



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0701

Introduced 02/01/05, by Rep. Eileen Lyons

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-18

from Ch. 38, par. 12-18

730 ILCS 5/5-5-6

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

Amends the Criminal Code of 1961 and the Unified Code of Corrections. Provides that 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. Provides that the court shall take into consideration any real or personal property or other assets of the defendant when it orders restitution. Provides that in addition to any other penalty prescribed by law and any restitution ordered 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 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. Provides that long-term physical health care includes mental health care. Provides that 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. Provides that an order of restitution for long-term physical health care costs 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. Provides that the order may exceed the length of any sentence imposed upon the defendant for the criminal activity. Provides that in addition to the sentences provided for the offenses of exploitation of a child, child pornography, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, and aggravated criminal sexual abuse, the court may order any person who is convicted of violating any of those offenses or who was charged with any of those offenses and which charge was reduced to another charge as a result of a plea agreement 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.

LRB094 05298 RLC 37185 b

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 1961 is amended by changing
5 Section 12-18 as follows:

6 (720 ILCS 5/12-18) (from Ch. 38, par. 12-18)

7 Sec. 12-18. General Provisions.

8 (a) No person accused of violating Sections 12-13, 12-14,
9 12-15 or 12-16 of this Code shall be presumed to be incapable
10 of committing an offense prohibited by Sections 12-13, 12-14,
11 12-14.1, 12-15 or 12-16 of this Code because of age, physical
12 condition or relationship to the victim, except as otherwise
13 provided in subsection (c) of this Section. Nothing in this
14 Section shall be construed to modify or abrogate the
15 affirmative defense of infancy under Section 6-1 of this Code
16 or the provisions of Section 5-805 of the Juvenile Court Act of
17 1987.

18 (b) Any medical examination or procedure which is conducted
19 by a physician, nurse, medical or hospital personnel, parent,
20 or caretaker for purposes and in a manner consistent with
21 reasonable medical standards is not an offense under Sections
22 12-13, 12-14, 12-14.1, 12-15 and 12-16 of this Code.

23 (c) (Blank).

24 (d) ~~(Blank). In addition to the sentences provided for in~~
25 ~~Sections 12-13, 12-14, 12-14.1, 12-15 and 12-16 of the Criminal~~
26 ~~Code of 1961 the Court may order any person who is convicted of~~
27 ~~violating any of those Sections to meet all or any portion of~~
28 ~~the financial obligations of treatment, including but not~~
29 ~~limited to medical, psychiatric, rehabilitative or~~
30 ~~psychological treatment, prescribed for the victim or victims~~
31 ~~of the offense.~~

32 (e) After a finding at a preliminary hearing that there is

1 probable cause to believe that an accused has committed a
2 violation of Section 12-13, 12-14, or 12-14.1 of this Code, or
3 after an indictment is returned charging an accused with a
4 violation of Section 12-13, 12-14, or 12-14.1 of this Code, or
5 after a finding that a defendant charged with a violation of
6 Section 12-13, 12-14, or 12-14.1 of this Code is unfit to stand
7 trial pursuant to Section 104-16 of the Code of Criminal
8 Procedure of 1963 where the finding is made prior to
9 preliminary hearing, at the request of the person who was the
10 victim of the violation of Section 12-13, 12-14, or 12-14.1,
11 the prosecuting State's attorney shall seek an order from the
12 court to compel the accused to be tested for any sexually
13 transmissible disease, including a test for infection with
14 human immunodeficiency virus (HIV). The medical tests shall be
15 performed only by appropriately licensed medical
16 practitioners. The test for infection with human
17 immunodeficiency virus (HIV) shall consist of an enzyme-linked
18 immunosorbent assay (ELISA) test, or such other test as may be
19 approved by the Illinois Department of Public Health; in the
20 event of a positive result, the Western Blot Assay or a more
21 reliable confirmatory test shall be administered. The results
22 of the tests shall be kept strictly confidential by all medical
23 personnel involved in the testing and must be personally
24 delivered in a sealed envelope to the victim and to the judge
25 who entered the order, for the judge's inspection in camera.
26 Acting in accordance with the best interests of the victim and
27 the public, the judge shall have the discretion to determine to
28 whom, if anyone, the result of the testing may be revealed;
29 however, in no case shall the identity of the victim be
30 disclosed. The court shall order that the cost of the tests
31 shall be paid by the county, and may be taxed as costs against
32 the accused if convicted.

