The Benchbook for the Rights of Victims of Crime in Texas

Originally developed by the

Office of Court Administration
and
Crime Victims' Compensation Division,
Office of the Texas Attorney General

In 1999, the publication of the Benchbook was a cooperative project between the Office of the Attorney General of Texas and the Office of Court Administration. The project team was made up of professionals from the law enforcement and judicial community, plus victim advocates. The information in this updated benchbook reflects the current changes to the Code of Criminal Procedure from the 77th Legislative Session and hopefully will continue to serve as an available resource for the judiciary when a victim of crime appears in a criminal case.

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How to Use this Benchbook

The *Benchbook for the Rights of Crime Victims* was developed by the Office of Court Administration and the Office of the Attorney General of Texas as an initial reference guide for judges.

It is not intended to be binding or to dictate procedures for a judge; however, it is a comprehensive guide to the rights of crime victims in the State of Texas as provided by law in Article I, Section 30, of the Texas Constitution; Chapter 56 of the Texas Code of Criminal Procedure; and other relevant laws that pertain to crime victims.

The book is designed to be a resource tool to guide judges when a victim of crime appears in a criminal case. The information provided includes specific examples of cases where crime victims may appear in the courtroom and participate in the criminal justice process. This may involve a victim's rights in such court proceedings as bail hearings, plea bargains, trials, sequestration, videotaping of witnesses, court schedules, and consideration of victims' rights in the sentencing process.

Note

The star symbol  is used throughout the handbook to indicate sections that discuss significant changes in the law that have occurred since publication of the 1999 handbook.

FOREWORD

As early as 1934, the Supreme Court of the United States wrote: "[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."

As you are aware, the United States Constitution and the Texas Constitution afford many rights to the accused, but many Texans, prosecutors, police, and judges are not aware of the constitutional guarantees afforded victims of crime. In 1989, a State constitutional amendment protecting the rights of crime victims in Texas was passed with 73 percent electoral support. Today, we can be proud that our State listened and responded to victims and their advocates. This amendment, Article I, Section 30, grants many rights to crime victims, including the right to be treated with fairness, respect and dignity throughout the process; to be reasonably protected from the accused throughout the process; to be notified of proceedings; to be present unless the victim is a witness; and to confer with a representative of the prosecutor's office. In addition, the State, through its prosecutor, has an obligation to enforce the rights of crime victims.

The Legislature has enacted a number of statutory rights, which are found in Section 56.02 of the Code of Criminal Procedure and Chapter 57 of the Texas Family Code. While these constitutional and statutory provisions exist to protect the victim, they have yet to be fully realized in the criminal justice system, which represents the State of Texas. According to the *Crime Victims' Institute 97-98 Final Report: The Impact of Crime On Victims*, more than one-third (35 percent) of the victims surveyed were not aware of their right to be informed of court proceedings. At least 40 percent of the respondents said they were never informed of their right to receive protection from their offenders, have their employers notified of absences from work, have their safety considered in setting bail, receive information about crime victims' compensation, provide information for sentencing, or be informed of parole procedures.

The prosecutor has a duty to represent community values and concerns, serve an ideal of justice, preserve fairness in the procedures for the accused, search for the truth, and observe and enforce legal constraints that govern themselves and their agents. None of these wide-ranging responsibilities--law enforcement officer, elected official, officer of the court, administrator, gatekeeper--require the prosecutor to assume the role of counselor to crime victims because the prosecutor "represents" the "people," "state," or "government." It is the prosecution's interest, not that it shall win a case, but that justice shall be done. Therefore, in the final analysis, the crime victim may become merely a witness with a limited role to play and is basically dependent on the prosecutor for information and support. However, with the constitutional and statutory guarantees granted by this State, a crime victim is not just another witness for the prosecution. For most crime victims, the criminal justice process will be their only source of justice.

There has been limited external pressure by judges to include victims in the decision-making process. While this traditionally enables the prosecutor to act impartially, the exclusion of the victim has become so routine that the victim may virtually vanish after the arrest. Indeed, judges presumably accept the notion that the victim's case is public property and can be adjudicated without victim participation. As a frame of reference, in some large prosecutors' offices, individual assistant district attorneys rarely have contact with the victim in connection with the charging decision, relying instead on the report of the police. Subsequent contacts with the victim may take place on the phone and may be conducted by designees from victim service agencies or by paralegals or investigators. The victim might speak to the assistant district attorney prior to testifying before the grand jury, but many times victims are not called before the grand jury. If the case is disposed of by a guilty plea, the victim may never participate in the process at all. In a plea-bargained case, the prosecutor responsible for the guilty plea, negotiation, and sentencing recommendation may have never seen or spoken to the victim i

As a result, the absence of the victim's voice and physical presence can lead to a depersonalization of the case in the eyes of everyone engaged in the adjudication process. Nearly three out of every four Texans (73 percent) feel the courts should give victims more opportunity to tell their side of the story according to the *Public Trust and Confidence in the Courts and the Legal Profession in Texas, Summary Report* prepared by the Texas Supreme Court, Texas Office of Court Administration, and the State Bar of Texas.

Judges play a crucial role in the day-to-day implementation of victim rights. Judges, after all, make rulings that will affect the court's observance of the victims' right to be present, notified, and heard. At the same time, judges have an obligation to ensure that the criminal justice process is impartial and fair, and many judges feel constrained about giving what they consider "special treatment" to crime victims, according to the United States Department of Justice's *New Directions from the Field: Victims' Rights & Services for the 21st Century.*

If we do nothing more than pass constitutional and statutory rights for victims but do not require a judge to know if the victim has been afforded his or her rights, then we do not keep the balance true. If we take the justice out of the criminal justice system, we leave behind a system that serves only the criminal.

TEXAS CONSTITUTION

ARTICLE I, SECTION 30

RIGHTS OF CRIME VICTIMS

§ 30. (a) A crime victim has the following rights:

(1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process: and

(2) the right to be reasonably protected from the accused throughout the criminal justice process.

(b) On the request of a crime victim, the crime victim has the following rights:

(1) the right to notification of court proceedings;

(2) the right to be present at all public court proceedings related to the offense unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;

(3) the right to confer with the representative of the prosecutor's office;

(4) the right to restitution; and

(5) the right to information about the conviction, sentence, imprisonment and release of the accused.

(c) The Legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.

(d) The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.

(e) The Legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by defendant in a criminal case as a ground for appeal or post- conviction writ of habeas corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

Adopted Nov, 7, 1989.

Historical Notes

This section was adopted at the Nov. 7, 1989 election, as proposed by Acts 1989, 71st Leg.

OVERVIEW

This section requires that law enforcement offices, prosecutors, and judges respond to allegations of family violence and, in doing so, protect the victim from threats or acts of violence.

TEXAS CODE OF CRIMINAL PROCEDURE
CHAPTER 5. FAMILY VIOLENCE PREVENTION

Art. 5.01. Legislative Statement

(a) Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

(b) In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.

Art. 5.02. Definitions

In this chapter, "family violence," "family," "household," and "member of a household" have the meanings assigned by Section 71.01, Family Code.

Art. 5.03. Family Or Household Relationship Does Not Create An Exception To Official Duties

A general duty prescribed for an officer by Chapter 2 of this code is not waived or excepted in any family violence case or investigation because of a family or household relationship between an alleged violator and the victim of family violence. A peace officer's or a magistrate's duty to prevent the commission of criminal offenses, including acts of family violence, is not waived or excepted because of a family or household relationship between the potential violator and victim.

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Art. 5.04. Duties Of Peace Officers

(a) The primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law, of this state, enforce a protective order from another jurisdiction as provided by Chapter 88, Family Code, and make lawful arrests of violators.

(b) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall advise any possible adult victim of all reasonable means to prevent further family violence, including giving written notice of a victim's legal rights and remedies and of the availability of shelter or other community services for family violence victims.

(c) A written notice required by Subsection (b) of this article is sufficient if it is in substantially the following form with the required information in English and in Spanish inserted in the notice:

"NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE

"It is a crime for any person to cause you any physical injury or harm EVEN IF THAT PERSON IS A MEMBER OR FORMER MEMBER OF YOUR FAMILY OR HOUSEHOLD.

"Please tell the investigating peace officer:

"IF you, your child, or any other household resident has been injured; or

"IF you feel you are going to be in danger when the officer leaves or later.

"You have the right to:

"ASK the local prosecutor to file a criminal complaint against the person committing family violence; and

"APPLY to a court for an order to protect you (you should consult a legal aid office, a prosecuting attorney, or a private attorney). If a family or household member assaults you and is arrested, you may request that a magistrate's order for emergency protection be issued. Please inform the investigating officer if you want an order for emergency protection. You need not be present when the order is issued. You cannot be charged a fee by a court in connection with filing, serving, or entering a protective order. For example, the court can enter an order that:

"(1) the abuser not commit further acts of violence;

"(2) the abuser not threaten, harass, or contact you at home;

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"(3) directs the abuser to leave your household; and

"(4) establishes temporary custody of the children and directs the abuser not to interfere with the children or any property.

"A VIOLATION OF CERTAIN PROVISIONS OF COURT-ORDERED PROTECTION (such as (1) and (2) above) MAY BE A FELONY.

"CALL THE FOLLOWING VIOLENCE SHELTERS OR SOCIAL ORGANIZATIONS IF YOU NEED PROTECTION:

"_____

"_____"

Art. 5.045. Standby Assistance; Liability

(a) In the discretion of a peace officer, the officer may stay with a victim of family violence to protect the victim and allow the victim to take the personal property of the victim or of a child in the care of the victim to a place of safety in an orderly manner.

(b) A peace officer who provides assistance under Subsection (a) of this article is not:

(1) civilly liable for an act or omission of the officer that arises in connection with providing the assistance or determining whether to provide the assistance; or

(2) civilly or criminally liable for the wrongful appropriation of any personal property by the victim.

Art. 5.05. Reports And Records

(a) A peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence shall make a written report, including but not limited to:

(1) the names of the suspect and complainant;

(2) the date, time, and location of the incident;

(3) any visible or reported injuries; and

(4) a description of the incident and a statement of its disposition.

(b) Each local law enforcement agency shall establish a departmental code for identifying and retrieving family violence reports as outlined in Subsection (a) of this section. A district or county attorney or an assistant district or county attorney exercising authority in the county where the law enforcement agency maintains records under this section is entitled to access to the records.

(c) In order to ensure that officers responding to calls are aware of the existence and terms of protective orders, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names of persons

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protected by a protective order and of persons to whom protective orders are directed.

(d) Each law enforcement officer shall accept a certified copy of an original or modified protective order as proof of the validity of the order and it is presumed the order remains valid unless:

(1) the order contains a termination date that has passed;

(2) it is more than one year after the date the order was issued; or

(3) the law enforcement officer has been notified by the clerk of the court vacating the order that the order has been vacated.

(e) A peace officer who makes a report under Subsection (a) of this article shall provide information concerning the incident or disturbance to the bureau of identification and records of the Department of Public Safety for its record keeping function under Section 411.042, Government Code. The bureau shall prescribe the form and nature of the information required to be reported to the bureau by this article.

Art. 5.06. Duties Of Prosecuting Attorneys And Courts

(a) Neither a prosecuting attorney nor a court may:

(1) dismiss or delay any criminal proceeding that involves a prosecution for an offense that constitutes family violence because a civil proceeding is pending or not pending; or

(2) require proof that a complaining witness, victim, or defendant is a party to a suit for the dissolution of a marriage or a suit affecting the parent- child relationship before presenting a criminal allegation to a grand jury, filing an information, or otherwise proceeding with the pro-secution of a criminal case. **(Emphasis added.)**

(b) A prosecuting attorney's decision to file an application for a protective order under Chapter 71, Family Code, should be made without regard to whether a criminal complaint has been filed by the applicant. A prosecuting attorney may require the applicant to provide information for an offense report, relating to the facts alleged in the application, with a local law enforcement agency.

(c) The prosecuting attorney having responsibility under Section 71.04(c), Family Code, for filing applications for protective orders under Chapter 71, Family Code, shall provide notice of that responsibility to all law enforcement agencies within the jurisdiction of the prosecuting attorney for the prosecuting attorney.

Art. 5.07. Venue For Protective Order Offenses

The venue for an offense under Section 25.07, Penal Code, is in the county in which the order was issued or, without regard to the

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identity or location of the court that issued the protective order, in the county in which the offense was comm

Art. 5.08 Mediation In Family Violence Cases

Notwithstanding Article 26.12(g) or Section 11 (a) (16), Article 42.12, of this code, in a criminal prosecution arising from family violence, as that term is defined by Section 71.004, Family code, a court shall not refer or order the victim or the defendant involved to mediation, dispute resolution, arbitration, or other similar procedures.

OVERVIEW

This section provides the guidelines for fixing the amount of bail and the need for safety of the victim to be considered. This is the first time a judge can have a significant role in participating in the victim's safety. It's important to note that judges can condition bonds to aid in that arena.

TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 17. BAIL

Art. 17.15. Rules for Fixing Amount of Bail

The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken upon this point.
5. The future safety of a victim of the alleged offense and the community shall be considered.

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The arraignment is most often a victim's first interaction with the court. Crime victims may not understand what a bond is. It is important that this procedure be explained to the victim by the appropriate personnel.

A measure that can be taken to help ensure the safety of the victim is to condition the bond with a "no-contact" provision. There can be a philosophical versus legal quandary at this time. You, as a judge, are charged with following the legal requirements for setting bond and cannot set the bond exorbitantly high just to keep someone in jail. A conditioned bond will give the victim some sense of safety.

Examples of conditioning bonds may include, but are not limited to: a no-contact provision; counseling for drug and alcohol dependency; batterers' intervention; electronic monitoring; or orders that prohibit the defendant from going near (200 yards) the victim's residence, school, place of business, etc. The court could also consider an emergency protective order at this time.

Unless bond conditions are monitored and enforced in a timely fashion, the safety of the victim will decrease dramatically.

At the time of arraignment, you can also stress to the defendant that he/she may not enlist friends or family members to harass or threaten the victim and that additional charges can be filed if this happens.

OVERVIEW

The law enforcement agency that is holding an alleged perpetrator in custody on a family violence offense must make a reasonable attempt to give personal notice to the victim prior to the alleged perpetrator being released on bail.

TEXAS CODE OF CRIMINAL PROCEDURE
CHAPTER 17. BAIL

Art. 17.29. Accused Liberated

(a) When the accused has given the required bond, either to the magistrate or the officer having him in custody, he shall at once be set at liberty.

(b) Before releasing on bail a person arrested for an offense under Section 42.072, Penal Code, the law enforcement agency holding the person shall make a reasonable attempt to give personal notice of the imminent release to the victim of the alleged offense or to another person designated by the victim to receive the notice. An attempt by an agency to give notice to the victim or the person designated by the victim at the victim's or person's last known telephone number or address, as shown on the records of the agency, constitutes a reasonable attempt to give notice under this subsection. If possible, the arresting officer shall collect the address and telephone number of the victim at the time the arrest is made and shall communicate that information to the agency holding the person.

(c) Before releasing on bail a person arrested or held without a warrant in the prevention of family violence, the agency holding the person shall make a reasonable attempt to give personal notice of the imminent release to the victim of the alleged offense or to another person designated by the victim to receive the notice. An attempt by an agency to give notice to the victim or person designated by the victim at the victim's or person's last known telephone number or address, as shown on the records of the agency, constitutes a reasonable attempt to give notice under this subsection. If possible, the arresting officer shall collect the address and telephone number of the victim at the time the arrest is made and shall communicate that information to the agency holding the person.

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(d) A law enforcement agency or an employee of a law enforcement agency is not liable for damages arising from complying or failing to comply with Subsection (b) of this article.

(e) In this article, "family violence" has the meaning assigned by Section 71.01, Family Code.

Art. 17.291. Further Detention Of Certain Persons

(a) In this article:

(1) "family violence" has the meaning assigned to that phrase by Section 71.01(b)(2), Family Code; and

(2) "magistrate" has the meaning assigned to it by Article 2.09 of this code, as amended by Chapters 25, 79, 916, and 1068, Acts of the 71st Legislature, Regular Session, 1989.

(b) Article 17.29 does not apply when a person has been arrested or held without a warrant in the prevention of family violence if there is probable cause to believe the violence will continue if the person is immediately released. The head of the agency arresting or holding such a person may hold the person for a period of not more than four hours after bond has been posted. This detention period may be extended for an additional period not to exceed 48 hours, but only if authorized in a writing directed to the person having custody of the detained person by a magistrate who concludes that:

(1) the violence would continue if the person is released; and

(2) if the additional period exceeds 24 hours, probable cause exists to believe that the person committed the instant offense and that, during the 10-year period preceding the date of the instant offense, the person has been arrested:

(A) on more than one occasion for an offense involving family violence; or

(B) for any other offense, if a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during commission of the offense or during immediate flight after commission of the offense.

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The four to 48-hour "hold" placed on the alleged perpetrator may be one of the most effective tools available to protect the victim and may literally save the victim's life or prevent further injury. It could allow the victim to find to a shelter or flee to safety. The Crime Victims' Compensation Fund can make a one-time award for relocation in family violence situations for crimes occurring on or after June 19, 1999.

