

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 17-56 as follows:

6 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

7 (This Section may contain text from a Public Act with a
8 delayed effective date)

9 Sec. 17-56. Financial exploitation of an elderly person or
10 a person with a disability.

11 (a) A person commits financial exploitation of an elderly
12 person or a person with a disability when he or she stands in a
13 position of trust or confidence with the elderly person or a
14 person with a disability and he or she knowingly and by
15 deception or intimidation obtains control over the property of
16 an elderly person or a person with a disability or illegally
17 uses the assets or resources of an elderly person or a person
18 with a disability.

19 (b) Sentence. Financial exploitation of an elderly person
20 or a person with a disability is: (1) a Class 4 felony if the
21 value of the property is \$300 or less, (2) a Class 3 felony if
22 the value of the property is more than \$300 but less than
23 \$5,000, (3) a Class 2 felony if the value of the property is

1 \$5,000 or more but less than \$50,000 ~~\$100,000~~, and (4) a Class
2 1 felony if the value of the property is \$50,000 ~~\$100,000~~ or
3 more or if the elderly person is over 70 years of age and the
4 value of the property is \$15,000 or more or if the elderly
5 person is 80 years of age or older and the value of the
6 property is \$5,000 or more.

7 (c) For purposes of this Section:

8 (1) "Elderly person" means a person 60 years of age or
9 older.

10 (2) "Person with a disability" means a person who
11 suffers from a physical or mental impairment resulting from
12 disease, injury, functional disorder or congenital
13 condition that impairs the individual's mental or physical
14 ability to independently manage his or her property or
15 financial resources, or both.

16 (3) "Intimidation" means the communication to an
17 elderly person or a person with a disability that he or she
18 shall be deprived of food and nutrition, shelter,
19 prescribed medication or medical care and treatment.

20 (4) "Deception" means, in addition to its meaning as
21 defined in Section 15-4 of this Code, a misrepresentation
22 or concealment of material fact relating to the terms of a
23 contract or agreement entered into with the elderly person
24 or person with a disability or to the existing or
25 pre-existing condition of any of the property involved in
26 such contract or agreement; or the use or employment of any

1 misrepresentation, false pretense or false promise in
2 order to induce, encourage or solicit the elderly person or
3 person with a disability to enter into a contract or
4 agreement.

5 The illegal use of the assets or resources of an elderly
6 person or a person with a disability includes, but is not
7 limited to, the misappropriation of those assets or resources
8 by undue influence, breach of a fiduciary relationship, fraud,
9 deception, extortion, or use of the assets or resources
10 contrary to law.

11 A person stands in a position of trust and confidence with
12 an elderly person or person with a disability when he (i) is a
13 parent, spouse, adult child or other relative by blood or
14 marriage of the elderly person or person with a disability,
15 (ii) is a joint tenant or tenant in common with the elderly
16 person or person with a disability, (iii) has a legal or
17 fiduciary relationship with the elderly person or person with a
18 disability, or (iv) is a financial planning or investment
19 professional.

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

23 (e) Good faith efforts. Nothing in this Section shall be
24 construed to impose criminal liability on a person who has made
25 a good faith effort to assist the elderly person or person with
26 a disability in the management of his or her property, but

1 through no fault of his or her own has been unable to provide
2 such assistance.

3 (f) Not a defense. It shall not be a defense to financial
4 exploitation of an elderly person or person with a disability
5 that the accused reasonably believed that the victim was not an
6 elderly person or person with a disability.

7 (g) Civil Liability. A person who is charged by information
8 or indictment with the offense of financial exploitation of an
9 elderly person or person with a disability and who fails or
10 refuses to return the victim's property within 60 days
11 following a written demand from the victim or the victim's
12 legal representative shall be liable to the victim or to the
13 estate of the victim in damages of treble the amount of the
14 value of the property obtained, plus reasonable attorney fees
15 and court costs. The burden of proof that the defendant
16 unlawfully obtained the victim's property shall be by a
17 preponderance of the evidence. This subsection shall be
18 operative whether or not the defendant has been convicted of
19 the offense.

