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HOUSE BILL 665

Committee Substitute Favorable 6/25/97

Committee Substitute #2 Favorable 7/10/97

Committee Substitute #3 Favorable 6/18/98

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A SENTENCE OF DEATH, AND TO REQUIRE A JUDGE PRESIDING IN A CAPITAL TRIAL TO INSTRUCT THE SENTENCING JURY REGARDING THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT PAROLE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new Subchapter to read:

“SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS."ARTICLE 101."CRIME VICTIMS' RIGHTS ACT."§ 15A-2010. Definitions.

(a) The following definitions apply in this Article:

(1) Accused. – A person who has been arrested and charged with committing a crime covered by this Article.

(2) Law enforcement agency. – Law enforcement agency includes the following:

a. Arresting law enforcement agency. – The law enforcement agency that makes the arrest of an accused.

b. Custodial agency. – The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, or the Department of Correction.

c. Investigating law enforcement agency. – The law enforcement agency with primary responsibility for investigating the crime committed against the victim.

(3) Next of kin. – The victim's spouse, children, parents, siblings, or grandparents. The term does not include the accused unless the charges are dismissed or the person is found not guilty.

(4) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.

e. A Class I felony if it is a violation of one of the following: G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

(b) If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article, except for the rights contained in G.S. 15A-2014. An individual entitled to exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

"§ 15A-2011. Responsibilities of law enforcement agency.

1 (a) As soon as practicable but within 72 hours after identifying a victim covered
2 by this Article, the investigating law enforcement agency shall provide the victim with
3 the following information:

4 (1) The availability of medical services, if needed.

5 (2) The availability of crime victims' compensation funds under Chapter
6 15B of the General Statutes and the address and telephone number of
7 the agency responsible for dispensing the funds.

8 (3) The address and telephone number of the district attorney's office that
9 will be responsible for prosecuting the victim's case.

10 (4) The name and telephone number of an investigating law enforcement
11 agency employee whom the victim may contact if the victim has not
12 been notified of an arrest in the victim's case within six months after the
13 crime was reported to the law enforcement agency.

14 (5) Information about an accused's opportunity for pretrial release.

15 (6) The name and telephone number of an investigating law enforcement
16 agency employee whom the victim may contact to find out whether the
17 accused has been released from custody.

18 The investigating law enforcement agency shall also be available to provide victims
19 with more direct assistance in understanding the criminal justice process and the scope of
20 victims' services available to assist them. The investigating law enforcement agency
21 shall assist a victim in obtaining any of those services upon the request of the victim.

22 (b) As soon as practicable but within 72 hours after receiving notification from the
23 arresting law enforcement agency that the accused has been arrested, the investigating
24 law enforcement agency shall forward to the district attorney's office that will be
25 responsible for prosecuting the case the victim's name, address, date of birth, social
26 security number, race, sex, and telephone number, unless the victim refuses to disclose
27 any or all of the information, in which case, the investigating law enforcement agency
28 shall so inform the district attorney's office.

29 (c) Upon receiving the information in subsection (a) of this section, the victim
30 shall, on a form provided by the investigating law enforcement agency, indicate whether
31 the victim wishes to receive any further notices from the investigating law enforcement
32 agency. If the victim elects to receive further notices, the victim shall be responsible for
33 notifying the investigating law enforcement agency of any changes in the victim's name,
34 address, and telephone number.

35 (d) As soon as practicable but within 72 hours after the arrest of a person believed
36 to have committed a crime covered by this Article, the arresting law enforcement agency
37 shall inform the investigating law enforcement agency of the arrest. As soon as
38 practicable but within 72 hours of being notified of the arrest, the investigating law
39 enforcement agency shall notify the victim of the arrest.

40 **"§ 15A-2012. Responsibilities of the district attorney's office.**

41 (a) Within 21 days after the arrest of the accused, but not less than 24 hours before
42 the accused's first scheduled probable cause hearing, the district attorney's office shall

1 provide to the victim a pamphlet or other written material that explains in a clear and
2 concise manner the following:

- 3 (1) The victim's rights under this Article, including the right to confer with
4 the attorney prosecuting the case about the disposition of the case and
5 the right to provide a victim impact statement.
- 6 (2) The responsibilities of the district attorney's office under this Article.
- 7 (3) The victim's eligibility for compensation under the Crime Victims'
8 Compensation Act and the deadlines by which the victim must file a
9 claim for compensation.
- 10 (4) The steps generally taken by the district attorney's office when
11 prosecuting a felony case.
- 12 (5) Suggestions on what the victim should do if threatened or intimidated
13 by the accused or someone acting on the accused's behalf.
- 14 (6) The name and telephone number of a victim and witness assistant in the
15 district attorney's office whom the victim may contact for further
16 information.

