

# Crime Victims Financial Recovery

This Act enables crime victims to satisfy restitution orders and civil judgments entered against their offenders from the offender's assets by providing notice of the assets to the victims and by reviving the statute of limitations for a civil action once assets are discovered.

The Act requires the following entities that knowingly contract for, pay, or agree to pay, profit from crime, or funds of an offender, to notify and submit a copy of the contract to a Crime Victims Compensation Commission, the contracting party, the State or a subdivision of the State whenever the payment or obligation to pay involves funds of an offender in excess of \$10,000 that a superintendent, sheriff, or municipal officer receives or will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility; and the State or a subdivision of the State when it makes a payment or has an obligation to pay funds of an offender in excess of \$10,000. In all other instances where the payment or obligation to pay involves funds of an offender and the value of the funds exceeds or will exceed \$10,000, the offender who receives or will receive the funds shall give written notice to the Commission.

A person who willfully fails to provide notice is subject to an assessment in the amount of the payment or obligation to pay, to be levied after notice and opportunity to be heard, plus a civil penalty in the amount of \$1,000 or 10 percent of the obligation to pay, whichever is greater. Once collected, the assessment is to be placed in escrow for the benefit of eligible people who would be notified of their right to bring a civil action. The proceeds of the civil penalty would be remitted to a Civil Penalty and Forfeiture Fund. The Act also provides for the return to the respondent of any unclaimed funds held in escrow upon the expiration of the three-year statute of limitations period and upon final determination of all pending claims.

The Crime Victims Compensation Commission must notify all "eligible persons" of the existence of the contract. An "eligible person" means a victim of the crime for which the offender was convicted; a surviving spouse, parent, or child of a deceased victim of the crime for which the offender was convicted; or any other person dependent for the person's principal support upon a deceased victim of the crime for which the offender was convicted. However, "eligible person" does not include the offender or an accomplice to the offender.

If the eligible person has already obtained a civil judgment against the offender for damages arising out of the offense for which the offender was convicted, the eligible person may proceed to execute against those assets as provided for by current law. If the eligible person has not obtained a civil judgment, this act provides that the person has three years from the notice of the profit from crime or funds of the offender to bring a civil action for damages arising out of the offense for which the offender was convicted, even if the original statute of limitations for the cause of action has expired. The eligible person must submit a copy of the lawsuit to the Commission, which, in turn, would attempt to notify all other eligible persons of the lawsuit.

The Commission, upon receipt of notice of a contract or agreement to pay profit from crime or funds of an offender, must notify all known eligible victims of the existence of the contract or agreement.

The Commission, upon notice of the filing of a civil action, must notify all other eligible victims of the filing.

The Commission has standing and, acting on its own behalf or on behalf of all eligible persons, has the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action, including attachment, injunction, constructive trust, and receivership.

Claims on profit from crime or funds of an offender are subject to subrogation by the Crime Victims Compensation Fund.

Submitted as:

North Carolina

[Session Law 2004-159](#)

Status: Enacted into law in 2004.

### **Suggested State Legislation**

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as ““The Crime Victims Financial  
2 Recovery Assistance Act.”

3

4           Section 2. [*Legislative Findings.*]

5           (A) The [Legislature] finds that:

6                   (1) No person who commits a crime should thereafter gain monetary profit as  
7 the result of committing the crime.

8                   (2) Victims of crime have a special relationship to any profit from the crime  
9 committed against them, including the personal belongings and memorabilia of a convicted  
10 felon whose criminal actions and resulting notoriety enhance the value of those belongings  
11 and memorabilia.

12                   (3) To the extent profit from crime would not have been realized but for an  
13 offender’s commission of illegal acts, an offender does not have an equitable interest in the  
14 profit and allowing the offender to retain the profit would result in the offender’s unjust  
15 enrichment.

16           (B) The [Legislature] finds that the state has a compelling interest in ensuring that  
17 persons convicted of crimes do not profit from those crimes, and that victims of crime are  
18 compensated by those who have harmed them.

19           (C) The [Legislature] further finds that crime victims have difficulty satisfying  
20 restitution orders or civil judgments entered against their offenders because the victims often  
21 lack the expertise and resources to identify or locate assets that an offender may have.

