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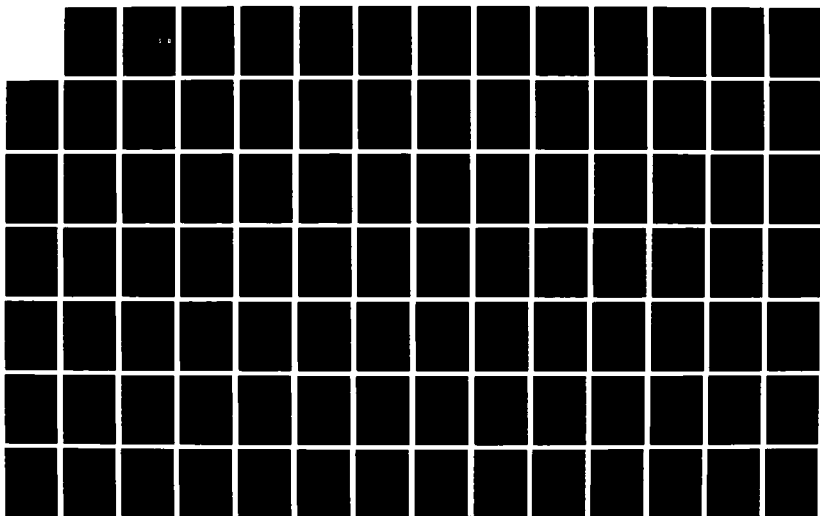
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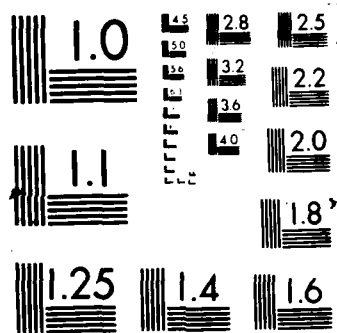
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NOTORIETY FOR PROFIT LEGISLATION

Author:

David Alan Hazelip
Captain
United States Air Force

1987

Thesis contains 183 pages

Degree Awarded

MASTER OF SCIENCE

in

CRIMINAL JUSTICE

at

CALIFORNIA STATE UNIVERSITY, SACRAMENTO



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Abstract
of
NOTORIETY FOR PROFIT LEGISLATION
by
David Alan Hazelip

Statement of Problem

There have been a number of cases whereby notorious criminals have profited from their crimes, as a result of their gained notoriety. In some cases these criminals are paid hundreds of thousands of dollars to tell their version of the story, giving details of how they committed their crimes for books or movie rights. The purpose of notoriety for profit statutes is to effectively prevent a notorious criminal from receiving such financial remuneration and help compensate the victims of their crimes.

Sources of Data

The sources of information for this thesis include newspaper and magazine articles, journals, trade periodicals, and notoriety for profit statutes. A review was also conducted of U.S. Government and private research publications on the subject.

Conclusions Reached

Since 1977, when the first "notoriety for profit" statute was first enacted, a substantial number of victim

compensation laws have been established. "Notoriety for profit legislation" has provided an innovative and extremely cost effective method of providing compensation to victim's of crime. Although the number of notorious criminals who have profited from their crimes are relatively few, these types of laws are an important measure needed to maintain public confidence and support for a form of crime control which prevents criminals from profiting unjustly from their crimes.

NOTORIETY FOR PROFIT LEGISLATION

David Alan Hazelip
B.S., Troy State University, 1978

THESIS

Submitted in partial satisfaction of
the requirements for the degree of

MASTER OF SCIENCE

in

CRIMINAL JUSTICE

at

CALIFORNIA STATE UNIVERSITY, SACRAMENTO

Summer
1987

NOTORIETY FOR PROFIT LEGISLATION

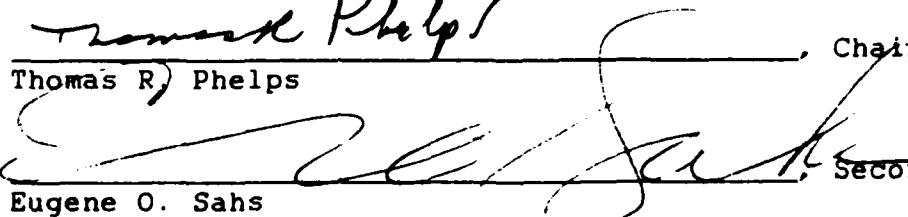
A Thesis

by

David Alan Hazelip

Approved by:


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Thomas R. Phelps


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Date: 24 July 1987

Name of Student: David Alan Hazelip

I certify that this student has met the requirements for format contained in the Manual of Instructions for the Preparation and Submission of the Master's Thesis, and that this thesis is suitable for shelving in the Library and credit is to be awarded for the thesis.

Thomas R. Phelps
Thomas R. Phelps, Graduate Coordinator

24 July 1987
Date

Department of Criminal Justice

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Committee Chair's Signature of Approval

Thomas L. Phelps

Dedication

This thesis is dedicated to my wife for her help, sacrifice, and the constant encouragement she has given me throughout this year. To my children for their understanding and patience during the times when I couldn't spend time with them because I always seemed to be working on a paper. And finally, a special dedication to my late father-in-law, who always took a special interest in my career and supported me in whatever I did.

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CHAPTER I

Introduction

The subject of this study is a relatively new and important area in victimology known as "Notoriety For Profit Legislation". The study contains descriptions, comparisons and discussions of the notoriety for profit statutes which have been enacted since 1977, when the first statute became law, to the present time with emphasis on the provisions of each statute. Pertinent data from all the statutes are used as a basis for comparison and discussion.

Statement of the Problem

The first notoriety for profit legislation came into being in New York state in 1977 as a result of a series of random shootings of young couples committed by an unknown assailant, who identified himself in notes to the media as the Son of Sam. There was speculation at the time that the killer's "story" could be sold to a publisher for at least \$200,000. Outraged by this, Senator Emmanuel R. Gold introduced the first notoriety for profit statute in the New York legislature stating that:

"It is abhorrent to one's sense of justice and decency that an individual, such as the .44 caliber killer, can expect to receive large sums of money for his story once he is captured, while five people are dead and other people were injured as a result of his conduct. This [statute] would make it clear that in all criminal situations, the victim must be more important than the criminal."¹

There have been a number of cases whereby notorious criminals have profited from their crimes. A few of the more well known cases are:

1. Susan Atkins, a member of the Manson family who received approximately \$200,000 for an interview describing her role in the Sharon Tate murder.

2. James Earl Ray, the convicted murderer of Martin Luther King Jr. who received in excess of \$40,000 in royalties for his story. However, he would have received over \$200,000 if he hadn't signed over the rights to his story to his lawyers.

3. John Wojtowicz, who received in excess of \$40,000 for the rights to depict the bank robbery he committed in 1972, which was the basis for the film Dog Day Afternoon.

4. Jack Abbott, who received \$500,000 or more in connection with his best-selling novel In the Belly of the

Beast, his autobiographical depiction of his life in prison, including crimes that he committed there, and the rights to his life story.

5. David Berkowitz, the "Son of Sam" killer, who actually received \$250,000 for his story.²

6. John Walker, who is expected to earn one-million from the book and movie rights about his eighteen years of selling secrets to the Russians.³

The average citizen is rightfully outraged when a heinous crime occurs in this country, and are further incensed when these criminals, as a result of their gained notoriety, are paid hundreds of thousands of dollars to tell their version of the story, giving details of how they committed their crimes for books or movie rights. The purpose of notoriety for profit statutes is to effectively prevent a notorious criminal from receiving such financial remuneration and help compensate the victims of their crimes.

Purpose of the Study

The purpose of this study is to review and provide a detailed analysis of what states have enacted or are in the process of enacting notoriety for profit legislation. In doing this, a comprehensive understanding will be

obtained as to how these statutes work in each state and how the statutes are similar or dissimilar with respect to the provisions incorporated into each statute.

Notoriety for profit legislation, or more commonly known as "Son of Sam" legislation is relatively new and not well known as to its scope and purpose by most people. At the present time there are thirty-seven states as well as the federal government which have enacted notoriety for profit legislation or are in the process of doing so. Although they vary from state to state, the purpose of these statutes is to require writers, journalists, publishers, or filmmakers who contract with an accused or convicted person for rights to their version of the crime, to turn any payments over to an escrow fund which is operated by the state. These statutes also require that anyone who contracts with a person accused or convicted of a crime to provide the state with a copy of the contract. The failure of the contracting party to turn over to the state the funds to be paid to the criminal for his story, vary from state to state. However, some states have made it a felony not to do so, with heavy fines and imprisonment imposed. The escrowed funds are then made available to satisfy victims' judgments against the criminal.⁴

Admittedly, a very small number of criminals have

committed notorious crimes and have received large sums of money for their stories, and consequently very few victims have been compensated to date. For example, in the state of New York, from 1977 to 1983, payments to only seven criminals have been placed in escrow under New York's notoriety for profit statutes. As a result of lengthy delays in the victims' civil trials against these criminals, only one victim (a victim of Wojtowicz's bank robbery) has actually received a distribution of such funds.⁵ There are some who feel that notoriety for profit statutes are only symbolic in nature (few crimes produce best-selling books), that they violate equal protection by treating the proceeds of book contracts different from other assets, and that they "chill" the criminals exercise of free speech in violation of the First Amendment.⁶ However, these statutes convey a very important message, and that is the people of this country will not tolerate criminals to profit from their crimes. They also provide states a viable source of income which can be used to supplement other revenues for the purpose of compensating victims of crimes.

Limitations of the Study

This study has one major limitation which requires

identification and discussion. Notoriety for profit legislation is a new and innovative area in victims compensation, with the vast majority of the states enacting these statutes in the 1980's. Consequently there has been very little research on the subject. The bulk of written information found on the subject was obtained from newspapers, journals, and trade periodicals, which primarily focus on specific issues that are being challenged in a number of court cases. Information that discusses and interprets the many state statutes is virtually non-existent. Therefore, for the purpose of this study, it has been necessary to rely primarily on each state's statute to extract the necessary information.

Methodology

Library research comprised the substantial portion of my research on notoriety for profit legislation. Most of the information concerning notoriety for profit legislation was obtained from reviewing indexes and literature at three libraries; the campus library at California State University, Sacramento, the Sacramento City Library, and the State Library at the Capital.

Several articles, pamphlets, and government documents on the subject were obtained from the National Criminal

Justice Reference Service and the National Organization for Victim Assistance (NOVA). The information obtained from NOVA was invaluable in identifying the states that have enacted or are in the process of enacting this type of legislation. After reviewing the literature focusing on this form of victim compensation it was possible to identify and evaluate existing state statutes which are appropriately defined under notoriety for profit legislation. These statutes were then used to compare the provisions incorporated into each of the state's statutes to gain an in-depth knowledge and understanding of how the laws are applied and how they work.

Definition of Terms

1. Victimology: a fairly new field within criminology which is devoted entirely to studying victims.⁷
2. Notoriety For Profit Legislation: special statutes (often called Son of Sam statutes) which require writers, journalists, publishers, or filmmakers who contract with an accused or convicted person for rights to his "version" of the crime to turn any payments over to an escrow fund operated by the state; these funds are then available to satisfy victims' judgments against the criminal.⁸
3. Statutes: a law passed by a legislative body. This

term is used interchangeably with notoriety for profit legislation throughout the thesis.

4. Notorious Criminals: are people who have become well known as a result of their crime(s).

5. Escrow Fund: Money that would have gone to the criminal as a result of him/her retelling their version of the crime is maintained in escrow, which is operated by the state. In most states the fund is maintained by the Crime Victims Board. Most states require that the funds be maintained in escrow for five years from the time the money is deposited to allow victims time to seek compensation through civil proceedings.

6. Victims: The statutes define victims broadly to include any person who suffers personal, physical, mental, or emotional injury, or pecuniary loss as a direct result of the crime. The federal statute is apparently limited to individual victims who have suffered physical harm from the crime.⁹

7. Convicted Persons: For the purpose of these statutes a person is considered convicted if one of the following occurs; (1) there has been a judgement of guilt, (2) the defendant is found not guilty by reason of insanity, (3) the defendant pleads guilty, or (4) as a result of plea bargaining and/or pretrial diversion, the defendant has "voluntarily and intelligently admitted the commission of

a crime for which he/she is not prosecuted.¹⁰

8. Civil Suit: The victim must obtain a civil judgment (awarded damages) through a civil suit against the criminal before any monies can be taken out of escrow and given to the victim. If a civil suit has been brought against the criminal within five years of establishment of the escrow fund then the money will remain in escrow until the civil suit is settled.

9. Contract: For the purpose of notoriety for profit statutes, the statutory language is extremely broad and applies to contracts with "every person, firm, corporation . . . or other legal entity" and the criminal or his "representative or assignee" with respect to his feelings or emotions about the crime or a reenactment in "a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment of any kind. It is incumbent upon anyone entering into a contract to provide the state with a copy of the contract, thus assisting the state in determining whether the contract is covered by the statute."¹¹

Organization of Study

This thesis will be organized into four parts. Chapter I, as already noted, discusses the problem, the

purpose of the study, limitations of the study, methodology, and definition of terms. Chapter II contains a review of the literature, including books, periodicals, newspaper articles, magazine articles, and government documents. Chapter III discusses all notoriety for profit statutes and provides an analysis of each statute to include the provisions of each statute and how they work. In Chapter IV the conclusion and recommendations for future research will be presented and discussed.

Notes

¹James Stark and Howard W. Goldstein, The Rights of Crime Victims (New York: Bantam Books, 1985), 266.

²Ibid. 267.

³"Son of Sam and Literary Spies." New York Times,
23 July 1986: A22.

⁴Stark, op. cit., p. 265.

⁵Ibid. 267.

⁶Ibid. 266.

⁷Morton Bard and Dawn Sangrey, The Crime Victim's Book (New York: Basic Books, Inc., 1979), 96.

⁸Stark, op. cit., p. 265.

⁹Ibid. 271.

¹⁰Ibid. 273.

¹¹Ibid. 268.

Chapter II

Review of the Literature

Introduction

In recent years there have been significant changes proposed and enacted which have enhanced the role of the victim in the criminal justice system. The failure of the present system to cope with rising crime or to meet the needs and expectations of crime victims, as well as the general public, has propelled crime victim reform measures to the forefront of the criminal justice legislative agenda.¹

The need for notoriety for profit legislation has surfaced in recent years as a result of a number of criminals who have committed particularly sensational crimes and have received substantial sums of money as a result of their notoriety. Books, magazine articles, and movies describing heinous crimes have resulted in significant royalties to criminals (or relatives they designated), while their victims languished without any form of restitution.²

Crime news and crime drama attract huge audiences because they tap the undercurrent of an

unresolved anxiety. Symbolically the crime-show rape, the arson on the eleven o'clock news, and the late movie murder are the same--they are all unpredictable, uncontrollable, life-threatening events. Sensational crimes epitomize a central theme fear: Something bad is going to happen to me, and I won't be able to stop it.³

The way crime is treated in both news and drama encourages us to identify with the criminals. People condemn the criminal, of course, but they are also intrigued. Americans have always been fascinated with good guys and bad guys. We have a long tradition of romantic outlaws, and our ambivalence about criminals runs deep.⁴ A number of notorious criminals have taken advantage of the public's fear and fascination to know all the lurid details about their crime. As a result, these criminals have made a great deal of money recounting the details of their crimes.

Preceding Notoriety for Profit Statutes

Prior to the "Son of Sam" killings, there were other famous cases which brought out the problem of notorious criminals profiting from their crimes. However, it should be noted that it was not the specific intention of the criminals to profit from their crimes, but rather the

result of their lawyers attempts to sell their clients story to ensure the collection of their fees and legal expenses by selling press interviews and book and movie rights to their clients' stories.⁵ These types of cases clearly showed that there was a growing problem.

In the case of Charles Watson, who was involved in the Sharon Tate murder case, his lawyer made the statement to a large number of reporters who were begging for jailhouse interviews, that Watson's family might go along "if the offer is substantial." Asked how much, Watson's lawyer stated, "About \$50,000."⁶

Lawyers for Sirhan Sirhan, Robert Kennedy's assassin, negotiated a contract with writer Robert Kaiser. To help Kaiser cover the court proceedings, they assigned him to the case as a special investigator. This allowed him to interview Sirhan in his jail cell, and also to examine evidence before the trial and talk with court officers who were barred from discussing the case with other reporters. Given such access, Kaiser produced a vividly detailed book, of which Sirhan received a fifty percent share of the royalties.⁷

Cases That Test the Limits of the Law

A number of legal decisions affecting books and the

publishing industry have been handed down concerning "notoriety for profit" statutes. The primary challenge to these statutes revolves around whether the statutes violate the First Amendment right to free speech. A number of publishers and writers have continually challenged the statutes in court, claiming that the statutes discourage criminals from telling their stories by preventing them from receiving royalties, therefore depriving the public's right to know. In fact, there are some who say that the statutes are discouraging the literary and artistic works of criminals. They feel these works should not be discouraged because they may contribute to criminology, further the rehabilitation of other criminals, and aid in crime prevention.⁸ A spokesman for one of the publishing companies stated that, "statutes of this nature dangerously chill freedom of expression and are therefore unconstitutional."⁹

Hudson points out that such first amendment arguments tend to ignore two salient points. The first is that New York's statute and other statutes patterned after it are essentially neutral in the sense that they do not encourage or discourage the making of contracts between criminals and media representatives. Even though it has been argued that the statutes act as a disincentive to the criminal, it has not prevented nearly a dozen such

contracts from being signed since the New York statute was first enacted. Hudson states that reputable publishers may actually be more likely to enter into contracts with notorious criminals because the regulation of the state, coupled with the fact that most monies will eventually be paid to the victims, tends to remove the moral stigma and negative publicity.¹⁰ The sale of the rights to the story of the criminal provides an opportunity for the offender to provide restitution to his victims with little effort on his part.¹¹

The second point that Hudson makes is that assuming there is some indirect impairment of free speech rights, there is a strong public interest to prevent the unjust enrichment of criminals from profiting from the media exploitation of their criminal acts. States also have a strong interest in deterring other criminally inclined persons from criminal conduct upon learning that certain heinous crimes can produce fame and wealth. He argues that states must preserve public respect and support for the criminal justice system and the criminal law. It would be difficult for such respect to be gained and preserved if multiple murderers, bank robbers, or assassins were permitted to acquire and spend instant riches after their apprehension, while their victims faced broken lives and financial hardship.¹²

Rothman cautions that these statutes should not become a tool for the punishment of the offender. Such a statute would be unfair not only because it would be limited to those offenders who sell their stories but also because it would likely deter the offender from ever telling his story. Rothman states that such a statute would block an important channel of communication in violation of the first amendment and effectively eliminate funds to compensate the victim. If the statute were used for punitive purposes, neither the offender, nor society, nor the victim would benefit.¹³