17 (b) Upon receiving the information in subsection (a) of this section, the victim
18 shall, on a form provided by the district attorney's office, indicate whether the victim
19 wishes to receive notices of some, all, or none of the trial and posttrial proceedings
20 involving the accused. If the victim elects to receive notices, the victim shall be
21 responsible for notifying the district attorney's office or any other department or agency
22 that has a responsibility under this Article of any changes in the victim's address and
23 telephone number. The victim may alter the request for notification at any time by
24 notifying the district attorney's office and completing the form provided by the district
25 attorney's office.

26 (c) The district attorney's office shall notify a victim of the date, time, and place of
27 all trial court proceedings of the type which the victim has elected to receive notice. All
28 notices required to be given by the district attorney's office shall be given in a manner
29 that is reasonably calculated to be received by the victim prior to the date of the court
30 proceeding.

31 (d) Whenever practical, the district attorney's office shall provide a secure waiting
32 area during court proceedings that does not place the victim in close proximity to the
33 defendant or the defendant's family.

34 (e) When the victim is to be called as a witness in a court proceeding, the court
35 shall make every effort to permit the fullest attendance possible by the victim in the
36 proceedings.

37 (f) Prior to the disposition of the case, the district attorney's office shall offer the
38 victim the opportunity to consult with the prosecuting attorney to obtain the views of the
39 victim about the disposition of the case, including the victim's views about dismissal, plea
40 or negotiations, sentencing, and any pretrial diversion programs.

41 (g) At the sentencing hearing, the prosecuting attorney shall submit to the court a
42 copy of a form containing the identifying information set forth in G.S. 15A-2011(b)
43 about any victim electing to receive further notices under this Article. The form shall be

1 included with the final judgment and commitment transmitted to the Department of
2 Correction or other agency receiving custody of the defendant and shall be maintained by
3 the custodial agency as a confidential file.

4 **"§ 15A-2013. Evidence of victim impact.**

5 (a) A victim has the right to offer evidence of the impact of the crime, which shall
6 be considered by the court or jury, as the case may be, in sentencing the defendant. The
7 evidence may include the following:

8 (1) A description of the nature and extent of any physical, psychological, or
9 emotional injury suffered by the victim as a result of the offense
10 committed by the defendant.

11 (2) An explanation of any economic or property loss suffered by the victim
12 as a result of the offense committed by the defendant.

13 (3) A request for restitution and an indication of whether the victim has
14 applied for or received compensation under the Crime Victims'
15 Compensation Act.

16 (b) No victim shall be required to offer evidence of the impact of the crime. No
17 inference or conclusion shall be drawn from a victim's decision not to offer evidence of
18 the impact of the crime.

19 **"§ 15A-2014. Restitution.**

20 (a) Upon conviction of the defendant or upon a plea of guilty, the court shall, in
21 addition to any penalty authorized by law, require that the defendant make restitution to a
22 victim or the victim's estate for any injuries or damages arising out of the offense
23 committed by the defendant. In determining the amount of restitution, the court shall
24 consider the following:

25 (1) The cost of any medical or other professional services and devices or
26 equipment required by the victim.

27 (2) The cost of physical therapy, occupational therapy, and rehabilitation
28 required by the victim.

29 (3) Any income loss, after taxes, suffered by the victim.

30 (4) The cost of any psychological or medical treatment for the victim's next
31 of kin.

32 (5) The cost of the victim's funeral and any related services.

33 (6) Any other injuries or damages arising out of the offense committed by
34 the defendant.

35 (b) The court may require that the victim or the victim's estate provide evidence
36 that documents the costs claimed by the victim or the victim's estate under this section.
37 Any such documentation shall be shared with the defendant before the sentencing
38 hearing.

39 (c) In determining the amount of restitution to be made, the court shall take into
40 consideration the resources of the defendant including all real and personal property
41 owned by the defendant and the income derived from the property, the defendant's ability
42 to earn, the defendant's obligation to support dependents, and any other matters that
43 pertain to the defendant's ability to make restitution, but the court is not required to make

1 findings of fact or conclusions of law on these matters. The amount of restitution must
2 be limited to that supported by the record, and the court may order partial restitution
3 when it appears that the damage or loss caused by the offense is greater than that which
4 the defendant is able to pay.

