HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2006

A REPORT TO THE
HOUSE OF REPRESENTATIVES
80TH TEXAS LEGISLATURE

REPRESENTATIVE TERRY KEEL
CHAIRMAN

COMMITTEE CLERK
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Committee On
Criminal Jurisprudence

October 30, 2006

Representative Terry Keel
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Criminal Jurisprudence of the Seventy-Ninth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eightieth Legislature.

Respectfully submitted,

Terry Keel

Debbie Riddle

Paul Moreno

Mary Denny

Elvira Reyna

Richard Raymond

Terri Hodge

Aaron Pena

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TABLE OF CONTENTS

INTRODUCTION

At the beginning of the 79th Legislature, House Speaker Tom Craddick appointed nine members to the Committee on Criminal Jurisprudence. The Committee membership includes the following members.

Representative Terry Keel, Chair
Representative Debbie Riddle, Vice Chair
Representative Paul Moreno
Representative Mary Denny
Representative Elvira Reyna
Representative Richard Raymond
Representative Terri Hodge
Representative Aaron Pena
Representative Juan Manuel Escobar

Pursuant to House Rule 3, Section 7, the Committee on Criminal Jurisprudence has jurisdiction over all matters pertaining to (1) criminal law, prohibitions, standards, and penalties; (2) probation and parole; (3) criminal procedure in the courts of Texas; (4) revision or amendment of the Penal Code; and (5) the Office of State Prosecuting Attorney and the Texas State Council for Interstate Adult Offender Supervision.

HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE

INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

- Review the applicable laws governing the payment of restitution to victims of crime and the methods by which restitution is collected and disbursed to victims of crime and the Compensation to Victims of Crime Fund.
- Examine the issue of reciprocal discovery in criminal cases.
- Study the current legal protection against criminal prosecution and civil liability for a person who uses force, including deadly force, against a person who unlawfully and with force seeks to enter a residence, dwelling, or vehicle.
- Monitor the use of nuisance abatement authority by the City of Dallas and investigate unresolved issues pertaining to allegations of possibly civil rights violations that may have been committed under color of law by local government. (Joint Interim Charge with House Committee on General Investigating and Ethics)
- Monitor the agencies and programs under the committee's jurisdiction.

On October 20, 2005, pursuant to Rule 4, Chapter D, of the House Rules, the Subcommittee on Reciprocal Discovery was formed. The composition of the subcommittee is as follows:

Rep. Aaron Pena, Chair
Rep. Debbie Riddle, Vice Chair
Rep. Paul Moreno, Member

RESTITUTION

CHARGE

> *The Committee was charged with reviewing the applicable laws governing the payment of restitution to victims of crime and the methods by which restitution is collected and disbursed to victims of crime and the Compensation to Victims of Crime Fund.*

The Committee has adopted the following report published by the Crime Victims' Institute of Sam Houston State University: **Restitution in Texas, A Report to the Legislature** by Glen Kercher, Matthew Johnson, Ilhong Yun, and Amy Proctor.

In 2005, Speaker of the House of Representatives, Tom Craddick, highlighted restitution payment as a key issue in his "Interim Study Charges" for the 79th Legislative Session of the Texas House: "Review the applicable laws governing the payment of restitution to victims of crime and the methods by which restitution is collected and disbursed to victims of crime and [through] the Compensation to Victims of Crime Fund."[1] The purpose of this report is to provide background information about the issues germane to restitution for victims of crime in Texas.

Glen Kercher

Crime Victims' Institute

RESTITUTION IN TEXAS: A COMPREHENSIVE APPROACH

The concept of restorative justice provides a context for understanding the issues surrounding restitution. "Restorative justice is aimed toward repairing the damage done to victims and the community while providing re-integrative responses by the criminal justice system, victims, and other 'stakeholders' in the community."[2] Although punishment is not a goal of restorative justice, restitution certainly involves repairing the damage between offenders and victims, as well as rehabilitating offenders. It is under the framework of restorative justice, keeping in mind the need to strictly enforce laws when necessary, that specific issues and initiatives are reviewed in this report.

Restitution to crime victims has a long history. Mosaic Law, the Code of Hammurabi, and Roman law all contained provisions for restitution. Throughout history, crimes were primarily regarded as harms against individual victims. Beginning in Europe during the 12th century, however, crimes were gradually viewed as offenses against the king's peace rather than against individual victims. Offenders were ordered to pay fines to the king's coffers rather than pay restitution to a victim who was actually violated.[3]

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1 Craddick, T. (2005). Interim Study Charges. Texas House of Representatives 79th Legislature. Retrieved, June 10, 2006 from http://www.house.state.tx.us/committees/charges/79interim/79thinterimcharges.pdf

2 Akers, R. L. & Sellers, C. S. (2004). Criminological theories: Introduction, evaluation, and application, 4th Ed. Los Angeles, CA: Roxbury.

3 VanNess, D. (1990) Restorative justice. In Galaway, B., and Hudson, J. (Eds.), Criminal justice, restitution, and reconciliation (pp. 7-14). New York: Willow Tree Press.

During the development of the U.S. criminal justice system the issue of restitution was addressed. In the years following the American Revolution, however, crimes were increasingly viewed as acts against the state, rather than the individual victim. As a result, criminals were ordered to pay their debts to society through fines and imprisonment. Increasingly, restitution to a victim began to be handled by tort law. Victims who wanted restitution were referred to civil courts.[4]

The prevailing concept of crime as "harm against the state" virtually eliminated the victim from the justice process, often rendering them "invisible" in the American criminal justice arena. Beginning in the 1970s, however, these forgotten victims increasingly influenced America's conscience. The victims' movement called for a return to the old practice of victim restitution.[5] Since 1972, when the first modern restitution center in Minnesota was created, restitution has become a fixture in the justice process of the U.S. and currently all states and the federal government have some statutory or constitutional provisions pertaining to restitution.

