

Regular Session, 2012

SENATE BILL NO. 565

BY SENATOR DORSEY-COLOMB

CRIME/PUNISHMENT. Prohibit death row inmate from selling items produced by him.
(gov sig)

1 AN ACT

2 To amend and reenact R.S. 15:833(A) and R.S. 46:1816(B)(6), and to enact R.S.

3 14:402(D)(10) and Chapter 21-C of Title 46 of the Louisiana Revised Statutes of

4 1950, comprised of R.S. 46:1851 through 1857, relative to prisons and offenders; to

5 provide for definitions; to provide for the creation of escrow accounts for certain

6 inmates who enter into contracts for profits derived from the notoriety gained from

7 their crimes; to provide relative to the distribution of escrow account funds to certain

8 crime victims; to provide relative to notice to crime victims of escrow account funds

9 becoming available; to provide for definitions; to provide relative to inspection of

10 certain inmate correspondence; to provide relative to the Crime Victims Reparations

11 Fund; to provide for the payment of certain inmate escrow account funds into the

12 Crime Victims Reparations Fund; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 14:402(D)(10) is hereby enacted to read as follows:

15 §402. Contraband defined; certain activities regarding contraband in penal

16 institutions prohibited; penalty; disposition of seized contraband

17 * * *

1 D. "Contraband" as used herein means:

2 * * *

3 **(10) Any sketch, painting, drawing or other pictorial rendering produced**
4 **in whole or in part by a capital offender, unless authorized by the warden of the**
5 **institution.**

6 * * *

7 Section 2. R.S. 15:833(A) is hereby amended and reenacted to read as follows:

8 §833. Inmate contact with persons outside institution; temporary release

9 A. **(1)** The secretary of the Department of Public Safety and Corrections may
10 authorize visits and correspondence under reasonable conditions between inmates
11 and approved friends, relatives, and other persons.

12 **(2) The secretary shall establish and promulgate rules, regulations, and**
13 **procedures regarding the review and inspection of all incoming and outgoing**
14 **death row inmate correspondence in order to effectuate the purposes of Chapter**
15 **21-C of Title 46 of the Louisiana Revised Statutes of 1950, and to determine**
16 **whether any contractual arrangements governed by those provisions are in**
17 **effect or being contemplated by an inmate or any other person.**

18 * * *

19 Section 3. R.S. 46:1816(B)(6) is hereby amended and reenacted, and Chapter 21-C
20 of Title 46 of the Louisiana Revised Statutes of 1950, comprised of R.S. 46:1851 through
21 1857, is hereby enacted to read as follows:

22 §1816. Crime Victims Reparations Fund; creation; sources of funds; uses

23 * * *

24 B. The fund shall be composed of:

25 * * *

26 (6) Any monies paid into the fund from a ~~criminal victim's escrow account~~
27 **defendant's escrow account**, as provided by Chapter ~~21-A~~ **21-C** of this Title.

28 * * *

29 **CHAPTER 21-C. PROFITS FROM CRIME OR NOTORIETY**

1 **§1851. Definitions**

2 **As used in this Chapter:**

3 **(1) "Account" and "escrow account" mean an escrow account in the**
4 **name of a defendant as provided for by this Chapter.**

5 **(2) "Board" means the Crime Victims Reparations Board provided for**
6 **by Chapter 21 of Title 46 of the Louisiana Revised Statutes of 1950.**

7 **(3) "Catastrophic property damage" means catastrophic property**
8 **damage as defined in Chapter 21 of Title 46 of the Louisiana Revised Statutes**
9 **of 1950.**

10 **(4) "Defendant" means an offender who has been convicted of a capital**
11 **offense and sentenced to death in accordance with the provisions of R.S. 15:567**
12 **through 571.**

13 **(5) "Minor" means a person under the age of eighteen years.**

14 **(6) "Victim" means any person who suffers death, injury, or**
15 **catastrophic property damage as a result of the defendant's crime, or any**
16 **person who is otherwise eligible to have a judgment or reparations award**
17 **satisfied from a defendant's escrow account as provided for by this Chapter, or**
18 **any legal representative thereof, but does not include any person denied**
19 **eligibility for a reparations award by Chapter 21 of Title 46 of the Louisiana**
20 **Revised Statutes of 1950.**