Art. 17.292. Magistrate's Order For Emergency Protection

(a) At a defendant's appearance before a magistrate after arrest for an offense involving family violence or an offense under Section 42.072, Penal Code, the magistrate may issue an order for emergency protection on the magistrate's own motion or on the request of:

(1) the victim of the offense;
(2) the guardian of the victim;
(3) a peace officer; or
(4) the attorney representing the state.

(b) At a defendant's appearance before a magistrate after arrest for an offense involving family violence, the magistrate shall issue and order for emergency protection if the arrest is for an offense that also involves:

(1) serious bodily injury to the victim; or
(2) the use or exhibition of a deadly weapon during the commission of an assault.

(c) The magistrate in the order for emergency protection may prohibit the arrested party from:

(1) committing:
  (A) family violence; or an assault on the person protected under the order; or
  (B) an act in furtherance of an offense under Section 42.072, Penal Code;
(2) communicating:
  (A) directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner; or
  (B) a threat through any person to a member of the family or household; or to the person protected under the order; [~~or~~]
(3) going to or near:
  (A) the residence, place of employment, or business of a member of the family or household; or of the person protected under the order; or
  (B) the residence, child care facility, or school where a child protected under the order resides or attends.

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The emergency protective order sends a message to the batterer that the criminal justice system will not tolerate further violence, harassment, or threats against the victim

A judge may want to withhold the address of the victim or victim's family in the emergency protective order.

It is essential that an efficient means of getting copies of the emergency protective order from the court to the appropriate law enforcement agencies be established in a timely manner. Statistics prove that an alleged perpetrator is more likely to commit the same crime soon after his/her release on bail.

(4) possessing a firearm, unless the person is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

(d) The victim of the offense need not be present in court when the order for emergency protection is issued.

(e) In the order for emergency protection the magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the party must maintain, unless the magistrate determines for the safety of the person or persons protected by the order that specific descriptions of the locations should be omitted.

(f) To the extent that a condition imposed by an order for emergency protection issued under this article conflicts with an existing court order granting possession of or access to a child, the condition imposed under this article prevails for the duration of the order for emergency protection.

(g) An order for emergency protection issued under this article must contain the following statements printed in bold-face type or in capital letters:

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER

THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

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"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

(h) The magistrate issuing an order for emergency protection under this article shall send a copy of the order to the chief of police in the municipality where the member of the family or household or individual protected by the order resides, if the person resides in a municipality, or to the sheriff of the county where the person resides, if the person does not reside in a municipality. If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment. The clerk of the court shall send a copy of the order to the victim.

(i) If an order for emergency protection issued under this article prohibits a person from going to or near a child care facility or school, the magistrate shall send a copy of the order to the child care facility or school.

(j) An order for emergency protection issued under this article is effective on issuance, and the defendant shall be served a copy of the order in open court. An order for emergency protection issued under this article remains in effect up to the 61st day but not less than 31 days after the date of issuance.

(k) To ensure that an officer responding to a call is aware of the existence and terms of an order for emergency protection issued under this article, each municipal police department and sheriff shall establish a procedure within the department or office to provide adequate information or access to information for peace officers of the names of persons protected by an order for emergency protection issued under this article and of persons to whom the order is directed. The police department or sheriff may enter an order for emergency protection issued under this article in the department's or office's record of outstanding warrants as notice that the order has been issued and is in effect.

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(l) In the order for emergency protection, the magistrate may suspend a license to carry a concealed handgun issues under Section 411.177, Government Code, that is held by the defendant.

(m) In this article:

(1) "family [~~, "family"~~]," "family violence," and "household" have the meanings assigned by Chapter 71, Family Code.

(2) "Firearm" has the meaning assigned by Chapter 46, Penal Code.

Amended effective Sept. 1, 2001 (SB 199, §4)

Art. 17.293. Delivery Of Order For Emergency Protection To Other Persons

The magistrate or the clerk of the magistrate's court issuing an order for emergency protection under Article 17.292 that suspends a license to carry a concealed handgun shall immediately send a copy of the order to the appropriate division of the Department of Public Safety at its Austin headquarters. On receipt of the order suspending the license, the department shall:

(1) record the suspension of the license in the records of the department;

(2) report the suspension to local law enforcement agencies, as appropriate; and

(3) demand surrender of the suspended license from the license holder.

Art. 17.40. Conditions Related To Victim Or Community Safety

(a) To secure a defendant's attendance at trial, a magistrate may impose any reasonable condition of bond related to the safety of a victim of the alleged offense or to the safety of the community.

(b) At a hearing limited to determining whether the defendant violated a condition of bond imposed under Subsection (a), the magistrate may revoke the defendant's bond only if the magistrate finds by a preponderance of the evidence that the violation occurred.

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Historical Note

The 76th Legislature adopted SB 804, which provides:

Section 1.(a) The Department of Public Safety of the State of Texas shall collaborate with the Texas Council on Family Violence and the Texas District and County Attorneys Association to develop a standard format for protective orders issued under Title 4, Family Code.

(b) In developing the standard format for protective orders as required by Subsection (a) of this section, the Department of Public Safety of the State of Texas shall consider the standard formats for protective orders adopted by other states.

(c) To the maximum extent possible, the standard format for a protective order developed under Subsection (a) of this section must be concise and easily understandable to a peace officer who attempts to enforce the order.

Section 2. Not later than December 1, 2000, the director of the Department of Public Safety of the State of Texas shall make a recommendation to the 77th Legislature regarding a standard format for protective orders issued under Title 4, Family Code.

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OVERVIEW

This section provides the court with the authority, after indictment, to order the defendant to undergo a test to determine whether the person has AIDS, HIV, or other sexually transmitted diseases. The court may order this testing on its own motion or on the request of the victim of the alleged offense. The results of the testing shall be made available to the victim.

TEXAS CODE OF CRIMINAL PROCEDURE
CHAPTER 21. INDICTMENT AND INFORMATION

Art. 21.31. AIDS And HIV Testing

(a) A person who is indicted for or who waives indictment for an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code, shall, at the direction of the court, undergo a medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immuno-deficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on the request of the victim of the alleged offense. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. The court may require a defendant previously required under this article to undergo a medical procedure or test on indictment for an offense to undergo a subsequent medical procedure or test following conviction of the offense. The person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall be required to make the notification of the test result to the victim of the alleged offense and to the defendant. The state may not use the fact that a medical procedure or test was performed on a person under this subsection or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense.

(b) Testing under this section shall be conducted in accordance with written infectious disease control protocols adopted by the Texas Board of Health that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the person accused and the victims of the alleged offense.

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The victim has the right to request HIV testing. Most victims of sexual assault may not be aware of this right. Victims should be notified of this right near the time of indictment.

The court will be notified by the local health authority if the defendant has submitted or refused to submit to the procedure(s) or test(s).

(c) Nothing in this section would allow a court to release a test result to anyone other than those specifically authorized by this law and the provisions of Section 81.103(d), Health and Safety Code, shall not be construed to allow such disclosure.

Release of test results to crime victim, see Vernon's Ann.Civ.St. art. 4419b-1.

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OVERVIEW

This section addresses when a Victim Impact Statement should be presented during the court process. Victim-offender mediation, if used carefully, can assist victims in recovering from the trauma of their victimization. The Victim Impact Statement provides victims an opportunity to express, in writing, the impact of the crime on their lives. Before a plea of guilty or nolo contendere is accepted, the court should inquire if the attorney representing the State has possession of the Victim Impact Statement. The court will ask for a copy of the statement if there is one. Interviews with judges, parole board members, and TYC staff involved in release decisions have stressed the value of Victim Impact Statements in the decision-making process.

TEXAS CODE OF CRIMINAL PROCEDURE
CHAPTER 26. ARRAIGNMENT

Art. 26.13. Plea Of Guilty

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial; and

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an

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Victim-offender mediation or "dialogue" programs show promise for closure and eventual recovery, particularly for victims. However, participation should always be voluntary and victim-led or initiated.

offense for which a person is subject to registration under that chapter.

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

(d) The court may make the admonitions required by this article either orally or in writing. If the court makes the admonitions in writing, it must receive a statement signed by the defendant and the defendant's attorney that he understands the admonitions and is aware of the consequences of his plea. If the defendant is unable or refuses to sign the statement, the court shall make the admonitions orally.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned.

(f) The court must substantially comply with Subsection (e) of this article. The failure of the court to comply with Subsection (e) of this article is not grounds for the defendant to set aside the conviction, sentence, or plea.

(g) Before accepting a plea of guilty or a plea of nolo contendere and on the request of a victim of the offense, the court may assist the victim and the defendant in participating in a victim-offender mediation program.

(h) Before accepting a plea of guilty or nolo contendre from a defendant described by Subsection (a)(5), the court shall ascertain whether the attorney representing the defendant has advised the defendant regarding registration requirements under Chapter 62.

(i) [~~(h)~~] Notwithstanding this article, a court shall not order the state or any of its prosecuting attorneys to participate in mediation, dispute resolution, arbitration, or other similar procedures in relation to a criminal prosecution unless upon written consent of the state.

Amended effective Sept. 1, 2001 (HB 2812, §21.001)

NOTES

OVERVIEW

This section addresses the importance of the right of a victim, close relative of a deceased victim, or guardian of a victim to be heard in the presence of the defendant. The victim is entitled to an opportunity to voice his or her views about the offense, the defendant, and the effect of the offense on the victim. The statement must be made after sentence is pronounced. This is often a time of closure for the victim and/or the family.

TEXAS CODE OF CRIMINAL PROCEDURE
CHAPTER 42. JUDGEMENT AND SENTENCE

Art. 42.03. Pronouncing Sentence; Time; Credit For Time Spent In Jail Between Arrest And Sentence Or Pending Appeal

Sec. 1. (a) Except as provided in Article 42.14, sentence shall be pronounced in the defendant's presence.

(b) The court shall permit a victim, close relative of a deceased victim, or guardian of a victim, as defined by Article 56.01 of this code, to appear in person to present to the court and to the defendant a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim. The victim, relative, or guardian may not direct questions to the defendant while making the statement. The court reporter may not transcribe the statement. The statement must be made:

(1) after punishment has been assessed and the court has determined whether or not to grant community supervision in the case;

(2) after the court has announced the terms and conditions of the sentence; and

(3) after sentence is pronounced.

Sec. 2. (a) In all criminal cases the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail in said cause, other than confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court.

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(b) In all revocations of a suspension of the imposition of a sentence the judge shall enter the restitution or reparation due and owing on the date of the revocation.

Sec. 3. If a defendant appeals his conviction, is not released on bail, and is retained in a jail as provided in Section 7, Article 42.09, pending his appeal, the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail pending disposition of his appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the defendant under this section, and the institutional division of the Texas Department of Criminal Justice shall grant the credit in computing the defendant's eligibility for parole and discharge.

Sec. 4. When a defendant who has been sentenced to imprisonment in the institutional division of the Texas Department of Criminal Justice has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail.

Sec. 8. (g) An employee of the Texas Department of Criminal Justice, sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate pursuant to court order under this article or in connection with an inmate or offender programmatic or non-programmatic activity, including work, educational, and treatment activities, if the act or failure to act was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

NOTES

OVERVIEW

Texas courts are required to order restitution in each case unless a written order explaining why restitution should not be granted is entered by the court. A defendant may be ordered to reimburse the Crime Victims' Compensation Fund for monies paid on behalf of the defendant's victim. If no reimbursement is due to the Fund, a judge may require a probated offender to pay a one-time fee of up to $50 for misdemeanors and up to $100 for felonies.

However, if a victim receives an award from the Fund and the convicting court orders restitution, the defendant is required by law to reimburse the fund in an amount equal to that ordered by the court. Nothing precludes the court from ordering restitution to be made directly to the Fund.

Restitution is a basic right for the victim. Restitution orders tell the victim that the court acknowledged the impact of the crime and moves the victim towards total recovery.

TEXAS CODE OF CRIMINAL PROCEDURE
CHAPTER 42. JUDGMENT AND SENTENCE

Art. 42.037. Restitution

(a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense. Holding defendants accountable for paying restitution is vitally important to the victim's sense that justice has been served, especially if the victim has suffered financial, emotional and/or physical hardship as a result of the crime. If the court does not order restitution or orders partial restitution under this subsection, the court shall state on the record the reasons for not making the order or for the limited order.

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

NOTES

Restitution may be ordered by the parole board as a condition of parole if the amount of restitution is reflected in the judgement and sentence.

(A) to return the property to the owner of the property or someone designated by the owner; or

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

(i) the value of the property on the date of the damage, loss, or destruction; or

(ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.

(2) If the offense results in bodily injury to a victim, the court may order the defendant to do any one or more of the following:

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including non-medical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; or

(C) reimburse the victim for income lost by the victim as a result of the offense.

(3) If the offense results in the death of a victim, the court may, in addition to an order under Sub-division (2) of this subsection, order the defendant to pay an amount equal to the cost of necessary funeral and related services.

(4) If the victim or the victim's estate consents, the court may, in addition to an order under Sub-division (2) of this subsection, order the defendant to make restitution by performing services instead of by paying money or make restitution to a person or organization designated by the victim or the estate.

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

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

(2) the financial resources of the defendant;

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

(4) other factors the court deems appropriate.

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The return of property, which is ordered by the court, means more than just dollars to the victim. The sentimental value of the item/s and attention paid by the court can help the victim in recovery.

Continuing and future medical and counseling costs should be considered.

(d) If the court orders restitution under this article and the victim is deceased the court shall order the defendant to make restitution to the victim's estate.

(e) The court shall impose an order of restitution that is as fair as possible to the victim. The imposition of the order may not unduly complicate or prolong the sentencing process.

(f)(1) The court may not order restitution for a loss for which the victim has received or will receive compensation. The court may, in the interest of justice, order restitution to any person who has compensated the victim for the loss to the extent the person paid compensation. An order of restitution shall require that all restitution to a victim be made before any restitution to any other person is made under the order.

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

(g)(1) The court may require a defendant to make restitution under this article within a specified period or in specified installments.

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

(A) the end of the period of probation, if probation is ordered;

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

(C) five years after the date of sentencing in any other case.

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

(4) The order of restitution must require the defendant to make restitution directly to the victim or other person eligible for restitution under this article or to deliver the amount or property due as restitution to a community supervision and corrections department for transfer to the victim or person.

(h) If a defendant is placed on community supervision [~~probation~~] or is paroled or released on mandatory supervision [~~under this chapter~~], the court or the parole panel [~~Board of Pardons and Paroles~~] shall order the payment of restitution ordered under this article as a condition of community supervision [~~probation~~], parole, or mandatory supervision. The court may revoke community supervision [~~probation~~] and the parole panel [~~Board of Pardons and Paroles~~] may revoke parole or mandatory supervision if the defendant fails to comply with the order. In determining whether to revoke

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community supervision [~~probation~~], parole, or mandatory supervision, the court or parole panel [~~board~~] shall consider:

(1) the defendant's employment status;

(2) the defendant's earning ability;

(3) the defendant's financial resources;

(4) the willfulness of the defendant's failure to pay; and

(5) any other special circumstances that may affect the defendant's ability to pay.

(i) In addition to any other terms and conditions of probation imposed under Article 42.12 of this code, the court may require a probationer to reimburse the crime victims compensation fund created under Sub-chapter B, Chapter 56 for any amounts paid from that fund to a victim of the probationer's offense. In this subsection, "victim" has the meaning assigned by Article 56.01 of this code.

(j) The court may order a community supervision and corrections department to obtain information per-taining to the factors listed in Subsection (c) of this article. The probation officer shall include the information in the report required under Section 9(a), Article 42.12, of this code or a separate report, as the court directs. The court shall permit the defendant and the prosecuting attorney to read the report.

(k) The court shall resolve any dispute relating to the proper amount or type of restitution. The standard of proof is a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the prosecuting attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and the defendant's dependents is on the defendant. The burden of demonstrating other matters as the court deems appropriate is on the party designated by the court as justice requires.

NOTES

(l) Conviction of a defendant for an offense involving the act giving rise to restitution under this article stops the defendant from denying the essential allegations of that offense in any subsequent federal civil proceeding or state civil proceeding brought by the victim, to the extent consistent with state law.

(m) An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

(n) If a defendant is convicted of or receives deferred adjudication for an offense under Section 25.05, Penal Code, if the child support order on which prosecution of the offense was based required the defendant to pay the support to a local registry of the Title IV-D agency, and if the court orders restitution under this article, the order of restitution must require the defendant to pay the child support in the following manner:

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

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

(o) The pardons and paroles division may waive a supervision fee or an administrative fee imposed on an inmate under Section 508.182, Government Code, during any period in which the inmate is required to pay restitution under this article.

Amendments to (h) effective Sept. 1, 2001 (HB 1649, §10)
Amendments adding (o) effective Sept. 1, 2001 (HB 1572, §2)

Art. 42.0371. Mandatory Restitution for Kidnaped Or Abducted Children

(a) The court shall order a defendant convicted of an offense under Chapter 20, Penal code, or Section 25.03, 25.031, or 25.04, Penal Code, to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment, for the victim of the offense if the victim is younger than 17 years of age.

