

103^D CONGRESS
2^D SESSION

S. 2074

To increase the special assessment for felonies and improve the enforcement of sentences imposing criminal fines, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4 (legislative day, MAY 2), 1994

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

A BILL

To increase the special assessment for felonies and improve the enforcement of sentences imposing criminal fines, 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.**

4 This Act may be cited as the “Crime Victim Assist-
5 ance Improvement Act”.

6 **SEC. 2. SPECIAL ASSESSMENTS ON CONVICTED PERSONS.**

7 (a) INCREASE.—Section 3013(a)(2) of title 18,
8 United States Code, is amended—

9 (1) in subparagraph (A) by striking “\$50” and
10 inserting “not less than \$100”; and

1 (2) in subparagraph (B) by striking “\$200”
2 and inserting “not less than \$400”.

3 (b) EXTENSION OF PERIOD OF OBLIGATION.—Sec-
4 tion 3013(c) of title 18, United States Code, is amended
5 by striking “five” and inserting “20”.

6 **SEC. 3. TIMING OF PAYMENT OF FINES AND RESTITUTION.**

7 (a) CLARIFICATION OF PROVISION CONCERNING
8 WHEN A FINE MUST BE PAID.—Section 3572(d) of title
9 18, United States Code, is amended to read as follows:
10 “(d) TIME, METHOD OF PAYMENT, AND RELATED
11 ITEMS.—

12 “(1) IN GENERAL.—Except as otherwise or-
13 dered under paragraph (2), a person sentenced to
14 pay a fine or other monetary penalty shall not be re-
15 leased from custody following sentencing until the
16 person has paid the fine or penalty in full.

17 “(2) DELAYED PAYMENT.—(A) At sentencing,
18 the court may, if the interest of justice requires, per-
19 mit the defendant to delay payment of a fine or
20 other penalty.

21 “(B) If the court permits the defendant to
22 delay payment of a fine or penalty, the court shall
23 require that—

24 “(i) an installment on the criminal debt be
25 paid immediately or as soon as the court deter-

1 mines that it would be possible for the defend-
2 ant to pay an installment;

3 “(ii) the criminal debt be paid in full by a
4 date certain, which shall not be a date later
5 than the date that is 5 years (not including any
6 term of imprisonment) after the date of sen-
7 tencing; and

8 “(iii) the defendant make payment in equal
9 monthly installments or on such other schedule
10 as the court may specify.”.

11 (b) AMENDMENT OF PROVISION CONCERNING WHEN
12 RESTITUTION MUST BE PAID.—Section 3663(f) of title
13 18, United States Code, is amended by striking “(f)(1)
14 The court may require” and all that follows through “(4)
15 The order of restitution” and inserting the following:

16 “(f) TIME, METHOD OF PAYMENT, AND RELATED
17 ITEMS.—

18 “(1) IN GENERAL.—Except as otherwise or-
19 dered under paragraph (2), a person required to pay
20 restitution shall not be released from custody follow-
21 ing sentencing until the person has paid the restitu-
22 tion in full.

23 “(2) DELAYED PAYMENT.—(A) At sentencing,
24 the court may, if the interest of justice requires, per-
25 mit the defendant to delay payment of restitution.

1 “(B) If the court permits the defendant to
2 delay payment of restitution, the court shall require
3 that—

4 “(i) an installment on the debt of restitu-
5 tion be paid immediately or as soon as the
6 court determines that it would be possible for
7 the defendant to pay an installment;

8 “(ii) the debt of restitution be paid in full
9 by a date certain, which shall not be a date
10 later than the date that is 5 years (not includ-
11 ing any term of imprisonment) after the date of
12 sentencing; and

13 “(iii) the person make payment in equal
14 monthly installments or on such other schedule
15 as the court may specify.

16 “(C) This paragraph shall not be construed to
17 limit any right that a victim may have to obtain and
18 enforce a civil judgment against the defendant or
19 seek any other legal remedy available to the victim
20 to redress any injury caused by the defendant.

21 “(3) RECIPIENT OF PAYMENT.—The order of
22 restitution”.

1 **SEC. 4. ENFORCEMENT OF SENTENCE OF A FINE THROUGH**
2 **ORDER SUSPENDING FEDERAL BENEFITS OR**
3 **REQUIRING COMMUNITY SERVICE.**

4 (a) IN GENERAL.—Section 3572 of title 18, United
5 States Code, is amended by adding at the end the follow-
6 ing new subsection:

7 “(j) SUSPENSION OF FEDERAL BENEFITS.—

8 “(1) DEFINITIONS.—In this subsection—

9 “(A) ‘Federal benefit’ means a grant, con-
10 tract, loan, professional license, or commercial
11 license provided by an agency of the United
12 States or by any entity using appropriated
13 funds of the United States (including a retire-
14 ment, welfare, Social Security, health, disabili-
15 ty, or veterans’ benefit, public housing, or any
16 similar benefit, or any other benefit for which
17 payments or services are required for eligi-
18 bility); and

19 “(B) ‘veterans’ benefit’ means a benefit
20 provided to veterans, their families, or survivors
21 under laws administered by the Secretary of
22 Veterans Affairs.

