



Sen. Thomas Cullerton

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1 AMENDMENT TO HOUSE BILL 3529

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3529 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by  
5 changing 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, including income required to be applied to

1 the cost of care of an elderly person or person with a  
2 disability residing in a facility licensed under the Nursing  
3 Home Care Act in order to establish and maintain Medicaid  
4 eligibility for long term care supports and services as  
5 provided in the Illinois Public Aid Code.

6 (b) Sentence. Financial exploitation of an elderly person  
7 or a person with a disability is: (1) a Class 4 felony if the  
8 value of the property is \$300 or less, (2) a Class 3 felony if  
9 the value of the property is more than \$300 but less than  
10 \$5,000, (3) a Class 2 felony if the value of the property is  
11 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony  
12 if the value of the property is \$50,000 or more or if the  
13 elderly person is over 70 years of age and the value of the  
14 property is \$15,000 or more or if the elderly person is 80  
15 years of age or older and the value of the property is \$5,000  
16 or more.

17 (c) For purposes of this Section:

18 (1) "Elderly person" means a person 60 years of age or  
19 older.

20 (2) "Person with a disability" means a person who  
21 suffers from a physical or mental impairment resulting from  
22 disease, injury, functional disorder or congenital  
23 condition that impairs the individual's mental or physical  
24 ability to independently manage his or her property or  
25 financial resources, or both.

26 (3) "Intimidation" means the communication to an

1 elderly person or a person with a disability that he or she  
2 shall be deprived of food and nutrition, shelter,  
3 prescribed medication or medical care and treatment or  
4 conduct as provided in Section 12-6 of this Code.

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

16 The illegal use of the assets or resources of an elderly  
17 person or a person with a disability includes, but is not  
18 limited to, the misappropriation of those assets or resources  
19 by undue influence, breach of a fiduciary relationship, fraud,  
20 deception, extortion, or use of the assets or resources  
21 contrary to law.

22 A person stands in a position of trust and confidence with  
23 an elderly person or person with a disability when he (i) is a  
24 parent, spouse, adult child or other relative by blood or  
25 marriage of the elderly person or person with a disability,  
26 (ii) is a joint tenant or tenant in common with the elderly

1 person or person with a disability, (iii) has a legal or  
2 fiduciary relationship with the elderly person or person with a  
3 disability, (iv) is a financial planning or investment  
4 professional, or (v) is a paid or unpaid caregiver for the  
5 elderly person or person with a disability.

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

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

15 (f) Not a defense. It shall not be a defense to financial  
16 exploitation of an elderly person or person with a disability  
17 that the accused reasonably believed that the victim was not an  
18 elderly person or person with a disability.

19 (g) Civil Liability. A person who is charged by information  
20 or indictment with the offense of financial exploitation of an  
21 elderly person or person with a disability and who fails or  
22 refuses to return the victim's property within 60 days  
23 following a written demand from the victim or the victim's  
24 legal representative shall be liable to the victim or to the  
25 estate of the victim in damages of treble the amount of the  
26 value of the property obtained, plus reasonable attorney fees

1 and court costs. The burden of proof that the defendant  
2 unlawfully obtained the victim's property shall be by a  
3 preponderance of the evidence. This subsection shall be  
4 operative whether or not the defendant has been convicted of  
5 the offense.

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

17 (i) Evidence of failure to pay for the facility care of an  
18 elderly person or person with a disability from the assets and  
19 income of the elderly person or person with a disability which  
20 are identified as above the allowable limits required under 89  
21 Ill. Adm. Code 120.61 for the purposes of meeting long term  
22 care Medicaid eligibility requirements for medical assistance,  
23 may include, but is not limited to failure to comply with  
24 notification from the Department of Healthcare and Family  
25 Services of the requirement to pay from the assets and income  
26 of the elderly person or person with a disability which are

1 identified as above the allowable limits required under 89 Ill.  
2 Adm. Code 120.61 for the purposes of meeting long term care  
3 Medicaid eligibility requirements for medical assistance.

4 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;  
5 97-865, eff. 1-1-13.)

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

8 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

9 Sec. 5-5-6. In all convictions for offenses in violation of  
10 the Criminal Code of 1961 or the Criminal Code of 2012 or of  
11 Section 11-501 of the Illinois Vehicle Code in which the person  
12 received any injury to his or her person or damage to his or  
13 her real or personal property as a result of the criminal act  
14 of the defendant, the court shall order restitution as provided  
15 in this Section. In all other cases, except cases in which  
16 restitution is required under this Section, the court must at  
17 the sentence hearing determine whether restitution is an  
18 appropriate sentence to be imposed on each defendant convicted  
19 of an offense. If the court determines that an order directing  
20 the offender to make restitution is appropriate, the offender  
21 may be sentenced to make restitution. The court may consider  
22 restitution an appropriate sentence to be imposed on each  
23 defendant convicted of an offense in addition to a sentence of  
24 imprisonment. The sentence of the defendant to a term of

1 imprisonment is not a mitigating factor that prevents the court  
2 from ordering the defendant to pay restitution. If the offender  
3 is sentenced to make restitution the Court shall determine the  
4 restitution as hereinafter set forth:

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

17 (b) In fixing the amount of restitution to be paid in  
18 cash, the court shall allow credit for property returned in  
19 kind, for property damages ordered to be repaired by the  
20 defendant, and for property ordered to be restored by the  
21 defendant; and after granting the credit, the court shall  
22 assess the actual out-of-pocket expenses, losses, damages,  
23 and injuries suffered by the victim named in the charge and  
24 any other victims who may also have suffered out-of-pocket  
25 expenses, losses, damages, and injuries proximately caused  
26 by the same criminal conduct of the defendant, and

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



1           witnessed the domestic battery of the victim, is liable to  
2           pay restitution for the cost of any counseling required for  
3           the child at the discretion of the court.

