendant unlawfully obtained the victim's property shall be by a preponderance of the evidence. This subsection shall be operative whether or not the defendant has been convicted of the offense.

(Source: P.A. 95-798, eff. 1-1-09; 96-1551, eff. 7-1-11.)

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

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

(Text of Section after amendment by P.A. 96-1551)

Sec. 5-5-6. In all convictions for offenses in violation of the Criminal Code of 1961 or of Section 11-501 of the Illinois Vehicle Code in which the person received any injury to his or her person or damage to his or her real or personal property as a result of the criminal act of the defendant, the court shall order restitution as provided in this Section. In all other cases, except cases in which restitution is required under this Section, the court must at the sentence hearing determine whether restitution is an appropriate sentence to be imposed on each defendant convicted of an offense. If the court determines that an order directing the offender to make restitution is appropriate, the offender may be sentenced to make restitution. The court may consider restitution an appropriate sentence to be imposed on each defendant convicted of an offense in addition to a sentence of imprisonment. The sentence of the defendant to a term of imprisonment is not a mitigating factor that prevents the court from ordering the defendant to pay restitution. If the offender is sentenced to make restitution the Court shall determine the restitution as hereinafter set forth:

(a) At the sentence hearing, the court shall determine whether the property may be restored in kind to the possession of the owner or the person entitled to possession thereof; or whether the defendant is possessed of sufficient skill to repair and restore property damaged; or whether the defendant should be required to make

restitution in cash, for out-of-pocket expenses, damages, losses, or injuries found to have been proximately caused by the conduct of the defendant or another for whom the defendant is legally accountable under the provisions of Article V of the Criminal Code of 1961.

(b) In fixing the amount of restitution to be paid in cash, the court shall allow credit for property returned in kind, for property damages ordered to be repaired by the defendant, and for property ordered to be restored by the defendant; and after granting the credit, the court shall assess the actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge and any other victims who may also have suffered out-of-pocket expenses, losses, damages, and injuries proximately caused by the same criminal conduct of the defendant, and insurance carriers who have indemnified the named victim or other victims for the out-of-pocket expenses, losses, damages, or injuries, provided that in no event shall restitution be ordered to be paid on account of pain and suffering. If a defendant is placed on supervision for, or convicted of, domestic battery, the defendant shall be required to pay restitution to any domestic violence shelter in which the victim and any other family or household members lived because of the domestic battery. The amount of the restitution shall equal the actual expenses of the domestic violence shelter in providing

housing and any other services for the victim and any other family or household members living at the shelter. If a defendant fails to pay restitution in the manner or within the time period specified by the court, the court may enter an order directing the sheriff to seize any real or personal property of a defendant to the extent necessary to satisfy the order of restitution and dispose of the property by public sale. All proceeds from such sale in excess of the amount of restitution plus court costs and the costs of the sheriff in conducting the sale shall be paid to the defendant. The defendant convicted of domestic battery, if a person under 18 years of age was present and witnessed the domestic battery of the victim, is liable to pay restitution for the cost of any counseling required for the child at the discretion of the court.

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

(1) In no event shall the victim be entitled to recover restitution in excess of the actual out-of-pocket expenses, losses, damages, or injuries,

proximately caused by the conduct of all of the defendants.

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

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

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

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

restitution on the charge or charges of which the defendant has been convicted that would require the defendant to make restitution to victims of other offenses as provided in the plea agreement.

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

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

there is a specific finding of good cause for waiver.

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

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

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

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

The payments shall be made by the defendant to the

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

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

(i) A sentence of restitution may be modified or revoked by the court if the offender commits another offense, or the offender fails to make restitution as ordered by the court, but no sentence to make restitution shall be revoked unless the court shall find that the offender has had the financial ability to make restitution, and he has wilfully refused to do so. When the offender's ability to pay restitution was established at the time an order of restitution was entered or modified, or when the offender's ability to pay was based on the offender's willingness to make restitution as part of a plea agreement made at the time the order of restitution was entered or modified, there is a rebuttable presumption that the facts and circumstances considered by the court at the hearing at which the order of restitution was entered or modified regarding the offender's ability or willingness to pay restitution have not materially changed. If the court shall

find that the defendant has failed to make restitution and that the failure is not wilful, the court may impose an additional period of time within which to make restitution. The length of the additional period shall not be more than 2 years. The court shall retain all of the incidents of the original sentence, including the authority to modify or enlarge the conditions, and to revoke or further modify the sentence if the conditions of payment are violated during the additional period.

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

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

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

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

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

(2) May be perfected in the same manner as provided

in Part 3 of Article 9 of the Uniform Commercial Code;

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

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

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

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

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

(2) Other damages suffered by the victim.

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

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

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the Code of Civil Procedure.

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

(Source: P.A. 95-331, eff. 8-21-07; 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11.)