

1-1 By: Pena (Senate Sponsor - Whitmire) H.B. No. 1751  
1-2 (In the Senate - Received from the House April 18, 2005;  
1-3 April 19, 2005, read first time and referred to Committee on  
1-4 Criminal Justice; May 20, 2005, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;  
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1751 By: Seliger

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the procedures governing the payment of restitution by  
1-11 criminal defendants.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 42.037, Code of Criminal Procedure, is  
1-14 amended by amending Subsections (a)-(c) and (e)-(i) to read as  
1-15 follows:

1-16 (a) In addition to any fine authorized by law, the court  
1-17 that sentences a defendant convicted of an offense may order the  
1-18 defendant to make restitution to any victim of the offense or to the  
1-19 compensation to victims of crime fund established under Subchapter  
1-20 B, Chapter 56, to the extent that fund has paid compensation to or  
1-21 on behalf of the victim. If the court does not order restitution or  
1-22 orders partial restitution under this subsection, the court shall  
1-23 state on the record the reasons for not making the order or for the  
1-24 limited order.

1-25 (b)(1) If the offense results in damage to or loss or  
1-26 destruction of property of a victim of the offense, the court may  
1-27 order the defendant:

1-28 (A) to return the property to the owner of the  
1-29 property or someone designated by the owner; or

1-30 (B) if return of the property is impossible or  
1-31 impractical or is an inadequate remedy, to pay an amount equal to  
1-32 the greater of:

1-33 (i) the value of the property on the date of  
1-34 the damage, loss, or destruction; or

1-35 (ii) the value of the property on the date  
1-36 of sentencing, less the value of any part of the property that is  
1-37 returned on the date the property is returned.

1-38 (2) If the offense results in personal [bodily] injury  
1-39 to a victim, the court may order the defendant to make restitution  
1-40 to:

1-41 (A) the victim for any expenses incurred by the  
1-42 victim as a result of the offense; or

1-43 (B) the compensation to victims of crime fund to  
1-44 the extent that fund has paid compensation to or on behalf of the  
1-45 victim [do any one or more of the following:

1-46 ~~[(A) pay an amount equal to the cost of necessary~~  
1-47 ~~medical and related professional services and devices relating to~~  
1-48 ~~physical, psychiatric, and psychological care, including~~  
1-49 ~~nonmedical care and treatment rendered in accordance with a method~~  
1-50 ~~of healing recognized by the law of the place of treatment;~~

1-51 ~~[(B) pay an amount equal to the cost of necessary~~  
1-52 ~~physical and occupational therapy and rehabilitation; or~~

1-53 ~~[(C) reimburse the victim for income lost by the~~  
1-54 ~~victim as a result of the offense].~~

1-55 (3) ~~[If the offense results in the death of a victim,~~  
1-56 ~~the court may, in addition to an order under Subdivision (2) of this~~  
1-57 ~~subsection, order the defendant to pay an amount equal to the cost~~  
1-58 ~~of necessary funeral and related services.~~

1-59 ~~[(4)]~~ If the victim or the victim's estate consents,  
1-60 the court may, in addition to an order under Subdivision (2) ~~[of~~  
1-61 ~~this subsection]~~, order the defendant to make restitution by  
1-62 performing services instead of by paying money or make restitution  
1-63 to a person or organization, other than the compensation to victims

2-1 of crime fund, designated by the victim or the estate.

2-2 (c) The court, in determining whether to order restitution  
2-3 and the amount of restitution, shall consider:

2-4 (1) the amount of the loss sustained by any victim and  
2-5 the amount paid to or on behalf of the victim by the compensation to  
2-6 victims of crime fund as a result of the offense; and

2-7 (2) ~~[the financial resources of the defendant,~~  
2-8 ~~[(3) the financial needs and earning ability of the~~  
2-9 ~~defendant and the defendant's dependents, and~~

2-10 [~~4~~] other factors the court deems appropriate.

2-11 (e) The court shall impose an order of restitution that is  
2-12 as fair as possible to the victim or to the compensation to victims  
2-13 of crime fund, as applicable. The imposition of the order may not  
2-14 unduly complicate or prolong the sentencing process.

