

104TH CONGRESS
1ST SESSION

S. 694

To prevent and punish crimes of sexual and domestic violence, to strengthen the rights of crime victims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 5), 1995

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

A BILL

To prevent and punish crimes of sexual and domestic violence, to strengthen the rights of crime victims, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Sexual Violence Prevention and Victim’s Rights Act of
6 1995”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EQUAL PROTECTION FOR VICTIMS

- Sec. 101. Right of the victim to restitution.
- Sec. 102. Right of the victim to an impartial jury.
- Sec. 103. Right of the victim to fair treatment in legal proceedings.
- Sec. 104. Rebuttal of attacks on the victim's character.
- Sec. 105. Use of notice concerning release of offender.
- Sec. 106. Balance in the composition of rules committees.
- Sec. 107. Victim's right of allocution in sentencing.

TITLE II—SEXUAL VIOLENCE, DOMESTIC VIOLENCE, AND
OFFENSES AGAINST THE FAMILY

- Sec. 201. Implementation of evidence rules for sexual assault and child molestation cases.
- Sec. 202. HIV testing of defendants in sexual assault cases.
- Sec. 203. Clarifying amendment to extraterritorial child pornography offense.
- Sec. 204. Evidence of defendant's disposition towards victim in domestic violence cases and other cases.
- Sec. 205. Battered women's syndrome evidence.
- Sec. 206. Death penalty for fatal domestic violence offenses.

1 **TITLE I—EQUAL PROTECTION**
2 **FOR VICTIMS**

3 **SEC. 101. RIGHT OF THE VICTIM TO RESTITUTION.**

4 (a) ORDER OF RESTITUTION.—Section 3663 of title
5 18, United States Code, is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) by striking “may order, in addition
9 to or, in the case of a misdemeanor, in lieu
10 of any other penalty authorized by law,”
11 and inserting “shall order”; and

12 (ii) by adding at the end the follow-
13 ing: “This paragraph does not affect the
14 power of the court to impose any other
15 penalty authorized by law. In the case of
16 a misdemeanor, the court may impose res-

1 titution in lieu of any other penalty author-
2 ized by law.”;

3 (B) by adding at the end the following new
4 paragraph:

5 “(4) In addition to ordering restitution to the victim
6 of the offense for which a defendant is convicted, a court
7 may order restitution to any person who, as shown by a
8 preponderance of evidence, was harmed physically, emo-
9 tionally, or pecuniarily, by unlawful conduct of the defend-
10 ant during—

11 “(A) the criminal episode during which the of-
12 fense occurred;

13 “(B) the course of a scheme, conspiracy, or pat-
14 tern of unlawful activity related to the offense.”;

15 (2) in subsection (b)(1)(B) by striking “imprac-
16 tical” and inserting “impracticable”;

17 (3) in subsection (b)(2) by inserting “emotional
18 or” after “resulting in”;

19 (4) in subsection (c) by striking “If the court
20 decides to order restitution under this section, the”
21 and inserting “The”;

22 (5) by striking subsections (d), (e), (f), (g), and
23 (h);

24 (6) by redesignating subsection (i) as subsection
25 (m); and

1 (7) by inserting after subsection (c) the follow-
2 ing:

3 “(d)(1) The court shall order restitution to a victim
4 in the full amount of the victim’s losses as determined by
5 the court and without consideration of—

6 “(A) the economic circumstances of the of-
7 fender; or

8 “(B) the fact that a victim has received or is
9 entitled to receive compensation with respect to a
10 loss from insurance or any other source.

11 “(2) Upon determination of the amount of restitution
12 owed to each victim, the court shall specify in the restitu-
13 tion order the manner in which and the schedule according
14 to which the restitution is to be paid, in consideration of—

15 “(A) the financial resources and other assets of
16 the offender;

17 “(B) projected earnings and other income of
18 the offender; and

19 “(C) any financial obligations of the offender,
20 including obligations to dependents.