23 “(2) ORDER.—If a defendant is delinquent in
24 paying a fine or other monetary penalty imposed
25 under this section, the court may, after a hearing,
26 issue an order that—

1 “(A) suspends the provision of Federal
2 benefits to the defendant for the time period in
3 which the defendant is delinquent, until such
4 time as—

5 “(i) the delinquency is cured; or

6 “(ii) if the court so orders, the de-
7 fendant demonstrates a good-faith effort to
8 cure the delinquency; or

9 “(B) if the defendant demonstrates that
10 the defendant is unable to make payments as
11 required—

12 “(i) sets a payment schedule that will
13 require the defendant to pay the maximum
14 amounts that the defendant can reasonably
15 be expected to pay under the cir-
16 cumstances; or

17 “(ii) requires the defendant to per-
18 form any community service that would be
19 appropriate for an offender to perform,
20 under guidelines issued by the Attorney
21 General.

22 “(3) REINSTATEMENT OF BENEFITS.—An
23 order under paragraph (2) may provide that if the
24 defendant cures a delinquency for any time period,
25 a Federal benefit that is in the form of a payment

1 of money or other instrument of value to which the
2 defendant would have been entitled with respect to
3 that time period shall be provided to the defendant
4 (without addition of interest for the delay in pay-
5 ment).”.

6 (b) APPLICATION OF AMENDMENT.—The amendment
7 made by subsection (a) shall not be applied to deny a Fed-
8 eral benefit to any person until the date on which the At-
9 torney General, in consultation with the Director of the
10 Administrative Office of the United States Courts, issues
11 a written determination that a criminal debt payment
12 tracking system operated by the agency responsible for the
13 collection of criminal debt has established communications
14 links with entities that administer Federal benefit pro-
15 grams that are sufficient to ensure that Federal benefits
16 are not denied to any person except as authorized by the
17 amendment made by law.

18 (c) SENSE OF CONGRESS.—It is the sense of the Con-
19 gress that the States should adopt procedures for the en-
20 forcement of fines similar to those adopted by the amend-
21 ment made by subsection (a).

22 **SEC. 5. CRIME VICTIMS FUND.**

23 (a) ALLOCATION OF FUNDS FOR COSTS AND
24 GRANTS.—Section 1402(d)(4) of the Victims of Crime Act

1 of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as
2 follows:

3 “(4)(A) Subject to subparagraph (B), the Di-
4 rector may retain any portion of the Fund that was
5 deposited during a fiscal year that is in excess of
6 110 percent of the total amount deposited in the
7 Fund during the preceding fiscal year as a reserve
8 for use in a year in which the Fund falls below the
9 amount available in the previous year.

10 “(B) The amount held in reserve under sub-
11 paragraph (A) at any time shall not exceed
12 \$20,000,000.”.

13 (b) PROHIBITION OF PAYMENTS TO DELINQUENT
14 CRIMINAL DEBTORS BY STATE CRIME VICTIM COM-
15 PENSATION PROGRAMS.—Section 1403(b) of the Victims
16 of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended—

17 (1) by striking “and” at the end of paragraph
18 (7);

19 (2) by redesignating paragraph (8) as para-
20 graph (9); and

21 (3) by inserting after paragraph (7) the follow-
22 ing new paragraph:

23 “(8) such program does not provide compensa-
24 tion to any person who has been convicted of an of-
25 fense under Federal law with respect to any time pe-

1 riod during which the person is delinquent in paying
2 a fine or other monetary penalty imposed for the of-
3 fense; and”.

4 (c) EXCLUSION FROM INCOME FOR PURPOSES OF
5 MEANS TESTS.—Section 1403 of the Victims of Crime
6 Act of 1984 (42 U.S.C. 10602) is amended by inserting
7 after subsection (b) the following new subsection:

8 “(c) EXCLUSION FROM INCOME FOR PURPOSES OF
9 MEANS TESTS.—Notwithstanding any other law, for the
10 purpose of any maximum allowed income eligibility re-
11 quirement in any Federal, State, or local government pro-
12 gram using Federal funds that provides medical or other
13 assistance (or payment or reimbursement of the cost of
14 such assistance) that becomes necessary to an applicant
15 for such assistance in full or in part because of the com-
16 mission of a crime against the applicant, as determined
17 by the Director, any amount of crime victim compensation
18 that the applicant receives through a crime victim com-
19 pensation program under this section shall not be included
20 in the income of the applicant until the total amount of
21 assistance that the applicant receives from all such pro-
22 grams is sufficient to fully compensate the applicant for
23 losses suffered as a result of the crime.”.