21 **§1852. Profits relative to criminal acts or notoriety**

22 **A.(1) Any proceeds or profits from any source, received or to be**
23 **received, directly or indirectly, by a defendant or by any agent, assignee, or**
24 **representative of the defendant, as a direct or indirect result of the defendant's**
25 **crime or sentence for such crime, or the notoriety that such crime or sentence**
26 **has conferred upon him, shall be subject to a court order requiring that such**
27 **proceeds or profits be paid over to the state treasurer for deposit in an escrow**
28 **account as provided for in this Section, if not otherwise deposited with the**
29 **treasurer as provided for in Paragraph (2) of this Subsection.**

1 (2) Every person, firm, corporation, partnership, association, or other
2 legal entity that contracts with a defendant for any purpose described in
3 Paragraph (1) of this Subsection shall file a copy of the contract with the state
4 treasurer, and shall pay over to the treasurer, commencing with the date of the
5 first payment under the contract, any funds that otherwise, by terms of the
6 contract, would be payable to the defendant or to the defendant's agent,
7 assignee, or representative. If the contracting party fails to meet the obligation
8 of payment as required by this Paragraph, then the treasurer, through the
9 attorney general, shall bring a civil action in a court of competent jurisdiction
10 to enforce payment.

11 B.(1) Any proceeds from a contract with the defendant relating to a
12 depiction or discussion of the defendant's crime in a movie, book, newspaper,
13 magazine, radio or television production, or live entertainment or publication
14 of any kind shall not be subject to court order requiring payment of such
15 proceeds to the treasurer unless an integral part of the work is a depiction or
16 discussion of the defendant's crime or an impression of the defendant's
17 thoughts, opinions, or emotions regarding such crime.

18 (2) Nothing in this Section shall be construed to prohibit or hinder the
19 return of property belonging to victims of crime to its rightful owners.

20 C.(1) Upon petition of the attorney general filed at any time after the
21 defendant is convicted and after notice to all interested parties and a hearing
22 upon the petition and a finding for the state, the court shall order that such
23 proceeds or profits as described in Subsection A of this Section be paid over to
24 the state treasurer for deposit in an escrow account in the name of the
25 defendant for the benefit of the victims of the defendant's crime.

26 (2) The petition shall be filed in the judicial district where the defendant
27 was convicted or in the judicial district in which the defendant is incarcerated.

28 (3) Upon the filing of the petition, the clerk shall issue a writ of
29 attachment or of sequestration, directing the sheriff of the parish where the

1 petition was filed to take the defendant's property into his possession and hold
2 such property subject to further proceedings in the cause. If for any reason the
3 writ is not executed, other writs may be successively issued until one is executed.
4 Concurrent writs may be directed to sheriffs of several parishes.

5 (4) Expenses and costs incurred in the proceedings shall be paid as the
6 court, in its discretion, shall determine, except that no costs shall be assessed
7 against the state.

8 D. A victim who meets the eligibility requirements and other provisions
9 of this Chapter shall be entitled, subject to the limitations contained in this
10 Chapter, to an amount from the defendant's escrow account equal to the
11 unsatisfied portion of the civil judgment or reparations award obtained by the
12 victim.

13 §1853. Distribution of escrow account funds

14 A. Proceeds paid into an escrow account provided for by this Chapter
15 shall be retained for a period of ten years after the date of the court order or
16 deposit by the contracting party, but during that period may be levied upon to
17 satisfy a money judgment or reparations award rendered in favor of a victim
18 or the legal representative of the victim of the defendant's crime.

19 B. If so ordered by a court, with notice to all interested parties and
20 opportunity for hearing, the escrow account shall be used to satisfy, and
21 disbursements made therefrom by the treasurer, in the following order:

22 (1) Court ordered restitution in favor of a victim of the defendant's
23 crime.

24 (2) A money judgment rendered by a court or an award of reparations
25 by the Crime Victims Reparations Board in favor of a victim of the defendant's
26 crime.

27 (3) Fees due for legal representation of the defendant in criminal
28 proceedings, including the appeals process, to the extent that the defendant's
29 representation was paid for by the state or an agency thereof, but such amounts

1 paid shall not exceed twenty-five percent of the total amount in escrow.

2 (4) Any fines or costs assessed against the defendant by a court.

3 C. At the end of the ten-year period provided for in Subsection A of this
4 Section, the remaining escrow account funds shall be paid into the Crime
5 Victims Reparations Fund as provided for by R.S. 46:1816. However, if a civil
6 action is pending against the defendant that would be eligible to be satisfied out
7 of the escrow account, then the funds shall be held in escrow until completion
8 of the action.

