



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5942

Introduced 2/10/2010, by Rep. Robert W. Pritchard

SYNOPSIS AS INTRODUCED:

705 ILCS 105/27.5	from Ch. 25, par. 27.5
750 ILCS 5/6.12 new	
750 ILCS 60/223	from Ch. 40, par. 2312-23
30 ILCS 105/5.755 new	
30 ILCS 105/6z-82 new	

Amends the Clerks of Courts Act. Provides that a person fined under the Illinois Marriage and Dissolution of Marriage Act for violating an order concerning custody or visitation, or fined under the Illinois Domestic Violence Act of 1986 for violating a portion of an order of protection concerning custody or visitation, shall pay the fine to the circuit clerk who shall remit to the State Treasurer for deposit the amount of the fine, less 10% to defray administrative costs, into the Domestic Violence Victims Assistance Fund in the State treasury. Amends the Illinois Marriage and Dissolution of Marriage Act and the Illinois Domestic Violence Act of 1986 to direct that a court that finds that a person violated a portion of an order of protection concerning custody or visitation or an order concerning custody or visitation shall fine the person \$100, unless waived by the court because the fine would place an undue burden on another party who did not violate the order. Amends the State Finance Act. Creates the Domestic Violence Victims Assistance Fund from which, subject to appropriation, grants are made by the Attorney General to public or private nonprofit entities that provide free legal assistance or domestic abuse advocacy to victims of domestic violence in legal proceedings related to domestic violence. Provides that the Attorney General shall adopt rules concerning the grants.

LRB096 18441 AJ0 33819 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning child custody.

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

4 Section 5. The Clerks of Courts Act is amended by changing
5 Section 27.5 as follows:

6 (705 ILCS 105/27.5) (from Ch. 25, par. 27.5)

7 Sec. 27.5. (a) All fees, fines, costs, additional
8 penalties, bail balances assessed or forfeited, and any other
9 amount paid by a person to the circuit clerk that equals an
10 amount less than \$55, except restitution under Section 5-5-6 of
11 the Unified Code of Corrections, reimbursement for the costs of
12 an emergency response as provided under Section 11-501 of the
13 Illinois Vehicle Code, any fees collected for attending a
14 traffic safety program under paragraph (c) of Supreme Court
15 Rule 529, any fee collected on behalf of a State's Attorney
16 under Section 4-2002 of the Counties Code or a sheriff under
17 Section 4-5001 of the Counties Code, or any cost imposed under
18 Section 124A-5 of the Code of Criminal Procedure of 1963, for
19 convictions, orders of supervision, or any other disposition
20 for a violation of Chapters 3, 4, 6, 11, and 12 of the Illinois
21 Vehicle Code, or a similar provision of a local ordinance, and
22 any violation of the Child Passenger Protection Act, or a
23 similar provision of a local ordinance, and except as otherwise

1 provided in this Section ~~in subsection (b)~~ shall be disbursed
2 within 60 days after receipt by the circuit clerk as follows:
3 47% shall be disbursed to the entity authorized by law to
4 receive the fine imposed in the case; 12% shall be disbursed to
5 the State Treasurer; and 41% shall be disbursed to the county's
6 general corporate fund. Of the 12% disbursed to the State
7 Treasurer, 1/6 shall be deposited by the State Treasurer into
8 the Violent Crime Victims Assistance Fund, 1/2 shall be
9 deposited into the Traffic and Criminal Conviction Surcharge
10 Fund, and 1/3 shall be deposited into the Drivers Education
11 Fund. For fiscal years 1992 and 1993, amounts deposited into
12 the Violent Crime Victims Assistance Fund, the Traffic and
13 Criminal Conviction Surcharge Fund, or the Drivers Education
14 Fund shall not exceed 110% of the amounts deposited into those
15 funds in fiscal year 1991. Any amount that exceeds the 110%
16 limit shall be distributed as follows: 50% shall be disbursed
17 to the county's general corporate fund and 50% shall be
18 disbursed to the entity authorized by law to receive the fine
19 imposed in the case. Not later than March 1 of each year the
20 circuit clerk shall submit a report of the amount of funds
21 remitted to the State Treasurer under this Section during the
22 preceding year based upon independent verification of fines and
23 fees. All counties shall be subject to this Section, except
24 that counties with a population under 2,000,000 may, by
25 ordinance, elect not to be subject to this Section. For
26 offenses subject to this Section, judges shall impose one total