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(b) The court shall, after considering the financial circumstances of the defendant, specify in a restitution order issued under Subsection (a) the manner in which the defendant must pay the restitution.

(c) A restitution order issued under subsection (a) may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgement in a civil action.

(d) The court may hold a hearing, make findings of fact, and amend a restitution order issued under Subsection (a) if the defendant fails to pay the victim named in the order in the manner specified by the court.

Art. 42.12, Sec. 11. Basic Conditions of Community Supervision

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

Art. 42.12, Sec. 11(18).

(18) Reimburse the general revenue fund for any amounts paid from that fund to a victim, as defined by Article 56.01 of this code, of the defendant's offense or if no reimbursement is required, make one payment to the fund in an amount not to exceed $50 if the offense is a misdemeanor or not to exceed $100 if the offense is a felony;

Art. 42.12, Sec. 11 (21, 22, 23).

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

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One of the most important conditions of community supervision is no contact with the victim or the victims' family.

(22) Submit a blood sample or other specimen to the Department of Public Safety under Sub-chapter G, Chapter 411, government Code, for the Purpose of creating a DNA record of the defendant; and

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

Art. 42.12, Sec. 11 (g)

(g) If a judge grants community supervision to a person convicted of an offense under Title 5, Penal code, that the court determines involves family violence, the judge may require the person to make one payment in an amount not to exceed $100 to a family violence shelter center that receives state or federal funds and that serves the county in which the court is located. IN this subsection, "family violence" has the meaning assigned by Section 71.004, Family Code, and "family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

Art. 42.12, Sec. 14. Child Abusers, Sex Offenders, and Family Violence Offenders; Special Conditions

(a) If the court grants probation to a person convicted of an offense described by Article 17.41 (a) of this code, the court may require as a condition of probation that the defendant not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the copy of terms and conditions, frequented by the victim. In imposing the condition, the court may grant the defendant supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subsection prevails for a period specified by the court granting probation, not to exceed 90 days.

(b) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code, the court may require the probationer to attend psychological counseling sessions at the direction of the probation officer and may require the probationer to pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense, upon a finding that the probationer is financially able to make payment. Any payments ordered under this subsection may not extend past one year from the date of the order.

(c) If the court grants community supervision to a person convicted of an offense involving family violence, as defined by Section

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71.004, Family code, the court may require the defendant to attend, at the direction of the community supervision and corrections department officer, counseling sessions for the elimination of violent behavior with a licensed counselor, social worker, or other professional who has been trained in family violence intervention or to attend a battering intervention and prevention program if available that meets guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice. If the court requires the defendant to attend counseling or a program, the court shall require the defendant to begin attendance not later than the 60th day after the date the court grants community supervision, notify the community supervision and corrections department officer of the name, address, and phone number of the counselor or program, and report the defendant's attendance to the officer. The court shall require the defendant to pay all the reasonable costs of the counseling sessions or attendance in the program on a finding that the defendant is financially able to make payment. If the court finds the defendant is unable to make payment, the court shall make the counseling sessions or enrollment in the program available without cost to the defendant. The court may also require the defendant to pay all or a part of the reasonable costs incurred by the victim for counseling made necessary by the offense, on a finding that the defendant is financially able to make payment. The court may order the defendant to make payments under this subsection for a period not to exceed one year after the date on which the order is entered.

OVERVIEW

In 1979, the Crime Victims' Compensation Fund was established by the Texas Legislature.

In 1989, the citizens of Texas voted to afford rights to victims of crime in Texas. The Texas Constitution was amended to add these 13 rights.

Fines and fees assessed offenders by the court directly support the Fund. In turn, these funds are offered to victims of crime in Texas to assist them with various out-of-pocket expenses incurred due to the crime. The Crime Victims' Compensation Fund is the payor of last resort. Benefits offered to victims may include, but are not limited to, medical bills, funeral costs, loss of support, loss of wages, dependent care, counseling, and special provisions for victims suffering catastrophic injuries.

TEXAS CODE OF CRIMINAL PROCEDURE
CHAPTER 56. RIGHTS OF CRIME VICTIMS
Sub-chapter A. Crime Victims' Rights

Art. 56.01. Definitions

In this chapter:

(1) "Close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(2) "Guardian of a victim" means a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim.

(3) "Victim" means a person who is the victim of sexual assault, kidnaping, or aggravated robbery or who has suffered bodily injury or death as a result of the criminal conduct of another.

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Art. 56.02. Crime Victims' Rights

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those [~~court~~] proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a pre-sentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding compensation to victims of crime as provided by Sub-chapter B, [~~Chapter 56~~], including information related to the costs that may be compensated under that subchapter [~~Act~~] and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that Act, the payment for a medical examination under Article 56.06 [~~of this code~~] for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance.

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the

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Victims need to be prepared for and educated about the criminal justice/court system. They want to know what to expect; otherwise, they may assume that your court works like the ones they see on television.

The victim has a right to provide information about the impact of the crime on his/her life and to have such information included in the pre-sentencing investigation. Despite the importance of their participation in this stage of the judicial process, some victims may still fear for their lives and choose not to appear. Additionally, a victim may have received information about this right too late to participate in the process.

A judge may elect to ask the prosecutor or victim why the information was not provided.

The right to information about Crime Victims' Compensation is the most tangible right victims have. A victim should not be required to pay for expenses incurred because of the crime. However, legally, Crime Victims' Compensation benefits can not pay for loss of or damage to property.

The Crime Victims' Compensation Fund may assist victims of crime by reimbursing out-of-pocket expenses for items such as medical bills, counseling, funeral, loss of wages, loss of support, dependent care, one-time relocation costs and rental assistance and catastrophic injuries. Certain eligibility requirements must be met in order to qualify.

Victims have jobs and lives. They may be confused if a trial/hearing is canceled or rescheduled. When the right to be notified about court proceedings is not afforded due to a technicality (ie., a change in court time, date, etc.), a victim/ family member can be re-traumatized.

Judges should be aware of any last minute resets or rescheduling and require notice to opposing counsel. Otherwise, victims will experience the trauma of preparing to face the accused in person and in some cases, travel great distances, take off from work, etc., only to be told on arrival that the case was set for another day.

parole of any defendant convicted of any crime subject to this subchapter [~~Act~~], and to be notified, if requested, of the defendant's release.

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause; [~~and~~]

(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code.

(12) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice; and

(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the Judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the Board of Pardons and Paroles before an inmate is released on parole.

(b) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the right to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case.

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Many judges argue that prosecutors are charged with this responsibility. However, just as a judge is charged with protecting the constitutional and statutory rights of the accused, the judge also has the co-comitant duty to protect the rights of the victims.

Often victims are excluded from the courtroom due to the "invoking of the rule." As a matter of courtesy, it is helpful to provide safe and comfortable waiting areas where victims may spend long hours. The process itself is uncomfortable enough.

Judges can take several steps to help insure the safety of victims, decrease their courthouse trauma, and reduce the potential for confrontations and violence at the courthouse. These steps range from simple admonishments by the judge to renovations of the courthouse. Examples:

(1) Requiring the defendant or protective order applicant to remain in the courtroom until the victim has been escorted out or has had the opportunity to leave; or

(2) Requesting (or allowing) advocates to be available to accompany victims.

A requested notification by the prosecutor can save a victim's job and dignity when he or she is questioned about missing work. Although we would like to assume differently, many victims actually lose their jobs as a result of frequent trips.

Victims of a sex offense suffer psychological and potential physical trauma. A major concern is whether or not they have been infected with AIDS, HIV, or an STD.

This topic should be handled and discussed in a way that respects the privacy of the victim.

(c) The office of the attorney representing the state, and the sheriff, police, and other law enforcement agencies shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by Subsection (a) of this article and, on request, an explanation of those rights.

(d) A judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this article. The failure or inability of any person to provide a right or service enumerated in this article may not be used by a defendant in a criminal case as a ground for appeal, a ground to set aside the conviction or sentence, or a ground in a habeas corpus petition. A victim, guardian of a victim, or close relative of a deceased victim does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

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Amended effective Sept. 1, 2001 (HB 1572, §3), Section 16 of HB 1572 provides:

"(a) The office of the attorney general is required to complete its pilot project regarding a computer network victim notification system by January 1, 2002, or as soon as practicable. In completing the project, the office of the attorney general shall consult with the office of court administration and the Texas Department of Criminal Justice. The office of the attorney general shall continue to provide funding for continuation of the operation of the project in the counties comprising the pilot project until the computer network victim notification system is operational in those counties.

"(b) The office of the attorney general may contract with the office of court administration or the Texas Department of Criminal Justice, or both, to implement a computer network victim notification system. Implementation of the state-wide system shall begin no later than June 1, 2002, according to a written schedule developed by the implementing agency or agencies."

Art. 56.03. Victim Impact Statement

(a) The Texas Crime Victim Clearinghouse, with the participation of the Texas Adult Probation Commission and the Board of Pardons and Paroles, shall develop a form to be used by law enforcement agencies, prosecutors, and other participants in the criminal justice system to record the impact of an offense on a victim of the offense, guardian of a victim, or a close relative of a deceased victim and to provide the agencies, prosecutors, and participants with information needed to contact the victim, guardian, or relative if needed at any stage of a prosecution of a person charged with the offense. The Texas Crime Victim Clearinghouse, with the participation of the Texas Adult Probation Commission and the Board of Pardons and Paroles, shall also develop a victims' information booklet that provides a general explanation of the criminal justice system to victims of an offense, guardians of victims, and relatives of deceased victims.

(b) The victim impact statement must be in a form designed to inform a victim, guardian of a victim, or a close relative of a deceased victim with a clear statement of rights provided by Article 56.02 of this code and to collect the following information:

(1) the name of the victim of the offense or, if the victim has a legal guardian or is deceased, the name of a guardian or close relative of the victim;

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(2) the address and telephone number of the victim, guardian, or relative through which the victim, guardian of a victim, or a close relative of a deceased victim, may by contacted;
(3) a statement of economic loss suffered by the victim, guardian, or relative as a result of the offense;
(4) a statement of any physical or psycho-logical injury suffered by the victim, guardian, or relative as a result of the offense, as described by the victim, guardian, relative, or by a physician or counselor;
(5) a statement of any psychological services requested as a result of the offense;
(6) a statement of any change in the victim's, guardian's, or relative's personal welfare or familial relationship as a result of the offense;
(7) a statement as to whether or not the victim, guardian, or relative wishes to be notified in the future of any parole hearing for the defendant
and an explanation as to the procedures by
which the victim, guardian, or relative may obtain information concerning the release of the defendant from the Texas Department of Corrections; and
(8) any other information, other than facts related to the commission of the offense, related to the impact of the offense on the victim, guardian, or relative.

(c) The victim assistance coordinator, designated in Article 56.04(a) of this code, shall send to a victim, guardian of a victim, or close relative of a deceased victim a victim impact statement, a victims' information booklet, and an application for compensation under Sub-chapter B, Chapter 56, along with an offer to assist in completing those forms on request. The victim assistance coordinator, on request, shall explain the possible use and consideration of the victim impact statement at sentencing and future parole hearing of the offender.

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A public file that contains the victim's address may result in threats or injury to a victim. Confidentiality must be upheld.

Many times the victim impact statement form is filled out while the victim is still in a state of shock. Without assistance for the victim, these forms may be incomplete.

(d) If a victim, guardian of a victim, or close relative of a deceased victim states on the victim impact statement that he wishes to be notified of parole proceedings, the victim, guardian, or relative is responsible for notifying the Board of Pardons and Paroles of any change of address.

(e) Prior to the imposition of a sentence by the court in a criminal case, the court, if it has received a victim impact statement, shall consider the information provided in the statement. Before sentencing the defendant, the court shall permit the defendant or his counsel a reasonable time to read the statement, excluding the victim's name, address, and telephone number, comment on the statement, and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the statement. If the court sentences the defendant to a term of community supervision [~~probation~~], the court shall forward any victim's impact statement received in the case to the community supervision and corrections [~~probation~~] department supervising the defendant, along with the papers in the case. **(emphasis added.)**

(f) The court may not inspect a victim impact statement until after a finding of guilt or until deferred adjudication is ordered and the contents of the statement may not be disclosed to any person unless:

(1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or

(2) the defendant in writing authorizes the court to inspect the statement. **(emphasis added.)**

(g) A victim impact statement is subject to discovery under Article 39.14 of this code before the testimony of the victim is taken only if the court determines that the statement contains exculpatory material. **(emphasis added.)**

(h) Not later than December 1 of each odd-numbered year, the Texas Crime Victim Clearinghouse, with the participation of the Texas Adult Probation Commission and the Board of Pardons and Paroles, shall update the victim impact statement form and any other information provided by the commission to victims, guardians of victims, and relatives of deceased victims, if necessary, to reflect changes in law relating to criminal justice and the rights of victims and guardians and relatives of victims.

(i) In addition to the information described by Subsections (b)(1)-(8), the victim impact statement must be in a form designed to

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It is of vital importance that the court be aware of whether or not the defendant has legal access to the child. An oversight in this area could be extremely dangerous for the child.

The court should ask the prosecutor if the victim has prepared a Victim Impact Statement. Failure to inquire may result in a victim being excluded.

A judge may wish to designate a liaison or point of contact to work with the victim assistance coordinator.

The victim assistance coordinator should be an individual who is thoroughly familiar with issues of victimology and victimization.

collect information on whether, if the victim is a child, there is an existing court order granting to the defendant possession of or access to the victim. If information collected under this subsection indicates the defendant is granted access or possession under court order and the defendant is subsequently confined by the Texas Department of Criminal Justice as a result of the commission of the offense, the victim services office department shall contact the court issuing the order before the defendant is released from the department on parole or mandatory supervision. **(emphasis added.)**

Amended effective Sept. 1, 2001 (HB 1572, §4). See effective note at the end of Article 56.02.

Art. 56.04. Victim Assistance Coordinator; Crime Victim Liaison

(a) The district attorney, criminal district attorney, or county attorney who prosecutes criminal cases shall designate a person to serve as victim assistance coordinator in that jurisdiction.

(b) The duty of the victim assistance coordinator is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, and relatives by Article 56.02 of this code. The victim assistance coordinator shall work closely with appropriate law enforcement agencies, prosecuting attorneys, the Board of Pardons and Paroles, and the judiciary in carrying out that duty.

(c) Each local law enforcement agency shall designate one person to serve as the agency's crime victim liaison. Each agency shall consult with the victim assistance coordinator in the office of the attorney representing the state to determine the most effective manner in which the crime victim liaison can perform the duties imposed on the crime victim liaison under this article.

(d) The duty of the crime victim liaison is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, or close relatives of deceased victims by Subdivisions (4), (6), and (9) of Article 56.02(a) of this code.

(e) The victim assistance coordinator shall send a copy of a victim impact statement to the court sentencing the defendant. If the court sentences the defendant to imprisonment in the Texas Department of Corrections, it shall attach the copy of the victim impact statement to the commitment papers. **(emphasis added.)**

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Art. 56.045. Presence of Advocate or Representative During Forensic Medical Examination

(a) Before conducting a forensic medical examination of a person who consents to such an examination for the collection of evidence for an alleged sexual assualt, the physician or other medical services personnel conducting the examination shall offer the person the opportunity to have an advocate from a sexual assault program as defined by Section 420.003, Government Code, who has completed a sexual assault training program described by Section 420.011(b), Government Code, present with the person during the examination, if the advocate is available at the time of the examination.

(b) The advocate may only provide the injured person with:

(1) counseling and other support services; and

(2) information regarding the rights of crime victims under Article 56.02.

(c) Notwithstanding Subsection (a), the advocate and the sexual assault program providing the advocate may not delay or otherwise impede the screening or stabilization of the an emergency medical condition.

(d) The sexual assault program providing the advocate shall pay all costs associated with providing the advocat

(e) Any individual or entity, including a health care facility, that provides an advocate with access to a person consenting to an examination under Subsection (a) is not subject to civil or criminal liability for providing that access. In this subsection, "health care facility" includes a hospital licensed under Chapter 241, Health and Safety Code.

(f) If a person alleging to have sustained injuries as the victim of a sexual assault was confined in a penal institution, as defined by Section 1.07, Penal Code, at the time of the alleged assault, the penal institution shall provide, at the person's request, a representative to be present at any forensic examination conducted for the purpose of collecting and preserving evidence related to the investigation or prosecution of the alleged assault. The representative may only provide the injured person with counseling and other support services and with information regarding the rights of crime victims under Article 56.02 and may not delay or otherwise impede the screening or stabilization of an emergency medical condition. The representative must be approved by the penal institution and must be a:

(1) psychologist;
(2) sociologist;
(3) chaplain;
(4) social worker;
(5) case manager; or
(6) volunteer who has completed a sexual training program described by Section 420.011(b), Government Code.

Enacted effective Sept. 1, 2001 (HB 1234, §1)

Art. 56.05. Reports Required

(a) The Board of Pardons and Paroles, the Texas Adult Probation Commission, and the Texas Crime Victim Clearinghouse, designated as the planning body for the purposes of this article, shall develop a survey plan to maintain statistics on the numbers and types of persons to whom state and local agencies provide victim impact statements during each year.