A case involving Joseph Kallinger, who was convicted for the 1975 murder of a nurse, and his fourteen year old son and a ten year old boy, points out the challenges being made against "notoriety for profit" statutes. During his trial, Kallinger signed a contract with Flora Schreiber under which he was to be granted 12.5% of all profits in return for exclusive interviews. In 1983 Ms. Schreiber published the book The Shoemaker, a biography of Kallinger. One chapter of the book describes Kallinger's 1975 murder of the young nurse. A New Jersey Superior Court judge ruled that New Jersey's "notoriety for profit" statute does not inhibit the First Amendment, as charged by the defendants, because it allows publishers and writers to publish a book "with respect to the reenactment

of a crime as long as the contract is not entered into with a convicted criminal or anyone who might have a legal obligation to transfer the proceeds to the criminal." The judge noted that contracts could be entered into with such a criminal "as long as the work does not reenact the crime."¹⁴ The judge also rejected the argument that the press's right to access to information is restricted by the law, writing that "if the criminal wishes to speak to the members of the press, he will speak regardless of any monetary incentives."¹⁵

Another important aspect of this case which the judge ruled on was that all proceeds paid to the authors, publishers, and the criminal should be turned over to the state's Violent Crimes Compensation Board and placed into escrow. The publishers appealed this ruling, arguing that if the board is "permitted to impound the profits of authors and publishers as well as criminals, the statute will inhibit the publication of beneficial, constructive works on crime. The publishers also stated that, "Without the cooperation of a criminal, a crucial perspective on crime and the forces leading to criminal behavior is lost," and that a book that omits a reenactment of the crime lacks an integral part of the story.¹⁶ An appellate panel reversed one aspect of the earlier Superior Court decision, ruling that the New Jersey statute applies only

to payments received by the criminal.¹⁷

As of yet, no court has invalidated a "notoriety for profit" statute on First Amendment grounds. The U.S. Supreme Court has repeatedly held that legislation can have the effect of interfering with free expression if it is otherwise constitutional, furthers a substantial governmental interest, was not intended to suppress free expression and if there is no less burdensome means of achieving the desired governmental end. Commentators have observed that the purpose of these statutes is to ease the crime victim's ability to recover damages caused by the crime and not to prevent the criminal from telling his story. One commentator has argued that such laws actually encourage publication of the criminal's story because the use of the proceeds to pay victims removes some of the moral stigma and negative publicity that may otherwise result from entering into such contracts.¹⁸ According to a study of inmates in Florida correctional institutions, "the overwhelming majority of those who have committed a form of criminal homicide also wish that they could make some reparation." This desire decreases as the seriousness of the crime drops to aggravated assault, robbery, and burglary.¹⁹

As a practical matter, these statutes have not deterred either criminals or publishers from printing such

stories; substantial incentives for the criminal to tell his story (such as the payment of legal fees and possible recovery of any residual sums after victims have satisfied their judgments) still exist in states that have enacted these laws. These considerations - along with the public policy interest in preventing criminals from profiting from their crimes, encouraging respect for the criminal justice system and the law, and deterring persons who might otherwise be lured by notions of profiting from criminal notoriety - and the incidental effect "notoriety for profit" statutes have on the free exercise of expression have led most commentators to conclude that these laws do not violate the First Amendment.²⁰

The state of New York recently added a section to their statute which stated that misdemeanors would also fall under notoriety for profit statutes. This provision of the statute was recently challenged in New York's State Supreme Court in the case involving Sidney Biddle Barrows. Ms. Barrows, the so-called Mayflower Madam, pleaded guilty to a misdemeanor charge of promoting prostitution. Ms. Barrows signed a contract with a publishing company to write a book about her business, which catered to a wealthy and prominent clientele. New York's Crime Victim's Board demanded copies of the contracts. The State Supreme Court ruled that the board

was not entitled to seize the proceeds from the book on behalf of Ms. Barrow's victims, since prostitution is a so-called victimless crime. Moreover, the court noted that the only people who might arguably have suffered injury as a direct result of the crime, her patrons were legally barred from asserting any claim for monetary relief, since they would have to admit to participating in a crime - patronizing a prostitute, which is a violation of the New York penal code.²¹

Another important aspect involving the federal governments notoriety for profit statute recently developed which involves the introduction of a new provision that expands notoriety for profit legislation to include the crime of spying. The federal government introduced a bill in response to a rash of espionage cases against Government employees, one of whom, John Walker, is expected to earn one million dollars from the book and movie rights about his eighteen years of selling secrets to the Russians.²²

The controversy originated when a bill was introduced which was designed to provide greater diplomatic security and to combat terrorism was amended during the legislative process. The amendment provided that spies convicted of espionage forfeit any profits they may have gained from their act. The original bill amended by Senator Ted

Stevens (R., Alaska), would have applied to the gathering of information critical to national defense with the intention of passing it to a foreign government, providing the information to foreign powers, and providing information about sensitive, classified communications to foreign powers or anyone not authorized to receive them. Sections of the bill would have required the forfeiture to the federal government of any property or facilities "used or intended to be used" to facilitate the violation of the act. Media representatives argued that even unintentional violations of the act as written could lead to confiscation of property even potentially involved, including the plants and presses of publishers or authors. After considerable negotiations between Congress and the Ad Hoc Media Group, this particular provision of the bill was eventually dropped. Senator Stevens told his colleagues that the change was required by the House conferees because "the language of this statute might be interpreted to apply to the press." However, the newly enacted legislation still contains provisions requiring that spies convicted of espionage forfeit any profits they may have gained from their act. Senator Stevens said, "These spies are offered large sums of money for books or appearances because their crime has ingrained their faces in the mind of the nation. Denying them the profit from

the publicity is intended to prevent them from making a career out of being a former spy."²³

Criticisms of the Statute

Although "notoriety for profit" statutes have increased in popularity in recent years as more and more states have enacted these laws, the statutes are not without their critics. Aside from the fact that the statutes have been challenged in numerous court cases on constitutional grounds, there have been many other criticisms and questions raised concerning these statutes.

Clark points out that the writing and publishing of a literary work is an intermediate action between the commission of the crime and the receipt of money for the work. Royalties that an author may receive from his work are not benefits from his crime - rather, they are benefits from the work of authorship; the crime is merely the historical event from which the work of authorship springs. Therefore, these statutes do not fit the conventional application of the fruits-of-crime maxim because the benefit to the criminal is indirect. He questions whether the criminal has any less of a right to derive money from reporting the events of the crime than do newscasters, publishers, or literateurs, who also benefit indirectly

from the crime.²⁴

Critics also argue that "notoriety for profit" statutes are burdensome and unnecessary, since a victim can already recover damages through civil action. Notoriety for profit statutes also require a victim to obtain a civil judgment against the criminal before receiving payment from the victim's fund. Therefore, critics find it difficult to understand the value of the statutes when their effect may be merely to burden the contractual relationship between author and publisher with the regulations of a government agency whose purpose is merely to collect and distribute income from the sale of a criminal's work.²⁵

Clark asserts that another criticism that commentators have overlooked is that "notoriety for profit" statutes violate section 201(e) of the federal Copyright Act, which states that:

(w)hen an individual author's ownership of a copyright, or any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive

rights under a copyright, shall be given effect under this title except as provided under title 11.²⁶

Clark emphasizes that distribution of a work by sale is an exclusive right, exercisable only by the copyright owner; section 201(e) forbids the seizure, expropriation, or transfer of that right and that these statutes expropriate and transfer the funds of such a sale and are therefore in disagreement with the federal Copyright Act.²⁷ He feels that amending the Copyright Act should be a prerequisite to enacting legislation that would involuntarily transfer a criminal/author's right to sell his works.²⁸

These and many other criticisms have been leveled against "notoriety for profit" statutes. Thus far no court has invalidated the statute based on constitutional grounds.

Notes

¹Paul S. Hudson, "The Crime Victim and the Criminal Justice System: Time for a Change," Pepperdine Law Review 11 (1984): 61.

²U.S., Victim Rights and Services: A Legislative Directory, (Washington, D.C.: U.S. Department of Justice, 1985), 19.

³Morton Bard and Dawn Sangrey, The Crime Victims Book (New York: Basic Books, Inc., 1979), 4.

⁴Ibid. 5.

⁵"Selling a Clients Story," Time Magazine, 19 Jan 1970: 62.

⁶Ibid.

⁷Ibid.

⁸Stephen Clark, "Son-of-Sam Laws - When the Lunatic the Criminal, and the Poet Are of Imagination All Compact," Saint Louis University Law Journal 27, no. 1 (1983): 227.

⁹Edwin McDowell, "Publishing: The Legacy of Son of Sam Laws," New York Times, 10 Jun 1986: C17.

¹⁰Hudson, op. cit., 50.

¹¹Joel Rothman, "In Cold Type: Statutory Approaches to the Problem of the Offender as Author," The Journal of Criminal Law & Criminology 71, no. 3 (Fall 1980): 260.

¹²Hudson, op. cit., 51.

¹³Rothman, op. cit., 274.

¹⁴"Judge Orders Book Profits To Go To Victims' Board,"
Publishers Weekly, 9 Aug 1985: 16.

¹⁵Ibid.

¹⁶Laura Landro, "Who Can Profit From a Criminal's
Story? Court Cases to Test Limit of New Laws," Wall
Street Journal, 31 Oct 85: 2.

¹⁷McDowell, op. cit.

¹⁸James Stark and Howard W. Goldstein, The Rights of
Crime Victims (New York: Bantam Books, 1985), 276.

¹⁹Rothman, op. cit., 260.

²⁰Stark, op. cit., 276-277.

²¹McDowell, op. cit.

²²"Son of Sam Literary Spies," New York Times, 23 Jul
1986: A22.

²³Howard Fields, "Reagan Signs "Son of Sam" Bill for
Spies," Publishers Weekly, 12 Sep 1986: 20.

²⁴Clark, op. cit., 210.

²⁵Ibid.

²⁶Ibid. 212.

²⁷Ibid.

²⁸Ibid. 214.

CHAPTER III

Analysis of the Statutes

Introduction

In this chapter the notoriety for profit statutes are listed and discussed to provide an analysis of each statute. By analyzing each statute and examining the provisions incorporated into each statute an in-depth understanding will be achieved with respect to how each state and the federal government has approached notoriety for profit legislation.

Alabama

Code of AL Sec. 41-9-80 to 84

Enacted 1983

41-9-80. Entity contracting with convicted felon to pay money to board; felony upon failure to pay; escrow account for crime victim who recovers judgement against felon.

Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, indicted or convicted of a felony in this state, with

respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the board of adjustment any moneys which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. Any person, firm, corporation, partnership, association or other legal entity who fails to pay said moneys to the board of adjustment shall be guilty of a felony punishable by imprisonment for not less than one nor more than 10 years and by a fine equal to the net proceeds earned as a result of the reenactment of the crime. The board of adjustment shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such persons, provided that such person is eventually convicted of the crime and provided further that such victim, within five years of the date of crime, brings civil action in a court of competent jurisdiction and recovers a money judgement against such person or his representatives.

41-9-81. List of criminals to probate judge; board to notify victims of escrow money.

The board of adjustment shall maintain a list of

criminals for whom money is being held in escrow. Said board of adjustment shall, once a year, send such list to each judge of probate of the state to be kept as a public record, open for inspection by the public.

The board of adjustment shall notify all known victims or their families, as determined by the criminal's record, that such escrow moneys are available to satisfy money judgements pursuant to this division. The cost of publication of the list of criminals and for the notification of victims as required by this section shall be paid out of the escrow account.

41-9-82. Escrow money to revert to state after five years.

If, five years after the establishment of the escrow account, neither the victim nor any heirs, as described above, have applied for the escrow moneys, such moneys shall revert to the state.

41-9-83. Limitation begins running when escrow account established.

Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five year period provided for in section 41-9-80 shall not begin to run until an escrow account has been established.

41-9-84. Action to defeat division purpose null and void.

Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this division shall be null and void as against the public policy of this state.¹

Alaska

AK Stats. Sec. 12.61.020

Enacted 1980

12.61.020. Money received as the result of the commission of a crime.

(a) Every person contracting with an offender with respect to the reenactment of the offender's crime by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of the offender's thoughts, feelings, opinions or emotions regarding the crime, shall pay to the state any money that would otherwise be owing to the offender.

(b) A claim by a victim arising out of an order of restitution under AS 12.55.045, or a judgement in a crime is a superior claim for money that would otherwise be paid to the state under (a) of this section.

(c) Notwithstanding other statutory limitations, a civil action by a victim against an offender for damages resulting from the commission of the crime, must be

commenced within 10 years of the date of the crime, or the date of the discovery of the perpetrator of the crime if the perpetrator is unknown on the date of the commission of the crime.

(d) For the purposes of this section, if the offender has not been convicted, proof of the commission of a crime must be established by a preponderance of the evidence.

(e) In this section:

(1) "offender" means a person who has committed a crime in this state, whether or not the person has been convicted of the crime, or that person's representative or assignee;

(2) "victim" has the meaning given in AS 12.55.185.²

Arizona

ARS Secs. 13-4202

Enacted 1978

13-4202. Void contracts; crime victim accounts; establishment; notice to victims; exceptions; civil liability; definition.

A. Every contract whether written or oral, express or implied, with an accused with respect to the reenactment of a crime by movie, book, article, radio or

television presentation, live entertainment or expression of thoughts, feelings, opinions or emotions is contrary to public policy and void unless the contract provides for payment to the commission of any monies which would be paid to the accused for such information or rights.

B. The commission shall deposit the monies received pursuant to subsection A from the contracts or agreements of each accused, for each crime committed by the accused, in a separate account designed as a crime victim account. The money shall be distributed as determined by the commission to any victim of the crime committed by the accused if both of the following apply:

(1) The accused is convicted of the crime.

(2) The victim, within five years after the date of establishment of the account, applies to the commission for compensation and demonstrates by sufficient reliable evidence, as determined by the commission, that he has suffered a loss resulting from such crime and the amount of such loss.

C. The commission, at least once every year for five years from the date of receipt of monies pursuant to subsection B, shall publish a legal notice in a newspaper of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising all victims for which monies have been received

that funds are available to satisfy money judgements pursuant to this section. Such notice shall identify the accused, describe the criminal act involved and the proceedings against the accused and state the procedure to be followed for recovery of monies pursuant to subsection B. No reference to the identity of the victim shall be made. The commission may, in its discretion, provide for such additional notice as it deems necessary.

D. Upon disposition of charges favorable to an accused, the commission shall immediately pay any monies in the account owing to such person.

E. After five years have elapsed following the establishment of the account pursuant to subsection B and upon a showing that no applications for compensation are pending pursuant to this section, the commission shall immediately pay any monies in the account to the state general fund.

F. For purposes of this section, a person found not guilty by reason of insanity pursuant to rule 23.2, Arizona rules of criminal procedure, shall be deemed to be a convicted person.

G. Whenever it is found, pursuant to rule 11, Arizona rules of criminal procedure, that a person accused of a crime is unfit to proceed as a result of mental illness or defect because such person lacks capacity to understand

the proceedings against him or to assist in his own defense, the commission shall bring an action of interpleader pursuant to rule 22, Arizona rules of civil procedure, to determine disposition of the escrow account.

H. Notwithstanding any inconsistent provision of law or of the rules of civil procedure with respect to the timely bringing of an action, the five-year period provided for in subsection B shall not begin to run until an account has been established.

I. Notwithstanding subsections B through F the commission shall make payments from the account to any accused upon the order of a court of competent jurisdiction after a showing by the accused that the money will be used for the sole purpose of retaining legal representation at any stage of proceedings against such accused.

J. An action taken by any person, whether by execution of a power of attorney, creation of a corporate entity or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

K. The cost of administering to the account and the monies therein shall be reimbursed to the industrial commission from the account.

L. Any person entering into a contract described in subsection A which does not comply with this section shall

be liable to the state for deposit in the crime victim account of an amount equal to all monies paid or received including monies paid to or received by another person by execution of a power of attorney, creation of a corporate entity or otherwise done to defeat the purposes of this section.

M. For purposes of this section "loss" includes the value of any property damaged, destroyed or taken, the cost of medical treatment or counseling, lost wages and any other damage suffered as a result of the crime.³

California

CA Stats. Chpt. 1016 (AB 2102)

Enacted 1983

2224.1. Proceeds from sale by convicted felon of story of felony subject to involuntary trust; Period of trust; Action to recover interest in trust.

(a) As used in this section:

(1) "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) "Felony" means a felony defined by any California or United States statute.

(3) "Representative of the felon" means any person or

entity receiving proceeds by designation of that felon, or on behalf of that felon or in the stead of that felon, whether by the felon's designation or by operation of law.

(4)(A) "Beneficiary" means a person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) If a beneficiary described in subparagraph (A) has died, "beneficiary" also includes a person or estate entitled to recover damages pursuant to Section 573 of the Probate Code.

(C) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, "beneficiary" also includes a person described in Section 377 of the Code of Civil Procedure and any beneficiary of a will of the decedent who had a right under that will to receive more than 25 percent of the value of the estate of the decedent.

(5) "Beneficiary's interest in the proceeds" means that portion of the proceeds necessary to pay the following:

(A) In the case of a beneficiary described in subparagraph (A) or (B) of paragraph (4), those damages which, under applicable law other than the provisions of this

section, the beneficiary has or had a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages which under all the circumstances of the case may be just.

(C) A beneficiary's interest in the proceeds shall be reduced by the following amount:

(i) Money paid to the beneficiary from the restitution fund because of the crime for which the felon was convicted.

(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(iii) Money paid to the beneficiary because of a judgement against the convicted felon based upon the crime for which the felon was convicted.

(D) In the case of an unsatisfied existing judgement or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgement or order.

(6) "Materials" means books, magazine or newspaper art-

icles, movies, films, video tapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.

(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.

(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.

(9) "Proceeds" means all fees, royalties, real property, or other consideration of any kind and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

(b) All proceeds from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials that include or are based on the story of a felony for which a convicted felon was convicted, shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the

proceeds to the felon or five years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action.

(c)(1) Any beneficiary may bring an action against a convicted felon or representative of the felon to recover his or her interest in the trust established by this section.

(2) That action may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which proceeds are located.

(3) If the court determines that a beneficiary is entitled to proceeds pursuant to this section, the court shall order the payment from proceeds which have been received, and, if that is insufficient, from proceeds which may be received in the future.

(d) If there are two or more beneficiaries and if the available proceeds are insufficient to pay all beneficiaries, the proceeds shall be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them. Prior to any distribution of any proceeds to a beneficiary, the court shall determine

whether the convicted felon has failed to pay any portion of a restitution fine or penalty fine imposed by a court, or any restitution imposed as a condition of probation. The court shall also determine whether the felon is obligated to reimburse a governmental entity for the costs of his or her defense and whether a portion of the proceeds is needed to cover his or her reasonable attorney's fees incurred in the criminal proceeding related to the felony, or any appeal or other related proceeding, or in the defense of the action brought under this section. The court shall order payment of these obligations prior to any payment to a beneficiary, except that 10 percent of the proceeds shall be reserved for payment to the beneficiaries.