22           (D) In order to carry out this public policy and to satisfy these compelling interests,  
23 the [Legislature] has enacted this Act to provide a mechanism by which crime victims are  
24 notified of the existence of an offender’s assets and are authorized to bring an action to  
25 recover those assets.

26

27           Section 3. [*Definitions.*]

28           (A) As used in this Act.

29                   (1) Commission. - The Crime Victims Compensation Commission established  
30 under [insert citation].

31                   (2) Convicted. - A finding or verdict of guilty by a jury or by entry of a plea  
32 of guilty or no contest, or a finding of not guilty by reason of insanity.

33 (3) Crime memorabilia. - Any tangible property belonging to or that belonged  
34 to an offender prior to conviction, the value of which is increased by the notoriety gained  
35 from the conviction of a felony.

36 (4) Earned income. - Income derived from one's own labor or through active  
37 participation in a business, as distinguished from income including dividends or investments.

38 (5) Eligible person. - Any of the following:

39 a. A victim of the crime for which the offender was convicted.

40 b. A surviving spouse, parent, or child of a deceased victim of the  
41 crime for which the offender was convicted.

42 c. Any other person dependent for the person's principal support upon  
43 a deceased victim of the crime for which the offender was convicted. However, 'eligible  
44 person' does not include the offender or an accomplice to the offender.

45 (6) Felony. - An offense defined as a felony by [this state's statutes] or United  
46 States statute that was committed in [this state] and that resulted in physical or emotional  
47 injury, or death, to another person.

48 (7) Funds of an offender. - All funds and property received from any source  
49 by an offender, excluding child support and earned income, where the offender:

50 a. Is an inmate serving a sentence with the [Department of Correction]  
51 or a prisoner confined at a local correctional facility or federal correctional institute, and  
52 includes funds that a superintendent, sheriff, or municipal official receives on behalf of an  
53 inmate or prisoner and deposits in an inmate account to the credit of the inmate or deposits in  
54 a prisoner account to the credit of the prisoner; or

55 b. Is not an inmate or prisoner but who is serving a sentence of  
56 probation, conditional discharge, or post-release supervision.

57 (8) Offender. - A person who has been convicted of a felony or that person's  
58 legal representative or assignee.

59 (9) Profit from crime. - Any income, assets, or property obtained through or  
60 generated from the commission of a crime for which the offender was convicted, including  
61 any income, assets, or property generated from the sale of crime memorabilia or obtained  
62 through the use of unique knowledge obtained during the commission of, or in preparation  
63 for the commission of the crime, as well as any gain from the sale, conversion, or exchange  
64 of the income, assets, or property. 'Profit from crime' does not include voluntary donations  
65 or contributions to an offender used to assist in the appeal of a conviction, provided the  
66 donation or contribution is not given in exchange for something of material value.

67 (10) Victim. - Any natural person who suffers physical or emotional injury, or  
68 the threat of physical or emotional injury, as the result of the commission of a felony.

69  
70 Section 4. *[Notice of Contract or Agreement to Pay.]*

71 (A) Notice to Commission.-

72 (1) Every person, firm, corporation, partnership, association, or other legal  
73 entity, or representative of a person, firm, corporation, partnership, association, or entity that  
74 knowingly contracts for, pays, or agrees to pay to an offender profit from crime or funds of  
75 an offender where the value or aggregate value of the payment or payments exceeds  
76 [\$10,000] shall submit to the [Commission] a copy of the contract or reduce to writing the  
77 terms of any oral agreement or obligation to pay as soon as practicable after discovering the  
78 payment or intended payment constitutes profit from crime or funds of an offender.

79 (2) Whenever the payment or obligation to pay involves funds of an offender  
80 that a superintendent, sheriff, or municipal officer receives or will receive on behalf of an

81 inmate serving a sentence with the [Department of Correction] or a prisoner confined at a  
82 local correctional facility, deposits or will deposit in an inmate account to the credit of an  
83 inmate or prisoner, and the value of such funds exceeds or will exceed [ten thousand dollars],  
84 the State or subdivision of the State shall also give written notice to the [Commission].

85 (3) Whenever the State or a subdivision of the State makes a payment or has  
86 an obligation to pay funds of an offender and the value of such funds exceeds or will exceed  
87 [\$10,000], the State or subdivision of the State shall also give written notice to the  
88 [Commission].

