

BILL ANALYSIS

Senate Research Center
79R10649 KCR-D

H.B. 1751
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Criminal Justice
5/19/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The source of funds for the compensation to victims of crime fund are primarily generated by persons who commit criminal offenses. Although restitution is commonly ordered by the courts, it is not always ordered to reimburse the compensation to victims of crime fund for funds expended on behalf of the victim. In 2003, the State collected approximately \$48 million in restitution payments. Of the \$71 million paid out by the compensation to victims of crime fund, less than \$900,000 in restitution was ordered repaid to the fund. The additional revenue required by H.B. 1751 will help the fund remain viable for future victims.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 42.037, Code of Criminal Procedure, by amending Subsections (a)-(i) and (n) and adding Subsection (c-1), as follows:

(a) Requires, rather than authorizes, the court to order the defendant convicted of an offense to make restitution to any victim of the offense or to the compensation to victims of crime fund (fund) established under Subchapter B, Chapter 56, to the extent that fund has paid compensation to or on behalf of the victim. Requires the court to order full restitution unless the court finds compelling and extraordinary reasons for not ordering full restitution and states those reasons on the record. Deletes existing text requiring the court to state the reasons for not ordering restitution or ordering partial restitution. Prohibits a court, in entering a restitution order under this subsection, from considering a defendant's inability to pay as a compelling and extraordinary reason not to require full restitution or as a factor in determining the amount of restitution to be ordered. Authorizes the court to consider a defendant's inability to pay only in determining the manner in which the defendant must pay the restitution ordered. Provides that for purposes of this subsection, the defendant is presumed to be capable of paying any restitution ordered and has the burden of proof in demonstrating the defendant's inability to pay. Defines "victim." Makes nonsubstantive changes.

(b) Requires, rather than authorizes, the court to order the defendant to either return the property or pay a certain amount if the offense results in damage to or loss or destruction of property. Requires, rather than authorizes, the court, if the offense results in personal injury to a victim, to order the defendant to make restitution to the victim for any expenses incurred by the victim as a result of the offense or the fund to the extent that fund has paid compensation to or on behalf of the victim. Deletes existing text setting forth the amounts the defendant may pay the victim. Deletes existing text relating to restitution in the case of the death of the victim. Authorizes the court, if the victim or victim's estate consents, to order the defendant to make restitution by performing services instead of by paying money or make restitution to a person or organization, other than the fund, designated by the victim or the estate. Makes nonsubstantive changes.

(c) Requires the court, in determining the amount of the restitution, to consider the amount paid to or on behalf of the victim by the fund and other factors the court deems appropriate, other than the defendant's inability to pay. Deletes the requirement that the

court consider the financial resources of the defendant and the financial needs and earning ability of the defendant and the defendant's dependents. Makes conforming and nonsubstantive changes.

(c-1) Requires the court, in determining the manner in which the defendant must pay restitution to consider the factors described in Subsection (c) and the current and future financial responsibilities of the defendant.

(d) Makes conforming and nonsubstantive changes.

(e) Requires the court to impose an order of restitution that is as fair as possible to the victim and to the fund.

(f) Prohibits the court from ordering restitution for a loss for which the victim has received or will receive compensation only from a source other than the fund. Makes a conforming change.

(g) Authorizes the court, if the court requires the defendant to make restitution in specified installments, in addition to the installment payments, to require the defendant to pay a one-time restitution fee of \$12, \$6 of which the court is required to retain for costs incurred in collecting the specified installments and \$6 of which the court is required to order to be paid to the fund. Makes a conforming change.

(h) Requires the court or parole panel, in determining whether to revoke community supervision, parole, or mandatory supervision, to consider the defendant's current and future earning ability, the defendant's current and future financial resources, and the victim's financial resources or ability to pay expenses incurred by the victim as a result of the offense.

(i) Requires, rather than authorizes, the court to require a probationer to reimburse the compensation to victims of crime fund for any amounts paid from that fund to or on behalf of a victim of the probationer's offense. Redefines "victim." Makes conforming and nonsubstantive changes.

(n) Makes a conforming change.

SECTION 2. Amends Section 11(a), Article 42.12, Code of Criminal Procedure, to authorize the conditions of community supervision to include a requirement that the defendant reimburse the fund, rather than the general revenue fund, for any amounts paid from that fund or on behalf of the victim. Makes conforming and nonsubstantive changes.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2005.