

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 2012 is amended by changing
5 Section 17-56 as follows:

6 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

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

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

17 (a-5) A person commits financial exploitation of an elderly
18 person or a person with a disability when he or she assumes the
19 responsibility of managing the financial affairs of an elderly
20 person who is a resident of a facility licensed under the
21 Nursing Home Care Act or a person with a disability who is a
22 resident of a facility licensed under the Nursing Home Care Act
23 and fails to pay for the facility care of the elderly person or

1 person with a disability from the assets and income of the
2 elderly person or person with a disability which are identified
3 as above the allowable limits required under 89 Ill. Adm. Code
4 120.61 for the purposes of meeting long term care Medicaid
5 eligibility requirements for medical assistance. For purposes
6 of this subsection (a-5), a person assumes the responsibility
7 of managing the financial affairs of an elderly person or a
8 person with a disability when he or she receives, has access
9 to, handles, or controls the funds of the elderly person or
10 person with a disability, including, but not limited to,
11 benefits under the federal Social Security Act, pension, cash,
12 or other income.

13 (b) Sentence. Financial exploitation of an elderly person
14 or a person with a disability is: (1) a Class 4 felony if the
15 value of the property is \$300 or less, (2) a Class 3 felony if
16 the value of the property is more than \$300 but less than
17 \$5,000, (3) a Class 2 felony if the value of the property is
18 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony
19 if the value of the property is \$50,000 or more or if the
20 elderly person is over 70 years of age and the value of the
21 property is \$15,000 or more or if the elderly person is 80
22 years of age or older and the value of the property is \$5,000
23 or more.

24 (c) For purposes of this Section:

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

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

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

12 (4) "Deception" means, in addition to its meaning as
13 defined in Section 15-4 of this Code, a misrepresentation
14 or concealment of material fact relating to the terms of a
15 contract or agreement entered into with the elderly person
16 or person with a disability or to the existing or
17 pre-existing condition of any of the property involved in
18 such contract or agreement; or the use or employment of any
19 misrepresentation, false pretense or false promise in
20 order to induce, encourage or solicit the elderly person or
21 person with a disability to enter into a contract or
22 agreement.

23 The illegal use of the assets or resources of an elderly
24 person or a person with a disability includes, but is not
25 limited to, the misappropriation of those assets or resources
26 by undue influence, breach of a fiduciary relationship, fraud,

1 deception, extortion, or use of the assets or resources
2 contrary to law.

3 A person stands in a position of trust and confidence with
4 an elderly person or person with a disability when he (i) is a
5 parent, spouse, adult child or other relative by blood or
6 marriage of the elderly person or person with a disability,
7 (ii) is a joint tenant or tenant in common with the elderly
8 person or person with a disability, (iii) has a legal or
9 fiduciary relationship with the elderly person or person with a
10 disability, (iv) is a financial planning or investment
11 professional, or (v) is a paid or unpaid caregiver for the
12 elderly person or person with a disability.

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

16 (e) Good faith efforts. Nothing in this Section shall be
17 construed to impose criminal liability on a person who has made
18 a good faith effort to assist the elderly person or person with
19 a disability in the management of his or her property, but
20 through no fault of his or her own has been unable to provide
21 such assistance.

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

26 (g) Civil Liability. A person who is charged by information

1 or indictment with the offense of financial exploitation of an
2 elderly person or person with a disability and who fails or
3 refuses to return the victim's property within 60 days
4 following a written demand from the victim or the victim's
5 legal representative shall be liable to the victim or to the
6 estate of the victim in damages of treble the amount of the
7 value of the property obtained, plus reasonable attorney fees
8 and court costs. The burden of proof that the defendant
9 unlawfully obtained the victim's property shall be by a
10 preponderance of the evidence. This subsection shall be
11 operative whether or not the defendant has been convicted of
12 the offense.

13 (h) If a person is charged with financial exploitation of
14 an elderly person or a person with a disability that involves
15 the taking or loss of property valued at more than \$5,000, a
16 prosecuting attorney may file a petition with the circuit court
17 of the county in which the defendant has been charged to freeze
18 the assets of the defendant in an amount equal to but not
19 greater than the alleged value of lost or stolen property in
20 the defendant's pending criminal proceeding for purposes of
21 restitution to the victim. The burden of proof required to
22 freeze the defendant's assets shall be by a preponderance of
23 the evidence.