(e)(1) The Attorney General may bring an action to require proceeds received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

(2) An action may be brought under this subdivision within six months after the receipt of proceeds by a convicted felon or six months after the date of conviction, whichever is later. That action may be brought in the superior court of any county in which the Attorney General has an office.

(3) If the Attorney General proves that the pro-

ceeds are proceeds from the sale of a story which are subject to an involuntary trust pursuant to this section, and that it is more probable than not that there are beneficiaries within the meaning of this section, the courts shall order that all proceeds be deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subdivision (d), or until the expiration of the period specified in subdivision (b).

(4) If the Attorney General prevails in an action under this subdivision, the court shall order the payment from the proceeds to the Attorney General of reasonable costs and attorney's fees.

(f) In any action brought pursuant to subdivision (d) or (e), upon motion of a party the court shall grant a preliminary injunction to prevent any waste of proceeds if it appears that the proceeds are subject to the provisions of this section, and that they may be subject to waste.

(g) Any violation of an order of a court made pursuant to this section shall be punishable as contempt.

(h) The remedies provided by this section are in addition to other remedies provided by law. No period of limitations except those provided by this section, shall limit the right of recovery under this section.⁴

Colorado

CRS Secs. 24-4.1-201

Enacted 1984

24-4.1-201. Distribution of money received as a result of commission of a crime - escrow account - civil suit by victim. (1) Every person contracting with a person, or the representative or assignee of a person, accused of a crime in this state, with respect to the reenactment of that crime or with respect to the expressions of the accused's thoughts, feelings, or emotions regarding the crime, by way of a movie, book, magazine article, radio or television presentation, or live entertainment of any kind shall pay to the victims assistance and law enforcement advisory board any money which would otherwise, by terms of the contract, be owing to the accused or his representatives. For the purposes of this part 2, "board" means the victims assistance and law enforcement advisory board established pursuant to section 24-33.5-508. The board shall deposit the money in an escrow account for the benefit of any victim of a crime committed by the person accused and payable to a victim if the accused is convicted of the crime and the victim, within five years of the date the escrow account is established, brings a civil action in a court of competent jurisdiction and recovers a money judgment against the accused or his

representatives.

(2) If funds remain in the escrow account after payment of a money judgment pursuant to subsection (1) of this section and if no civil actions are pending under this section after five years from the establishment of an escrow account, the board shall notify the department of corrections of the existence of such escrow account. The department of corrections shall certify to the board a statement of the costs of maintenance of the person in the state correctional institution or institutions at which the person was incarcerated. A statement of the cost of maintenance shall be submitted annually for payment to the department of corrections by the board until such time as the person is released from custody of the state. No such payment shall be made if there is disposition of the charges favorable to the defendant.

(3) Upon the disposition of charges favorable to the accused or upon a showing by the defendant that five years have elapsed from the establishment of an escrow account and that no civil actions are pending against him under this section, the board shall immediately pay any money in the escrow account to the defendant except for funds paid to the department of corrections and anticipated as necessary for future payment to the department of corrections as set forth in subsection (2) of this

section.

(4) If an escrow account is established under this section, no otherwise applicable statute of limitations on the time within which civil action may be brought bars action by a victim of a crime committed by the person accused or convicted of the crime, as to a claim resulting from the crime, until five years have elapsed from the time the escrow account was established.

(5) The board shall make payments from an escrow account to the accused upon an order of the court after a showing by the accused that:

(a) The money will be used for the exclusive purpose of retaining legal representation at any stage of the civil or criminal proceedings against him, including the appeals process; and

(b) He has insufficient assets , other than funds in the escrow account and assets which could be claimed as exempt from execution under state law, to provide for payment of the expenses of legal representation.

24-4.1-202. Notification of board. It shall be the duty of the victim, the victim's attorney, or the victim's representative to notify the board within thirty days of the filing of any compensable claim under section 24-4.1-201.

24-4.1-203. More than one claim. If more than one claim

is filed against the moneys in escrow pursuant to section 24-4.1-201, the board shall disburse payments from the escrow account on a pro rata basis of all judgments obtained, according to the amount of money in the escrow account as compared to the amount of each claim. No compensation shall be disbursed until all pending claims have been settled or reduced to judgment.

24-4.1-204. Actions null and void. Any action taken by a person who is accused or convicted of a crime or who enters a plea of guilty, whether by way of execution of a power of attorney, the creation of corporate entities, or any other action, to defeat the purpose of this part 2 shall be null and void as against the public policy of this state.

24-4.1-205. Interest on moneys in the account. Interest earned on the moneys deposited in the escrow account pursuant to section 24-4.1-201 shall accrue to the benefit of the payee of the account.

24-4.1-206. Annual reports of funds. No later than February 15 of each year, the board shall submit a report to the general assembly for the previous calendar year of an accounting of all funds received and disbursed under this part 2.

24-4.1-207. Applicability. This part 2 shall apply to offenses committed on or after January 1, 1985.⁵

Connecticut

PA 82-328; CT Gen. Stats. Sec. 54-218

Enacted 1982

54-218. Profits derived as result of crime of violence. Recovery of money judgement by victim. Payment to criminal injuries compensation fund.

(a) Any person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person accused of a crime of violence in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the clerk of the court of the judicial district in which the crime is alleged to have been committed any moneys which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. The clerk of the court shall deposit such moneys in an interest bearing escrow account for the benefit of and payable to such accused person for the expenses of his or her defense and any victim of a crime of violence committed by such person, provided such person is eventually convicted of the crime and provided further such victim, within five

years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgement against such person or his representatives. Any covenant, promise, agreement or understanding entered into or in connection with or collateral to a contract or agreement relative to the payment of any person accused or convicted of a crime of violence which attempts to circumvent the provisions of this section is prohibited.

(b) If no victim brings a civil action and recovers a money judgement within five years of the date of the crime, the moneys in any such escrow account shall be paid to the criminal injuries compensation fund established under section 54-215.⁶

Delaware

DE Code Ann. Title 11, Part 6, Chpt 91, Sec. 9101

Enacted 1983

9101. Findings.

The General Assembly finds that it is against public policy and the welfare of the citizens of Delaware to allow a person accused or convicted of a crime to benefit financially from a published reenactment of said crime or any incidents involved therein. The General Assembly further finds that a system is required to provide for the distribution of moneys received as a result of the

commission of a crime in order that victims of crime may be adequately compensated.

9102. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Board" shall mean the Violent Crimes Compensation Board, as established by this title.

(2) "Victim" shall mean a person who suffers personal, physical, mental or emotional injury, or pecuniary loss, as a direct result of the commission of a crime enumerated in Chapter 5 of this title.

(3) "Person convicted of a crime" shall mean any person convicted of a crime in this State either by entry of a plea of guilty or by conviction after trial, and any person who has voluntarily and intelligently admitted the commission of a crime for which such person is not prosecuted.

9103. Distribution of moneys.

(a) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person accused or convicted of a crime in this State, with respect to the reenactment of such crime, by way of a movie, book,

magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the Board and pay over to the Board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives. The Board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by:

(1) Such convicted person; or

(2) By such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within 5 years from the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgement for damages against such person or his representatives.

(b) The Board, at least once every 6 months for 5 years from the date it receives such moneys, shall cause to have published a legal notice in a newspaper or newspapers of general circulation in the county wherein the crime was committed, and in the county contiguous to such county, advising such victims that such escrow accounts are available to satisfy money judgements pursuant to this

chapter. The Board may, in its discretion, provide for such additional notice as it deems necessary.

(c) Upon dismissal of charges or acquittal of any accused person, the Board shall immediately pay over to such accused person the moneys in the escrow account established on behalf of such accused person.

(d) Upon a showing by any convicted person that 5 years have elapsed from the date of establishment of such escrow account, and further that no actions are pending against such convicted person pursuant to this chapter, the Board shall immediately pay over any moneys in such escrow account to such person or his legal representatives.

(e) For purposes of this chapter, a person found not guilty as a result of the defense of mental disease or defect pursuant to this title shall be deemed to be a convicted person.

(f) Whenever it is found, pursuant to this title, that a person accused of a crime is unfit to proceed as a result of mental disease or defect because such person lacks the capacity to understand the proceedings against him or to assist in his own defense, the Board shall bring an action in a court of competent jurisdiction to determine disposition of the escrow account.

(g) Notwithstanding any inconsistent provisions of law or court rules with respect to the timely bringing of an

action, the 5 year period provided for in this chapter shall not begin to run until an escrow account has been established.

(h) Notwithstanding the foregoing provisions of this chapter, the Board shall make payments from an escrow account to any person accused or convicted of crime upon order of any court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process. The Board may in its discretion and after notice to victims of the crime make payments from the escrow account to a representative of any person accused or convicted of a crime for the necessary fees and expenses incident to the generation and procurement of the moneys paid into the escrow account, provided the Board finds such payments would be in the best interest of the victims of the crime and would not be contrary to public policy. The total of all payments made from the escrow account under this subsection shall not exceed one-fifth of the total moneys paid into the escrow account and available to satisfy civil money judgements obtained by victims of the crime.

(i) Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of

attorney, creation of corporate entities or otherwise, to defeat the purpose of this chapter, shall be null and void as against the public policy of this State.

(j) For purposes of this chapter, notwithstanding any other provision of the Delaware Code, claims on moneys in the escrow account shall have the following priorities:

(1) Payments ordered by the Board or a court pursuant to subsection (h) of this section.

(2) Judgements obtained by the Division of Revenue, State of Delaware, against the convicted or accused person.

(3) Subrogation claims of the State in an amount not to exceed one-third of the net amount of the civil judgement obtained by a victim which is payable directly to the victim from the escrow account.

(4) Civil judgements of the crime victims.

(5) Other judgement creditors or persons claiming moneys through the person accused or convicted of a crime who present lawful claims, including local government tax authorities.

(6) The person accused or convicted of the crime.

(k) The Board may bring an action in a court of competent jurisdiction for a declaratory judgement where it cannot determine the priority of claims and the proper distribution of any escrow account.

(1) Moneys in an escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this chapter.

9104. Board as exclusive escrow agent.

Notwithstanding any other provisions of law, the Board shall have exclusive jurisdiction and control, as escrow agent, over any moneys subject to this chapter. No distribution of moneys in such escrow accounts shall be made except by determination and order of the Board.

9105. Judicial review.

Any party aggrieved by a final determination and order of the Board may appeal such final determination and order to the Superior Court.

9106. Penalties.

Any person convicted of a violation of this chapter shall be guilty of a class A misdemeanor.⁷

Florida

FL Stats. Chpt. 82, Sec. 71

Enacted 1982

944.512. State lien on proceeds from literary or other type of account of crime for which imprisoned.

(1) A lien prior in dignity to all others shall exist in favor of the state upon royalties, commissions, proceeds of sale, or any other thing of value payable to

or accruing to a convicted felon or a person on his behalf, including any person to whom the proceeds may be transferred or assigned by gift or otherwise, from any literary, cinematic, or other account of the crime for which he was convicted.

(2) The proceeds of such account shall be distributed as follows:

(a) Twenty-five percent to the dependents of the convicted felon.

(b) Twenty-five percent to the victim or victims of the crime or to their dependents, to the extent of their damages as determined by the court in the lien enforcement proceedings.

(c) An amount equal to pay court costs, which shall include jury fees and expenses, court reporter fees, and reasonable per diem for the prosecuting attorneys for the state, shall go to the General Revenue Fund. Additional costs shall be assessed for the computed per capita cost of imprisonment in the state correctional institution. Such costs shall be determined by the Auditor General.

(d) The rest, residue, and remainder to the convicted felon upon his or her release or parole or upon the expiration of his or her sentence.

(3) The department is hereby authorized and directed

to report to the Department of Legal Affairs the existence or reasonably expected existence of circumstances which would be covered by this section. Upon such notification, the Department of Legal Affairs is authorized and directed to take such legal action as is necessary to perfect and enforce the lien created by this section.⁸

Georgia

GA Ann. Code, Title 17, Chpt. 14, Art. 31

Enacted 1982

27-3401 ~~[[17-14-31]]~~. Distribution of moneys received as a result of the commission of crime.

(a)(1) Every person, firm, corporation, partnership, association, or other legal entity contracting with any person or with the representative or assignee of any person who has been accused or convicted of a crime in the state with respect to the reenactment of the crime by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment of any kind or with respect to the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime shall submit a copy of the contract to the board and shall pay over to the board any moneys which would otherwise, by the terms of the contract, be owing to the accused or

convicted person or to his representatives.

(2) The board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by the accused or convicted person.

(3) Payments may be made pursuant to paragraph (2) of this subsection only if the accused person is eventually convicted or enters a plea of guilty of the crime and if the victim, within five years of the date of the establishment of the escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against the convicted or accused person or his representatives.

(4) It shall be the duty of the victim, the victim's attorney, or the victim's representative to notify the board within 30 days of the filing of any claim under this article.

(b) At least once every six months for five years from the date it receives such moneys, the board shall cause to have published a legal notice in newspapers of general circulation in the county in which the crime was committed and in counties contiguous to such county, advising victims of the crime that escrow moneys are available to satisfy money judgments pursuant to this Code section.

(c) Upon dismissal of charges or acquittal of any person, the board shall immediately pay over to the accused person the moneys in the escrow account established on behalf of the accused person.

(d) Upon a showing by any convicted person that five years have elapsed from the establishment of the escrow account and that no actions are pending against the convicted person pursuant to this Code section, the board shall immediately pay over any moneys in the escrow account to the person or his legal representatives.

(e) Whenever it is found that a person accused of a crime is unfit to proceed to trial as a result of insanity because the person lacks capacity to understand the proceedings against him or to assist in his own defense, the board shall bring an action of interpleader to determine the disposition of the escrow account.

(f) Any excess which remains in the escrow account after all money judgments have been satisfied shall be paid over into the state treasury as compensation for the establishment, administration, and execution of this article.

(g) The board shall make payments from the escrow account to any person accused of crime, upon the order of a court of competent jurisdiction, after a showing by the person that the moneys shall be used for the exclusive

purpose of retaining legal representation at any stage of the proceedings against the person, including the appeals process.

(h) The board shall disburse payments from the escrow account on a pro rata basis of all claims filed, according to the amount of money in the escrow account as compared to the amount of each claim. The sums are not to be disbursed until all pending claims have been settled or reduced to judgment.

(i) Any action taken by a person who is accused or convicted of a crime or who enters a plea of guilty, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Code section shall be null and void as against the public policy of this state.

27-3401 [17-14-32] Penalties.

(a) It shall be unlawful for any person, firm, corporation, partnership, association, or other legal entity to fail to comply with this article.

(b) Any person, firm, corporation, partnership, association, or other legal entity violating this article shall be guilty of a misdemeanor.

(c) Each day that a person, firm, corporation, partnership, association, or other legal entity continues in violation of this article shall constitute a separate

offense.⁹

Hawaii

HI Sec. 1 Chpt. 351, 351-81

Enacted 1986

"Part VI. Limiting Commercial Exploitation of Crime.

351-81. Deposit of copy of contract upon indictment or charge of criminal offense.

Every person, firm, corporation, partnership, association, or other legal entity upon entering into a contract with any person indicted or charged with a criminal offense committed in this state or representative or assignee of any such person, shall submit a copy of the contract to the commission if:

(1) The contract provides for monetary compensation payable to the person indicated or charged or payable at the person's direction; and

(2) The subject matter of the contract is the reenactment of the crime, or the expression of the thoughts, feelings, opinions, or emotions of the person about the criminal offense for which the person is indicted or charged which is to be reflected in a movie, book, article, radio or television program, or other form of communication.

351-82. Effect of conviction upon contract; deposit of

monetary compensation with the criminal injuries compensation commission.

If the person indicted or charged is subsequently convicted, the person, firm, corporation, partnership, association, or other legal entity which entered into a contract of the type identified in section 351-81 shall:

(1) Deposit fifty percent of the monetary compensation paid under such contract into a collection account established by the commission pursuant to section 351-83 and deposit the other fifty percent of such monetary compensation in a special account established by the commission pursuant to section 351-84 if a timely appeal from the conviction is filed and the contract provides that monetary compensation is payable to the convicted person; or

(2) Deposit all monetary compensation paid under such contract with the commission to a special account established pursuant to section 351-84, if a timely appeal from the conviction is:

(A) Filed and the contract provides that the monetary compensation is payable to a person other than the convicted person;

(B) Filed, the conviction is affirmed on appeal, and no further appellate action is allowed; or

(C) Not filed.

351-83. Collection account, creation, disbursements.

Monetary compensation received by the commission pursuant to section 351-82(1) shall be deposited into a collection account established by the commission. The moneys deposited into the collection account including interest earned shall be used exclusively to pay the expenses of legal representation incurred by the convicted person in prosecuting an appeal of the conviction. Upon the presentation of a verified statement of attorney's fees and expenses, the commission shall pay such attorney's fees and expenses reasonably and necessarily incurred in prosecuting the appeal.

If the monetary compensation deposited into the collection account pursuant to section 351-82(1) is not sufficient to prosecute the convicted person's appeal, or if the convicted person seeks other judicial relief in order to void the conviction or to obtain release from incarceration, then the convicted person may obtain a court order compelling the commission either to pay the sum necessary for adequate legal representation out of the funds deposited in the special account pursuant to section 351-82(2) or to deposit into the collection account a percentage greater than fifty percent of the monetary compensation payable to the convicted person.

351-84. Special account, creation, disbursements.

(a) Monetary compensation received by the commission pursuant to section 351-82(2) shall be deposited into a special account established by the commission. The moneys deposited into the special account including interest earned shall be retained or disbursed by the commission pursuant to this section.

(b) Moneys deposited into the special account shall be used first as provided in section 351-83, if necessary, and then to reimburse the criminal injuries compensation fund for payments made pursuant to this chapter for the crime committed by the convicted person.

(c) Moneys remaining after disbursement under subsection (b) shall be disbursed to a judgement creditor, for the purpose of satisfying a judgement, moneys from the special account if:

(1) The judgement creditor is a victim, a victim's representative, or other person specified in section 351-31, or a person who is not specified in section 351-31 but is the victim of a crime subject to this part;

(2) The judgement is for the damages arising out of the criminal act of the convicted person;

(3) A certified copy of the judgement is presented to the commission; and

(4) There is no order staying the judgement or enjoining disbursement.

Judgement creditors shall be paid out of the special account in the order in which certified copies of the judgements are presented to the commission.

351-85. Collection, special accounts to be interest bearing.

All moneys deposited into the collection account or special account under this part shall be deposited into federally-insured interest-bearing accounts.

351-86. Money deposited not subject to execution, levy, attachment, or lien.

All moneys received by the commission pursuant to this part shall not be subject to execution, levy, attachment, or lien of any kind.

351-87. Lien in favor of State.