CURRENT PRACTICE

According to Akers & Sellers, restitution has three specific goals:

First, it restores victims by providing financial and psychological benefits. The compensation aspect of restitution can address both the victim's financial loss and the victim's sense of injustice. Second, restitution can serve as a means of changing offenders' behavior. This rehabilitation aspect of restitution is aimed at changing offenders' behavior by forcing them to recognize both the losses that they have caused and their responsibility for repairing those losses. Third, restitution has punishment aspects, in that the requirement of making payments is more onerous than stralght probation.[6]

All three goals are important when considering policy changes to restitution procedures. These goals can also be seen as interrelated; when one is being properly addressed, the others are likely to be met as well.

The idea of restitution is important in that crime is not merely a symbolic assault against the state, but also one that inflicts harm on innocent victims. Criminals have long paid their debts to the state through fines and confinement. Fairness dictates that the same criminals pay debts to victims to repair the harm they have caused. Moreover, research has consistently shown that restitution rehabilitates and reduces recidivism of offenders.[7][8][9][10]

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4 McDonald, W. (1977). The role of the victim in America. In R. Barnett and J. Hagel III (Eds.), Assessing the criminal: Restitution, retribution, and the legal process (pp. 295-307). Cambridge, MA: Ballinger.
5 Hillenbrand, S. (1990). Restitution and victim rights in the 1980s. In A. Lurigio, W. Skogan, and R. Davis (Eds.), Victims of crime: Problems, politics, and programs (pp. 188-204). Thousand Oaks, CA: Sage.
6 See Akers & Sellers, Supra Note 2
7 Outlaw, M.C., & Ruback, R.B. (1999). Predictors and outcomes of victim restitution orders. Justice Quarterly, 16(4), 847-869.

Restitution is certainly important, but it is only available when an offender is apprehended and convicted. Consequently, only a small percentage of victims receive any reparation payments. Unfortunately, many victims do not report their victimization to the police. Statistics show that as many as 50% of victimization incidents go unreported. In the case of robbery, for example, approximately half of all robberies are reported, and only one quarter of them are solved. According to a recent report, one out of every eight robbery victims is likely to receive restitution.[11] Worse yet, not all offenders are ordered to pay restitution and, of those who are, many do not fully comply with the order.

Judges typically order restitution when quantifying the harm to the victim is uncomplicated. Thus, property crime offenders are more likely to receive restitution orders than are violent criminals. A national study showed that the proportion of property crime offenders on probation who were ordered to pay restitution was about 40%, while that of violent perpetrators was a mere 15%.[12] When ruling on restitution, judges may not take into consideration salient factors other than the dollar value of the damages. Texas law requires judges to order defendants to pay restitution to victims. If judges do not order restitution or order only partial restitution, they must state their reasons for the record.[13]

An accurate assessment of the extent of victims' injuries and losses are essential to a fair order of restitution. When determining the optimal amount of restitution, judges often rely on information provided by community supervision officers in a pre-sentence investigation. However, pre-sentence investigations are ordered in only a small percentage of cases. Victims are asked to describe their physical, psychological, and emotional injury in a victim impact statement after an indictment is brought against an offender. However, victim impact statements may not fully capture the extent of damages that victims experience. For example, unforeseen financial expenses may be incurred after the victim impact statement is submitted. Greater effort is required to more accurately document the extent of suffering crime victims experience. Only in this way will judges be able to order restitution that addresses the harm experienced by victims

RESTITUTION ISSUES

Despite the popularity of restitution and the many statutory provisions related to this issue, restitution remains one of the most under-enforced rights of crime victims. To rectify this, many

8 Rowley, M. (1990). Comparison of recidivism rates for delinquents processed in a restitution-diversion program to a matched sample processed in court. In Galaway, B., and Hudson, J. (Eds.), Criminal justice, restitution, and reconciliation (pp. 217-226). New York: Willow Tree Press.
9 Schneider, P. (1990). Deterrence and juvenile crime: Results from a national policy experiment. New York Springer-Verlag.
10 Ervin, L., & Schneider, A. (1990). Explaining the effects of restitution on offenders: Results from a national experiment on juvenile courts. In Galaway, B., and Hudson, J. (Eds.), Criminal justice, restitution, and reconciliation (pp. 183-206). New York: Willow Tree Press
11 Carmen, A. (2004). Crime victims: An introduction to victimology. Belmont, CA: Wadsworth.
12 Brown, J., Langan, P., & Levin, D. (1999). BJS Bulletin: Felony sentences in state courts, 1996. Washington, D.C.: U.S. Department of Justice
13 Tex. Code Crim Proc. Art. 42.037

victims want restitution to be mandatory regardless of offenders' ability to pay. They also want higher amounts of restitution imposed, and harsher penalties for failure to comply. Increasingly, state policies and laws are addressing these concerns.

Offenders' Ability to Pay

Many victim advocates argue that an offender's ability to pay should not be considered when ordering restitution. Instead, they maintain that the offender's financial ability should be taken into account only when setting the payment schedules. The ostensible rationale of such an argument is that judges do not have to be concerned about the defendant's financial ability at the time of the restitution order, because the offender's earning ability and financial situation can change over time.[14] Pursuant to this argument, the 79th Session of the Texas Legislature removed the requirement of having judges consider a defendant's ability to pay when determining the amount of restitution. Nothing prevents a judge from considering it, but it is no longer required

Controversy continues on this issue, however. Offenders who do not have adequate resources to pay restitution may not even attempt payment.[15] Many probationers have financial, mental, and physical health problems which adversely affect their ability to comply with restitution orders. A study by the American Bar Association concluded that the ability of the offender to pay should be considered in setting the amount of the restitution award and in responding to delinquent offenders.[16]

Restitution benefits not only victims, but offenders as well. The community as a whole also benefits as a result of reduced recidivism.[17][18][19] Several studies that examined the impact of restitution on recidivism suggest that restitution reduces future law violations. Ervin and Schneider suggest that with regard to juvenile offenders:

. restitution involves a continuing, tangible, positive action by the youth that culminates in successful completion of [restitution]…. Restitution's impact on recidivism operates largely through the opportunity it presents for positively rewarding the juvenile for actions taken [20]

This is in contrast with traditional sanctions where probationers passively avoid punishment by not violating the conditions of probation.