89 (4) In all other instances where the payment or obligation to pay involves  
90 funds of an offender and the value or aggregate value of the funds exceeds or will exceed  
91 [\$10,000], the offender who receives or will receive the funds shall give written notice to the  
92 [Commission].

93 (B) Notice to Eligible Persons. - The [Commission] shall, upon receipt of a notice of  
94 a contract, an agreement to pay, or payment of profit from crime or funds of an offender,  
95 notify in writing by certified mail, return receipt requested, all known eligible persons where  
96 the eligible persons' names and addresses are known to the [Commission]. The  
97 [Commission] may, in its discretion, provide for additional notice as it deems necessary.

98  
99 Section 5. *[Penalties.]*

100 (A) Assessment and Civil Penalty for Failure to Give Notice.- Any person or entity,  
101 other than the State, a subdivision of the State, or a person who is a superintendent, sheriff,  
102 or municipal official, who willfully fails to give notice as required by section 4 of this Act is  
103 subject to an assessment of up to the amount of the payment or obligation to pay and a civil  
104 penalty of up to [\$1,000] or [ten percent] of the payment or obligation to pay, whichever is  
105 greater.

106 (B) Notice and Opportunity to be Heard Required. - After providing notice and  
107 opportunity to be heard in accordance with the provisions of [insert citation], the  
108 [Commission] may order the respondent to pay the assessment and civil penalty imposed by  
109 this section.

110 (C) Failure to Pay. - If a respondent fails to pay the assessment and civil penalty  
111 imposed by this section within [sixty days] of being ordered to pay, the assessment and civil  
112 penalty may be recovered from the respondent by an action brought by the [attorney  
113 general], upon the request of the [Commission], in any court of competent jurisdiction.

114 (D) Establishment of Escrow Account. - The [Commission] shall deposit the  
115 assessment in an escrow account pending the expiration of the [three-year] statute of  
116 limitations authorized by section 6 of this Act to preserve the funds to satisfy a civil  
117 judgment in favor of an eligible person to whom the failure to give notice relates. The  
118 [Commission] shall notify any eligible person who may have a claim against the offender of  
119 the existence of the funds being held in escrow. The notice shall instruct the eligible person  
120 that the person may have a right to commence a civil action against the offender as well as  
121 any other information deemed necessary by the [Commission].

122 (E) Satisfaction of Judgment from Escrow Account - Upon an eligible person's  
123 presentation to the [Commission] of a civil judgment for damages arising out of the offense  
124 for which the offender was convicted, the [Commission] shall satisfy up to [one hundred  
125 percent] of that judgment, including costs and disbursements as taxed by the clerk of the  
126 court, with the escrowed fund obtained pursuant to this section, but in no event shall the  
127 amount of all judgments, costs, and disbursements satisfied from the escrowed funds exceed  
128 the amount in escrow. If more than one eligible person indicates to the [Commission] that the  
129 eligible person intends to commence or has commenced a civil action against the offender,

130 the [Commission] shall delay satisfying any judgment, costs, and disbursements until the  
131 claims of all eligible persons are reduced to judgment. If the aggregate of all judgments,  
132 costs, and disbursement obtained exceeds the amount of escrowed funds, the amount used to  
133 partially satisfy each judgment shall be reduced to a pro rata share.

134 (F) Return of Unclaimed Escrowed Funds. - After the expiration of the [three-year]  
135 statute of limitations period established in section 6 of this Act, the [Commission] shall  
136 review all judgments that have been satisfied from the escrowed funds. In the event no claim  
137 was filed prior to the expiration of the [three-year] statute of limitations, the [Commission]  
138 shall return the escrowed amount to the respondent. In the event a claim or claims are  
139 pending at the expiration of the statute of limitations, the funds shall remain escrowed until  
140 the final determination of all claims to allow the [Commission] to satisfy any judgment  
141 which may be obtained by the eligible person after which time any remaining escrowed  
142 amount shall be returned to the respondent.

143 (G) Remittance of Proceeds from Civil Penalty. - The [Commission] shall remit the  
144 clear proceeds of the civil penalty of up to [\$1,000] or [ten percent] of the payment or  
145 obligation to pay, whichever is greater, assessed under this section to the [Civil Penalty and  
146 Forfeiture Fund] in accordance with [insert citation].

