

CHAPTER 806

H.B. No. 2179

AN ACT

relating to restitution paid by criminal defendants to crime victims.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.037 to read as follows:

Art. 42.037. RESTITUTION. (a) In addition to or, in the case of a misdemeanor, in lieu of 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. 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:

(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 nonmedical 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 Subdivision (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 Subdivision (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.

(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 probation or is paroled or released on mandatory supervision under this chapter, the court or the Board of Pardons and Paroles shall order the payment of restitution ordered under this article as a condition of probation, parole, or mandatory supervision. The court may revoke probation and the 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 probation, parole, or mandatory supervision, the court or 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 the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) and its subsequent amendments 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 pertaining 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.

(l) Conviction of a defendant for an offense involving the act giving rise to restitution under this article estops 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.

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

(a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

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

(2) Avoid injurious or vicious habits;

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

(4) Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;

(5) Permit the probation officer to visit him at his home or elsewhere;

(6) Work faithfully at suitable employment as far as possible;

(7) Remain within a specified place;

(8) Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, ~~and make restitution or reparation in any sum that the court shall determine~~;

(9) Support his dependents;

(10) Participate, for a time specified by the court in any community-based program, including a community-service work program designated by the court;

(11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

(13) Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility;

(14) ~~Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense;~~

~~[(15)] Submit to testing for controlled substances;~~

(15) ~~[(16)] Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse, if the person was sentenced for an offense involving controlled substances or the court determines that the defendant's use of controlled substances was connected to the commission of the offense;~~

(16) ~~[(17)] Register under Article 6252-13c.1, Revised Statutes; and~~

(17) ~~[(18)] With the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation [for the purpose of making restitution to the victim].~~

SECTION 3. Section 15(a), Article 42.12, Code of Criminal Procedure, as amended by Section 1, Chapter 111, Acts of the 71st Legislature, Regular Session, 1989, and Section 4.17, Chapter 785, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) If the court requires a probationer to make restitution to a victim of the probationer's offense, and a payment is received under ~~[Section 6(a)(8) or (a)(14) of] this chapter [article]~~ from the probationer for transmittal to a victim of the offense, the *community supervision and corrections* ~~[probation]~~ department that receives the payment for disbursement to the victim shall immediately deposit the payment in an interest-bearing account in the department having original jurisdiction. The department shall transmit the payment to the victim as soon as practicable.

SECTION 4. Section 11(c), Article 42.12, Code of Criminal Procedure, as added by Section 2, Chapter 202, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 5. (a) The change in law made by this Act applies only to an order of restitution for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An order of restitution for 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.

SECTION 6. This Act takes effect September 1, 1993.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 12, 1993, by a non-record vote; passed by the Senate on May 27, 1993, by a viva-voce vote.

Approved June 18, 1993.

Effective Sept. 1, 1993.