1 sum of money payable for violations. The circuit clerk may add
2 on no additional amounts except for amounts that are required
3 by Sections 27.3a and 27.3c of this Act, Section 16-104c of the
4 Illinois Vehicle Code, and subsection (a) of Section 5-1101 of
5 the Counties Code, unless those amounts are specifically waived
6 by the judge. With respect to money collected by the circuit
7 clerk as a result of forfeiture of bail, ex parte judgment or
8 guilty plea pursuant to Supreme Court Rule 529, the circuit
9 clerk shall first deduct and pay amounts required by Sections
10 27.3a and 27.3c of this Act. Unless a court ordered payment
11 schedule is implemented or fee requirements are waived pursuant
12 to a court order, the circuit clerk may add to any unpaid fees
13 and costs a delinquency amount equal to 5% of the unpaid fees
14 that remain unpaid after 30 days, 10% of the unpaid fees that
15 remain unpaid after 60 days, and 15% of the unpaid fees that
16 remain unpaid after 90 days. Notice to those parties may be
17 made by signage posting or publication. The additional
18 delinquency amounts collected under this Section shall be
19 deposited in the Circuit Court Clerk Operation and
20 Administrative Fund to be used to defray administrative costs
21 incurred by the circuit clerk in performing the duties required
22 to collect and disburse funds. This Section is a denial and
23 limitation of home rule powers and functions under subsection
24 (h) of Section 6 of Article VII of the Illinois Constitution.

25 (b) The following amounts must be remitted to the State
26 Treasurer for deposit into the Illinois Animal Abuse Fund:

1 (1) 50% of the amounts collected for felony offenses
2 under Sections 3, 3.01, 3.02, 3.03, 4, 4.01, 4.03, 4.04, 5,
3 5.01, 6, 7, 7.5, 7.15, and 16 of the Humane Care for
4 Animals Act and Section 26-5 of the Criminal Code of 1961;

5 (2) 20% of the amounts collected for Class A and Class
6 B misdemeanors under Sections 3, 3.01, 4, 4.01, 4.03, 4.04,
7 5, 5.01, 6, 7, 7.1, 7.5, 7.15, and 16 of the Humane Care
8 for Animals Act and Section 26-5 of the Criminal Code of
9 1961; and

10 (3) 50% of the amounts collected for Class C
11 misdemeanors under Sections 4.01 and 7.1 of the Humane Care
12 for Animals Act and Section 26-5 of the Criminal Code of
13 1961.

14 (c) Any person who receives a disposition of court
15 supervision for a violation of the Illinois Vehicle Code or a
16 similar provision of a local ordinance shall, in addition to
17 any other fines, fees, and court costs, pay an additional fee
18 of \$29, to be disbursed as provided in Section 16-104c of the
19 Illinois Vehicle Code. In addition to the fee of \$29, the
20 person shall also pay a fee of \$6, if not waived by the court.
21 If this \$6 fee is collected, \$5.50 of the fee shall be
22 deposited into the Circuit Court Clerk Operation and
23 Administrative Fund created by the Clerk of the Circuit Court
24 and 50 cents of the fee shall be deposited into the Prisoner
25 Review Board Vehicle and Equipment Fund in the State treasury.

26 (d) Any person convicted of, pleading guilty to, or placed

1 on supervision for a serious traffic violation, as defined in
2 Section 1-187.001 of the Illinois Vehicle Code, a violation of
3 Section 11-501 of the Illinois Vehicle Code, or a violation of
4 a similar provision of a local ordinance shall pay an
5 additional fee of \$20, to be disbursed as provided in Section
6 16-104d of that Code.

7 This subsection ~~Subsection~~ (d) becomes inoperative 7 years
8 after the effective date of Public Act 95-154.

9 (e) In all counties having a population of 3,000,000 or
10 more inhabitants:7

11 (1) ~~(e-1)~~ A person who is found guilty of or pleads
12 guilty to violating subsection (a) of Section 11-501 of the
13 Illinois Vehicle Code, including any person placed on court
14 supervision for violating subsection (a), shall be fined
15 \$500 as provided for by subsection (f) of Section 11-501.01
16 of the Illinois Vehicle Code, payable to the circuit clerk,
17 who shall distribute the money pursuant to subsection (f)
18 of Section 11-501.01 of the Illinois Vehicle Code.

19 (2) ~~(e-2)~~ When a crime laboratory DUI analysis fee of
20 \$150, provided for by Section 5-9-1.9 of the Unified Code
21 of Corrections is assessed, it shall be disbursed by the
22 circuit clerk as provided by subsection (f) of Section
23 5-9-1.9 of the Unified Code of Corrections.