(b) At intervals specified in the plan, the planning body may require any state or local agency to submit, in a form prescribed for the reporting of the information, statistical data on the numbers and types of persons to whom the agency provides victim impact statements and any other information required by the planning

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body. The form must be designed to protect the privacy of persons afforded rights under this chapter and to determine whether the selected agency or office is making a good faith effort to protect the rights of the persons served.

(c) The Texas Crime Victim Clearinghouse shall develop crime victim assistance standards and distribute those standards to law enforcement officers and attorneys representing the state to aid those officers and prosecutors in performing duties imposed by this chapter.

Art. 56.06. Costs of Medical Examination

(a) A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination. On application to the attorney general, the law enforcement agency is entitled to be reimbursed for the reasonable costs of that examination if the examination was performed by a physician or by a sexual assault examiner or sexual assault nurse examiner, as defined by Section 420.003, Government Code.

(b) A law enforcement agency or prosecuting attorney's office may pay all costs related to the testimony of a licensed health care professional in a criminal proceeding regarding the results of the medical examination or manner in which it was performed.

(c) [~~(b)~~] This article does not require a law enforcement agency to pay any costs of treatment for injuries.

Amended effective June 17, 2001 (HB 131, §1)

Art. 56.07. Notification

At the initial contact or at the earliest possible time after the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall provide the victim a written notice containing:

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(1) information about the availability of emergency and medical services, if applicable;

(2) notice that the victim has the right to receive information regarding compensation to victims of crime as provided by Sub-chapter B, Chapter 56, including information about:

(A) the costs that may be compensated under that Act and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that Act;

(B) the payment for a medical examination for a victim of a sexual assault under Article 56.06 of this code; and

(C) referral to available social service agencies that may offer additional assistance;

(3) the name, address, and phone number of the law enforcement agency's victim assistance liaison;

(4) the address, phone number, and name of the crime victim assistance coordinator of the office of the attorney representing the state;

(5) the following statement:

"You may call the law enforcement agency's telephone number for the status of the case and information about victims' rights"; and

(6) the rights of crime victims under Article 56.02 of this code.

Art. 56.08. Notification Of Rights By Attorney Representing The State

(a) Not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, the attorney representing the state shall give to each victim of the offense a written notice containing:

(1) a brief general statement of each procedural stage in the processing of a criminal case,

including bail, plea bargaining, parole restitution, and appeal;

(2) notification of the rights and procedures under this chapter;

(3) suggested steps the victim may take if the victim is subjected to threats or intimidation;

(4) notification of the right to receive inform-ation regarding compensation to victims of crime as provided by Sub-chapter B of this chapter, including information about:

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A defendant can be ordered to pay restitution to the law enforcement agency that paid for the sexual assault exam.

Costs incurred to treat injuries may be paid by the Crime Victims' Compensation Fund.

(A) the costs that may be compensated under Sub-chapter B of this chapter, eligibility for compensation, and procedures for application for compensation under Sub-chapter B of this chapter;

(B) the payment for a medical examination for a victim of a sexual assault under Article 56.06 of this code; and

(C) referral to available social service agencies that may offer additional assistance;

(5) the name, address, and phone number of the local victim assistance coordinator;

(6) the case number and assigned court for the case;

(7) the right to file a victim impact statement with the office of the attorney representing the state and the pardons and paroles division of the Texas Department of Criminal Justice; and

(8) notification of the right of a victim, guardian of a victim, or close relative of a deceased victim, as defined by Section 508.117, Government Code, to appear in person before a member of the Board of Pardons and Paroles as provided by Section 508.153, Government Code.

(b) If requested by the victim, the attorney representing the state, as far as reasonably practical, shall give to the victim notice of any scheduled court proceedings, changes in that schedule, the filing of a request for continuance of a trial setting, and any plea agreements to be presented to the court.

(c) A victim who receives a notice under Subsection (a) of this article and who chooses to receive other notice under law about the same case must keep the following persons informed of the victim's current address and phone number:

(1) the attorney representing the state; and

(2) the pardons and paroles division of the Texas Department of Criminal Justice if after sentencing the defendant is confined in the institutional division.

(d) An attorney representing the state who receives information concerning a victim's current address and phone number shall immediately provide that information to the community supervision and corrections department supervising the defendant, if the defendant is placed on community supervision.

(e) The brief general statement describing the plea bargaining stage in a criminal trial required by Subsection (a)(1) shall include a statement that:

(1) the victim impact statement provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state in entering into the plea bargain agreement; and

(2) the judge before accepting the plea bargain is required under Section 26.13(e) to ask:

(A) whether a victim impact statement has been returned to the attorney; and

(B) if a statement has been returned, for a copy of the statement.

Amended effective Sept. 1, 2002 (HB 1572, §5)

Art. 56.09. Victim's Right to Privacy

As far as reasonably practical, the address of the victim may not be a part of the court file except as necessary to identify the place of the crime. The phone number of the victim may not be a part of the court file.

Art. 56.10. Victims Discovery Attendance

Unless absolutely necessary, victims or witnesses who are not incarcerated may not be required to attend depositions in a correctional facility. **(emphasis added.)**

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A victim and/or family's life could be in danger if this article is not followed.

Art. 56.11. Notification To Victim Of Release Or Escape Of Defendant

(a) The Texas Department of Criminal Justice or the sheriff, whichever has custody of the defendant in the case of a felony, or the sheriff in the case of a misdemeanor, shall notify the victim of the offense whenever a person convicted of an offense described by Subsection (c):

(1) completes the person's sentence and is released; or

(2) escapes from a correctional facility.

(b) If the Texas Department of Criminal Justice is required by Subsection (a) to give notice to the victim of an offense, the department shall also give notice to local law enforcement officials in the county in which the victim resides.

(c) This article applies to a person convicted of an offense described by Section 508.187(a), Government Code, or an offense involving family violence, stalking, or violation of a protective order or magistrate's order.

(d) It is the responsibility of a victim desiring notification of the offender's release to provide the Texas Department of Criminal Justice or the sheriff, as appropriate, with the address and telephone number of the victim or other person through whom the victim may be contacted and to notify the department or the sheriff of any change of address or telephone number of the victim or other person. Information obtained and maintained by the Texas Department of Criminal Justice or a sheriff under this subsection is privileged and confidential.

(e) The Texas Department of Criminal Justice or the sheriff, as appropriate, shall make a reasonable attempt to give the notice required by Subsection (a):

(1) not later than the 30th day before the person completes the sentence and is released; or

(2) immediately if the person escapes from the correctional facility.

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(f) An attempt by the Texas Department of Criminal Justice or the sheriff to give notice to the victim at the victim's last known address, as shown on the records of the department or agency, constitutes a reasonable attempt to give notice under this article.

(g) In this article:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Family violence" has the meaning assigned by Section 71.01, Family Code.

Art. 56.12. Notification Of Escape or Transfer

(a) The Texas Department of Criminal Justice shall immediately [~~make a reasonable attempt to~~] notify the victim of an offense, the victim's guardian, or the victim's close relative, if the victim is deceased[~~, whenever the offender escapes from a facility operated by the institutional division of the Texas Department of Criminal Justice~~], if the victim, victim's guardian, or victim's close relative has notified the institutional division as provided by Subsection (b) of this article, whenever the offender:

(1) escapes from a facility operated by the institutional division; or

(2) is transferred from the custody of the institutional division to the custody of a peace officer under a writ of attachment or a bench warrant.[~~An attempt by the Texas Department of Criminal Justice to give notice to the victim, the guardian of the victim, or a close relative of a deceased victim at the victim's, the guardian of the victim's, or a close relative of a deceased victim's last known telephone number or address as shown on the records of the department constitutes a reasonable attempt to give notice under this subsection.~~]

(b) It is the responsibility of the victim, guardian, or close relative desiring notification of an offender's escape or transfer from custody under a writ of attachment or bench warrant to notify the Texas Department of Criminal Justice of the desire for notification and any change of address.

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If appropriate, remind the victim to provide a current address and contact information to TDCJ and the district attorney's office.

(c) In providing notice under Subsection (a)(2), the institutional division shall include the name, address, and telephone number of the peace officer receiving the inmate into custody. On returning the inmate to the custody of the institutional division, the victim services division of the Texas Department of Criminal Justice shall notify the victim, the victim's guardian, or the victim's close relative if the victim is deceased, of that fact.

Art. 56.13. Victim-Offender Mediation

The victim services division of the Texas Department of Criminal Justice shall:

(1) train volunteers to act as mediators between victims, guardians of victims, and close relatives of deceased victims and offenders whose criminal conduct caused bodily injury or death to victims; and

(2) provide mediation services through referral of a trained volunteer, if requested by a victim, guardian of a victim, or close relative of a deceased victim.

Amended effective Sept. 1, 2001 (HB 1572, §7).

TEXAS CODE OF CRIMINAL PROCEDURE
CHAPTER 56, RIGHTS OF CRIME VICTIMS
Sub-chapter B. Crime Victims' Compensation

Art. 56.31. Short Title

This Sub-chapter may be cited as the Crime Victims' Compensation Act.

Art. 56.311. Legislative Findings and Intent

The legislature recognizes that many innocent individuals suffer personal injury or death as a result of criminal acts. Crime victims and persons who intervene to prevent criminal acts often suffer disabilities, incur financial burdens, or become dependent on public assistance. The legislature finds that there is a need for the compensation of victims of crime and those who suffer personal injury or death in the prevention of crime or in the apprehension of criminals. It is the legislature's intent that the compensation of innocent victims of violent crime encourage greater public cooperation in the successful apprehension and prosecution of criminals.

Art. 56.32. Definitions

(a) In this Sub-chapter:

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(1) "Child" means an individual younger than 18 years of age who:

(A) is not married; or

(B) has not had the disabilities of minority removed for general purposes under Chapter 31, Family Code.

(2) "Claimant" means, except as provided by Subsection (b), any of the following individuals who is entitled to file or has filed a claim for compensation under this Sub-chapter:

(A) an authorized individual acting on behalf of a victim;

(B) an individual who legally assumes the obligation or who voluntarily pays medical or burial expenses of a victim incurred as a result of the criminally injurious conduct of another;

(C) a dependent of a victim who died as a result of criminally injurious conduct;

(D) an immediate family member or household member of a victim who requires psychiatric care or counseling as a result of the criminally injurious conduct; or

(E) an authorized individual acting on behalf of an individual who is described by Subdivision (C) or (D) and who is a child.

(3) "Collateral source" means any of the following sources of benefits or advantages for pecuniary loss that a claimant or victim has received or that is readily available to the claimant or victim from:

(A) the offender under an order of restitution to the claimant or victim imposed by a court as a condition of community supervision;

(B) the United States, a federal agency, a state or any of its political sub-divisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Sub-chapter;

(C) social security, Medicare, or Medicaid;

(D) another state's or another country's crime victims' compensation program;

(E) workers' compensation;

(F) an employer's wage continuation program, not including vacation and sick leave benefits;

(G) proceeds of an insurance contract payable to or on behalf of the claimant or victim for loss that the claimant or victim sustained because of the criminally injurious conduct;

(H) a contract or self-funded program providing hospital and other health care services or benefits; or

(I) proceeds awarded to the claimant or victim as a result of third-party litigation

(4) "Criminally injurious conduct" means conduct that:

(A) occurs or is attempted;

(B) poses a substantial threat of personal injury or death;

(C) is punishable by fine, imprison-ment, or death, or would be punishable by fine, imprisonment, or death if the person engaging in the conduct possessed capacity to commit the conduct; and

(D) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle, unless the conduct is intended to cause personal injury or death or the conduct is in violation of Section 550.021, Transportation Code, or one or more of the following sections of the Penal Code:

(i) Section 19.04
(manslaughter);

(ii) Section 19.05
(criminally negligent homicide);

(iii) Section 22.02
(aggravated assault);

(iv) Section 49.04
(driving while intoxicated);

(v) Section 49.05
(flying while intoxicated);

(vi) Section 49.06
(boating while intoxicated);

(vii) Section 49.07
(intoxication assault); or

(viii) Section 49.08
(intoxication manslaughter).

(5) "Dependent" means:

(A) a surviving spouse;

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(B) a person who is a dependent, within the meaning of the Internal Revenue Code, of a victim; and

(C) a posthumous child of a deceased victim.

(6) "Household member" means an individual who resided in the same permanent household as the victim at the time that the criminally injurious conduct occurred and who is related by consanguinity or affinity to the victim.

(7) "Immediate family member" means an individual who is related to a victim within the second degree by affinity or consanguinity.

(8) "Intervenor" means an individual who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in criminally injurious conduct, or to aid a peace officer.

(9) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred as a result of personal injury or death for:

(A) medical, hospital, nursing, or psychiatric care or counseling, or physical therapy;

(B) actual loss of past earnings and anticipated loss of future earnings and necessary travel expenses because of:

(i) a disability resulting from the personal injury;

(ii) the receipt of medically indicated services related to the disability resulting from the personal injury; or

(iii) participation in or attendance at investigative, prosecutorial, or judicial pro-cesses related to the criminally injurious conduct and parti-cipation in or attendance at any post-conviction or post-adjudication proceeding relating to criminally injurious conduct;

(C) care of a child or dependent ;

(D) funeral and burial expenses;

(E) loss of support to a dependent, consistent with Article 56.41(b)(5);

(F) reasonable and necessary costs of cleaning the crime scene; [~~and~~]

(G) reasonable replacement costs for clothing,

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bedding, or property of the victim seized as evidence or rendered unusable as a result of the criminal investigation; and

(H) reasonable and necessary costs, as provided by Article 56.42 (d), incurred by a victim of family [~~domestic~~] violence or a victim of sexual assault who is assaulted in the victim's place of residence for relocation and housing rental assistance payments.

(10) "Personal injury" means physical or mental harm.

(11) "Victim" means, except as provided by Subsection (c):

(A) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct or as a result of actions taken by the individual as an intervenor, if the conduct or actions occurred in this state; and

(ii) is a resident of this state, another state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession or territory of the United States;

(B) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct or as a result of actions taken by the individual as an intervenor, if the conduct or actions occurred in a state or country that does not have a crime victims' compensation program that meets the requirements of Section 1403(b), Crime Victims Compensation Act of 1984 (42 U.S.C. Section 10602(b));

(ii) is a resident of this state; and

(iii) would be entitled to compensation under this sub-chapter if the criminally injurious conduct or actions had occurred in this state; or

(C) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct caused by an act of international terrorism as defined by 18 U.S.C. Section 2331 committed outside of the United States;

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and (ii) is a resident of this state.

(12) "Family violence" has the meaning assigned by Section 71.004(1), Family Code.

(b) In this sub-chapter "claimant" does not include a service provider.

Amended effective Sept. 1, 2001 (HB 519, §§1 & 2). Section 4 of the HB 519 provides: "The changes in law made by this Act apply only to a victim of a criminal offense committed or a violation that occurs on or after the effective date of this Act. For purposes of this Act, a criminal offense is committed or a violation occurs before the effective date of this Act if any element of the offense or violation that occurs before that date. A criminal offense committed or a violation that occurs before the effective date of this Act is covered by the law in effect when the criminal offense was committed or the violation occurred, and the former law is continued in effect for that purpose."

Art. 56.33. Administration; Rules

(a) The attorney general shall adopt rules consistent with this sub-chapter governing its administration, including rules relating to the method of filing claims and the proof of entitlement to compensation and the review of health

care services subject to compensation under this chapter. Sub-chapters A and B, Chapter 2001, Government Code, except Sections 2001.004(3) and 2001.005, apply to the attorney general.

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

Art. 56.34. Compensation

(a) The attorney general shall award compensation for pecuniary loss arising from criminally injurious conduct if the attorney general is satisfied by a preponderance of the evidence that the requirements of this sub-chapter are met.

(b) The attorney general, shall establish whether, as a direct result of criminally injurious conduct, a claimant or victim suffered personal injury or death that resulted in a pecuniary loss for which the claimant or victim is not compensated from a collateral source.

(c) The attorney general shall award compensation for health care services according to the medical fee guidelines prescribed by Subtitle A, Title 5, Labor Code.

(d) The attorney general, a claimant, or a victim is not liable for health care service charges in excess of the medical fee guidelines. A health care provider shall accept compensation from the attorney general as payment in full for the charges unless an investigation of the charges by the attorney general determines that there is a reasonable health care justification for the deviation from the guidelines.

(e) A claimant or victim is not liable for the balance of service charges left as a result of an adjustment of payment for the charges under Article 56.58.

(f) The compensation to victims of crime fund and the compensation to victims of crime auxiliary fund are the payers of last resort.

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Art. 56.35. Types Of Assistance

If the attorney general approves an application for compensation under Article 56.41, the attorney general shall determine what type of state assistance will best aid the claimant or victim. The attorney general may do one or more of the following:

(1) authorize cash payment or payments to or on behalf of a claimant or victim for pecuniary loss;

(2) refer a claimant or victim to a state agency for vocational or other rehabilitative services; or

(3) provide counseling services for a claimant or victim or contract with a private entity to provide counseling services.

Art. 56.36. Application

(a) An applicant for compensation under this sub-chapter must apply in writing on a form prescribed by the attorney general.