The failure of any person, firm, corporation, partnership, association, or legal entity to pay moneys over to the commission in accordance with this part shall create a debt owing to the commission from that person, firm, corporation, partnership, association, or legal entity and shall constitute a preferential lien in favor of the state which may be collected by the commission by civil process.

351-88. Part not applicable; return of moneys held.

This part shall not apply and shall have no effect where:

(1) The conviction is reversed or overturned; or

(2) The applicable statute of limitations for a civil action which may be filed by a victim, a victim's representative, or a person specified in section 351-31 relating to the criminal act committed by the convicted person has expired, and there are no such civil actions pending and ten years have elapsed since the date of the last judgement obtained by a victim, a victim's representative, or a person specified in section 351-31.

Under the circumstances set forth in paragraph (1) or (2), all moneys held by the commission in a collection account or special account, including interest, shall be disbursed to the convicted person or any other person legally entitled to receive the disbursement.¹⁰

Idaho

ID Code, Sec. 19-5301

Enacted 1979

19-5301. Distribution of moneys received as a result of the commission of crime.

(1) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused of a crime in this state, with respect to the reenactment of such crime by way of movie, book, magazine

article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the state treasurer any moneys which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. The state treasurer shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime or is acquitted on the ground of mental disease or defect excluding responsibility and provided further that such victim, or his personal representative, within five years of the date the escrow account has been established, brings a civil action in a court of competent jurisdiction and recovers a money judgement against such person or his representatives.

(2) The state treasurer, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county of the state where the crime was committed advising such victims that such escrow moneys are available to satisfy money judgements pursuant to this section.

(3) Upon disposition of charges favorable to any

person accused of committing a crime, or upon a showing by such person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such person, pursuant to this section the board shall immediately pay over any moneys in the escrow account to such person.

(4) Notwithstanding the foregoing provisions of this section the state treasurer shall make payments from an escrow account to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

(5) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

(6) The state treasurer may invest the moneys in any escrow account hereunder in any United States government notes or securities.

(7) The attorney general or any other person may bring an action in a court of competent jurisdiction to require the deposit of moneys in an escrow account as

provided in this section.¹¹

Illinois

IL Stats. Chpt 70, Sec. 403

Enacted 1979

403. Escrow account.

Any person who has been charged with or convicted of a crime in this State or who has been found not guilty by reason of insanity or guilty but mentally ill of a crime, involving a victim as described in Section 2.3, who contracts with a person, or the representative or assignee of such person, with respect to the depiction of the crime in a movie, book, magazine article, radio or television production, or live presentation of any kind, or with respect to that person's thoughts, feelings, opinions, or emotions regarding the crime, shall file a copy of such contract with the Treasurer. The person with whom the person charged or convicted has contracted shall pay over to the Treasurer any money which would otherwise, by terms of the contract, be owing to the person charged or convicted or his representatives. The Treasurer shall establish by deposit, within 3 days of receipt of such moneys, an escrow account in the name of the person charged or convicted for the benefit of and payable to any victim of the crime for which the person has been charged

or convicted, or to the legal representative of such victim. A victim who brought a civil action within 2 years of the date of the establishment of the escrow account shall be entitled to an amount, subject to the limitations of Sections 7 and 8, from the appropriate escrow account equal to the amount of an unsatisfied judgement or a partially satisfied judgement against the person or his representative entered in a court of competent jurisdiction in an action arising out of a crime committed by the person.

404. Victim's notice of intent to file a claim.

A victim of a crime committed by a person in whose name an escrow account is established or a victim's legal representative must register a notice of intent to file a claim against such escrow account, pursuant to a judgment, a pending lawsuit or a prospective lawsuit, with the Treasurer within one year of the establishment of the escrow account. A failure to comply with this requirement shall forfeit a victim's or victim's estate's rights in such escrow account as against other victims but a failure to file such notice shall not bar a claim against such escrow account filed within 2 years of the establishment of such account.

405. Notice to victims.

The Treasurer shall notify any person who has regis-

tered with the Treasurer as a victim or legal representative of a victim of a crime committed by an individual, identified by name, at the time the Treasurer receives such escrow moneys for that individual. The Treasurer shall also, at least once every 6 months for 2 years from the date he or she receives such escrow moneys, cause to have published a notice in newspapers of general circulation in each county of the State advising victims that such escrow moneys are available to satisfy judgments pursuant to this Act.

406. Release of escrow account.

(a) The Treasurer shall immediately pay over any moneys in an escrow account to a person in whose name an escrow account was established upon dismissal or acquittal of the charges or entry of an order reversing a conviction without remand, which arose from the same circumstances which gave rise to the establishment of the escrow account, against such person.

(b) Except as otherwise provided in subsection (a), if no civil actions are pending or registered under Section 4 with the Treasurer against such person in whose name an escrow account was established, the Treasurer shall, after all avenues of State appellate review have been exhausted without reversal of a conviction, deposit all monies in such account into the Violent Crime Victims

Assistance Fund in the State Treasury.

(c) Any victim who files a claim and receives any amount pursuant to the provisions of this Act who subsequently recants and such recantation is the basis of a reversal of a conviction or dismissal of the charges shall repay such amount with interest at 9% per annum calculated from the date of receipt of such amount until the date of payment to the Treasurer for distribution as provided by subsection (a).

407. Payments from escrow account for legal representation - Notice.

(a) Notwithstanding other Sections of this Act and subject only to subsection (b) herein, the Treasurer may, upon an order of a court of competent jurisdiction, make payments from a person's escrow account to the attorney of record of that person for the exclusive purpose of providing legal representation at any stage of the criminal proceedings against such person or a civil action arising out of a crime brought by a victim or his personal representative, including the appeals process.

(b) Moneys shall be paid out of a person's escrow account pursuant to this Section only:

- 1) Upon 15 days notice to victims or their representatives, the Treasurer and to the State's Attorney for the county in which the account is located; and

2) When such amounts are fair and reasonable, as determined by the order of a court of competent jurisdiction which authorizes such payment.

408. Prorated payments on basis of judgements.

When an escrow account has insufficient funds to meet all judgments presented by victims or their representatives, the escrow account shall be prorated among the victims or their representatives on the basis of the amounts of the unsatisfied judgments or partially satisfied judgments. There shall be no payment from the escrow account to a victim or his representative until either the amounts of all unsatisfied judgments are determined or it is determined that the payment for an unsatisfied judgment will not so diminish the escrow account so that other potential victim claims could not be satisfied.

409. Penalty for failure to pay moneys to Treasurer.

Any person who fails to comply with the payment requirement of Section 3 shall be guilty of a Business Offense punishable by a fine of no less than \$5,000.

410. Void agreements.

Any action taken by any person, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this Act shall be null and void as against the public policy of

this State.¹²

Indiana

IN Code Ann., Sec. 16-7-3.7

Enacted 1979

16-7-3.7-1. Definitions.

"Division" means the violent crime compensation division established as a division of the Indiana industrial board.

"Responsible party" means an individual who has been formally charged with or convicted of a felony.

16-7-3.7-2. Contracts for broadcast or publication; escrow of money.

A person who after August 31, 1982, contracts with a responsible party, with respect to the publication or broadcast of the responsible party's thoughts, feelings, opinions, or emotions regarding a felony of which the responsible party has been accused or convicted, shall submit a copy of the contract to the division, and shall pay to the division ninety percent of the money that would otherwise by terms of the contract, be owed to the responsible party. The division shall deposit this money in a separate interest-bearing escrow account, and shall only make distributions from that account in accordance with this chapter.

16-7-3.7-3. Distribution of escrowed money to indigent responsible parties; petition; order.

(a) The responsible party may petition the court before which he is to be tried or in which he has been convicted for an order requiring the division to distribute money from the escrow account to the responsible party in any amount up to the total in the escrow account at the time the petition is filed. The court shall make such an order only upon a showing that:

(1) without use of the money held in escrow account, the responsible party would be indigent; and

(2) the money will be used for the exclusive purpose of retaining legal counsel or for investigation during any state of the felony proceedings against the responsible party, including the appeals process.

(b) Upon receipt of a court order issued under this section, the division shall distribute the required amount from the money in the escrow account.

16-7-3.7-4. Distribution of escrowed money to persons receiving damage awards.

If the victim or his heirs receive a damage award as a result of a civil action arising from the felonious act that has been charged, the person awarded the damages may petition the court for an order requiring the division to distribute money to that person from the account.

However, the court may make such an order only for an amount equal to the amount by which the damage award exceeds the value of the defendant's assets that are in the defendant's possession and that can be taken by the plaintiff in order to satisfy the damage award.

16-7-3.7-5. Distribution of escrowed money to violent crime victims compensation fund.

If the responsible party has been found to be guilty, guilty but mentally ill, or not responsible by reason of insanity, for the act of which he has been accused, and if he has exhausted all appeals or if the time for appeals has expired, then the division may pay all money remaining in the escrow account into the violent crime victims compensation fund. However, the division may not make this payment unless at least two years have elapsed from the time the responsible party committed the act for which he has been charged. In addition, the division may not make the payment while any civil action arising from the felony is pending.

16-7-3.7-6. Distribution of escrowed money to responsible party.

(a) Except as provided in subsection (b) of this section, if a responsible party is found to be not guilty or has had the case against him dismissed, and if all periods for appeal by the state have expired, then the

division shall distribute all money remaining in the escrow account to that responsible party.

(b) If a responsible party is found to lack the competency necessary to stand trial, the division shall distribute all money remaining in the escrow account to that responsible party if:

(1) he does not become competent to stand trial within five years after the money is first placed in the escrow account; and

(2) no civil actions arising from the felony of which he is accused are pending.¹³

Iowa

Code of Iowa, Chpt. 910.15

Enacted 1982

910.15. Distribution of moneys received as a result of the commission of crime.

1. Every person, firm, corporation, partnership, association, or other legal entity contracting with any person or the representative or assignee of any person, initially convicted of a crime in this state, shall pay over to the attorney general any money or other compensation received from the reenactment of the crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of

the person's thoughts, feelings, opinions, or emotions regarding the crime, which money or other compensation would otherwise, by terms of the contract, be owing to the person so convicted or the person's representatives. The attorney general shall deposit the money or other compensation in an escrow account for the benefit of and payable to any victim or representative of the victim, who recovers a money judgment against the person or the person's representatives. Notwithstanding section 614.1, a victim or the victim's representative who has a cause of action for a crime for which an escrow account or receivership is established pursuant to this section, may bring the action against the escrow account or against the property in receivership within five years of the date the escrow account is established.

When the nature of the compensation to the person initially convicted of the crime is such that it cannot be placed in an escrow account, the attorney general shall assume the powers of a receiver under chapter 680 in taking charge of the property for benefit of and payable to any victim or representative of the victim. In those instances, the date the attorney general assumed the power of a receiver, shall be considered the date an escrow account was established for purposes of this section.

2. Once an escrow account or receivership is established,

the attorney general shall make reasonable efforts to notify victims and representatives of victims of the escrow account or receivership and their possible rights under this section. The reasonable efforts shall include but are not limited to mailing the notification to known victims or representatives of known victims. The cost of notification shall be paid from the escrow account or from the sale of property held in receivership.

3. Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by the person that five years have elapsed from the date of establishment of the escrow account and further that no actions are pending against the person, the attorney general shall immediately pay over any money in the escrow account to the person.

4. Notwithstanding the other provisions of this section, the attorney general shall make payments from the escrow account or property held in receivership to the person accused of the crime upon the order of a court of competent jurisdiction after a showing by the person that the money or other property shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against the person, including the appeals process.

5. An action taken by a person convicted of a crime,

whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this section is null and void as against the public policy of this state.¹⁴

Kansas

KSA 74-7319

Enacted 1986

74-7319. Moneys payable to accused or convicted person for use of crime in publications, broadcast presentations or live entertainments, disposition. (a) Any individual, partnership, corporation or association which contracts with any person accused or convicted of the commission of a crime in this state, or with a representative or assignee of such person, to use the crime committed or alleged to have been committed by such person or the expression of such person's thoughts, feelings, opinions or emotions regarding the crime in any book, magazine or other publication or in any movie, radio, television presentation or live entertainment shall pay to the crime victims reparations board all moneys which would otherwise by the terms of the contract be owed to the person who committed or is alleged to have committed the crime, or such person's representatives or assignees.

74-7320. Same; deposit in escrow account, authorized uses.

Upon the receipt of any moneys pursuant to K.S.A. 1986 Supp. 74-7319, the crime victims reparations board shall deposit the entire amount in a separate escrow account to be used only as follows:

(a) Upon dismissal of charges against the accused person or upon acquittal of the accused person, the board shall promptly pay the entire amount to such person, or such person's representatives or assignees.

(b) Upon conviction of the accused person or if the accused person has already been convicted, the board shall promptly distribute the entire amount and any future moneys paid to the board under K.S.A. 1986 Supp. 74-7319 as follows:

(1) First, to pay any restitution ordered by the court or by the Kansas parole board to be paid by the convicted person to the person directed by the court or board;

(2) if any moneys remain after payment pursuant to subsection (b)(1), to repay any amount expended by the state board of indigents' defense services on behalf of the convicted person in defending prosecution for the crime, including appeals;

(3) if any moneys remain after payment pursuant to subsections (b)(1) and (2), to pay any court costs assessed against the convicted person in proceedings for

prosecution for the crime, including appellate proceedings;

(4) if any moneys remain after payment pursuant to subsections (b)(1), (2) and (3), to pay reparations pursuant to K.S.A. 1986 Supp. 74-7321; and

(5) if any moneys remain after payment pursuant to subsections (b)(1), (2), (3) and (4), to pay crime victims reparations pursuant to K.S.A. 74-7301 through 74-7318, and amendments thereto, for which purpose such moneys shall be deposited in the state treasury and credited to the state general fund established by K.S.A. 74-7317 and amendments thereto.

74-7321. Same; distribution as additional reparations; administration; rules and regulations. (a) When moneys are to be distributed pursuant to subsection (b) of K.S.A. 1986 Supp. 74-7320, the victim of the crime, and the victim's dependents, heirs, representatives or assignees, may apply to the crime victims reparations board for reparations for losses arising from the convicted person's crime. To the extent that moneys received by the board pursuant to K.S.A. 1986 Supp. 74-7319 are sufficient, such reparations shall be in an amount equal to the applicant's actual loss, as determined by the board, less any restitution paid pursuant to order of a court or order of the Kansas parole board and any reparations paid by the crime

victims reparations board pursuant to K.S.A. 74-7301 et seq., and amendments thereto.

(b) The limitations provided by K.S.A. 74-7301 et seq., and amendments thereto, shall not apply to reparations paid pursuant to this section.

(c) The crime victims reparations board shall adopt such rules and regulations as necessary to administer the provisions of K.S.A. 1986 Supp. 74-7319, 74-7320 and 74-7321.¹⁵

Kentucky

KRS Sec. 346.165

Enacted 1980

346.165. Contracts regarding crime - Money to be paid to board - Disposition.

(1) Every person contracting with any person or the representative or assignee of any person accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his

representatives.

(2) After deducting all sums paid to the victim by the board, the board shall deposit such moneys in its account for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime and provided further that such victim, within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representative.

(3) Upon disposition of charges favorable to any person accused of committing a crime, or upon showing by such person that five years have elapsed from the board's receipt of such funds and that such person has not been convicted of said crime and further that no actions are pending against such person in connection with the crime or pursuant to this section, the board shall immediately pay over any such moneys to such person.

(4) Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five year period provided for in paragraph two of this section shall not begin to run until the board has received such moneys.

(5) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney,

creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

(6) The failure of a person to pay moneys to the board in accordance with subsection (1) shall create a debt due and owing to the board from that person and shall constitute a preferential lien to the state which may be collected by the board by civil process.¹⁶

Louisiana

LA Rev. Stat., Chpt. 21-A, 1831-1839

Enacted 1982

1831. Definitions.

As used in this Chapter:

(1) "Account" and "escrow account" mean a criminal victim's escrow account as authorized herein.

(2) "Crime" means any crime for which reparations awards may be made under the provisions of Chapter 21 of Title 46, particularly as enumerated in R.S. 46:1831.

(3) "Victim" means a person who is injured, killed, or dependent at the time of the crime and who is the victim of injury, death, or catastrophic property loss as provided in Chapter 21 of the Louisiana Revised Statutes, as amended, or who is dependent of a deceased person.

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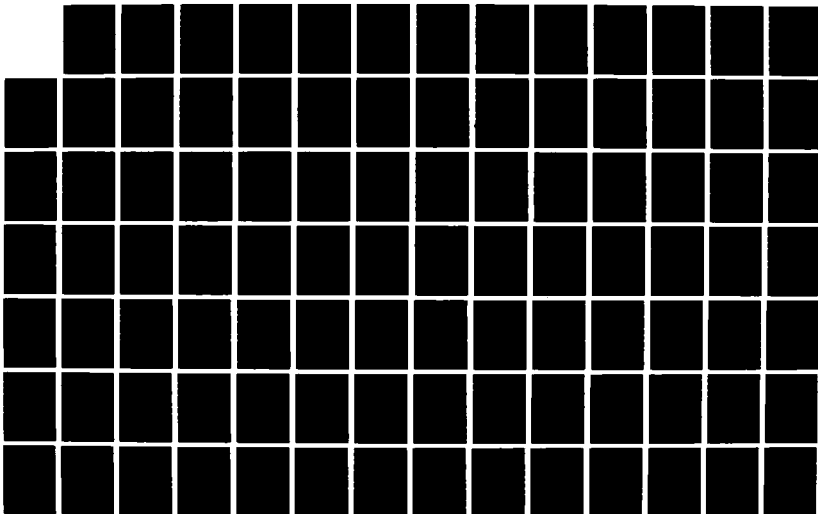
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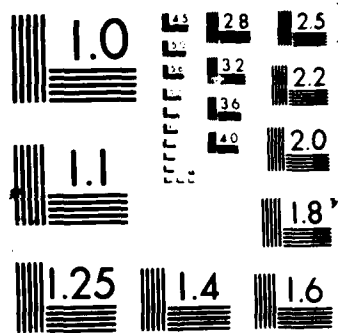
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person prohibited by said Chapter 21 from eligibility to be paid a reparations award.

(4) "Dependent" means a spouse or other person who is or was a dependent, within the meaning of Section 152 of the United States Internal Revenue Code (26 USC Sec. 152), of a victim.

1832. Escrow account; establishment.

A. Every person, firm, corporation, partnership, association, or other legal entity which contracts with any person or the agent, assignee, or representative of any person accused or convicted of a crime in this state with respect to the reenactment of such crime by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime, shall file a copy of the contract with the state treasurer and shall pay over to the treasurer, commencing with the date of the first payment under contract, any money which otherwise, by terms of the contract, would be owing or payable to the person accused or convicted or to his agent assignee or representatives.

If the contracting party fails to meet the obligation of payment as required herein, the treasurer, through the

attorney general, shall bring a civil action in a court of competent jurisdiction to enforce payment of the funds.

