



Rep. Tom Demmer

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1 AMENDMENT TO HOUSE BILL 3529

2 AMENDMENT NO. _____. Amend House Bill 3529, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Criminal Code of 2012 is amended by
6 changing Section 17-56 as follows:

7 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

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

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

1 with a disability.

2 (a-5) A person commits financial exploitation of an elderly
3 person or a person with a disability when he or she assumes the
4 responsibility of managing the financial affairs of an elderly
5 person who is a resident of a facility licensed under the
6 Nursing Home Care Act or a person with a disability who is a
7 resident of a facility licensed under the Nursing Home Care Act
8 and fails to pay for the facility care of the elderly person or
9 person with a disability from the assets and income of the
10 elderly person or person with a disability which are identified
11 as above the allowable limits required under 89 Ill. Adm. Code
12 120.61 for the purposes of meeting long term care Medicaid
13 eligibility requirements for medical assistance. For purposes
14 of this subsection (a-5), a person assumes the responsibility
15 of managing the financial affairs of an elderly person or a
16 person with a disability when he or she receives, has access
17 to, handles, or controls the funds of the elderly person or
18 person with a disability, including, but not limited to,
19 benefits under the federal Social Security Act, pension, cash,
20 or other income.

21 (b) Sentence. Financial exploitation of an elderly person
22 or a person with a disability is: (1) a Class 4 felony if the
23 value of the property is \$300 or less, (2) a Class 3 felony if
24 the value of the property is more than \$300 but less than
25 \$5,000, (3) a Class 2 felony if the value of the property is
26 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony

1 if the value of the property is \$50,000 or more or if the
2 elderly person is over 70 years of age and the value of the
3 property is \$15,000 or more or if the elderly person is 80
4 years of age or older and the value of the property is \$5,000
5 or more.

6 (c) For purposes of this Section:

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

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

15 (3) "Intimidation" means the communication to an
16 elderly person or a person with a disability that he or she
17 shall be deprived of food and nutrition, shelter,
18 prescribed medication or medical care and treatment or
19 conduct as provided in Section 12-6 of this Code.

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

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

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

11 A person stands in a position of trust and confidence with
12 an elderly person or person with a disability when he (i) is a
13 parent, spouse, adult child or other relative by blood or
14 marriage of the elderly person or person with a disability,
15 (ii) is a joint tenant or tenant in common with the elderly
16 person or person with a disability, (iii) has a legal or
17 fiduciary relationship with the elderly person or person with a
18 disability, (iv) is a financial planning or investment
19 professional, or (v) is a paid or unpaid caregiver for the
20 elderly person or person with a disability.

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

24 (e) Good faith efforts. Nothing in this Section shall be
25 construed to impose criminal liability on a person who has made
26 a good faith effort to assist the elderly person or person with

1 a disability in the management of his or her property, but
2 through no fault of his or her own has been unable to provide
3 such assistance.

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

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

21 (h) If a person is charged with financial exploitation of
22 an elderly person or a person with a disability that involves
23 the taking or loss of property valued at more than \$5,000, a
24 prosecuting attorney may file a petition with the circuit court
25 of the county in which the defendant has been charged to freeze
26 the assets of the defendant in an amount equal to but not

1 greater than the alleged value of lost or stolen property in
2 the defendant's pending criminal proceeding for purposes of
3 restitution to the victim. The burden of proof required to
4 freeze the defendant's assets shall be by a preponderance of
5 the evidence.

6 (i) Evidence of failure to pay for the facility care of an
7 elderly person or person with a disability from the assets and
8 income of the elderly person or person with a disability which
9 are identified as above the allowable limits required under 89
10 Ill. Adm. Code 120.61 for the purposes of meeting long term
11 care Medicaid eligibility requirements for medical assistance,
12 may include, but is not limited to failure to comply with
13 notification from the Department of Healthcare and Family
14 Services of the requirement to pay from the assets and income
15 of the elderly person or person with a disability which are
16 identified as above the allowable limits required under 89 Ill.
17 Adm. Code 120.61 for the purposes of meeting long term care
18 Medicaid eligibility requirements for medical assistance.

19 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;
20 97-865, eff. 1-1-13.)