1 **SEC. 6. FORFEITURE OF COLLATERAL PROFITS OF CRIME.**

2 (a) DECLARATIONS.—The Congress declares the fol-
3 lowing:

4 (1) In the case of *Simon & Schuster, Inc. v.*
5 *New York State Victims Board*, ____ U.S. ____,
6 112 S.Ct. ____ (1991), the Supreme Court over-
7 turned New York’s “Son of Sam” law on the
8 grounds that—

9 (A) the law appeared to focus on restrict-
10 ing an offender’s right to freedom of speech, in
11 that the law called for forfeiture only of income
12 derived from an offender’s activity such as de-
13 scribing the offender’s participation in the of-
14 fense or the offender’s life story for publication
15 in the news or entertainment media, but did not
16 require forfeiture of any other type of profit
17 that an offender might be able to realize as a
18 result of the notoriety that may attach to an
19 offender;

20 (B) that restrictive effect did not appear to
21 be well designed to further the primary interest
22 asserted by the State of New York in enacting
23 the law, namely, the interest in providing a
24 source of funds out of which victims of an of-
25 fense could seek restitution; and

1 (C) the law, which applied not only to per-
2 sons who are convicted of a crime but also to
3 those who merely have been accused, brought
4 under its coverage a broad range of activities,
5 many of which might be seen as relatively in-
6 nocuous, or at least not sufficiently serious to
7 justify the penalty that the law imposed.

8 (2) The case arguably draws into question the
9 validity of a similar (but not identical) Federal law,
10 section 3681 of title 18, United States Code, so that
11 it is appropriate for Congress to make clear the in-
12 terest that that law is intended to further and to
13 amend the law so as to make sure that it does not
14 suffer from the deficiencies found by the Supreme
15 Court in the “Son of Sam” law.

16 (3) A person who has been convicted of a crimi-
17 nal offense not only should be prevented from retain-
18 ing anything of value obtained by the offender dur-
19 ing commission of the offense, but, to the extent
20 practicable, should also be precluded from accepting
21 anything of value that any person might offer by
22 reason of the notoriety of the offender in a case that
23 has been publicized in the news media and caught
24 the interest of the public.

1 (4) The interest of the Government in preclud-
2 ing an offender from profiting from an offense,
3 which is the interest that the Congress hereby de-
4 clares is the interest that section 3681 of title 18,
5 United States Code seeks to assert, is that of pun-
6 ishing the offender and removing from the minds of
7 any potential offenders the thought that a person
8 may profit from the commission of a crime. If an of-
9 fender should be permitted to realize any profit at
10 all from the commission of a crime, it should be only
11 for the purpose of raising funds with which to pay
12 restitution to victims or a fine imposed by the court;
13 any excess earnings should be forfeited to the Crime
14 Victims Fund.

15 (b) AMENDMENT OF SECTION 3681 OF TITLE 18,
16 UNITED STATES CODE.—Section 3681(a) of title 18,
17 United States Code, is amended to read as follows:

18 “(a) Upon the motion of the United States attorney
19 made at any time after conviction of a defendant of an
20 offense punishable by imprisonment for more than 1 year,
21 after notice to interested parties, the court shall order the
22 defendant to forfeit any payment of money or anything
23 of value given to or for the benefit of the defendant in
24 exchange for any item sold or service provided by the de-
25 fendant if, under the circumstances, it is evident that—

1 “(1) the payment would not have been offered
2 but for the notoriety of the defendant as the person
3 who committed the offense; or

4 “(2) the sale or service is otherwise related to
5 the defendant’s having committed the offense.”.

6 **SEC. 7. AVAILABILITY OF CRIME VICTIMS FUND FOR**
7 **INDIAN TRIBES.**

8 (a) AMOUNTS OF FUNDS FOR COSTS AND GRANTS.—
9 Section 1402(d)(2) of the Victims of Crime Act of 1984
10 (42 U.S.C. 10601(d)(2)) is amended—

11 (1) in subparagraph (A) by inserting “, of
12 which 2.5 percent of the funds available under sec-
13 tion 1403 shall be available for Indian tribes and
14 tribal organizations that serve victims of crime” be-
15 fore the semicolon; and

16 (2) in subparagraph (B) by inserting “, of
17 which 2.5 percent of the funds available under sec-
18 tion 1404 shall be available for Indian tribes and
19 tribal organizations that serve victims of crime” be-
20 fore the semicolon.

