

104TH CONGRESS
1ST SESSION

S. 1504

To control crime by mandatory victim restitution.

IN THE SENATE OF THE UNITED STATES

DECEMBER 22, 1995

Mr. ABRAHAM introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To control crime by mandatory victim restitution.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Victims Restitution
5 Enforcement Act of 1995”.

6 **SEC. 2. PROCEDURE FOR ISSUANCE AND ENFORCEMENT**
7 **OF RESTITUTION ORDER.**

8 (a) IN GENERAL.—Section 3664 of title 18, United
9 States Code, is amended to read as follows:

1 **“§ 3664. Procedure for issuance and enforcement of**
2 **order of restitution**

3 “(a) For orders of restitution under this title, the
4 court shall order the probation service of the court to ob-
5 tain and include in its presentence report, or in a separate
6 report, as the court directs, information sufficient for the
7 court to exercise its discretion in fashioning a restitution
8 order. The report shall include, to the extent practicable,
9 a complete accounting of the losses to each victim, any
10 restitution owed pursuant to a plea agreement, and infor-
11 mation relating to the economic circumstances of each de-
12 fendant. If the number or identity of victims cannot be
13 reasonably ascertained, or other circumstances exist that
14 make this requirement clearly impracticable, the probation
15 service shall so inform the court.

16 “(b) The court shall disclose to both the defendant
17 and the attorney for the Government all portions of the
18 presentence or other report pertaining to the matters de-
19 scribed in subsection (a) of this section.

20 “(c) The provisions of this chapter, chapter 227, and
21 Rule 32(c) of the Federal Rules of Criminal Procedure
22 shall be the only rules applicable to proceedings under this
23 section.

24 “(d)(1)(A) Upon application of the United States, the
25 court may enter a restraining order or injunction, require
26 the execution of a satisfactory performance bond, or take

1 any other action to preserve the availability of property
2 or assets necessary to satisfy a criminal restitution order
3 under this subchapter. Such order may be entered in the
4 following circumstances:

5 “(i) Prior to the filing of an indictment or in-
6 formation charging an offense that may result in a
7 criminal restitution order, and upon the United
8 States showing that—

9 “(I) there is a substantial probability that
10 the United States will obtain a criminal restitu-
11 tion order;

12 “(II) the defendant has or is likely to take
13 action to dissipate or hide the defendant’s prop-
14 erty or assets; and

15 “(III) the need to preserve the availability
16 of the property or assets through the requested
17 order outweighs the hardship of any party
18 against whom the order is entered.

19 “(ii) Upon the filing of an indictment or infor-
20 mation charging an offense that may result in a
21 criminal restitution order, and upon the United
22 States showing that the defendant has or is likely to
23 take action to dissipate or hide the defendant’s prop-
24 erty or assets.

1 “(iii) Upon the conviction, or entry of a guilty
2 plea, to an indictment or information charging an
3 offense that may result in a criminal restitution
4 order, and upon the United States showing that the
5 defendant may take action to dissipate or hide the
6 defendant’s property or assets or that an order is
7 necessary to marshal and determine the defendant’s
8 property or assets.

9 “(B) An order entered pursuant to subparagraph (A)
10 shall be effective for not more than 90 days, unless ex-
11 tended by the court for good cause shown or unless an
12 indictment or information described in subparagraph
13 (A)(ii) has been filed.

14 “(2)(A) Except as provided in paragraph (3), an
15 order entered under this subsection shall be after notice
16 to persons appearing to have an interest in the property
17 and opportunity for a hearing, and upon the United States
18 carrying the burden of proof by a preponderance of the
19 evidence.

20 “(B) The court may receive and consider, at a hear-
21 ing held pursuant to this subsection, evidence and infor-
22 mation that would be inadmissible under the Federal
23 Rules of Evidence.