33 (f) Whenever any law enforcement officer has reasonable
34 cause to believe that a person has been delivered a controlled
35 substance without his or her consent, the law enforcement
36 officer shall advise the victim about seeking medical treatment

1 and preserving evidence.

2 (g) Every hospital providing emergency hospital services
3 to an alleged sexual assault survivor, when there is reasonable
4 cause to believe that a person has been delivered a controlled
5 substance without his or her consent, shall designate personnel
6 to provide:

7 (1) An explanation to the victim about the nature and
8 effects of commonly used controlled substances and how such
9 controlled substances are administered.

10 (2) An offer to the victim of testing for the presence
11 of such controlled substances.

12 (3) A disclosure to the victim that all controlled
13 substances or alcohol ingested by the victim will be
14 disclosed by the test.

15 (4) A statement that the test is completely voluntary.

16 (5) A form for written authorization for sample
17 analysis of all controlled substances and alcohol ingested
18 by the victim.

19 A physician licensed to practice medicine in all its
20 branches may agree to be a designated person under this
21 subsection.

22 No sample analysis may be performed unless the victim
23 returns a signed written authorization within 30 days after the
24 sample was collected.

25 Any medical treatment or care under this subsection shall
26 be only in accordance with the order of a physician licensed to
27 practice medicine in all of its branches. Any testing under
28 this subsection shall be only in accordance with the order of a
29 licensed individual authorized to order the testing.

30 (Source: P.A. 92-81, eff. 7-12-01; 93-958, eff. 8-20-04.)

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

33 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

34 Sec. 5-5-6. In all convictions for offenses in violation of

1 the Criminal Code of 1961 in which the person received any
2 injury to their person or damage to their real or personal
3 property as a result of the criminal act of the defendant, the
4 court shall order restitution as provided in this Section. In
5 all other cases, except cases in which restitution is required
6 under this Section, the court must at the sentence hearing
7 determine whether restitution is an appropriate sentence to be
8 imposed on each defendant convicted of an offense. If the court
9 determines that an order directing the offender to make
10 restitution is appropriate, the offender may be sentenced to
11 make restitution. The court may consider restitution an
12 appropriate sentence to be imposed on each defendant convicted
13 of an offense in addition to a sentence of imprisonment. The
14 sentence of the defendant to a term of imprisonment is not a
15 mitigating factor that prevents the court from ordering the
16 defendant to pay restitution. If the offender is sentenced to
17 make restitution the Court shall determine the restitution as
18 hereinafter set forth:

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

30 (b) In fixing the amount of restitution to be paid in
31 cash, the court shall allow credit for property returned in
32 kind, for property damages ordered to be repaired by the
33 defendant, and for property ordered to be restored by the
34 defendant; and after granting the credit, the court shall
35 assess the actual out-of-pocket expenses, losses, damages,
36 and injuries suffered by the victim named in the charge and

1 any other victims who may also have suffered out-of-pocket
2 expenses, losses, damages, and injuries proximately caused
3 by the same criminal conduct of the defendant, and
4 insurance carriers who have indemnified the named victim or
5 other victims for the out-of-pocket expenses, losses,
6 damages, or injuries, provided that in no event shall
7 restitution be ordered to be paid on account of pain and
8 suffering. If a defendant is placed on supervision for, or
9 convicted of, domestic battery, the defendant shall be
10 required to pay restitution to any domestic violence
11 shelter in which the victim and any other family or
12 household members lived because of the domestic battery.
13 The amount of the restitution shall equal the actual
14 expenses of the domestic violence shelter in providing
15 housing and any other services for the victim and any other
16 family or household members living at the shelter. If a
17 defendant fails to pay restitution in the manner or within
18 the time period specified by the court, the court may enter
19 an order directing the sheriff to seize any real or
20 personal property of a defendant to the extent necessary to
21 satisfy the order of restitution and dispose of the
22 property by public sale. All proceeds from such sale in
23 excess of the amount of restitution plus court costs and
24 the costs of the sheriff in conducting the sale shall be
25 paid to the defendant. The defendant convicted of domestic
26 battery, if a person under 18 years of age who is the child
27 of the offender or of the victim was present and witnessed
28 the domestic battery of the victim, is liable to pay
29 restitution for the cost of any counseling required for the
30 child at the discretion of the court.

