

BILL ANALYSIS

C.S.H.B. 1866
By: Geren
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that some probation departments have difficulty locating crime victims for purposes of remitting restitution payments that are owed to those victims, which are later presumed abandoned and turned over to the comptroller of public accounts as unclaimed property. C.S.H.B. 1866 seeks to resolve this issue by realigning incentives for probation departments to facilitate the successful location of crime victims.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 1866 amends the Government Code to remove and revise certain provisions relating to a community supervision and corrections department's obligation to make a good faith effort to locate and notify a victim of unclaimed restitution payments and provisions relating to the eventual transfer of such funds to the comptroller of public accounts. The bill instead requires a community supervision and corrections department to promptly remit all restitution payments received by such a department from a defendant for transmittal to the victim if the victim makes a claim for payment of restitution with the department. The bill sets out the circumstances under which an unclaimed restitution payment is presumed abandoned and the requirements of such a department or the Texas Department of Criminal Justice, as applicable, in reporting, delivering, and certifying holdings of those payments. The bill removes the requirement that unclaimed money in the releasee restitution fund be transferred to the compensation to victims of crime auxiliary fund on the fifth anniversary of deposit to the releasee restitution fund.

C.S.H.B. 1866 amends the Property Code to require each holder of an unclaimed restitution payment who on March 1 holds such a payment that is presumed abandoned to file a property report with the comptroller on or before the following July 1. The bill sets out provisions relating to the form, filing, and required contents of the property report and requires a holder required to file a report in any year to file a report each successive year and, if the person is not holding any restitution payments that are presumed abandoned, to certify that the person is not holding any such payments. The bill requires a holder who on March 1 holds an unclaimed restitution payment that is presumed abandoned to mail, on or before the following May 1, to the last known address of the victim entitled to the unclaimed restitution payment written notice stating that the holder is holding the restitution payment to which the victim is entitled and stating that the holder may be required to deliver the restitution payment to the comptroller on or before

July 1 if the victim does not claim the restitution payment. The bill requires a person preparing a required property report to provide with each copy of the report a statement signed by the holder's designated chief fiscal officer, in an electronic or other form prescribed by the comptroller with the same effect as an original signature, and sets out the contents of the statement. The bill makes the property report filed with the comptroller and the social security number, driver's license or state identification number, and address of a victim confidential and not subject to disclosure under state public information law. The bill exempts the comptroller or an officer or employee of the comptroller's office who publishes or discloses information in reliance on a property report filed with the comptroller from liability under Government Code provisions relating to the distribution or misuse of confidential information and makes such persons immune from any civil liability for publishing or disclosing such information.

C.S.H.B. 1866 sets out provisions relating to notice by the comptroller regarding unclaimed restitution payments to victims and prohibiting the comptroller from publishing information that identifies a person as a victim or that identifies a victim's address. The bill requires each holder who on March 1 holds an unclaimed restitution payment that is presumed abandoned to deliver the property to the comptroller on or before the following July 1 accompanied by the required property report and sets out provisions relating to the responsibility and liability for a reported and delivered unclaimed restitution payment.

C.S.H.B. 1866 requires the comptroller to review the validity of each claim for an unclaimed restitution payment and, if the comptroller determines a claim is valid, to approve and pay the claim. The bill requires all such claims to be filed in accordance with the applicable procedures, contain the information, and be on forms prescribed by the comptroller. The bill sets out the conditions under which certain claims may be approved by the comptroller on receipt of a claim form and all necessary documentation as may be appropriate and sets out the conditions under which the comptroller is prohibited from approving such claims. The bill authorizes the comptroller to approve a claim for child support arrearages owed by the victim and reflected in a child support lien notice that complies with Family Code provisions relating to child support liens and authorizes such a claim to be submitted by the lienholder. The bill authorizes the comptroller to approve a claim for debts owed by the victim to the state or any state agency and authorizes such a claim to be submitted by the attorney general or the comptroller on behalf of the state or state agency. The bill prohibits an interest in such a claim from being assigned.

