

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1519 (Second Edition)

SHORT TITLE: Crime Victim Financial Recovery Assist. Act.

SPONSOR(S): Representatives Eddins and Holliman

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (x)		
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>
REVENUES:					
EXPENDITURES:					
POSITIONS:					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Administrative Office of the Courts (AOC); Crime Victims Compensation Fund.				
EFFECTIVE DATE:	Upon Ratification				

BILL SUMMARY:

May 19, 2004

Adds new GS Ch. 15B, Art. 2, "The Crime Victim Financial Recovery Assistance Act." Requires every person or legal entity that knowingly contracts for, pays, or agrees to pay to a person who has been convicted of a felony or that person's legal representative or assignee ("offender") more than \$10,000 in "profit from crime" or "funds of an offender" to provide a copy of or the terms of the contract to the Crime Victims Compensation Comm'n ("Comm'n") established under GS 15B-3. Written notice to Comm'n is also required by the state or subdivision of the state, whenever the payment or obligation to pay involves over \$10,000 in funds of an offender that local or state officials are receiving and depositing in an inmate's account, or whenever the state or a state subdivision has an obligation to pay over \$10,000 in funds of an offender. Offender must give Comm'n written notice in all other cases where the payment or obligation to pay involves funds of an offender valued at over \$10,000. Any action taken by offender to defeat act's purpose is void as against state's public policy.

"Profit from crime" is any income, assets, or property obtained through or generated from the commission of a crime for which the offender was convicted, including income, assets, or property

generated from the sale of crime memorabilia, or obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, the crime. Also includes any gain from the sale, conversion, or exchange of the income, assets, or property. Does not include voluntary donations or contributions used to assist in the appeal of a conviction, so long as they were not given in exchange for something of material value.

“Funds of an offender” are all funds and property received from any source by an offender, except child support and earned income. Includes funds deposited in an inmate or prisoner’s account to their credit.

Once Comm’n receives one of the notices specified above, it is to notify as specified all known “eligible persons,” including victims of the crime, their surviving spouses, parents, and children, and any other persons dependent for their principal support on a deceased crime victim. Provides for penalties for failure to notify Comm’n by anyone other than gov’ts and gov’t officials.

Authorizes eligible persons, as defined above, to sue to recover money damages from an offender. Suit must be brought within three years of the discovery of any profit from crime or funds of an offender. Comm’n must be notified of suit as specified in act; Comm’n then gives notice as specified to all other known eligible persons and gives notice by publication at least once every six months for three years. Comm’n may take various types of actions to avoid wasting of the assets. Judgment in civil action may not be enforced against the first \$1,000 in inmate’s or prisoner’s account, nor, in a civil action involving funds of an offender that the offender recovered pursuant to a judgment in a civil action, against the first 10 percent of any compensatory damages awarded to the offender in that action.

Claims under act are subject to subrogation by the Crime Victims Compensation Fund pursuant to GS 15B-18. Profits from crime that are subject to a provisional remedy on behalf of eligible persons must be returned to the rightful owner, if the conviction for the offense from which profit from crime was realized is reversed, vacated, or set aside, or if the offender has been granted an unconditional pardon.

Contains severability clause. Effective when it becomes law, and applies to contracts for profit from crime entered into on or after that date or funds of an offender that have accrued on or after that date.

June 2, 2004

House committee substitute makes the following changes to 1st edition. Provides that penalties assessed by Crime Victims Compensation Commission (Comm’n) shall bear interest at the legal rate (was 1 percent). Eliminates requirement to publish legal notice of offenders’ profits from crime and permits Comm’n to provide for additional notice as it deems necessary. Makes technical changes.

Source: Bill Digest H.B. 1519 (05/19/2004)

ASSUMPTIONS AND METHODOLOGY:

Under new GS 15B-32(a), any person or entity who has a contract or an agreement to pay an offender (i) “profit from crime” (as defined in new GS 15B-31(9)) or (ii) “funds of an offender” (as defined in new GS 15B-31(7)) in excess of \$10,000 must give notice of such contract or agreement to the Crime Victims Compensation Commission.

Any person or entity (unless excepted by new GS 15B-32(c)) that willfully fails to comply with the notice requirements under new GS 15B-32(a) is subject to a civil penalty up to the amount of the payment, plus \$1,000 or 10% of the payment, whichever is greater.

This provision could result in new superior court actions enforcing or contesting the imposition of civil penalties. We have no data from which to estimate the number of such matters or the impact on the courts. Depending on the number and complexity of these proceedings, the impact on the court system could be significant.

In addition, new GS 15B-33 provides that an eligible person may, within three years of the discovery of any profit from crime or funds of an offender, bring a civil action to recover money damages from the offender. The eligible person must give notice of the action to the Commission; the Commission must then give notice to all known eligible persons. The Commission may apply for provisional remedies (such as attachment, injunction, constructive trust, and receivership) to avoid wasting of the assets.

The Administrative Office of the Courts has no data from which to estimate the number of civil actions that would arise from this provision. Depending on the amount of damages sought, AOC assumes that these actions could be filed in district or superior court. Depending on the number and complexity of these cases, this provision could have an impact on the court system. The agency would expect an increase in the workload of district court judges, superior court judges, clerks, and court reporters.

SOURCES OF DATA: Administrative Office of the Courts

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DATE: June 29, 2004



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