9 D. If the defendant has appealed his conviction and the appeal process
10 is not finalized by the expiration of the ten-year period provided for in
11 Subsection A of this Section, then the remaining escrow account funds shall be
12 held until the appeal process is finalized, and if the conviction is reversed, the
13 treasurer shall pay any money remaining in the escrow account to the
14 defendant.

15 §1854. Persons eligible for awards

16 A. The following persons shall be eligible to have a judgment or
17 reparations award satisfied from an escrow account provided for by this
18 Chapter:

19 (1) A victim of the defendant's crime or the parent or legal guardian of
20 a minor who is the victim of the defendant's crime.

21 (2) A surviving spouse, parent, grandparent, sibling, or child, including
22 posthumous children, of a victim who died as a direct result of the defendant's
23 crime.

24 (3) Any person, except a law-enforcement officer engaged in the
25 performance of his duties, who is injured or killed while trying to prevent the
26 defendant's crime from occurring in his presence, or trying to apprehend the
27 defendant during the course of the crime.

28 (4) A surviving spouse, parent, grandparent, sibling, or child, including
29 posthumous children, of any person, except a law-enforcement officer engaged

1 in the performance of his duties, who dies as a direct result of trying to prevent
2 the defendant's crime from occurring in his presence, or trying to apprehend
3 the defendant during the course of the crime.

4 (5) Any other person legally dependent for his principal support from the
5 victim who dies as a result of the defendant's crime, or legally dependent for his
6 principal support from any person who dies as a direct result of trying to
7 prevent the defendant's crime from occurring in his presence, or trying to
8 apprehend the defendant during the course of the crime.

9 B. A person who is criminally responsible for the crime upon which a
10 claim is based, or an accomplice or accessory of such person, shall not be
11 eligible to receive an award under the provisions of this Chapter.

12 C. A resident of Louisiana who is the victim of a defendant's crime
13 occurring outside of Louisiana and any other person as defined in Subsection
14 A of this Section who is injured as a result of a defendant's crime occurring
15 outside of Louisiana shall be eligible for an award pursuant to this Chapter if
16 the following conditions are met:

17 (1) The person would be eligible for an award had the crime occurred in
18 Louisiana.

19 (2) The state, country, or territory in which the crime occurred does not
20 have a victims' compensation program deemed eligible pursuant to the
21 provision of the federal Victims of Crime Act, Chapter 112 of Title 42 of the
22 United States Code, and does not compensate nonresidents.

23 §1855. Victim's notice of intent to file a claim

24 A. A victim of the defendant's crime shall register with the treasurer a
25 notice of intent to file a claim against the defendant's escrow account pursuant
26 to a judgment, a pending lawsuit, a prospective lawsuit, or a reparations award
27 by the board, within one year after establishment of the escrow account.

28 B. A failure to comply with the requirement of this Section shall forfeit
29 the rights of the victim to the escrow account as against other victims who have

1 filed claims, but shall not bar a claim against the escrow account filed within
 2 two years of the establishment of such account.

3 C. No payments to victims shall be made until the time limit for filing a
 4 notice has expired or it is established that all victims have filed their notices,
 5 whichever is sooner.

6 §1856. Notice to victims

7 The treasurer shall notify any person who has registered with the
 8 treasurer as a victim of the defendant's crime upon receipt of escrow funds for
 9 that defendant. Additionally, at least once every six months for two years after
 10 the date on which the treasurer receives such escrow funds, the treasurer shall
 11 cause a notice to be published in the official state journal informing victims that
 12 such escrow funds are available to satisfy judgments or reparations awards
 13 pursuant to this Chapter.

14 §1857. Actions to defeat purposes of chapter prohibited

15 Any action taken by a defendant, whether by way of execution of a power
 16 of attorney, creation of corporate entities, or otherwise, to defeat the purposes
 17 of this Chapter shall be null and void.

18 Section 4. This Act shall become effective upon signature by the governor or, if not
 19 signed by the governor, upon expiration of the time for bills to become law without signature
 20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 21 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 22 effective on the day following such approval.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy R. Wells.

DIGEST

Dorsey-Colomb (SB 565)

Proposed law prohibits persons convicted of a capital offense and sentenced to death from profiting from any notoriety gained from the commission of those crimes or the sentences imposed for those crimes.