14 Levin, M. (2005a). Testimony on House Bill 1751 to the Senate Criminal Justice Committee: Requiring restitution. Policy Brief. Retrieved May 5, 2006, from http://www.texaspolicy.com/pdf/2005-05019-test2193-cej.pdf
15 Hudson, J., & Galaway, B. (1975). Historical perspectives. In Hudson, J., and Galaway, B. (Eds.), Considering the victim: Readings in restitution and victim compensation (pp. 3-54) Springfield, IL: Thomas.
16 Smith, B., Davis, R., & Hillenbrand, S. (1989). Improving enforcement of court-ordered restitution. Chicago: American Bar Association.
17 See Ervin & Schneider, Supra Note 10
18 See Rowley, Supra Note 8.
19 See Schneider, Supra Note 9
20 See Ervin & Schneider, Supra Note 10

Payment of Restitution

Many offenders often do not fully pay the restitution that is ordered. The national estimates of restitution dollars collected vary. A study conducted by the American Bar Association showed that only 45% of restitution dollars were actually collected.[21] Similarly, the mean collection rate over a three-year period in Cook County, Illinois was a mere 34%.[22] In Pennsylvania, 41% of probationers with restitution orders paid nothing or less than half of the amount required.[23] In Texas, the Legislative Budget Board[24] estimated that approximately 50% of restitution ordered is actually collected, an estimate that is higher than the national figure. The average dollar amount collected for victims in Texas from 1999 to 2003 was approximating $45 million a year.

It is important to understand the factors that affect payment of restitution if compliance rates are going to be improved. For example, closer supervision might be provided for high-risk offenders who are likely to default on their payments.

Outlaw & Ruback[25] found that female offenders were less likely to pay than males, presumably because they often have fewer financial resources. Likewise, offenders who are younger, unmarried, unemployed, and without community ties were less likely to comply with restitution requirements. Those with prior criminal records paid less. Although African Americans did not differ from Whites in whether they made any payment, they did not contribute as much as Whites. White-collar offenders, as opposed to violent criminals, were more likely to fully comply with restitution orders. In summary, those who have fewer resources, are minorities, have previous records, and commit violent crimes are less likely to pay restitution. In contrast, those who are most likely to carry out the order are White males who are employed, have little or no previous criminal record, and commit financial crimes such as theft or fraud.

In addition to the demographic factors discussed above, another feature that affects restitution payment is close supervision [26] [27] [28] In Texas, the responsibility for supervising restitution payments falls to Community Supervision and Corrections Departments and the Pardons and Parole Division of the Texas Department of Criminal Justice. The following section discusses this issue.

Collecting and Dispersing Restitution Payments

Although probation and parole officers in Texas are charged with supervising offenders and collecting restitution, the latter responsibility was not one for which these departments

21 See Smith, et al. Supra Note 16.
22 Lurigio, A. (1984). The relationship between offender characteristics and fulfillment of financial restitution. Chicago: Cook County Adult Probation Department.
23 See Outlaw & Ruback, Supra Note 7.
24 Legislative Budget Board (2005). Fiscal Note, 79th Legislative Regular Session. 2006 from http://www.capitol.state.tx.us/tlo/legislation/bill_status.htm
25 See Outlaw & Ruback, Supra Note 7.
26 Klein, A. (1988). Alternative sentencing: A practitioner's guide. Cincinnati: Anderson
27 See Outlaw & Ruback, Supra Note 7
28 See Smith, et al. Supra Note 16.

volunteered. They have traditionally focused on offenders rather than victims. Therefore, victim-related tasks in these departments may not be given a high priority.

Collecting restitution payments competes with the collection of other fees, including fines, court fees, and supervision fees. Some of these fees are used to supplement the budgets of the respective departments and officers' salaries. The average community supervision order contains 18 conditions, which strains the officers' ability to efficiently supervise restitution payment.[29]

A related issue is that a significant proportion of restitution dollars collected is not disbursed to victims because they cannot be located. Each year about $1 million of the money collected goes unclaimed. In some cases victims may not claim the funds because they are unaware from the outset that restitution is their right and has been ordered.

Many victims of crime receive financial help from the Crime Victims' Compensation Fund (CVCF). However, when they also receive restitution payments, consideration should be given to using those funds to reimburse the CVCF. Although this duplication may not often happen, it could be prevented by developing a system that more accurately tracks reparation to victims and payments by offenders.

Revocation

Some might argue for an immediate revocation of probation or parole upon any reneging on a scheduled restitution payment. However, there are obvious drawbacks in doing so: victim restitution is unlikely to be paid and the prison population increases, along with the associated costs to the state. Revocation of offenders' probation and parole accounts for a significant share of all TDCJ admissions. A Dallas Morning News article pointed out that two out of every three inmates who entered the prison system were there because of parole or probation violations in 1998; half of them were not charged with committing a new crime but with committing technical violations.[30] Therefore, putting offenders back in prison for not fulfilling restitution orders may not be the best option, especially when nonpayment is unintentional. Alternative remedies are needed to more effectively handle offenders who are noncompliant with restitution orders.

RESTITUTION LAWS IN TEXAS

The Texas Code of Criminal Procedure allows judges to impose restitution in a variety of situations.[31] However, the issue here is not targeting offenders for restitution. The problem lies in the fact that Texas, as well as most other states, has been unsuccessful in making sure restitution orders to crime victims have been fulfilled by defendants. It is estimated that the collection rate for restitution is only about 50% in Texas.[32]

29 Office for Victims of Crime (1999). Promising victim-related practices and strategies in probation and parole. Washington, D.C : U.S. Department of Justice.

30 Jennings, D. (2000). Full house: Growing inmate population has lawmakers scrambling for alternate solutions The Dallas Morning News, p. A45. Retrieved June 25, 2006, from America's Newspapers database.