5 (d) An order providing for restitution does not abridge the right of a victim or the
6 victim's estate to bring a civil action against the defendant for damages arising out of the
7 offense committed by the defendant.

8 (e) The court may order the defendant to make restitution to a person other than
9 the victim, or to any organization, corporation, or association, including the Crime
10 Victims' Compensation Fund that provided assistance to the victim following the
11 commission of the offense by the defendant. Restitution shall be made to the victim or
12 the victim's estate before it is made to any other person, organization, corporation, or
13 association.

14 (f) The court may require the defendant to make full restitution no later than a
15 certain date or, if the circumstances warrant, may allow the defendant to make restitution
16 in installments over a specified time period.

17 (g) If the defendant is placed on probation or post-release supervision, any
18 restitution ordered under this Article shall be a condition of probation or post-release
19 supervision.

20 (h) If the court orders partial restitution, the court shall state on the record the
21 reasons for such an order.

22 **"§ 15A-2015. Enforcement of order for restitution.**

23 (a) An order for restitution under this Article may be enforced in the same manner
24 as a civil judgment, subject to the provisions of this section.

25 (b) The order for restitution under this Article shall be docketed and indexed in the
26 county of the original conviction in the same manner as a civil judgment. The order for
27 restitution may be collected in the same manner as a civil judgment unless the order to
28 pay restitution is a condition of probation. If the order to pay restitution is a condition of
29 probation, the judgment may only be collected in accordance with subsection (c) of this
30 section.

31 (c) If the defendant is ordered to pay restitution as a condition of probation, the
32 docketed judgment may not be collected until the date of notification to the clerk of
33 superior court in the county of the original conviction that the judge presiding at the
34 probation termination or revocation hearing has made a finding that restitution in a sum
35 certain remains due and payable, that the defendant's probation has been terminated or
36 revoked, and that the remaining balance of restitution owing may be collected by
37 execution on the judgment. The clerk shall then enter upon the judgment docket the
38 amount that remains due and payable on the judgment, together with amounts equal to
39 the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall
40 notify the victim by first-class mail at the victim's last known address that the judgment
41 may be executed upon, together with the amount of the judgment. Until the clerk
42 receives notification of termination or revocation of probation and the amount that
43 remains due and payable on the order of restitution, the clerk shall not be required to

1 update the judgment docket to reflect partial payments on the order of restitution as a
2 condition of probation.

3 (d) An appeal of the conviction upon which the order of restitution is based shall
4 stay execution on the judgment until the appeal is completed. If the conviction is
5 overturned, the judgment shall be removed from the judgment docket.

6 **"§ 15A-2016. Posttrial responsibilities.**

7 (a) Within 30 days after the final proceeding of the trial phase of the case, the
8 district attorney's office shall notify the victim, in writing, of:

9 (1) The final disposition of the case.

10 (2) The crimes of which the defendant was convicted.

11 (3) The defendant's right to appeal, if any.

12 (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the
13 Supreme Court, the district attorney's office shall forward to the Attorney General's office
14 the victim's name, address, and telephone number. Upon receipt of this information, and
15 thereafter as the circumstances require, the Attorney General's office shall provide the
16 victim with the following:

17 (1) A clear and concise explanation of how the appellate process works,
18 including information about possible actions that may be taken by the
19 appellate court.

20 (2) Notice of the date, time, and place of any appellate proceedings
21 involving the defendant. Notice shall be given in a manner that is
22 reasonably calculated to be received by the victim prior to the date of
23 the proceedings.

24 (3) The final disposition of an appeal.

25 (c) If the defendant has been released on bail pending the outcome of the appeal,
26 the agency that has custody of the defendant shall notify the investigating law
27 enforcement agency, and the investigating law enforcement agency shall notify the victim
28 that the defendant has been released.

29 (d) If the defendant's conviction is overturned, and the district attorney's office
30 decides to retry the case or the case is remanded to superior court for a new trial, the
31 victim shall be entitled to the same rights under this Article as if the first trial did not take
32 place.

33 (e) The Conference of District Attorneys shall maintain a repository relating to
34 victims' identities, addresses, and other appropriate information for use by agencies
35 charged with responsibilities under this Article.

36 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

37 The Department of Correction shall notify the victim of:

38 (1) The projected date by which the defendant can be released from
39 custody. The calculation of the release date shall be as exact as
40 possible, including earned time and disciplinary credits if the sentence
41 of imprisonment exceeds 90 days.