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

12           (1) In no event shall the victim be entitled to  
13          recover restitution in excess of the actual  
14          out-of-pocket expenses, losses, damages, or injuries,  
15          proximately caused by the conduct of all of the  
16          defendants.

17           (2) As between the defendants, the court may  
18          apportion the restitution that is payable in  
19          proportion to each co-defendant's culpability in the  
20          commission of the offense.

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

24           (4) As between the defendants, each defendant  
25          shall be entitled to a pro rata reduction in the total  
26          restitution required to be paid to the victim for

1 amounts of restitution actually paid by co-defendants,  
2 and defendants who shall have paid more than their pro  
3 rata share shall be entitled to refunds to be computed  
4 by the court as additional amounts are paid by  
5 co-defendants.

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

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

22 (f) Taking into consideration the ability of the  
23 defendant to pay, including any real or personal property  
24 or any other assets of the defendant, the court shall  
25 determine whether restitution shall be paid in a single  
26 payment or in installments, and shall fix a period of time

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

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

1 includes mental health care.

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

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

1 (g) In addition to the sentences provided for in  
2 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,  
3 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,  
4 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of  
5 Section 11-14.4, of the Criminal Code of 1961 or the  
6 Criminal Code of 2012, the court may order any person who  
7 is convicted of violating any of those Sections or who was  
8 charged with any of those offenses and which charge was  
9 reduced to another charge as a result of a plea agreement  
10 under subsection (d) of this Section to meet all or any  
11 portion of the financial obligations of treatment,  
12 including but not limited to medical, psychiatric, or  
13 rehabilitative treatment or psychological counseling,  
14 prescribed for the victim or victims of the offense.

15 (g-1) In addition to the sentence provided for in  
16 Section 17-56 of the Criminal Code of 2012, the State's  
17 Attorney of the county that prosecuted the defendant shall  
18 request that the court order a person convicted of  
19 financial exploitation of an elderly person or a person  
20 with a disability under subsection (a) of Section 17-56 of  
21 the Criminal Code of 2012, who failed to pay the long term  
22 care facility licensed under the Nursing Home Care Act for  
23 care provided to the elderly person or person with a  
24 disability, to pay restitution to the facility where the  
25 elderly person or a person with a disability resided at the  
26 time of the financial exploitation of all amounts that are

1       owed to the facility to pay for the care of the elderly  
2       person or a person with a disability.

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

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

13          (i) A sentence of restitution may be modified or  
14       revoked by the court if the offender commits another  
15       offense, or the offender fails to make restitution as  
16       ordered by the court, but no sentence to make restitution  
17       shall be revoked unless the court shall find that the  
18       offender has had the financial ability to make restitution,  
19       and he has wilfully refused to do so. When the offender's  
20       ability to pay restitution was established at the time an  
21       order of restitution was entered or modified, or when the  
22       offender's ability to pay was based on the offender's  
23       willingness to make restitution as part of a plea agreement  
24       made at the time the order of restitution was entered or  
25       modified, there is a rebuttable presumption that the facts  
26       and circumstances considered by the court at the hearing at

1           which the order of restitution was entered or modified  
2           regarding the offender's ability or willingness to pay  
3           restitution have not materially changed. If the court shall  
4           find that the defendant has failed to make restitution and  
5           that the failure is not wilful, the court may impose an  
6           additional period of time within which to make restitution.  
7           The length of the additional period shall not be more than  
8           2 years. The court shall retain all of the incidents of the  
9           original sentence, including the authority to modify or  
10          enlarge the conditions, and to revoke or further modify the  
11          sentence if the conditions of payment are violated during  
12          the additional period.

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

18           (k) Nothing contained in this Section shall preclude  
19          the right of any party to proceed in a civil action to  
20          recover for any damages incurred due to the criminal  
21          misconduct of the defendant.

22           (l) Restitution ordered under this Section shall not be  
23          subject to disbursement by the circuit clerk under Section  
24          27.5 of the Clerks of Courts Act.

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

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

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

5           (3) May be enforced to satisfy any payment that is  
6 delinquent under the restitution order by the person in  
7 whose favor the order is issued or the person's  
8 assignee; and

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

11           When a restitution order is issued under this Section,  
12 the issuing court shall send a certified copy of the order  
13 to the clerk of the circuit court in the county where the  
14 charge was filed. Upon receiving the order, the clerk shall  
15 enter and index the order in the circuit court judgment  
16 docket.

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

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

23           (2) Other damages suffered by the victim.

24           The restitution order is not discharged by the completion  
25 of the sentence imposed for the offense.

26           A restitution order under this Section is not discharged by



1 the liquidation of a person's estate by a receiver. A  
2 restitution order under this Section may be enforced in the  
3 same manner as judgment liens are enforced under Article XII of  
4 the Code of Civil Procedure.

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

8 (Source: P.A. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;  
9 97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.  
10 1-25-13.)

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law."