1 “(3)(A) A temporary restraining order may be en-
2 tered without notice or opportunity for a hearing if the
3 United States demonstrates that—

4 “(i) there is probable cause to believe that the
5 property or assets with respect to which the order is
6 sought would be subject to execution upon the entry
7 of a criminal restitution order;

8 “(ii) there is a substantial probability that the
9 United States will obtain a criminal restitution
10 order; and

11 “(iii) the provision of notice would jeopardize
12 the availability of the property or assets for execu-
13 tion.

14 “(B) A temporary order under this paragraph shall
15 expire not later than 10 days after the date on which it
16 is entered, unless—

17 “(i) the court grants an extension for good
18 cause shown; or

19 “(ii) the party against whom the order is en-
20 tered consents to an extension for a longer period.

21 “(C) A hearing requested concerning an order en-
22 tered under this paragraph shall be held at the earliest
23 possible time, and prior to the expiration of the temporary
24 order.

1 “(4)(A) Information concerning the net worth, finan-
2 cial affairs, transactions or interests of the defendant pre-
3 sented to the grand jury may be disclosed to an attorney
4 for the government assisting in the enforcement of crimi-
5 nal restitution orders, for use in the performance of that
6 attorney’s duties.

7 “(B)(i) An attorney for the government responsible
8 for the prosecution of criminal offenses, or responsible for
9 the enforcement of criminal restitution orders, may obtain
10 and use consumer credit reports to—

11 “(I) obtain an order under this section;

12 “(II) determine the amount of restitution that
13 is appropriate; or

14 “(III) enforce a criminal restitution order.

15 “(ii) This subparagraph does not limit the availability
16 of grand jury subpoenas to obtain such credit reports.

17 “(iii) Upon conviction, such reports may be furnished
18 to the United States Probation Service.

19 “(e)(1)(A) Within 60 days after conviction, and in
20 any event not later than 10 days prior to sentencing, the
21 attorney for the United States after consulting with all
22 victims (when practicable), shall promptly provide the pro-
23 bation service of the court all information readily available
24 to the attorney, including matters occurring before the
25 grand jury relating to the identity of the victim or victims,

1 the amount of loss, and financial matters relating to the
2 defendant.

3 “(B) The attorney for the government shall, if prac-
4 ticable, provide notice to all victims. The notice shall in-
5 form the victims of the offenses for which the defendant
6 was convicted, the victim’s right to submit information to
7 the probation office concerning the amount of the victim’s
8 losses, and the scheduled date, time, and place of the sen-
9 tencing hearing.

10 “(C) Upon ex parte application to the court, and a
11 showing that the requirements of subparagraph (A) may
12 cause harm to any victim, or jeopardize an ongoing inves-
13 tigation, the court may limit the information to be pro-
14 vided to or sought by the probation service of the court.

15 “(D) If any victim objects to any of the information
16 provided to the probation service by the attorney for the
17 United States, the victim may file a separate affidavit with
18 the court.

19 “(2) After reviewing the report of the probation serv-
20 ice of the court, the court may require additional docu-
21 mentation or hear testimony. The privacy of any records
22 filed, or testimony heard, pursuant to this section shall
23 be maintained to the greatest extent possible and such
24 records may be filed or testimony heard in camera.

1 “(3) If the victim’s losses are not ascertainable by
2 the date that is 10 days prior to sentencing as provided
3 in paragraph (1), the United States Attorney (or the
4 United States Attorney’s delegee) shall so inform the
5 court, and the court shall set a date for the final deter-
6 mination of the victim’s losses, not to exceed 90 days after
7 sentencing. If the victim’s losses cannot reasonably be
8 ascertained, the court shall determine an appropriate
9 amount of restitution based on the available information.
10 If the victim subsequently discovers further losses, the vic-
11 tim shall have 60 days after discovery of those losses in
12 which to petition the court for an amended restitution
13 order. Such order may be granted only upon a showing
14 of good cause for the failure to include such losses in the
15 initial claim for restitutionary relief.

