

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 the
7 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 felon
10 whose criminal actions and resulting notoriety enhance the value of those belongings and
11 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 profit
14 and allowing the offender to retain the profit would result in the offender’s unjust enrichment.

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

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

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

24
25 Section 3. [*Definitions.*]

26 (A) As used in this Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

67
68 Section 4. *[Notice of Contract or Agreement to Pay.]*

69 (A) Notice to Commission.-

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

77 (2) Whenever the payment or obligation to pay involves funds of an offender that
78 a superintendent, sheriff, or municipal officer receives or will receive on behalf of an inmate
79 serving a sentence with the [Department of Correction] or a prisoner confined at a local
80 correctional facility, deposits or will deposit in an inmate account to the credit of an inmate or
81 prisoner, and the value of such funds exceeds or will exceed [ten thousand dollars], the State or
82 subdivision of the State shall also give written notice to the [Commission].

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

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

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

95
96 Section 5. *[Penalties.]*

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

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

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

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

117 (E) Satisfaction of Judgment from Escrow Account - Upon an eligible person's
118 presentation to the [Commission] of a civil judgment for damages arising out of the offense for
119 which the offender was convicted, the [Commission] shall satisfy up to [one hundred percent] of
120 that judgment, including costs and disbursements as taxed by the clerk of the court, with the
121 escrowed fund obtained pursuant to this section, but in no event shall the amount of all
122 judgments, costs, and disbursements satisfied from the escrowed funds exceed the amount in
123 escrow. If more than one eligible person indicates to the [Commission] that the eligible person
124 intends to commence or has commenced a civil action against the offender, the [Commission]
125 shall delay satisfying any judgment, costs, and disbursements until the claims of all eligible
126 persons are reduced to judgment. If the aggregate of all judgments, costs, and disbursement
127 obtained exceeds the amount of escrowed funds, the amount used to partially satisfy each
128 judgment shall be reduced to a pro rata share.

129 (F) Return of Unclaimed Escrowed Funds. - After the expiration of the [three-year]
130 statute of limitations period established in section 6 of this Act, the [Commission] shall review
131 all judgments that have been satisfied from the escrowed funds. In the event no claim was filed
132 prior to the expiration of the [three-year] statute of limitations, the [Commission] shall return the
133 escrowed amount to the respondent. In the event a claim or claims are pending at the expiration
134 of the statute of limitations, the funds shall remain escrowed until the final determination of all

135 claims to allow the [Commission] to satisfy any judgment which may be obtained by the eligible
136 person after which time any remaining escrowed amount shall be returned to the respondent.

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

141
142 Section 6. [*Civil Action to Recover Profits or Funds; Responsibilities of the Commission.*]

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

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

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

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

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

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

162 (D) Standing; Authority to Avoid Wasting of Assets. - The [Commission] has standing
163 and, acting on its own behalf or on behalf of all eligible people, shall have the right to apply for
164 any and all provisional remedies that are also otherwise available to the plaintiff in the civil
165 action brought under subsection (a) of this section, including attachment, injunction, constructive
166 trust, and receivership. On a motion for a provisional remedy, the moving party shall state
167 whether any other provisional remedy has previously been sought in the same action against the
168 same defendant. The court may require the moving party to elect between those remedies to
169 which it would otherwise be entitled.

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

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

180
181 Section 9. [*Evasive Action Void.*] Any action taken by an offender, whether by way of
182 execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the
183 purpose of this Act shall be void as against the public policy of this State.

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Section 10. [*Restitution.*]

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

(1) Requiring that restitution be made,

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

(3) Recommending that restitution be made a condition of work release or parole, and until the defendant has paid in full the amount of restitution ordered or imposed.

(B) Except as provided in section 6 of this Act, an action to recover damages arising 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.”

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

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

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