21 “(3) A restitution order may direct the offender to
22 make a single, lump-sum payment, partial payment at
23 specified intervals, or such in-kind payments as may be
24 agreeable to the victim and the offender. A restitution
25 order shall direct the offender to give appropriate notice

1 to victims and other persons in cases where there are mul-
2 tiple victims or other persons who may receive restitution,
3 and where the identity of such victims and other persons
4 can be reasonably determined.

5 “(4) An in-kind payment described in paragraph (3)
6 may be in the form of—

7 “(A) return of property;

8 “(B) replacement of property; or

9 “(C) services rendered to the victim or to a per-
10 son or organization other than the victim.

11 “(e) When the court finds that more than 1 offender
12 has contributed to the loss of a victim, the court may make
13 each offender liable for payment of the full amount of res-
14 titution or may apportion liability among the offenders to
15 reflect the level of contribution and economic cir-
16 cumstances of each offender.

17 “(f) When the court finds that more than 1 victim
18 has sustained a loss requiring restitution by an offender,
19 the court shall order full restitution to each victim but
20 may provide for different payment schedules to reflect the
21 economic circumstances of each victim.

22 “(g)(1) If the victim has received or is entitled to re-
23 ceive compensation with respect to a loss from insurance
24 or any other source, the court shall order that restitution
25 be paid to the person who provided or is obligated to pro-

1 vide the compensation, but the restitution order shall pro-
2 vide that all restitution to victims required by the order
3 be paid to the victims before any restitution is paid to
4 such a provider of compensation.

5 “(2) The issuance of a restitution order shall not af-
6 fect the entitlement of a victim to receive compensation
7 with respect to a loss from insurance or any other source
8 until the payments actually received by the victim under
9 the restitution order fully compensate the victim for the
10 loss, at which time a person that has provided compensa-
11 tion to the victim shall be entitled to receive any payments
12 remaining to be paid under the restitution order.

13 “(3) Any amount paid to a victim under an order of
14 restitution shall be set off against any amount later recov-
15 ered as compensatory damages by the victim in—

16 “(A) any Federal civil proceeding; and

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

19 “(h) A restitution order shall provide that—

20 “(1) all fines, penalties, costs, restitution pay-
21 ments and other forms of transfers of money or
22 property made pursuant to the sentence of the court
23 shall be made by the offender to an entity des-
24 ignated by the Director of the Administrative Office
25 of the United States Courts for accounting and pay-

1 ment by the entity in accordance with this sub-
2 section;

3 “(2) the entity designated by the Director of
4 the Administrative Office of the United States
5 Courts shall—

6 “(A) log all transfers in a manner that
7 tracks the offender’s obligations and the cur-
8 rent status in meeting those obligations, unless,
9 after efforts have been made to enforce the res-
10 titution order and it appears that compliance
11 cannot be obtained, the court determines that
12 continued recordkeeping under this subpara-
13 graph would not be useful; and

14 “(B) notify the court and the interested
15 parties when an offender is 30 days in arrears
16 in meeting those obligations; and

17 “(3) the offender shall advise the entity des-
18 ignated by the Director of the Administrative Office
19 of the United States Courts of any change in the of-
20 fender’s address during the term of the restitution
21 order.

22 “(i) A restitution order shall constitute a lien against
23 all property of the offender and may be recorded in any
24 Federal or State office for the recording of liens against
25 real or personal property.

1 “(j) Compliance with the schedule of payment and
2 other terms of a restitution order shall be a condition of
3 any probation, parole, or other form of release of an of-
4 fender. If a defendant fails to comply with a restitution
5 order, the court may revoke probation or a term of super-
6 vised release, modify the term or conditions of probation
7 or a term of supervised release, hold the defendant in con-
8 tempt of court, enter a restraining order or injunction,
9 order the sale of property of the defendant, accept a per-
10 formance bond, or take any other action necessary to ob-
11 tain compliance with the restitution order. In determining
12 what action to take, the court shall consider the defend-
13 ant’s employment status, earning ability, financial re-
14 sources, the willfulness in failing to comply with the res-
15 titution order, and any other circumstances that may have
16 a bearing on the defendant’s ability to comply with the
17 restitution order.