20 (Source: P.A. 95-798, eff. 1-1-09; 96-1551, eff. 7-1-11.)

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

23 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

24 (Text of Section after amendment by P.A. 96-1551)

1 Sec. 5-5-6. In all convictions for offenses in violation of
2 the Criminal Code of 1961 or of Section 11-501 of the Illinois
3 Vehicle Code in which the person received any injury to his or
4 her person or damage to his or her real or personal property as
5 a result of the criminal act of the defendant, the court shall
6 order restitution as provided in this Section. In all other
7 cases, except cases in which restitution is required under this
8 Section, the court must at the sentence hearing determine
9 whether restitution is an appropriate sentence to be imposed on
10 each defendant convicted of an offense. If the court determines
11 that an order directing the offender to make restitution is
12 appropriate, the offender may be sentenced to make restitution.
13 The court may consider restitution an appropriate sentence to
14 be imposed on each defendant convicted of an offense in
15 addition to a sentence of imprisonment. The sentence of the
16 defendant to a term of imprisonment is not a mitigating factor
17 that prevents the court from ordering the defendant to pay
18 restitution. If the offender is sentenced to make restitution
19 the Court shall determine the restitution as hereinafter set
20 forth:

21 (a) At the sentence hearing, the court shall determine
22 whether the property may be restored in kind to the
23 possession of the owner or the person entitled to
24 possession thereof; or whether the defendant is possessed
25 of sufficient skill to repair and restore property damaged;
26 or whether the defendant should be required to make

1 restitution in cash, for out-of-pocket expenses, damages,
2 losses, or injuries found to have been proximately caused
3 by the conduct of the defendant or another for whom the
4 defendant is legally accountable under the provisions of
5 Article V of the Criminal Code of 1961.

6 (b) In fixing the amount of restitution to be paid in
7 cash, the court shall allow credit for property returned in
8 kind, for property damages ordered to be repaired by the
9 defendant, and for property ordered to be restored by the
10 defendant; and after granting the credit, the court shall
11 assess the actual out-of-pocket expenses, losses, damages,
12 and injuries suffered by the victim named in the charge and
13 any other victims who may also have suffered out-of-pocket
14 expenses, losses, damages, and injuries proximately caused
15 by the same criminal conduct of the defendant, and
16 insurance carriers who have indemnified the named victim or
17 other victims for the out-of-pocket expenses, losses,
18 damages, or injuries, provided that in no event shall
19 restitution be ordered to be paid on account of pain and
20 suffering. If a defendant is placed on supervision for, or
21 convicted of, domestic battery, the defendant shall be
22 required to pay restitution to any domestic violence
23 shelter in which the victim and any other family or
24 household members lived because of the domestic battery.
25 The amount of the restitution shall equal the actual
26 expenses of the domestic violence shelter in providing

1 housing and any other services for the victim and any other
2 family or household members living at the shelter. If a
3 defendant fails to pay restitution in the manner or within
4 the time period specified by the court, the court may enter
5 an order directing the sheriff to seize any real or
6 personal property of a defendant to the extent necessary to
7 satisfy the order of restitution and dispose of the
8 property by public sale. All proceeds from such sale in
9 excess of the amount of restitution plus court costs and
10 the costs of the sheriff in conducting the sale shall be
11 paid to the defendant. The defendant convicted of domestic
12 battery, if a person under 18 years of age was present and
13 witnessed the domestic battery of the victim, is liable to
14 pay restitution for the cost of any counseling required for
15 the child at the discretion of the court.

16 (c) In cases where more than one defendant is
17 accountable for the same criminal conduct that results in
18 out-of-pocket expenses, losses, damages, or injuries, each
19 defendant shall be ordered to pay restitution in the amount
20 of the total actual out-of-pocket expenses, losses,
21 damages, or injuries to the victim proximately caused by
22 the conduct of all of the defendants who are legally
23 accountable for the offense.

24 (1) In no event shall the victim be entitled to
25 recover restitution in excess of the actual
26 out-of-pocket expenses, losses, damages, or injuries,

1 proximately caused by the conduct of all of the
2 defendants.