16 “(4) The court may refer any issue arising in connec-
17 tion with a proposed order of restitution to a magistrate
18 or special master for proposed findings of fact and rec-
19 ommendations as to disposition, subject to a de novo de-
20 termination of the issue by the court.

21 “(5) In no case shall the fact that a victim has re-
22 ceived or is entitled to receive compensation with respect
23 to a loss from insurance or any other source be considered
24 in determining the amount of restitution.

1 “(f) Any dispute as to the proper amount or type of
2 restitution shall be resolved by the court by the preponder-
3 ance of the evidence. The burden of demonstrating the
4 amount of the loss sustained by a victim as a result of
5 the offense shall be on the attorney for the Government.
6 The burden of demonstrating the financial resources of
7 the defendant and the financial needs of the defendant
8 and such defendant’s dependents shall be on the defend-
9 ant. The burden of demonstrating such other matters as
10 the court deems appropriate shall be upon the party des-
11 ignated by the court as justice requires.

12 “(g)(1)(A) In each order of restitution, the court
13 shall order restitution to each victim in the full amount
14 of each victim’s losses as determined by the court and
15 without consideration of the economic circumstances of
16 the defendant.

17 “(B) If—

18 “(i) the number of victims is too great;

19 “(ii) the actual identity of the victims cannot be
20 ascertained; and

21 “(iii) or the full amount of each victim’s losses
22 cannot be reasonably ascertained;

23 the court shall order restitution in the amount of the total
24 loss that is reasonably ascertainable.

1 “(2) The restitution order shall be for a sum certain
2 and payable immediately.

3 “(3) If the court finds from facts on the record that
4 the economic circumstances of the defendant do not allow
5 and are not likely to allow the defendant to make more
6 than nominal payments under the restitution order, the
7 court shall direct the defendant to make nominal periodic
8 payments in the amount the defendant can reasonably be
9 expected to pay by making a diligent and bona fide effort
10 toward the restitution order entered pursuant to para-
11 graph (1). Nothing in the paragraph shall impair the de-
12 fendant’s obligation to make full restitution pursuant to
13 paragraphs (1) and (2).

14 “(4) Notwithstanding any payment schedule entered
15 by the court pursuant to paragraph (2), each order of res-
16 titution shall be a civil debt, payable immediately, and sub-
17 ject to the enforcement procedures provided in subsection
18 (n). In no event shall a defendant incur any criminal pen-
19 alty for failure to make a restitution payment under the
20 restitution order because of the defendant’s indigency.

21 “(h)(1) No victim shall be required to participate in
22 any phase of a restitution order. If a victim declines to
23 receive restitution made mandatory by this title, the court
24 shall order that the victim’s share of any restitution owed
25 be deposited in the Crime Victims Fund in the Treasury.

1 “(2) A victim may at any time assign the victim’s
2 interest in restitution payments to the Crime Victims
3 Fund in the Treasury without in any way impairing the
4 obligation of the defendant to make such payments.

5 “(3) If the victim cannot be located or identified, the
6 court shall direct that the restitution payments be made
7 to the Crime Victims Fund of the Treasury. This para-
8 graph shall not be construed to impair the obligation of
9 the defendant to make such payments.

10 “(i) If the court finds that more than 1 defendant
11 has contributed to the loss of a victim, the court may make
12 each defendant jointly and severally liable for payment of
13 the full amount of restitution or may apportion liability
14 among the defendants to reflect the level of contribution
15 to the victim’s loss and economic circumstances of each
16 defendant.

17 “(j) If the court finds that more than 1 victim has
18 sustained a loss requiring restitution by a defendant, the
19 court may issue an order of priority for restitution pay-
20 ments based on the type and amount of the victim’s loss
21 accounting for the economic circumstances of each victim.
22 In any case in which the United States is a victim, the
23 court shall ensure that all individual victims receive full
24 restitution before the United States receives any restitu-
25 tion.

