

By: Pena

H.B. No. 1751

A BILL TO BE ENTITLED

AN ACT

relating to the procedures governing the payment of restitution by criminal defendants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 42.037, Code of Criminal Procedure, is amended by amending Subsections (a)-(i) and (n) and adding Subsection (c-1) to read as follows:

(a)(1) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense shall ~~may~~ order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund established under Subchapter B, Chapter 56, to the extent that fund has paid compensation to or on behalf of the victim. The ~~[If the]~~ court shall ~~[does not]~~ order full restitution unless ~~[or orders partial restitution under this subsection,~~ the court finds compelling and extraordinary reasons for not ordering full restitution and states those reasons ~~[shall state]~~ on the record ~~[the reasons for not making the order or for the limited order]~~.

(2) In entering a restitution order under this subsection, the court may not consider a defendant's inability to pay as a compelling and extraordinary reason not to require full restitution or as a factor in determining the amount of restitution to be ordered. The court may consider a defendant's inability to pay only in determining the manner in which the defendant must pay

1 the restitution ordered. For purposes of this subsection, the
2 defendant is presumed to be capable of paying any restitution
3 ordered and has the burden of proof in demonstrating the
4 defendant's inability to pay.

5 (3) For purposes of this article and except as
6 otherwise provided by this article, "victim" includes:

7 (A) the person who is the actual victim of a
8 criminal offense;

9 (B) the immediate surviving family of the actual
10 victim; and

11 (C) the estate of the actual victim.

12 (b)(1) If the offense results in damage to or loss or
13 destruction of property of a victim of the offense, the court shall
14 [~~may~~] order the defendant:

15 (A) to return the property to the owner of the
16 property or someone designated by the owner; or

17 (B) if return of the property is impossible or
18 impractical or is an inadequate remedy, to pay an amount equal to
19 the greater of:

20 (i) the value of the property on the date of
21 the damage, loss, or destruction; or

22 (ii) the value of the property on the date
23 of sentencing, less the value of any part of the property that is
24 returned on the date the property is returned.

25 (2) If the offense results in personal [~~bodily~~] injury
26 to a victim, the court shall [~~may~~] order the defendant to make
27 restitution to:

1 (A) the victim for any expenses incurred by the
2 victim as a result of the offense; or

3 (B) the compensation to victims of crime fund to
4 the extent that fund has paid compensation to or on behalf of the
5 victim [~~do any one or more of the following:~~

6 [~~(A) pay an amount equal to the cost of necessary~~
7 ~~medical and related professional services and devices relating to~~
8 ~~physical, psychiatric, and psychological care, including~~
9 ~~nonmedical care and treatment rendered in accordance with a method~~
10 ~~of healing recognized by the law of the place of treatment;~~

11 [~~(B) pay an amount equal to the cost of necessary~~
12 ~~physical and occupational therapy and rehabilitation; or~~

13 [~~(C) reimburse the victim for income lost by the~~
14 ~~victim as a result of the offense].~~

15 (3) [~~If the offense results in the death of a victim,~~
16 ~~the court may, in addition to an order under Subdivision (2) of this~~
17 ~~subsection, order the defendant to pay an amount equal to the cost~~
18 ~~of necessary funeral and related services.~~

19 [~~(4)~~] If the victim or the victim's estate consents,
20 the court may, in addition to an order under Subdivision (2) [~~of~~
21 ~~this subsection~~], order the defendant to make restitution by
22 performing services instead of by paying money or make restitution
23 to a person or organization, other than the compensation to victims
24 of crime fund, designated by the victim or the estate.

25 (c) The court, in determining [~~whether to order restitution~~
26 ~~and~~] the amount of restitution, shall consider:

27 (1) the amount of the loss sustained by any victim and

1 the amount paid to or on behalf of the victim by the compensation to
2 victims of crime fund as a result of the offense; and

3 (2) [~~the financial resources of the defendant,~~
4 [~~(3) the financial needs and earning ability of the~~
5 ~~defendant and the defendant's dependents,~~ and
6 [~~(4)~~] other factors the court deems appropriate, other
7 than a defendant's inability to pay.

8 (c-1) The court, in determining the manner in which the
9 defendant must pay restitution, shall consider:

10 (1) the factors described by Subsections (c)(1) and
11 (2); and

12 (2) the current and future financial resources of the
13 defendant.

