

HOUSE BILL REPORT

HB 1640

As Reported By House Committee On:
Judiciary

Title: An act relating to crime victims.

Brief Description: Making the property of a convicted person acquired as a result of the crime subject to seizure and forfeiture.

Sponsors: Representatives Johanson, Ballasiotes, Wineberry, Padden, Schmidt, Ludwig, Mastin, Riley, Thibaudeau, Campbell, Long, Forner, H. Myers, Brough, Vance, Jones, Foreman, Fuhrman, Schoesler, Miller, Casada, Jacobsen, Stevens, Rayburn, Kremen, Silver, Quall, Talcott, Tate, Orr, Van Luven and Anderson.

Brief History:

Reported by House Committee on:
Judiciary, March 3, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Bill Perry (786-7123).

Background: Following the so-called "Son of Sam" killings in New York in 1977, several states, including Washington, passed laws to prohibit criminals from profiting from their crimes. Typically these laws were aimed at profits that might be made by a criminal from publishing or broadcasting his or her account of the crime.

Washington's law allows money from a charged or convicted person's interest in a contract for the sale of his or her story to be placed in an escrow account for the benefit of victims. The money is to be held for five years, during which time victims may bring civil suits to recover damages from the charged or convicted person. If charges are dismissed or if the person charged is acquitted, the money

is to be returned to him or her. If after five years there are no civil actions pending for the money in the account, half of it is to be returned to the charged or convicted person, and half of it is to go to the crime victims' compensation fund.

New York's law, which is nearly identical to Washington's law, was struck down by the United States Supreme Court in the case of Simon & Schuster, Inc. v. New York State Crime Victims Board, 116 L. Ed. 2d 476 (1991). The court found that, although there is a compelling state interest in compensating victims of crime and in preventing criminals from benefiting from their crimes, the statute was not narrowly enough tailored to those ends. Because the statute imposed a content-based restriction on free speech, it could only have been upheld if it were narrowly aimed at those compelling state interests. Some members of the court also indicated that in at least one respect, the statute may actually be too narrow.

Features of the Washington law that may make it subject to the court's holding include the following:

First, the statute may be too broad because it covers any gross misdemeanor or felony, whether or not there was an identifiable victim.

Second, the statute may be too broad because it has no period of limitation.

Third, the statute may be too broad because it allows the state to take all of the proceeds of a book, movie, or other depiction, even though only a portion of the depiction deals with a crime.

Fourth, the statute may not be broad enough, because it applies only to "speech" related activities from which a criminal may profit.

In addition to this profits of crime law, there are other potential remedies that victims may seek against criminals. A civil suit by a victim or a wrongful death action by a victim's survivors may be brought. A judgment entered for the victim under such a suit could include recovery of both special damages, e.g., out-of-pocket expenses and future economic losses, and general damages, e.g., emotional harm, pain, and suffering. Also, at the time of sentencing, the court may impose victim restitution on the defendant. Restitution is limited to easily ascertainable damages for personal injury or property loss, actual expenses for medical treatment, and lost wages.

Summary of Substitute Bill: A new procedure is established for compensating the victims of crime and for preventing criminals from profiting from their crimes.

Property acquired by a convicted person as the result of his or her crime is subject to forfeiture. The prosecuting attorney in the county of conviction may seize the property. Within 15 days following seizure, the prosecuting attorney must give notice to the owner. If the owner does not respond within 90 days of the seizure, the property is deemed forfeited. If the owner responds, he or she may demand a hearing before the prosecutor or before a court of competent jurisdiction. The owner must prove his or her claim of ownership or right to possession. The prosecutor must prove that the property is subject to forfeiture.

The following limitations and conditions apply:

- o Forfeiture is available only for crimes for which there is a victim within the meaning of the Crime Victims' Compensation Act. Victims are those who suffer bodily injury or death as a proximate result of a criminal act of another person, or the victim's reasonable effort to stop a criminal act, or to apprehend a criminal suspect.
- o Forfeitures are subject to a period of limitation equal to the maximum sentence of incarceration that could have been imposed for the crime in question.
- o Forfeiture is available only to the extent the property in question was acquired as a result of the commission of the crime.
- o Forfeiture applies to any tangible or intangible property acquired as a result of the crime. The property covered includes, but is not limited to, payment for any reenactment, depiction or account of the crime and any expression of the convicted person's thoughts, feelings, opinions, or emotions regarding the crime.

The proceeds of a forfeiture are to be distributed as follows: first, to the satisfaction of any judgment or restitution owed any victim; second, to the payment of the legal expenses of bringing the action; and third, to the crime victims' compensation fund. The court may establish escrow accounts or other arrangements to carry out the distribution of proceeds.

Substitute Bill Compared to Original Bill: The substitute makes victim restitution the first priority for payment of

proceeds. The substitute also adds a number of procedural provisions similar to those found in the state's drug law forfeiture provisions.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill will prevent criminals from profiting from their crimes and will aid victims.

Testimony Against: None.

Witnesses: Mike Redman, Washington Association of Prosecuting Attorneys (pro); and Trevor Sandison, Washington Bankers Association (pro, with amendments).