C.S.H.B. 1866 authorizes the holder to pay the amount of a claim for an unclaimed restitution payment if the claim is filed with a holder who in good faith determines that the claim is valid and authorizes the comptroller to reimburse the holder for the payment of such a valid claim. The bill requires such a request from a holder for reimbursement to be filed in accordance with procedures and on forms prescribed by the comptroller and prohibits such requests from exceeding the amount previously reported and delivered by the holder to the comptroller. The bill prohibits the comptroller from reimbursing a holder for a claim paid to a person the comptroller is not permitted to pay under the bill's provisions. The bill limits the liability of the comptroller to reimburse a holder to the extent of the property delivered and remaining in the possession of the comptroller at the time a holder requests reimbursement. The bill sets out provisions relating to an appeals process for a person aggrieved by the decision of a claim filed under the bill's provisions, limits the liability of the state to the extent of the property delivered and remaining in the possession of the comptroller at the time a suit is filed, and provides for a fee for recovery of unclaimed property.

C.S.H.B. 1866 requires the comptroller to maintain a record that documents unclaimed restitution payments received and to deposit all unclaimed restitution payments to the credit of the compensation to victims of crime auxiliary fund in the state treasury. The bill requires income or interest derived from unclaimed restitution payments deposited in the fund to remain in the fund. The bill restricts the use of money in the fund to the payment of claims as provided by the bill's provisions authorizing the payment of such claims and establishes that such money is not available for any other purpose, except as provided by Code of Criminal Procedure

provisions relating to crime victims' rights and except that the bill authorizes the legislature to appropriate money in the fund to cover costs incurred by the comptroller in administering the bill's provisions relating to the fund. The bill exempts the fund from the application of Government Code provisions relating to the use of dedicated revenue and authorizes the comptroller to pay a claim that is more than the money available in the fund using funds appropriated by the legislature for paying such claims.

C.S.H.B. 1866 authorizes the comptroller to adopt rules necessary to carry out the bill's provisions relating to unclaimed restitution payments; provides for the examination and prohibited disclosure of the books and records of any holder, including the authority of the comptroller to take testimony and issue administrative subpoenas; and sets out the process by which the bill's provisions and those subpoenas are enforced. The bill requires the imposition of a penalty equal to five percent of the value of an unclaimed restitution payment due on a holder who fails to pay or deliver the payment within the prescribed time and requires the imposition of an additional penalty equal to five percent of the value of the payment due if a holder fails to pay or deliver an unclaimed restitution payment before the 121st day after the date the payment is due. The bill authorizes the comptroller to waive any penalty or interest imposed under the bill's provisions relating to unclaimed restitution payments.

C.S.H.B. 1866 requires the office of the attorney general and the comptroller, not later than January 1, 2018, to establish a plan for the identification and transfer of records, property, and unspent appropriations of the attorney general that are used for the purpose of managing the compensation to victims of crime auxiliary fund. The bill requires a community supervision and corrections department that before the bill's effective date had previously transferred restitution payments to the comptroller to provide to the comptroller not later than March 1, 2018, the information required under the bill's provisions related to the required property report for each victim for whom the department previously transferred a payment to the comptroller.

C.S.H.B. 1866 repeals a Code of Criminal Procedure provision, and amends the Code of Criminal Procedure to remove statutory language, relating to the use of money in the compensation to victims of crime auxiliary fund by the attorney general. The bill specifies that the attorney general's authority to use that fund to cover costs incurred by the attorney general in administering the address confidentiality program is as appropriated by the legislature. The bill adds a temporary provision set to expire September 1, 2019, prohibiting the attorney general from transferring during a fiscal year beginning September 1, 2017, or September 1, 2018, a certain amount of excess money remaining in that fund that is authorized by state law to be transferred at the end of the preceding state fiscal year to the compensation to victims of crime fund for purposes of making compensation payments.

C.S.H.B. 1866 repeals the following provisions:

- Articles 56.54(c), Code of Criminal Procedure
- Section 76.013(d), Government Code

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1866 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 56.34(f), Code of Criminal Procedure, is amended to read as follows:

(f) The compensation to victims of crime fund is [~~and the compensation to victims of crime auxiliary fund are~~] the payer [~~payers~~] of last resort.

SECTION 2. Articles 56.54(a), (d), (f), and (g), Code of Criminal Procedure, are amended to read as follows:

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

(d) The attorney general may not make compensation payments in excess of the amount of money available in the compensation to victims of crime fund [~~from the combined funds~~].