Proposed law provides the following definitions for purposes of proposed law:

1. "Account" and "escrow account" mean an escrow account in the name of a defendant convicted of a crime of violence as provided for by proposed law.
2. "Board" means the Crime Victims Reparations Board as provided for by present law.
3. "Catastrophic property damage" means catastrophic property damage as defined in present law relative to the rights of crime victims.
4. "Defendant" means an offender who has been convicted of a capital offense and sentenced to death in accordance with present law.
5. "Minor" means a person under the age of 18 years.
6. "Victim" means any person who suffers death, injury, or catastrophic property damage as a result of the defendant's crime of violence, or any person who is otherwise eligible to have a judgment or reparations award satisfied from a defendant's escrow account as provided for by proposed law, or any legal representative thereof, but does not include any person denied eligibility for a reparations award by present law relative to the rights of crime victims.

Proposed law adds to the definition of "contraband" in present law any sketch, pointing, drawing, or other pictorial rendering produced in whole or in part by a capital offender, unless authorized by the warden.

Proposed law provides that any proceeds or profits from any source, received or to be received, directly or indirectly, by a defendant or by any agent, assignee, or representative of the defendant, as a direct or indirect result of the defendant's crime or sentence for such crime, or the notoriety that such crime or sentence has conferred upon him, are subject to a court order requiring that such proceeds or profits be paid over to the state treasurer for deposit in an escrow account as provided for in proposed law if not otherwise deposited with the treasurer as provided by other provisions of proposed law.

Proposed law provides that every person, firm, corporation, partnership, association, or other legal entity that contracts with a defendant for any purpose described in proposed law must file a copy of the contract with the state treasurer, and pay over to the treasurer, commencing with the date of the first payment under the contract, any funds that otherwise, by terms of the contract, would be payable to the defendant or to the defendant's agent, assignee, or representative. Proposed law further provides that if the contracting party fails to meet the obligation of payment as required by proposed law, then the treasurer, through the attorney general, is to bring a civil action in a court of competent jurisdiction to enforce payment.

Proposed law provides that any proceeds from a contract with the defendant relating to a depiction or discussion of the defendant's crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment or publication of any kind are not subject to court order requiring payment of such proceeds to the treasurer unless an integral part of the work is a depiction or discussion of the defendant's crime or an impression of the defendant's thoughts, opinions, or emotions regarding such crime.

Proposed law provides that nothing in proposed law is to be construed to prohibit or hinder the return of property belonging to crime victims to its rightful owners.

Proposed law provides that upon petition of the attorney general filed at any time after the defendant is convicted and after notice to all interested parties and a hearing upon the petition and a finding for the state, the court is to order that such proceeds or profits as described in proposed law be paid over to the state treasurer for deposit in an escrow account in the name of the defendant for the benefit of the victims of the defendant's crime.

Proposed law provides that the petition is to be filed in the judicial district where the

defendant was convicted or in the judicial district in which the defendant is incarcerated. Proposed law provides that upon the filing of the petition, the clerk is to issue a writ of attachment or of sequestration, directing the sheriff of the parish where the petition was filed to take the defendant's property into his possession and hold such property subject to further proceedings in the cause. Proposed law further provides that if for any reason the writ is not executed, other writs may be successively issued until one is executed, and concurrent writs may be directed to sheriffs of several parishes. Proposed law provides that expenses and costs incurred in the proceedings are to be paid as the court, in its discretion, determines, except that no costs can be assessed against the state.

Proposed law provides that a victim who meets the eligibility requirements and other provisions of proposed law is entitled, subject to the limitations contained in proposed law, to an amount from the defendant's escrow account equal to the unsatisfied portion of the civil judgment or reparations award obtained by the victim.

Proposed law provides that proceeds paid into a defendant's escrow account are to be retained for a period of 10 years after the date of the court order or deposit by the contracting party, but during that period may be levied upon to satisfy a money judgment or reparations award rendered in favor of a victim or the legal representative of the victim of the defendant's crime. Proposed law further provides that, if so ordered by a court, with notice to all interested parties and opportunity for hearing, the escrow account is to be used to satisfy the following, in the following order:

1. Court ordered restitution in favor of a victim of the defendant's crime.
2. A money judgment rendered by a court or an award of reparations by the Crime Victims Reparations Board in favor of a victim of the defendant's crime.
3. Fees due for legal representation of the defendant in criminal proceedings, including the appeals process, to the extent that the defendant's representation was paid for by the state or an agency thereof, but such amounts paid cannot exceed 25% of the total amount in escrow.
4. Any fines or costs assessed against the defendant by a court.

Proposed law provides that at the end of the 10-year period provided for in proposed law, the remaining escrow account funds are to be paid into the Crime Victims Reparations Fund; however, if a civil action is pending against the defendant that would be eligible to be satisfied out of the escrow account, then the funds are to be held in escrow until completion of the action.

