

BILL ANALYSIS

C.S.H.B. 2970
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many victims of child pornography live with the fact that even though the people who harmed them may have been convicted, the material they produced can often still be viewed on the Internet by people around the world. Interested parties contend that current law does not adequately provide for the payment of restitution to a victim by the person convicted of the possession or promotion of child pornography. C.S.H.B. 2970 seeks to address this issue by providing for such restitution.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2970 amends the Code of Criminal Procedure to establish the compensation to child pornography victims fund as an account in the general revenue fund. The bill limits the use of money in the account to award compensation to child pornography victims or to provide grants related to preventing child pornography and related offenses, including trafficking of persons. The bill requires the attorney general to adopt rules governing the administration of the compensation to child pornography victims fund, including rules establishing procedures for the application, review, and award of compensation or the issuance of a grant, and requires the attorney general to transfer money from the compensation to child pornography victims fund to a subaccount in the compensation to victims of crime fund as necessary to award compensation or provide a grant under the bill's provisions. The bill requires the attorney general to award compensation to an individual who as a child younger than 18 years of age was depicted in visual material constituting the basis for one or more convictions for possession or promotion of child pornography if the attorney general finds by a preponderance of the evidence that sufficient grounds exist for compensation. The bill requires an applicant for such compensation to apply in writing on a form prescribed by the attorney general and establishes that the applicant is not required to file an application under the Crime Victims' Compensation Act to receive compensation under the bill's provisions.

C.S.H.B. 2970 requires an award for compensation under the bill's provisions to be in an amount equal to the expenses incurred by the individual as a result of the offense. The bill requires the attorney general to reduce an award by the amount of restitution received by or on behalf of the individual from a defendant ordered to make restitution to the individual and authorizes the attorney general to reduce the award to the extent that the applicable expenses are recouped from

another collateral source. The bill authorizes the attorney general to provide for the payment of an award in a lump sum or in installments and authorizes the attorney general by rule to limit the amount of award that is payable to an individual under the bill's provisions.

C.S.H.B. 2970 authorizes the attorney general to use the compensation to victims of crime fund to pay expenses associated with the administration of the compensation to child pornography victims fund and authorizes the attorney general to delegate a power, duty, or responsibility given to the attorney general under the bill's provisions to a person in the attorney general's office. The bill establishes that the name of an individual awarded compensation under the bill's provisions and any other identifying information regarding that individual are confidential and not subject to disclosure under state public information law. The bill establishes that its provisions regarding the compensation to child pornography victims fund control to the extent of any conflict with provisions under the Crime Victims' Compensation Act regarding conduct for which compensation may be awarded.

C.S.H.B. 2970 requires a court to order a defendant convicted of an offense of possession or promotion of child pornography to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material in an amount equal to the expenses incurred by the individual as a result of the offense or to make restitution to the compensation to child pornography victims fund to the extent that the fund has paid compensation to or on behalf of the individual or to the extent that the court is unable to identify an individual who as a child was depicted in the visual material, in an amount determined by the court after considering the average amount of the expenses incurred by, and restitution ordered to, individuals in other similar cases involving a conviction for an offense of possession or promotion of child pornography and other factors the court considers appropriate.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2970 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Article 42.037, Code of Criminal Procedure, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Article 56.54(b), Code of Criminal Procedure, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Subchapter B, Chapter 56, Code of Criminal Procedure, is amended by adding Article 56.55 to read as follows: <u>Art. 56.55. COMPENSATION TO CHILD PORNOGRAPHY VICTIMS FUND; PAYMENT OF AWARDS OR EXPENSES. (a) The compensation to child pornography victims fund is an account in the general revenue fund. Money</u>	SECTION 3. Subchapter B, Chapter 56, Code of Criminal Procedure, is amended by adding Article 56.55 to read as follows: <u>Art. 56.55. COMPENSATION TO CHILD PORNOGRAPHY VICTIMS FUND; PAYMENT OF AWARDS OR EXPENSES. (a) The compensation to child pornography victims fund is an account in the general revenue fund. Money</u>

in the account may be used only to:

- (1) award compensation under this article;
- or
- (2) pay expenses related to preventing crime, including human trafficking crime.