(b) An application must be verified and must contain:

(1) the date on which the criminally injurious conduct occurred;

(2) a description of the nature and circum-stances of the criminally injurious conduct;

(3) a complete financial statement, including:

(A) the cost of medical care or burial expenses and the loss of wages or support the claimant or victim has incurred or will incur; and

(B) the extent to which the claimant or victim has been indemnified for those expenses from a collateral source;

(4) if appropriate, a statement indicating the extent of a disability resulting from the injury incurred;

(5) an authorization permitting the attorney general to verify the contents of the application; and

(6) other information the attorney general requires.

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Art. 56.37. Time For Filing

(a) Except as otherwise provided by this article, a claimant or victim must file an application not later than three years from the date of the criminally injurious conduct.

(b) The attorney general may extend the time for filing for good cause shown by the claimant or victim.

(c) If the victim is a child, the application must be filed within three years from the date the claimant or victim is made aware of the crime but not after the child is 21 years of age.

(d) If a claimant or victim presents medically documented evidence of a physical or mental incapacity that was incurred by the claimant or victim as a result of the criminally injurious conduct and that reasonably prevented the claimant or victim from filing the application within the limitations period under Subsection (a), the period of the incapacity is not included.

Art. 56.38. Review; Verification

(a) The attorney general shall appoint a clerk to review each application for compensation under Article 56.36 to ensure the application is complete. If an application is not complete, the clerk shall return it to the claimant or victim and give a brief statement showing the additional information required. Not later than the 30th day after receiving a returned application, a claimant or victim may:

(1) supply the additional information; or

(2) appeal the action to the attorney general,

who shall review the application to determine whether it is complete.

(b) The attorney general may investigate an application.

(c) Incident to the attorney general's review, verification, and hearing duties under this sub-chapter, the attorney general may:

(1) subpoena witnesses and administer oaths to determine whether and the extent to which a claimant or victim qualifies for an award; and

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(2) order a claimant or victim to submit to a mental or physical examination by a physician or psychologist or order an autopsy of a deceased victim as provided by Article 56.39, if the mental, physical, or emotional condition of a claimant or victim is material to a claim.

(d) On request by the attorney general and not later than the 14th business day after the date of the request, a law enforcement agency shall release to the attorney general all reports, including witness statements and criminal history record information, for the purpose of allowing the attorney general to determine whether a claimant or victim qualifies for an award and the extent of the qualification.

Art. 56.385. Review Of Health Care Services

(a) The attorney general may review the actual or proposed health care services for which a claimant or victim seeks compensation in an application filed under Article 56.36.

(b) The attorney general may not compensate a claimant or victim for health care services that the attorney general determines are not medically necessary.

(c) The attorney general, a claimant, or a victim is not liable for a charge that is not medically necessary.

Art. 56.39. Mental Or Physical Examination; Autopsy

(a) An order for a mental or physical examination or an autopsy as provided by Article 56.38(c)(3) may be made for good cause shown on notice to the individual to be examined and to all persons who have appeared.

(b) An order shall:

(1) specify the time, place, manner, conditions, and scope of the examination or autopsy;

(2) specify the person by whom the examination or autopsy is to be made; and

(3) require the person making the examination or autopsy to file with the attorney general a detailed written report of the examination or autopsy.

(c) A report shall set out the findings of the person making the examination or autopsy, including:

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(1) the results of any tests made; and

(2) diagnoses, prognoses, and other con-clusions and reports of earlier examinations of the same conditions.

(d) On request of the individual examined, the attorney general shall furnish the individual with a copy of the report. If the victim is deceased, the attorney general on request shall furnish the claimant with a copy of the report.

(e) A physician or psychologist making an examination or autopsy under this article shall be compensated from funds appropriated for the administration of this sub-chapter.

Art. 56.40. Hearings

(a) The attorney general shall determine whether a hearing on an application for compensation under this sub-chapter is necessary.

(b) If the attorney general determines that a hearing is not necessary, the attorney general may approve the application in accordance with the provisions of Article 56.41.

(c) If the attorney general determines that a hearing is necessary or if the claimant or victim requests a hearing, the attorney general shall consider the application at a hearing at a time and place of the attorney general's choosing. The attorney general shall notify all interested persons not less than 10 days before the date of the hearing.

(d) At the hearing the attorney general shall:

(1) review the application for assistance and the report prepared under Article 56.39 and any other evidence obtained as a result of the attorney general's investigation; and

(2) receive other evidence that the attorney general finds necessary or desirable to evaluate the application properly.

(e) The attorney general may appoint hearing officers to conduct hearings or pre-hearing conferences under this sub-chapter.

(f) A hearing or pre-hearing conference is open to the public unless in a particular case the hearing officer or attorney general determines that the hearing or pre-hearing conference or a part of it should be held in private because a criminal suspect has not been apprehended or because it is in the interest of the claimant or victim.

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(g) The attorney general may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make an emergency award under Article 56.50.

(h) Sub-chapters C through H, Chapter 2001, Government Code, do not apply to the attorney general or the attorney general's orders and decisions.

Art. 56.41. Approval of Claim

(a) The attorney general shall approve an application for compensation under this sub-chapter if the attorney general finds by a preponderance of the evidence that grounds for compensation under this sub-chapter exist.

(b) The attorney general shall deny an application for compensation under this sub-chapter if:

(1) the criminally injurious conduct is not reported as provided by Article 56.46;

(2) the application is not made in the manner provided by Articles 56.36 and 56.37;

(3) the claimant or victim knowingly and willingly participated in the criminally injurious conduct;

(4) the claimant or victim is the offender or an accomplice of the offender;

(5) an award of compensation to the claimant or victim would benefit the offender or an accomplice of the offender;

(6) the claimant or victim was incarcerated in a penal institution, as defined by Section 1.07, Penal Code, at the time the offense was committed; or

(7) the claimant or victim knowingly or intentionally submits false or forged information to the attorney general.

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(c) Except as provided by rules adopted by the attorney general to prevent the unjust enrichment of an offender, the attorney general may not deny an award otherwise payable to a claimant or victim because the claimant or victim:

(1) is an immediate family member of the offender; or

(2) resides in the same household as the offender.

Art. 56.42. Limits On Compensation

(a) Except as otherwise provided by this article, awards payable to a victim and all other claimants sustaining pecuniary loss because of injury or death of that victim may not exceed $50,000 in the aggregate.

(b) In addition to an award payable under Subsection (a), the attorney general may award an additional $75,000 [~~$50,000~~] for extraordinary pecuniary losses, if the personal injury to a victim is catastrophic and results in a total and permanent disability to the victim, for lost wages and reasonable and necessary costs of:

(1) making a home or automobile accessible;

(2) obtaining job training and vocational rehabilitation;

(3) training in the use of special appliances; [~~and~~]

(4) receiving home health care;

(5) durable medical equipment;

(6) rehabilitation technology; and

(7) long-term medical expenses incurred as a result of medically indicated treatment for the personal injury.

(c) The attorney general may by rule establish limitations on any other pecuniary loss compensated for under this sub-chapter.

(d) A victim who is a victim of family [~~domestic~~] violence or a victim of sexual assault who is assaulted in the victim's place of residence may receive a onetime-only assistance payment in an amount not to exceed:

(1) $2,000 to be used for relocation expenses, including expenses for rental deposit, utility connections, expenses relating to the moving of belongings, motor vehicle mileage expenses, and

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for out-of-state moves, transportation, lodging, and meals; and

(2) $1,800 to be used for housing rental expenses.

Amendments to subsection (d) effective Sept. 1, 2001 (HB 519, §3). Section 4 of HB 519 provides: "The changes in law made by this Act apply only to a victim of a criminal offense committed or a violation that occurs on or after the effective date of this Act. For purposes of this Act, a criminal offense is committed or a violation occurs before the effective date of this Act if any element of the offense or violation occurs before that date. A criminal offense committed or a violation that occurs before the effective date this Act is covered by the law in effect when the criminal offense was committed or the violation occurred, and the former law is continued in effect for that purpose."

Amended effective Sept. 1, 2001 (DB 1202, §1). Section 2 of SB 1202 provides: "(a) The change in law made by this Act applies only to a claim for compensation from the compensation to victims of crime fund based on an offense committed or a violation that occurs on or after the effective date of this Act. For purposes of this section, an offense was committed or a violation occurred before the effective date of this Act if any element of the offense or violation occurred before that date.

"(b) A claim for compensation from the compensation to victims of crime fund based on an offense committed or a violation that occurred before the effective date of this Act is covered by the law in effect when the offense was committed or the violation occurred, and the former law is continued in effect for that purpose."

Art. 56.43. Attorney Fees

(a) As part of an order, the attorney general shall determine and award reasonable attorney's fees, commensurate with legal services rendered, to be paid by the state to the attorney representing the claimant or victim. Attorney fees shall not exceed 25 percent of the amount the attorney assisted the claimant or victim in obtaining. Where there is no dispute of the attorney general's determination of the amount of the award due to the claimant or victim and where no hearing is held, the attorney fee shall be the lesser of either 25 percent of the amount the attorney assisted the claimant or victim in obtaining or $300.

(b) Attorney fees may be denied on a finding that the claim or appeal is frivolous.

(c) An award of attorney fees is in addition to an award of compensation.

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(d) An attorney may not contract for or receive an amount larger than that allowed under this article.

(e) Attorney fees may not be paid to an attorney of a claimant or victim unless an award is made to the claimant or victim.

Art. 56.44. Payments

(a) The attorney general may provide for the payment of an award in a lump sum or in installments. The attorney general shall provide that the part of an award equal to the amount of pecuniary loss accrued to the date of the award be paid in a lump sum. Except as provided in Subsection (b), the attorney general shall pay the part of an award for allowable expense that accrues after the award is made in installments.

(b) At the request of the claimant or victim, the attorney general may provide that an award for future pecuniary loss be paid in a lump sum if the attorney general finds that:

(1) paying the award in a lump sum will promote the interests of the claimant or victim; or

(2) the present value of all future pecuniary loss does not exceed $1,000.

(c) The attorney general may not provide for an award for future pecuniary loss payable in installments for a period for which the attorney general cannot reasonably determine the future pecuniary loss.

(d) The attorney general may make payments only to an individual who is a claimant or a victim or to a provider on the individual's behalf.

Art. 56.45. Denial Or Reduction Of Award

The attorney general may deny or reduce an award otherwise payable:

(1) if the claimant or victim has not substantially cooperated with an appropriate law enforcement agency;

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(2) if the claimant or victim bears a share of the responsibility for the act or omission giving rise to the claim because of the claimant's or victim's behavior;

(3) to the extent that pecuniary loss is recouped from a collateral source; or

(4) if the claimant or victim was engaging in an activity that at the time of the criminally injurious conduct was prohibited by law or a rule made under law.

Art. 56.46. Reporting Of Crime

(a) Except as otherwise provided by this article, a claimant or victim may not file an application unless the victim reports the criminally injurious conduct to the appropriate state or local public safety or law enforcement agency within a reasonable period of time, but not so late as to interfere with or hamper the investigation and prosecution of the crime after the criminally injurious conduct is committed.

(b) The attorney general may extend the time for reporting the criminally injurious conduct if the attorney general determines that the extension is justified by extraordinary circumstances.

(c) Subsection (a) does not apply if the victim is a child.

Art. 56.47. Reconsideration

(a) The attorney general, on the attorney general's own motion or on request of a claimant or victim, may reconsider:

(1) a decision to make or deny an award; or

(2) the amount of an award.

(b) At least annually, the attorney general shall reconsider each award being paid in installments.

(c) An order on reconsideration may require a refund of an award if:

(1) the award was obtained by fraud or mistake; or

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(2) newly discovered evidence shows the claimant or victim to be ineligible for the award under Article 56.41 or 56.45.

Art. 56.48. Judicial Review

(a) Not later than the 40th day after the attorney general renders a final decision, a claimant or victim may file with the attorney general a notice of dissatisfaction with the decision. Not later than the 40th day after the claimant or victim gives notice, the claimant or victim shall bring suit in the district court having jurisdiction in the county in which:

(1) the injury or death occurred;

(2) the victim resided at the time the injury or death occurred; or

(3) if the victim resided out of state at the time of the injury or death, in the county where the injury or death occurred or in a district court of Travis County.

(b) While judicial review of a decision by the attorney general is pending, the attorney general:

(1) shall suspend payments to the claimant or victim; and

(2) may not reconsider the award.

(c) The court shall determine the issues by trial de novo. The burden of proof is on the party who filed the notice of dissatisfaction.

(d) A court may award not more than 25 percent of the total recovery by the claimant or victim for attorney fees in the event of review.

(e) In computing a period under this article, if the last day is a legal holiday or Sunday, the last day is not counted, and the time is extended to include the next business day.

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Art. 56.49. Exemption; Assignability

(a) An award is not subject to execution, attachment, garnishment, or other process, except that an award is not exempt from a claim of a creditor to the extent that the creditor provided products, services, or accommodations, the costs of which are included in the award.

(b) An assignment or agreement to assign a right to benefits for loss accruing in the future is unenforceable except:

(1) an assignment of a right to benefits for loss of earnings is enforceable to secure payment of alimony, maintenance, or child support; and

(2) an assignment of a right to benefits is enforceable to the extent that the benefits are for the cost of products, services, or accommodations:

(A) made necessary by the injury or death on which the claim is based; and

(B) provided or to be provided by the assignee.

Art. 56.50. Emergency Award

(a) The attorney general may make an emergency award if, before acting on an application for compensation under this Sub-chapter, it appears likely that:

(1) a final award will be made; and

(2) the claimant or victim will suffer undue hardship if immediate economic relief is not obtained.

(b) An emergency award may not exceed $1,500.

(c) The amount of an emergency award shall be:

(1) deducted from the final award; or

(2) repaid by and recoverable from the claimant or victim to the extent the emergency award exceeds the final award.

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Art. 56.51. Subrogation

If compensation is awarded under this sub-chapter, the state is subrogated to all the claimant's or victim's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a collateral source.

Art. 56.52. Notice Of Private Action

(a) Before a claimant or victim may bring an action to recover damages related to criminally injurious conduct for which compensation under this sub-chapter is claimed or awarded, the claimant or victim must give the attorney general written notice of the proposed action. After receiving the notice, the attorney general shall promptly:

(1) join in the action as a party plaintiff to recover benefits awarded;

(2) require the claimant or victim to bring the action in the claimant's or victim's name as a trustee on behalf of the state to recover benefits awarded; or

(3) reserve the attorney general's rights and do neither in the proposed action.

(b) If the claimant or victim brings the action as trustee and recovers compensation awarded by the attorney general, the claimant or victim may deduct from the benefits recovered on behalf of the state the reasonable expenses of the suit, including attorney fees, expended in pursuing the recovery for the state. The claimant or victim must justify this deduction in writing to the attorney general on a form provided by the attorney general.

(c) A claimant or victim shall not settle or resolve any such action without written authorization to do so from the attorney general. No third party or agents, insurers, or attorneys for third parties shall participate in the settlement or resolution of such an action if they actually know, or should know, that the claimant or victim has received moneys from the fund and is subject to the subrogation provisions of this article. Any attempt by such third party, or agents, insurers, or attorneys of third parties to settle an action is void and shall result in no release from liability to the fund for any rights subrogated pursuant to this article. All such agents, insurers, and attorneys are personally liable to the fund for any moneys paid to a claimant or victim in violation of this subsection, up to the full amount of the fund's right to reimbursement. A claimant, victim, third party, or any agents, attorneys, or insurers of third parties who knowingly or intentionally fail to comply with the requirements of this chapter commits a Class B misdemeanor.

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(d) A person adjudged guilty of a Class B misdemeanor shall be punished by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and imprisonment.

Art. 56.53. Annual Report

Annually, the attorney general shall report to the governor and the legislature on the attorney general's activities, including a statistical summary of claims and awards made and denied. The reporting period is the state fiscal year. The attorney general shall file the report not later than the 100th day after the end of the fiscal year.

Art. 56.54. Funds

(a) The compensation to victims of crime fund and the compensation to victims of crime auxiliary fund are in the state treasury.

(b) Except as provided by Subsections (h) [~~and~~] (i), (j), and (k) and Article 56.541, the compensation to victims of crime fund may be used by the attorney general only for the payment of compensation to claimants or victims under this sub-chapter, the operation of the Crime Victims' Institute created by Chapter 412, Government Code, and other expenses in administering this sub-chapter.

(b) Except as provided by Article 56.541, the compensation to victims of crime fund may be used only by the attorney general for the payment of compensation to claimants or victims under this sub-chapter and other expenses in administering this sub-chapter.

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(c) Except as provided by Subsections (h) and (i), the compensation to victims of crime auxiliary fund may be used by the attorney general only for the payment of compensation to claimants or victims under this sub-chapter.

(d) The attorney general may not make compensation payments in excess of the amount of money available from the combined funds.

(e) General revenues may not be used for payments under this sub-chapter.

(f) The office of the attorney general is authorized to accept gifts, grants, and donations to be credited to the compensation to victims of crime fund and compensation to victims of crime auxiliary fund and shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all gifts, grants, and donations received and disbursed, used, or maintained by the office for the attorney general that are credited to these funds.

(g) Money in the compensation to victims of crime fund or in the compensation to victims of crime auxiliary fund may be used only as provided by this sub-chapter and is not available for any other purpose. Section 403.095, Government Code, does not apply to the fund.

