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To: Judiciary B

HOUSE BILL NO. 1286

1 AN ACT TO CREATE THE COMPREHENSIVE CRIME RESTITUTION AND
2 REIMBURSEMENT ACT; TO PROVIDE FOR THE PROCEDURE FOR COURT-ORDERED
3 RESTITUTION; TO AMEND SECTIONS 99-37-3 AND 99-37-5, MISSISSIPPI
4 CODE OF 1972, IN CONFORMITY THERETO; TO BRING FORWARD SECTIONS
5 99-37-9, 99-37-11, 99-37-13, 99-37-15 AND 99-37-17, MISSISSIPPI
6 CODE OF 1972, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** (1) (a) In addition to any punishment and
9 supplemental to other specific provisions requiring restitution,
10 the court shall order the defendant to make restitution to the
11 victim for:

12 (i) Damage or loss caused directly or indirectly
13 by the defendant's offense; and

14 (ii) Damage or loss related to the defendant's
15 criminal episode, unless it finds clear and compelling reasons not
16 to order such restitution. Restitution may be monetary or
17 nonmonetary restitution. The court shall make the payment of
18 restitution a condition of probation. An order requiring the
19 defendant to make restitution to a victim does not remove or
20 diminish the requirement that the court order payment to the Crime
21 Victims Compensation Fund. Payment of an award by the Crime
22 Victims Compensation Fund shall create an order of restitution to
23 the Crime Victims Compensation Fund, unless specifically waived in
24 accordance with subparagraph (b)(i).

25 (b) (i) If the court does not order restitution, or
26 orders restitution of only a portion of the damages, as provided
27 in this section, it shall state on the record in detail the
28 reasons therefor.

29 (ii) An order of restitution entered as part of a
30 plea agreement is as definitive and binding as any other order of
31 restitution, and a statement to such effect must be made part of
32 the plea agreement. A plea agreement may contain provisions that
33 order restitution relating to criminal offenses committed by the
34 defendant to which the defendant did not specifically enter a
35 plea.

36 (c) The term "victim" as used in this section and in
37 any provision of law relating to restitution means each person who
38 suffers property damage or loss, monetary expense, or physical
39 injury or death as a direct or indirect result of the defendant's
40 offense or criminal episode, and also includes the victim's estate
41 if the victim is deceased, and the victim's next of kin if the
42 victim is deceased as a result of the offense.

43 (2) (a) When an offense has resulted in bodily injury to a
44 victim, a restitution order entered under subsection (1) shall
45 require that the defendant:

46 (i) Pay the cost of necessary medical and related
47 professional services and devices relating to physical,
48 psychiatric and psychological care, including nonmedical care and
49 treatment rendered in accordance with a recognized method of
50 healing.

51 (ii) Pay the cost of necessary physical and
52 occupational therapy and rehabilitation.

53 (iii) Reimburse the victim for income lost by the
54 victim as a result of the offense.

55 (iv) In the case of an offense which resulted in
56 bodily injury that also resulted in the death of a victim, pay an
57 amount equal to the cost of necessary funeral and related
58 services.

59 (b) When an offense has not resulted in bodily injury
60 to a victim, a restitution order entered under subsection (1) may

61 require that the defendant reimburse the victim for income lost by
62 the victim as a result of the offense.

63 (3) (a) The court may require that the defendant make
64 restitution under this section within a specified period or in
65 specified installments.

66 (b) The end of such period or the last such installment
67 shall not be later than:

68 (i) The end of the period of probation if
69 probation is ordered;

70 (ii) Five (5) years after the end of the term of
71 imprisonment imposed if the court does not order probation; or

72 (iii) Five (5) years after the date of sentencing
73 in any other case.

74 (c) Notwithstanding this subsection, a court that has
75 ordered restitution for a misdemeanor offense shall retain
76 jurisdiction for the purpose of enforcing the restitution order
77 for any period, not to exceed five (5) years, that is pronounced
78 by the court at the time restitution is ordered.

79 (d) If not otherwise provided by the court under this
80 subsection, restitution must be made immediately. If the
81 restitution ordered by the court is not made within the time
82 period specified, the court may continue the restitution order
83 through the duration of the civil judgment provision set forth in
84 subsection (5).

85 (4) If a defendant is placed on probation or paroled,
86 complete satisfaction of any restitution ordered under this
87 section shall be a condition of such probation or parole. The
88 court may revoke probation, and the Parole Board may revoke
89 parole, if the defendant fails to comply with such order.

90 (5) An order of restitution may be enforced by the state, or
91 by a victim named in the order to receive the restitution, in the
92 same manner as a judgment in a civil action. The outstanding
93 unpaid amount of the order of restitution bears interest as may be

94 ordered by the court, and, when properly recorded, becomes a lien
95 on real estate owned by the defendant. If civil enforcement is
96 necessary, the defendant shall be liable for costs and attorney's
97 fees incurred by the victim in enforcing the order.

