HB2650 Engrossed

1 AN ACT concerning criminal law.

2 Be it enacted by the People of the State of Illinois, 3 represented in the General Assembly:

Section 5. The Unified Code of Corrections is amended by
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 the Criminal Code of 1961 or of Section 11-501 of the Illinois 8 9 Vehicle Code in which the person received any injury to his or her their person or damage to his or her their real or personal 10 property as a result of the criminal act of the defendant, the 11 court shall order restitution as provided in this Section. In 12 13 all other cases, except cases in which restitution is required 14 under this Section, the court must at the sentence hearing determine whether restitution is an appropriate sentence to be 15 imposed on each defendant convicted of an offense. If the court 16 17 determines that an order directing the offender to make restitution is appropriate, the offender may be sentenced to 18 19 make restitution. The court may consider restitution an 20 appropriate sentence to be imposed on each defendant convicted 21 of an offense in addition to a sentence of imprisonment. The 22 sentence of the defendant to a term of imprisonment is not a mitigating factor that prevents the court from ordering the 23

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1 defendant to pay restitution. If the offender is sentenced to 2 make restitution the Court shall determine the restitution as 3 hereinafter set forth:

(a) At the sentence hearing, the court shall determine 4 5 whether the property may be restored in kind to the 6 possession of the owner or the person entitled to 7 possession thereof; or whether the defendant is possessed 8 of sufficient skill to repair and restore property damaged; 9 or whether the defendant should be required to make 10 restitution in cash, for out-of-pocket expenses, damages, 11 losses, or injuries found to have been proximately caused 12 by the conduct of the defendant or another for whom the defendant is legally accountable under the provisions of 13 14 Article V of the Criminal Code of 1961.

15 (b) In fixing the amount of restitution to be paid in 16 cash, the court shall allow credit for property returned in 17 kind, for property damages ordered to be repaired by the defendant, and for property ordered to be restored by the 18 19 defendant; and after granting the credit, the court shall 20 assess the actual out-of-pocket expenses, losses, damages, 21 and injuries suffered by the victim named in the charge and 22 any other victims who may also have suffered out-of-pocket 23 expenses, losses, damages, and injuries proximately caused 24 by the same criminal conduct of the defendant, and 25 insurance carriers who have indemnified the named victim or 26 other victims for the out-of-pocket expenses, losses,

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damages, or injuries, provided that in no event shall 1 restitution be ordered to be paid on account of pain and 2 3 suffering. If a defendant is placed on supervision for, or convicted of, domestic battery, the defendant shall be 4 required to pay restitution to any domestic violence 5 6 shelter in which the victim and any other family or 7 household members lived because of the domestic battery. 8 The amount of the restitution shall equal the actual 9 expenses of the domestic violence shelter in providing 10 housing and any other services for the victim and any other 11 family or household members living at the shelter. If a 12 defendant fails to pay restitution in the manner or within 13 the time period specified by the court, the court may enter 14 an order directing the sheriff to seize any real or 15 personal property of a defendant to the extent necessary to 16 satisfy the order of restitution and dispose of the 17 property by public sale. All proceeds from such sale in excess of the amount of restitution plus court costs and 18 19 the costs of the sheriff in conducting the sale shall be 20 paid to the defendant. The defendant convicted of domestic 21 battery, if a person under 18 years of age was present and 22 witnessed the domestic battery of the victim, is liable to 23 pay restitution for the cost of any counseling required for the child at the discretion of the court. 24

(c) In cases where more than one defendant is
 accountable for the same criminal conduct that results in

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1 out-of-pocket expenses, losses, damages, or injuries, each 2 defendant shall be ordered to pay restitution in the amount 3 of the total actual out-of-pocket expenses, losses, 4 damages, or injuries to the victim proximately caused by 5 the conduct of all of the defendants who are legally 6 accountable for the offense.

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

12 (2) As between the defendants, the court may 13 apportion the restitution that is payable in 14 proportion to each co-defendant's culpability in the 15 commission of the offense.

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

19 (4) As between the defendants, each defendant 20 shall be entitled to a pro rata reduction in the total 21 restitution required to be paid to the victim for 22 amounts of restitution actually paid by co-defendants, 23 and defendants who shall have paid more than their pro rata share shall be entitled to refunds to be computed 24 25 by the court as additional amounts are paid by 26 co-defendants.

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(d) In instances where a defendant has more than one 1 criminal charge pending against him in a single case, or 2 3 more than one case, and the defendant stands convicted of one or more charges, a plea agreement negotiated by the 4 5 State's Attorney and the defendants may require the 6 defendant to make restitution to victims of charges that 7 have been dismissed or which it is contemplated will be 8 dismissed under the terms of the plea agreement, and under 9 agreement, the court may impose a sentence of the 10 restitution on the charge or charges of which the defendant 11 has been convicted that would require the defendant to make 12 restitution to victims of other offenses as provided in the 13 plea agreement.