(h) In addition to the purposes provided by Subsection (b), the legislature may appropriate money in the compensation to victims of crime fund to state agencies that deliver or fund victim-related services or assistance. This subsection expires August 31, 1999.

(i) An amount of money deposited to the credit of the compensation to victims of crime fund not to exceed one-quarter of the amount disbursed from that fund in the form of compensation payments during a fiscal year shall be carried forward into the next succeeding fiscal year and applied toward the amount listed in the next succeeding fiscal year's method of financing.

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(j) If the sums available in the compensation to victims of crime fund are sufficient in a fiscal year to make all compensation payments, the attorney general may retain any portion of the fund that was deposited during the fiscal year that was in excess of compensation payments made during that fiscal year as an emergency reserve for the next fiscal year. Such emergency reserve may not exceed $10,000,000. The emergency reserve fund may be used only to make compensation awards in claims and for providing emergency relief and assistance, including crisis intervention, emer-gency housing, travel, food, or expenses and technical assistance expenses incurred in the implementation of this subsection in incidents resulting from an act of mass violence or from an act of international terrorism as defined by 18 U.S.C. Section 2331, occurring in the state or for Texas residents injured or killed in an act of terrorism outside of the United States.

(k) The legislature may appropriate money in the compensation to victims of crime fund to administer the associate judge program under Subchapter C, Chapter 201, Family Code.

(l) The attorney general may use the compensation to victims of crime fund to reimburse a law enforcement agency for the reasonable costs of a medical examination that are incurred by the agency under Article 56.06.

Amended effective June 17, 2001 (HB 131, §§2 & 3).

Art. 56.541. Appropriation Of Excess Money For Other Crime Victim Assistance

(a) Not later than December 15 of each even-numbered year, the attorney general, after consulting with the comptroller, shall prepare forecasts and certify estimates of:

(1) the amount of money that the attorney general anticipates will be received from deposits made to the credit of the compensation to victims of crime fund during the next state

fiscal biennium, other than deposits of:

(A) gifts, grants, and donations; and

(B) money received from the United States;

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(2) the amount of money from the fund that the attorney general anticipates will be obligated during the next state fiscal biennium to comply with this chapter; and

(3) the amount of money in the fund that the attorney general anticipates will remain unexpended at the end of the current state fiscal year and that is available for appropriation in the next state fiscal biennium.

(b) At the time the attorney general certifies the estimates made under Subsection (a), the attorney general shall also certify for the next state fiscal biennium the amount of excess money in the compensation to victims of crime fund for purposes of Subsection (c), calculated by multiplying the amount estimated under Subsection (a)(2) by 120 percent, and subtracting that product from the sum of the amounts estimated under Subsections (a)(1) and (a)(3).

(c) For a state fiscal biennium, the legislature may appropriate from the compensation to victims of crime fund the amount of excess money in the fund certified for the biennium under Subsection (b) to state agencies that deliver or fund victim-related services or assistance.

(d) The attorney general and the comptroller shall cooperate in determining the proper allocation of the various sources of revenue deposited to the credit of the compensation to victims of crime fund for purposes of this article.

(e) The attorney general may use money appropriated from the compensation to victims of crime fund for grants or contracts supporting victim-related services or assistance, including support for private Texas nonprofit corporations that provide victim-related civil legal services directly to victims, immediate family members of victims, or claimants. A grant supporting victim-related services or assistance is governed by Chapter 783, Government Code.

(f) The attorney general shall adopt rules necessary to carry out this article.

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Art. 56.542, Payments for Certain Disabled Peace Officers

(a) In this article, "peace officer";

(1) means an individual elected, appointed, or employed to serve as a peace officer for a governmental entity under Article 2.12 or other law; and

(2) includes a former peace officer who because of an injury suffered while performing duties as a peace officer is entitled to receive payments under this article.

(b) If a peace officer employed by the state or a local governmental entity in this state sustains an injury as a result of criminally injurious conduct on or after September 1, 1989, in the performance of the officer's duties as a peace officer and presents evidence satisfactory to the attorney general that the officer's condition is a total disability resulting in permanent incapacity for work and that the total disability has persisted for more than 12 months, the officer is entitled to an annual payment equal to the difference between:

(1) any amounts received by the officer on account of the injury or disability from other sources of income, including settlements related to the injury or disability, insurance benefits, federal disability benefits, workers' compensation benefits, and benefits from another governmental entity, if those amounts do not exceed the amount described by Subdivision (2); and

(2) an amount equal to the officer's average annual salary during the officer's final three years as a peace officer.

(c) The amount of the payment under Subsection (b) is subject to an annual cost-of-living adjustment computed by the attorney general. The attorney general shall compute the amount of the cost-of-living adjustment by multiplying the amount of the annual payment received by the peace officer under this section during the previous year times the percentage by which the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor index, increased during the previous calendar year.

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(d) The attorney general shall compute the amount of an initial payments based on an injury suffered after September 1, 1989, by:

(1) computing the amount to which the officer is entitled under Subsection (b); and

(2) adding to that amount the cumulative successive cost-of-living adjustments for the intervening years computed from the date of the injury.

(e) To receive a payment under this section, a peace officer must furnish to the attorney general:

(1) proof that the injury was sustained in the performance of the applicant's duties as a peace officer and is a total disability resulting in permanent incapacity for work; and

(2) other information or evidence the attorney general requires.

(f) The attorney general may approve the application without a hearing or may conduct a hearing under Article 56.40. The decision of the attorney general is subject to judicial review under Article 56.48.

(g) The attorney general may appoint a panel of physicians to periodically review each application for assistance under this article to ensure the validity of the application and the necessity of continued assistance to the peace officer.

(h) The attorney general shall notify the comptroller of the attorney general's determination that a claim under this section is valid and justifies payment. On receipt of the notice, the comptroller shall issue a warrant to or in behalf of the claimant in the proper amount from amounts in the compensation to victims of crime fund. A payment under this section to or in behalf of a peace officer is payable as soon as possible after the attorney general notifies the comptroller.

(i) The attorney general and the comptroller by rule shall adopt a memorandum of understanding to establish procedures under which annual payments continue to a peace officer until continued assistance is no longer necessary.

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(j) Article 56.37 does not apply to the filing of an application under this article. Other provisions of this chapter apply to the article to the extent applicable consistent with this article.

(k) The limits on compensation imposed by Article 56.42 do not apply to payments made under this article, but the total aggregate amount of all annual payments made to an individual peace officer under this section may not exceed $200,000.

Enacted effective Sept. 1, 2001 (SB 850, §2). Section 1 of SB 850 provides: "This Act shall be known as the Bill Biles Law."

Art. 56.55. Court Costs

(a) A person shall pay:

(1) $45 as a court cost on conviction of a felony;

(2) $35 as a court cost on conviction of a violation of a municipal ordinance punishable by a fine of more than $200 or on conviction of a misdemeanor punishable by imprisonment or by a fine of more than $500; or

(3) $15 as a court cost on conviction of a violation of a municipal ordinance punishable by a fine of not more than $200 or on conviction of a misdemeanor punishable by a fine of not more than $500, other than a conviction of a misdemeanor offense or a violation of a municipal ordinance relating to pedestrians and the parking of motor vehicles.

(b) The court shall assess and make a reasonable effort to collect the cost due under this article whether any other court cost is assessed or collected.

(c) In this article, a person is considered to have been convicted if:

(1) a sentence is imposed;

(2) the defendant receives probation or deferred adjudication; or

(3) the court defers final disposition of the case.

(d) Court costs under this article are collected in the same manner as other fines or costs.

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Art. 56.56. Deposit And Remittance Of Court Costs

(a) The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under Article 56.55 and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, or district court case shall keep separate records of the funds collected as costs under Article 56.55 and shall deposit the funds in the county treasury.

(b) The custodian of a municipal or county treasury shall:

(1) keep records of the amount of funds on deposit collected under Article 56.55; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected during the preceding quarter.

(c) A municipality or county may retain 10 percent of the funds collected under Article 56.55 as a collection fee if the custodian of the treasury:

(1) keeps records of the amount of funds on deposit collected under Article 56.55; and

(2) sends to the comptroller the funds within the period prescribed by Subsection (b)(2).

(d) If no funds due as costs under Article 56.55 are collected by a custodian of a municipal or county treasury in a quarter, the custodian shall file the report required for the quarter in the regular manner and must state that no funds were collected.

Art. 56.57. Deposit By Comptroller, Audit

(a) The comptroller shall deposit the funds received under Article 56.56 and all other moneys credited to the fund by any other provision of law in the compensation to victims of crime fund.

(b) Funds collected are subject to audit by the comptroller. Funds spent are subject to audit by the state auditor.

Art. 56.58. Adjustment Of Awards And Payments

(a) The attorney general shall establish a policy to adjust awards and payments so that the total amount of awards granted in each calendar year does not exceed the amount of money credited to the fund during that year.

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(b) If the attorney general establishes a policy to adjust awards under Subsection (a), the attorney general, the claimant, or the victim is not liable for the amount of charges incurred in excess of the adjusted amount for the service on which the adjusted payment is determined.

(c) A service provider who accepts a payment that has been adjusted by a policy established under Sub-section (a) agrees to accept the adjusted payment as payment in full for the service and is barred from legal action against the claimant or victim for collection.

Art. 56.59. Attorney General Supervision Of Collection Of Costs; Failure To Comply

(a) If the attorney general has reason to believe that a court has not been assessing costs due under Article 56.55 or has not been making a reasonable effort to collect those costs, the attorney general shall send a warning letter to the court or the governing body of the governmental unit in which the court is located.

(b) Within 60 days after receipt of a warning letter, the court or governing body shall respond in writing to the attorney general, specifically referring to the charges in the warning letter.

(c) If the court or governing body does not respond or if the attorney general considers the response inadequate, the attorney general may request the comptroller to audit the records of:

(1) the court;

(2) the officer charged with collecting the costs; or

(3) the treasury of the governmental unit in which the court is located.

(d) The comptroller shall give the attorney general the results of the audit.

(e) If, using the results of the audit and other evidence available, the attorney general finds that a court is not assessing costs due under Article 56.55 or is not making a reasonable effort to collect those costs, the attorney general may:

(1) refuse to award compensation under this sub-chapter to residents of the jurisdiction served by the court; or

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(2) notify the State Commission on Judicial Conduct of the findings.

(f) The failure, refusal, or neglect of a judicial officer to comply with a requirement of Article 56.55:

(1) constitutes official misconduct; and

(2) is grounds for removal from office.

Art. 56.60. Public Notice

(a) A hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this sub-chapter. The attorney general shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this sub-chapter to each hospital and physician licensed to practice in this state.

(b) Each local law enforcement agency shall inform a claimant or victim of criminally injurious conduct of the provisions of this sub-chapter and make application forms available. The attorney general shall provide application forms and all other documents that local law enforcement agencies may require to comply with this article. The attorney general shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with the attorney general a description of the procedures adopted by each agency to comply.

Art. 56.61. Compensation For Certain Criminally Injurious Conduct Prohibited

The attorney general may not award compensation for economic loss arising from criminally injurious conduct that occurred before January 1, 1980.

Art. 56.62. Public Letter Of Reprimand

(a) The attorney general may issue a letter of reprimand against a person if the attorney general finds that the person has filed or has caused to be filed under this sub-chapter an application for benefits or claim for pecuniary loss that contains a statement or representation that the person knows to be false.

(b) The attorney general must give the person notice of the proposed action before issuing the letter.

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(c) A proposal to issue a letter of reprimand is a contested case under Chapter 2001, Government Code (Administrative Procedure Act).

(d) A letter of reprimand issued under this article is public information.

Art. 56.63. Civil Penalty

(a) A person is subject to a civil penalty of not less than $2,500 or more than $25,000 for each application for compensation that:

(1) is filed under this sub-chapter by the person or is filed under this sub-chapter as a result of conduct of the person; and

(2) contains a material statement or representation that the person knows to be false.

(b) The attorney general shall institute and conduct the suit to collect the civil penalty authorized by this article on behalf of the state.

(c) A civil penalty recovered under this article shall be deposited to the credit of the compensation to victims of crime fund.

(d) The civil penalty authorized by this article is in addition to any other civil, administrative, or criminal penalty provided by law.

(e) In addition to the civil penalty authorized by this article, the attorney general may recover expenses incurred by the attorney general in the investigation, institution, and prosecution of the suit, including investigative costs, witness fees, attorney's fees, and deposition expenses.

Art. 56.64. Administrative Penalty

(a) A person who presents to the attorney general under this sub-chapter, or engages in conduct that results in the presentation to the attorney general under this sub-chapter of, an application for compensation under this sub-chapter that contains a statement or representation the person knows to be false is liable to the attorney general for:

(1) the amount paid in reliance on the application and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made;

NOTES

(2) payment of an administrative penalty not to exceed twice the amount paid because of the false application for benefits or claim for pecuniary loss; and

(3) payment of an administrative penalty of not more than $10,000 for each item or service for which payment was claimed.

(b) In determining the amount of the penalty to be assessed under Subsection (a)(3), the attorney general shall consider:

(1) the seriousness of the violation;

(2) whether the person has previously sub-mitted a false application for benefits or a claim for pecuniary loss; and

(3) the amount necessary to deter the person from submitting future false applications for benefits or claims for pecuniary loss.

(c) If the attorney general determines that a violation has occurred, the attorney general may issue a report that states the facts on which the determination is made and the attorney general's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(d) The attorney general shall give written notice of the report to the person. Notice under this subsection may be given by certified mail and must:

(1) include a brief summary of the alleged violation;

(2) include a statement of the amount of the recommended penalty; and

(3) inform the person of the right to a hearing on:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) both the occurrence of the violation and the amount of the penalty.

(e) Not later than the 20th day after the date the person receives the notice, the person, in writing, may:

(1) accept the attorney general's determination and recommended penalty; or

(2) request in writing a hearing on:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

NOTES

(C) both the occurrence of the violation and the amount of the penalty.

(f) If the person accepts the determination and recommended penalty of the attorney general, the attorney general by order shall approve the determination and impose the recommended penalty.

(g) If the person requests a hearing as provided by Subsection (e) or fails to respond to the notice in a timely manner, the attorney general shall set a contested case hearing under Chapter 2001, Government Code (Administrative Procedure Act), and notify the person of the hearing. The administrative law judge shall make findings of facts and conclusions of law and promptly issue to the attorney general a proposal for a decision regarding the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the attorney general by order may:

(1) find that a violation has occurred and impose a penalty; or

(2) find that a violation has not occurred.

(h) Notice of the attorney general's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(i) Not later than the 30th day after the date that the attorney general's order is final under Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) the occurrence of the violation and the amount of the penalty.

NOTES

(j) Within the 30-day period, a person who acts under Subsection (i)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the attorney general's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty or to give the supersedeas bond; and

(B) delivering a copy of the affidavit to the attorney general by certified mail.

(k) On receipt by the attorney general of a copy of an affidavit under Subsection (j)(2), the attorney general may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. A person who files an affidavit under Subsection (j)(2) has the burden of proving that the person is financially unable to pay the amount of the penalty or to give a supersedeas bond.

(1) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the attorney general may file suit for collection of the amount of the penalty.

(l) Judicial review of the order of the attorney general:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is governed by the substantial evidence rule.

(m) If the court upholds the finding that a violation occurred, the court may order the person to pay the full or reduced amount of the penalty. If the court does not uphold the finding, the court shall order that no penalty is owed.

NOTES

(n) If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(o) A penalty collected under this article shall be sent to the comptroller and deposited to the credit of the compensation to victims of crime fund.

(p) All proceedings under this article are subject to Chapter 2001, Government Code.

(q) In addition to the administrative penalty authorized by this article, the attorney general may recover all expenses incurred by the attorney general in the investigation, institution, and prosecution of the suit, including investigative costs, witness fees, attorney's fees, and deposition expenses.

ARTS. 56.65 - 56.67 [REPEALED]

NOTES

OVERVIEW

This section gives a sex offense victim the right to use a "pseudonym," a set of initials, or a fictitious name in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. An attorney for the State shall ensure that the victim is designated by the pseudonym in all legal proceedings concerning the offense.

TEXAS CODE OF CRIMINAL PROCEDURE

CHAPTER 57. CONFIDENTIALITY OF IDENTIFYING INFORMATION OF SEX OFFENSE VICTIMS

Art. 57.01. Definitions

In this chapter:

(1) "Name" means the legal name of a person.

(2) "Pseudonym" means a set of initials or a fictitious name chosen by a victim to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings.

(3) "Public servant" has the meaning assigned by Subsection (a), Section 1.07, Penal Code.

(4) "Victim" means a person who was the subject of an offense the commission of which leads to a reportable conviction or adjudication under Article 6252-13c.1, Revised Statutes

Art. 57.02. Confidentiality Of Files And Records

(a) The Sexual Assault Prevention and Crisis Services Program of the Texas Department of Health shall develop and distribute to all law enforcement agencies of the state a pseudonym form to record the name, address, telephone number, and pseudonym of a victim.

(b) A victim may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. A victim who elects to use a pseudonym as provided by this article must complete a pseudonym form developed under this article and return the form to the law enforcement agency investigating the offense.