21 (b) CRIME VICTIM COMPENSATION.—Section 1403 of
22 the Victims of Crime Act of 1984 (42 U.S.C. 10602) is
23 amended—

24 (1) in subsection (a) by adding at the end the
25 following new paragraph:

1 “(3) The Director shall make grants directly to
2 Indian tribes and tribal organizations from funds available
3 under section 1402(d)(2)(A).”;

4 (2) in subsection (b)—

5 (A) by striking “A crime victim compensa-
6 tion program” and inserting “(1) STATE PRO-
7 GRAMS.—A State crime victim compensation
8 program”;

9 (B) by striking “(1) such program is oper-
10 ated” and inserting “(A) such program is oper-
11 ated”;

12 (C) by striking “(2) such program pro-
13 motes” and inserting “(B) such program pro-
14 motes”;

15 (D) by striking “(3) such State certifies”
16 and inserting “(C) such State certifies”;

17 (E) by striking “(4) such program,” and
18 inserting “(D) such program,”;

19 (F) by striking “(5) such program” and
20 inserting “(E) such program”;

21 (G) by striking “(6) such program” and
22 inserting “(F) such program”;

23 (H) by striking “(A) the crimes” and in-
24 serting “(i) the crimes”;

1 (I) by striking “(B) the places” and insert-
2 ing “(ii) the places”;

3 (J) by striking “(7) such program” and in-
4 serting “(G) such program”;

5 (K) by striking “(8) such program” and
6 inserting “(H) such program”; and

7 (L) by adding at the end the following new
8 paragraph:

9 “(2) TRIBAL PROGRAMS.—

10 “(A) ELIGIBILITY.—A crime victim com-
11 pensation program of an Indian tribe or tribal
12 organization is an eligible crime victim program
13 for the purposes of this section if the program
14 meets criteria established by the Director that
15 are consistent with those stated in paragraph
16 (1), as modified by the Director to account for
17 the resources and needs of Indian tribes and
18 tribal organizations.

19 “(B) USE OF EXCESS FUNDS.—If for any
20 fiscal year the amount of funds required to be
21 made available for Indian tribes and tribal or-
22 ganizations under section 1402(d)(2)(A) ex-
23 ceeds the amount that crime victim compensa-
24 tion programs of Indian tribes and tribal orga-
25 nizations need to compensate victims—

1 “(i) not to exceed \$105,000 of that
2 excess shall be made available to provide
3 training and technical assistance to tribes
4 and tribal organizations in establishing and
5 administering victim compensation pro-
6 grams; and

7 “(ii) any remaining excess shall be
8 made available for grants generally admin-
9 istered under 1403.”;

10 (3) in subsection (d)—

11 (A) by striking “and” at the end of para-
12 graph (3);

13 (B) by striking the period at the end of
14 paragraph (4) and inserting a semicolon; and

15 (C) by adding at the end the following new
16 paragraphs:

17 “(5) ‘Indian tribe’ has the meaning stated in
18 section 103 of the Indian Self-Determination and
19 Education Assistance Act (25 U.S.C. 450b); and

20 “(6) ‘tribal organization’ has the meaning stat-
21 ed in section 103 of the Indian Self-Determination
22 and Education Assistance Act (25 U.S.C. 450b).”.

23 (c) CRIME VICTIM ASSISTANCE.—Section 1404 of the
24 Victims of Crime Act of 1984 (42 U.S.C. 10603) is
25 amended—

1 (1) in subsection (a)(1) by inserting “(except
2 the portion made available for Indian tribes and
3 tribal organizations)” after “1402(d)(2)”;

4 (2) by redesignating subsection (d) as sub-
5 section (e);

6 (3) by inserting after subsection (c) the follow-
7 ing new subsection:

8 “(d) GRANTS TO INDIAN TRIBES AND TRIBAL ORGA-
9 NIZATIONS.—(1) The Director shall make grants directly
10 to Indian tribes and tribal organizations from funds avail-
11 able under section 1402(d)(2)(B).

12 “(2) A grant under this subsection shall be used for
13 the purposes describe in subsection (c) and for such other
14 purposes related to crime victim assistance as the Director
15 considers to be appropriate.”; and

16 (4) in subsection (e), as redesignated by para-
17 graph (2)—

18 (A) by striking “and” at the end of para-
19 graph (4);

20 (B) by striking the period at the end of
21 paragraph (5) and inserting a semicolon; and

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

1 “(6) ‘Indian tribe’ has the meaning stated in
2 section 103 of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 450b); and

4 “(7) ‘tribal organization’ has the meaning stat-
5 ed in section 103 of the Indian Self-Determination
6 and Education Assistance Act (25 U.S.C. 450b).”.

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