31 Tex. Code Crim. Proc. Art. 42.037

32 Legislative Budget Board (2005). Fiscal Note, 79th Legislative Regular Session. In Re: HB1751. Retrieved June

Although the rate of restitution collection for victims of crime is low, Texas law does include some provisions designed to promote payment by the defendant. First, the court is required to set a specific time period for a defendant to complete payment. The time frame cannot exceed the time period of probation (if applicable), nor can the time period end more than five years after the end of a prison term.[33] This provides a deadline for the defendant to fulfill the restitution obligation. Also, if the court or parole panel places a defendant on probation or parole, restitution is a required condition of the terms of probation or parole. Thus, the court has the ability to revoke probation, and the parole panel has the ability to revoke parole, when restitution is not paid. When determining whether or not to revoke probation or parole, the court must consider several factors including: defendant's employment; future earning capabilities; financial resources; and willingness to pay [34] The law allows the courts to obtain information about the defendant from a community supervision and corrections department in order to make a decision [35]

Texas law also gives crime victims a restitution lien in order to ensure restitution is paid by the offender This means that victims have legal access to offenders' assets. Also regarding liens, the victim has priority over any lien the state has over an offender's property.[36]

Finally, the Texas Legislature recently passed Article 103.033 of the Texas Code of Criminal Procedure. The Collection Improvement Act was passed in order to increase the amount of money collected for court-ordered payments. All counties with a population greater than 50,000, and all municipalities with a population greater than 100,000 are now required to develop a program for collection improvement following the guidelines set forth in the law. The Office of Court Administration is responsible for developing specific guidelines for the new programs as well as ensuring each jurisdiction is in compliance with the guidelines.[37] Although the specific program qualities have not yet been established, this program should increase the collection of fees as well as restitution orders.

RESTITUTION LAWS IN OTHER STATES

Although some aspects of Texas statutory law have mechanisms in place to promote and enforce restitution collection, additional methods may be necessary to fulfill the rights of victims of crime.

Enforcing Orders of Restitution

Monitoring restitution. A number of measures have been taken in other states to more

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21, 2006, from http://www.capitol.state.tx.us/tlo/legislation/bill_status.htm. This document assesses the financial impact of the HB1751 on the General Revenue and Crime Victims' Compensation funds for Texas.
33 Tex. Code Crim. Proc. Art. 42.037 (g) (1), (g) (2)
34 Tex. Code Crim. Proc. Art. 42.037 (h).
35 Tex. Code Crim. Proc. Art. 42.037 (j).
36 Tex Code Crim Proc. Art. 42.22 Sec. 2 (a), Sec. 9
37 Tex Code Crim. Proc. Art. 103.0033.

effectively enforce restitution orders. One way to enhance enforcement is improved monitoring of restitution orders. Texas has addressed this need with the Collection Improvement Program discussed above.[38] However, some states have implemented other provisions that could enhance current Texas policies. For example, Wisconsin law requires that a separate account be set up for offenders who are ordered to pay restitution.[39] Presumably, this allows for better tracking of compliance with restitution orders. In Michigan, the probation or parole officer must review each case in which restitution was ordered every two years. This is to ensure that all payments are being made.[40] In Utah, the Corrections Department is required to file a violation report when a defendant does not make required restitution payments.[41]

Some states specifically provide victims with information on offenders' restitution plans. In Massachusetts, a victim has the right to the restitution payment schedule and the contact information of the probation officer in charge of supervising these orders.[42] This enables the victim to monitor compliance as well.

Access to state payments. Some state statutes allow state payments, which are intended to go to the offender, to be taken for restitution payment purposes. In Colorado, any lottery winnings may be garnished if the offender owes restitution.[43] Similar laws can be found in Maryland and Wisconsin.[44] Colorado also allows for tax refunds to be transferred to restitution payments.[45] In Iowa, any witness fees paid to an offender must be used for restitution payment.[46] Iowa also requires restitution payments to be taken out of a prisoner's account, regardless of the source of the money.[47]

Payments from prison work programs. Several states have enacted laws that allow for a significant portion of prisoners' wages to go toward restitution payments. Under California law, the wages of prisoners can be taken for restitution payment. The law allows for up to fifty percent of a prisoner's wages to be garnished.[48] Iowa also has a similar law.[49] Although Texas does have a program for inmates to work for wages, some of which can go toward restitution, the program is limited to a small number of inmates.[50]

Probation and parole. Many states, including Texas, allow for probation to be revoked or extended if an offender fails to pay restitution. In a somewhat different fashion, Washington allows the court to have continuing jurisdiction over a defendant for the purpose of ensuring that

38 *Id.*
39 Wis. Stat. § 973.20.
40 Mich. Stat. Ann. §§ 28.1073, .2306
41 Utah Code Jud. Admin. R. 6-303.
42 Mass. Ann. Laws ch. 258B, § 3.
43 Colo. Rev. Stat. § 16-18.5-106.5.
44 Md. Ann. Code art. 27, § 810; Wis. Stat. § 973.05
45 Colo. Rev. Stat. § 16-18.5-106.8.
46 Iowa Code § 622.69.
47 Iowa Code § 904.702
48 Cal. Penal Code § 2085.5.
49 Iowa Code § 920.5.
50 Texas Comptroller of Public Accounts, 2001

restitution is paid. This means that even though the defendant may not have his or her probation or parole extended, he or she remains under the jurisdiction of the state until restitution is paid.[51]

Other provisions. Some other practices pertaining to the enforcement of restitution orders should be noted. For example, Virginia allows for an offender's driver's license to be suspended for failure to pay restitution.[52] In Utah, the governor recently signed a bill into law that requires that, "Judgment for a conviction for a lower degree of offense may not be entered if there remains any unpaid balance on court ordered restitution for the offense for which the reduction is sought."[53] Also, anyone wishing to obtain expungement for a criminal record must not have any unpaid restitution.[54]

Investigating and Preserving Offenders' Assets

Not only is it important to make sure offenders are paying restitution, it is also important to ensure any assets that can be used toward restitution are preserved.