NOTES

(c) A victim who completes and returns a pseudonym form to the law enforcement agency investigating the offense may not be required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense.

(d) A completed and returned pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant's attorney, except on an order of a court of competent jurisdiction. The court finding required by Subsection (g) of this article is not required to disclose the confidential pseudonym form to the defendant in the case or to the defendant's attorney.

(e) If a victim completes and returns a pseudonym form to a law enforcement agency under this article, the law enforcement agency receiving the form shall:

(1) remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession;

(2) notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym; and

(3) maintain the form in a manner that protects the confidentiality of the information contained on the form.

(f) An attorney for the state who receives notice that a victim has elected to be designated by a pseudonym shall ensure that the victim is designated by the pseudonym in all legal proceedings concerning the offense.

(g) A court of competent jurisdiction may order the disclosure of a victim's name, address, and telephone number only if the court finds that the information is essential in the trial of the defendant for the offense or the identity of the victim is in issue.

(h) Except as required or permitted by other law or by court order, a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 17 years of age may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:

NOTES

If the sexual assault was a random act committed by a stranger in a location other than the victim's residence, the victim may choose to use a pseudonym to ensure a feeling of safety. The law does not keep the identity of the victim from the defendant; constitutional law gives the defendant the right to know who his or her accuser is. Victims must be made aware of this. Many sex offenders threaten physical harm or death if the victim reports to law enforcement. Victims believe these threats from a person who has had complete control over them.

If the case goes before a jury, the victim would have to be available for voir dire so that the jury panel could see him/her to determine if any potential juror knew the victim. The jury panel would have to be told the victim was not using his or her real name and would be asked if they recognized the victim.

The use of a pseudonym is for privacy. Society still has a tendency to blame the victim of a sex crime. The pseudonym can be a way for the victim to protect him or herself from public scrutiny while cooperating with law enforcement, prosecution, and judicial efforts.

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the parent, conservator, or guardian is a defendant in the case.

Amended effective Sept. 1, 2001 (HB 2890, §3). Section 5 of HB 2890 provides: "(a) Except as provided by Subsection (b) of this section, the change in law made by this Act in adding Article 57.02(h), Code of Criminal Procedure, applies only to an offense committed against a juvenile sex offense victim on or after the effective date of this Act. An offense committed against a juvenile sex offense victim before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

Art. 57.03. Offense

(a) A public servant with access to the name, address, or telephone number of a victim 17 years of age or older who has chosen [~~to be designated by~~] a pseudonym under this chapter commits an offense if the public servant [~~intentionally or~~] knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

(b) Unless the disclosure is required or permitted by other law, a public servant or other person commits an offense if the person:

(1) has access to or obtains the name, address, or telephone number of a victim younger than 17 years of age; and

(2) knowingly discloses the name, address, or telephone number of the victim to any person who sis not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order of a court of competent jurisdiction.

(c) It is an affirmative defense to prosecution under Subsection (b) that the actor is:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the actor is a defendant in the case.

(d) An offense under this article is a Class C mis-demeanor.

NOTES

Amended effective Sept. 1, 2001 (HB 2890, §4). Section 5 of HB 2890 provides: "(b) The change in law made by this Act in amending Article 57.03, Code of Criminal Procedure, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

"(c) For purpose of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date."

FEDERAL AND STATE CASES

See The Florida Star v. B.J.F., U.S.Fla.1989, 109 S.Ct. 2603, 491 U.S. 524, 105 L.Ed.2d 443.

Stevens v. State (App. 11 Dist. 1993) 860 S.W.2d 132, petition for discretionary review granted, affirmed 891 S.W.2d 649, habeas corpus denied 963 S.W.2d 75, writ denied.

NOTES

OVERVIEW

This section discusses the need for the safety of a victim of domestic violence to be considered when referring dissolution of marriage cases to mediation. The participants should be provided a separate waiting area prior to mediation and be placed in separate rooms while mediation occurs.

TEXAS FAMILY CODE
SUBTITLE C. DISSOLUTION OF MARRIAGE
CHAPTER 6. SUIT FOR DISSOLUTION OF MARRIAGE
SUB-CHAPTER G. ALTERNATIVE DISPUTE RESOLUTION

§6.602. Mediation Procedures

(a) On the written agreement of the parties or on the court's own motion, the court may refer a suit for dissolution of a marriage to mediation.

(b) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides in a separate paragraph that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgement on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

NOTES

(d) A party may at any time prior to the final mediation order file a written objection to the referral of a suit for dissolution of a marriage to mediation on the basis of family violence having been committed against the objecting party by the other party. After an objection is filed, the suit may not be referred to mediation unless, on the request of the other party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures to be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation.

NOTES

OVERVIEW

A victim or a close relative or guardian of a victim who has suffered as a result of personal injury or a pecuniary loss as a result of a crime committed by a juvenile is entitled to the same rights as noted in the Texas Code of Criminal Procedure, Chapter 56.

Unfortunately, juvenile courts on the whole have fewer victim advocates to inform victims of their rights and guide them through the court proceedings in this arena.

If a juvenile court has not begun to provide notification or brochures outlining these rights, the court should ensure that steps are taken to do so.

TEXAS FAMILY CODE
TITLE 3. JUVENILE JUSTICE CODE
CHAPTER 57. RIGHTS OF VICTIMS

§ 57.001. Definitions

In this chapter:

(1) "Close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(2) "Guardian of a victim" means a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and the victim exists because of the age of the victim or the physical or mental incompetency of the victim.

(3) "Victim" means a person who as the result of the delinquent conduct of a child suffers a pecuniary loss or personal injury or harm.

§ 57.002. Victim's Rights

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the juvenile justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the court or person appointed by the

NOTES

Victims who lose property in a juvenile crime are entitled to the same rights as victims of bodily injury or death. They have the right to complete a Victim Impact Statement, have it considered, be present in court, etc.

court take the safety of the victim or the victim's family into consideration as an element in determining whether the child should be detained before the child's conduct is adjudicated;

(3) the right, if requested, to be informed of relevant court proceedings, including appellate proceedings, and to be informed in a timely manner if those court proceedings have been canceled or rescheduled;

(4) the right to be informed, when requested, by the court or a person appointed by the court concerning the procedures in the juvenile justice system, including general procedures relating to:

(A) the preliminary investigation and deferred prosecution of a case; and

(B) the appeal of the case;

(5) the right to provide pertinent information to a juvenile court conducting a disposition hearing concerning the impact of the offense on the victim and the victim's family by testimony, written statement, or any other manner before the court renders its disposition;

(6) the right to receive information regarding compensation to victims as provided by Sub-chapter B, Chapter 56, Code of Criminal Procedure, including information related to the costs that may be compensated under that subchapter [~~Act~~] and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter [~~Act~~], the payment of medical expenses under Section 56.06, Code of Criminal Procedure, for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of procedures for release under supervision or transfer of the person to the custody of the pardons and paroles division of the Texas Department of Criminal Justice for parole, to participate in the release or transfer for parole process, to be notified, if requested, of the person's release, escape or transfer for parole proceedings concerning the person, to provide to the Texas Youth Commission for inclusion in the person's file information to be considered by the commission before the release under supervision or transfer for parole of the person, and to be notified, if requested, of the person's release or transfer for parole;

NOTES

Victims and survivors who have exercised their right to be heard have stated that it helped them. Some said it gave them a sense of closure; others felt it put them back in control. Many simply appreciated being able to tell the defendant how the criminal act affected them and their families.

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the child alleged to have committed the conduct and relatives of the child, before testifying in any proceeding concerning the child, or, if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the child and the child's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;

(11) the right to be present at all public court proceedings related to the conduct of the child as provided by Section 54.08, subject to that section; and

(12) any other right appropriate to the victim that a victim of criminal conduct has under Article 56.02, Code of Criminal Procedure.

(b) In notifying a victim of the release or escape of a person, the Texas Youth Commission shall use the same procedure established for the notification of the release or escape of an adult offender under Article 56.11, Code of Criminal Procedure.

§ 57.003. Duty Of Juvenile Board

(a) The juvenile board shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by Section 57.002 and, on request, an explanation of those rights.

(b) The juvenile board may designate a person to serve as victim assistance coordinator in the juvenile board's jurisdiction for victims of juvenile offenders.

NOTES

As of January 1, 1996, the juvenile board was given the option of designating a victim assistance coordinator whose duty is to ensure that victims of juvenile offenders are afforded their rights.

(c) The victim assistance coordinator shall ensure that a victim, or close relative of a deceased victim, is afforded the rights granted victims, guardians, and relatives by Section 57.002 and, on request, an explanation of those rights. The victim assistance coordinator shall work closely with appropriate law enforcement agencies, prosecuting attorneys, the Texas Juvenile Probation Commission, and the Texas Youth Commission in carrying out that duty.

(d) The victim assistance coordinator shall ensure that at a minimum, a victim, guardian of a victim, or close relative of a deceased victim receives:

(1) a written notice of the rights outlined in Section 57.002;

(2) an application for compensation under the Crime Victims' Comp-ensation Act (Sub-chapter B, Chapter 56, Code of Criminal Procedure); and

(3) a victim impact statement with information explaining the possible use and consideration of the victim impact statement at detention, adjudication, and release proceedings involving the juvenile.

(e) The victim assistance coordinator shall, on request, offer to assist a person receiving a form under Subsection (d) to complete the form.

(f) The victim assistance coordinator shall send a copy of the victim impact statement to the court conducting a disposition hearing involving the juvenile.

NOTES

§ 57.0031. Notification Of Rights Of Victims Of Juveniles

At the initial contact or at the earliest possible time after the initial contact between the victim of a reported crime and the juvenile probation office having the responsibility for the disposition of the juvenile, the office shall provide the victim a written notice:

(1) containing information about the availability of emergency and medical services, if applicable;

(2) stating that the victim has the right to receive information regarding compensation to victims of crime as provided by the Crime Victims' Compensation Act (Sub-chapter B, Chapter 56, Code of Criminal Procedure), including information about:

(A) the costs that may be compensated and the amount of compensation, eligibility for compensation, and procedures for application for compensation;

(B) the payment for a medical examination for a victim of a sexual assault; and

(C) referral to available social service agencies that may offer additional assistance;

(3) stating the name, address, and phone number of the victim assistance coordinator for victims of juveniles;

(4) containing the following statement: "You may call the crime victim assistance coordinator for the status of the case and information about victims' rights.";

(5) stating the rights of victims of crime under Section 57.002;

(6) summarizing each procedural stage in the processing of a juvenile case, including preliminary investigation, detention, informal adjustment of a case, disposition hearings, release proceedings, restitution, and appeals;

(7) suggesting steps the victim may take if the victim is subjected to threats or intimidation;

(8) stating the case number and assigned court for the case; and

(9) stating that the victim has the right to file a victim impact statement and to have it considered in juvenile proceedings.

§ 57.004. Notification

A court, a person appointed by the court, or the Texas Youth Commission is responsible for notifying a victim, guardian of a victim, or close relative of a deceased victim of a proceeding under this chapter only if the victim, guardian of a victim, or close relative of a deceased victim requests the notification in writing and provides a current address to which the notification is to be sent.

§ 57.005. Liability

The Texas Youth Commission, a juvenile board, a court, a person appointed by a court, an attorney for the state, a peace officer, or a law enforcement agency is not liable for a failure or inability to provide a right listed under Section 57.002 of this code.

NOTES

§ 57.006. Appeal

The failure or inability of any person to provide a right or service listed under Section 57.002 of this code may not be used by a child as a ground for appeal or for a post conviction writ of habeas corpus.

§ 57.007. Standing

A victim, guardian of a victim, or close relative of a victim does not have standing to participate as a party in a juvenile proceeding or to contest the disposition of any case.

§ 57.008. Court Order For Protection From Juveniles

(a) A court may issue an order for protection from juveniles directed against a child to protect a victim of the child's conduct who, because of the victim's participation in the juvenile justice system, risks further harm by the child.

(b) In the order, the court may prohibit the child from doing specified acts or require the child to do specified acts necessary or appropriate to prevent or reduce the likelihood of further harm to the victim by the child.

NOTES

OVERVIEW

This section discusses the steps to be taken when a protective order is applied for, the duration of protective orders, and new and continual protective orders. The focus of this section is to outline new sections of the Texas Family Code that became law during the 76th Legislative Session.

In addition, this section addresses issuing of protective orders. When a protective order is issued, the court may suspend a license to carry a concealed handgun issued under Section 411.177, Government Code, that is held by a person found to have committed family violence. The section also addresses the duration of protective orders and new wording for warning of protective orders.

TEXAS FAMILY CODE
TITLE 4. PROTECTION OF THE FAMILY
CHAPTER 82. APPLYING FOR PROTECTIVE ORDER

SUB-CHAPTER A. APPLICATION FOR PROTECTIVE ORDER

§ 82.008 Application Filed After Expiration of Former Protective Order

(a) An application for a protective order that is filed after a previously rendered protective order has expired must include:

(1) a copy of the expired protective order attached to the application or, if a copy of the expired protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application;

(2) a description of either:

(A) the violation of the expired protective order, if the application alleges that the respondent violated the expired protective order by committing an act prohibited by that order before the order expired; or

(B) the threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault; and

NOTES

(3) if a violation of the expired order is alleged, a statement that the violation of the expired order has not been grounds for any other order protecting the applicant that has been issued or requested under this subtitle.

(b) The procedural requirements for an original application for a protective order apply to a protective order requested under this section.

SUB-CHAPTER B. PLEADINGS BY RESPONDENT

§82.0085 Application filed before Expiration Of Previously Rendered Protective Order

(a) If an application for a protective order alleges that an unexpired protective order applicable to the respondent is due to expire not later than the 30th day after the date the application was filed, the application for the subsequent protective order must include

(1) a copy of the previously rendered protective order attached to the application or, if a copy of the previously rendered protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application; and

(2) a description of the threatened harm that reasonable places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) The procedural requirements for an original application for a protective order apply to a protective order requested under this section.

NOTES

TEXAS FAMILY CODE

TITLE 4. PROTECTION OF THE FAMILY

CHAPTER 85. ISSUANCE OF PROTECTIVE ORDER

SUB-CHAPTER B. CONTENTS OF PROTECTIVE ORDER

§85.021. Requirements of Order Applying to Any Party

In a protective order, the court may:

(1) prohibit a party from:

(A) removing a child who is a member of the family or household from:

(i) the possession of a person named in the order; or

(ii) the jurisdiction of the court; or

(B) transferring, encumbering, or otherwise disposing of property, other than in the ordinary course of business, that is mutually owned or leased by the parties;

(2) grant exclusive possession of a residence to a party and, if appropriate, direct one or more parties to vacate the residence if the residence;

(A) is jointly owned or leased by the party receiving exclusive possession and a party being denied possession;

(B) is owned or leased by the party retaining possession; or

(C) is owned or leased by the party being denied possession and that party has an obligation to support the party or a child of the party granted possession of the residence;

(3) provide for the possession of and access to a child of a party if the person receiving possession of or access to the child is a parent of the child;

(4) Require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child; or

(5) award to a party the use and possession of a specified property that is community property or jointly owned or leased property.

NOTES

§85.022. Requirements of Order Applying to Person Who Committed Family Violence

(a) In a protective order, the court may order the person found to have committed family violence to:

(1) complete a battering intervention and prevention program as provided by Article 42.141, Code of Criminal Procedure, and that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice if a program is available;

(2) counsel with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor if a program under Subdivision (1) is not available; or

(3) perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence.

(b) In a protective order, the court may prohibit the person found to have committed family violence from:

(1) committing family violence

(2) communicating:

(A) directly with a person protected by an order or a member of the family or household of a person protected by an order in a threatening or harassing manner;

(B) a threat through any person to a a person protected by an order or a member of the family or household a person protected by an order; and

(C) if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order or a except through the party's attorney or a person appointed by the court;

(3) going to or near the residence or place of employment or business of a a person protected by an order or a member of the family or household of a person protected by an order;

(4) going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides; and

NOTES

(5) engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonable likely to harass, annoy, alarm, abuse, torment, or embarrass the person.

(c) In an order under Subsection (b)(3) or (4), the court shall specifically describe each prohibited location and the minimum distances from the location, if any, that the party must maintain. This subsection does not apply to an order in which Section 85.007 applies.

(d) In a protective order, the court may suspend a license to carry a concealed handgun issued under Section 411.177, government code, that is held by a person found to have committed family violence.

§85.025. Duration Of Protective Order

(a) Except as provided by Subsection (b) or (c), and order under this subtitle is effective:

(1) for the period stated in the order, not to exceed two years; or

(2) if a period is not stated in the order, until the second anniversary of the date the order was issued.

(b) A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order. After a hearing on the motion, if the court finds there si a continuing need for the protective order, the protective order remains in effect until the date the order under this section. If the court finds there is no continuing need for the protective order, the court shall order that the protective order expires on a date set by the court.

(c) If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a), the period for which the order is effective is extended, and the order expires on the first anniversary of the date the person si released from confinement or imprisonment.

NOTES

§85.026 Warning on Protective Order

(a) Each protective order issued under this subtitle, including a temporary protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statements in boldfaced type, capital letters, or underlined:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

"IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION."