98 (6) (a) The court, in determining whether to order
99 restitution and the amount of such restitution, shall consider the
100 amount of the loss sustained by any victim as a result of the
101 offense.

102 (b) The criminal court, at the time of enforcement of
103 the restitution order, shall consider the financial resources of
104 the defendant, the present and potential future financial needs
105 and earning ability of the defendant and his or her dependents,
106 and such other factors which it deems appropriate.

107 (7) Any dispute as to the proper amount or type of
108 restitution shall be resolved by the court by the preponderance of
109 the evidence. The burden of demonstrating the amount of the loss
110 sustained by a victim as a result of the offense is on the
111 prosecution. The burden of demonstrating the present financial
112 resources and the absence of potential future financial resources
113 of the defendant and the financial needs of the defendant and his
114 or her dependents is on the defendant. The burden of
115 demonstrating such other matters as the court deems appropriate is
116 upon the party designated by the court as justice requires.

117 (8) The conviction of a defendant for an offense involving
118 the act giving rise to restitution under this section shall estop
119 the defendant from denying the essential allegations of that
120 offense in any subsequent civil proceeding. An order of
121 restitution hereunder will not bar any subsequent civil remedy or
122 recovery, but the amount of such restitution shall be set off
123 against any subsequent independent civil recovery.

124 (9) When a corporation or unincorporated association is
125 ordered to make restitution, the person authorized to make
126 disbursements from the assets of such corporation or association

127 shall pay restitution from such assets, and such person may be
128 held in contempt for failure to make such restitution.

129 (10) (a) Any default in payment of restitution may be
130 collected by any means authorized by law for enforcement of a
131 judgment.

132 (b) The restitution obligation is not subject to
133 discharge in bankruptcy, whether voluntary or involuntary, or to
134 any other statutory or common-law proceeding for relief against
135 creditors.

136 (11) (a) The court may order the clerk of the court to
137 collect and dispense restitution payments in any case.

138 (b) The court may order the Department of Corrections
139 to collect and dispense restitution and other payments from
140 persons remanded to its custody or supervision.

141 (12) (a) Issuance of income deduction order with an order
142 for restitution shall be as follows:

143 (i) Upon the entry of an order for restitution,
144 the court shall enter a separate order for income deduction if one
145 has not been entered.

146 (ii) The income deduction order shall direct a
147 payor to deduct from all income due and payable to the defendant
148 the amount required by the court to meet the defendant's
149 obligation.

150 (iii) The income deduction order shall be
151 effective so long as the order for restitution upon which it is
152 based is effective or until further order of the court.

153 (iv) When the court orders the income deduction,
154 the court shall furnish to the defendant a statement of his or her
155 rights, remedies, and duties in regard to the income deduction
156 order. The statement shall state:

157 1. All fees or interest which shall be
158 imposed.

159 2. The total amount of income to be deducted
160 for each pay period.

161 3. That the income deduction order applies to
162 current and subsequent payors and periods of employment.

163 4. That a copy of the income deduction order
164 will be served on the defendant's payor or payors.

165 5. That enforcement of the income deduction
166 order may only be contested on the ground of mistake of fact
167 regarding the amount of restitution owed.

168 6. That the defendant is required to notify
169 the clerk of court within seven (7) days after changes in the
170 defendant's address, payors and the addresses of his or her
171 payors.

172 (b) Enforcement of income deduction orders shall be as
173 follows:

174 (i) The clerk of court or probation officer shall
175 serve an income deduction order and the notice to payor on the
176 defendant's payor unless the defendant has applied for a hearing
177 to contest the enforcement of the income deduction order.

178 (ii) 1. Service by or upon any person who is a
179 party to a proceeding under this subsection shall be made in the
180 manner prescribed in the Mississippi Rules of Civil Procedure for
181 service upon parties.

182 2. Service upon the defendant's payor or
183 successor payor under this subsection shall be made by prepaid
184 certified mail, return receipt requested.

185 (iii) The defendant, within fifteen (15) days
186 after having an income deduction order entered against him or her,
187 may apply for a hearing to contest the enforcement of the income
188 deduction order on the ground of mistake of fact regarding the
189 amount of restitution owed. The timely request for a hearing
190 shall stay the service of an income deduction order on all payors
191 of the defendant until a hearing is held and a determination is

192 made as to whether the enforcement of the income deduction order
193 is proper.

194 (iv) The notice to payor shall contain only
195 information necessary for the payor to comply with the income
196 deduction order. The notice shall:

197 1. Require the payor to deduct from the
198 defendant's income the amount specified in the income deduction
199 order and to pay that amount to the clerk of the court.