B. Within seven days after receipt of monies under this Section, the treasurer shall establish an escrow account in the name of the person convicted or accused of crime and deposit said monies in said account. Seventy-five percent of the monies in the account shall be for the benefit of and payable to any victim of crimes committed by such person and the remaining twenty-five percent thereof shall be for the benefit of and payable to any crime victims reparations fund in the state treasury, if the person is eventually convicted, found not guilty by reason of insanity, or enters a plea of guilty or nolo contendere as authorized by law and the victim, within the applicable time limits provided by law, brings a civil action in a court of competent jurisdiction and obtains a money judgment against such person or his representative.

1833. Victim's notice of intent to file a claim.

A victim of a crime committed by a person in whose name an escrow account is established must register a notice of intent to file a claim against such escrow account pursuant to a judgment, a pending lawsuit, or a prospective lawsuit, with the treasurer within one year after establishment of the escrow account. A failure to comply with this requirement shall forfeit the rights of

the victim in the escrow account against other victims, but shall not bar a claim against the escrow account filed within two years of the establishment of such account. No payments to victims shall be made until the time limit for filing a notice has expired or it is established that all of the victims have filed their notices, whichever is sooner.

1834. Notice to victims.

The treasurer shall notify any person who has registered with the treasurer as a victim of a crime at the time the treasurer receives such escrow monies for that individual. In addition, at least once every six months for two years after the date on which the treasurer receives such escrow monies, the treasurer shall cause a notice to be published in the official state journal informing victims that such escrow monies are available to satisfy judgments pursuant to this Chapter.

1835. Release of escrow account.

A. The treasurer shall immediately pay over any monies in an escrow account to a person in whose name an escrow account was established upon dismissal or acquittal of the charges, which arose from the same circumstances which gave rise to the establishment of the escrow account, against such person.

B. Upon a showing that three years have elapsed

after the establishment of the escrow account and that no civil actions are pending or registered as provided in R.S. 46:1833, the treasurer shall immediately transfer all monies in and accruing to the escrow account to any crime victim reparations fund in the state treasury.

1836. Payments from escrow account for legal representation.

A. Notwithstanding any other provision of this Chapter, the treasurer, upon order of a court of competent jurisdiction, may make payments from an escrow account to the person in whose name it is established for the sole purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process.

B. Prior to issuing any order to the treasurer for payments for the retaining of legal representation, as permitted by Subsection A of this Section, the court shall determine that the amount of the payment is fair and reasonable.

1837. Prorated payments on basis of judgments.

A. When any victim has timely presented a notice of intent to file a claim pursuant to a pending or prospective lawsuit, no monies shall be paid from the escrow account until the victim has obtained a final judgment or it has been determined that the pending or

prospective lawsuit has been abandoned. This provision shall not affect the payment from the escrow account of those amounts payable to a crime victim reparations fund or affect the right to payments provided for in R.S. 46:1836.

B. When an escrow account contains insufficient funds to meet all judgments presented by victims or their representatives, the monies in the escrow account shall be prorated among the victims or their representatives on the basis of the amounts of the unsatisfied judgments or partially satisfied judgments. The treasurer, through the attorney general, may bring a civil action in a court of competent jurisdiction to determine the payment amount to the victims out of the account. The victims or their representatives shall be included as parties in such action.

1838. Incapacity of accused person; determination of funds in account.

Whenever a person accused of crime for whom funds have been deposited into an escrow account is adjudged unfit to proceed to trial by reason of mental incapacity to understand the proceedings against him or to assist in his own defense, the treasurer, through the attorney general, may bring a civil action in a court of competent jurisdiction to determine disposition of the account, if

disposition cannot otherwise reasonably be made.

1839. Void actions.

Any action taken by a person accused or convicted of a crime, or by a person or legal entity with who such person contracts as set forth in R.S. 46:1832, whether by way of execution of a power of attorney, donation, creation of a corporation or other legal entity, or otherwise, to defeat the purposes of this Chapter shall be null and void as against the public policy of this state. The treasurer, through the attorney general, may bring a civil action in a court of competent jurisdiction to have any such action declared unenforceable and to obtain a judgment ordering such funds to be paid into the escrow account pursuant to this Chapter.¹⁷

Maryland

Code of Maryland Art. 27 Sec. 764

Introduced 1987

Senate Bill 428

Article 27, Sec. 764.

(B) A person who contracts with a defendant, or a representative or assignee of that defendant, with respect to the reenactment of a crime by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any

kind, or with respect to the expression of the defendant's thoughts, feelings, opinions, or emotions regarding the crime, shall:

(1) Submit a copy of the contract to the attorney general; and

(2) Pay over to the attorney general any moneys or other consideration which by the terms of the contract would otherwise be owing to the defendant, or a representative or assignee of the defendant.

(C) On receipt of a copy of a contract under subsection (B)(1) of this section, the attorney general shall mail to any victim at the victim's last known address, a notice that informs the victim of the attorney general's receipt of the copy,

(D) A person may not:

(1) Conceal the existence of a contract described in subsection (B) of this section; or

(2) Except as otherwise provided in this section, make or receive payments under a contract described in subsection (B) of this section.

(E)(1)(I) The attorney general shall deposit any funds received under this section in an interest bearing escrow account.

(II) Except as provided in paragraph (3) of this subsection and subsection (F) of this section, the

attorney general shall hold funds for the benefit of and payable to the victim, as provided in paragraph (2) of this subsection.

(2)(I) If, within 5 years of the establishment of the escrow account, the victim has a pending civil action in a court of competent jurisdiction or has recovered a money judgment for damages against the defendant or has been awarded restitution, the attorney general shall pay, subject to the priority of claims described in this section, to the victim funds from the escrow account to the extent of the money judgment or the amount of restitution. Any funds then remaining in the escrow account shall be paid over as provided in this section.

(II) At least once every 6 months for 5 years from the date the attorney general receives such moneys or other consideration, the attorney general shall publish a legal notice in newspapers of general circulation in the county where the crime was committed and in counties contiguous to that county that advises the victims that escrow moneys are available to satisfy money judgments under this section. The attorney general may provide for additional notice as the attorney general deems necessary.

(3) The attorney general shall payover to the defendant all of the funds from the escrow account if:

(I) The charges against the defendant are

dismissed or if a Nolle Prosequi is entered;

(II) The defendant is acquitted;

(III) The defendant is found to be incompetent to stand trial under 12-105 of the Health - General Article and at least 5 years have elapsed from that finding without a further disposition of the charge; or

(IV) The charges against the defendant are placed on the Stet Docket and a period of at least 3 years have elapsed.

(F) (1) The attorney general shall make payments to the defendant from the escrow account on order of a court of competent jurisdiction that the defendant has shown that the funds will be used for the purpose of retaining legal counsel at any stage of the proceedings of the criminal charges, including the appeals process.

(2) After notice to the victims of the crime, the attorney general may make payments from the escrow account to a representative of a defendant for the necessary expenses of production of the moneys paid into the escrow account if the attorney general finds that the payments are in the best interests of the victims of the crime and are not contrary to public policy.

(G) Notwithstanding any other provision of law to the contrary, the 5 year period provided for in subsection (E) of this section does not begin to run until the escrow

account has been established by the attorney general.

(H) Any action taken by a defendant, including an execution of a power of attorney, creation of corporate entities, or designation of the defendant's interest, to defeat the purpose of this section shall be void as against public policy.

(I) (1) Notwithstanding any other provisions of law, claims on moneys in the escrow account shall have the following priorities:

(I) Payments ordered by the attorney general or a court under subsection (F) of this section;

(II) Subrogation claims of the state under Article 26A of the Code;

(III) A court order of restitution under Article 27, 640 of the Code;

(IV) A civil judgment of a victim of the crime; and

(V) A civil judgment of a person, other than a victim of the crime, arising out of the crime.

(2) The attorney general may bring an action of interpleader or an action for declaratory judgment when the attorney general is unable to determine the priority of claims and the disposition of the escrow account.

(J) There is established a Maryland Victims of Crime Fund account in the general fund of the state.

(K) The Maryland Victims of Crime Fund shall be used for the purpose of implementation of the guidelines for treatment and assistance for crime victims and witnesses described in Article 27, 761 of the Code.

(L) After payment of the claims described in subsection (I) of this section, the attorney general shall deposit the moneys remaining in the escrow account in the Maryland Victims of Crime Fund account.

(M) (1) Notwithstanding any other provisions of law, the attorney general has exclusive jurisdiction and control as escrow agent over any moneys or other consideration subject to this section.

(2) A distribution of moneys in an escrow account may be made only by a determination and order of the attorney general under this section.

(3) The attorney general may adopt regulations for the purpose of implementation of this section.

(N) Any person aggrieved by a final determination and order of the attorney general under this section may seek judicial review.

(O) (1) Any person who willfully fails to submit to the attorney general a copy of the contract described in subsection (B) of this section or willfully fails to pay over to the attorney general any moneys or other consideration as required by this section shall be subject

to a civil penalty of not less than \$10,000 for each offense and not more than an amount equal to 3 times the contract amount.

(2) If 2 or more persons are subject to the penalties provided in this section, those persons shall be jointly and severally liable for the payment of the penalty imposed.

(3) After notice and opportunity to be heard is provided, the attorney general may by order assess the penalties described in this section.

(4) If not paid within 30 days from the date of the order, any penalty assessed under this section shall bear interest at the rate of 1 percent per month, compounded monthly.

(5) An action to recover a civil penalty assessed under this section may be brought by the attorney general in a court of competent jurisdiction within 6 years after the cause of action accrues.

(6) Any money recovered under item (5) of this subsection shall be paid into the Maryland Victims of Crime Fund.

(P)(1) If any person violates or threatens to violate any provision of this section, the attorney general may bring a proceeding against the person in a court of competent jurisdiction to restrain the person from

continuing the violation or carrying out the threat of violation.

(2) In any proceeding under this subsection, a court shall have jurisdiction to grant to the attorney general, without bond or other undertaking, a prohibitory or mandatory injunction as the facts may warrant, including temporary restraining orders and preliminary injunctions to prevent payments under a contract in violation of this section.

Section 2. This act shall be construed only prospectively and may not be applied or interpreted to have any effect upon or application to any contract entered into prior to the effective date of this Act.

Section 3. This act shall take effect July 1, 1987.¹⁸

Massachusetts

Mass. Ann. Laws, Chpt. 258(A) Sec. 8

Enacted 1981

Sec. 8. Use of Proceeds from Books, Movies, Etc., Re-Enacting Crime.

Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article,

radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the state treasurer any moneys which would otherwise, by terms of such contract, be owing to the person or his representatives. The treasurer shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime and provided, further, that such victim, within three years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.

The treasurer, at least once every six months for three years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in each county of the state advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section.

Upon disposition of charges favorable to any person convicted of committing a crime, or upon a showing by such person that three years have elapsed from the establishment of such escrow account and further that no actions are pending against such person pursuant to this section

the treasurer shall immediately pay over any moneys in the escrow account to such person.

Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the three year period provided for in subdivision one of this act shall not begin to run until an escrow account has been established.

Notwithstanding the foregoing provisions of this section the board shall make payments from an escrow account to any person convicted of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.¹⁹

Minnesota

MN Stats. Ann., 299B.17, Sec. 611A.68

Enacted 1981

611A.68. Limiting commercial exploitation of crimes;

payment of victims.

Subd. 1. For purposes of this section "crime" means an offense which is a felony under the laws of Minnesota.

Subd. 2. A legal entity that contracts with an individual person or the representative or assignee of a person who has been convicted of a crime in this state, or found not guilty by reason of insanity, regarding (a) the reenactment of the crime, by way of a movie, book, newspaper or magazine article, radio or television presentation, or live or recorded entertainment of any kind, or (b) the expression of the person's thoughts, feelings, opinions or emotions about the crime, shall notify the crime victims reparations board of the existence of the contract and pay over to the crime victims reparations board any moneys owed to that person or the person's representatives by virtue of the contract. If the crime occurred in this state, the proportion payable is one hundred percent. If the crime occurred in another jurisdiction having a law applicable to the case which is substantially similar to this section, the proportion payable is zero and this section does not apply. In all other cases, the proportion payable is that which fairly can be allocated to commerce in this state. This section does not apply to crimes occurring outside the United States. The board shall

deposit the moneys pursuant to subdivision 7 and assign the amount received in each case for the benefit of any victim of crimes committed by the person. The moneys shall be paid by the board to any victim or the legal representative of a victim if (1) the person is convicted of the crime or found not guilty by reason of insanity, and (2) the claimant, within five years of the date of payment to the board in the case, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against the person or the person's representatives. Notwithstanding any provision of law for the timely bringing of an action, an action may be brought pursuant to this section within a five year period which begins to run on the date payment is made to the board in a case; provided that once the person has been discharged from a sentence by court order or upon expiration of sentence, this section shall not apply.

Subd. 3. When the board receives a payment pursuant to this section, it shall attempt to notify any known victims of the crime and shall publish a notice of that fact in a newspaper having general circulation in the county where the crime was committed. The expenses of notification shall be paid from the amount received for that case.

Subd. 4. When the board has made payments to or on behalf of a crime victim pursuant to sections 611A.51 to 611A.67,

to the extent of payment made, it is subrogated to any claim or judgment of the victim or a representative against the offender.

Subd. 5. Upon a showing by that person convicted of a crime or found not guilty by reason of insanity, or a representative, that five years have elapsed from the date of payment to the board in the case, and further that no actions are pending against the person pursuant to this section, the board shall immediately pay over to the person any moneys in the account related to the case.

Subd. 6. Notwithstanding any other provisions of this section, the board shall make payments to a person convicted of crime or found not guilty by reason of insanity from the account of amounts received with reference to that person upon the order of a court of competent jurisdiction after a showing by that person that the moneys shall be used for the reasonable costs of defense in the appeal of a criminal conviction or in civil proceedings pursuant to this section.

Subd. 7. All moneys received by the board pursuant to this section shall be deposited in the state treasury, credited to a special account, and are appropriated to the board for the purposes of this section. Money in the special account may be invested pursuant to section 11A.25. When so invested, any interest or profit shall

accrue to, and any loss be borne by, the special account. The board shall allocate money in the special account to each case pursuant to this section.

Subd. 8. Any action taken, whether by way of execution of a power of attorney, creation of corporate or trust entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.²⁰

Mississippi

Senate Bill 2381

Introduced February 1987

Section 1. This act shall be known and may be cited as the "Crime Victims' Escrow Account Act."

Section 2. As used in this act the following terms shall have the meanings herein ascribed:

- (a) "Accused" shall mean any person who has been indicted for a criminal offense or against who a criminal prosecution has been commenced;
- (b) "Treasurer" shall mean the State Treasurer of the State of Mississippi; and
- (c) "Victim" shall mean any person who suffers damages as a result of another person's criminal activities. The term "victim" shall not include any coparticipant in the criminal activities of an accused or convicted person.

Section 3. Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the legal representative, assignee, beneficiary or heirs at law of any person accused or convicted of a crime in this state, with respect to the reenactment of such crime by way of a movie, book, magazine article, tape recording, phonograph record, photograph, reproduction, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the Treasurer and pay over to the Treasurer any monies which would otherwise, by the terms of such contract, be owing to the person so accused or convicted or his legal representative, assignee, beneficiary or heirs at law.

Section 4. (1) The Treasurer shall deposit such monies as he receives under the provisions of Section 3 of this act, within seven days from the receipt thereof, in an interest-bearing escrow account in the name of the person accused or convicted, for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by an accused or convicted person.

(2) Any person, or the legal representative of any person, who is the victim of a crime may register with the

Treasurer and request to be notified of the establishment of an escrow account under the provisions of this act. Such registration shall include the name and address of the victim and/or his legal representative, an identification by name of the person accused or convicted of an offense against the victim, the location where and the date upon which such offense occurred, and such other information as the Treasurer shall require. The Treasurer shall immediately notify, by United States mail, the victim or the legal representative of any victim who has registered with the Treasurer upon the establishment of an escrow account for the benefit of any such registered victim. In addition, the Treasurer shall, at least once every six months for five years from the date he receives monies under the provisions of Section 3 of this act, cause to have published a legal notice in some newspaper having a genreal circulation in the county in which the crime was committed and in counties contiguous to such county advising any and all victims that escrow monies are available to satisfy money judgments pursuant to this act. All costs and expenses incurred by the Treasurer in giving the notice and making publication required by this subsection shall be paid from funds in the escrow account. Payments may be made pursuant to this act to the victim or his legal representative only if the accused

person is convicted or enters a plea of guilty of the crime, and provided that the victim or his legal representative, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his legal representative, assignee, beneficiary or heirs at law. The Treasurer shall disburse payments on a pro rata basis of all claims filed according to the amount of money in the escrow account comparable to the amount of each such claim; provided, however, such sums shall not be disbursed until all pending claims have been settled or reduced to judgment.

(3) It shall be the duty of the victim, the victim's lawyer or the victim's legal representative to notify the Treasurer within thirty days of filing any claim under this act.

Section 5. (1) The Treasurer shall make payments from an escrow account established pursuant to this act to any person accused or convicted of crime upon the order of a court of competent jurisdiction after a showing by such person that such monies shall be used for the exclusive purpose of retaining legal representation at any stage of any criminal proceedings against such person, including the appeals process.

(2) Whenever it is found that a person accused of a crime is unfit to proceed as a result of insanity because such person lacks the capacity to understand the proceedings against him or to assist in his own defense, the Treasurer shall bring an action of interpleader to determine disposition of the escrow account. For the purposes of this act, a person found not guilty by reason of insanity shall be deemed to be a convicted person.

(3) Upon dismissal of charges or acquittal of any person accused of an offense arising out of the same circumstances which led to the establishment of an escrow account under this act, the Treasurer shall immediately pay over to such accused person, his legal representative, assignee, beneficiary or heirs at law the monies in the escrow account established on his or their behalf. Upon a showing that the accused person has been convicted or has pleaded guilty to an offense for which an escrow account has been established under this act and that five years have elapsed from the time of establishment of such escrow account, and that no civil actions are pending under the provisions of subsection (2) of Section 4 of this act, the Treasurer shall immediately transfer all monies in the escrow account established in the name of the accused person, less such costs and expenses as the Treasurer incurs in the administration thereof, to the Crime

Victims' Compensation Fund created under the provisions of Section 15 of Senate Bill No. 2381, 1987 Regular Session.

(4) The Treasurer shall be authorized to promulgate such rules and regulations as shall be necessary to carry out the provisions of this act.

Section 6. (1) It shall be unlawful for any person, firm, corporation, partnership, association or other legal entity to fail to comply with the provisions of this act.

(2) Any person, firm, corporation, partnership, association or other legal entity violating the provisions of this act shall be guilty of a misdemeanor and, upon conviction of the violation, shall be punished as for a misdemeanor.

(3) Each day any such person, firm, corporation, partnership, association or other legal entity continues in violation of the provisions of this act shall constitute a separate offense.