42 (2) An inmate's assignment to a minimum custody unit and the address of
43 the unit. This notification shall include notice that the inmate's

1 minimum custody status may lead to the inmate's participation in one or
2 more community-based programs such as work release or supervised
3 leaves in the community.

4 (3) The victim's right to submit any concerns to the agency with custody
5 and the procedure for submitting such concerns.

6 (4) The defendant's escape from custody.

7 (5) The defendant's capture.

8 (6) The date the defendant is scheduled to be released from the facility.
9 Whenever practical, notice shall be given 60 days before release.

10 (7) The defendant's death.

11 **"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.**

12 The Division of Adult Probation and Parole shall notify the victim of:

13 (1) The defendant's regular conditions of probation or post-release
14 supervision, special or added conditions, supervision requirements, and
15 any subsequent changes.

16 (2) The date of a hearing to determine whether the defendant's supervision
17 should be revoked, continued with or without modifications, or
18 terminated.

19 (3) The final disposition of any hearing referred to in subdivision (2) of
20 this section.

21 (4) Any restitution modification.

22 (5) The defendant's movement into or out of any intermediate sanction as
23 defined in G.S. 15A-1340.11(6).

24 (6) The defendant absconding supervision.

25 (7) The capture of a defendant described in subdivision (6) of this section.

26 (8) The date when the defendant is terminated or discharged.

27 (9) The defendant's death.

28 **"§ 15A-2019. Notice of commuted sentence or pardon.**

29 The Governor's Clemency Office shall notify a victim when it is considering
30 commuting the defendant's sentence or pardoning the defendant. The Governor's
31 Clemency Office shall also give notice that the victim has the right to present a written
32 statement to be considered by the Office before the defendant's sentence is commuted or
33 the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its
34 decision. Notice shall be given in a manner that is reasonably calculated to allow for a
35 timely response to the commutation or pardon decision.

36 **"§ 15A-2020. No money damages.**

37 This Article does not create a claim for damages against the State, a county, or a
38 municipality, or any of its agencies, instrumentalities, officers, or employees.

39 **"§ 15A-2021. No ground for relief.**

40 The failure or inability of any person to provide a right or service under this Article
41 may not be used by a defendant in a criminal case, by an inmate, or by any other accused
42 as a ground for relief in any criminal or civil proceeding.

43 **"§ 15A-2022. Incompetent victim's rights exercised.**

1 When a victim is rendered mentally or physically incompetent or when the victim is a
2 minor, the victim's rights under this Article, other than the rights provided by G.S. 15A-
3 2014 and G.S. 15A-2015, may be exercised by the victim's next of kin."

4 Section 1.1. If the General Assembly appropriates funds for State grants to
5 local and State law enforcement to implement the provisions of this act, the Department
6 of Crime Control and Public Safety shall establish criteria for the allocation of these State
7 grants. These criteria shall include a requirement that the requesting law enforcement
8 agency document services and man-hours that directly relate to the provisions of this act.
9 The criteria shall also require documentation that the requesting law enforcement agency
10 is not receiving funding from any other source for that specific service. The Department
11 of Crime Control and Public Safety shall report quarterly to the Chairs of the House and
12 Senate Appropriations Committees and the Chairs of the House and Senate
13 Appropriations Subcommittees on Justice and Public Safety on the development of the
14 grant program and allocation of funding.

15 Section 2. The provisions of Article 45 of Subchapter VIII of Chapter 15A of
16 the General Statutes are supplemental to the provisions of Article 101 of Subchapter XVI
17 of Chapter 15A of the General Statutes as enacted in Section 1 of this act. If there is any
18 conflict between the provisions of Article 45 and Article 101, the provisions of Article
19 101 shall control.

20 Section 2.1. G.S. 1C-1601(e) reads as rewritten:

21 "(e) Exceptions. – The exemptions provided in this Article are inapplicable to
22 claims

- 23 (1) Of the United States or its agencies as provided by federal law;
- 24 (2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary
25 bonds;
- 26 (3) Of lien by a laborer for work done and performed for the person
27 claiming the exemption, but only as to the specific property affected;
- 28 (4) Of lien by a mechanic for work done on the premises, but only as to the
29 specific property affected;
- 30 (5) For payment of obligations contracted for the purchase of the specific
31 real property affected;
- 32 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6;
- 33 (7) For contractual security interests in the specific property affected;
34 provided, that the exemptions shall apply to the debtor's household
35 goods notwithstanding any contract for a nonpossessory, nonpurchase
36 money security interest in any such goods;
- 37 (8) For statutory liens, on the specific property affected, other than judicial
38 liens;
- 39 (9) For child support, alimony or distributive award order pursuant to
40 Chapter 50 of the General Statutes–Statutes;
- 41 (10) For criminal restitution orders docketed as civil judgments pursuant to
42 G.S. 15A-2015."