Investigating offenders' assets. Texas law does allow for the state to investigate possible sources of restitution payment.[55] However, this information is limited to the courts and community supervision officers. Some states allow victims to investigate assets as well. "In California, a victim is entitled to see a defendant's disclosures identifying all assets, income, and liabilities or certain other documents concerning financial information."[56] Kansas has similar provisions that are in place until all restitution is paid.[57]

Preserving the assets of offenders. Although investigating offenders' assets is fairly common, some states also include laws designed to preserve assets for restitution. California makes it a criminal offense to attempt to avoid paying restitution by disposing of property.[58] Georgia has a similar law [59] In Pennsylvania, the prosecutor may be granted a restraining order in order to preserve the assets of a defendant if the court finds that the Commonwealth is likely to prevail in judgment.[60]

RECOMMENDATIONS

The Offender's Ability to Pay Restitution

51 U S. Department of Justice Office for Victims of Crime (2002). Restitution: Making it Work. Retrieved June 9, 2006, from http://www.ovc.gov/publications/bulletins/legalseries/bulletin5/welcome.html
52 Va. Code § 46.2-395
53 Utah S.B. 150 76-3-402 (5).
54 Utah S.B. 150 77-27-21.5 (h).
55 Supra Note 35.
56 U.S. Department of Justice Office for Victims of Crime (2002). Restitution: Making it Work. Retrieved June 9, 2006, from http://www.ovc.gov/publications/bulletins/legalseries/bulletin5/welcome.html; from Cal. Penal Code § 1202.4
57 Kan. Stat. Ann. § 60-4305.
58 Cal. Penal Code § 155.5.
59 Georgia Code Title 17-10-1.1 § 3.
60 41 Pa. Cons. Stat. Ann. § 9728

Even though a number of initiatives have been enacted by other states to improve victim restitution, little is known about the effectiveness of these methods. For example, one concern involves requiring judges to consider an offender's ability to pay when determining the amount of restitution to order. Some may argue that requiring judges to determine an offender's ability to pay will lead to less compensation for the victim than they deserve. However, there is evidence to suggest that offenders are more likely to comply with restitution orders if they think the amount is in line with their resources.[61] Thus, there is a conflict between the need for victims to be given what is deserved, and the ability of an offender to pay.

Texas law does not require judges to consider an offender's ability to pay when determining the amount of restitution to order. Nevertheless, there may still be considerable disparity among judges' restitution orders for similar types of crime. At one extreme, a judge may impose a large amount of restitution payment for an offender with no assets or job potential. At the other extreme, a judge may not order any restitution regardless of the type of crime based on his or her evaluation of an offender's ability to pay.

- *Legislation should be enacted that establishes guidelines for the amounts of restitution ordered for particular types of crime or for categories of victim losses.* The offender's ability to pay should influence the schedule of payments, not the amount of restitution ordered
- *Restitution payments should be a priority over other payments due from the offender, including fines and fees.*

Since a number of justice entities share responsibility for restitution (e.g., courts, community supervision departments, and the Crime Victims' Compensation Program), automation can be an effective means by which these agencies communicate electronically with each other. Many states have already established automated systems.[62]

- *Texas should create an automated system of monitoring, managing, collecting, and disbursing restitution money.* Automation would facilitate communication with offenders, and victims could be automatically informed of the restitution process and the status of payments. This would also limit the number of victims who are paid both by offenders and from the CVCF.

Accessing Offenders' Assets and Payments

Texas is currently limited in the types of assets available for restitution. An increase in ways to collect money may improve collection.

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61 Outlaw, M. C. & Ruback, R. B. (1999). Predictors and Outcomes of Victim Restitution Orders. Justice Quarterly, 16, 847, 869.
62 See Office for Victims of Crime, Supra Note 29.

- *Texas should allow an offender's tax refunds, lottery winnings, and assets acquired while incarcerated to be subject to forfeiture when necessary to fulfill restitution obligations.*

Some judicial districts in Texas have established Community Corrections Facilities (CCF). These residential facilities could be operated by a Community Supervision and Corrections Department (CSCD) or by a public or private vendor under contract with the department. A CCF provides services and programs to offenders placed on community supervision, with the aim of modifying criminal behavior and restoring victims of crime [63]

Of particular interest among CCFs is the restitution center. Restitution centers target offenders who have problems maintaining employment and meeting court ordered monetary obligations Most offenders who reside in restitution centers are employed and return substantial value to their community by paying taxes, supporting their families, and, most importantly, by making restitution payments to their victims.

The average annual cost of a CCF placement is considerably less than the cost of revoking probation.[64] The recidivism rate for those who participate in CCF programs tends to be much lower than for those who do not.[65] However, funding for CCFs has been decreasing in recent years.[66]

Building more CCFs, especially restitution centers, and giving offenders an opportunity to pay their debts to both victims and society seems like a better idea for all parties involved than revoking technical violators and putting them back in prison.

- *Funding should be made available for CCF restitution centers in large metropolitan areas of the state*

Another way to increase restitution payments is to have prisoners engage in wage-earning activities in and outside of prison walls. Of particular interest with regard to prison employment is the Prison Industry Enhancement (PIE) program. Congress created the PIE program to encourage state and local governments to establish employment opportunities for prison inmates through partnership with private companies. PIE enables prisoners to earn prevailing industry wages and acquire marketable skills. In Texas, at least 10 percent of gross wages earned from Prison Industry Enhancement Program (PIE) is directed to restitution. However, utilization of the PIE program is limited. About 446 offenders a month are employed in the PIE Program.[67]

- *Texas should provide more opportunities for offenders to earn money while*

63 Community Justice Assistance Division (2002). Report to house corrections interim committee: Texas residential programs community corrections facilities. Austin: Texas Department of Criminal Justice
64 Criminal Justice Policy Council (2002). Cost revocations based on trends, profile and policy issues related to felony probation revocations in Texas. Austin: Author
65 See Community Justice Assistance Division, Supra Note 63
66 Id.
67 Miller, P. (2006). Prison Industry Enhancement Certification Program: A win-win. Criminal Justice Connections. Retrieved June 2006, from http://www.tdcj.state.tx.us/mediasvc/connections/MarApr2006/agency3_v13no4.html

incarcerated.

- *The first priority for the money earned while in prison should be victim restitution, followed by all other needs.*

Preserving Offenders' Assets

It is important that resources which can reasonably be used for restitution payments be preserved. In some cases, an offender may dispose of assets simply to avoid paying restitution.

