

BILL ANALYSIS

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C.S.S.B. 1010
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Each aspect of child pornography – the production, distribution and possession – harms the children who are victims of this crime. Their forced participation in these heinous acts cause long- term emotional trauma, and the victims are harmed as those images are viewed repeatedly, violating the child each time.

Federal law, under 18 U.S.C. Section 2259, requires federal courts to issue restitution payment to victims of child pornography crimes, but Texas state law does not. Victims of these crimes can experience emotional harm and incur financial loss, including medical services, therapy, rehabilitation, transportation, child care, and lost income. Restitution to victims is one way to help repair the damage done and help the victims of these crimes.

S.B. 10 requires a court to order an individual who has been convicted of possession or promotion of child pornography to pay restitution to minors forced to participate in child pornography or to a child pornography victims fund. The fund would be administered by the attorney general of the State of Texas. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1010 amends current law relating to the use of money paid as restitution to or on behalf of certain individuals depicted in child pornography.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general of the State of Texas in SECTION 3 (Article 56.55, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 42.037, Code of Criminal Procedure, by adding Subsection (r), as follows:

(r) Requires the court to order a defendant convicted of an offense under Section 43.26 (Possession or Promotion of Child Pornography), Penal Code, to make restitution to:

(1) an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income; and

(E) attorney's fees; or

(2) the compensation to child pornography victims fund under Article 56.55 to the extent that:

(A) the fund has paid compensation to or on behalf of the individual; or

(B) the court is unable to identify an individual who as a child was depicted in the visual material, in an amount determined by the court after considering:

(i) the average amount of the expenses incurred by, and restitution ordered to, individuals in other similar cases involving a conviction for an offense under Section 43.26, Penal Code; and

(ii) other factors the court considers appropriate.

SECTION 2. Amends Article 56.54(b), Code of Criminal Procedure, as follows:

(b) Provides that the compensation to victims of crime fund, except as provided by Subsections (h) (requiring an amount of money deposited to the credit of the compensation to victims of crime fund not to exceed one-quarter of the amount disbursed from that fund in the form of compensation payments during a fiscal year to be carried forward into the next succeeding fiscal year and applied toward the amount listed in the next succeeding fiscal year's method of financing), (i) (authorizing the attorney general of the State of Texas (attorney general) to retain any portion of the fund that was deposited during the fiscal year that was in excess of compensation payments made during that fiscal year as an emergency reserve for the next fiscal year), (j) (authorizing the legislature to appropriate money in the compensation to victims of crime fund to administer the associate judge program under Subchapter C, Chapter 201, Family Code), and (k) (authorizing the attorney general to use the compensation to victims of crime fund to reimburse a law enforcement agency for the reasonable costs of a medical examination that are incurred by the agency under Article 56.06) and Articles 56.541 (Appropriation of Excess Money for Other Crime Victim Assistance) and 56.55 is authorized to be used only by the attorney general for the payment of compensation to claimants or victims under this subchapter. Provides that, for purposes of this subsection, compensation to claimants or victims includes money allocated from the fund to the Crime Victims' Institute created by Section 96.65 (Crime Victims' Institute), Education Code, for the operation of the institute and for other expenses in administering this subchapter. Requires the institute to use money allocated from the fund only for the purposes of Sections 96.65, 96.651(Crime Victims' Institute Advisory Council), and 96.652 (Crime Victims' Institute Account; Audit; Report), Education Code.

Makes a nonsubstantive change.

SECTION 3. Amends Subchapter B, Chapter 56, Code of Criminal Procedure, by adding Article 56.55, as follows:

Art. 56.55. COMPENSATION TO CHILD PORNOGRAPHY VICTIMS FUND; PAYMENT OF AWARDS OR EXPENSES. (a) Provides that the compensation to child pornography victims fund is an account in the general revenue fund. Authorizes money in the account to be used only to:

(1) award compensation under this article; or

(2) provide grants related to preventing child pornography and related offenses, including trafficking of persons.

(b) Requires the attorney general to:

(1) adopt rules governing the administration of the compensation to child pornography victims fund, including rules establishing procedures for the

application, review, and award of compensation or the issuance of a grant under this article; and

(2) notwithstanding any other provision of this subchapter, transfer money from the compensation to child pornography victims fund to a subaccount in the compensation to victims of crime fund as necessary to award compensation or provide a grant under this article.

(c) Requires the attorney general to award compensation to an individual who as a child younger than 18 years of age was depicted in visual material constituting the basis for one or more convictions under Section 43.26, Penal Code, if the attorney general finds by a preponderance of the evidence that sufficient grounds exist for compensation under this article.

(d) Requires an applicant for compensation under this article to apply in writing on a form prescribed by the attorney general. Provides that the applicant is not required to file an application under Article 56.36 (Application) to receive compensation under this article.

(e) Requires that an award for compensation under this article be in an amount equal to the expenses incurred by the individual as a result of the offense, including:

(1) medical services relating to physical, psychiatric, or psychological care;

(2) physical and occupational therapy or rehabilitation;

(3) necessary transportation, temporary housing, and child care expenses;

(4) lost income; and

(5) attorney's fees for assistance in obtaining compensation under this article.

(f) Requires the attorney general to reduce an award under this article by the amount of restitution received by or on behalf of the individual under Article 42.037 (Restitution) and authorizes the committee to reduce the award to the extent that the applicable expenses are recouped from another collateral source, including compensation awarded under Article 56.34 (Compensation).

(g) Authorizes the attorney general to provide for the payment of an award under this article in a lump sum or in installments.

(h) Authorizes the attorney general by rule to limit the amount of award that is payable to an individual under this article.

(i) Authorizes the attorney general to use the compensation to victims of crime fund to pay expenses associated with the administration of the compensation to the child pornography victims fund under this article.

(j) Authorizes the attorney general to delegate a power, duty, or responsibility given to the attorney general under this article to a person in the attorney general's office.

(k) Provides that the name of an individual awarded compensation under this article and any other identifying information regarding that individual are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(l) Provides that, to the extent of any conflict between this article and another article of this subchapter regarding conduct for which compensation may be awarded, this article controls.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2015.