43 Section 2.2. G.S. 7A-304(d) reads as rewritten:

1 "(d) In any criminal case in which the liability for costs, fines, restitution, or any
2 other lawful charge has been finally determined, the clerk of superior court shall, unless
3 otherwise ordered by the presiding judge, disburse such funds when paid in accordance
4 with the following priorities:

5 (1) Sums in restitution prorated among the persons entitled thereto;

6 ~~(2)~~ Costs due the county;

7 ~~(2)~~(3) Costs due the city;

8 ~~(3)~~(4) Fines to the county school fund;

9 ~~(4)~~ Sums in restitution prorated among the persons entitled thereto;

10 (5) Costs due the State;

11 (6) Attorney's fees.

12 Sums in restitution received by the clerk of superior court shall be disbursed when:

13 (1) Complete restitution has been received; or

14 (2) When, in the opinion of the clerk, additional payments in restitution will
15 not be collected; or

16 (3) Upon the request of the person or persons entitled thereto; and

17 (4) In any event, at least once each calendar year."

18 Section 2.3. Article 45 of Subchapter VIII of Chapter 15A of the General
19 Statutes is amended by adding a new section to read:

20 "**§ 15A-828. Assistance to victims of domestic violence.**

21 In the allocation of resources to persons the district attorney determines are victims of
22 serious misdemeanors, the district attorney shall, to the extent possible, provide the
23 services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could
24 involve the infliction of serious bodily injury."

25 Section 3. The Department of Crime Control and Public Safety shall establish
26 a pilot program to integrate the Justice Wide Area Network (JWAN) with the proposed
27 Victim Information and Notification Everyday (VINE) automated victim notification
28 system. The pilot program shall include the development of a software application that
29 can be implemented statewide to integrate the VINE system with other criminal justice
30 networks. The Department shall report to the Chairs of the Joint Legislative Correction
31 and Crime Control Oversight Committee and the Chairs of the Senate and House
32 Appropriations Subcommittees on Justice and Public Safety by April 1, 1999, on the
33 progress of the pilot program.

34 Section 4. Funds appropriated to the Judicial Department may not be used to
35 contract for the services of jury consultants in criminal cases where the defendant has
36 been assigned counsel by the court.

37 Section 5. The General Assembly requests the North Carolina Supreme Court
38 to consider and adopt rules to expedite appeals from all cases in which the defendant is
39 convicted of murder in the first degree and the judgment of the superior court includes a
40 sentence of death.

41 Section 6. G.S. 15A-2002 reads as rewritten:

42 "**§ 15A-2002. Capital offenses; jury verdict and sentence.**

1 (a) If the recommendation of the jury is that the defendant be sentenced to death,
2 the judge shall impose a sentence of death in accordance with the provisions of Chapter
3 15, Article 19 of the General Statutes. If the recommendation of the jury is that the
4 defendant be imprisoned for life in the State's prison, the judge shall impose a sentence of
5 imprisonment for life in the State's prison, without parole.

6 (b) The judge shall instruct the jury, in words substantially equivalent to those of
7 this section, that a sentence of life imprisonment means a sentence of life without parole.

8 (c) The judge shall instruct the jury about the review of sentences of life
9 imprisonment without parole in words substantially equivalent to those of G.S. 15A-
10 1380.5."

11 Section 7. G.S. 15A-2000 is amended by adding a new subsection to read:

12 "(d1) Argument by District Attorney. – The district attorney may inform the jury in
13 the closing argument about the review of sentences of life imprisonment without parole
14 in words substantially equivalent to those of G.S. 15A-1380.5."

15 Section 8. The provisions of this act are severable. If any provision of this act
16 is held invalid by a court of competent jurisdiction, the invalidity does not affect other
17 provisions of the act that can be given effect without the invalid provision.

18 Section 9. Sections 1.1, 2.3, 5, and this section of this act are effective when
19 they become law. Section 4 of this act becomes effective July 1, 1998. Sections 6 and 7
20 of this act become effective December 1, 1998, and apply to capital sentencing hearings
21 or rehearings begun on or after that date. The remainder of this act becomes effective
22 October 1, 1998.