- *Statutory provisions should be in place to prevent offenders from disposing of property/assets that can go toward unpaid restitution*
- *Legislation should be enacted making it a crime to dispose of property/assets that can go toward unpaid restitution*

Duplicating Payments

Victims sometimes receive restitution after receiving payment from the Crime Victims Compensation Fund. This can be attributed to several issues:

1 There is very little communication between the Office of the Attorney General (OAG) and the CSCD. Often the OAG does not have information that the defendant has been placed on community supervision, and the CSCD does not know that the victim has applied for or received any assistance from the CVCF. As a result, they both provide services to the victim. This is probably the exception rather than the rule. The victim may not know what the restitution was ordered for and may mistakenly believe that payments from the CVCF are separate and in addition to restitution payments.

2. The prosecutor's office and the court often do not adequately inform the victim or the CSCD what restitution has been ordered and its purpose. The restitution is ordered in a lump sum with no differentiation between property and expenses that may be covered by the compensation fund.

- *When victims receive restitution payments after they have been compensated from the Crime Victims' Compensation Fund, the restitution money collected in these instances should be reimbursed back to the Fund. Here again, automation of the restitution process could help correct this problem*

The Role of Probation/Parole Departments

Generally, it is the task of CSCD and parole departments to collect restitution payments. This role is often not embraced by these departments. To address this problem, Texas has established the Collection Improvement Program, which is intended to improve the process of collecting fees Yet, more specific measures may be helpful as well.

- *Probation and parole departments could designate specialized officers or a departmental unit for the collection of restitution.*
- *Probation and parole officers should be required to submit reports to the courts on offenders who have not fulfilled restitution requirements*
- *Victims should be provided with updated information about the restitution schedule of the offender, as well as the contact information for the officer in charge of collecting the restitution.*

Enforcing Restitution

In addition to the recommendations already mentioned that can serve as enforcement measures, the following proposals are suggested:

- *Alternative means for collecting restitution should be established (e.g., civil remedies, garnishment of wages, statutory ability to expand supervision for nonpayment, denial of professional license, or acceptance of credit card payments).*
- *Offenders should be prevented from obtaining drivers' licenses, professional licenses, and other special privileges provided by the state when restitution obligations are not fulfilled*
- *Offenders should be required to pay full restitution before a judge can lessen the degree of the offense*

Dispersing Restitution Payments

A significant proportion of restitution dollars collected is not disbursed to victims. Increased public awareness of restitution, effective communication between probation officers and victims, and genuine efforts to locate victims will significantly reduce the amount of restitution that goes unclaimed by victims.

- *A good faith effort to locate victims for restitution payments should be given greater priority by impressing on them the importance of notifying the department whenever their mailing address changes.*

CONCLUSION

The problems associated with restitution are not easy to solve. It is often difficult to determine the amount a victim should receive and an offender's ability to pay. It is also difficult to forecast the overall impact of many measures due to the lack of empirical research. Despite the problems associated with restitution, there are plausible solutions and many are being utilized by other states. Texas has also created provisions designed to improve restitution practices, yet more can be done. It is hoped that the recommendations provided serve as a useful guide for restitution reform in Texas.

To view additional research publications relating to victims of crime please visit the

Crime Victims' Intsitute website at:

www.crimevictimsinstitute.org

The Crime Victims' Institute

Sam Houston State University

Criminal Justice Center

Huntsville, Texas 77341-2180

phone: (936) 294-3100; fax: (936) 294-4296

www.crimevictimsinstitute.org

RECOMMENDATIONS

The Committee recommends that the Legislature make the following statutory changes:

A BILL TO BE ENTITLED AN ACT

relating to providing the attorney general with copies of felony judgments that contain certain restitution orders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 42.01, Code of Criminal Procedure, is amended by adding Section 9 to read as follows:

Sec. 9. If the court orders a defendant convicted of a felony to make restitution to the compensation to victims of crime fund established under Subchapter B, Chapter 56, the court shall send to the crime victim services division of the office of the attorney general a copy of the judgment containing the restitution order, entered on a standardized felony judgment form as required by Section 4.

SECTION 2. The change in law made by this Act applies only to a felony judgment entered on or after September 1, 2007. A felony judgment entered before September 1, 2007, is covered by the law in effect when the judgment was entered, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2007.

A BILL TO BE ENTITLED AN ACT

relating to a pilot study regarding certain defendants ordered to make restitution to the compensation to victims of crime fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 56, Code of Criminal Procedure, is amended by adding Article 56.531 to read as follows:

Art. 56.531. PILOT STUDY REGARDING DEFENDANTS ON COMMUNITY SUPERVISION. (a) The attorney general's crime victim services division and the community justice assistance division of the Texas Department of Criminal Justice by rule shall adopt a memorandum of understanding to establish a pilot study to identify and maintain information regarding each defendant who:

(1) is serving a term of community supervision; and

(2) has been ordered by a court to make restitution to the compensation to victims of crime fund.

(b) A community supervision and corrections department established under Chapter 76, Government Code, shall assist in the pilot study in the manner requested by the community justice assistance division of the Texas Department of Criminal Justice.

(c) In conducting the pilot study, the attorney general's crime victim services division shall create and maintain a computerized database that:

(1) identifies each defendant described by Subsection (a); and

(2) indicates with respect to that defendant:

(A) the total amount of restitution ordered;

(B) the total amount of restitution paid under the order;

(C) the amount of time allowed to complete payment of the restitution; and

(D) any established payment schedule for completing payment of the restitution.

(d) Except as necessary to establish and maintain the computerized database required by this article, the information contained in the database is privileged and confidential.

(e) Not later than September 1, 2009, the attorney general shall submit to the legislature a final written report containing the findings of the pilot study and any recommendations.

(f) This article expires January 1, 2010.

SECTION 2. This Act takes effect September 1, 2007.

A BILL TO BE ENTITLED AN ACT

relating to the payment of restitution for a criminal offense resulting in personal injury to a victim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1 Article 42.037(b)(2), Code of Criminal Procedure, is amended to read as follows:

(2) If the offense results in personal injury to a victim, the court may order the defendant to make restitution to:

(A) the victim for any pecuniary loss [~~expenses~~] incurred by the victim as a result of the offense, including a pecuniary loss based on:

(i) 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;

(ii) necessary physical and occupational therapy and rehabilitation; or

(iii) income lost by the victim as a result of the offense; or

(B) the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim.