(4) Any action taken by any person accused or convicted of a crime or who enters a plea of guilty of a crime, or by a person or legal entity with whom any such person contracts as set forth in Section 3 of this act, whether by way of execution of a power of attorney, donation, creation of corporate entities, or otherwise, to defeat the purpose of this act shall be null and void as against the public policy of the state.

(5) In addition to such powers and duties of the Attorney General of this state as are otherwise authorized and prescribed by law, the Attorney General shall be authorized to bring a civil action in any court of competent jurisdiction to enforce the obligations of a contracting party to make payment to the Treasurer of such monies as are required to be paid to the Treasurer under the provisions of Section 3 of this act.²¹

Missouri

MO Rev. Stats. Chpts. 549.045(11)

Enacted 1985

595.045. (11) Any person, firm, corporation, partnership, association, or other legal entity contracting with any person or the representative or assigner of any person, accused of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the fund any money which would otherwise, by terms of such contract, be owing to the person so convicted to his representatives to reimburse the crime victims' compensation fund for payments made to any claimants from the above mentioned occur-

rence.²²

Montana

MT Code Ann., Sec. 53-9-104(E)

Enacted 1983

53-9-104(E). Powers and duties of division.

The division shall require that any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article relating to such crime to deposit any proceeds owed to such individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime or any surviving dependents of the victim, if such individual is convicted of that crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. If, after all funds due the victim have been paid to the victim under this section, there remain additional funds in the escrow account, such funds shall be returned to the individual charged or convicted of the crime.²³

Nebraska

NE Rev. Stats., Sec. 81-1835

Enacted 1980

81-1835. Victim's Compensation Fund; established; purpose; investment. There is hereby established in the state treasury a Victim's Compensation Fund from which all awards or judgments under sections 81-1801 to 81-1841 shall be paid. This fund shall be in such amount as the Legislature shall determine to be reasonably sufficient to meet anticipated claims. When the amount of money in the Victim's Compensation Fund is not sufficient to pay any awards or judgments under sections 81-1801 to 81-1841, the Director of Administrative Services shall immediately advise the Legislature, and request an emergency appropriation to satisfy such awards and judgments. Any money in the Victim's Compensation Fund available for investment shall be invested by the state investment officer pursuant to applicable provisions of law.

81-1836. Person convicted of crime; payment for thoughts, feelings, or opinions; deposited in fund. Every person, firm, corporation, partnership, association, or other legal entity contracting with any person or the representative or assignee of any person, accused of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article,

radio, or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the board any money which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. The board shall deposit such money in the Victim's Compensation Fund.

81-1837. Money in Victim's Compensation Fund; returned; when. Upon disposition of charges to any person accused of committing a crime, or upon a showing by such person that five years have elapsed from the deposit of money into the Victim's Compensation Fund by the accused and further that no actions are pending against such person pursuant to sections 81-1801 to 81-1841, the board shall immediately pay the money deposited by the accused to such person.

81-1838. Five-year period; when commenced. Notwithstanding any other provision of law with respect to the timely bringing of an action, the five-year period provided for in section 81-1837 shall not begin to run until the accused has deposited money into the Victim's Compensation Fund.

81-1839. Board; payments from fund for legal representation; when. Notwithstanding the provisions of sections 81-

1836 to 81-1838, the board shall make payments from the fund to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such money shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

81-1840. Action to defeat purpose of act; null and void. Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.²⁴

New Jersey

P.L. 1983, Chpt. 33 Adds to Chpt. 317, Sec. 52:4B-28

Enacted 1983

52:4B-28. Proceeds from contract regarding reenactment with person accused or convicted of crime; deposit in escrow account; civil action for damages.

Every person, firm, corporation, partnership, association or other legal entity contracting with a person convicted or accused of a crime in this in State or an agent, assignee, beneficiary, conservator, executor, guardian, relative, friend, associate or conspirator of a

person convicted or accused of a crime in this State, with respect to the reenactment of the crime, by way of a movie, book, magazine article, other literary expression, recording, radio or television presentation, live entertainment or presentation of any kind, or from the expression of the person's thoughts, feelings, opinions or emotions regarding the crime, shall submit a copy of the contract to the board and shall pay over to the board all moneys which would otherwise, by terms of the contract, be owing the person convicted or accused of a crime in this State or an agent, assignee, beneficiary, conservator, executor, guardian, representative, relative, friend, associate or conspirator of a person convicted or accused of a crime in this State. The board shall deposit these moneys in an interest bearing escrow account for the benefit of and payable to any victim of the convicted or accused person or the victim's representative, provided that the person is eventually convicted of the crime and that the victim or victim's representative brings, within five years of the date of the establishment of the escrow account, a civil action for damages resulting from the crime, or, has already obtained a judgment for damages resulting from the crime in a court of competent jurisdiction and files notice of such action with the board and recovers a money judgment for damages resulting

from the crime against the person or an agent, assignee, beneficiary, conservator, executor, guardian, representative, relative, friend, associate or conspirator of a person convicted or accused of a crime in this State.

52:4B-29. Notice to victim regarding escrowed funds.

The board, if the victim or victims are identifiable, shall notify these persons that such escrow moneys are available to satisfy money judgments under this act. The board, if the victim or victims are not identifiable or cannot be located, shall, at least once every six months for five years from the date it receives these moneys, cause to have published a legal notice in newspapers of general circulation in each county of the State advising that such escrow moneys are available to satisfy money judgments under this act.

52:4B-30. Payment of money from escrow account; priorities; liens and judgments.

If a person is not convicted of committing a crime, the board shall immediately pay over all moneys in the escrow account to the person, subject to any outstanding or pending liens or judgments. If the person is convicted, the board shall pay over the moneys according to the following priorities:

(1) Civil judgments of the victim or the victim's representative, which shall be apportioned among these

judgment holders if there is sufficient moneys in the account to pay each judgment in full. Any moneys received by the victim or the victim's representative as a result of a judgment in a prior civil action relating to the crime shall be set-off against any amount due to be paid from the fund.

(2) Restitution ordered by the court pursuant to the New Jersey Code of Criminal Justice.

(3) Other judgment creditors of the accused.

(4) Reasonable costs incurred by the Violent Crimes Compensation Board in connection with the administration of the provisions of this act.

(5) The remainder of the moneys in the escrow account shall be paid to the Violent Crimes Compensation Board for use in satisfying claims filed pursuant to the "Criminal Injuries Compensation Act of 1971," P.L. 1971, c. 317 (C. 52:4B-1 et seq.). If there is a dispute as to the respective priority of or the apportionment due a judgment creditor the board shall apply to Superior Court for a declaratory judgment with proper notice given to all parties.

b. No payment shall be made pursuant to subsection a.

(5) until five years have elapsed from establishment of the escrow account or final disposition of any action brought by any victim or victim's representative, pursuant

to this act.

c. Moneys in the escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in subsection a.

52:4B-31. Limitation of action.

Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five year period provided for in this act shall not begin to run until an escrow account has been established.

52:4B-32. Proceeds of escrow account used for legal fees.

Notwithstanding the foregoing provisions of this act, the board shall make payments from an escrow account to a person accused of crime upon the order of a court of competent jurisdiction after a showing by the person that a reasonable amount of these moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against the person, including the appeals process.

52:4B-33. Actions to defeat purpose of act against public policy. Any action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this act shall be null and void as against the

public policy of this State.²⁵

New Mexico

NM Stats. Ann., Chpt. 321

Enacted 1983

31-22-22. Distribution of money received as result of crime; escrow account.

A. Every firm, person, corporation, association or other legal entity contracting with a person or the representative or assignee of any person charged or convicted of a violent crime in this state, with respect to the reenactment of the crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation or live entertainment or with respect to the expression of the accused or convicted person's thoughts, feelings, opinions or emotions regarding the crime shall submit a copy of the contract to the crime victims reparation commission and pay to the commission any money that would otherwise by terms of such contract be owing to the accused or convicted person or his representatives. The commission shall deposit the money in an escrow account.

B. Money placed in an escrow account pursuant to this section shall be available to satisfy a civil judgment against the convicted person or the accused person,

if eventually convicted of the crime, in favor of a victim of the crime if the court in which the civil judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

C. Upon dismissal of charges or acquittal of any accused person, the commission shall immediately pay over to the accused person the money in the escrow account.

D. For purposes of this section, a person found not guilty by reason of insanity at the time of commission of an offense shall be deemed to be a convicted person.

E. Notwithstanding the provisions of Subsections A through C of this section, the commission shall make payments from the escrow account to any person accused or convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that the money shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process.

F. Upon a showing by any accused or convicted person that five years have elapsed from the establishment of the escrow account, that any claims brought pursuant to this section have been disposed of and that no such claims are pending against him, the commission shall immediately pay over to such accused or convicted person any money in

the escrow account.

G. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise to defeat the purpose of this section, shall be null and void as against the public policy of the state.²⁶

New York

N.Y. Exec. Law, Sec. 632-a

Enacted 1977

632-a. Distribution of moneys received as a result of the commission of crime.

1. Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the board and pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his repre-

sentatives. The board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by: (i) such convicted person; or (ii) by such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives.

2. The board, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section. For crimes committed in a county located within a city having a population of one million or more, the notice provided for in this section shall be in newspapers having general circulation in such city. The board may, in its discretion, provide for such additional notice as it deems necessary.

3. Upon dismissal of charges or acquittal of any accused person the board shall immediately pay over to such

accused person the moneys in the escrow account established on behalf of such accused person.

4. Upon a showing by any convicted person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to this section, the board shall immediately pay over any moneys in the escrow account to such person or his legal representatives.

5. For purposes of this section, a person found not guilty as a result of the defense of mental disease or defect pursuant to section 30.05 of the penal law shall be deemed to be a convicted person.

6. Whenever it is found, pursuant to article seven hundred thirty of the criminal procedure law, that a person accused of a crime is unfit to proceed as a result of mental disease or defect because such person lacks capacity to understand the proceedings against him or to assist in his own defense, the board shall bring an action of interpleader pursuant to section one thousand six of the civil practice law and rules to determine disposition of the escrow account.

7. Notwithstanding any inconsistent provision of the estates, powers and trusts law or the civil practice law and rules with respect to the timely bringing of an action, the five year period provided for in subdivision

one of this section shall not begin to run until an escrow account has been established.

8. Notwithstanding the foregoing provisions of this section the board shall make payments from an escrow account to any person accused or convicted of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process. The board may in its discretion and after notice to the victims of the crime make payments from the escrow account to a representative of any person accused or convicted of a crime for the necessary expenses of the production of the moneys paid into the escrow account, provided the board finds that such payments would be in the best interests of the victims of the crime and would not be contrary to public policy. The total of all payments made from the escrow account under this subdivision shall not exceed one-fifth of the total moneys paid into the escrow account and available to satisfy civil judgments obtained by the victims of the crime.

9. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to

defeat the purpose of this section shall be null and void as against the public policy of this state.

10. For purposes of this section:

(a) Victim shall mean a person who suffers personal, physical, mental, or emotional injury, or pecuniary loss as a direct result of the crime.

(b) A person convicted of a crime shall include any person convicted of a crime in this state either by entry of a plea of guilty or by conviction after trial and any person who has voluntarily and intelligently admitted the commission of a crime for which such person is not prosecuted.

11. Notwithstanding any other provision of law, claims on moneys in the escrow account shall have the following priorities:

(a) Payments ordered by the board or a court pursuant to subdivision eight of this section;

(b) Subrogation claims of the state pursuant to section six hundred thirty-four of this article in an amount not exceeding one-half of the net amount of the civil judgment obtained by a victim which is payable directly to the victim from the escrow account;

(c) Civil judgments of the victims of the crime;

(d) Other judgment creditors or persons claiming moneys through the person accused or convicted of a crime who

present lawful claims, including state or local government tax authorities;

(e) The person accused or convicted of the crime.

No payment shall be made out of the escrow account where such payment would be in derogation of claims, either presented or pending, entitled to a higher priority under this subdivision. The board may bring an action of interpleader pursuant to section one thousand six of the civil practice law and rules or an action for a declaratory judgment where it cannot determine the priority of claims and the proper disposition of the escrow account.

Moneys in the escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this subdivision.

12. Notwithstanding any other provisions of law, the board shall have exclusive jurisdiction and control, as escrow agent, over any moneys subject to this section. No distribution of moneys in such escrow accounts shall be made except by determination and order of the board, pursuant to the provisions of this section and the board's rules and regulations. Any party aggrieved by a final determination and order of the board under this section may seek judicial review of such decision pursuant to

article seventy-eight of the civil practice law and rules.²⁷

Ohio

OH Rev. Code Ann., Sec. 2969.02

Enacted 1984

2969.02. Proceeds of contracts with offender or allied person relating to accounts of the offense.

(A) Except as provided in section 2969.05 of the Revised Code, any person that enters into a contract with an offender, or with an agent, assignee, conspirator, or accomplice of the offender, shall pay any money, and the monetary value of any property other than money, due under the contract to the clerk of the court of claims for deposit in the recovery of offender's profits fund, if the terms of the contract provide for any of the following:

(1) The reenactment or description by the offender in any of the following, of any offense that the offender committed:

(a) A movie, book, magazine, newspaper, article, or other form of literary expression;

(b) A program on television, radio, or any other broadcasting medium;

(c) A play, speech, or any other form of live entertainment, instruction, or presentation.

(2) The expression, or description, of the offender's thoughts, feelings, opinions, or emotions regarding or experienced during the offense in any material, performance, or program described in division (A)(1)(a), (1)(b), or (1)(c) of this section;

(3) The life story or any part of the life story of the offender or an interview or any part of an interview with the offender or an agent, conspirator, or accomplice of the offender that is to be used in any material, performance, or program described in division (A)(1)(a), (1)(b), or (1)(c) of this section, if the publication value of the story or interview results primarily in part from the notoriety brought by the commission of an offense.

(B) Any offender, or any agent, assignee, conspirator, or accomplice of the offender, who enters into any contract described in division (A) of this section or any person who receives money, or receives any property other than money, pursuant to such a contract shall pay money, or the monetary value of the other property, received pursuant to the contract to the clerk of the court of claims for deposit in the recovery of offender's profits fund. If any person receives any money or other property pursuant to a contract described in division (A) of this section and fails to pay it or its monetary value to the clerk of

the court of claims for deposit in the fund as required by this section, the state has a lien upon the money or property and upon any property that is purchased. The attorney general shall enforce the lien in the same manner as a judgment lien may be enforced by a private individual.

(C)(1) Any person that fails to pay any money, or the monetary value of any property other than money, to the clerk of the court of claims or deposit as required by this section is liable to the state for the money or the monetary value of the property.

(2) If any person who is required by this section to pay money, or the monetary value of any property other than money, to the clerk of the court of claims for deposit in the fund fails to do so, the attorney general shall bring an action to recover the money or the monetary value of the property against the person who has possession, custody, or control of the money or property or against the person who failed to pay the money, or the monetary value of the property, to the clerk of the court of claims for deposit in the fund as required. The action shall be brought in the appropriate court. If the court determines in an action brought pursuant to this division that money, or the monetary value of any property, is to be paid to the clerk of the court of claims for deposit in the fund,

it shall order that the money be paid to the clerk of the court of claims for deposits in the fund and that the property be sold and the money received from the sale be paid to the clerk of the court of claims for deposit in the fund.

2969.03. Declaratory judgment to determine application. Any person may bring an action for a declaratory judgment to determine if section 2969.02 of the Revised Code applies to a particular contract. The action for a declaratory judgment shall be brought in the Franklin county court of common pleas.

2969.04. Administration and distribution of funds; action by victim. (A) The clerk of the court of claims shall administer the recovery of offender's profits fund established by section 2969.06 of the Revised Code, and shall maintain in the name of each offender a separate account for any money, or money received from the sale or other disposition of any property, received pursuant to section 2969.02 or 2969.03 or the Revised Code. The money shall be distributed in accordance with division (C) of this section.

If money is deposited in the recovery of offender's profits fund and maintained in a separate account in the name of an offender and if the offender is found not guilty of all of the charges against him in this state, or

all of the charges against him in this state are dismissed, or he is found not guilty of some of the charges against him in this state and the remaining charges against him in this state are dismissed, the clerk of the court of claims shall return all of the money in the separate account plus any interest earned on the money to the persons from whom it was obtained.

(B) Notwithstanding any contrary provision of any section of the Revised Code that deals with the limitation of actions, a victim of any offense committed by an offender in whose name a separate account is maintained in the recovery of offender's profits fund may bring a civil action against the offender or his representatives at any time within three years after the establishment of the separate account.

In order to recover from a separate account maintained in the recovery of offender's profits fund in the name of an offender, a victim of that offender shall:

(1) Within the three year period or, if the action was initiated before the account was established, within ninety days after the account is established, notify the clerk of the court of claims that a civil action has been brought against the offender;

(2) Notify the clerk of the court of claims of the entry of any judgment in the civil action;

(3) Within ninety days after the judgment in the civil action is final or, if the judgment was obtained before the account was established, within ninety days after the account is established, request the clerk of the court of claims to pay, from the separate account maintained in the name of the offender, any judgment he is awarded in the civil action.

If a civil action is filed against an offender or his representatives and the civil action is filed after the expiration of the statute of limitations that would apply to the civil action, but for this division, the court shall state in its judgment that the judgment may be enforced only against the separate account maintained in the name of that offender in the recovery of offender's profits fund.

(C) The clerk of the court of claims shall make payments from the separate account maintained in the name of an offender in the recovery of offender's profits fund to any victim of the offender who has obtained a judgment against the offender for damages resulting from an offense committed by the offender. The payments shall be made as provided in this division.

After an offender, in whose name a separate account is maintained in the recovery of offender's profits fund, is convicted, or found not guilty by reason of insanity, of

any offense in this state, the clerk of the court of claims shall, on the second day of January and the first of April, July, and October of each year, determine the amount of money in the separate account maintained in the name of that offender and pay any judgment for which a victim of that offender has, prior to any of those dates, requested pursuant to division (B) of this section the clerk of the court of claims to pay a judgment against the offender. If there are insufficient funds in the separate account maintained in the name of an offender to pay all of the judgments against the offender, the clerk of the court of claims shall pay the judgments on a pro rata basis.

2969.05. Payment from separate account to person from whom obtained. If a separate account has been maintained in the recovery of offender's profits fund, there is no further requirement to pay any money, or the monetary value of any property, pursuant to section 2969.02 of the Revised Code, and, unless otherwise ordered by a court of record in which a judgment has been rendered against the offender, the clerk of the court of claims shall pay the amount remaining in the separate account to the persons from whom the moneys in the account were obtained, if all of the following apply:

(A) Three years has elapsed since the establishment of

the separate account;

(B) None of the civil actions against the offender or his representatives of which the clerk of the court of claims has been notified pursuant to division (B) of section 2969.04 of the Revised Code is pending;

(C) All judgments against the offender or his representatives for which payment was requested pursuant to division (B) of section 2969.04 of the Revised Code has been paid.