24 (3) ~~(e-3)~~ When a fine for a violation of subsection (a)
25 of Section 11-605 of the Illinois Vehicle Code is \$150 or
26 greater, the additional \$50 which is charged as provided

1 for by subsection (f) of Section 11-605 of the Illinois
2 Vehicle Code shall be disbursed by the circuit clerk to a
3 school district or districts for school safety purposes as
4 provided by subsection (f) of Section 11-605.

5 (4) ~~(e-3.5)~~ When a fine for a violation of subsection
6 (a) of Section 11-1002.5 of the Illinois Vehicle Code is
7 \$150 or greater, the additional \$50 which is charged as
8 provided for by subsection (c) of Section 11-1002.5 of the
9 Illinois Vehicle Code shall be disbursed by the circuit
10 clerk to a school district or districts for school safety
11 purposes as provided by subsection (c) of Section 11-1002.5
12 of the Illinois Vehicle Code.

13 (5) ~~(e-4)~~ When a mandatory drug court fee of up to \$5
14 is assessed as provided in subsection (f) of Section 5-1101
15 of the Counties Code, it shall be disbursed by the circuit
16 clerk as provided in subsection (f) of Section 5-1101 of
17 the Counties Code.

18 (6) ~~(e-5)~~ When a mandatory teen court, peer jury, youth
19 court, or other youth diversion program fee is assessed as
20 provided in subsection (e) of Section 5-1101 of the
21 Counties Code, it shall be disbursed by the circuit clerk
22 as provided in subsection (e) of Section 5-1101 of the
23 Counties Code.

24 (7) ~~(e-6)~~ When a Children's Advocacy Center fee is
25 assessed pursuant to subsection (f-5) of Section 5-1101 of
26 the Counties Code, it shall be disbursed by the circuit

1 clerk as provided in subsection (f-5) of Section 5-1101 of
2 the Counties Code.

3 (8) ~~(e-7)~~ When a victim impact panel fee is assessed
4 pursuant to subsection (b) of Section 11-501.01 of the
5 Illinois Vehicle Code, it shall be disbursed by the circuit
6 clerk to the victim impact panel to be attended by the
7 defendant.

8 (9) ~~(e-8)~~ When a new fee collected in traffic cases is
9 enacted after January 1, 2010 (the effective date of Public
10 Act 96-735) ~~this amendatory Act of the 96th General~~
11 ~~Assembly~~, it shall be excluded from the percentage
12 disbursement provisions of this Section unless otherwise
13 indicated by law.

14 (f) ~~(e)~~ Any person who receives a disposition of court
15 supervision for a violation of Section 11-501 of the Illinois
16 Vehicle Code shall, in addition to any other fines, fees, and
17 court costs, pay an additional fee of \$50, which shall be
18 collected by the circuit clerk and then remitted to the State
19 Treasurer for deposit into the Roadside Memorial Fund, a
20 special fund in the State treasury. However, the court may
21 waive the fee if full restitution is complied with. Subject to
22 appropriation, all moneys in the Roadside Memorial Fund shall
23 be used by the Department of Transportation to pay fees imposed
24 under subsection (f) of Section 20 of the Roadside Memorial
25 Act. The fee shall be remitted by the circuit clerk within one
26 month after receipt to the State Treasurer for deposit into the

1 Roadside Memorial Fund.

2 (g) ~~(e)~~ For any conviction or disposition of court
3 supervision for a violation of Section 11-1429 of the Illinois
4 Vehicle Code, the circuit clerk shall distribute the fines paid
5 by the person as specified by subsection (h) of Section 11-1429
6 of the Illinois Vehicle Code.

7 (h) Any person fined pursuant to Section 612 of the
8 Illinois Marriage and Dissolution of Marriage Act for a
9 violation of an order concerning custody or visitation or fined
10 pursuant to subsection (c-5) of Section 223 of the Illinois
11 Domestic Violence Act of 1986 for a violation of a portion of
12 an order of protection concerning custody or visitation, shall
13 pay the amount of the fine to the clerk of the circuit court.
14 This amount, less 10% that shall be deposited into the Circuit
15 Court Clerk Operation and Administrative Fund created by the
16 Clerk of the Circuit Court, shall be remitted to the State
17 Treasurer within 30 days after receipt for deposit into the
18 Domestic Violence Victims Assistance Fund in the State
19 treasury.

20 (Source: P.A. 95-154, eff. 10-13-07; 95-428, eff. 8-24-07;
21 95-876, eff. 8-21-08; 96-286, eff. 8-11-09; 96-576, eff.
22 8-18-09; 96-625, eff. 1-1-10; 96-667, eff. 8-25-09; 96-735,
23 eff. 1-1-10; revised 12-28-09.)

