

SUBJECT: Mandatory restitution payments by criminal defendants

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Pena, Denny, Escobar, Raymond, Reyna
0 nays
3 absent — Riddle, Hodge, P. Moreno

WITNESSES: For — Verna Lee Carr, Sebastian Sarate, People Against Violent Crime
Against — None
On — Rita Baranowski, Office of the Attorney General.

BACKGROUND: Under the Crime Victims' Compensation Act, the Office of the Attorney General (OAG) administers the Crime Victims' Compensation (CVC) Fund, which awards compensation to victims of crimes or families of victims who have sustained monetary losses as a result of personal injuries or deaths. Money in the fund comes primarily from court costs and fees imposed on criminal offenders.

Under Code of Criminal Procedure (CCP), art. 42.037, at the discretion of the court, a defendant may be ordered to pay restitution to any victims of the offender's crime. For instance, if the offense caused damage to or loss of property, the court may order the defendant to return the property or pay the victim for the value of lost property. If the offense resulted in bodily injury, the court may order the offender to pay the victim's medical or rehabilitation costs and reimburse the victim for lost income due to the offense. If the defendant was responsible for the death of the victim, the court may order the defendant to pay for funeral expenses. Instead of or in addition to paying money, the court may order the offender to make restitution by performing services to a person or organization designated by the victim or the victim's estate. The court also may order the defendant to reimburse the Crime Victims Compensation (CVC) Fund any money paid to the victim.

The factors for a court to examine in determining the amount of restitution the offender should pay include the amount of loss sustained by the victim, the financial resources of the defendant, and the financial needs and earning ability of the defendant and the defendant's dependants.

The court may order the defendant to pay restitution within a specified period or in installments. If the court does not order the defendant to pay full restitution to the victim, the court must document on the record the reasons for limiting restitution.

A court may revoke a defendant's community supervision or parole if the defendant fails to comply with an order to pay restitution. In determining whether to do so, the court is required to consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstance.

CCP, art. 42.12 lists the conditions of community supervision that a judge may impose on a defendant. Included among these provisions is the requirement that the defendant reimburse the general revenue fund from any amounts paid from the fund to the victim as a result of the defendant's crime. If no reimbursement is required, the defendant still must make a one-time payment to the general revenue fund of up to \$50 if the offense committed is a misdemeanor and up to \$100 if the offense is a felony.

DIGEST:

CSHB 1751 would amend CCP, art. 42.037 to require those convicted of crimes to pay restitution to the victims, rather than leaving it to the discretion of the court. The bill also would require the offender to reimburse the CVC fund for money paid to the victims from the fund for damages resulting from the offense. The court would be required to order the offender to pay full restitution unless the court found compelling and extraordinary reasons not to order full restitution and stated those reasons on the record.

A defendant's inability to pay restitution would not be considered a compelling and extraordinary reason not to require full restitution be paid to the victim. Nor could the court consider the defendant's inability to pay when determining whether the offender would have to pay full restitution. Current or future inability to pay could be considered only when determining the manner in which the defendant would have to pay. The defendant would be presumed capable of paying any restitution ordered and would have the burden of proving inability to pay.

The bill would define "victim" to mean the person who was the victim of the crime, the surviving family of the victim, or the estate of the victim.

The bill also would require the offender to make restitution for the destruction of property as outlined in current law, rather than leaving it to the discretion of the court. If the victim suffered personal injury, the defendant would be required to make restitution to the victim for any expense incurred as a result of the offense. If the CVC fund compensated the victim, the defendant would be required to reimburse the fund for any money paid to the victim.

In determining the amount of restitution paid, the court would consider the loss sustained by the victim and the amount paid by the CVC fund for the victim's losses, as well as other factors the court deemed appropriate, other than a defendant's inability to pay. The court could not consider the defendant's financial resources.

CSHB 1751 would allow the offender to make restitution in installments. If the defendant paid in installments, the defendant would have to pay a one-time restitution fee of \$12. The court would retain \$6 and the other \$6 would go to the CVC fund.