14 (d) When [~~If~~] the court orders restitution under this
15 article and the victim is deceased, the court shall order the
16 defendant to make restitution to the victim's estate.

17 (e) The court shall impose an order of restitution that is
18 as fair as possible to the victim and to the compensation to victims
19 of crime fund. The imposition of the order may not unduly
20 complicate or prolong the sentencing process.

21 (f)(1) The court may not order restitution for a loss for
22 which the victim has received or will receive compensation only
23 from a source other than the compensation to victims of crime fund.

24 The court may, in the interest of justice, order restitution to any
25 person who has compensated the victim for the loss to the extent the
26 person paid compensation. An order of restitution shall require
27 that all restitution to a victim or to the compensation to victims

1 of crime fund be made before any restitution to any other person is
2 made under the order.

3 (2) Any amount recovered by a victim from a person
4 ordered to pay restitution in a federal or state civil proceeding is
5 reduced by any amount previously paid to the victim by the person
6 under an order of restitution.

7 (g)(1) The court may require a defendant to make restitution
8 under this article within a specified period or in specified
9 installments. If the court requires the defendant to make
10 restitution in specified installments, in addition to the
11 installment payments, the court may require the defendant to pay a
12 one-time restitution fee of \$12, \$6 of which the court shall retain
13 for costs incurred in collecting the specified installments and \$6
14 of which the court shall order to be paid to the compensation to
15 victims of crime fund.

16 (2) The end of the period or the last installment may
17 not be later than:

18 (A) the end of the period of probation, if
19 probation is ordered;

20 (B) five years after the end of the term of
21 imprisonment imposed, if the court does not order probation; or

22 (C) five years after the date of sentencing in
23 any other case.

24 (3) If the court does not provide otherwise, the
25 defendant shall make restitution immediately.

26 (4) Except as provided by Subsection (n), the order of
27 restitution must require the defendant to make restitution directly

1 to the victim or other person eligible for restitution under this
2 article, including the compensation to victims of crime fund, or to
3 deliver the amount or property due as restitution to a community
4 supervision and corrections department for transfer to the victim
5 or person.

6 (h) If a defendant is placed on community supervision or is
7 paroled or released on mandatory supervision, the court or the
8 parole panel shall order the payment of restitution ordered under
9 this article as a condition of community supervision, parole, or
10 mandatory supervision. The court may revoke community supervision
11 and the parole panel may revoke parole or mandatory supervision if
12 the defendant fails to comply with the order. In determining
13 whether to revoke community supervision, parole, or mandatory
14 supervision, the court or parole panel shall consider:

- 15 (1) the defendant's employment status;
- 16 (2) the defendant's current and future earning
17 ability;
- 18 (3) the defendant's current and future financial
19 resources;
- 20 (4) the willfulness of the defendant's failure to pay;
21 ~~and~~
- 22 (5) any other special circumstances that may affect
23 the defendant's ability to pay; and
- 24 (6) the victim's financial resources or ability to pay
25 expenses incurred by the victim as a result of the offense.

26 (i) In addition to any other terms and conditions of
27 probation imposed under Article 42.12 ~~[of this code]~~, the court

1 shall [~~may~~] require a probationer to reimburse the compensation to
2 victims of crime [~~crime victims compensation~~] fund created under
3 Subchapter B, Chapter 56, for any amounts paid from that fund to or
4 on behalf of a victim of the probationer's offense. In this
5 subsection, "victim" has the meaning assigned by Article 56.32
6 [~~56.01 of this code~~].

7 (n) If a defendant is convicted of or receives deferred
8 adjudication for an offense under Section 25.05, Penal Code, and if
9 the child support order on which prosecution of the offense was
10 based required the defendant to pay the support to a local registry
11 or the Title IV-D agency, when [~~and if~~] the court orders restitution
12 under this article, the order of restitution must require the
13 defendant to pay the child support in the following manner:

14 (1) during any period in which the defendant is under
15 the supervision of a community supervision and corrections
16 department, to the department for transfer to the local registry or
17 Title IV-D agency designated as the place of payment in the child
18 support order; and

19 (2) during any period in which the defendant is not
20 under the supervision of a department, directly to the registry or
21 agency described by Subdivision (1).