2969.06. Recovery of offender's profits fund. All moneys collected pursuant to sections 2969.02 and 2969.03 of the Revised Code shall be credited by the treasurer of state to the recovery of offender's profits fund, which is hereby created in the state treasury. Except as provided in division (A) of section 2969.04 of the Revised Code, any interest earned on the money in the fund shall be credited to the fund.²⁸

Oklahoma

22 OK Stats., Sec. 17

Enacted 1981

Sec. 17. Custody and distribution of proceeds from sale of rights arising from criminal act.

A. Every person who has been charged, convicted, or has pled guilty or has pled nolo contendere to any crime

hereinafter referred to as defendant who contracts to reenact such crime by the use of any movie, book, newspaper, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of his thoughts, opinions or emotions regarding such crime, shall pay to the district court wherein the charges were filed any money or thing of value contracted to be paid to the defendant. The district court shall deposit such monies in an escrow account for the benefit of and payable to any victim or his legal representative of crimes committed by the defendant.

B. Payments from the account shall be made to the defendant upon an order of the judge of the district court wherein the charges were filed upon showing that the money or thing of value shall be used for the exclusive purpose of retaining legal representation for the defendant at any stage of the proceedings arising out of a criminal charge, and that the defendant would otherwise be unable to afford adequate representation.

C. Payments from the account shall be used to satisfy any judgment rendered in favor of a victim or his legal representative, provided said victim brings a civil action, in a court of competent jurisdiction, to recover money against the defendant or his legal representatives within five years of the filing of charges against the

defendant. If no victim or legal representative of a victim has filed suit within five years from the filling of the charges, any money remaining in the account shall be paid over to the Victims' Compensation Revolving Fund. Upon disposition of charges favorable to the defendant, money in the account shall be paid over to the defendant.

D. The district court wherein the charges were filed shall, once every six months for five years from the date the money is deposited with the court, publish a notice in at least one newspaper of general circulation in each county of the state in accordance with the provisions on publication of notices found in Sections 101 et seq. of Title 25 of the Oklahoma Statutes, notifying any eligible victim or legal representative of an eligible victim that monies are available to satisfy judgments pursuant to this section.²⁹

Pennsylvania

PA Stats., Ann., Title 71, Sec. 180-7.18

Enacted 1982

180-7.18. Distribution of moneys received as a result of the commission of crime.

(a) Every person, contracting with any person or the representative or assignee of any person, accused of a crime in this Commonwealth, with respect to the reenact-

ment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. The board shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime and provided further that such victim, within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.

(b) The board, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in each county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section.

(c) Upon disposition of charges favorable to any person accused of committing a crime or upon a showing by such person that five years have elapsed from the establishment of such escrow account and further that no actions are

pending against such person pursuant to this section, the board shall immediately pay over any moneys in the escrow account to such person.

(d) Notwithstanding any inconsistent provision of law and rules of civil procedure with respect to the timely bringing of an action, the five year period provided for in subsection (a) shall not begin to run until an escrow account has been established.

(e) Notwithstanding the foregoing provisions of this section, the board shall make payments from an escrow account to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

(f) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this Commonwealth.³⁰

Rhode Island

RI Gen. Laws, Sec. 12-25.1-3 PL 328

Enacted 1983

12-25.1-3. Confiscation of criminal royalties - Criminal royalties fund - Priority of claims against criminal royalties fund. (A) Every person, firm, corporation, partnership, association or other legal entity contracting with a criminally responsible person or alleged criminally responsible person or with the legal representative or assignee of such person regarding the commercial exploitation of the events and circumstances constituting and/or surrounding and/or motivating the crime or alleged crime shall submit a copy of such contract, within ten days of the making thereof, to the general treasurer and shall pay over to the general treasurer, within ten days of it becoming due and payable, any and all monies or other compensation which would otherwise by the terms of such contract be due and payable to or distributed at the direction of such person. All rights, causes of action or other entitlements accruing to any criminally responsible person or alleged criminally responsible person or the legal representative or assignee of such person by the general treasurer for the benefit of the "criminal royalties fund" established by this chapter.

(B) All monies paid to or recovered by the general

treasurer pursuant to subsection (A) shall be collectively known as the "criminal royalties fund." Except as required for payment of awards under this chapter, the general treasurer shall manage and invest the criminal royalties fund in accordance with section 35-10-11.

(C) Claims against any portion of the criminal royalties fund attributable to a specific criminally responsible person shall have the following priorities:

(1) claims by the state for costs incurred in providing defense counsel for the criminally responsible person by means of the public defender or a court appointed attorney;

(2) claims by the state and its political subdivisions for costs incurred in the investigation of the crime and the prosecution and trial of the criminally responsible person;

(3) claims by the victim or victims of the criminally responsible person pursuant to section 12-25.1-4;

(4) claims by the state pursuant to section 12-25-10;

(5) civil judgments in favor of the victim or victims of the criminally responsible person;

(6) after claims arising under subparagraphs (1) through (5) have been resolved and the statute of limitations for such claims has expired, one-half of the

remainder of the funds attributable to a specific criminally responsible person shall be transferred to the "violent crimes indemnity fund" established by section 12-25-12;

(7) claims by other creditors of the criminally responsible person; and

(8) claims by the criminally responsible person or persons claiming through him or her.

Claims against the criminal royalties fund shall be made against the portion of the fund attributable to the specific criminally responsible person and not against the fund as a whole. No payment shall be made out of the fund when such payment would be in derogation of claims, either present or pending, entitled to a higher priority under this subsection. The general treasurer may bring an action of interpleader or an action for a declaratory judgment where he cannot determine the priority of claims and the proper disposition of funds. Monies in the fund shall not be subject to execution, levy, attachment or lien except in accordance with the priorities set forth in this subsection. Any party aggrieved by a final determination and order of the general treasurer arising from his administration of the "Criminal Royalties Fund" may seek judicial review of such decision pursuant to chapter 35 of title 42.

12-12.1-4. Awards of compensation from the criminal royalties fund. (A) A victim, his or her guardian, or in the case of a deceased victim, his or her legal representative, within three years of the last payment to or recovery by the criminal royalties fund of monies attributable to the criminally responsible person whose portion of the fund is to be charged, may petition the court for compensation from such portion of the fund. Notice of such action shall be accorded the criminally responsible person in the manner and in the form prescribed by the court after filing of the petition. In the event that the whereabouts of such criminally responsible person are neither known nor discoverable through diligent and reasonable inquiry, such circumstances shall be made a matter of record by affidavit to the court. The criminally responsible person whose portion of the fund is to be charged shall have the right to contest any petition pursuant to this section.

(B) No award of compensation may be entered unless the court, sitting without a jury, finds that:

(1) the victim did suffer personal injury or loss of property as a result of conduct in this state in perpetration of a criminal offense by the criminally responsible person whose portion of the fund is to be charged;

(2) that the victim was not a co-conspirator with or an accessory to such criminally responsible person in the perpetration of such criminal offense;

(3) that such person whose portion of the fund is to be charged has been convicted of said criminal offense or otherwise determined to be the criminally responsible person within the meaning of this chapter; and

(4) the portion of the criminal royalties fund sought to be charged is attributable to the criminally responsible person shown to have caused the victim's personal injury.

(C) The court may award compensation:

(1) to or on behalf of the victim, or his guardian;
or

(2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person; or

(3) in the case of the death of the victim, to or for the benefit of the dependents or closest relative of the deceased victim, or any on or more of such dependents or to the legal representative of the victim.

An award of compensation shall be limited to:

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) pecuniary loss to the personally injured victim or the dependents of the deceased victim;

(3) pain and suffering of the personally injured victim;

(4) any other pecuniary loss resulting from the personal injury or death of the victim, the amount of which the court finds upon the evidence to be reasonable and necessary; and

(5) the amount of the fair market value of the lost or stolen property.

In determining the amount of an award, the court may consider any circumstances it determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death or loss of property, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend a criminally responsible person. No interest shall be included in or added to an award of compensation under this chapter. No compensation shall be awarded if the victim was at the time of the personal injury or death or loss of property of the victim living with the criminally responsible person as his wife or her husband or in other situations, when the court, at its discretion, feels unjust enrichment to or on behalf of the criminally responsible person would result. Compensation

under this chapter shall not be awarded to any victim or dependent relative or legal representative if such an award would, directly or indirectly, inure to the benefit of the criminally responsible person.

(D) Upon certification by the court, the general treasurer shall pay to the person named in the award the amount specified therein from the appropriate portion of the criminal royalties fund.

12-25.1-5. Attorneys' fees. At the conclusion of the proceedings under section 12-25.1-4, the attorney representing a claimant who has received an award of compensation shall file a statement with the court setting forth the amount of fee proposed to be charged in connection with his efforts and services rendered in such proceedings. After the fee information is filed by said attorney, the court shall determine whether such proposed fee is reasonable. If the court initially determines that the proposed fee is unreasonable, the court shall, notice to the attorney, determine the amount of a reasonable fee. Upon certification by the court to the effect that the fee has been established, the general treasurer shall pay to the attorney named in the certification the amount of the counsel fee which shall be paid from the appropriate portion of the criminal royalties fund. Any attorney who charges, demands, receives, or collects for

services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be subject to disciplinary action and other appropriate action to be taken by the supreme court of the state of Rhode Island.

12-25.1-6. Return of monies to criminally responsible person. (A) No funds attributable to a specific alleged criminally responsible person shall be distributed unless and until that person is determined to be criminally responsible as defined in this chapter. Immediately upon the dismissal of charges or the acquittal of such person for the crime which was the subject of the commercial exploitation, all funds recovered by the general treasurer attributable to such person shall be paid to him or her together with any interest which accrued thereon.

(B) Subject to the disposition of all claims and pending claims which have been brought against said funds attributable to the criminally responsible person, he or she may recover the remainder of said funds pursuant to subsection (8) of section 12-25.1-3 three years and six months following the last payment to or recovery by the general treasurer of said funds.

12-25.1-7. Statute of limitations. Notwithstanding any inconsistent provision of the general or public laws with

respect to the timely bringing of an action, all claims brought against the criminal royalties fund shall be brought within three years of accrual or three years of the last payment to or recovery by the general treasurer of funds or other compensation attributable to the criminally responsible person, whichever is later.

12-25.1-8. Public notice. The general treasurer, at least once every six months for three years from the date he receives such moneys, shall cause to have published a legal notice in a newspaper of general circulation in the state advising potential claimants that such funds are available to satisfy money judgments pursuant to this chapter. The general treasurer may, in his discretion, provide for such additional notice as he deems necessary. The expenses of such advertisements shall be charged against the appropriate portion of the fund.

12-25.1-9. Legal expenses of criminally responsible person. Notwithstanding any other provisions of this chapter, the general treasurer shall make payments from the portion of the criminal royalties fund attributable to a criminally responsible person to such person upon order of the court after a showing that such monies shall be used exclusively for the purpose of retaining legal representation at any stage of the criminal proceedings against such person with respect to the events or conduct

being the subject of the commercial exploitation giving rise to the monies paid to or recovered by the criminal royalties fund, Provided, however, That the total of all payments made pursuant to this section shall not exceed twenty percent of the total monies in the applicable portion of the criminal royalties fund.

12-25.1-10. Subterfuge. Any action taken by or on behalf of any criminally responsible person to circumvent, impede, or frustrate the purpose of this chapter shall be null and void.

12-25.1-11. Failure to comply. Every person, firm, corporation, partnership, association or other legal entity which enters into a contract within the scope of section 12-25.1-3 but fails to comply with the provisions of this chapter shall be liable to the state of Rhode Island "Criminal Royalties Fund" for double the amount which said person or entity should have paid over to the general treasurer pursuant thereto.

12-25.1-12. Severability. If any of the provisions of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable.³¹

South Carolina

Stats. at large of SC, Title 15, Chpt. 59, Art. 40

Enacted 1980

15-59-40. Escrow of certain funds of persons charged with crimes.

Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused of a crime in this State, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the clerk of court of the county in which the crime is alleged to have been committed any monies which would otherwise, by terms of such contract, be owing to the persons so convicted or his representatives. The clerk of court shall deposit such monies in an interest bearing escrow account for the benefit of and payable to any victim of crimes committed by such person, provided, that such person is eventually convicted of the crime and, provided, further, that such victim, within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his

representatives.

15-59-50. Escrow of certain funds of persons charged with crimes: publishing of legal notice.

The clerk of court, at least once every six months for five years from the date he receives such monies shall cause to have published a legal notice in newspapers of general circulation in each county of the State advising such victims that such escrow monies are available to satisfy money judgments pursuant to this section.

15-59-60. Escrow of certain funds of persons charged with crimes: disposition of escrowed funds.

Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such person pursuant to 15-59-40 to 15-59-80 the clerk of court shall immediately pay over any monies in the escrow account to such person.

15-59-70. Escrow of certain funds of persons charged with crimes: beginning of 5 year escrow period.

Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five-year period provided for in section 15-59-40 shall not begin to run until an escrow account has been established.

15-59-80. Escrow of certain funds of persons charged with crimes: action taken to defeat purpose of sections 15-59-40 to 15-59-80 shall be null and void.

Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of sections 15-59-40 to 15-59-80 shall be null and void as against the public policy of this State.³²

Tennessee

TN Code Ann., Secs. 29-13-201 to 208

Enacted 1980

29-13-201. Definitions. -- As used in this part:

- (1) "Court of competent jurisdiction" shall mean the circuit courts of the state of Tennessee;
- (2) "Victim" shall mean a person who suffers personal injury or death or a person who suffers loss of or injury to real or personal property as a direct and proximate result of any act of a person, which if committed by a mentally competent, criminally responsible adult, would constitute a crime.

29-13-202. Payment of moneys to department of revenue -- Deposit of moneys in fund -- Payment to victims of crime.

- (a) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or

the representative or assignee of any person, convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the department of revenue any moneys which would otherwise, by terms of such contract, be owing to the person so accused or his representatives.

(b) The department shall deposit such moneys in the criminal injuries compensation fund established by 40-3207, and shall earmark such moneys for the benefit of and payable to the victim of such crime (or in the case of the death of the victim, to his estate) committed by such person, provided that the victim, or the legal representative of his estate, within five years of the date of the crime, brings a claim for the payment of compensation in accordance with 29-13-108, and an order for the payment of compensation is entered on behalf of the claimant.

29-13-203. Payment of moneys to person convicted of crime. The department shall immediately pay over to the person convicted of the crime all moneys paid to such department pursuant to 29-13-202(b) upon the order of a court of competent jurisdiction:

(1) After a showing by such person that five years

have elapsed from the date such moneys were paid to the department and further that no claims for compensation pursuant to 29-13-108, relating to the crime for which such person was accused are pending; or

(2) Upon disposition of the criminal charges favorable to such person.

29-13-204. Period within which claim must be made.

Notwithstanding any inconsistent provision of law with respect to survival of civil actions, the five year period for filing a claim for the payment of compensation as provided in 29-13-202(b) shall not begin to run until all moneys have been paid over and such moneys have been earmarked in the criminal injuries compensation fund for the benefit of such victim.

29-13-205. Payment of moneys for purpose of retaining legal representation.

Notwithstanding the foregoing provisions of this part, the department shall make payments from such earmarked funds to any person convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

29-13-206. Actions taken to defeat purpose of law.

Any action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this part shall be null and void as against the public policy of this state.

29-13-207. Limitations on level of compensation.

Limitations upon the permissible level of compensation provided elsewhere in this chapter shall not apply to this part.

29-13-208. Promulgation of rules and regulations.

The department of revenue is hereby authorized to promulgate such rules and regulations as are necessary to insure the efficient and thorough performance of the duties imposed upon it by the provisions of this part and as are consistent with the provisions of this part.³³

Texas

TX Rev. Stats. Ann., Art. 8309-1, Secs. 16-18

Enacted 1979

Sec. 16. Every firm, person, corporation, association, or other legal entity that contracts with a person who is accused or convicted of a crime in this state, or the representative or assignee of that person, with respect to the reenactment of the crime in a movie, book, magazine, article, tape recording, phonograph record, radio or tele-

vision presentation, live entertainment, or from the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime shall submit a copy of the contract to the board. The terms of the contract or agreement must be submitted to the board before it can be finally executed. All money that would otherwise by terms of the contract be owing to the accused or convicted person or his representatives shall be paid to the board. The board shall deposit the money in an escrow account. Any action taken by any person, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Act is void as against public policy.

Funds available to victim

Sec. 17. Money placed in an escrow account is available to satisfy a judgment against the accused or convicted person in favor of a victim of the crime if the court in which the judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

Sec. 18. Maintenance of escrow account. The board shall pay money in an escrow account to the accused person if he is acquitted of the crime. The board shall pay the money in the account to the accused or convicted person if five years elapse from the date when the account was estab-

lished and the money has not been ordered paid to a victim in satisfaction of a judgment.³⁴

Utah

UT Code Ann., Chpt. 78-11-12.5

Enacted 1984

78-11-12.5. Proceeds received by criminals as result of crime - Delivery to state treasurer - Trust Account - Distribution to crime victims - Custody and control - Sale of real property and securities - Definitions - Accused mentally ill - Notice - Return to accused - Reimbursement for legal defense of indigent accused. (1) Every person, firm, corporation, partnership, association, or other legal entity contracting or otherwise arranging with any person accused or convicted of a crime in this state, the representative or assignee of that person, or any other person, or entity, to provide information regarding that person with respect to the reenactment or fictionalization of that crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of the person's thoughts, feelings, opinions, or emotions regarding the crime, shall pay or deliver to the state treasurer any proceeds which would otherwise, by terms of the contract or other arrangement, be owing directly or indirectly to that

person who is accused or convicted or his representatives or assignees. The state treasurer shall deposit the proceeds in a trust account for the benefit of and payable to any victim of crimes committed by that person if:

(a) the person is eventually convicted of a crime based on the facts upon which the reenactment or fictionalization is based; and

(b) the victim brings a civil action within six years of the date the trust account has been established, and recovers a money judgment against the person or representative.

(2)(a) Where more than one victim establishes a claim against the proceeds, the court shall apportion the proceeds equitably among the victims who obtain a money judgment.

(b) The court may make a partial or full distribution of the proceeds prior to the six-year statute of limitations provided in this section.

(c) At any point in the proceedings where a victim is a minor under state law, the court shall appoint a guardian ad litem to petition the court for a conservator under Part 4, Chapter 5, Title 75 to protect that minor's interest in the trust account.

(3) Proceeds deposited in the trust account shall be invested in accordance with Chapter 7, Title 51. The

state treasurer shall deposit investment income in the trust account and reinvest earnings for the account.

(4) When the compensation to the person convicted of the crime is of a nature that it cannot be placed in a trust account, the state treasurer assumes custody, title, or possession of the property for benefit of and payable to any victim of the crime. For purposes of this section, the date the state treasurer assumes custody is considered the date a trust account is established.