24 (i) Evidence of failure to pay for the facility care of an
25 elderly person or person with a disability from the assets and
26 income of the elderly person or person with a disability which

1 are identified as above the allowable limits required under 89
2 Ill. Adm. Code 120.61 for the purposes of meeting long term
3 care Medicaid eligibility requirements for medical assistance,
4 may include, but is not limited to failure to comply with
5 notification from the Department of Healthcare and Family
6 Services of the requirement to pay from the assets and income
7 of the elderly person or person with a disability which are
8 identified as above the allowable limits required under 89 Ill.
9 Adm. Code 120.61 for the purposes of meeting long term care
10 Medicaid eligibility requirements for medical assistance.

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

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

15 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

16 Sec. 5-5-6. In all convictions for offenses in violation of
17 the Criminal Code of 1961 or the Criminal Code of 2012 or of
18 Section 11-501 of the Illinois Vehicle Code in which the person
19 received any injury to his or her person or damage to his or
20 her real or personal property as a result of the criminal act
21 of the defendant, the court shall order restitution as provided
22 in this Section. In all other cases, except cases in which
23 restitution is required under this Section, the court must at
24 the sentence hearing determine whether restitution is an

1 appropriate sentence to be imposed on each defendant convicted
2 of an offense. If the court determines that an order directing
3 the offender to make restitution is appropriate, the offender
4 may be sentenced to make restitution. The court may consider
5 restitution an appropriate sentence to be imposed on each
6 defendant convicted of an offense in addition to a sentence of
7 imprisonment. The sentence of the defendant to a term of
8 imprisonment is not a mitigating factor that prevents the court
9 from ordering the defendant to pay restitution. If the offender
10 is sentenced to make restitution the Court shall determine the
11 restitution as hereinafter set forth:

12 (a) At the sentence hearing, the court shall determine
13 whether the property may be restored in kind to the
14 possession of the owner or the person entitled to
15 possession thereof; or whether the defendant is possessed
16 of sufficient skill to repair and restore property damaged;
17 or whether the defendant should be required to make
18 restitution in cash, for out-of-pocket expenses, damages,
19 losses, or injuries found to have been proximately caused
20 by the conduct of the defendant or another for whom the
21 defendant is legally accountable under the provisions of
22 Article 5 of the Criminal Code of 1961 or the Criminal Code
23 of 2012.

24 (b) In fixing the amount of restitution to be paid in
25 cash, the court shall allow credit for property returned in
26 kind, for property damages ordered to be repaired by the

1 defendant, and for property ordered to be restored by the
2 defendant; and after granting the credit, the court shall
3 assess the actual out-of-pocket expenses, losses, damages,
4 and injuries suffered by the victim named in the charge and
5 any other victims who may also have suffered out-of-pocket
6 expenses, losses, damages, and injuries proximately caused
7 by the same criminal conduct of the defendant, and
8 insurance carriers who have indemnified the named victim or
9 other victims for the out-of-pocket expenses, losses,
10 damages, or injuries, provided that in no event shall
11 restitution be ordered to be paid on account of pain and
12 suffering. When a victim's out-of-pocket expenses have
13 been paid pursuant to the Crime Victims Compensation Act,
14 the court shall order restitution be paid to the
15 compensation program. If a defendant is placed on
16 supervision for, or convicted of, domestic battery, the
17 defendant shall be required to pay restitution to any
18 domestic violence shelter in which the victim and any other
19 family or household members lived because of the domestic
20 battery. The amount of the restitution shall equal the
21 actual expenses of the domestic violence shelter in
22 providing housing and any other services for the victim and
23 any other family or household members living at the
24 shelter. If a defendant fails to pay restitution in the
25 manner or within the time period specified by the court,
26 the court may enter an order directing the sheriff to seize

1 any real or personal property of a defendant to the extent
2 necessary to satisfy the order of restitution and dispose
3 of the property by public sale. All proceeds from such sale
4 in excess of the amount of restitution plus court costs and
5 the costs of the sheriff in conducting the sale shall be
6 paid to the defendant. The defendant convicted of domestic
7 battery, if a person under 18 years of age was present and
8 witnessed the domestic battery of the victim, is liable to
9 pay restitution for the cost of any counseling required for
10 the child at the discretion of the court.

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

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

24 (2) As between the defendants, the court may
25 apportion the restitution that is payable in
26 proportion to each co-defendant's culpability in the

1 commission of the offense.

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

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

13 (d) In instances where a defendant has more than one
14 criminal charge pending against him in a single case, or
15 more than one case, and the defendant stands convicted of
16 one or more charges, a plea agreement negotiated by the
17 State's Attorney and the defendants may require the
18 defendant to make restitution to victims of charges that
19 have been dismissed or which it is contemplated will be
20 dismissed under the terms of the plea agreement, and under
21 the agreement, the court may impose a sentence of
22 restitution on the charge or charges of which the defendant
23 has been convicted that would require the defendant to make
24 restitution to victims of other offenses as provided in the
25 plea agreement.