24 Section 10. The Illinois Marriage and Dissolution of
25 Marriage Act is amended by adding Section 6.12 as follows:

1 (750 ILCS 5/6.12 new)

2 Sec. 6.12. Custody or visitation order violation. If the
3 court finds that a party violated an order concerning custody
4 or visitation, the court shall fine the party \$100, in addition
5 to any other penalty imposed, unless the court waives the fine
6 because the court finds that the imposition of the fine would
7 place an undue burden on another party who did not violate the
8 order. The fine shall be paid to the circuit clerk for deposit,
9 pursuant to subsection (h) of Section 27.5 of the Clerks of
10 Courts Act, into the Domestic Violence Victims Assistance Fund.

11 Section 15. The Illinois Domestic Violence Act of 1986 is
12 amended by changing Section 223 as follows:

13 (750 ILCS 60/223) (from Ch. 40, par. 2312-23)

14 Sec. 223. Enforcement of orders of protection.

15 (a) When violation is crime. A violation of any order of
16 protection, whether issued in a civil or criminal proceeding,
17 shall be enforced by a criminal court when:

18 (1) The respondent commits the crime of violation of an
19 order of protection pursuant to Section 12-30 of the
20 Criminal Code of 1961, by having knowingly violated:

21 (i) remedies described in paragraphs (1), (2),
22 (3), (14), or (14.5) of subsection (b) of Section 214
23 of this Act; or

1 (ii) a remedy, which is substantially similar to
2 the remedies authorized under paragraphs (1), (2),
3 (3), (14), and (14.5) of subsection (b) of Section 214
4 of this Act, in a valid order of protection which is
5 authorized under the laws of another state, tribe, or
6 United States territory; or

7 (iii) any other remedy when the act constitutes a
8 crime against the protected parties as defined by the
9 Criminal Code of 1961.

10 Prosecution for a violation of an order of protection
11 shall not bar concurrent prosecution for any other crime,
12 including any crime that may have been committed at the
13 time of the violation of the order of protection; or

14 (2) The respondent commits the crime of child abduction
15 pursuant to Section 10-5 of the Criminal Code of 1961, by
16 having knowingly violated:

17 (i) remedies described in paragraphs (5), (6) or
18 (8) of subsection (b) of Section 214 of this Act; or

19 (ii) a remedy, which is substantially similar to
20 the remedies authorized under paragraphs (5), (6), or
21 (8) of subsection (b) of Section 214 of this Act, in a
22 valid order of protection which is authorized under the
23 laws of another state, tribe, or United States
24 territory.

25 (b) When violation is contempt of court. A violation of any
26 valid Illinois order of protection, whether issued in a civil

1 or criminal proceeding, may be enforced through civil or
2 criminal contempt procedures, as appropriate, by any court with
3 jurisdiction, regardless where the act or acts which violated
4 the order of protection were committed, to the extent
5 consistent with the venue provisions of this Act. Nothing in
6 this Act shall preclude any Illinois court from enforcing any
7 valid order of protection issued in another state. Illinois
8 courts may enforce orders of protection through both criminal
9 prosecution and contempt proceedings, unless the action which
10 is second in time is barred by collateral estoppel or the
11 constitutional prohibition against double jeopardy.

12 (1) In a contempt proceeding where the petition for a
13 rule to show cause sets forth facts evidencing an immediate
14 danger that the respondent will flee the jurisdiction,
15 conceal a child, or inflict physical abuse on the
16 petitioner or minor children or on dependent adults in
17 petitioner's care, the court may order the attachment of
18 the respondent without prior service of the rule to show
19 cause or the petition for a rule to show cause. Bond shall
20 be set unless specifically denied in writing.

21 (2) A petition for a rule to show cause for violation
22 of an order of protection shall be treated as an expedited
23 proceeding.

24 (c) Violation of custody or support orders. A violation of
25 remedies described in paragraphs (5), (6), (8), or (9) of
26 subsection (b) of Section 214 of this Act may be enforced by

1 any remedy provided by Section 611 of the Illinois Marriage and
2 Dissolution of Marriage Act. The court may enforce any order
3 for support issued under paragraph (12) of subsection (b) of
4 Section 214 in the manner provided for under Parts V and VII of
5 the Illinois Marriage and Dissolution of Marriage Act.

6 (c-5) Violation of custody or visitation order. A violation
7 of a portion of an order of protection concerning custody or
8 visitation shall be enforced by a fine of \$100, unless the
9 court waives the fine because the court finds that the
10 imposition of the fine would place an undue burden on another
11 party who did not violate the order. The fine shall be paid to
12 the circuit clerk for deposit, pursuant to subsection (h) of
13 Section 27.5 of the Clerks of Courts Act, into the Domestic
14 Violence Victims Assistance Fund.