Proposed law provides that if the defendant has appealed his conviction and the appeal process is not finalized by the expiration of the 10-year period, then the remaining escrow account funds are to be held until the appeal process is finalized, and if the conviction is reversed, the treasurer is to pay any money remaining in the escrow account to the defendant.

Proposed law provides that the following persons are eligible to have a judgment or reparations award satisfied from an escrow account provided for by proposed law:

1. A victim of the respective defendant's crime or the parent or legal guardian of a minor who is the victim of such defendant's crime.
2. A surviving spouse, parent, grandparent, sibling, or child, including posthumous children, of a victim of a defendant's crime who died as a direct result of such crime.
3. Any person, except a law-enforcement officer engaged in the performance of his duties, who is injured or killed while trying to prevent the defendant's crime from

occurring in his presence, or trying to apprehend the defendant during the course of his crime.

4. A surviving spouse, parent, grandparent, sibling, or child, including posthumous children, of any person, except a law-enforcement officer engaged in the performance of his duties, who dies as a direct result of trying to prevent defendant's crime or trying to apprehend the defendant during the course of the crime.
5. Any other person legally dependent for his principal support from the victim of the defendant's crime and who dies as a result of such crime, or legally dependent for his principal support upon any person who dies as a direct result of trying to prevent the defendant's crime from occurring in his presence, or trying to apprehend the defendant during the course of the crime.

Proposed law provides that a person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, is not eligible to receive an award under the provisions of proposed law.

Proposed law provides that a resident of Louisiana who is the victim of a defendant's crime which occurred outside of Louisiana and any other person who is injured as a result of a crime occurring outside of Louisiana is eligible for an award pursuant to proposed law if the following conditions are met:

1. The person would be eligible for an award had the crime occurred in Louisiana.
2. The state, country, or territory in which the crime occurred does not have a victims' compensation program deemed eligible pursuant to the provision of the federal Victims of Crime Act and does not compensate nonresidents.

Proposed law provides that a victim of the defendant's crime is to register with the treasurer a notice of intent to file a claim against the defendant's escrow account pursuant to a judgment, a pending lawsuit, a prospective lawsuit, or a reparations award by the board, within one year after establishment of the escrow account. Proposed law further provides that a victim's failure to comply with this requirement forfeits the victim's rights to the escrow account as against other victims who have filed claims, but does not bar a claim against the escrow account filed within two years of the establishment of such account.

Proposed law provides that no payments to victims can be made until the time limit for filing a notice has expired or it is established that all victims have filed their notices, whichever is sooner.

Proposed law provides that the treasurer is to notify any person who has registered with the treasurer as a victim of the defendant's crime upon receipt of escrow funds for that defendant, and at least once every six months for two years after the date on which the treasurer receives such escrow funds, the treasurer is to publish a notice in the official state journal informing victims that such escrow funds are available to satisfy judgments or reparations awards.

Proposed law provides that any action taken by a defendant, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purposes of proposed law is null and void.

Present law provides that the secretary of the Dept. Public Safety and Corrections may authorize visits and correspondence under reasonable conditions between inmates and approved friends, relatives, and other persons.

Proposed law retains present law and adds that the secretary is to establish and promulgate rules, regulations, and procedures regarding the review and inspection of all incoming and

outgoing inmate correspondence in order to effectuate the purposes of proposed law and to determine whether any contractual arrangements governed by the provisions of proposed law are in effect or being contemplated by an inmate or any other person.

Present law provides for the creation and composition of the Crime Victims Reparations Fund, including funds from the Crime Victim's Escrow Account law, which previously has been repealed.

Proposed law deletes the reference in present law to the Crime Victim's Escrow Account, and further provides that in addition to the other sources provided for by present law, the Crime Victims Reparations Fund is to be composed of any monies paid into the fund pursuant to proposed law.

Proposed law adds to the definition of "contraband" in present law any sketch, painting, drawing, or other pictorial rendering produced in whole or in part by a capital offender, unless authorized by the warden.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 15:833(A) and R.S. 46:1816(B)(6); adds R.S. 14:402(D)(10), R.S. 46:1851-1857)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Changes scope of legislation from a person convicted of a crime of violence to person who has been convicted of a capital offense and sentenced to death in accordance with law.
2. Deletes the definition of crime.
3. Changes the definition of defendant.

Senate Floor Amendments to engrossed bill

1. Adds contraband definition.