

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)-(c) and (e)-(i) to read as follows:

(a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense 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. If the court does not order restitution or orders partial restitution under this subsection, the court shall state on the record the reasons for not making the order or for the limited order.

(b)(1) If the offense results in damage to or loss or destruction of property of a victim of the offense, the court may order the defendant:

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

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

1 (i) the value of the property on the date of
2 the damage, loss, or destruction; or

3 (ii) the value of the property on the date
4 of sentencing, less the value of any part of the property that is
5 returned on the date the property is returned.

6 (2) If the offense results in personal [~~bodily~~] injury
7 to a victim, the court may order the defendant to make restitution
8 to:

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

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

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

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

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

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

27 [~~(4)~~] If the victim or the victim's estate consents,

1 the court may, in addition to an order under Subdivision (2) [~~of~~
2 ~~this subsection~~], order the defendant to make restitution by
3 performing services instead of by paying money or make restitution
4 to a person or organization, other than the compensation to victims
5 of crime fund, designated by the victim or the estate.

6 (c) The court, in determining whether to order restitution
7 and the amount of restitution, shall consider:

8 (1) the amount of the loss sustained by any victim and
9 the amount paid to or on behalf of the victim by the compensation to
10 victims of crime fund as a result of the offense; and

11 [~~the financial resources of the defendant,~~
12 [~~(3) the financial needs and earning ability of the~~
13 ~~defendant and the defendant's dependents, and~~

14 [~~(4)~~] other factors the court deems appropriate.

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

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

22 The court may, in the interest of justice, order restitution to any
23 person who has compensated the victim for the loss to the extent the
24 person paid compensation. An order of restitution shall require
25 that all restitution to a victim or to the compensation to victims
26 of crime fund be made before any restitution to any other person is
27 made under the order.

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

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

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

16 (A) the end of the period of probation, if
17 probation is ordered;

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

20 (C) five years after the date of sentencing in
21 any other case.

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

24 (4) Except as provided by Subsection (n), the order of
25 restitution must require the defendant to make restitution directly
26 to the victim or other person eligible for restitution under this
27 article, including the compensation to victims of crime fund, or to

1 deliver the amount or property due as restitution to a community
2 supervision and corrections department for transfer to the victim
3 or person.

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

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

24 (i) In addition to any other terms and conditions of
25 probation imposed under Article 42.12 [~~of this code~~], the court may
26 require a probationer to reimburse the compensation to victims of
27 crime [~~crime victims compensation~~] fund created under Subchapter B,

1 Chapter 56, for any amounts paid from that fund to or on behalf of a
2 victim of the probationer's offense. In this subsection, "victim"
3 has the meaning assigned by Article 56.32 [~~56.01 of this code~~].

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

6 (a) The judge of the court having jurisdiction of the case
7 shall determine the conditions of community supervision and may, at
8 any time, during the period of community supervision alter or
9 modify the conditions. The judge may impose any reasonable
10 condition that is designed to protect or restore the community,
11 protect or restore the victim, or punish, rehabilitate, or reform
12 the defendant. Conditions of community supervision may include,
13 but shall not be limited to, the conditions that the defendant
14 shall:

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

17 (2) Avoid injurious or vicious habits;

18 (3) Avoid persons or places of disreputable or harmful
19 character;

20 (4) Report to the supervision officer as directed by
21 the judge or supervision officer and obey all rules and regulations
22 of the community supervision and corrections department;

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

25 (6) Work faithfully at suitable employment as far as
26 possible;

27 (7) Remain within a specified place;

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

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

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

8 (11) Reimburse the county in which the prosecution was
9 instituted for compensation paid to appointed counsel for defending
10 the defendant [~~him~~] in the case, if counsel was appointed, or if the
11 defendant [~~he~~] was represented by a county-paid public defender, in
12 an amount that would have been paid to an appointed attorney had the
13 county not had a public defender;

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

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

21 (14) Submit to testing for alcohol or controlled
22 substances;

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

27 (16) With the consent of the victim of a misdemeanor

1 offense or of any offense under Title 7, Penal Code, participate in
2 victim-defendant mediation;

3 (17) Submit to electronic monitoring;

4 (18) Reimburse the compensation to victims of crime
5 [~~general revenue~~] fund for any amounts paid from that fund to or on
6 behalf of a victim, as defined by Article 56.32 [~~56.01 of this~~
7 ~~code~~], of the defendant's offense, or if no reimbursement is
8 required, make one payment to the compensation to victims of crime
9 fund in an amount not to exceed \$50 if the offense is a misdemeanor
10 or not to exceed \$100 if the offense is a felony;

11 (19) Reimburse a law enforcement agency for the
12 analysis, storage, or disposal of raw materials, controlled
13 substances, chemical precursors, drug paraphernalia, or other
14 materials seized in connection with the offense;

15 (20) Pay all or part of the reasonable and necessary
16 costs incurred by the victim for psychological counseling made
17 necessary by the offense or for counseling and education relating
18 to acquired immune deficiency syndrome or human immunodeficiency
19 virus made necessary by the offense;

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

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

1 (23) In any manner required by the judge, provide
2 public notice of the offense for which the defendant was placed on
3 community supervision in the county in which the offense was
4 committed.

5 SECTION 3. The changes in law made by this Act apply only to
6 an order of restitution that is entered or a condition of community
7 supervision that is imposed on or after September 1, 2005. An order
8 of restitution that is entered or a condition of community
9 supervision that is imposed before September 1, 2005, is governed
10 by the law in effect on the date the order was entered or the
11 condition was imposed, and the former law is continued in effect for
12 that purpose.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1751 was passed by the House on April 14, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1751 on May 27, 2005, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1751 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor