

TX Sample Restitution Motion

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Attorney for Crime Victim

IN THE [FILL IN] JUDICIAL DISTRICT COURT
OF [FILL IN] COUNTY

PEOPLE OF THE STATE OF TEXAS,)	Case No. [FILL IN]
Plaintiff)	
)	CRIME VICTIM'S MOTION FOR
vs.)	RESTITUTION
[NAME OF DEFENDANT],)	
Defendant)	Hon. [FILL IN]
)	
[NAME/PSEUDONYM],)	
Crime Victim.)	
)	
)	
)	

COMES NOW the crime victim, [Name/Pseudonym],¹ by and through undersigned counsel, and respectfully asserts [his/her/their] constitutional and statutory rights to restitution.

¹ [Practitioner's Note: If using pseudonyms for crime victims in pleadings for the first time, add a footnote. For example: All references herein to the crime victim shall refer to [Doe 1 or alternative pseudonym] to protect [his/her/their] privacy in accordance with [his/her/their] federal constitutional rights. See, e.g., *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977) (recognizing that the United States Constitution provides a right to personal privacy, which includes an "individual interest in avoiding disclosure of personal matters"); *Roe v. Wade*, 410 U.S. 113, 152-53 (1973) ("[A] right of personal privacy . . . does exist under the Constitution."); see also Tex. Const. art. I, § 30(a)(1) (guaranteeing crime victims a constitutional "right to be treated with . . . respect for . . . [their] privacy throughout the criminal justice process"); Tex. Code Crim. Proc. Ann. art. 57.02(b) (providing that victims of sex offenses have the right to use pseudonyms "in all public files and records concerning the offense, including police summary reports, press releases[] and records of judicial proceedings"); Tex. Code Crim. Proc. Ann. art. 57A.02(b) (providing that victims of stalking have the right to use pseudonyms); Tex. Code Crim. Proc. Ann. art. 57B.02(b) (providing that victims of family violence have the right to use pseudonyms); Tex. Code Crim. Proc. Ann. art.

[Name/Pseudonym] suffered [damages/losses], resulting from the criminal offense caused by the defendant, totaling [\$XXX.XX]. As such, [Name/Pseudonym] moves this Court for a criminal restitution order, directing [Name of Defendant] to pay restitution to [Name/Pseudonym] in the amount of [\$XXX.XX]. This request is supported by the attached Memorandum of Points and Authorities, all pleadings and evidence filed with the court and any evidence presented in connection with the consideration of restitution.²

Respectfully submitted [date]

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57D.02(2) (providing that victims of trafficking have the right to use pseudonyms); *Andrus v. State*, 495 S.W.3d 300, 303 n.1 (Tex. Ct. App. 2016) (protecting the victim’s privacy in a burglary prosecution by using initials, relying on crime victims’ constitutional “right to be treated with fairness and with respect for the victim’s dignity and privacy throughout the criminal justice process” (quoting Tex. Const. art. I, § 30(a)(1))); *Williams v. State*, 474 S.W.3d 850, 852 n.2 (Tex. Ct. App. 2015) (referencing the Texas Rules of Appellate Procedure and explaining that “[t]o protect the privacy of the victim and a child witness, we use pseudonyms for children in this case, and we do not use surnames of witnesses”). In addition to pseudonyms, Texas law provides explicit protections for crime victims’ telephone numbers and addresses. *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 56.09 (prohibiting crime victims’ telephones numbers from becoming part of the court file and providing “[a]s far as reasonably practical, the address of the victim may not be a part of the court file except as necessary to identify the place of the crime”).]

² [Practitioner’s Note: Although this sample is styled as one to be filed by crime victims, it can easily be adapted to one filed by the state. *See, e.g.*, Tex. Const. art. I, § 30(d) (granting “[t]he state, through its prosecuting attorney, . . . the right to enforce the rights of crime victims[,]” including the right to restitution).]

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

[Insert relevant facts, including an itemization of the losses incurred as a result of the criminal conduct. If you choose to attach documentation detailing damages/losses or submit documentation in connection with a restitution proceeding (e.g., receipts, estimates or affidavits), consider redacting information to safeguard the crime victim's rights to privacy and/or protection.]

ARGUMENT

I. THE CRIME VICTIM HAS STANDING TO ASSERT AND SEEK ENFORCEMENT OF [HIS/HER/THEIR] RIGHT TO RESTITUTION.

Victims of crime in Texas are guaranteed myriad constitutional and statutory rights, including the right to restitution. *See, e.g.*, Tex. Const. art. I, § 30(a)(1), (b)(4)-(5) (guaranteeing crime victims constitutional rights, *inter alia*, “to be treated with fairness and with respect for the victim’s dignity . . . throughout the criminal justice process;” and, upon request, “to restitution” and to information about sentencing); Tex. Code Crim. Proc. Ann. art. 42.037 (guaranteeing crime victims a statutory right to restitution); *Hanna v. State*, 426 S.W.3d 87, 91 (Tex. Crim. App. 2014) (observing that “[r]estitution is not only a form of punishment, it is also a crime victim’s statutory right”).³

³ In addition, victims of crime also have numerous rights that help to ensure that their constitutional and statutory rights to restitution are enforced in a meaningful way. *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 56.02(a)(5) (granting crime victims the right to provide impact information in the presentence investigation in any manner they wish); Tex. Code Crim. Proc. Ann. art. 56.02(a)(12)(A) (mandating courts and prosecutors to consider victim impact statements before sentencing a defendant and before a plea agreement is accepted); Tex. Code Crim. Proc. Ann. art. 56.02(b) (granting crime victims the “the right to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case”); Tex. Code Crim. Proc. Ann. art. 56.03(b)(3) (requiring victim impact statement forms to collect information concerning a victim’s “economic loss”); Tex. Code Crim. Proc. Ann. art. 56.03(e) (requiring courts, prior to imposing a sentence, to inquire if the victim returned a victim impact statement and requiring redaction of the victim impact statement to “exclud[e] the victim’s name, address[] and telephone number” before a copy is reviewed by defendant or defendant’s counsel); *see also* Tex. Code Crim. Proc. Ann. art. 42.22(2)(a) (providing that a victim of crime has a “restitution lien to secure the amount of restitution to which the victim is entitled under the order of a court in a criminal case”).

Victims of crime have standing to assert their constitutional and statutory rights, including the right to restitution. *See* Tex. Const. art. I, § 30(e) (providing that “[a] victim or guardian or legal representative of a victim has standing to enforce” their constitutional rights but that they do not “have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge”).⁴

Further, Texas case law recognizes that third-parties have standing to assert and seek enforcement of their rights, provided that third-parties allege: 1) an injury to their own rights that is traceable to the challenged act, 2) the injury falls within the “zone of interests” protected by the rights, and 3) the injury can be redressed by the court. *See In re Houston Chronicle Pub. Co.*, 64 S.W.3d 103, 106-07 (Tex. Ct. App. 2001) (finding that a media entity had standing to challenge a gag order issued in connection with a criminal proceeding that prohibited individuals

⁴ [Practitioner’s Note: The second clause of article I, section 30(e) of The Texas Constitution—providing that a victim “does not have standing to participate as a party”—does not conflict with the first clause—providing express “standing to enforce the rights enumerated in this section.” Tex. Const. art. I, § 30(e); *cf. Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000) (noting that the court “[p]resum[es] that the language of the Texas Constitution is carefully selected . . . [and] construes its words as they are generally understood”; and stating that fundamental principles of construction require courts to “give effect to all the words” and “avoid constructions that would render any constitutional provision meaningless or nugatory”). The second clause acknowledges that in a criminal case, a crime victim is not a “party” to the underlying criminal prosecution, and her/his/their standing to participate is separate and distinct from the state or criminal defendant’s standing in the case. Read together, the entire standing provision is consistent with established law recognizing that “party” status is distinct from the legal analysis of standing for rights enforcement purposes and that an “appeal” is not the only procedural mechanism by which appellate relief may be sought. *See, e.g., In re Houston Chronicle Pub. Co.*, 64 S.W.3d 103, 106-07 (Tex. Ct. App. 2001) (concluding that the Houston Chronicle had standing to challenge—via a petition for a writ of mandamus—a gag order entered in a criminal case even though “it is neither a party nor the direct subject of restraint” on the basis that it alleged an injury caused by the gag order; the injury, arguably, impacted rights protected by the First Amendment; and the court had the ability to grant redress for the injury); *see also Martin v. Darnell*, 960 S.W.2d 838, 839-40 (Tex. Ct. App. 1997) (granting—without addressing but necessarily recognizing third-party standing—the government witness’ petition for writ of mandamus directing the trial court to quash defendant’s pretrial subpoena *duces tecum* for the witness’ financial records). Case law suggesting a contrary result is distinguishable on the basis that certain legal arguments were not raised and/or the decision relied on flawed or incomplete analysis of standing and principles of constitutional and statutory construction. *See, e.g., State ex rel. Sistrunk*, 142 S.W.3d 497, 502-03 (Tex. Ct. App. 2004) (per curiam) (relying on Tex. Code Crim. Proc. Ann. art. 56.02(d)’s no “party” standing clause and concluding the family members of deceased victim—who asserted that their constitutional right to be treated with fairness and statutory right to present victim impact statements at sentencing had been violated but who inexplicably conceded that the law provided them with no remedy for rights violations—had no standing to seek enforcement of their rights before the court of appeals because they had no standing to “appeal” defendant’s sentence).]

involved in the criminal prosecution from speaking to the media). [Insert information demonstrating how the standing test is met in this case.]

[Name/Pseudonym] is a crime victim, as defined by Texas law. See Tex. Const. art. I, § 30(c) (providing that “[t]he legislature may enact laws to define the term ‘victim’”); Tex. Crim. Proc. Code Ann. art. 56.01(3) (defining “victim” as “a person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons[] or injury to a child, elderly individual[] or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another”); *Hanna*, 426 S.W.3d at 94 (defining victim, “for purposes of the restitution statute[,] . . . [as] any person who suffered loss as a direct result of the criminal offense”). [Insert explanation describing how the victim meets the definitions of “victim.”].

[Name/Pseudonym] properly appears before this court to assert [his/her/their] constitutional and statutory rights to restitution and is entitled to seek meaningful enforcement of these rights.

II. THE CRIME VICTIM IS GUARANTEED THE RIGHT TO RESTITUTION FOR LOSSES SUSTAINED AS A RESULT OF DEFENDANT’S CRIMINAL CONDUCT, INCLUDING [INSERT TYPE(S) OF RELEVANT DAMAGES/LOSSES SOUGHT].⁵

Restitution under Texas law serves “multiple purposes, including restoring the victim to the status quo and forcing an offender to address and remedy the specific harm that he has caused.” *Hanna*, 426 S.W.3d at 91; see also Tex. Code Crim. Proc. Ann. art. 42.037(c)(1) (requiring the court to consider, *inter alia*, “the amount of the loss sustained by any victim” when

⁵ [Practitioner’s Note: If factors other than the amount of the victims’ loss would assist the court in ordering the proper amount of restitution, the court is permitted to review them. See Tex. Code Crim. Proc. Ann. art. 42.037(c)(2) (providing that the court “shall consider: (1) the amount of the loss sustained by any victim and the amount paid . . . by the compensation to victims of crime fund . . . ; and (2) other factors the court deems appropriate”).]

determining restitution); Tex. Code Crim. Proc. Ann. art. 42.037(e) (requiring courts to “impose an order of restitution that is as fair as possible to the victim”); *Burt v. State*, 445 S.W.3d 752, 757 (Tex. Crim. App. 2014) (explaining that the Court of Criminal Appeals “ha[s] interpreted restitution statutes liberally to effectuate fairness to the victims of crime”).⁶

In this case, [Name/Pseudonym] incurred [*identify the damages/losses sustained and sought by the victim, and explain how those damages or losses were caused by defendant’s criminal conduct.*] Restitution is determined using the “preponderance of the evidence” standard.⁷ See Tex. Code Crim. Proc. Ann. art. 42.037(k) (granting the court authority to resolve restitution matters).

Accordingly, [Name/Pseudonym] seeks the following in restitution: [*Identify relevant categories of damage/loss and include the applicable law and arguments. Included below are a few examples that may apply in a given case*]:⁸

- Damage, Loss or Destruction of Property: See, e.g., Tex. Crim. Proc. Code Ann. art. 42.037(b)(1)(A)-(B) (providing that restitution for property damage, destruction or loss—if return of property is not possible, practical or adequate—is to be paid in “an

⁶ [Practitioner’s Note: Under the statutory provision governing restitution, if the court does not order full restitution, the law requires that the court justify its basis for not doing so on the record. See Tex. Code Crim. Proc. Ann. art. 42.037(a) (emphasis added) (mandating that “[i]f the court does not order restitution *or* orders partial restitution under this subsection, the court shall state on the record the reasons for not making the order or for the limited order”).]

⁷ [Practitioner’s Note: “The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the prosecuting attorney.” Tex. Code Crim. Proc. Ann. art. 42.037(k). Restitution orders are generally upheld, unless the court orders restitution “in an amount that is unjust or unsupported by facts.” *Sanders v. State*, 346 S.W.3d 26, 35 (Tex. Ct. App. 2011).]

⁸ [Practitioner’s Note: The list of restitution categories included in this sample is not intended to be exhaustive. Only when working with an individual victim will you be able to determine what damages/losses are necessary to fully compensate the victim for the financial costs incurred as a result of the crime. This list is intended as a starting point. Other examples of successful restitution requests can be found among NCVLI’s online resources. See, e.g., *Sample Cases: Thinking Broadly About Restitution*, Rights Enforcement Toolkit (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2018, <https://law.lclark.edu/live/files/27371-sample-cases-handoutrestitution>.]

amount equal to the greater of: (i) the value of the property on the date of the damage, loss[] or destruction; or (ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned”); *Miller v. State*, 343 S.W.3d 499, 503 (Tex. Ct. App. 2011) (citing Tex. Crim. Proc. Code Ann. § 42.037(b)(1) and clarifying that “restitution does not include cost of repair; it includes the value of the property on the date of the damage, or the value of the property on the date of sentencing less the value of any part of the property that is returned on the date the property is returned”).

- Injury: *See, e.g.*, Tex. Crim. Proc. Code Ann. art. 42.037(b)(2)(A) (providing that restitution for personal injury covers “expenses incurred by the victim as a result of the offense”); *Sanders*, 346 S.W.3d at 35 (affirming restitution for medical expenses incurred as a result of injuries from defendant’s criminal conduct and reiterating the statutory mandate that a court’s restitution order be “as fair as possible to the victim,” and that the court consider the victim’s losses as well as any other factors deemed appropriate); *Narvaez v. State*, 40 S.W.3d 729, 730 (Tex. Ct. App. 2001) (affirming the trial court’s order requiring defendant to pay restitution directly to the hospital to cover the victim’s medical expenses and quoting language from a previous version of the restitution statute in clarifying that “[w]hen an offense ‘results in bodily injury to a victim, the court may order the defendant to’ ‘pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric[] and psychological care”).
- Funeral Expenses and Lost Earnings of Decedent: *See, e.g.*, *Lemos v. State*, 27 S.W.3d 42, 46-49 (Tex. Ct. App. 2000) (affirming restitution for, *inter alia*, the deceased victim’s

funeral expenses and lost earnings, holding that “[r]estitution awards for lost income exist for a deceased victim’s estate”); *Richardson v. State*, 957 S.W.2d 854, 859-60 (Tex. Ct. App. 1997) (affirming restitution for the decedent’s child in the amount of the “present value of the loss of the mother’s wages during the child’s minority”).