15 (d) Actual knowledge. An order of protection may be
16 enforced pursuant to this Section if the respondent violates
17 the order after the respondent has actual knowledge of its
18 contents as shown through one of the following means:

19 (1) By service, delivery, or notice under Section 210.

20 (2) By notice under Section 210.1 or 211.

21 (3) By service of an order of protection under Section
22 222.

23 (4) By other means demonstrating actual knowledge of
24 the contents of the order.

25 (e) The enforcement of an order of protection in civil or
26 criminal court shall not be affected by either of the

1 following:

2 (1) The existence of a separate, correlative order,
3 entered under Section 215.

4 (2) Any finding or order entered in a conjoined
5 criminal proceeding.

6 (f) Circumstances. The court, when determining whether or
7 not a violation of an order of protection has occurred, shall
8 not require physical manifestations of abuse on the person of
9 the victim.

10 (g) Penalties.

11 (1) Except as provided in paragraph (3) of this
12 subsection, where the court finds the commission of a crime
13 or contempt of court under subsections (a) or (b) of this
14 Section, the penalty shall be the penalty that generally
15 applies in such criminal or contempt proceedings, and may
16 include one or more of the following: incarceration,
17 payment of restitution, a fine, payment of attorneys' fees
18 and costs, or community service.

19 (2) The court shall hear and take into account evidence
20 of any factors in aggravation or mitigation before deciding
21 an appropriate penalty under paragraph (1) of this
22 subsection.

23 (3) To the extent permitted by law, the court is
24 encouraged to:

25 (i) increase the penalty for the knowing violation
26 of any order of protection over any penalty previously

1 imposed by any court for respondent's violation of any
2 order of protection or penal statute involving
3 petitioner as victim and respondent as defendant;

4 (ii) impose a minimum penalty of 24 hours
5 imprisonment for respondent's first violation of any
6 order of protection; and

7 (iii) impose a minimum penalty of 48 hours
8 imprisonment for respondent's second or subsequent
9 violation of an order of protection

10 unless the court explicitly finds that an increased penalty
11 or that period of imprisonment would be manifestly unjust.

12 (4) In addition to any other penalties imposed for a
13 violation of an order of protection, a criminal court may
14 consider evidence of any violations of an order of
15 protection:

16 (i) to increase, revoke or modify the bail bond on
17 an underlying criminal charge pursuant to Section
18 110-6 of the Code of Criminal Procedure of 1963;

19 (ii) to revoke or modify an order of probation,
20 conditional discharge or supervision, pursuant to
21 Section 5-6-4 of the Unified Code of Corrections;

22 (iii) to revoke or modify a sentence of periodic
23 imprisonment, pursuant to Section 5-7-2 of the Unified
24 Code of Corrections.

25 (5) In addition to any other penalties, the court shall
26 impose an additional fine of \$20 as authorized by Section

1 5-9-1.11 of the Unified Code of Corrections upon any person
2 convicted of or placed on supervision for a violation of an
3 order of protection. The additional fine shall be imposed
4 for each violation of this Section.

5 (Source: P.A. 95-331, eff. 8-21-07.)

6 Section 20. The State Finance Act is amended by adding
7 Section 5.755 and 6z-82 as follows:

8 (30 ILCS 105/5.755 new)

9 Sec. 5.755. The Domestic Violence Victims Assistance Fund.

10 (30 ILCS 105/6z-82 new)

11 Sec. 6z-82. Domestic Violence Victims Assistance Fund. The
12 Domestic Violence Victims Assistance Fund is created as a
13 special fund in the State treasury. Subject to appropriation
14 and subject to approval by the Attorney General, the moneys in
15 the Fund shall be paid as grants to public or private nonprofit
16 entities that provide to domestic abuse victims pro bono legal
17 assistance or domestic abuse advocacy pursuant to Section 205
18 of the Illinois Domestic Violence Act of 1986 for the purposes
19 of facilitating or providing free domestic violence legal
20 advocacy, assistance, or services to victims of domestic
21 violence related to order of protection proceedings,
22 dissolution of marriage proceedings, declaration of invalidity
23 of marriage proceedings, legal separation proceedings, child

1 custody proceedings, visitation proceedings, or other
2 proceedings for civil remedies for domestic violence. The
3 Attorney General shall adopt rules concerning application for
4 and disbursement of the moneys in the Fund.