(b) The attorney general shall establish a committee, consisting of six members appointed by the attorney general, to administer the account. Notwithstanding any other provision of this subchapter, the committee shall transfer money from the compensation to child pornography victims fund to a subaccount in the compensation to victims of crime fund as necessary to award compensation under Subsections (c)-(j) or to pay expenses related to preventing crime.

(c) The committee shall award compensation to an individual who as a child younger than 18 years of age was depicted in visual material constituting the basis for one or more convictions under Section 43.26, Penal Code, if the committee finds by a preponderance of the evidence that sufficient grounds exist for compensation under this article.

(d) An applicant for compensation under this article must apply in writing on a form prescribed by the attorney general. The applicant is not required to file an application under Article 56.36 to receive compensation under this article.

(e) An award for compensation under this article must be in an amount equal to the expenses incurred by the individual as a result of the offense, including:

- (1) medical services relating to physical, psychiatric, or psychological care;
- (2) physical and occupational therapy or rehabilitation;
- (3) necessary transportation, temporary housing, and child care expenses;
- (4) lost income; and
- (5) attorney's fees.

(f) The committee shall reduce an award under this article by the amount of restitution received by or on behalf of the individual under Article 42.037 and may reduce the award to the extent that the applicable expenses are recouped from another collateral source.

in the account may be used only to:

- (1) award compensation under this article;
- or
- (2) provide grants related to preventing child pornography and related offenses, including trafficking of persons.

(b) The attorney general shall:

(1) adopt rules governing the administration of the compensation to child pornography victims fund, including rules establishing procedures for the application, review, and award of compensation or the issuance of a grant under this article; and

(2) notwithstanding any other provision of this subchapter, transfer money from the compensation to child pornography victims fund to a subaccount in the compensation to victims of crime fund as necessary to award compensation or provide a grant under this article.

(c) The attorney general shall award compensation to an individual who as a child younger than 18 years of age was depicted in visual material constituting the basis for one or more convictions under Section 43.26, Penal Code, if the attorney general finds by a preponderance of the evidence that sufficient grounds exist for compensation under this article.

(d) An applicant for compensation under this article must apply in writing on a form prescribed by the attorney general. The applicant is not required to file an application under Article 56.36 to receive compensation under this article.

(e) An award for compensation under this article must be in an amount equal to the expenses incurred by the individual as a result of the offense, including:

- (1) medical services relating to physical, psychiatric, or psychological care;
- (2) physical and occupational therapy or rehabilitation;
- (3) necessary transportation, temporary housing, and child care expenses;
- (4) loss of past earnings; and
- (5) attorney's fees for assistance in obtaining compensation under this article.

(f) The attorney general shall reduce an award under this article by the amount of restitution received by or on behalf of the individual under Article 42.037 and may reduce the award to the extent that the applicable expenses are recouped from another collateral source, including

(g) The committee may provide for the payment of an award under this article in a lump sum or in installments.

(h) The attorney general by rule may limit the aggregate amount of award that is payable to an individual under this article.

(i) The name of an individual awarded compensation under this article and any other identifying information regarding that individual are confidential and not subject to disclosure under Chapter 552, Government Code.

(j) To the extent of any conflict between this article and another article of this subchapter regarding conduct for which compensation may be awarded, this article controls.

SECTION 4. The change in law made by this Act applies only to a conviction for a criminal offense committed on or after the effective date of this Act. A criminal offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, a criminal offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. This Act takes effect September 1, 2015.

compensation awarded under Article 56.34.

(g) The attorney general may provide for the payment of an award under this article in a lump sum or in installments.

(h) The attorney general by rule may limit the amount of award that is payable to an individual under this article.

(i) The attorney general may use the compensation to victims of crime fund to pay expenses associated with the administration of the compensation to the child pornography victims fund under this article.

(j) The attorney general may delegate a power, duty, or responsibility given to the attorney general under this article to a person in the attorney general's office.

(k) The name of an individual awarded compensation under this article and any other identifying information regarding that individual are confidential and not subject to disclosure under Chapter 552, Government Code.

(l) To the extent of any conflict between this article and another article of this subchapter regarding conduct for which compensation may be awarded, this article controls.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.