1 “(k)(1) If a victim has received or is entitled to re-
2 ceive compensation with respect to a loss from insurance
3 or any other source, the court shall order that restitution
4 shall be paid to the person who provided or is obligated
5 to provide the compensation, but the restitution order
6 shall provide that all restitution of victims required by the
7 order be paid to the victims before any restitution is paid
8 to such a provider of compensation.

9 “(2) Any amount paid to a victim under an order of
10 restitution shall be reduced by any amount later recovered
11 as compensatory damages for the same loss by the victim
12 in—

13 “(A) any Federal civil proceeding; and

14 “(B) any State civil proceeding, to the extent
15 provided by the law of the State.

16 “(3) If a person obligated to provide restitution re-
17 ceives substantial resources from any source, including in-
18 heritance, settlement, or other judgment, such person shall
19 be required to apply the value of such resources to any
20 restitution still owed.

21 “(l) The defendant shall notify the court and the At-
22 torney General of any material change in the defendant’s
23 economic circumstances that might affect the defendant’s
24 ability to pay restitution. Upon receipt of the notification,
25 the court may, on its own motion, or the motion of any

1 party, including the victim, adjust the payment schedule,
2 or require immediate payment in full, as the interests of
3 justice require.

4 “(m)(1) The court shall retain jurisdiction over any
5 criminal restitution judgment or amended criminal restitu-
6 tion judgment for a period of 5 years from the date the
7 sentence was imposed. This limitation shall be tolled dur-
8 ing any period of time that the defendant—

9 “(A) was incarcerated;

10 “(B) was a fugitive; or

11 “(C) was granted a stay that prevented the en-
12 forcement of the restitution order.

13 “(2) While within the jurisdiction of the court, if the
14 defendant knowingly fails to make a bona fide effort to
15 pay whatever amount of restitution is ordered by the
16 court, or knowingly and willfully refuses to pay restitution,
17 the court may—

18 “(A) modify the terms or conditions of the de-
19 fendant’s probation or supervised release;

20 “(B) extend the defendant’s probation or super-
21 vised release until a date not later than 10 years
22 from the date the sentence was imposed;

23 “(C) revoke the defendant’s probation or super-
24 vised release;

25 “(D) hold the defendant in contempt; or

1 “(E) increase the defendant’s sentence to any
2 sentence that might originally have been imposed
3 under the applicable statute, without regard to the
4 sentencing guidelines.

5 “(n)(1) An order of restitution may be enforced—

6 “(A) through civil or administrative methods
7 during the period that the restitution lien provided
8 for in section 3613 of title 18, United States Code,
9 is enforceable;

10 “(B) by the United States in the manner pro-
11 vided for in subchapter C of chapter 227 and sub-
12 chapter B of chapter 229;

13 “(C) by the United States regardless of whether
14 for the benefit of the United States, in accordance
15 with the procedures of chapter 176 of part VI of
16 title 28, or in accordance with any other administra-
17 tive or civil enforcement means available to the
18 United States to enforce a debt due the United
19 States; or

20 “(D) by any victim named in the restitution
21 order as a lien pursuant to section 1962 of title 28.

22 “(2) A conviction of a defendant for an offense giving
23 rise to restitution under this section shall estop the de-
24 fendant from denying the essential allegations of that of-
25 fense in any subsequent Federal civil proceeding or State

1 civil proceeding, regardless of any State law precluding es-
 2 toppel for a lack of mutuality. The victim, in such subse-
 3 quent proceeding, shall not be precluded from establishing
 4 a loss that is greater than the loss determined by the court
 5 in the earlier criminal proceeding.”.

6 (b) **TECHNICAL AMENDMENT.**—The item relating to
 7 section 3664 in the analysis for chapter 232 of title 18,
 8 United States Code, is amended to read as follows:

“3664. Procedure for issuance and enforcement of order of restitution.”.