(b) Each protective order issued under this subtitle, except for a temporary ex parte order, must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

SUBCHAPTER C. DELIVERY OF PROTECTIVE ORDER

§85.041 Delivery to Respondent

(a) A protective order rendered under this subtitle shall be:

(1) delivered to the respondent as provided by Rule 21a, Texas Rules of Civil Procedure;

(2) served in the same manner as a writ of injunction; or

NOTES

(3) served in open court at the close of the hearing as provided by this section.

(b) The court shall serve an order in open court to a respondent who is present at the hearing by giving the respondent a copy of the order, reduced to writing and signed by the judge or master. A certified copy of the signed order shall be given to the applicant at the time the order is given to the respondent. If the applicant is not in court at the conclusion of the hearing, the clerk of the court shall mail a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

(c) If the order has not been reduced to writing, the court shall give notice orally to a respondent who is present at the hearing of the part of the order that contain prohibition under Section 85.022 or any other part of the order that contains provision necessary to prevent further family violence. The clerk of the court shall mail a copy of the order to the respondent and a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

(d) If the respondent is not present at the hearing and the order has been reduced to writing at the conclusion of the hearing, the clerk of the court shall immediately provide a certified copy of the order to the applicant and mail a copy of the order to the respondent not later than the third business day after the date the hearing is concluded.

§85.042 Delivery of Order to Other Persons

(a) The clerk of the court issuing an original or modified protective order under this subtitle shall send a copy of the order, along with the information provided by the applicant or the applicant's attorney that is required under Section 411.042(b)(6) [~~411.042(b)(5)~~], Government code, to the chief of police of the municipality in which the person [~~member of the family or household~~] protected by the order resides, if the person resides in a municipality, or to the appropriate constable and the sheriff of the county in which the person resides, if the person does not reside in a municipality. [~~The chief of police or constable and sheriff shall enter the information into the statewide law enforcement information system.~~]

NOTES

(b) If a protective order made under this chapter prohibits a respondent from going to or near a child-care facility or school, the clerk of the court shall send a copy of the order to the child-care facility or school.

(c) The clerk of a court that vacates an original or modified protective order under this subtitle shall notify the chief of police or constable and sheriff who received a copy of the original or modified order that the order is vacated.

(d) The applicant or the applicant's attorney shall provide to the clerk of the court:

(1) the name and address of each law enforcement agency, child-care facility, and school to which the clerk is required to mail a copy of the order under this section; and

(2) any other information required under Section 411.042(b)(60 [~~411.042(b)(5)~~], Government Code.

(e) The clerk of the court issuing an original or modified protective order under Section 85.022 that suspends a license to carry a concealed handgun shall send a copy of the order to the appropriate division of the Department of Public Safety at its Austin headquarters. On receipt of the order suspending the license, the department shall:

(1) record the suspension of the license in the records of the department;

(2) report the suspension to local law enforcement agencies, as appropriate; and

(3) demand surrender of the suspended license from the license holder.

Amended effective Sept. 1, 2001 (SB 68 and 479). This act "applies only to a protective order issued or modified on or after the effective date of this Act. A protective order issued or modified before the effective date of this Act is governed by the law in effect on the date the order was issued or modified, and the former law is continued in effect for that purpose."

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TEXAS FAMILY CODE
TITLE 4. PROTECTION OF THE FAMILY
CHAPTER 87. MODIFICATION OF PROTECTIVE ORDERS

§87.001 Modification of Protective Order

On the motion of any party, the court, after notice and hearing, may modify an existing protective order to:

(1) exclude any item included in the order; or

(2) include any item that could have been included in the order.

§87.002 Modification May Not Extend Duration of Order

A protective order may not be modified to extend the period of the order's validity beyond the second anniversary of the date the original order was rendered or beyond the date the order expires under Section 85.025 (c), whichever date occurs later.

§87.003 Notification of Motion to Modify

Notice of a motion to modify a protective order is sufficient if delivery of the motion is attempted on the respondent at the respondent's last known address by registered or certified mail as provided by Rule 21 a, Texas Rules of Civil Procedure.

§87.004 Change of Address or Telephone Number

(a) If a protective order contains the address or telephone number of a person protected by the order, of the place of employment, or business of the person, or of the child-care facility or school of a child protected by the order and that information is not confidential under Section 85.007, the person protected by the order may file a notification of change of address or telephone number with the court that rendered the order to modify the information contained in the order.

(b)The clerk of the court shall attach the notification of change to the protective order and shall deliver a copy of the notification to the respondent by registered or certified mail as provided by Rule 21a, Texas Rules of Civil Procedure.

(c) The filing of a notification of change of address or telephone number and the attachment of the notification to a protective order does not affect the validity of the order.

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TEXAS FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 101. DEFINITIONS

SUBTITLE A. GENERAL PROVISIONS

§ 101.011 Administrative Writ of Withholding

"Administrative writ of withholding" means the document issued by the Title IV-D agency and delivered to an employer directing that earnings be withheld for payment of child support as provided by Chapter 158.

§ 101.007 Clear and Convincing Evidence

Notes of Decisions

1. In general

It is constitutionally and statutorily mandated that evidence supporting parental termination order must be clear and convincing; in order to qualify as clear and convincing evidence must be of such measure or degree of proof as will produce in mind of trier of fact firm belief or conviction as to truth of allegations sought to be establishes. In Interest of J.J. (App. 6 Dist. 1995) 911 S.W.2d 437, rehearing overruled, writ denied.

In reviewing jury's findings in proceeding to terminate parental rights based on clear and convincing standard, Court of Appeals asks whether sufficient evidence was presented to produce in mind of rational fact finder firm belief or conviction as to truth of allegations sought to be established. In Interest of B.T. (App. 4 Dist. 1997) 954 S.W2d 44, review denied.

§ 101.011 Earnings

"Earnings" means a payment to or due an individual regardless of source and how denominated.

The term includes a periodic or lump-sum payment for:

(1) wages, salary, compensation received as an independent contractor, overtime pay, severance pay, commission, bonus, and interest income;

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(2) payments made under a pension, an annuity, workers' compensation, and a disability or retirement program; and

(3) unemployment benefits.

§ 101.012 Employer

"Employer" means a person, corporation, partnership, workers' compensation insurance carrier, governmental entity that pays or owes earnings to an individual. The term includes, for the purposes of enrolling dependents in a group health insurance plan, a union, trade association, or other similar organization.

§ 101.0125 Family Violence

"Family violence" has the meaning assigned be Section 71.004.

§101.034 Title IV-D Case

"Title IV-D case" means an action in which services are provided by the Title IV-D agency under Part D, Title IV, of the federal Social Security Act (42 U.S.C. Section 651 et seq.), relating to the location of an absent parent, determination of parentage, or establishment, modification, or enforcement of a child support or medical support obligation.

NOTES

OVERVIEW

In summary, this legislation refers to the conservatorship and access to certain children whose parent or parents have a history of family violence. The law now allows the judge to deny a parent who has a history of family violence access to the child, render a possession order that is designed to protect the safety of the child, and order the parent to complete a battering intervention and prevention program, among other options.

TEXAS FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 153. CONSERVATORSHIP, POSSESSION, AND ACCESS

SUB-CHAPTER A. GENERAL PROVISIONS

§ 153.001 Public Police

(a) The public policy of this state is to:

(1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;

(2) provide a safe, stable, and nonviolent environment for the child; and

(3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

§153.004. History of Domestic Violence

(a) In determining whether to appoint a party as a sole or joint managing conservator, the court shall consider evidence of the intentional use of abusive physical force by a party against the party's spouse or against any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit.

(b) The court may not appoint joining managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent

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directed against the other parent, a spouse, or a child, including a sexual assault in violation of Section 22.011 or 22.021, Penal Code, that results in the other parent becoming pregnant with the child. A history of sexual abuse includes a sexual assault that results in the other parent becoming pregnant with the child, regardless of the prior relationship of the parents. It is a rebuttable presumption that the appointment of a parent as the sole managing conservator of a child or as the conservator who the exclusive right to determine the primary residence of a child is not in the best interest of the child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

(c) The court shall consider the commission of family violence in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator.

(d) The court may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit, unless the court:

(1) finds that awarding the parent access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child; and

(2) renders a possession order that is designed to protect the safety and well-being of the child and any other person who has been a victim of family violence committed by the parent and that may include a requirement that:

(A) the periods of access be continuously supervised by an entity or person chosen by the court;

(B) the exchange of possession of the child occur in a protective setting;

(C) the parent abstain from the consumption of alcohol or a controlled substance, as defined by Chapter 481, Health and Safety Code, within 12 hours prior to or during the period of access to the child; or

(D) the parent attend and complete a battering interve ntion and prevention program as provided by Article 42.121, Code of Criminal Procedure, or, if such a program is not available, complete a course of treatment under Section 153.010.

NOTES

(e) It is a rebuttable presumption that it is not the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

Amended effective Sept. 1, 2001 (SB 140). This Act "applies only to an order in a [SAPCR] rendered on or after that date, without regard to whether the suit was filed before, on or after that date.... The enactment of this Act does not by itself constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for the possession of or access to a child rendered before the effective date of this Act."

§ 153.0071. Alternate Dispute Resolution

(a) On written agreement of the parties, the court may refer a suit affecting the parent-child relationship to arbitration. The agreement must state whether the arbitration is binding or non-binding.

(b) If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award unless the court determines at a non-jury hearing that the award is not in the best interest of the child. The burden or proof at a hearing under this subsection is on the party seeking to avoid rendition of an order based on the arbitrator's award.

(c) On the written agreement of the parties or on the court's own motion, the court may refer a suit affecting the parent-child relationship to mediation.

(d) A mediated settlement agreement is binding on the parties if the agreement;

(1) provides in a separate paragraph an underlined statement that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(e) If a mediated settlement agreement meets the requirements of Subsection (d), a party is entitled to judgement on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(f) The procedures and remedies provided by this section apply to an action brought under Title 1.

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(g) A party may at any time prior to the final mediation order file a written objection to the referral of a suit affecting the parent-child relationship to mediation on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, the suit may not be referred to mediation unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation. This subsection does not apply to suits filed under Chapter 262.

NOTES

OVERVIEW

Legislation passed by the 76th Legislature allows a judge to suspend an alleged perpetrator's license to carry a concealed handgun due to a family violence arrest or the issuance of an order for emergency protection

GOVERNMENT CODE

CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS

Sub-chapter H. License To Carry A Concealed Handgun

§ 411.180. Notification of Denial, Revocation, or Suspension of License; Review

(a) The department shall give written notice to each applicant for a handgun license of any denial, revocation, or suspension of that license. Not later than the 30th day after the notice is received by the applicant, according to the records of the department, the applicant or license holder may request a hearing on the denial, revocation, or suspension. The applicant must make a written request for a hearing addressed to the department at its Austin address. The request for hearing must reach the department in Austin prior to the 30th day after the date of receipt of the written notice. On receipt of a request for hearing from a license holder or applicant, the department shall promptly schedule a hearing in the appropriate justice court in the county of residence for the applicant or license holder. The justice court shall conduct a hearing to review the denial, revocation, or suspension of the license. In a proceeding under this section, a justice of the peace shall act as an administrative hearing officer. A hearing under this section is not subject to Chapter 2001 (Administrative Procedure Act). A district attorney or county attorney, the attorney general, or a designated member of the department may represent the department.

(b) The department on receipt of a request for hearing, shall file the appropriate petition in the justice court selected for the hearing, shall file the appropriate petition in the justice court selected for the hearing and send a copy of that petition to the applicant or license holder at the address contained in departmental records. A hearing under this section must be scheduled within 30 days of receipt of the request for a hearing. The hearing shall be held expeditiously

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but in no event more than 60 days after the date that the applicant or license holder requested the hearing. The date of the hearing may be reset on the motion of either party, by agreement of the parties, or by the court as necessary to accommodate the court's docket.

(h) The department may use and introduce into evidence certified copies of governmental records to establish the existence of certain eve nts that could result in the denial, revocation, or suspension of a license under this sub-chapter, including records regarding convictions, judicial findings regarding mental competency, judicial findings regarding mental competency, judicial findings regarding chemical dependency, or other matters that may be established by governmental records that have been properly authenticated.

(i) this section does not apply to a suspension of a license under Section 85.022, Family code, or Article 17.292, code of Criminal Procedure.

§ 411.187. Suspension of License

(a) A license may be suspended under this section of the license holder:

(1) is convicted of disorderly conduct punishable as a Class C misdemeanor under Section 42.01, Penal Code, or of a felony under an information or indictment;

(2) fails to display a license as required by Section 411.205;

(3) fails to notify the department of a change of address or name as required by Section 411.181;

(4) carries a concealed handgun under the authority of this subchapter of a different category than the license holder is licensed to carry; ~~[or]~~

(5) fails to return a previously issued license after a license is modified as required by Section 411.184(d);

(6) commits an act of family violence and is the subject of an active protective order rendered under Title 4, Family code; or

(7) is arrested for an offense involving family violence or an offense under Section 42.072, Penal code, and is the subject of an order for emergency protection issued under Article 17.292, code of Criminal Procedure.

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(c) A license may be suspended under this section:

(1) for 30 days, if the person's license is subject to suspension for a reason listed in Subsection (a) (3), (4), or (5), except as provided by Subdivision (3),

(2) for 90 days, if the person's license is subject to suspension for a reason listed in Subsection (a)(2), except as provided by Subdivision (3);

(3) for not less than one year and not more than three years if the person's license is subject to suspension for a reason listed in Subsection (a), other than the reason listed in Subsection (a)(1), and the person's license has been previously suspended for the same reason; ~~[or]~~

(4) until dismissal of the charges if the person's license is subject to suspension for the reason listed in subsection (a)(1); or

(5) for the duration of or the period specified by:

(A) the protective order issued under Title 4, Family code, if the person's license is subject to suspension for the reason listed in Subsection (a)(6); or

(B) the order for emergency protection issued under Article 17.292, code of Criminal Procedure, if person's license is subject to suspension for the reason listed in Subsection (a)(7).

NOTES

OVERVIEW

Passage of SB 1851 creates a new exception to disclosure, section 552.132, for certain crime victim information held by the Crime Victims' Compensation Division. A crime victim who applies for compensation under the Crime Victims' Compensation Fund may elect to keep identifying information from public disclosure.

GOVERNMENT CODE
CHAPTER 552. OPEN RECORDS
Sub-chapter B. Right of Access To Public Information

§ 552.021 Availability of Public Information

Public information is available to the public at a minimum during the normal business hours of the governmental body.

§ 552.022 Categories of Public Information; Examples

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law;

(4) the name of each official and the final record of voting on all proceedings in a governmental body;

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

(6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code.

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(7) A description of an agency's central and field organization, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit in-formation or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit in-formation or requests, or obtain decisions;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7)-(10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(13) a policy statement or interpretation that has been adopted or issued by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information regarded as open to the public under an agency's policies;

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege or confidential under other law;

(17) information that is also contained in a public court record; and

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(18) a settlement agreement to which a governmental body is a party unless the agreement is confidential under other law.

Sub-chapter C. Information Excepted From Required Disclosure

§ 552.132 Exception: Crime Victim Information

(a) In this section, "crime victim" means a victim under Sub-chapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that Sub-chapter.

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:

(1) the name, social security number, address, or telephone number of the crime victim; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

(c) An election under Subsection (b) must be:

(1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and

(2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.

(d) If the crime victim elects not to allow public access to the information, the information is excepted from the requirements of Section 552.021. If the crime victim does not make an election under Subsection (b) or elects to allow public access to the information, the information is not excepted from the requirements of Section 552.021 unless the information is made confidential or excepted from those requirements by another law.

(e) If the crime victim is awarded compensation under 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim and the amount of compensation awarded to that victim are public information and are not excepted from the requirements of Section 552.021.

NOTES

OVERVIEW

This section addresses the procedure to take if a victim of domestic violence requests a new driver's license or personal identification certificate number.

TEXAS TRANSPORTATION CODE

TITLE 7. VEHICLES AND TRAFFIC

SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS

CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES

SUBCHAPTER M. LICENSE EXPIRATION, RENEWAL, AND NUMBER CHANGE

§521.271. License Expiration

(a) Each original driver's license and provisional license expires as follows:

(1) a driver's license expires on the first birthday of the license holder occurring after the sixth anniversary of the date of the application;

(2) a provisional license expires on the earlier of:

(A) the 18th birthday of the license holder; or

(B) the first birthday of the license holder occurring after the date of the application;

(3) an instruction permit expires on the first birthday of the license holder occurring after the date of the application; and

(4) an occupational license expires on the first anniversary of the court order granting the license.

(b) A driver's license that is renewed expires on the sixth anniversary of the expiration date before renewal.

§521.275. Change Of Driver's License Or Personal Identification Certificate Number

(a) The department shall issue to a person a new driver's license number or personal identification certificate number on the person's showing a court order stating that the person has been the victim of domestic violence.

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(b) The department may require each applicant to furnish the information required by Section 521.142. If the applicant's name has changed, the department may require evidence identifying the applicant by both the former and new name.

(c) Except as provided by Sections 521.049 (c), 730.005, and 730.006, the department may not disclose:

(1) the changed license or certificate number; or

(2) the person's name or any former name.

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