The bill also would require a court to consider the defendant's current and future earning ability when determining whether to revoke parole or community supervision for failure to pay restitution. The court also would have to consider the victim's financial resources and ability to pay expenses resulting from the offense, among other factors. The court would order the probationer to reimburse the CVC fund for expenses paid to the victim, rather than leaving it to the court's discretion.

The bill also would amend CCP, art. 42.12 to make it gender neutral and to require those on community supervision to reimburse the CVC fund, rather than general revenue, for any amounts paid from that fund to compensate a victim of the defendant. If no reimbursement were required, the defendant would have to pay \$50 to the CVC Fund if the offense was a misdemeanor, or up to \$100 if the offense was a felony.

The bill would take effect September 1, 2005, and would apply to orders of restitution entered or conditions of community supervision imposed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1751 would provide an effective and efficient way to restore money to the Crime Victims' Compensation Fund. The CVC fund is a crucial source of funds for victims who have no other way to recoup losses incurred due to crime. The fund faces insolvency, due in part to the fact that offenders are not always forced to reimburse restitution paid to victims from the fund. Of the \$71 million paid out of the fund in 2003, less than \$900,000 in restitution was ordered repaid to the fund. By requiring offenders to repay losses suffered by their victims and to reimburse money paid from the fund, this bill would help the fund remain viable.

After the trauma of being a victim of crime, the victim should not also have to suffer the hardship of financial loss. The offender, not the victim, should shoulder the burden of the financial strain. The victim should not have to suffer further because of the offender's inability to pay. An individual who chooses to cause injury to another person must take full responsibility for the damage done to the victim. This bill would communicate to victims of crime that they are supported and protected by the state. Moreover, if offenders knew they would have to repay in full any financial losses caused to their victims, it might deter them from committing certain crimes.

CSHB 1751 is consistent with protections guaranteed by the state constitution. Under Art. 1, sec. 30 of the Texas Constitution, victims of crime have a right to restitution.

While the bill would not allow courts to consider the offender's financial resources when determining the amount of restitution owed, it would allow the consideration of current and future financial resources when determining the manner of payment. Therefore, if payment of the restitution would impose a significant financial burden on the defendant, the court could order the defendant to pay the restitution in manageable installments. The bill also would allow the parole board to consider the defendant's current and future earning ability when deciding whether to revoke parole or community supervision due to failure to pay restitution.

**OPPONENTS
SAY:**

An offender's earning ability should be considered when determining the amount of restitution that offender should pay. As it is, when an offender is released from jail, that person must pay fines and fees that can amount to a hefty sum. It often is difficult enough for someone with a felony on his or her record to find employment. Requiring an offender to repay the

victim in full would further handicap that person's ability to become a productive member of society once released from jail.

As it is, Texas faces significant problems with prison overcrowding, and the cost of incarceration is significantly more than the cost of probation or community supervision. It would be a tremendous waste of resources to send someone back to jail simply because the individual could not afford to repay the victim's losses in full. A court familiar with the defendant's situation would be in the best position to determine the amount and ability of an offender to reimburse losses to the victim. The decision is best left in the hands of the court.

Moreover, the bill would require courts to overlook the financial needs of the defendant's dependants when determining the restitution paid to the victim, potentially causing significant financial hardship to the family of the offender. The offender's children should not have to suffer because of the actions of a parent.

NOTES:

The committee substitute would prohibit a court from considering the defendant's inability to pay as a reason not to order full restitution but would allow the court to consider it when determining the manner in which the defendant would pay. The substitute would place the burden of proving inability to pay on the defendant. The substitute also defined the term "victim" for the purpose of the bill.

The substitute would amend CCP, art. 42.037(b)(2) to remove the types of restitution a defendant must pay listed in the current law and instead require the defendant to pay for any expenses incurred by the victim or the CVC fund.

The substitute would require defendants who make restitution payments in installments to pay a one-time fee of \$12. It also added the victim's financial resources as a factor a court should consider when determining whether to revoke the defendant's parole or community supervision for failure to pay restitution.

According to the fiscal note, the bill would generate for the CVC Fund an additional \$2 million per fiscal year from the restitutions payments and \$1.4 million from fees assessed for the administration of restitution.