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

23 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

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

1 the Criminal Code of 1961 or the Criminal Code of 2012 or of
2 Section 11-501 of the Illinois Vehicle Code in which the person
3 received any injury to his or her person or damage to his or
4 her real or personal property as a result of the criminal act
5 of the defendant, the court shall order restitution as provided
6 in this Section. In all other cases, except cases in which
7 restitution is required under this Section, the court must at
8 the sentence hearing determine whether restitution is an
9 appropriate sentence to be imposed on each defendant convicted
10 of an offense. If the court determines that an order directing
11 the offender to make restitution is appropriate, the offender
12 may be sentenced to make restitution. The court may consider
13 restitution an appropriate sentence to be imposed on each
14 defendant convicted of an offense in addition to a sentence of
15 imprisonment. The sentence of the defendant to a term of
16 imprisonment is not a mitigating factor that prevents the court
17 from ordering the defendant to pay restitution. If the offender
18 is sentenced to make restitution the Court shall determine the
19 restitution as hereinafter set forth:

20 (a) At the sentence hearing, the court shall determine
21 whether the property may be restored in kind to the
22 possession of the owner or the person entitled to
23 possession thereof; or whether the defendant is possessed
24 of sufficient skill to repair and restore property damaged;
25 or whether the defendant should be required to make
26 restitution in cash, for out-of-pocket expenses, damages,

1 losses, or injuries found to have been proximately caused
2 by the conduct of the defendant or another for whom the
3 defendant is legally accountable under the provisions of
4 Article 5 of the Criminal Code of 1961 or the Criminal Code
5 of 2012.

6 (b) In fixing the amount of restitution to be paid in
7 cash, the court shall allow credit for property returned in
8 kind, for property damages ordered to be repaired by the
9 defendant, and for property ordered to be restored by the
10 defendant; and after granting the credit, the court shall
11 assess the actual out-of-pocket expenses, losses, damages,
12 and injuries suffered by the victim named in the charge and
13 any other victims who may also have suffered out-of-pocket
14 expenses, losses, damages, and injuries proximately caused
15 by the same criminal conduct of the defendant, and
16 insurance carriers who have indemnified the named victim or
17 other victims for the out-of-pocket expenses, losses,
18 damages, or injuries, provided that in no event shall
19 restitution be ordered to be paid on account of pain and
20 suffering. When a victim's out-of-pocket expenses have
21 been paid pursuant to the Crime Victims Compensation Act,
22 the court shall order restitution be paid to the
23 compensation program. If a defendant is placed on
24 supervision for, or convicted of, domestic battery, the
25 defendant shall be required to pay restitution to any
26 domestic violence shelter in which the victim and any other

1 family or household members lived because of the domestic
2 battery. The amount of the restitution shall equal the
3 actual expenses of the domestic violence shelter in
4 providing housing and any other services for the victim and
5 any other family or household members living at the
6 shelter. If a defendant fails to pay restitution in the
7 manner or within the time period specified by the court,
8 the court may enter an order directing the sheriff to seize
9 any real or personal property of a defendant to the extent
10 necessary to satisfy the order of restitution and dispose
11 of the property by public sale. All proceeds from such sale
12 in excess of the amount of restitution plus court costs and
13 the costs of the sheriff in conducting the sale shall be
14 paid to the defendant. The defendant convicted of domestic
15 battery, if a person under 18 years of age was present and
16 witnessed the domestic battery of the victim, is liable to
17 pay restitution for the cost of any counseling required for
18 the child at the discretion of the court.

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

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

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

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

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

21 (d) In instances where a defendant has more than one
22 criminal charge pending against him in a single case, or
23 more than one case, and the defendant stands convicted of
24 one or more charges, a plea agreement negotiated by the
25 State's Attorney and the defendants may require the
26 defendant to make restitution to victims of charges that

1 have been dismissed or which it is contemplated will be
2 dismissed under the terms of the plea agreement, and under
3 the agreement, the court may impose a sentence of
4 restitution on the charge or charges of which the defendant
5 has been convicted that would require the defendant to make
6 restitution to victims of other offenses as provided in the
7 plea agreement.