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

17 Taking into consideration the ability of the (f) 18 defendant to pay, including any real or personal property 19 or any other assets of the defendant, the court shall 20 determine whether restitution shall be paid in a single payment or in installments, and shall fix a period of time 21 22 not in excess of 5 years or the period of time specified in 23 subsection (f-1), not including periods of incarceration, 24 within which payment of restitution is to be paid in full. 25 Complete restitution shall be paid in as short a time 26 period as possible. However, if the court deems it

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1 necessary and in the best interest of the victim, the court may extend beyond 5 years the period of time within which 2 3 the payment of restitution is to be paid. If the defendant is ordered to pay restitution and the court orders that 4 restitution is to be paid over a period greater than 6 5 months, the court shall order that the defendant make 6 7 monthly payments; the court may waive this requirement of 8 monthly payments only if there is a specific finding of 9 good cause for waiver.

10 (f-1) (1) In addition to any other penalty prescribed by 11 law and any restitution ordered under this Section that did 12 not include long-term physical health care costs, the court may, upon conviction of any misdemeanor or felony, order a 13 14 defendant to pay restitution to a victim in accordance with 15 the provisions of this subsection (f-1) if the victim has 16 suffered physical injury as a result of the offense that is 17 reasonably probable to require or has required long-term physical health care for more than 3 months. As used in 18 this subsection (f-1) "long-term physical health care" 19 20 includes mental health care.

(2) The victim's estimate of long-term physical health
care costs may be made as part of a victim impact statement
under Section 6 of the Rights of Crime Victims and
Witnesses Act or made separately. The court shall enter the
long-term physical health care restitution order at the
time of sentencing. An order of restitution made under this

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subsection (f-1) shall fix a monthly amount to be paid by 1 the defendant for as long as long-term physical health care 2 3 of the victim is required as a result of the offense. The order may exceed the length of any sentence imposed upon 4 5 the defendant for the criminal activity. The court shall include as a special finding in the judgment of conviction 6 7 its determination of the monthly cost of long-term physical 8 health care.

9 (3) After a sentencing order has been entered, the 10 court may from time to time, on the petition of either the 11 defendant or the victim, or upon its own motion, enter an order for restitution for long-term physical care or modify 12 13 the existing order for restitution for long-term physical 14 care as to the amount of monthly payments. Any modification 15 of the order shall be based only upon a substantial change 16 of circumstances relating to the cost of long-term physical health care or the financial condition of either the 17 defendant or the victim. The petition shall be filed as 18 19 part of the original criminal docket.

(g) In addition to the sentences provided for in Sections 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961, the court may order any person who is convicted of violating any of those Sections or who was charged with any of those offenses and which charge was reduced to another charge as a result of a plea agreement under subsection (d) of this Section to meet HB2650 Engrossed - 8 - LRB096 08947 RLC 19085 b

any portion of the financial obligations of 1 all or 2 treatment, including but not limited to medical, 3 psychiatric, or rehabilitative treatment or psychological counseling, prescribed for the victim or victims of the 4 5 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 Except as otherwise provided in subsection (f-1), the order 10 may require such payments to be made for a period not to 11 exceed 5 years after sentencing, not including periods of 12 incarceration.

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

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

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made at the time the order of restitution was entered or 1 2 modified, there is a rebuttable presumption that the facts 3 and circumstances considered by the court at the hearing at which the order of restitution was entered or modified 4 5 regarding the offender's ability or willingness to pay restitution have not materially changed. If the court shall 6 7 find that the defendant has failed to make restitution and 8 that the failure is not wilful, the court may impose an 9 additional period of time within which to make restitution. 10 The length of the additional period shall not be more than 11 2 years. The court shall retain all of the incidents of the 12 original sentence, including the authority to modify or enlarge the conditions, and to revoke or further modify the 13 14 sentence if the conditions of payment are violated during 15 the additional period.

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

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

(1) Restitution ordered under this Section shall not be
 subject to disbursement by the circuit clerk under Section

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27.5 of the Clerks of Courts Act.

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

4 (1) Attaches to the property of the person subject 5 to the order;

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

8 (3) May be enforced to satisfy any payment that is 9 delinquent under the restitution order by the person in 10 whose favor the order is issued or the person's 11 assignee; and

12 (4) Expires in the same manner as a judgment lien13 created in a civil proceeding.

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

20 (n) An order of restitution under this Section does not21 bar a civil action for:

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

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

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

8 The provisions of Section 2-1303 of the Code of Civil 9 Procedure, providing for interest on judgments, apply to 10 judgments for restitution entered under this Section.

11 (Source: P.A. 94-148, eff. 1-1-06; 94-397, eff. 1-1-06; 95-331, 12 eff. 8-21-07.)

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