SECTION 2. The changes in law made by this Act apply only to an order of restitution that is entered on or after September 1, 2007. An order of restitution that is entered before September 1, 2007, is governed by the law in effect on the date the order was entered, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2007.

RECIPROCAL DISCOVERY

CHARGE

The Committee was charged with examining the issue of reciprocal discovery in criminal cases.

Report submitted by the Subcommittee on Reciprocal Discovery
Representative Aaron Peña, Chair

BACKGROUND OF THE ISSUE

Discovery in a criminal case is the procedure by which a party to the case obtains facts and other information about the case from the other party in order to assist in preparation for trial. There is no general constitutional right to discovery in a criminal case. However, The U. S. Supreme Court has ruled in *Brady v. Maryland* that suppression of requested evidence favorable to an accused would violate the right of due process if the evidence is material to guilt or innocence or punishment. The normal procedure for discovery provides that upon a showing of good cause by the defendant, the prosecution must produce and permit the inspection and photocopying of any designated documents or other items which constitute evidence material to any matter involved in the action.

The current Texas statute (Art. 39.14, Code of Criminal Procedure) places the burden of discovery primarily on the prosecution. The only notable exception is that either party may be ordered by the court to disclose the name and address for each expert witness expected to testify at trial. The statute does not permit the release of written statements of witnesses, work product, or other privileged materials.

In Texas, therefore, the current procedure for discovery in a criminal case does not generally provide for *reciprocal* discovery; criminal defense attorneys are entitled to most information held by the prosecution, while prosecutors are not entitled to most information held by the defendant. Currently, many states as well as the federal government provide for reciprocal discovery, though with varying degrees. Examples include the states of Florida, California and Oklahoma which provide for reciprocal discovery through a type of opt in system. In this system of reciprocal discovery, if a defendant requests the disclosure of a prosecution's facts and information, then the defendant must also respond to the prosecution's request for similar information. Reciprocal discovery has the potential to maximize the presentation of reliable evidence and to promote efficiency in a criminal proceeding.

During the 79th Regular Session, two noteworthy pieces of legislation were filed that proposed to modify the discovery statute, which has remained virtually unchanged over the last forty years. (During that time, the only revision was the addition of a provision requiring the parties to disclose the name and address of each person that presents evidence under Rules 702, 703, and 705, Texas Rules of Evidence.) The first piece of legislation, House Bill 969 which became law on September 1, 2005, removed discretionary language which could have been interpreted to allow a court to deny a defendant the ability to receive the requested materials even after showing good cause. The second, Senate Bill 560, proposed to create an opt in reciprocal discovery

process. Although the legislation received legislative hearings and was originally thought to have the support from both prosecutors and criminal defense attorneys, it did not pass.

In this subcommittee's directive to examine the issue of reciprocal discovery, it remains clear that the parties involved want to maintain the status quo. There is a concern that under current law there has not been uniformity in how jurisdictions have been making records available. Enacting a more comprehensive statute which details the materials and information that must be turned over and requiring deadlines or notices for this discovery could make the process more equitable for both sides in the case. At the same time, due to the limited availability of personal information on witnesses and law enforcement personnel through discovery, Texas has an extremely low rate of retaliation.

RECOMMENDATIONS

This subcommittee makes no recommendations with regards to the issue of reciprocal discovery.

CASTLE DOCTRINE

CHARGE

The Committee was charged with studying the legal protection against criminal prosecution and civil liability for a person who uses force, including deadly force, against a person who unlawfully and with force seeks to enter a residence, dwelling or vehicle

BACKGROUND OF THE ISSUE

Under Chapter 9 of the Penal Code, a person is justified in using force to repel an unjust aggressor to protect himself against another's use or attempted use of unlawful force.[68] In some instances, a person may even lawfully use deadly force to repel the aggressor. In these situations, the person must reasonably believe that deadly force is immediately necessary to protect himself from the exercise of unlawful deadly force by the aggressor or to prevent the imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.[69]

Statutory Change Requiring a Duty to Retreat

In 1973, the Legislature added a further qualification which permitted the use of deadly force only if a reasonable person in the situation would not have retreated. This in effect placed the burden on the victim of retreating in the face of an impending lethal attack unless this criteria has been met in the victim's mind. This statutory change, as noted by the Texas Court of Criminal Appeals, reversed what had been the long standing practice of recognizing the right of a person to stand his ground in the face of an attack. While affirming the statute, the court noted that the change was "one of the most drastic changes made in the new penal code" and that it had its basis in the common law doctrine of "retreat to the wall".[70] However, the court also noted that this doctrine "was first recognized before the use of guns when the weapons used were fists, sticks, and knives."[71]

In outlining the case history to reinforce the gravity of the legislative change, the court highlighted several notable cases, including *Renn v. State* and *Brown v. United States*, which in turn relied on *Beard v. United States*. In discussing *Renn*, the court noted that its prior ruling had not only recognized a person's right to stand his ground, but "even to advance on his adversary, and continue to act in self-defense until the danger or apparent danger is past" [72] Furthermore, in *Brown v. United States*, which originated in Texas, the United States Supreme Court held that a person may stand his ground even if he is not doing so while in his home or on his land, as was the case in *Beard v. United States* (158 U.S. 550 (1895)).[73] In response to the question of whether a person should be required to pause to consider whether a reasonable person would retreat, Justice Oliver Wendell Holmes wrote

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68 §9.31, Penal Code
69 §9.32, Penal Code
70 *Sternlight v State, 540 S.W.2d 704 (1976)*
71 ibid
72 *Renn v State*, 64 Tex.Cr. 639, 143 S.W. 167 (1912)
73 *Brown v. United States*, 256 U.S. 335 (1921)

"Detached reflection cannot be demanded in the presence of an uplifted knife."[74]

In 1995, the Legislature created an exception to the duty to retreat. The new language provided that the duty to retreat "does not apply to an actor who uses force against a person who is at the time of the use of force committing an offense of unlawful entry in the habitation of the actor."[75]

Recent Legislation

Over the years, a number of states have enacted legislation recognizing the right of a person to stand their ground in the face of an attack. Most recently, the State of Florida received attention for enacting legislation known as the "Castle Doctrine". The basis of this doctrine, as noted in the Florida legislation, is that it is a common-law doctrine which declares that a person's home is his or her castle.[76] The legislation provides that a person who is not engaged in criminal activity and is at a place where he or she has a right to be has no duty to retreat if attacked. Furthermore, the person has a right to stand his or her ground and to use force, including deadly force, if the person believes it is reasonably necessary to prevent death or great bodily harm to themselves or another person.

