



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/09/04, by James H. Meyer

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-3.2

from Ch. 38, par. 12-3.2

730 ILCS 5/5-5-6

from Ch. 38, par. 1005-5-6

Amends the Criminal Code of 1961 and the Unified Code of Corrections. Provides that a defendant who commits any of certain specified offenses against a family or household member in the presence of any child under 16 years of age (rather than a child who is the defendant's or victim's child or a step child or who is a minor child residing within the household of the defendant or victim) is liable for the cost of counseling required for the child at the discretion of the court and must serve a mandatory minimum imprisonment term of 10 days or perform 300 hours of community service, or both.

LRB093 18077 RLC 43764 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT in relation to 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 1961 is amended by changing
5 12-3.2 as follows:

6 (720 ILCS 5/12-3.2) (from Ch. 38, par. 12-3.2)

7 Sec. 12-3.2. Domestic Battery.

8 (a) A person commits domestic battery if he intentionally
9 or knowingly without legal justification by any means:

10 (1) Causes bodily harm to any family or household
11 member as defined in subsection (3) of Section 112A-3 of
12 the Code of Criminal Procedure of 1963, as amended;

13 (2) Makes physical contact of an insulting or provoking
14 nature with any family or household member as defined in
15 subsection (3) of Section 112A-3 of the Code of Criminal
16 Procedure of 1963, as amended.

17 (b) Sentence. Domestic battery is a Class A Misdemeanor.
18 Domestic battery is a Class 4 felony if the defendant has any
19 prior conviction under this Code for domestic battery (Section
20 12-3.2) or violation of an order of protection (Section 12-30),
21 or any prior conviction under the law of another jurisdiction
22 for an offense which is substantially similar. Domestic battery
23 is a Class 4 felony if the defendant has any prior conviction
24 under this Code for first degree murder (Section 9-1), attempt
25 to commit first degree murder (Section 8-4), aggravated
26 domestic battery (Section 12-3.3), aggravated battery (Section
27 12-4), heinous battery (Section 12-4.1), aggravated battery
28 with a firearm (Section 12-4.2), aggravated battery of a child
29 (Section 12-4.3), aggravated battery of an unborn child
30 (Section 12-4.4), aggravated battery of a senior citizen
31 (Section 12-4.6), stalking (Section 12-7.3), aggravated
32 stalking (Section 12-7.4), criminal sexual assault (Section

1 12-13), aggravated criminal sexual assault (12-14), kidnapping
2 (Section 10-1), aggravated kidnapping (Section 10-2),
3 predatory criminal sexual assault of a child (Section 12-14.1),
4 aggravated criminal sexual abuse (Section 12-16), unlawful
5 restraint (Section 10-3), aggravated unlawful restraint
6 (Section 10-3.1), aggravated arson (Section 20-1.1), or
7 aggravated discharge of a firearm (Section 24-1.2), or any
8 prior conviction under the law of another jurisdiction for any
9 offense that is substantially similar to the offenses listed in
10 this Section, when any of these offenses have been committed
11 against a family or household member as defined in Section
12 112A-3 of the Code of Criminal Procedure of 1963. In addition
13 to any other sentencing alternatives, for any second conviction
14 of violating this Section within 5 years of a previous
15 conviction for violating this Section, the offender shall be
16 mandatorily sentenced to a minimum of 48 consecutive hours of
17 imprisonment. The imprisonment shall not be subject to
18 suspension, nor shall the person be eligible for probation in
19 order to reduce the sentence.

20 (c) Domestic battery committed in the presence of a child.
21 In addition to any other sentencing alternatives, a defendant
22 who commits, in the presence of a child, a felony domestic
23 battery (enhanced under subsection (b)), aggravated domestic
24 battery (Section 12-3.3), aggravated battery (Section 12-4),
25 unlawful restraint (Section 10-3), or aggravated unlawful
26 restraint (Section 10-3.1) against a family or household
27 member, as defined in Section 112A-3 of the Code of Criminal
28 Procedure of 1963, shall be required to serve a mandatory
29 minimum imprisonment of 10 days or perform 300 hours of
30 community service, or both. The defendant shall further be
31 liable for the cost of any counseling required for the child at
32 the discretion of the court in accordance with subsection (b)
33 of Section 5-5-6 of the Unified Code of Corrections. For
34 purposes of this Section, "child" means a person under 16 years
35 of age ~~who is the defendant's or victim's child or step-child~~
36 ~~or who is a minor child residing within the household of the~~

1 ~~defendant or victim~~. For purposes of this Section, "in the
2 presence of a child" means in the physical presence of a child
3 or knowing or having reason to know that a child is present and
4 may see or hear an act constituting one of the offenses listed
5 in this subsection.

6 (Source: P.A. 92-16, eff. 6-28-01; 92-827, eff. 8-22-02; P.A.
7 93-336, eff. 1-1-04.)

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

10 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

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

25 (a) At the sentence hearing, the court shall determine
26 whether the property may be restored in kind to the
27 possession of the owner or the person entitled to
28 possession thereof; or whether the defendant is possessed
29 of sufficient skill to repair and restore property damaged;
30 or whether the defendant should be required to make
31 restitution in cash, for out-of-pocket expenses, damages,
32 losses, or injuries found to have been proximately caused
33 by the conduct of the defendant or another for whom the
34 defendant is legally accountable under the provisions of

1 Article V of the Criminal Code of 1961.

2 (b) In fixing the amount of restitution to be paid in
3 cash, the court shall allow credit for property returned in
4 kind, for property damages ordered to be repaired by the
5 defendant, and for property ordered to be restored by the
6 defendant; and after granting the credit, the court shall
7 assess the actual out-of-pocket expenses, losses, damages,
8 and injuries suffered by the victim named in the charge and
9 any other victims who may also have suffered out-of-pocket
10 expenses, losses, damages, and injuries proximately caused
11 by the same criminal conduct of the defendant, and
12 insurance carriers who have indemnified the named victim or
13 other victims for the out-of-pocket expenses, losses,
14 damages, or injuries, provided that in no event shall
15 restitution be ordered to be paid on account of pain and
16 suffering. If a defendant is placed on supervision for, or
17 convicted of, domestic battery, the defendant shall be
18 required to pay restitution to any domestic violence
19 shelter in which the victim and any other family or
20 household members lived because of the domestic battery.
21 The amount of the restitution shall equal the actual
22 expenses of the domestic violence shelter in providing
23 housing and any other services for the victim and any other
24 family or household members living at the shelter. If a
25 defendant fails to pay restitution in the manner or within
26 the time period specified by the court, the court may enter
27 an order directing the sheriff to seize any real or
28 personal property of a defendant to the extent necessary to
29 satisfy the order of restitution and dispose of the
30 property by public sale. All proceeds from such sale in
31 excess of the amount of restitution plus court costs and
32 the costs of the sheriff in conducting the sale shall be
33 paid to the defendant. The defendant convicted of an
34 offense listed in subsection (c) of Section 12-3.2 of the
35 Criminal Code of 1961 ~~domestic battery~~, if a person under
36 16 ~~18~~ years of age ~~who is the child of the offender or of~~

1 ~~the victim~~ was present and witnessed the offense against
2 ~~domestic battery of~~ the victim, is liable to pay
3 restitution for the cost of any counseling required for the
4 child at the discretion of the court.

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

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

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

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

25 (4) As between the defendants, each defendant
26 shall be entitled to a pro rata reduction in the total
27 restitution required to be paid to the victim for
28 amounts of restitution actually paid by co-defendants,
29 and defendants who shall have paid more than their pro
30 rata share shall be entitled to refunds to be computed
31 by the court as additional amounts are paid by
32 co-defendants.

