

CHAPTER 1154**PROCEEDS RECEIVED BY FELONS AS RESULT OF COMMISSION OF CRIME***H.F. 2405*

AN ACT relating to proceeds received by felons as it relates to Iowa's "Son of Sam" statute.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 910.15, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

910.15 DISTRIBUTION OF MONEYS RECEIVED AS A RESULT OF THE COMMISSION OF CRIME.

1. **DEFINITIONS.** As used in this section, unless the context otherwise requires:

a. "Convicted felon" means a person initially convicted, or found not guilty by reason of insanity, of a felony committed in Iowa, either by a court or jury trial or by entry of a guilty plea in court.

b. "Escrow account" includes, but is not limited to, property in which the attorney general has assumed the powers of a receiver as provided in this section.

c. "Felony" means a felony defined by any Iowa or United States statute.

d. "Fruits of the crime" mean any profit which, were it not for the commission of the felony, would not have been realized.

e. "Proceeds" mean all of the fruits of the crime from whatever source received by or owing to a felon or the felon's representatives, 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.

f. "Representative of the convicted felon" means any person or entity receiving proceeds by designation of that convicted felon, or on behalf of that convicted felon, or in the stead of that convicted felon, whether by the felon's designation or by operation of law.

g. "Victim" means a person who has suffered physical, mental, or emotional harm or financial loss as the result of a felony committed in this state, for which the felon was convicted. The term also includes the father, mother, son, or daughter of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.

2. **DUE PROCESS HEARING — ACTION BY ATTORNEY GENERAL.**

a. The attorney general may bring an action to require all proceeds received by a convicted felon or representative of the convicted felon to be deposited in an escrow account as provided in this section.

b. The action may be brought in the county where the convicted felon resides, or the county in which the proceeds are located.

c. The action shall be preceded by notice to any interested party.

d. The court shall order that all proceeds be deposited in the escrow account until an order of disposition is made by the court pursuant to subsection 3, 4, or 5 or until the expiration of the escrow account as specified in subsection 8, if the attorney general proves both of the following:

(1) The proceeds are fruits of the crime for which the convicted felon was convicted.

(2) It is more probable than not that there are victims who may recover a money judgment against the felon for physical, mental, or emotional injury or pecuniary loss proximately caused by the convicted felon as a result of the felony for which the felon was convicted or there is an unpaid order of restitution under chapter 910 against the convicted felon for the felony for which the felon was convicted.

e. If the court orders that proceeds be deposited in an escrow account and the nature of the proceeds 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 the escrow account was established for purposes of this section.

3. **NOTICE OF ESTABLISHMENT OF ESCROW ACCOUNT.** Once an escrow account is established, the attorney general shall make reasonable efforts to notify victims and representatives of victims of the escrow account 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.

4. **PROCEEDS FOR LEGAL DEFENSE OF FELON.** 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. **PAYMENT OF ESCROW FUNDS TO VICTIMS.** The remaining proceeds in escrow may be levied upon to satisfy an order for restitution under chapter 910 or a money judgment entered against the convicted felon, by a court of competent jurisdiction, for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the felony for which the felon was convicted.

6. **PRIORITY AND PRORATION OF CLAIMS.** Proceeds distributed under subsection 3 shall have first priority, and proceeds distributed for the cost of legal defense under subsection 4 shall have second priority in the distribution of proceeds in the escrow account. If there are multiple orders for restitution and judgments by victims under subsection 5 against the convicted felon, and the remaining proceeds in the escrow account are insufficient to satisfy all of the orders for restitution and judgments, the proceeds shall be distributed on a pro rata basis based on the ratio that the amount of an order for restitution or an individual victim's judgment bears to the total amount of all restitution orders and victims' judgments against the convicted felon which have been claimed under this section.

7. **LIMITATION OF ACTION.** 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.

8. **DURATION OF ESCROW ACCOUNT.** Notwithstanding the other provisions of this section, upon a disposition of charges favorable to the person accused of committing the felony, 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 or unpaid orders for restitution or monetary judgments outstanding relating to the felony for which the felon was convicted, the attorney general shall immediately pay over any money in the escrow account to the person.

9. **PURPOSE.** The purpose of this section is to meet the following compelling state interests:

a. The state has an interest in ensuring that victims of crime are compensated by those who harm them.

b. The state has an interest in ensuring that criminals do not profit from their felonious crimes at the expense of their victims.

Approved April 27, 1992