22 SECTION 2. Section 11(a), Article 42.12, Code of Criminal
23 Procedure, is amended to read as follows:

24 (a) The judge of the court having jurisdiction of the case
25 shall determine the conditions of community supervision and may, at
26 any time, during the period of community supervision alter or
27 modify the conditions. The judge may impose any reasonable

1 condition that is designed to protect or restore the community,
2 protect or restore the victim, or punish, rehabilitate, or reform
3 the defendant. Conditions of community supervision may include,
4 but shall not be limited to, the conditions that the defendant
5 shall:

6 (1) Commit no offense against the laws of this State or
7 of any other State or of the United States;

8 (2) Avoid injurious or vicious habits;

9 (3) Avoid persons or places of disreputable or harmful
10 character;

11 (4) Report to the supervision officer as directed by
12 the judge or supervision officer and obey all rules and regulations
13 of the community supervision and corrections department;

14 (5) Permit the supervision officer to visit the
15 defendant [~~him~~] at the defendant's [~~his~~] home or elsewhere;

16 (6) Work faithfully at suitable employment as far as
17 possible;

18 (7) Remain within a specified place;

19 (8) Pay the defendant's [~~his~~] fine, if one be assessed,
20 and all court costs whether a fine be assessed or not, in one or
21 several sums;

22 (9) Support the defendant's [~~his~~] dependents;

23 (10) Participate, for a time specified by the judge in
24 any community-based program, including a community-service work
25 program under Section 16 of this article;

26 (11) Reimburse the county in which the prosecution was
27 instituted for compensation paid to appointed counsel for defending

1 the defendant [~~him~~] in the case, if counsel was appointed, or if the
2 defendant [~~he~~] was represented by a county-paid public defender, in
3 an amount that would have been paid to an appointed attorney had the
4 county not had a public defender;

5 (12) Remain under custodial supervision in a community
6 corrections facility, obey all rules and regulations of such
7 facility, and pay a percentage of the defendant's [~~his~~] income to
8 the facility for room and board;

9 (13) Pay a percentage of the defendant's [~~his~~] income
10 to the defendant's [~~his~~] dependents for their support while under
11 custodial supervision in a community corrections facility;

12 (14) Submit to testing for alcohol or controlled
13 substances;

14 (15) Attend counseling sessions for substance abusers
15 or participate in substance abuse treatment services in a program
16 or facility approved or licensed by the Texas Commission on Alcohol
17 and Drug Abuse;

18 (16) With the consent of the victim of a misdemeanor
19 offense or of any offense under Title 7, Penal Code, participate in
20 victim-defendant mediation;

21 (17) Submit to electronic monitoring;

22 (18) Reimburse the compensation to victims of crime
23 [~~general revenue~~] fund for any amounts paid from that fund to or on
24 behalf of a victim, as defined by Article 56.32 [~~56.01 of this~~
25 ~~code~~], of the defendant's offense, or if no reimbursement is
26 required, make one payment to the compensation to victims of crime
27 fund in an amount not to exceed \$50 if the offense is a misdemeanor

1 or not to exceed \$100 if the offense is a felony;

2 (19) Reimburse a law enforcement agency for the
3 analysis, storage, or disposal of raw materials, controlled
4 substances, chemical precursors, drug paraphernalia, or other
5 materials seized in connection with the offense;

6 (20) Pay all or part of the reasonable and necessary
7 costs incurred by the victim for psychological counseling made
8 necessary by the offense or for counseling and education relating
9 to acquired immune deficiency syndrome or human immunodeficiency
10 virus made necessary by the offense;

11 (21) Make one payment in an amount not to exceed \$50 to
12 a crime stoppers organization as defined by Section 414.001,
13 Government Code, and as certified by the Crime Stoppers Advisory
14 Council;

15 (22) Submit a blood sample or other specimen to the
16 Department of Public Safety under Subchapter G, Chapter 411,
17 Government Code, for the purpose of creating a DNA record of the
18 defendant; and

19 (23) In any manner required by the judge, provide
20 public notice of the offense for which the defendant was placed on
21 community supervision in the county in which the offense was
22 committed.

23 SECTION 3. The changes in law made by this Act apply only to
24 an order of restitution that is entered or a condition of community
25 supervision that is imposed on or after September 1, 2005. An order
26 of restitution that is entered or a condition of community
27 supervision that is imposed before September 1, 2005, is governed

H.B. No. 1751

1 by the law in effect on the date the order was entered or the
2 condition was imposed, and the former law is continued in effect for
3 that purpose.

4 SECTION 4. This Act takes effect September 1, 2005.