9 **SEC. 3. CIVIL REMEDIES.**

10 Section 3613 of title 18, United States Code, is
 11 amended—

12 (1) in the heading, by inserting “or restitution”
 13 after “fine”; and

14 (2) in subsection (a)—

15 (A) by striking “A fine” and inserting the
 16 following:

17 “(1) **FINES.**—A fine”;

18 (B) by redesignating paragraphs (1) and
 19 (2) as subparagraphs (A) and (B), respectively,
 20 and indenting accordingly; and

21 (C) by adding at the end the following new
 22 paragraphs:

23 “(2) **RESTITUTION.**—(A) An order of restitu-
 24 tion shall operate as a lien in favor of the United
 25 States for its benefit or for the benefit of any non-

1 Federal victims against all property belonging to the
2 defendant or defendants. The lien shall arise at the
3 time of the entry of judgment or order and shall
4 continue until the liability is satisfied, remitted, or
5 set aside, or until it becomes otherwise unenforce-
6 able. Such lien shall apply against all property and
7 property interests owned by the defendants at the
8 time of arrest as well as all property subsequently
9 acquired by the defendant or defendants.

10 “(B) The lien shall be entered in the name of
11 the United States in behalf of all ascertained vic-
12 tims, unascertained victims, victims entitled to res-
13 titution who choose not to participate in the restitu-
14 tion program and victims entitled to restitution who
15 cannot assert their interests in the lien for any rea-
16 son.

17 “(3) JOINTLY HELD PROPERTY.—(A)(i) If the
18 court enforcing an order of restitution under this
19 section determines that the defendant has an inter-
20 est in property with another, and that the defendant
21 cannot satisfy the restitution order from his or her
22 separate property or income, the court may, after
23 considering all of the equities, order such jointly
24 owned property be divided and sold, upon such con-

1 ditions as the court deems just, regardless of any
2 Federal or State law to the contrary.

3 “(ii) The court shall take care to protect the
4 reasonable and legitimate interests of the defend-
5 ant’s innocent spouse and minor children, especially
6 real property used as the actual home of such inno-
7 cent spouse and minor children, except to the extent
8 that the court determines that the interest of such
9 innocent spouse and children is the product of the
10 criminal activity of which the defendant has been
11 convicted, or is the result of a fraudulent transfer.

12 “(B) In determining whether there was a fraud-
13 ulent transfer, the court shall consider whether the
14 debtor made the transfer—

15 “(i) with actual intent to hinder, delay, or
16 defraud the United States or other victim; or

17 “(ii) without receiving a reasonably equiva-
18 lent value in exchange for the transfer.

19 “(C) In determining what portion of such joint-
20 ly owned property shall be set aside for the defend-
21 ant’s innocent spouse or children, or whether to have
22 sold or divided such jointly held property, the court
23 shall consider—

24 “(i) the contributions of the other joint
25 owner to the value of the property;

1 “(ii) the reasonable expectation of the
2 other joint owner to be able to enjoy the contin-
3 ued use of the property; and

4 “(iii) the economic circumstances and
5 needs of the defendant and dependents of the
6 defendant and the economic circumstances and
7 needs of the victim and the dependents of the
8 victim.”.

9 **SEC. 4. FINES.**

10 Section 3572(b) of title 18, United States Code, is
11 amended to read as follows:

12 “(b) Any fine, special assessment, restitution, or cost
13 shall be for a sum certain and payable immediately. In
14 no event shall a defendant incur any criminal penalty for
15 failure to make a payment on a fine, special assessment,
16 restitution, or cost because of the defendant’s indigency.”.

17 **SEC. 5. RESENTENCING.**

18 Section 3614 of title 18, United States Code, is
19 amended by inserting “or may increase the defendant’s
20 sentence to any sentence that might originally have been
21 imposed under the applicable statute” after “imposed”.

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