18 “(k) An order of restitution may be enforced—

19 “(1) by the United States—

20 “(A) in the manner provided for the collec-
21 tion and payment of fines in subchapter B of
22 chapter 229 of this title; or

23 “(B) in the same manner as a judgment in
24 a civil action; and

1 “(2) by a victim named in the order to receive
2 the restitution, in the same manner as a judgment
3 in a civil action.

4 “(l) A victim or the offender may petition the court
5 at any time to modify a restitution order as appropriate
6 in view of a change in the economic circumstances of the
7 offender.”.

8 (b) PROCEDURE FOR ISSUING ORDER OF RESTITU-
9 TION.—Section 3664 of title 18, United States Code, is
10 amended—

11 (1) by striking subsection (a);

12 (2) by redesignating subsections (b), (c), (d),
13 and (e) as subsections (a), (b), (c), and (d), respec-
14 tively;

15 (3) by amending subsection (a), as redesignated
16 by paragraph (2), to read as follows:

17 “(a) The court may order the probation service of the
18 court to obtain information pertaining to the amount of
19 loss sustained by any victim as a result of the offense,
20 the financial resources of the defendant, the financial
21 needs and earning ability of the defendant and the defend-
22 ant’s dependents, and such other factors as the court
23 deems appropriate. The probation service of the court
24 shall include the information collected in the report of

1 presentence investigation or in a separate report, as the
2 court directs.”; and

3 (4) by adding at the end the following new sub-
4 section:

5 “(e) The court may refer any issue arising in connec-
6 tion with a proposed order of restitution to a magistrate
7 or special master for proposed findings of fact and rec-
8 ommendations as to disposition, subject to a de novo de-
9 termination of the issue by the court.”.

10 **SEC. 102. RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.**

11 Rule 24(b) of the Federal Rules of Criminal Proce-
12 dure is amended by striking “the Government is entitled
13 to 6 peremptory challenges and the defendant or defend-
14 ants jointly to 10 peremptory challenges” and inserting
15 “each side is entitled to 6 peremptory challenges”.

16 **SEC. 103. RIGHT OF THE VICTIM TO FAIR TREATMENT IN**
17 **LEGAL PROCEEDINGS.**

18 The following rules, to be known as the Rules of Pro-
19 fessional Conduct for Lawyers in Federal Practice, are en-
20 acted as an appendix to title 28, United States Code:

21 **“RULES OF PROFESSIONAL CONDUCT FOR**
22 **LAWYERS IN FEDERAL PRACTICE**

“Rule 1. Scope.

“Rule 2. Abuse of Victims and Others Prohibited.

“Rule 3. Duty of Enquiry in Relation to Client.

“Rule 4. Duty to Expedite Litigation.

“Rule 5. Duty to Prevent Commission of Crime.

1 **“Rule 1. Scope**

2 “(a) These rules apply to the conduct of lawyers in
3 their representation of clients in relation to proceedings
4 and potential proceedings before Federal tribunals.

5 “(b) For purposes of these rules, ‘Federal tribunal’
6 and ‘tribunal’ mean a court of the United States or an
7 agency of the Federal Government that carries out adju-
8 dicatory or quasi-adjudicatory functions.

9 **“Rule 2. Abuse of Victims and Others Prohibited**

10 “(a) A lawyer shall not engage in any action or course
11 of conduct for the purpose of increasing the expense of
12 litigation for any person, other than a liability under an
13 order or judgment of a tribunal.

14 “(b) A lawyer shall not engage in any action or course
15 of conduct that has no substantial purpose other than to
16 distress, harass, embarrass, burden, or inconvenience an-
17 other person.

18 “(c) A lawyer shall not offer evidence that the lawyer
19 knows to be false or attempt to discredit evidence that the
20 lawyer knows to be true.

21 **“Rule 3. Duty of Enquiry in Relation to Client**

22 “A lawyer shall attempt to elicit from the client a
23 truthful account of the material facts concerning the mat-
24 ters in issue. In representing a client charged with a crime
25 or civil wrong, the duty of enquiry under this rule in-
26 cludes—

1 “(1) attempting to elicit from the client a mate-
2 rially complete account of the alleged criminal activ-
3 ity or civil wrong if the client acknowledges involve-
4 ment in the alleged activity or wrong; and

5 “(2) attempting to elicit from the client the ma-
6 terial facts relevant to a defense of alibi if the client
7 denies such involvement.

8 **“Rule 4. Duty to Expedite Litigation**

9 “(a) A lawyer shall seek to bring about the expedi-
10 tious conduct and conclusion of litigation.

11 “(b) A lawyer shall not seek a continuance or other-
12 wise attempt to delay or prolong proceedings in the hope
13 or expectation that—

14 “(1) evidence will become unavailable;

15 “(2) evidence will become more subject to im-
16 peachment or otherwise less useful to another party
17 because of the passage of time; or

18 “(3) an advantage will be obtained in relation
19 to another party because of the expense, frustration,
20 distress, or other hardship resulting from prolonged
21 or delayed proceedings.

22 **“Rule 5. Duty to Prevent Commission of Crime**

23 “(a) A lawyer may disclose information relating to
24 the representation of a client to the extent necessary to
25 prevent the commission of a crime or other unlawful act.

1 “(b) A lawyer shall disclose information relating to
2 the representation of a client where disclosure is required
3 by law. A lawyer shall also disclose such information to
4 the extent necessary to prevent—

5 “(1) the commission of a crime involving the
6 use or threatened use of force against another, or a
7 substantial risk of death or serious bodily injury to
8 another; or

9 “(2) the commission of a crime of sexual as-
10 sault or child molestation.

11 “(c) For purposes of this rule, ‘crime’ means a crime
12 under the law of the United States or the law of a State,
13 and ‘unlawful act’ means an act in violation of the law
14 of the United States or the law of a State.”.

15 **SEC. 104. REBUTTAL OF ATTACKS ON THE VICTIM'S CHAR-**
16 **ACTER.**

17 Rule 404(a)(1) of the Federal Rules of Evidence is
18 amended by inserting before the semicolon the following:
19 “, or, if an accused offers evidence of a pertinent trait
20 of character of the victim of the crime, evidence of a perti-
21 nent trait of character of the accused offered by the pros-
22 ecution”.

1 **SEC. 105. USE OF NOTICE CONCERNING RELEASE OF OF-**
2 **FENDER.**

3 Section 4042(b) of title 18, United States Code, is
4 amended by striking paragraph (4).

5 **SEC. 106. BALANCE IN THE COMPOSITION OF RULES COM-**
6 **MITTEES.**

7 Section 2073 of title 28, United States Code, is
8 amended—

9 (1) in subsection (a)(2), by adding at the end
10 the following: “On each such committee that makes
11 recommendations concerning rules that affect crimi-
12 nal cases, including the Federal Rules of Criminal
13 Procedure, the Federal Rules of Evidence, the Fed-
14 eral Rules of Appellate Procedure, the Rules Govern-
15 ing Section 2254 Cases, and the Rules Governing
16 Section 2255 Cases, the number of members who
17 represent or supervise the representation of defend-
18 ants in the trial, direct review, or collateral review
19 of criminal cases shall not exceed the number of
20 members who represent or supervise the representa-
21 tion of the Government or a State in the trial, direct
22 review, or collateral review of criminal cases.”; and

23 (2) in subsection (b), by adding at the end the
24 following: “The number of members of the standing
25 committee who represent or supervise the represen-
26 tation of defendants in the trial, direct review, or

1 collateral review of criminal cases shall not exceed
2 the number of members who represent or supervise
3 the representation of the Government or a State in
4 the trial, direct review, or collateral review of crimi-
5 nal cases.”.

6 **SEC. 107. VICTIM'S RIGHT OF ALLOCUTION IN SENTENCING.**

7 Rule 32 of the Federal Rules of Criminal Procedure
8 is amended—

9 (1) in subdivision (c)(3)(E), by striking “if sen-
10 tence is to be imposed for a crime of violence or sex-
11 ual abuse,”; and

12 (2) by amending subdivision (f) to read as fol-
13 lows:

14 “(f) DEFINITION.—For purposes of this rule, ‘victim’
15 means any individual against whom an offense has been
16 committed for which a sentence is to be imposed, but the
17 right of allocution under subdivision (c)(3)(E) may be ex-
18 ercised instead by—

19 “(1) a parent or legal guardian if the victim is
20 below the age of 18 years or is incompetent; or

21 “(2) one or more family members or relatives
22 designated by the court if the victim is deceased or
23 incapacitated,

24 if such person or persons are present at the sentencing
25 hearing, regardless of whether the victim is present.”.

1 **TITLE II—SEXUAL VIOLENCE,**
2 **DOMESTIC VIOLENCE, AND**
3 **OFFENSES AGAINST THE**
4 **FAMILY**

5 **SEC. 201. IMPLEMENTATION OF EVIDENCE RULES FOR SEX-**
6 **UAL ASSAULT AND CHILD MOLESTATION**
7 **CASES.**

8 (a) REPEAL OF SUPERSEDED EFFECTIVE DATE
9 PROVISIONS.—Subsections (b) through (e) of section
10 320935 of the Violent Crime Control and Law Enforce-
11 ment Act of 1994 are repealed.

12 (b) EFFECTIVE DATE OF NEW RULES.—Section
13 320935 of the Violent Crime Control and Law Enforce-
14 ment Act of 1994 is amended by adding at the end the
15 following new subsection (b):

16 “(b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall take effect on the date of enactment
18 of the Sexual Violence Prevention and Victim’s Rights Act
19 of 1995.”.

20 **SEC. 202. HIV TESTING OF DEFENDANTS IN SEXUAL AS-**
21 **SAULT CASES.**

22 (a) IN GENERAL.—Chapter 109A of title 18, United
23 States Code, is amended by adding at the end the follow-
24 ing new section:

1 **“§ 2249. Testing for Human Immunodeficiency Virus;**
2 **Disclosure of Test Results to Victim; Ef-**
3 **fect on Penalty**

4 “(a) TESTING AT TIME OF PRETRIAL RELEASE DE-
5 TERMINATION.—In a case in which a person is charged
6 with an offense under this chapter, a judicial officer issu-
7 ing an order pursuant to section 3142(a) of this title shall
8 include in the order a requirement that a test for the
9 human immunodeficiency virus be performed upon the
10 person, and that followup tests for the virus be performed
11 6 months and 12 months following the date of the initial
12 test, unless the judicial officer determines that the conduct
13 of the person created no risk of transmission of the virus
14 to the victim, and so states in the order. The order shall
15 direct that the initial test be performed within 24 hours,
16 or as soon thereafter as feasible. The person shall not be
17 released from custody until the test is performed.

18 “(b) TESTING AT LATER TIME.—If a person charged
19 with an offense under this chapter was not tested for the
20 human immunodeficiency virus pursuant to subsection (a),
21 the court may at a later time direct that such a test be
22 performed upon the person, and that followup tests be per-
23 formed 6 months and 12 months following the date of the
24 initial test, if it appears to the court that the conduct of
25 the person may have risked transmission of the virus to
26 the victim. A testing requirement under this subsection

1 may be imposed at any time while the charge is pending,
2 or following conviction at any time prior to the person's
3 completion of service of the sentence.

4 “(c) TERMINATION OF TESTING REQUIREMENT.—A
5 requirement of followup testing imposed under this section
6 shall be canceled if any test is positive for the virus or
7 the person obtains an acquittal on, or dismissal of, all
8 charges under this chapter.

9 “(d) DISCLOSURE OF TEST RESULTS.—The results
10 of any test for the human immunodeficiency virus per-
11 formed pursuant to an order under this section shall be
12 provided to the judicial officer or court. The judicial offi-
13 cer or court shall ensure that the results are disclosed to
14 the victim (or to the victim's parent or legal guardian, as
15 appropriate), the attorney for the Government, and the
16 person tested.

17 “(e) EFFECT ON PENALTY.—The United States Sen-
18 tencing Commission shall amend existing guidelines for
19 sentences for offenses under this chapter to enhance the
20 sentence if the offender knew or had reason to know that
21 he was infected with the human immunodeficiency virus,
22 except where the offender did not engage or attempt to
23 engage in conduct creating a risk of transmission of the
24 virus to the victim.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 109A of title 18, United States Code, is
3 amended by inserting at the end the following new item:

“2249. Testing for human immunodeficiency virus; disclosure of test results
to victim; effect on penalty.”.

4 (c) AMENDMENTS TO EXISTING TESTING PROVI-
5 SIONS.—Subsection (b) of section 40503 of the Violent
6 Crime Control and Law Enforcement Act of 1994 is
7 amended—

8 (1) by amending the heading to read as follows:

9 “(b) TESTING OF DEFENDANTS.—”;

10 (2) in paragraph (1)—

11 (A) by inserting “, or the Government in
12 such a case,” after “subsection (a)”;

13 (B) by inserting “(or to the victim’s parent
14 or legal guardian, as appropriate)” after “com-
15 municated to the victim”; and

16 (C) by inserting “, unless the recipient
17 does not wish to receive such counseling” after
18 “counseling”;

19 (3) in paragraph (2)—

20 (A) by striking “To obtain an order under
21 paragraph (1), the victim must demonstrate
22 that” and inserting “The victim or the Govern-
23 ment may obtain an order under paragraph (1)
24 by showing that”;

1 (B) in subparagraph (A)—

2 (i) by striking “the offense” and in-
 3 sserting “a sexual assault involving alleged
 4 conduct that poses a risk of transmission
 5 of the etiologic agent for acquired immune
 6 deficiency syndrome”; and

7 (ii) by inserting “and” after the semi-
 8 colon;

9 (C) in subparagraph (B), by striking
 10 “after appropriate counseling; and” and insert-
 11 ing a period; and

12 (D) by striking subparagraph (C).

13 **SEC. 203. CLARIFYING AMENDMENT TO**
 14 **EXTRATERRITORIAL CHILD PORNOGRAPHY**
 15 **OFFENSE.**

16 Subsections (a) and (b) of section 2258 of title 18,
 17 United States Code, are each amended by inserting “by
 18 any means including by computer or mails” after “im-
 19 ported”.

20 **SEC. 204. EVIDENCE OF DEFENDANT’S DISPOSITION TO-**
 21 **WARDS VICTIM IN DOMESTIC VIOLENCE**
 22 **CASES AND OTHER CASES.**

23 Rule 404(b) of the Federal Rules of Evidence is
 24 amended by striking “or absence of mistake or accident”

1 and inserting “absence of mistake or accident, or a dis-
2 position towards a particular individual”.

3 **SEC. 205. BATTERED WOMEN’S SYNDROME EVIDENCE.**

4 Rule 702 of the Federal Rules of Evidence is amend-
5 ed by adding at the end the following: “Testimony that
6 may be admitted pursuant to this rule includes testimony
7 concerning the behavior and psychology of victims to ex-
8 plain a victim’s failure to report or delay in reporting an
9 offense, recantation of an accusation, or failure to cooper-
10 ate in the investigation or prosecution.”.

11 **SEC. 206. DEATH PENALTY FOR FATAL DOMESTIC VIO-**
12 **LENCE OFFENSES.**

13 Sections 2261(b)(1) and 2262(b)(1) of title 18, Unit-
14 ed States Code, are each amended by inserting “or may
15 be sentenced to death” after “years,”.

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