2-15 (f)(1) The court may not order restitution for a loss for  
2-16 which the victim has received or will receive compensation only  
2-17 from a source other than the compensation to victims of crime fund.  
2-18 The court may, in the interest of justice, order restitution to any  
2-19 person who has compensated the victim for the loss to the extent the  
2-20 person paid compensation. An order of restitution shall require  
2-21 that all restitution to a victim or to the compensation to victims  
2-22 of crime fund be made before any restitution to any other person is  
2-23 made under the order.

2-24 (2) Any amount recovered by a victim from a person  
2-25 ordered to pay restitution in a federal or state civil proceeding is  
2-26 reduced by any amount previously paid to the victim by the person  
2-27 under an order of restitution.

2-28 (g)(1) The court may require a defendant to make restitution  
2-29 under this article within a specified period or in specified  
2-30 installments. If the court requires the defendant to make  
2-31 restitution in specified installments, in addition to the  
2-32 installment payments, the court may require the defendant to pay a  
2-33 one-time restitution fee of \$12, \$6 of which the court shall retain  
2-34 for costs incurred in collecting the specified installments and \$6  
2-35 of which the court shall order to be paid to the compensation to  
2-36 victims of crime fund.

2-37 (2) The end of the period or the last installment may  
2-38 not be later than:

2-39 (A) the end of the period of probation, if  
2-40 probation is ordered;

2-41 (B) five years after the end of the term of  
2-42 imprisonment imposed, if the court does not order probation; or

2-43 (C) five years after the date of sentencing in  
2-44 any other case.

2-45 (3) If the court does not provide otherwise, the  
2-46 defendant shall make restitution immediately.

2-47 (4) Except as provided by Subsection (n), the order of  
2-48 restitution must require the defendant to make restitution directly  
2-49 to the victim or other person eligible for restitution under this  
2-50 article, including the compensation to victims of crime fund, or to  
2-51 deliver the amount or property due as restitution to a community  
2-52 supervision and corrections department for transfer to the victim  
2-53 or person.

2-54 (h) If a defendant is placed on community supervision or is  
2-55 paroled or released on mandatory supervision, the court or the  
2-56 parole panel shall order the payment of restitution ordered under  
2-57 this article as a condition of community supervision, parole, or  
2-58 mandatory supervision. The court may revoke community supervision  
2-59 and the parole panel may revoke parole or mandatory supervision if  
2-60 the defendant fails to comply with the order. In determining  
2-61 whether to revoke community supervision, parole, or mandatory  
2-62 supervision, the court or parole panel shall consider:

2-63 (1) the defendant's employment status;  
2-64 (2) the defendant's current and future earning  
2-65 ability;

2-66 (3) the defendant's current and future financial  
2-67 resources;

2-68 (4) the willfulness of the defendant's failure to pay;  
2-69 [~~and~~]

3-1 (5) any other special circumstances that may affect  
3-2 the defendant's ability to pay; and

3-3 (6) the victim's financial resources or ability to pay  
3-4 expenses incurred by the victim as a result of the offense.

3-5 (i) In addition to any other terms and conditions of  
3-6 probation imposed under Article 42.12 [~~of this code~~], the court may  
3-7 require a probationer to reimburse the compensation to victims of  
3-8 crime [~~crime victims compensation~~] fund created under Subchapter B,  
3-9 Chapter 56, for any amounts paid from that fund to or on behalf of a  
3-10 victim of the probationer's offense. In this subsection, "victim"  
3-11 has the meaning assigned by Article 56.32 [~~56.01 of this code~~].

3-12 SECTION 2. Section 11(a), Article 42.12, Code of Criminal  
3-13 Procedure, is amended to read as follows:

3-14 (a) The judge of the court having jurisdiction of the case  
3-15 shall determine the conditions of community supervision and may, at  
3-16 any time, during the period of community supervision alter or  
3-17 modify the conditions. The judge may impose any reasonable  
3-18 condition that is designed to protect or restore the community,  
3-19 protect or restore the victim, or punish, rehabilitate, or reform  
3-20 the defendant. Conditions of community supervision may include,  
3-21 but shall not be limited to, the conditions that the defendant  
3-22 shall:

3-23 (1) Commit no offense against the laws of this State or  
3-24 of any other State or of the United States;

3-25 (2) Avoid injurious or vicious habits;

3-26 (3) Avoid persons or places of disreputable or harmful  
3-27 character;

