

By: Pena

H.B. No. 1751

Substitute the following for H.B. No. 1751:

By: Keel

C.S.H.B. No. 1751

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the procedures governing the payment of restitution by  
3 criminal defendants.

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

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

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

19 (2) In entering a restitution order under this  
20 subsection, the court may not consider a defendant's inability to  
21 pay as a compelling and extraordinary reason not to require full  
22 restitution or as a factor in determining the amount of restitution  
23 to be ordered. The court may consider a defendant's inability to  
24 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

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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.