

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 1961 is amended by changing
5 Section 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 or
14 subsequent conviction of violating this Section, the offender
15 shall be mandatorily sentenced to a minimum of 72 consecutive
16 hours of imprisonment. The imprisonment shall not be subject to
17 suspension, nor shall the person be eligible for probation in
18 order to reduce the sentence.

19 (c) Domestic battery committed in the presence of a child.
20 In addition to any other sentencing alternatives, a defendant
21 who commits, in the presence of a child, a felony domestic
22 battery (enhanced under subsection (b)), aggravated domestic
23 battery (Section 12-3.3), aggravated battery (Section 12-4),
24 unlawful restraint (Section 10-3), or aggravated unlawful
25 restraint (Section 10-3.1) against a family or household
26 member, as defined in Section 112A-3 of the Code of Criminal
27 Procedure of 1963, shall be required to serve a mandatory
28 minimum imprisonment of 10 days or perform 300 hours of
29 community service, or both. The defendant shall further be
30 liable for the cost of any counseling required for the child at
31 the discretion of the court in accordance with subsection (b)
32 of Section 5-5-6 of the Unified Code of Corrections. For
33 purposes of this Section, "child" means a person under 18 ~~16~~
34 years of age who is the defendant's or victim's child or
35 step-child or who is a minor child residing within or visiting
36 the household of the defendant or victim. For purposes of this

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

5 (Source: P.A. 92-16, eff. 6-28-01; 92-827, eff. 8-22-02; P.A.
6 93-336, eff. 1-1-04; 93-809, eff. 1-1-05.)

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

9 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

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

24 (a) At the sentence hearing, the court shall determine
25 whether the property may be restored in kind to the
26 possession of the owner or the person entitled to
27 possession thereof; or whether the defendant is possessed
28 of sufficient skill to repair and restore property damaged;
29 or whether the defendant should be required to make
30 restitution in cash, for out-of-pocket expenses, damages,
31 losses, or injuries found to have been proximately caused
32 by the conduct of the defendant or another for whom the
33 defendant is legally accountable under the provisions of
34 Article V of the Criminal Code of 1961.

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

1 child at the discretion of the court.

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

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

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

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

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

30 (d) In instances where a defendant has more than one
31 criminal charge pending against him in a single case, or
32 more than one case, and the defendant stands convicted of
33 one or more charges, a plea agreement negotiated by the
34 State's Attorney and the defendants may require the
35 defendant to make restitution to victims of charges that
36 have been dismissed or which it is contemplated will be

1 dismissed under the terms of the plea agreement, and under
2 the agreement, the court may impose a sentence of
3 restitution on the charge or charges of which the defendant
4 has been convicted that would require the defendant to make
5 restitution to victims of other offenses as provided in the
6 plea agreement.

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

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

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

30 (1) the defendant was convicted of an offense under
31 Sections 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1,
32 12-15 or 12-16 of the Criminal Code of 1961, or was
33 charged with such an offense and the charge was reduced
34 to another charge as a result of a plea agreement under
35 subsection (d) of this Section, and

36 (2) the victim was under 18 years of age at the

1 time the offense was committed and requires counseling
2 as a result of the offense.

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 The order may require such payments to be made for a period
7 not to exceed 5 years after sentencing, not including
8 periods of incarceration.

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

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

1 the additional period.

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

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

11 (l) Restitution ordered under this Section shall not be
12 subject to disbursement by the circuit clerk under Section
13 27.5 of the Clerks of Courts Act.

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

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

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

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

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

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

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

34 (1) Damages that the court did not require the
35 person to pay to the victim under the restitution order
36 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. 91-153, eff. 1-1-00; 91-262, eff. 1-1-00; 91-420,
14 eff. 1-1-00; 92-16, eff. 6-28-01.)