The Texas Penal Code contains no presumption of reasonableness in defending a home, occupied vehicle, place of business, or place of employment against forcible, unlawful intruders. Instead, Texas juries must decide whether victims' actions to protect themselves and their families were "reasonable" or "necessary" under the circumstances.

In contrast, Florida law establishes a presumption that a criminal who forcibly enters or intrudes into a person's home or occupied vehicle is there to cause death or great bodily harm, and therefore, a person may use any manner of force – including deadly force – against that criminal. Florida law explicitly states that an individual has "no duty to retreat" if attacked in any place where that person has a right to be. Victims no longer need to put forth evidence showing that they believed such deadly force was immediately necessary, or that such a belief was reasonable, if they were responding to an unlawful entry into their home or occupied vehicle. Victims must merely show that they knew, or had reason to believe, that a forcible and unlawful entry into their dwelling or occupied vehicle had occurred or was occurring. The belief and reasonableness of the belief in the need for deadly force are presumed, and the state must put forth evidence that rebuts those presumptions to convict victims of unlawful use of force or deadly force in defending their homes or vehicles. Both Louisiana and Mississippi laws address this same concept, but they also apply the presumptions to places of business and places of employment.

While Texas law provides a defense to prosecution for conduct justified under Penal Code Sections 9.31, 9.32, or 9.33, it does not protect from civil liability. As a result, a person who justifiably uses force or deadly force and is not guilty of any crime may still be open to a civil action filed by the criminal or the criminal's family. Because the standard of proof in civil cases is lower than that in criminal cases, someone who lawfully exercises their right to self-defense may still be sued by an

74 ibid.
75 §9.32(b), Penal Code
76 SB 436, 2005 Legislature

individual who was attempting to commit a violent crime against him, or by relatives of the would-be criminal. Florida law not only protects victims from prosecution, it also protects them from civil liability.

RECOMMENDATIONS

The Committee recommends that the Legislature make the following statutory changes:

A BILL TO BE ENTITLED AN ACT

relating to the use of force or deadly force in defense of a person.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 9.01, Penal Code, is amended by adding Subdivisions (4) and (5) to read as follows:

(4) "Habitation" has the meaning assigned by Section 30.01.

(5) "Vehicle" has the meaning assigned by Section 30.01.

SECTION 2. Section 9.31, Penal Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor [~~he~~] reasonably believes the force is immediately necessary to protect the actor [~~himself~~] against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor knew or had reason to believe that the person against whom the force was used:

(1) unlawfully entered, or was attempting to enter unlawfully, the actor's habitation, vehicle, or place of business or employment;

(2) unlawfully removed, or was attempting to remove unlawfully, the actor from the actor's habitation, vehicle, or place of business or employment; or

(3) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(e) A person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.

(f) For purposes of Subsection (a), in determining whether an actor described by Subsection (e) reasonably believed that the use of force was necessary, a finder of fact may not consider whether the actor failed to retreat.

SECTION 3. Section 9.32, Penal Code, is amended to read as follows:

Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person is justified in using deadly force against another:

(1) if the actor [~~he~~] would be justified in using force against the other under Section 9.31; and

(2) [~~if a reasonable person in the actor's situation would not have retreated; and~~

[~~(3)~~] when and to the degree the actor [~~he~~] reasonably believes the deadly force is immediately necessary:

(A) to protect the actor [~~himself~~] against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor knew or had reason to believe that the person against whom the deadly force was used:

(1) unlawfully entered, or was attempting to enter unlawfully, the actor's habitation, vehicle, or place of business or employment;

(2) unlawfully removed, or was attempting to remove unlawfully, the actor from the actor's habitation, vehicle, or place of business or employment of the actor; or

(3) was committing or attempting to commit an offense described by Subsection (a)(2)(B) [~~The requirement imposed by Subsection (a)(2) does not apply to an actor who uses force against a person who is at the time of the use of force committing an offense of unlawful entry in the habitation of the actor~~].

(c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.

(d) For purposes of Subsection (a)(2), in determining whether an actor described by Subsection (c) reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

SECTION 4. Section 83.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 83.001 AFFIRMATIVE DEFENSE. It is an affirmative defense to a civil action for damages for personal injury or death that the defendant, at the time the cause of action arose, was

justified in using force or deadly force under Subchapter C, Chapter 9 [~~Section 9.32~~], Penal Code[~~, against a person who at the time of the use of force was committing an offense of unlawful entry in the habitation of the defendant~~].

SECTION 5. Chapter 83, Civil Practice and Remedies Code, is amended by adding Section 83.002 to read as follows:

Sec. 83.002. COURT COSTS, ATTORNEY'S FEES, AND OTHER EXPENSES. A defendant who prevails in asserting the affirmative defense described by Section 83.001 may recover from the plaintiff all court costs, reasonable attorney's fees, earned income that was lost as a result of the suit, and other reasonable expenses.

SECTION 6. (a) Sections 9.31 and 9.32, Penal Code, as amended by this Act, apply 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 this purpose. For the purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) Section 83.001, Civil Practice and Remedies Code, as amended by this Act, and Section 83.002, Civil Practice and Remedies Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2007.

NUISANCE ABATEMENT

CHARGE

The Committee, along with the House Committee on General Investigating and Ethics, was charged with monitoring the use of nuisance abatement authority by the City of Dallas and investigating unresolved issues pertaining to allegations of possibly civil rights violations that may have been committed under color of law by local government.

This report was issued on February 28, 2006. For a copy of the Committees' findings and recommendations, please visit the following web site:
http://www.house.state.tx.us/committees/reports/79interim/joint/joint_CriminalJuri_GeneralInvest.pdf