(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 the fund [~~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 subchapter and is not available for any other purpose. Section 403.095, Government Code, does not apply to the fund.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Article 56.54, Code of Criminal Procedure, is amended by amending Subsections (a), (d), (f), (g), and (l) and adding Subsection (m-1) to read as follows:

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

(d) The attorney general may not make compensation payments in excess of the amount of money available in the compensation to victims of crime fund [~~from the combined funds~~].

(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 the fund [~~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 subchapter and is not available for any other purpose. Section 403.095, Government Code, does not apply to the fund.

(l) As appropriated by the legislature, the [~~The~~] attorney general may use the compensation to victims of crime auxiliary fund to cover costs incurred by the attorney general in administering the address confidentiality program established under Subchapter C.

(m-1) Notwithstanding Subsection (m), the attorney general may not transfer money under that subsection during a fiscal year beginning September 1, 2017, or September

1, 2018. This subsection expires September 1, 2019.

SECTION 3. Section 76.013, Government Code, is amended.

SECTION 2. Same as introduced version.

SECTION 4. Section 508.322, Government Code, is amended.

SECTION 3. Same as introduced version.

SECTION 5. Title 6, Property Code, is amended by adding Chapter 77 to read as follows:

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CHAPTER 77. REPORT, DELIVERY, AND CLAIMS PROCESS FOR UNCLAIMED RESTITUTION PAYMENTS

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SUBCHAPTER A. APPLICABILITY

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Sec. 77.001. APPLICABILITY.

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SUBCHAPTER B. PROPERTY REPORT

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Sec. 77.051. PROPERTY REPORT.

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Sec. 77.052. NOTICE BY HOLDER REQUIRED.

Sec. 77.052. NOTICE BY HOLDER REQUIRED.

Sec. 77.053. SIGNED STATEMENT.

Sec. 77.053. SIGNED STATEMENT.

Sec. 77.054. CONFIDENTIALITY OF PROPERTY REPORT.

Sec. 77.054. CONFIDENTIALITY OF PROPERTY REPORT.

Sec. 77.055. EXCEPTION TO LIABILITY.

Sec. 77.055. EXCEPTION TO LIABILITY.

SUBCHAPTER C. NOTICE BY COMPTROLLER

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Sec. 77.101. NOTICE.

Sec. 77.101. NOTICE.

Sec. 77.102. PUBLICATION.

Sec. 77.102. PUBLICATION.

SUBCHAPTER D. DELIVERY

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Sec. 77.151. DELIVERY OF PROPERTY TO COMPTROLLER.

Sec. 77.151. DELIVERY OF PROPERTY TO COMPTROLLER.

Sec. 77.152. RESPONSIBILITY AFTER DELIVERY.

Sec. 77.152. RESPONSIBILITY AFTER DELIVERY.

SUBCHAPTER E. CLAIM FOR DELIVERED PROPERTY

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Sec. 77.201. CLAIM FILED WITH COMPTROLLER. (a) The comptroller

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shall review the validity of each claim for an unclaimed restitution payment filed under this section.

(b) If the comptroller determines a claim for an unclaimed restitution payment is valid, the comptroller shall approve the claim. If a claim is approved under this section, the comptroller shall pay the claim.

(c) All claims to which this section applies must be filed in accordance with the procedures, contain the information, and be on forms prescribed by the comptroller.

(d) On receipt of a claim form and all necessary documentation as may be appropriate under the circumstances, the comptroller may approve the claim of:

(1) the victim;

(2) if the victim died testate:

(A) the appropriate legal beneficiaries of the victim as provided by the last will and testament of the victim that has been accepted into probate or filed as a muniment of title; or

(B) the executor of the victim's last will and testament who holds current letters testamentary;

(3) if the victim died intestate or is deceased and presumed intestate:

(A) the legal heirs of the victim as provided by Chapter 201, Estates Code; or

(B) the court-appointed administrator of the victim's estate, on behalf of the legal heirs of the victim;

(4) the legal heirs of the victim as established by an affidavit of heirship order signed by a judge of the county probate court or by a county judge;

(5) if the victim is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;

(6) if the victim is a trust:

(A) the trustee, on behalf of the trust; or

(B) the beneficiaries of the trust, if the trust is dissolved;

(7) if the victim is a corporation:

(A) the president or chair of the board of directors of the corporation, on behalf of the corporation;

(B) any person who has been delegated legal authority to act on behalf of the corporation by the president or board of directors of the corporation; or

(C) a receiver appointed for the corporation;

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(b) If the comptroller determines a claim for an unclaimed restitution payment is valid, the comptroller shall approve the claim. If a claim is approved under this section, the comptroller shall pay the claim.