147  
148 Section 6. *[Civil Action to Recover Profits or Funds; Responsibilities of the*  
149 *Commission.]*

150 (A) Civil Action. - Notwithstanding any inconsistent provision of law with respect to  
151 the timely bringing of an action, an eligible person may, within three years of the discovery  
152 of any profit from crime or funds of an offender, bring a civil action in a court of competent  
153 jurisdiction against an offender for damages arising out of the offense for which the offender  
154 was convicted.

155 (B) Notice by Eligible Persons. - Upon filing an action under subsection (a) of this  
156 section, the eligible person shall give notice to the [Commission] of the filing by delivering a  
157 copy of the summons and complaint to the [Commission]. The eligible person may also give  
158 notice to the [Commission] prior to filing the action so as to allow the [Commission] to apply  
159 for any appropriate provisional remedies, which are otherwise authorized to be invoked prior  
160 to the commencement of an action.

161 (C) Responsibilities of Commission. - Upon receipt of a copy of a summons and  
162 complaint, or upon receipt of notice from the eligible person prior to filing an action, the  
163 [Commission] shall immediately take action to:

164 (1) Notify all other known eligible persons of the filing of the civil action by  
165 certified mail, return receipt requested, where the eligible persons' names and addresses are  
166 known to the Commission.

167 (2) Provide, in its discretion, for additional notice as it deems necessary.

168 (3) Avoid the wasting of the assets identified in the complaint as the profit  
169 from crime or funds of an offender in any manner consistent with subsection (d) of this  
170 section.

171 (D) Standing; Authority to Avoid Wasting of Assets. - The [Commission] has  
172 standing and, acting on its own behalf or on behalf of all eligible people, shall have the right  
173 to apply for any and all provisional remedies that are also otherwise available to the plaintiff  
174 in the civil action brought under subsection (a) of this section, including attachment,  
175 injunction, constructive trust, and receivership. On a motion for a provisional remedy, the  
176 moving party shall state whether any other provisional remedy has previously been sought in

177 the same action against the same defendant. The court may require the moving party to elect  
178 between those remedies to which it would otherwise be entitled.

179

180 Section 7. [*Subrogation by the Crime Victims Compensation Fund.*] Claims on profit  
181 from crime or funds of an offender are subject to subrogation by the [Crime Victims  
182 Compensation Fund] pursuant to [insert citation].

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184 Section 8. [*Conviction Overturned or Pardon Issued.*] If profit from crime is subject  
185 to a provisional remedy on behalf of eligible persons and the conviction for the criminal  
186 offense from which profit from crime is realized is reversed, vacated, or set aside, or if the  
187 offender has been granted an unconditional pardon of innocence for the criminal offense,  
188 those funds shall be returned to the rightful owner.

189

190 Section 9 [*Evasive Action Void.*] Any action taken by an offender, whether by way of  
191 execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the  
192 purpose of this Act shall be void as against the public policy of this State.

193

194 Section 10. [*Restitution.*]

195 (A) Notwithstanding any other provision of law, if a defendant is convicted of a  
196 criminal offense and is ordered by the court to pay restitution or restitution is imposed as a  
197 condition of probation, special probation, work release, or parole, then all applicable statutes  
198 of limitation and statutes of repose, except as established herein, are tolled for the period set  
199 forth in this subsection for purposes of any civil action brought by an aggrieved party against  
200 that defendant for damages arising out of the offense for which the defendant was convicted.  
201 Any statute of limitation or repose applicable in the civil action shall be tolled from the time  
202 of entry of the court order

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(1) Requiring that restitution be made,

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(2) Making restitution a condition of probation or special probation, or

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(3) Recommending that restitution be made a condition of work release or

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parole, and until the defendant has paid in full the amount of restitution ordered or imposed.

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208 (B) Except as provided in section 6 of this Act, an action to recover damages arising  
209 out of the criminal offense shall not be commenced more than [ten years] from the last act of  
the defendant giving rise to the cause of action.”

210

211 Section 11. [*Severability.*] [Insert severability clause.]

212

213 Section 12. [*Repealer.*] [Insert repealer clause.]

214

215 Section 13. [*Effective Date.*] [Insert effective date.]