



Rep. Tom Demmer

Filed: 3/23/2015

09900HB3529ham002

LRB099 09357 RLC 33229 a

1 AMENDMENT TO HOUSE BILL 3529

2 AMENDMENT NO. _____. Amend House Bill 3529 on page 6, by
3 inserting immediately below line 5 the following:

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

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

7 Sec. 5-5-6. In all convictions for offenses in violation of
8 the Criminal Code of 1961 or the Criminal Code of 2012 or of
9 Section 11-501 of the Illinois Vehicle Code in which the person
10 received any injury to his or her person or damage to his or
11 her real or personal property as a result of the criminal act
12 of the defendant, the court shall order restitution as provided
13 in this Section. In all other cases, except cases in which
14 restitution is required under this Section, the court must at
15 the sentence hearing determine whether restitution is an
16 appropriate sentence to be imposed on each defendant convicted

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

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

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

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

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

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

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

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

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

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

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

25 (e) The court may require the defendant to apply the
26 balance of the cash bond, after payment of court costs, and

1 any fine that may be imposed to the payment of restitution.

2 (f) Taking into consideration the ability of the
3 defendant to pay, including any real or personal property
4 or any other assets of the defendant, the court shall
5 determine whether restitution shall be paid in a single
6 payment or in installments, and shall fix a period of time
7 not in excess of 5 years, except for violations of Sections
8 16-1.3 and 17-56 of the Criminal Code of 1961 or the
9 Criminal Code of 2012, or the period of time specified in
10 subsection (f-1), not including periods of incarceration,
11 within which payment of restitution is to be paid in full.
12 Complete restitution shall be paid in as short a time
13 period as possible. However, if the court deems it
14 necessary and in the best interest of the victim, the court
15 may extend beyond 5 years the period of time within which
16 the payment of restitution is to be paid. If the defendant
17 is ordered to pay restitution and the court orders that
18 restitution is to be paid over a period greater than 6
19 months, the court shall order that the defendant make
20 monthly payments; the court may waive this requirement of
21 monthly payments only if there is a specific finding of
22 good cause for waiver.

23 (f-1) (1) In addition to any other penalty prescribed by
24 law and any restitution ordered under this Section that did
25 not include long-term physical health care costs, the court
26 may, upon conviction of any misdemeanor or felony, order a

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

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

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

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

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

21 (g-1) In addition to the sentence provided for in
22 Section 17-56 of the Criminal Code of 2012, the State's
23 Attorney of the county that prosecuted the defendant shall
24 request that the court order a person convicted of
25 financial exploitation of an elderly person or a person
26 with a disability under subsection (a-5) of Section 17-56

1 of the Criminal Code of 2012, to pay restitution to the
2 individual from whom the funds were misappropriated, or in
3 the case of an individual who is in an asset transfer and
4 spend down for purposes of final determination of long term
5 care Medicaid eligibility, to the facility where the
6 elderly person or a person with a disability is a resident,
7 of all amounts misappropriated from the elderly person or a
8 person with a disability that are owed to the individual or
9 to the facility to pay for the care of the elderly person
10 or a person with a disability if the facility is licensed
11 under the Nursing Home Care Act or the ID/DD Community Care
12 Act.

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

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

23 (i) A sentence of restitution may be modified or
24 revoked by the court if the offender commits another
25 offense, or the offender fails to make restitution as
26 ordered by the court, but no sentence to make restitution

1 shall be revoked unless the court shall find that the
2 offender has had the financial ability to make restitution,
3 and he has wilfully refused to do so. When the offender's
4 ability to pay restitution was established at the time an
5 order of restitution was entered or modified, or when the
6 offender's ability to pay was based on the offender's
7 willingness to make restitution as part of a plea agreement
8 made at the time the order of restitution was entered or
9 modified, there is a rebuttable presumption that the facts
10 and circumstances considered by the court at the hearing at
11 which the order of restitution was entered or modified
12 regarding the offender's ability or willingness to pay
13 restitution have not materially changed. If the court shall
14 find that the defendant has failed to make restitution and
15 that the failure is not wilful, the court may impose an
16 additional period of time within which to make restitution.
17 The length of the additional period shall not be more than
18 2 years. The court shall retain all of the incidents of the
19 original sentence, including the authority to modify or
20 enlarge the conditions, and to revoke or further modify the
21 sentence if the conditions of payment are violated during
22 the additional period.

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

1 Probation, of Conditional Discharge, or of Supervision.

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

6 (l) Restitution ordered under this Section shall not be
7 subject to disbursement by the circuit clerk under Section
8 27.5 of the Clerks of Courts Act.

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

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

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

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

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

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

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

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

7 (2) Other damages suffered by the victim.

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

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

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

18 (Source: P.A. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;
19 97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.
20 1-25-13.)".