33 (d) In instances where a defendant has more than one
34 criminal charge pending against him in a single case, or
35 more than one case, and the defendant stands convicted of
36 one or more charges, a plea agreement negotiated by the

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

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

13 (f) Taking into consideration the ability of the
14 defendant to pay, the court shall determine whether
15 restitution shall be paid in a single payment or in
16 installments, and shall fix a period of time not in excess
17 of 5 years, not including periods of incarceration, within
18 which payment of restitution is to be paid in full.
19 Complete restitution shall be paid in as short a time
20 period as possible. However, if the court deems it
21 necessary and in the best interest of the victim, the court
22 may extend beyond 5 years the period of time within which
23 the payment of restitution is to be paid. If the defendant
24 is ordered to pay restitution and the court orders that
25 restitution is to be paid over a period greater than 6
26 months, the court shall order that the defendant make
27 monthly payments; the court may waive this requirement of
28 monthly payments only if there is a specific finding of
29 good cause for waiver.

30 (g) The court shall, after determining that the
31 defendant has the ability to pay, require the defendant to
32 pay for the victim's counseling services if:

33 (1) the defendant was convicted of an offense under
34 Sections 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1,
35 12-15 or 12-16 of the Criminal Code of 1961, or was
36 charged with such an offense and the charge was reduced

1 to another charge as a result of a plea agreement under
2 subsection (d) of this Section, and

3 (2) the victim was under 18 years of age at the
4 time the offense was committed and requires counseling
5 as a result of the offense.

6 The payments shall be made by the defendant to the
7 clerk of the circuit court and transmitted by the clerk to
8 the appropriate person or agency as directed by the court.
9 The order may require such payments to be made for a period
10 not to exceed 5 years after sentencing, not including
11 periods of incarceration.

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

15 (i) A sentence of restitution may be modified or
16 revoked by the court if the offender commits another
17 offense, or the offender fails to make restitution as
18 ordered by the court, but no sentence to make restitution
19 shall be revoked unless the court shall find that the
20 offender has had the financial ability to make restitution,
21 and he has wilfully refused to do so. When the offender's
22 ability to pay restitution was established at the time an
23 order of restitution was entered or modified, or when the
24 offender's ability to pay was based on the offender's
25 willingness to make restitution as part of a plea agreement
26 made at the time the order of restitution was entered or
27 modified, there is a rebuttable presumption that the facts
28 and circumstances considered by the court at the hearing at
29 which the order of restitution was entered or modified
30 regarding the offender's ability or willingness to pay
31 restitution have not materially changed. If the court shall
32 find that the defendant has failed to make restitution and
33 that the failure is not wilful, the court may impose an
34 additional period of time within which to make restitution.
35 The length of the additional period shall not be more than
36 2 years. The court shall retain all of the incidents of the

1 original sentence, including the authority to modify or
2 enlarge the conditions, and to revoke or further modify the
3 sentence if the conditions of payment are violated during
4 the additional period.

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

10 (k) Nothing contained in this Section shall preclude
11 the right of any party to proceed in a civil action to
12 recover for any damages incurred due to the criminal
13 misconduct of the defendant.

14 (l) Restitution ordered under this Section shall not be
15 subject to disbursement by the circuit clerk under Section
16 27.5 of the Clerks of Courts Act.

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

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

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

23 (3) May be enforced to satisfy any payment that is
24 delinquent under the restitution order by the person in
25 whose favor the order is issued or the person's
26 assignee; and

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

29 When a restitution order is issued under this Section,
30 the issuing court shall send a certified copy of the order
31 to the clerk of the circuit court in the county where the
32 charge was filed. Upon receiving the order, the clerk shall
33 enter and index the order in the circuit court judgment
34 docket.

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

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

5 (2) Other damages suffered by the victim.

6 The restitution order is not discharged by the completion
7 of the sentence imposed for the offense.

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

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

16 (Source: P.A. 91-153, eff. 1-1-00; 91-262, eff. 1-1-00; 91-420,
17 eff. 1-1-00; 92-16, eff. 6-28-01.)