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(2) if the victim died testate:

(A) the appropriate legal beneficiaries of the victim as provided by the last will and testament of the victim that has been accepted into probate or filed as a muniment of title; or

(B) the executor of the victim's last will and testament who holds current letters testamentary;

(3) if the victim died intestate or is deceased and presumed intestate:

(A) the legal heirs of the victim as provided by Chapter 201, Estates Code; or

(B) the court-appointed administrator of the victim's estate, on behalf of the legal heirs of the victim;

(4) the legal heirs of the victim as established by an affidavit of heirship order signed by a judge of the county probate court or by a county judge;

(5) if the victim is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;

(6) if the victim is a trust:

(A) the trustee, on behalf of the trust; or

(B) the beneficiaries of the trust, if the trust is dissolved;

(7) if the victim is a corporation:

(A) the president or chair of the board of directors of the corporation, on behalf of the corporation;

(B) any person who has been delegated legal authority to act on behalf of the corporation by the president or board of directors of the corporation; or

(C) a receiver appointed for the corporation;

(8) if the victim is a corporation that has been dissolved, liquidated, or otherwise terminated:

(A) the surviving shareholders of the corporation in proportion to their ownership of the corporation at the time of dissolution, liquidation, or termination;

(B) the corporation's bankruptcy trustee; or

(C) a receiver appointed for the corporation;

(9) if the victim is a state agency, the comptroller; or

(10) any other person that is entitled to receive the unclaimed restitution payment under other law or comptroller policy.

(e) Except as provided by Subsections (f) and (g), the comptroller may not approve the claim of or pay a claim to the following persons:

(1) a creditor, a judgment creditor, a lienholder, or an assignee of the victim or of any other person entitled to receive an unclaimed restitution payment under this section;

(2) a receiver, if the receiver is appointed at the request of a person the comptroller may not pay under Subdivision (1);

(3) a person attempting to make a claim on behalf of a trust or corporation that has previously been dissolved or terminated, if it appears the trust or corporation was revived for the purpose of making a claim under this section and the person submitting the claim was not an authorized representative of the corporation or trust at the time of the dissolution or termination; or

(4) a person holding a power of attorney, if the person holding a power of attorney is a person the comptroller may not pay under this subsection.

(f) The comptroller may approve a claim for child support arrearages owed by the victim and reflected in a child support lien notice that complies with Section 157.313, Family Code. A claim under this subsection may be submitted by the lienholder or the attorney general on behalf of the lienholder.

(g) The comptroller may approve a claim for debts owed by the victim to the state or any state agency. A claim under this subsection may be submitted by the attorney general or the comptroller on behalf of the state or state agency.

Sec. 77.202. CLAIMS NOT

(8) if the victim is a corporation that has been dissolved, liquidated, or otherwise terminated:

(A) the surviving shareholders of the corporation in proportion to their ownership of the corporation at the time of dissolution, liquidation, or termination;

(B) the corporation's bankruptcy trustee; or

(C) a receiver appointed for the corporation;

(9) if the victim is a state agency, the comptroller; or

(10) any other person that is entitled to receive the unclaimed restitution payment under other law or comptroller policy.

(e) Except as provided by Subsections (f) and (g), the comptroller may not approve the claim of or pay a claim to the following persons:

(1) a creditor, a judgment creditor, a lienholder, or an assignee of the victim or of any other person entitled to receive an unclaimed restitution payment under this section;

(2) a receiver, if the receiver is appointed at the request of a person the comptroller may not pay under Subdivision (1);

(3) a person attempting to make a claim on behalf of a trust or corporation that has previously been dissolved or terminated, if it appears the trust or corporation was revived for the purpose of making a claim under this section and the person submitting the claim was not an authorized representative of the corporation or trust at the time of the dissolution or termination; or

(4) a person holding a power of attorney, if the person holding a power of attorney is a person the comptroller may not pay under this subsection.

(f) The comptroller may approve a claim for child support arrearages owed by the victim and reflected in a child support lien notice that complies with Section 157.313, Family Code. A claim under this subsection may be submitted by the lienholder.

