



Sen. Toi W. Hutchinson

**Filed: 5/10/2011**

09700HB1689sam001

LRB097 08260 RLC 55291 a

1 AMENDMENT TO HOUSE BILL 1689

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1689 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. 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 (Text of Section after amendment by P.A. 96-1551)

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

1 each defendant convicted of an offense. If the court determines  
2 that an order directing the offender to make restitution is  
3 appropriate, the offender may be sentenced to make restitution.  
4 The court may consider restitution an appropriate sentence to  
5 be imposed on each defendant convicted of an offense in  
6 addition to a sentence of imprisonment. The sentence of the  
7 defendant to a term of imprisonment is not a mitigating factor  
8 that prevents the court from ordering the defendant to pay  
9 restitution. If the offender is sentenced to make restitution  
10 the Court shall determine the restitution as hereinafter set  
11 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 V of the Criminal Code of 1961.

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. If a defendant is placed on supervision for, or  
12 convicted of, domestic battery, the defendant shall be  
13 required to pay restitution to any domestic violence  
14 shelter in which the victim and any other family or  
15 household members lived because of the domestic battery.  
16 The amount of the restitution shall equal the actual  
17 expenses of the domestic violence shelter in providing  
18 housing and any other services for the victim and any other  
19 family or household members living at the shelter. If a  
20 defendant fails to pay restitution in the manner or within  
21 the time period specified by the court, the court may enter  
22 an order directing the sheriff to seize any real or  
23 personal property of a defendant to the extent necessary to  
24 satisfy the order of restitution and dispose of the  
25 property by public sale. All proceeds from such sale in  
26 excess of the amount of restitution plus court costs and

1 the costs of the sheriff in conducting the sale shall be  
2 paid to the defendant. The defendant convicted of domestic  
3 battery, if a person under 18 years of age was present and  
4 witnessed the domestic battery of the victim, is liable to  
5 pay restitution for the cost of any counseling required for  
6 the child at the discretion of the court.

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

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

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

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

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

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

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

25           (f) Taking into consideration the ability of the  
26 defendant to pay, including any real or personal property

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

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

1           this subsection (f-1) "long-term physical health care"  
2           includes mental health care.

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

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

1 part of the original criminal docket.

2 (g) In addition to the sentences provided for in  
3 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,  
4 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,  
5 12-14.1, 12-15, ~~and~~ 12-16, 16-1.3, and 17-56, and  
6 subdivision (a) (4) of Section 11-14.4, of the Criminal Code  
7 of 1961, the court may order any person who is convicted of  
8 violating any of those Sections or who was charged with any  
9 of those offenses and which charge was reduced to another  
10 charge as a result of a plea agreement under subsection (d)  
11 of this Section to meet all or any portion of the financial  
12 obligations of treatment, including but not limited to  
13 medical, psychiatric, or rehabilitative treatment or  
14 psychological counseling, prescribed for the victim or  
15 victims of the offense.

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 for orders based on violations of Sections 16-1.3  
20 and 17-56 of the Criminal Code of 1961 or as otherwise  
21 provided in subsection (f-1), the order may require such  
22 payments to be made for a period not to exceed 5 years  
23 after sentencing, not including periods of incarceration.

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

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

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

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

10           (l) Restitution ordered under this Section shall not be  
11 subject to disbursement by the circuit clerk under Section  
12 27.5 of the Clerks of Courts Act.

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

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

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

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

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

25           When a restitution order is issued under this Section,  
26 the issuing court shall send a certified copy of the order

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

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

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

11 (2) Other damages suffered by the victim.

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

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

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

22 (Source: P.A. 95-331, eff. 8-21-07; 96-290, eff. 8-11-09;  
23 96-1551, eff. 7-1-11.)".