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

11 (f) Taking into consideration the ability of the
12 defendant to pay, including any real or personal property
13 or any other assets of the defendant, the court shall
14 determine whether restitution shall be paid in a single
15 payment or in installments, and shall fix a period of time
16 not in excess of 5 years, except for violations of Sections
17 16-1.3 and 17-56 of the Criminal Code of 1961 or the
18 Criminal Code of 2012, or the period of time specified in
19 subsection (f-1), not including periods of incarceration,
20 within which payment of restitution is to be paid in full.
21 Complete restitution shall be paid in as short a time
22 period as possible. However, if the court deems it
23 necessary and in the best interest of the victim, the court
24 may extend beyond 5 years the period of time within which
25 the payment of restitution is to be paid. If the defendant
26 is ordered to pay restitution and the court orders that

1 restitution is to be paid over a period greater than 6
2 months, the court shall order that the defendant make
3 monthly payments; the court may waive this requirement of
4 monthly payments only if there is a specific finding of
5 good cause for waiver.

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

17 (2) The victim's estimate of long-term physical health
18 care costs may be made as part of a victim impact statement
19 under Section 6 of the Rights of Crime Victims and
20 Witnesses Act or made separately. The court shall enter the
21 long-term physical health care restitution order at the
22 time of sentencing. An order of restitution made under this
23 subsection (f-1) shall fix a monthly amount to be paid by
24 the defendant for as long as long-term physical health care
25 of the victim is required as a result of the offense. The
26 order may exceed the length of any sentence imposed upon

1 the defendant for the criminal activity. The court shall
2 include as a special finding in the judgment of conviction
3 its determination of the monthly cost of long-term physical
4 health care.

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

16 (g) In addition to the sentences provided for in
17 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
18 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,
19 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of
20 Section 11-14.4, of the Criminal Code of 1961 or the
21 Criminal Code of 2012, the court may order any person who
22 is convicted of violating any of those Sections or who was
23 charged with any of those offenses and which charge was
24 reduced to another charge as a result of a plea agreement
25 under subsection (d) of this Section to meet all or any
26 portion of the financial obligations of treatment,

1 including but not limited to medical, psychiatric, or
2 rehabilitative treatment or psychological counseling,
3 prescribed for the victim or victims of the offense.

4 (g-1) In addition to the sentence provided for in
5 Section 17-56 of the Criminal Code of 2012, the State's
6 Attorney of the county that prosecuted the defendant shall
7 request that the court order a person convicted of
8 financial exploitation of an elderly person or a person
9 with a disability under subsection (a-5) of Section 17-56
10 of the Criminal Code of 2012, to pay restitution to the
11 facility where the elderly person or a person with a
12 disability resided at the time of the financial
13 exploitation of all amounts that are owed to the facility
14 to pay for the care of the elderly person or a person with
15 a disability.

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

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

26 (i) A sentence of restitution may be modified or

1 revoked by the court if the offender commits another
2 offense, or the offender fails to make restitution as
3 ordered by the court, but no sentence to make restitution
4 shall be revoked unless the court shall find that the
5 offender has had the financial ability to make restitution,
6 and he has wilfully refused to do so. When the offender's
7 ability to pay restitution was established at the time an
8 order of restitution was entered or modified, or when the
9 offender's ability to pay was based on the offender's
10 willingness to make restitution as part of a plea agreement
11 made at the time the order of restitution was entered or
12 modified, there is a rebuttable presumption that the facts
13 and circumstances considered by the court at the hearing at
14 which the order of restitution was entered or modified
15 regarding the offender's ability or willingness to pay
16 restitution have not materially changed. If the court shall
17 find that the defendant has failed to make restitution and
18 that the failure is not wilful, the court may impose an
19 additional period of time within which to make restitution.
20 The length of the additional period shall not be more than
21 2 years. The court shall retain all of the incidents of the
22 original sentence, including the authority to modify or
23 enlarge the conditions, and to revoke or further modify the
24 sentence if the conditions of payment are violated during
25 the additional period.

26 (j) The procedure upon the filing of a Petition to

1 Revoke a sentence to make restitution shall be the same as
2 the procedures set forth in Section 5-6-4 of this Code
3 governing violation, modification, or revocation of
4 Probation, of Conditional Discharge, or of Supervision.

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

9 (l) Restitution ordered under this Section shall not be
10 subject to disbursement by the circuit clerk under Section
11 27.5 of the Clerks of Courts Act.

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

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

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

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

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

24 When a restitution order is issued under this Section,
25 the issuing court shall send a certified copy of the order
26 to the clerk of the circuit court in the county where the

1 charge was filed. Upon receiving the order, the clerk shall
2 enter and index the order in the circuit court judgment
3 docket.

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

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

10 (2) Other damages suffered by the victim.

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

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

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

21 (Source: P.A. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;
22 97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.
23 1-25-13.)".