(g) The comptroller may approve a claim for debts owed by the victim to the state or any state agency. A claim under this subsection may be submitted by the attorney general or the comptroller on behalf of the state or state agency.

Sec. 77.202. CLAIMS NOT

ASSIGNABLE.

Sec. 77.203. CLAIM FILED WITH HOLDER.

Sec. 77.204. APPEAL.

Sec. 77.205. LIMITATION OF LIABILITY.

Sec. 77.206. FEE FOR RECOVERY.

SUBCHAPTER F. UNCLAIMED PAYMENTS

Sec. 77.251. UNCLAIMED RESTITUTION PAYMENTS.

Sec. 77.252. USE OF MONEY. (a) Except as provided by Subsection (b), money in

the compensation to victims of crime auxiliary fund may only be used to pay claims as provided by this chapter and is not available for any other purpose. Section 403.095, Government Code, does not apply to the fund.

(b) The legislature may appropriate money in the compensation to victims of crime auxiliary fund to cover costs incurred by the comptroller in administering this chapter.

Sec. 77.253. EXCESS CLAIMS.

SUBCHAPTER G. ENFORCEMENT

Sec. 77.301. RULES.

Sec. 77.302. EXAMINATION OF RECORDS.

Sec. 77.303. AUTHORITY TO TAKE TESTIMONY AND ISSUE ADMINISTRATIVE SUBPOENAS.

Sec. 77.304. ENFORCEMENT OF SUBPOENAS.

Sec. 77.305. VENUE FOR PRE-COMPLIANCE REVIEW.

Sec. 77.306. ASSISTANCE IN ENFORCEMENT.

Sec. 77.307. PENALTY.

ASSIGNABLE.

Sec. 77.203. CLAIM FILED WITH HOLDER.

Sec. 77.204. APPEAL.

Sec. 77.205. LIMITATION OF LIABILITY.

Sec. 77.206. FEE FOR RECOVERY.

SUBCHAPTER F. UNCLAIMED PAYMENTS

Sec. 77.251. UNCLAIMED RESTITUTION PAYMENTS.

Sec. 77.252. USE OF MONEY. (a) Except as provided by Subsection (b) and Chapter 56, Code of Criminal Procedure, money in

the compensation to victims of crime auxiliary fund may only be used to pay claims as provided by this chapter and is not available for any other purpose. Section 403.095, Government Code, does not apply to the fund.

(b) The legislature may appropriate money in the compensation to victims of crime auxiliary fund to cover costs incurred by the comptroller in administering this chapter.

Sec. 77.253. EXCESS CLAIMS.

SUBCHAPTER G. ENFORCEMENT

Sec. 77.301. RULES.

Sec. 77.302. EXAMINATION OF RECORDS.

Sec. 77.303. AUTHORITY TO TAKE TESTIMONY AND ISSUE ADMINISTRATIVE SUBPOENAS.

Sec. 77.304. ENFORCEMENT OF SUBPOENAS.

Sec. 77.305. VENUE FOR PRE-COMPLIANCE REVIEW.

Sec. 77.306. ASSISTANCE IN ENFORCEMENT.

Sec. 77.307. PENALTY.

Sec. 77.308. WAIVER OR ABATEMENT OF PENALTY.

SECTION 6. The following laws are repealed:

- (1) Articles 56.54(c), (l), and (m), Code of Criminal Procedure; and
- (2) Section 76.013(d), Government Code.

SECTION 7. As soon as is practicable after the effective date of this Act, but not later than January 1, 2018, the office of the attorney general and the comptroller of public accounts shall establish a plan for the identification and transfer of records, property, and unspent appropriations of the attorney general that are used for the purpose of managing the compensation to victims of crime auxiliary fund.

SECTION 8. As soon as is practicable after the effective date of this Act, but not later than March 1, 2018, a department that prior to the effective date of this Act had previously transferred payments to the comptroller under Section 76.013 or 508.322, Government Code, shall provide to the comptroller the information required under Section 77.051(b), Property Code, as added by this Act, for each victim for whom the department previously transferred a payment to the comptroller.

SECTION 9. This Act takes effect September 1, 2017.

Sec. 77.308. WAIVER OR ABATEMENT OF PENALTY.

SECTION 5. The following laws are repealed:

- (1) Article 56.54(c), Code of Criminal Procedure; and
- (2) Section 76.013(d), Government Code.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.