3 (2) As between the defendants, the court may
4 apportion the restitution that is payable in
5 proportion to each co-defendant's culpability in the
6 commission of the offense.

7 (3) In the absence of a specific order apportioning
8 the restitution, each defendant shall bear his pro rata
9 share of the restitution.

10 (4) As between the defendants, each defendant
11 shall be entitled to a pro rata reduction in the total
12 restitution required to be paid to the victim for
13 amounts of restitution actually paid by co-defendants,
14 and defendants who shall have paid more than their pro
15 rata share shall be entitled to refunds to be computed
16 by the court as additional amounts are paid by
17 co-defendants.

18 (d) In instances where a defendant has more than one
19 criminal charge pending against him in a single case, or
20 more than one case, and the defendant stands convicted of
21 one or more charges, a plea agreement negotiated by the
22 State's Attorney and the defendants may require the
23 defendant to make restitution to victims of charges that
24 have been dismissed or which it is contemplated will be
25 dismissed under the terms of the plea agreement, and under
26 the agreement, the court may impose a sentence of

1 restitution on the charge or charges of which the defendant
2 has been convicted that would require the defendant to make
3 restitution to victims of other offenses as provided in the
4 plea agreement.

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

8 (f) Taking into consideration the ability of the
9 defendant to pay, including any real or personal property
10 or any other assets of the defendant, the court shall
11 determine whether restitution shall be paid in a single
12 payment or in installments, and shall fix a period of time
13 not in excess of 5 years, except for violations of Sections
14 16-1.3 and 17-56 of the Criminal Code of 1961, or the
15 period of time specified in subsection (f-1), not including
16 periods of incarceration, within which payment of
17 restitution is to be paid in full. Complete restitution
18 shall be paid in as short a time period as possible.
19 However, if the court deems it necessary and in the best
20 interest of the victim, the court may extend beyond 5 years
21 the period of time within which the payment of restitution
22 is to be paid. If the defendant is ordered to pay
23 restitution and the court orders that restitution is to be
24 paid over a period greater than 6 months, the court shall
25 order that the defendant make monthly payments; the court
26 may waive this requirement of monthly payments only if

1 there is a specific finding of good cause for waiver.

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

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

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

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

26 The payments shall be made by the defendant to the

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

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

10 (i) A sentence of restitution may be modified or
11 revoked by the court if the offender commits another
12 offense, or the offender fails to make restitution as
13 ordered by the court, but no sentence to make restitution
14 shall be revoked unless the court shall find that the
15 offender has had the financial ability to make restitution,
16 and he has wilfully refused to do so. When the offender's
17 ability to pay restitution was established at the time an
18 order of restitution was entered or modified, or when the
19 offender's ability to pay was based on the offender's
20 willingness to make restitution as part of a plea agreement
21 made at the time the order of restitution was entered or
22 modified, there is a rebuttable presumption that the facts
23 and circumstances considered by the court at the hearing at
24 which the order of restitution was entered or modified
25 regarding the offender's ability or willingness to pay
26 restitution have not materially changed. If the court shall

1 find that the defendant has failed to make restitution and
2 that the failure is not wilful, the court may impose an
3 additional period of time within which to make restitution.
4 The length of the additional period shall not be more than
5 2 years. The court shall retain all of the incidents of the
6 original sentence, including the authority to modify or
7 enlarge the conditions, and to revoke or further modify the
8 sentence if the conditions of payment are violated during
9 the additional period.

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

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

19 (l) Restitution ordered under this Section shall not be
20 subject to disbursement by the circuit clerk under Section
21 27.5 of the Clerks of Courts Act.

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

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

26 (2) May be perfected in the same manner as provided

1 in Part 3 of Article 9 of the Uniform Commercial Code;

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

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

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

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

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

20 (2) Other damages suffered by the victim.

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

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

1 the Code of Civil Procedure.

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

5 (Source: P.A. 95-331, eff. 8-21-07; 96-290, eff. 8-11-09;
6 96-1551, eff. 7-1-11.)