- Rehabilitative Costs for Child-Witnesses of Family Violence: *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 42.0373(a)-(b), (d) (mandating that courts order “defendant[s] to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric[] and psychological care and treatment, for” child-victims under the of age 15 that “the defendant had knowledge or reason to know . . . [were] physically present or occup[ying] the same habitation or vehicle” at the time of the family violence; and granting victims named in the restitution order as well as their legal guardians explicit standing to enforce the order).
- Rehabilitative Costs for Child-Victims of Kidnapping or Abduction: *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 42.0371(a), (c) (mandating that courts order “defendant[s] convicted of [specified offenses] to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric,[] and psychological care and treatment, for” child-victims under the age of 17; and granting victims named in the restitution order explicit standing to enforce the order).
- Rehabilitative Costs for Child-Victims of Trafficking of Prostitution: *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 42.0372(a), (c) (mandating that courts order defendants convicted of specified crimes to pay restitution to child-victims under the age of 18 “in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric[] and

psychological care and treatment[;]” and granting victims named in the restitution order explicit standing to enforce the restitution order).

- Rehabilitative Costs for Child-Victims of Child Sex Images or Videos: *See, e.g.*, Tex. Crim. Proc. Code Ann. art. 42.037(r) (providing that child-victims of the possession or promotion of visual materials of child sexual abuse can receive restitution “in an amount equal to the expenses incurred by the [child-victims] 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”).

CONCLUSION

Under Texas law, [Name/Pseudonym] has both a constitutional and statutory right to restitution. As detailed above, [Name/Pseudonym] has established that [he/she/they] suffered [damages/losses] as a result of defendant’s criminal conduct. Therefore, [Name/Pseudonym] respectfully requests that this Court grant this Motion for Restitution and order defendant to pay full restitution to [Name/Pseudonym], in the amount of [XXX.XX].^{9, 10}

⁹ [Practitioner’s Note: A defendant is required to pay restitution immediately, unless the court provides otherwise. *See* Tex. Code Crim. Proc. Ann. art. 42.037(g)(3). The court may order a defendant to pay restitution “within a specified period or in specified installments.” Tex. Code Crim. Proc. Ann. art. 42.037(g)(1). If the court implements a payment plan, ensure the date jurisdiction ends and the terms of the payment plan meet the victim’s restitution needs. *See* Tex. Code Crim. Proc. Ann. art. 42.037(g)(2)(A)-(C) (providing that “[t]he end of the period or the last installment may not be later than: (A) the end of the period of probation, if probation is ordered; (B) five years after the end of the term of imprisonment imposed, if the court does not order probation; or (C) five years after the date of sentencing in any other case”). If applicable, consider including an argument regarding defendant’s failure to meet the burden of proof required for establishing limited financial resources or needs. *See* Tex. Code Crim. Proc. Ann. art. 42.037(k) (explaining that “[t]he burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and the defendant’s dependents is on the defendant”).]

¹⁰ [Practitioner’s Note: It is worth noting that, in addition to seeking restitution, there may also be civil remedies or compensation funds available to the victim. *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 42.037(l) (explaining that “[c]onviction of a defendant for an offense involving the act giving rise to restitution under this article estops the defendant from denying the essential allegations of that offense in any subsequent federal civil proceeding or state civil proceeding brought by the victim, to the extent consistent with state law”); Tex. Code Crim. Proc. Ann. art. 56.31 *et seq.* (Texas’s Crime Victims’ Compensation Act).]

Respectfully submitted [date]

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