26 (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, except for violations of Sections
9 16-1.3 and 17-56 of the Criminal Code of 1961 or the
10 Criminal Code of 2012, or the period of time specified in
11 subsection (f-1), not including periods of incarceration,
12 within which payment of restitution is to be paid in full.
13 Complete restitution shall be paid in as short a time
14 period as possible. However, if the court deems it
15 necessary and in the best interest of the victim, the court
16 may extend beyond 5 years the period of time within which
17 the payment of restitution is to be paid. If the defendant
18 is ordered to pay restitution and the court orders that
19 restitution is to be paid over a period greater than 6
20 months, the court shall order that the defendant make
21 monthly payments; the court may waive this requirement of
22 monthly payments only if there is a specific finding of
23 good cause for waiver.

24 (f-1)(1) In addition to any other penalty prescribed by
25 law and any restitution ordered under this Section that did
26 not include long-term physical health care costs, the court

1 may, upon conviction of any misdemeanor or felony, order a
2 defendant to pay restitution to a victim in accordance with
3 the provisions of this subsection (f-1) if the victim has
4 suffered physical injury as a result of the offense that is
5 reasonably probable to require or has required long-term
6 physical health care for more than 3 months. As used in
7 this subsection (f-1) "long-term physical health care"
8 includes mental health care.

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

23 (3) After a sentencing order has been entered, the
24 court may from time to time, on the petition of either the
25 defendant or the victim, or upon its own motion, enter an
26 order for restitution for long-term physical care or modify

1 the existing order for restitution for long-term physical
2 care as to the amount of monthly payments. Any modification
3 of the order shall be based only upon a substantial change
4 of circumstances relating to the cost of long-term physical
5 health care or the financial condition of either the
6 defendant or the victim. The petition shall be filed as
7 part of the original criminal docket.

8 (g) In addition to the sentences provided for in
9 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
10 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,
11 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of
12 Section 11-14.4, of the Criminal Code of 1961 or the
13 Criminal Code of 2012, the court may order any person who
14 is convicted of violating any of those Sections or who was
15 charged with any of those offenses and which charge was
16 reduced to another charge as a result of a plea agreement
17 under subsection (d) of this Section to meet all or any
18 portion of the financial obligations of treatment,
19 including but not limited to medical, psychiatric, or
20 rehabilitative treatment or psychological counseling,
21 prescribed for the victim or victims of the offense.

22 (g-1) In addition to the sentence provided for in
23 Section 17-56 of the Criminal Code of 2012, the State's
24 Attorney of the county that prosecuted the defendant shall
25 request that the court order a person convicted of
26 financial exploitation of an elderly person or a person

1 with a disability under subsection (a-5) of Section 17-56
2 of the Criminal Code of 2012, to pay restitution to the
3 facility where the elderly person or a person with a
4 disability resided at the time of the financial
5 exploitation of all amounts that are owed to the facility
6 to pay for the care of the elderly person or a person with
7 a disability.

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

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

18 (i) A sentence of restitution may be modified or
19 revoked by the court if the offender commits another
20 offense, or the offender fails to make restitution as
21 ordered by the court, but no sentence to make restitution
22 shall be revoked unless the court shall find that the
23 offender has had the financial ability to make restitution,
24 and he has wilfully refused to do so. When the offender's
25 ability to pay restitution was established at the time an
26 order of restitution was entered or modified, or when the

1 offender's ability to pay was based on the offender's
2 willingness to make restitution as part of a plea agreement
3 made at the time the order of restitution was entered or
4 modified, there is a rebuttable presumption that the facts
5 and circumstances considered by the court at the hearing at
6 which the order of restitution was entered or modified
7 regarding the offender's ability or willingness to pay
8 restitution have not materially changed. If the court shall
9 find that the defendant has failed to make restitution and
10 that the failure is not wilful, the court may impose an
11 additional period of time within which to make restitution.
12 The length of the additional period shall not be more than
13 2 years. The court shall retain all of the incidents of the
14 original sentence, including the authority to modify or
15 enlarge the conditions, and to revoke or further modify the
16 sentence if the conditions of payment are violated during
17 the additional period.

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

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

1 (1) Restitution ordered under this Section shall not be
2 subject to disbursement by the circuit clerk under Section
3 27.5 of the Clerks of Courts Act.

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

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

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

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

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

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

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

24 (1) Damages that the court did not require the
25 person to pay to the victim under the restitution order
26 but arise from an injury or property damages that is

1 the basis of restitution ordered by the court; and

2 (2) Other damages suffered by the victim.

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

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

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

13 (Source: P.A. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;
14 97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.
15 1-25-13.)