31 (c) In cases where more than one defendant is
32 accountable for the same criminal conduct that results in
33 out-of-pocket expenses, losses, damages, or injuries, each
34 defendant shall be ordered to pay restitution in the amount
35 of the total actual out-of-pocket expenses, losses,
36 damages, or injuries to the victim proximately caused by

1 the conduct of all of the defendants who are legally
2 accountable for the offense.

3 (1) In no event shall the victim be entitled to
4 recover restitution in excess of the actual
5 out-of-pocket expenses, losses, damages, or injuries,
6 proximately caused by the conduct of all of the
7 defendants.

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

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

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

23 (d) In instances where a defendant has more than one
24 criminal charge pending against him in a single case, or
25 more than one case, and the defendant stands convicted of
26 one or more charges, a plea agreement negotiated by the
27 State's Attorney and the defendants may require the
28 defendant to make restitution to victims of charges that
29 have been dismissed or which it is contemplated will be
30 dismissed under the terms of the plea agreement, and under
31 the agreement, the court may impose a sentence of
32 restitution on the charge or charges of which the defendant
33 has been convicted that would require the defendant to make
34 restitution to victims of other offenses as provided in the
35 plea agreement.

36 (e) The court may require the defendant to apply the

1 balance of the cash bond, after payment of court costs, and
2 any fine that may be imposed to the payment of restitution.

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

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

33 (2) The victim's estimate of long-term physical health
34 care costs may be made as part of a victim impact statement
35 under Section 6 of the Rights of Crime Victims and
36 Witnesses Act or made separately. The court shall enter the

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

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

22 (g) In addition to the sentences provided for in
23 Sections 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1, 12-15,
24 and 12-16 of the Criminal Code of 1961, the court may order
25 any person who is convicted of violating any of those
26 Sections or who was charged with any of those offenses and
27 which charge was reduced to another charge as a result of a
28 plea agreement under subsection (d) of this Section to meet
29 all or any portion of the financial obligations of
30 treatment, including but not limited to medical,
31 psychiatric, or rehabilitative treatment or psychological
32 counseling, prescribed for the victim or victims of the
33 offense. The court shall, after determining that the
34 defendant has the ability to pay, require the defendant to
35 pay for the victim's counseling services if:

36 (1) the defendant was convicted of an offense under

~~Sections 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961, or was charged with such an offense and the charge was reduced to another charge as a result of a plea agreement under subsection (d) of this Section, and~~

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

1 that the failure is not wilful, the court may impose an
2 additional period of time within which to make restitution.
3 The length of the additional period shall not be more than
4 2 years. The court shall retain all of the incidents of the
5 original sentence, including the authority to modify or
6 enlarge the conditions, and to revoke or further modify the
7 sentence if the conditions of payment are violated during
8 the additional period.

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

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

18 (l) Restitution ordered under this Section shall not be
19 subject to disbursement by the circuit clerk under Section
20 27.5 of the Clerks of Courts Act.

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

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

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

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

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

33 When a restitution order is issued under this Section,
34 the issuing court shall send a certified copy of the order
35 to the clerk of the circuit court in the county where the
36 charge was filed. Upon receiving the order, the clerk shall

1 enter and index the order in the circuit court judgment
2 docket.

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

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

9 (2) Other damages suffered by the victim.

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

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

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

20 (Source: P.A. 91-153, eff. 1-1-00; 91-262, eff. 1-1-00; 91-420,
21 eff. 1-1-00; 92-16, eff. 6-28-01.)