200 2. Instruct the payor to implement the income
201 deduction order no later than the first payment date which occurs
202 more than fourteen (14) days after the date the income deduction
203 order was served on the payor.

204 3. Instruct the payor to forward within two
205 (2) days after each payment date to the clerk of the court the
206 amount deducted from the defendant's income and a statement as to
207 whether the amount totally or partially satisfies the periodic
208 amount specified in the income deduction order.

209 4. Specify that, if a payor fails to deduct
210 the proper amount from the defendant's income, the payor is liable
211 for the amount the payor should have deducted plus costs, interest
212 and reasonable attorney's fees.

213 5. Provide that the payor may collect up to
214 Five Dollars (\$5.00) against the defendant's income to reimburse
215 the payor for administrative costs for the first income deduction
216 and up to Two Dollars (\$2.00) for each deduction thereafter.

217 6. State that the income deduction order and
218 the notice to payor are binding on the payor until further notice
219 by the court or until the payor no longer provides income to the
220 defendant.

221 7. Instruct the payor that, when he or she no
222 longer provides income to the defendant, the payor shall notify
223 the clerk of the court and shall also provide the defendant's last
224 known address and the name and address of the defendant's new

225 payor, if known, and that, if the payor violates this provision,
226 the payor is subject to a civil penalty not to exceed Two Hundred
227 Fifty Dollars (\$250.00) for the first violation or Five Hundred
228 Dollars (\$500.00) for any subsequent violation.

229 8. State that the payor shall not discharge,
230 refuse to employ or take disciplinary action against the defendant
231 because of an income deduction order and shall state that a
232 violation of this provision subjects the payor to a civil penalty
233 not to exceed Two Hundred Fifty Dollars (\$250.00) for the first
234 violation or Five Hundred Dollars (\$500.00) for any subsequent
235 violation.

236 9. Inform the payor that when he or she
237 receives income deduction orders requiring that the income of two
238 (2) or more defendants be deducted and sent to the same clerk of
239 the court, the payor may combine the amounts that are to be paid
240 to the depository in a single payment as long as he or she
241 identifies that portion of the payment attributable to each
242 defendant.

243 10. Inform the payor that if the payor
244 receives more than one income deduction order against the same
245 defendant, he or she shall contact the court for further
246 instructions.

247 (v) The clerk of court shall enforce income
248 deduction orders against the defendant's successor payor who is
249 located in this state in the same manner prescribed in this
250 subsection for the enforcement of an income deduction order
251 against an original payor.

252 (vi) A person may not discharge, refuse to employ
253 or take disciplinary action against an employee because of the
254 enforcement of an income deduction order. An employer who
255 violates this provision is subject to a civil penalty not to
256 exceed Two Hundred Fifty Dollars (\$250.00) for the first violation
257 or Five Hundred Dollars (\$500.00) for any subsequent violation.

258 (vii) When a payor no longer provides income to a
259 defendant, the payor shall notify the clerk of the court and shall
260 provide the defendant's last known address and the name and
261 address of the defendant's new payor, if known. A payor who
262 violates this provision is subject to a civil penalty not to
263 exceed Two Hundred Fifty Dollars (\$250.00) for the first violation
264 or Five Hundred Dollars (\$500.00) for a subsequent violation.

265 **SECTION 2.** Section 99-37-3, Mississippi Code of 1972, is
266 amended as follows:

267 99-37-3. (1) When a person is convicted of criminal
268 activities which have resulted in pecuniary damages, in addition
269 to any other sentence it may impose, the court may order that the
270 defendant make restitution to the victim under the provisions of
271 this chapter or Section 1 of House Bill No. _____, 2004 Regular
272 Session; provided, however, that the justice court shall not order
273 restitution in an amount exceeding Five Thousand Dollars
274 (\$5,000.00).

275 (2) In determining whether to order restitution which may be
276 complete, partial or nominal, the court shall take into account:

277 (a) The financial resources of the defendant and the
278 burden that payment of restitution will impose, with due regard to
279 the other obligations of the defendant;

280 (b) The ability of the defendant to pay restitution on
281 an installment basis or on other conditions to be fixed by the
282 court; and

283 (c) The rehabilitative effect on the defendant of the
284 payment of restitution and the method of payment.

285 (3) If the defendant objects to the imposition, amount or
286 distribution of the restitution, the court shall, at the time of
287 sentencing, allow him to be heard on such issue.

288 (4) If the court determines that restitution is
289 inappropriate or undesirable, an order reciting such finding shall

290 be entered, which should also state the underlying circumstances
291 for such determination.