3-28 (4) Report to the supervision officer as directed by  
3-29 the judge or supervision officer and obey all rules and regulations  
3-30 of the community supervision and corrections department;

3-31 (5) Permit the supervision officer to visit the  
3-32 defendant [~~him~~] at the defendant's [~~his~~] home or elsewhere;

3-33 (6) Work faithfully at suitable employment as far as  
3-34 possible;

3-35 (7) Remain within a specified place;

3-36 (8) Pay the defendant's [~~his~~] fine, if one be assessed,  
3-37 and all court costs ~~whether a fine be assessed or not~~, in one or  
3-38 several sums;

3-39 (9) Support the defendant's [~~his~~] dependents;

3-40 (10) Participate, for a time specified by the judge in  
3-41 any community-based program, including a community-service work  
3-42 program under Section 16 of this article;

3-43 (11) Reimburse the county in which the prosecution was  
3-44 instituted for compensation paid to appointed counsel for defending  
3-45 the defendant [~~him~~] in the case, if counsel was appointed, or if the  
3-46 defendant [~~he~~] was represented by a county-paid public defender, in  
3-47 an amount that would have been paid to an appointed attorney had the  
3-48 county not had a public defender;

3-49 (12) Remain under custodial supervision in a community  
3-50 corrections facility, obey all rules and regulations of such  
3-51 facility, and pay a percentage of the defendant's [~~his~~] income to  
3-52 the facility for room and board;

3-53 (13) Pay a percentage of the defendant's [~~his~~] income  
3-54 to the defendant's [~~his~~] dependents for their support while under  
3-55 custodial supervision in a community corrections facility;

3-56 (14) Submit to testing for alcohol or controlled  
3-57 substances;

3-58 (15) Attend counseling sessions for substance abusers  
3-59 or participate in substance abuse treatment services in a program  
3-60 or facility approved or licensed by the Texas Commission on Alcohol  
3-61 and Drug Abuse;

3-62 (16) With the consent of the victim of a misdemeanor  
3-63 offense or of any offense under Title 7, Penal Code, participate in  
3-64 victim-defendant mediation;

3-65 (17) Submit to electronic monitoring;

3-66 (18) Reimburse the compensation to victims of crime  
3-67 [~~general revenue~~] fund for any amounts paid from that fund to or on  
3-68 behalf of a victim, as defined by Article 56.32 [~~56.01 of this~~  
3-69 ~~code~~], of the defendant's offense, or if no reimbursement is

4-1 required, make one payment to the compensation to victims of crime  
4-2 fund in an amount not to exceed \$50 if the offense is a misdemeanor  
4-3 or not to exceed \$100 if the offense is a felony;

4-4 (19) Reimburse a law enforcement agency for the  
4-5 analysis, storage, or disposal of raw materials, controlled  
4-6 substances, chemical precursors, drug paraphernalia, or other  
4-7 materials seized in connection with the offense;

4-8 (20) Pay all or part of the reasonable and necessary  
4-9 costs incurred by the victim for psychological counseling made  
4-10 necessary by the offense or for counseling and education relating  
4-11 to acquired immune deficiency syndrome or human immunodeficiency  
4-12 virus made necessary by the offense;

4-13 (21) Make one payment in an amount not to exceed \$50 to  
4-14 a crime stoppers organization as defined by Section 414.001,  
4-15 Government Code, and as certified by the Crime Stoppers Advisory  
4-16 Council;

4-17 (22) Submit a blood sample or other specimen to the  
4-18 Department of Public Safety under Subchapter G, Chapter 411,  
4-19 Government Code, for the purpose of creating a DNA record of the  
4-20 defendant; and

4-21 (23) In any manner required by the judge, provide  
4-22 public notice of the offense for which the defendant was placed on  
4-23 community supervision in the county in which the offense was  
4-24 committed.

4-25 SECTION 3. The changes in law made by this Act apply only to  
4-26 an order of restitution that is entered or a condition of community  
4-27 supervision that is imposed on or after September 1, 2005. An order  
4-28 of restitution that is entered or a condition of community  
4-29 supervision that is imposed before September 1, 2005, is governed  
4-30 by the law in effect on the date the order was entered or the  
4-31 condition was imposed, and the former law is continued in effect for  
4-32 that purpose.

4-33 SECTION 4. This Act takes effect September 1, 2005.

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