(a) Where the proceeds are real property, the state treasurer shall, as soon as practicable after taking title to the property, obtain at least three independent appraisals of the value of the property and then make a good faith effort to sell the property for at least the amount of the lowest appraisal. If the real property has not been sold within two years after receipt, the state treasurer shall sell it to the highest bidder at public sale and whatever city in or out of the state affords in his judgment the most "favorable" market for the property involved. He may decline the highest bid and reoffer the property for sale if in his judgment the bid is insufficient. If in his judgment the probable cost of sale exceeds the value of the property, it need not be offered for sale.

(b) Securities listed on an established stock exchange

may be sold only at prices prevailing at the time of the sale and may be sold over the counter or by any other method the state treasurer considers advisable.

(c) The purchaser of property at any sale conducted by the state treasurer pursuant to this chapter takes the property of all claims of the owner or previous holder of the property and of all persons claiming through or under them. The state treasurer shall execute all documents necessary to complete the transfer of ownership.

(5) For purposes of this section:

(a) "Victim" means a person who suffers personal, physical, mental, or emotional injury, or pecuniary loss, as a direct result of the crime or the legal representative acting on behalf of the victim.

(b) "Person convicted of a crime" includes any person convicted of a crime in this state either by entry of a plea of guilty or by conviction after trial, and any person who has voluntarily and knowingly admitted the commission of a crime for which the person is not prosecuted.

(c) "Proceeds" include property or other compensation.

(d) "Convicted person" includes a person found not guilty as a result of the defense of mental illness pursuant to Section 76-2-305.

(6) When a person accused of a crime is found unfit to proceed as a result of mental illness because the person lacks capacity to understand the proceedings against him or to assist in his own defense, the state treasurer shall bring a civil action to determine disposition of the trust account.

(7) The state treasurer, at least once every six months for six years from the date the proceeds are received, shall publish a legal notice in newspapers of general circulation in the county of the state where the crime was committed advising the victims that the proceeds are available to satisfied money judgments under this section.

(8) Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by an accused or convicted person or his estate that six years have elapsed from the establishment of the trust account and that no actions are pending against that person, the state treasurer shall immediately pay over any proceeds in the trust account to that person or his estate.

(9) Notwithstanding the foregoing provisions of this section, and upon the order of the court of competent jurisdiction, the state treasurer shall make payments to any governmental agency for reimbursement of cost expended by that entity under law for the legal defense of an indigent person accused of a crime from the proceeds which

are in the trust account and would otherwise be owing to the accused person as described in subsection (1).

(10) Any action taken by a person accused of a crime, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise to defeat the purpose of this section is void as against public policy of this state.

78-11-13. Construction of statute. This act shall not be construed to be retroactive.³⁵

Washington

Rev. Code of WA, Chpt. 219, Sec. 7.68.200

Enacted 1979

7.68.200. Payment for reenactments of crimes - Contracts - Deposits - Damages. After hearing, as provided in RCW 7.68.210, every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinion or emotions regarding such crime, shall submit a copy of

such contract to the department and pay over to the department any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives. The department shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by: (i) such convicted person; or (ii) such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives.

7.68.210. Payment may be directed based on contract. The prosecutor or the department may, at any time after the person's arraignment petition any superior court for an order, following notice and hearing, directing that any contract described in RCW 7.68.200 shall be paid in accordance with RCW 7.68.200 through 7.68.280.

7.68.220. Notice published of moneys in escrow. The department, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county wherein the crime was committed and

in counties contiguous to such county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section. For crimes committed in a city located within a county having a population of one million or more, the notice provided for in this section shall be in newspapers having general circulation in such city. The department may, in its discretion, provide for such additional notice as it deems necessary.

7.68.230. Payment to accused if charges dismissed, acquitted. Upon dismissal of charges or acquittal of any accused person, the department shall immediately pay over to such accused person the moneys in the escrow account established on behalf of such accused person.

7.68.240. Payment in no action pending. Upon a showing by any convicted person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to this act, the department shall immediately pay over any moneys in the escrow account to such person or his legal representatives.

7.68.250. Persons not guilty for mental reasons deemed convicted. For purposes of this act, a person found not guilty as a result of the defense of mental disease or defect shall be deemed to be a convicted person.

7.68.260. Time for filing action begins when escrow

account established. Notwithstanding any inconsistent provision of the civil practice and rules with respect to the timely bringing of an action, the five year period provided for in RCW 7.68.200 shall not begin to run until an escrow account has been established.

7.68.270. Escrow moneys may be used for legal representation. Notwithstanding the foregoing provisions of this act the department shall make payments from an escrow account to any person accused or convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

7.68.280. Actions to avoid law null and void. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this act shall be null and void as against the public policy of this state.³⁶

Wisconsin

WI Stats. Ann., Chpt. 949.165

Enacted 1984

949.165. Escrow accounts; moneys received as a result of

the commission of a serious crime.

(1) Definitions. In this section:

(a) "Serious crime" has the meaning designated in s. 969.08(10)(b) and includes solicitation, conspiracy or attempt to commit a serious crime.

(b) "Victim" has the meaning specified in s. 950.02(4).

(2) Payment to and establishment of escrow accounts. Every person or other legal entity contracting with any person, or the representative or assignee of any person, accused or convicted of a serious crime in this state, with respect to the reenactment of the serious crime, by a movie, book, magazine article, tape recording, phonograph record, radio or television presentation or live entertainment of any kind, or from the expression of the accused or convicted person's thoughts, feelings, opinions or emotions regarding the serious crime, shall submit a copy of the contract to the department and pay over to the department any moneys which would otherwise, by terms of the contract, be owing to the person so accused or convicted of his or her representatives. This subsection applies only if the reenactment of the serious crime constitutes a substantial portion of the movie, book, article, recording, record, presentation, entertainment or expression. The department shall deposit the moneys in an

interest-bearing escrow account for the payment of money judgments to any victim or the legal representative of any victim of serious crimes committed by:

(a) The convicted person; or

(b) The accused person, but only if the accused person is eventually convicted of the serious crime charged.

(3) Notice to potential claimants. The department, at least once every 6 months for 3 years from the date it receives the moneys, shall cause to have published a legal notice in newspapers of general circulation in the county in which the serious crime was committed advising the victims that the escrow moneys are available to satisfy money judgments under this section. The department may provide for additional notice. When the department is reasonably satisfied that all victims have received actual notice, the department may cease to provide the notice required under this subsection.

(4) Priority of payments. (a) Claims on money in an escrow account have the following priority:

1. First priority for legal representation payments under sub. (5).

2. Second priority for payments to satisfy money judgments under sub. (6).

3. Third priority for reimbursement, recoupment and restitution payments under sub. (7).

(b) The department shall make payments from escrow accounts in accordance with the priority schedule under par.

(a). The department may make payments at any time from an escrow account, except that no payment may be made for a claim if there is another existing or pending claim entitled to a higher priority.

(c) If the amount of claims for the same priority exceeds the amount of moneys available in an escrow account, the department may prorate the payments.

(5) First priority payments; legal representation. The department shall make payments from an escrow account to a person charged with a serious crime upon the order of a court of competent jurisdiction after a showing by the person that the moneys shall be used for the exclusive purpose of his or her legal representation in a criminal action or in the defense of a civil action.

(6) Second priority payments; satisfaction of money judgments. (a) The department shall make payments to victims or legal representatives of victims of serious crimes who have obtained money judgments against the accused or convicted person. The victim or legal representative of the victim shall bring a civil action and obtain a money judgment. The victim shall then file a claim with the department for payment.

(b) In the case of death of the victim, one or more

dependents may obtain a payment under this section in the same manner as a victim. If 2 or more dependents are entitled to payments under this subsection, the department shall apportion the payments among the dependents.

(c) If the state is subrogated to a cause of action under s. 949.15, the state may seek reimbursement under this subsection. If the judgment is apportioned under s. 949.15(3), the payments under this subsection shall be prorated accordingly.

(d) The victim or the legal representative of a victim shall notify the department when he or she brings an action described in par. (a), but failure to notify under this paragraph does not bar any payment from an escrow account.

(7) Third priority payments; legal fees and restitution. The department shall make payments from an escrow account for any governmental entity for the reimbursement for or recoupment of the costs of legal representation of the person charged with the serious crime or for any unpaid restitution under s. 973.09. The governmental entity shall file a claim for the applicable amount with the department.

(8) Payment to accused or convicted person. If either of the following conditions occur, the department shall pay all of the remaining moneys in an escrow account to the ac-

cused or convicted person:

(a) The charges against the person are dismissed with prejudice or the person is found not guilty of the crime charged.

(b) Three years have elapsed from the date of the establishment of the escrow account and no civil actions seeking money judgments, unsatisfied money judgments or claims under this section are pending against the defendant in this state.

(9) Interpleader. If a court determines that a person accused of a serious crime is incompetent to proceed under s. 971.14 or if the charges are dismissed without prejudice, the department shall bring an action of interpleader to determine the disposition of the escrow account.

(10) Statute of limitations. If an escrow account is established under this section, no otherwise applicable statute of limitations on the time within which a civil action may be brought bars an action by a victim of a serious crime committed by a person accused or convicted of the serious crime as to a claim resulting from the serious crime until 3 years have elapsed from the time the escrow account was established.

(11) Act to defeat purpose; void. Any act by any person, accused or convicted of a serious crime, whether by execution of a power of attorney, creation of corporate en-

tities or otherwise, to defeat the purpose of this section shall be void as against the public policy of this state.

(12) Payment is not an award. Any payment from an escrow account under this section shall not be considered an award by the department under this chapter.

(13) Applicability. This section applies only to contracts which are entered into on or after May 18, 1985.

(14) Penalty. Any person who violates sub. (2) shall be fined not more than \$500 or imprisoned not more than 30 days or both.³⁷

U.S. Statute

18 U.S.C. Secs. 3671, 3672

Enacted 1984

Sec. 3671. Order of special forfeiture.

(a) Upon the motion of the United States attorney made at any time after conviction of a defendant for an offense against the United States resulting in physical harm to an individual, and after notice to any interested party, the court shall, if the court determines that the interest of justice or an order of restitution under chapter 227 or 231 of the title so requires, order such defendant to forfeit all or any part of proceeds received or to be received by that defendant, or a transferee of that defendant, from a contract relating to a depiction of such

crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or an expression of that defendant's thoughts, opinions, or emotions regarding such crime.

(b) An order issued under subsection (a) of this section shall require that the person with whom the defendant contracts pay to the Attorney General any proceeds due the defendant under such contract.

(c)(1) Proceeds paid to the Attorney General under this section shall be retained in escrow in the Crime Victims Fund in the Treasury by the Attorney General for five years after the date of an order under this section, but during that five year period may-

(A) be levied upon to satisfy-

(i) a money judgment rendered by a United States district court in favor of a victim of an offense for which such defendant has been convicted, or a legal representative of such victim; and

(ii) a fine imposed by a court of the United States; and

(B) if ordered by the court in the interest of justice, be used to-

(i) satisfy a money judgment rendered in any court in favor of a victim of any offense for which such defendant has been convicted, or a legal representative of

such victim; and

(ii) Pay for legal representation of the defendant in matters arising from the offense for which such defendant has been convicted, but no more than 20 percent of the total proceeds may be so used.

(2) The court shall direct the disposition of all such proceeds in the possession of the Attorney General at the end of such five years and may require that all or any part of such proceeds be released from escrow and paid into the Crime Victims Fund in the Treasury.

(d) As used in this section, the term "interested party" includes the defendant and any transferee of proceeds due the defendant under the contract, the person with whom the defendant has contracted, and any person physically harmed as a result of the offense for which the defendant has been convicted.

Sec. 3672. Notice to victims of order of special forfeiture. The United States attorney shall, within thirty days after the imposition of an order under this chapter and at such other times as the Attorney General may require, publish in a newspaper of general circulation in the district in which the offense for which a defendant was convicted occurred, a notice that states-

(1) the name of, and other identifying information about, the defendant;

(2) the offense for which the defendant was convicted;
and

(3) that the court has ordered a special forfeiture of certain proceeds that may be used to satisfy a judgment obtained against the defendant by a victim of an offense for which the defendant has been convicted.³⁸

Summary

After reviewing the notoriety for profit legislation it is evident that some of the statutes are extremely detailed, covering a wide range of topics and others are exceedingly succinct employing only the minimum requirements to get the law on the books. These statutes provide a comprehensive analysis of the various provisions which have been incorporated into each of the statutes, and how these are implemented in this form of victim compensation legislation.

Notes

- ¹Code of Alabama, Sec. 41-9-84.
- ²Alaska Stats., Sec. 12.61.020.
- ³Arizona Rev. Stat. Ann. Secs. 13-4202.
- ⁴California Stats. of 1983, Chpt. 1016 (AB 2102).
- ⁵Colorado Rev. Stats., Secs. 24-4.1-201.
- ⁶PA 82-328; Connecticut Gen. Stats. Sec. 54-218.
- ⁷Delaware Code Ann. Title 11, Part 6, Chpt. 91, Sec. 9101.
- ⁸Florida Stats. Chpt. 944, Sec. 944.512.
- ⁹Georgia Ann. Code, Title 17, Chpt. 14, Art. 31.
- ¹⁰Hawaii Rev. Stats., Sec. 1, Chpt. 351, 351-81.
- ¹¹Idaho Code, Sec. 19-5301.
- ¹²Illinois Stats., Chpt. 70, Sec. 403.
- ¹³Indiana Code Ann., Sec. 16-7-3.7.
- ¹⁴Code of Iowa, Chpt. 910.15.
- ¹⁵Kansas Code Ann. 74-7319.
- ¹⁶Kentucky Rev. Stats., Sec. 346.165.
- ¹⁷Louisiana Rev. Stats., Chpt. 21-A, 1831-1839.
- ¹⁸Code of Maryland Art. 27, Sec. 764, Senate Bill 428.
- ¹⁹Massachusetts Ann. Laws, Chpt. 258(A), Sec. 8.
- ²⁰Minnesota Stats. Ann., 299B.17, Sec. 611A.68.
- ²¹Mississippi Senate Bill 2381.

- ²²Missouri Rev. Stats., Sec. 595.045.
- ²³Montana Code Ann., Sec. 53-9-104(E).
- ²⁴Nebraska Rev. Stats., Sec. 81-1835.
- ²⁵New Jersey Stats. Ann., Chpt. 317, Sec. 52:4B-28.
- ²⁶New Mexico Stats. Ann., Chpt. 321.
- ²⁷New York Exec. Law, Sec. 632-a.
- ²⁸Ohio Rev. Code Ann., Sec. 2969.02.
- ²⁹22 Oklahoma Stats., Sec. 17.
- ³⁰Pennsylvania Stats. Ann., Title 71, Sec. 180-7.18.
- ³¹Rhode Island Gen. Laws, Sec. 12-25.1-3 PL 328.
- ³²Stats. at Large of South Carolina, Title 15, Chpt. 59, Art. 40.
- ³³Tennessee Code Ann., Secs. 29-13-201 to 208.
- ³⁴Texas Rev. Stats. Ann., Art. 8309-1, Secs. 16-18.
- ³⁵Utah Code Ann., Chpt. 78-16-12.5.
- ³⁶Rev. Code of Washington, Chpt. 219, Sec. 7.68.200.
- ³⁷Wisconsin Stats. Ann., Chpt. 949.165.
- ³⁸18 U.S.C. Secs. 3671, 3672.

CHAPTER IV

Conclusion and Recommendations

Conclusion

The purpose of this study has been to provide a current, comprehensive, and detailed analysis of the existing state and federal government "notoriety for profit" statutes. In doing so, an in-depth understanding can be gained as to how "notoriety for profit legislation" has evolved and how the statutes operate within the criminal justice system.

Through an examination of the contemporary literature available on the subject, additional insight can be gained as to how the statutes are being tested and challenged in a number of court cases. Several scholarly opinions have been provided giving the pros and cons as to why the statutes are important in the administration of justice, or why they are burdensome and unconstitutional and therefore should be removed from the books.

Since 1977, when the first "notoriety for profit" statute was first enacted, a substantial number of victim compensation laws have been established. "Notoriety for profit legislation" has provided an innovative and extremely cost effective method of providing compensation to crime victims. Although the number of notorious

criminals who have profited from their crimes are relatively few, these types of laws are an important measure needed to maintain public confidence and support for a form of crime control which prevents criminals from profiting unjustly from their crimes.

An important aspect that seems to have been incorporated into the majority of the statutes is that the laws are not overly oppressive toward the offender. Most statutes allow the offender to collect the remaining escrowed funds after the victims have satisfied their claims, after five years have elapsed and when there are no claims pending, or upon their release from prison. So there is always the potential for the offender to receive a large sum of money as a result of telling his story. This encourages or allows the offender to tell his version of the criminal event and helps to minimize the moral stigma attached to retelling the story. It provides a potentially large source of income to state and federal agencies for use in victim compensation programs, which would ordinarily have to be taken out of general revenue funds.

Rothman points out that these statutes must be closely monitored to insure that they do not become punitive in nature. This would virtually eliminate any chance for the offender to tell his story, and remove a

viable source of income for victims and victim compensation programs. For the most part, these statutes are not intended to totally eliminate any financial gain on the part of the offender. The statutes comprise a very fine constitutional line and are designed to insure that justice has been served and that the victims of these crimes are compensated. These statutes, and similar laws, are an important and evolving process which are changing the manner in which victims are treated and restoring a much needed balance to our criminal justice system.

Recommendations

In order to realize the full potential of these statutes and to preclude the laws from becoming diluted through amendments, these and future statutes should be closely monitored. It is important for lawmakers not to lose sight of the reasons why "notoriety for profit" statutes were implemented in the first place and to avoid the tendency through the course of time to change these laws. In doing so, we run the risk of making the laws so cumbersome that they become administratively or economically onerous.

Another driving force which can ultimately change the complexion of the laws, or help maintain the delicate con-

stitutional balance of the current laws, are the decisions handed down through various court cases. Since "notoriety for profit" legislation is a relatively new innovation with a comparatively small number of court cases ruling on the constitutionality of the provisions of the statutes, it will be interesting to see whether or not the statutes can withstand the test of time and continue to be an important and monumental piece of legislation for the victim.

Need For Further Study

There is a need for further study of "notoriety for profit" legislation to chart the progress of current and future legislation. A particularly important question that needs further examination is how often are the statutes applied and in those cases how long does it take for the victim to receive compensation. Another important question that needs to be answered is whether, over time, these statutes have had any impact on reducing the number of published books, movies, or articles, or determine whether the numbers have actually increased. If the numbers have remained the same or have increased, this would obviously disprove the assertion that these statutes discourage the criminal from telling their story. These

and other questions in the area of victimology require further study.

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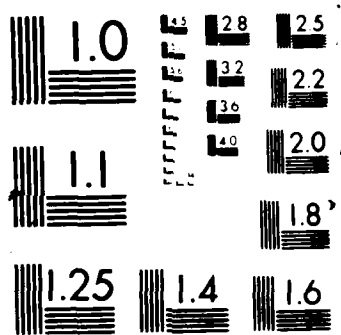
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