292 **SECTION 3.** Section 99-37-5, Mississippi Code of 1972, is
293 amended as follows:

294 99-37-5. (1) When a defendant is sentenced to pay a fine or
295 costs or ordered to make restitution, the court may order payment
296 to be made forthwith or within a specified period of time or in
297 specified installments. If a defendant is sentenced to a term of
298 imprisonment, an order of payment of a fine, costs or restitution
299 shall not be enforceable during the period of imprisonment unless
300 the court expressly finds that the defendant has assets to pay all
301 or part of the amounts ordered at the time of sentencing.

302 (2) When a defendant sentenced to pay a fine or costs or
303 ordered to make restitution is also placed on probation or
304 imposition or execution of sentence is suspended, the court may
305 make payment of the fine or costs or the making of restitution a
306 condition of probation or suspension of sentence. Such offenders
307 shall make restitution payments directly to the victim. As an
308 alternative to a contempt proceeding under Sections 99-37-7
309 through 99-37-13, the intentional refusal to obey the restitution
310 order or a failure by a defendant to make a good faith effort to
311 make such restitution may be considered a violation of the
312 defendant's probation and may be cause for revocation of his
313 probation or suspension of sentence.

314 (3) When the court orders a defendant to pay restitution, it
315 may follow the provisions of this chapter or the provisions of
316 Section 1 of House Bill No. _____, 2004 Regular Session.

317 **SECTION 4.** Section 99-37-9, Mississippi Code of 1972, is
318 brought forward as follows:

319 99-37-9. The term of imprisonment for contempt for failure
320 to make restitution shall be set forth in the commitment order,
321 and shall not exceed one (1) day for each Twenty-five Dollars
322 (\$25.00) of the restitution, or thirty (30) days if the order of

323 the restitution was imposed upon conviction of a violation or
324 misdemeanor, or one (1) year in any other case, whichever is the
325 shorter period. A person committed for failure to make
326 restitution shall be given credit toward payment for each day of
327 imprisonment at the rate specified in the commitment order.

328 **SECTION 5.** Section 99-37-11, Mississippi Code of 1972, is
329 brought forward as follows:

330 99-37-11. If it appears to the satisfaction of the court
331 that the default in the payment of a fine or restitution is not
332 contempt, the court may enter an order allowing the defendant
333 additional time for payment, reducing the amount thereof or of
334 each installment or revoking the fine or order of restitution or
335 the unpaid portion thereof in whole or in part.

336 **SECTION 6.** Section 99-37-13, Mississippi Code of 1972, is
337 brought forward as follows:

338 99-37-13. A default in the payment of a fine or costs or
339 failure to make restitution or any installment thereof may be
340 collected by any means authorized by law for the enforcement of a
341 judgment. The levy of execution for the collection of a fine or
342 restitution shall not discharge a defendant committed to
343 imprisonment for contempt until the amount of the fine or
344 restitution has actually been collected.

345 **SECTION 7.** Section 99-37-15, Mississippi Code of 1972, is
346 brought forward as follows:

347 99-37-15. Whenever an offender in the custody of the
348 Department of Corrections is paroled, placed on earned probation
349 or other form of release, and when such offender has been
350 sentenced to make restitution pursuant to Section 99-37-3 but with
351 respect to whom payment of all or a portion of the restitution was
352 suspended until his release from confinement, the making of
353 restitution shall be a condition of the offender's release. The
354 Commissioner of Corrections shall establish a schedule by which
355 payment of the restitution may be resumed. In fixing the schedule

356 and supervising the released offender's performance thereunder,
357 the commissioner shall consider the factors specified in
358 subsection (2) of Section 99-37-3. The commissioner shall provide
359 to the sentencing court a copy of the schedule and any
360 modifications thereof. Such offenders shall make restitution
361 payments directly to the victim.

362 As an alternative to a contempt proceeding under Sections
363 99-37-7 through 99-37-13, the intentional refusal to obey the
364 restitution order or a failure by an offender to make a good faith
365 effort to make such restitution may be considered a violation of
366 an offender's release and may be cause for revocation of his
367 parole, earned probation or other form of release.

368 **SECTION 8.** Section 99-37-17, Mississippi Code of 1972, is
369 brought forward as follows:

370 99-37-17. (1) Nothing in this chapter limits or impairs the
371 right of a person injured by a defendant's criminal activities to
372 sue and recover damages from the defendant in a civil action.
373 Evidence that the defendant has paid or been ordered to pay
374 restitution pursuant to this chapter may not be introduced in any
375 civil action arising out of the facts or events which were the
376 basis for the restitution. However, the court shall credit any
377 restitution paid by the defendant to a victim against any judgment
378 in favor of the victim in such civil action.

379 (2) If conviction in a criminal trial necessarily decides
380 the issue of a defendant's liability for pecuniary damages of a
381 victim, that issue is conclusively determined as to the defendant,
382 if it is involved in a subsequent civil action.

383 **SECTION 9.** This act shall take effect and be in force from
384 and after July 1, 2004.