

BILL ANALYSIS

H.B. 1612
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

H.B. 1612 and its accompanying constitutional amendment, H.J.R. 67, would enable crime victims to obtain an order garnishing part of the wages of an offender who owes restitution in a criminal judgment. Presently, no wages for personal service are subject to garnishment, except for the enforcement of court-ordered child support payments or spousal maintenance. Restitution owed by offenders to compensate crime victims is a similarly important obligation.

While the Texas constitution establishes the right to restitution, the success rate in collecting such judgments in Texas is not good. The Crime Victims' Compensation Fund (CVCF) operated by the Attorney General offers violent crime victims reimbursement of up to \$50,000 in medical and other costs, but its fiscal soundness is tenuous because it is funded in part with restitution paid by offenders.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 1612 amends the Code of Criminal Procedure by adding Article 42.039, which addresses withholding from earnings for restitution. The bill provides that a court that, under Article 42.037 or 42.0371, Code of Criminal Procedure, orders a defendant to make restitution to the crime victim is allowed to order that income be withheld from the disposable earnings of the defendant for restitution and be paid to a community supervision and corrections department.

The court has continuing jurisdiction of a defendant whose income is the subject of an income withholding order to administer and enforce the order.

An income withholding order must direct any employer of the defendant obligated to pay restitution to withhold from the defendant's disposable earnings an amount that is equal to all or a portion of the amount specified in the restitution order, but that is not more than 50 percent of the defendant's disposable earnings. The order must state the style, docket number, and the court assessing punishment; the name, address, and, if available, the social security number of the defendant; the amount of the restitution; the name and address of the community supervision and corrections department to which payments are to be made; and any other matter necessary to effect the order.

The defendant whose income is subject to a withholding order or the prosecuting attorney is allowed to request the clerk of the court making the order to deliver a certified copy of the income withholding order to any employer of the defendant. The request must include the name and address of the employer. The clerk is required to issue a certified copy of the order and make a copy of Article 42.039, Code of Criminal Procedure, for each employer of the defendant whose income is the subject of the order and is required to deliver them no later than the fourth working day after the date the order is signed by the court or a request of delivery is filed, whichever is later. The order and a copy of this article must be delivered to the employer by certified or registered mail, return receipt requested, to the person authorized to receive service of process in civil cases generally, or to a person designated by the employer to receive notices of delinquency by written notice to the clerk of the appropriate court, or by the service of citation as provided by the Texas Rules of Civil Procedure. The clerk is authorized to charge the

defendant whose income is subject to withholding a reasonable fee of no more than \$15 for each copy of the order mailed by the clerk. The amount to be withheld must be remitted to the community supervision and corrections department named in the order on each regular due date or pay date. The employer is allowed to deduct an administrative fee each month of no more than \$10 from the defendant's disposable earnings in addition to the amount to be withheld as restitution.

The employer must begin to withhold income in accordance with an issued order not later than the first pay period following the date on which the order is delivered to the employer and must continue to withhold income as long as the defendant whose income is subject to the order is employed by the employer.

The bill provides that the employer is authorized to make a motion to the court that made the order for hearing on the applicability of the order to the employer no later than the 20th day after receipt of an income withholding order. The hearing shall be held no later than the 15th day after the date of the filing of the motion. The order remains binding and the employer must continue to make the payments pending further order of the court.

An employer receiving an order who complies with the order is not liable to the defendant whose income is subject to the order for the amount of income withheld and paid as provided in the order. An employer who receives an income withholding order and who does not comply with the order is liable for the amount not paid in compliance with the order. That amount and reasonable attorney's fees and court costs may be collected by the prosecuting attorney or by the victim for whose benefit the withholding is to be made. An employer who receives an income withholding order and who does not comply with the order is also liable to the defendant whose income is subject to the order for any amount withheld but not paid in compliance with the order and for reasonable attorney's fees and court costs.

An employer receiving more than one order on the same defendant must comply with each order to the maximum extent possible. If the total amount in the orders exceeds 50 percent of the defendant's disposable earnings, the employer is required to pay an equal amount on each order until each order is individually satisfied. An employer who is ordered to withhold from more than one defendant is allowed to combine the amounts withheld and make a single payment to each appropriate community supervision and corrections department requesting withholding if the employer separately identifies the amount of the payment that is attributable to each department.

An employer is not authorized to use an order as grounds in whole or part for the termination of employment or for any other disciplinary action against an employee. An employer may not refuse to hire an employee because of an order withholding income. If an employer intentionally discharges an employee in violation of these provisions, the employer is liable to the employee for the continuing wages and other benefits and for reasonable attorney's fees and court costs incurred by the employee in enforcing the employee's rights. An action may be brought only by the employee.

In addition to the civil remedies provided by law and this Act, an employer who knowingly violates Article 42.039(g) or (i), Code of Criminal Procedure, is subject to a fine not to exceed \$200 for each occurrence in which the employer fails to withhold and pay in compliance with the withholding order. The amount of a fine recovered this provision must be paid to the community supervision and corrections department to which withholding is required to be paid and credited against the amount of restitution ordered.

When the employment of a defendant whose income is withheld by the employer under an income withholding order is terminated, both the defendant and the employer must notify the court of that fact no later than the seventh day after the termination of employment and must provide the defendant's last known address and the name and address of the defendant's new employer, if known. The defendant has a continuing duty to inform each subsequent employer of the income withholding order after obtaining employment. The defendant shall promptly notify the court of any other change in the defendant's status that may affect the income withholding order.

The bill also provides that a payment received by a community supervision and corrections department under an income withholding order shall be accounted for and distributed in the same manner as a payment received directly from the defendant required to pay the restitution.

The change in law made by this Act applies only to restitution for an offense committed on or after the effective date of this Act. Restitution for an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

EFFECTIVE DATE

September 1, 2008, but only if the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, relating to authorizing garnishment of wages for court-ordered restitution in a criminal judgment is approved by the voters. If that constitutional amendment is not approved, this Act has no effect.