

By: Pena

H.B. No. 1751

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain criminal defendants paying restitution to the
3 compensation to victims of crime fund.

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

5 SECTION 1. Articles 42.037(a), (c), (d), (f), (i), and (n),
6 Code of Criminal Procedure, are amended to read as follows:

7 (a) In addition to any fine authorized by law, the court
8 that sentences a defendant convicted of an offense shall ~~may~~
9 order the defendant to make restitution to any victim of the offense
10 or to the compensation to victims of crime fund established under
11 Subchapter B, Chapter 56. If the court ~~[does not order restitution~~
12 ~~or]~~ orders partial restitution under this subsection, the court
13 shall state on the record the reasons for ~~[not making the order or~~
14 ~~for]~~ the limited order.

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

17 (1) the amount of the loss sustained by any victim as a
18 result of the offense;

19 (2) the financial resources of the defendant;

20 (3) the financial needs and earning ability of the
21 defendant and the defendant's dependents; and

22 (4) other factors the court deems appropriate.

23 (d) When ~~[if]~~ the court orders restitution under this
24 article and the victim is deceased, the court shall order the

1 defendant to make restitution to the victim's estate.

2 (f)(1) If the court orders the defendant to make restitution
3 under this article, the court shall order the defendant to make
4 restitution to the compensation to victims of crime fund
5 established under Subchapter B, Chapter 56, for any amounts paid by
6 that fund to a victim of the defendant's offense. The court may not
7 order restitution for a loss for which the victim has received or
8 will receive compensation. The court may, in the interest of
9 justice, order restitution to any person other than the
10 compensation to victims of crime fund who has compensated the
11 victim for the loss to the extent the person paid compensation. An
12 order of restitution shall require that all restitution to a victim
13 be made before any restitution to any other person is made under the
14 order.

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

19 (i) In addition to any other terms and conditions of
20 probation imposed under Article 42.12 [~~of this code~~], the court
21 shall [~~may~~] require a probationer to reimburse the compensation to
22 victims of crime [~~crime victims compensation~~] fund created under
23 Subchapter B, Chapter 56, for any amounts paid from that fund to a
24 victim of the probationer's offense. In this subsection, "victim"
25 has the meaning assigned by Article 56.32 [~~56.01 of this code~~].

26 (n) If a defendant is convicted of or receives deferred
27 adjudication for an offense under Section 25.05, Penal Code, and if

1 the child support order on which prosecution of the offense was
2 based required the defendant to pay the support to a local registry
3 or the Title IV-D agency, when [~~and if~~] the court orders restitution
4 under this article, the order of restitution must require the
5 defendant to pay the child support in the following manner:

6 (1) during any period in which the defendant is under
7 the supervision of a community supervision and corrections
8 department, to the department for transfer to the local registry or
9 Title IV-D agency designated as the place of payment in the child
10 support order; and

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

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

16 (a) The judge of the court having jurisdiction of the case
17 shall determine the conditions of community supervision and may, at
18 any time, during the period of community supervision alter or
19 modify the conditions. The judge may impose any reasonable
20 condition that is designed to protect or restore the community,
21 protect or restore the victim, or punish, rehabilitate, or reform
22 the defendant. Conditions of community supervision may include,
23 but shall not be limited to, the conditions that the defendant
24 shall:

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

27 (2) Avoid injurious or vicious habits;

1 (3) Avoid persons or places of disreputable or harmful
2 character;

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

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

8 (6) Work faithfully at suitable employment as far as
9 possible;

10 (7) Remain within a specified place;

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

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

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

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

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

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

4 (14) Submit to testing for alcohol or controlled
5 substances;

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

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

13 (17) Submit to electronic monitoring;

14 (18) Reimburse the compensation to victims of crime
15 [~~general revenue~~] fund for any amounts paid from that fund to a
16 victim, as defined by Article 56.32 [~~56.01 of this code~~], of the
17 defendant's offense, or if no reimbursement is required, make one
18 payment to the compensation to victims of crime fund in an amount
19 not to exceed \$50 if the offense is a misdemeanor or not to exceed
20 \$100 if the offense is a felony;

21 (19) Reimburse a law enforcement agency for the
22 analysis, storage, or disposal of raw materials, controlled
23 substances, chemical precursors, drug paraphernalia, or other
24 materials seized in connection with the offense;

25 (20) Pay all or part of the reasonable and necessary
26 costs incurred by the victim for psychological counseling made
27 necessary by the offense or for counseling and education relating

1 to acquired immune deficiency syndrome or human immunodeficiency
2 virus made necessary by the offense;

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

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

11 (23) In any manner required by the judge, provide
12 public notice of the offense for which the defendant was placed on
13 community supervision in the county in which the offense was
14 committed.

15 SECTION 3. The changes in law made by this Act apply only to
16 an order of restitution that is entered or a condition of community
17 supervision that is imposed on or after September 1, 2005. An order
18 of restitution that is entered or a condition of community
19 supervision that is imposed before September 1, 2005, is governed
20 by the law in effect on the date the order was entered or the
21 condition was imposed, and the former law is continued in effect for
22 that purpose.

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