Calendar No. 257

104TH CONGRESS
1ST SESSION

H. R. 665

[Report No. 104–179]

AN ACT

To control crime by mandatory victim restitution.

DECEMBER 6, 1995

Reported with an amendment and an amendment to the title

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 30), 1995
Received; read twice and referred to the Committee on the Judiciary

DECEMBER 6, 1995
Reported by Mr. HATCH, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To control crime by mandatory victim restitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~**SECTION 1. SHORT TITLE.**~~

~~This Act may be cited as the "Victim Restitution Act of 1995".~~

~~**SEC. 2. MANDATORY RESTITUTION AND OTHER PROVISIONS.**~~

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

~~(1) in subsection (a)—~~

~~(A) in paragraph (1)—~~

~~(i) by striking "may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law" and inserting "shall order"; and~~

~~(ii) by adding at the end the following: "The requirement of this paragraph does not affect the power of the court to impose any other penalty authorized by law. In the case of a misdemeanor, the court may impose restitution in lieu of any other penalty authorized by law.";~~

~~(B) by adding at the end the following:~~

~~"(4) In addition to ordering restitution to the victim of the offense of which a defendant is convicted, a court may order restitution to any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—~~

~~"(A) the criminal episode during which the offense occurred; or~~

~~"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";~~

~~(2) in subsection (b)(1)(B) by striking "impractical" and inserting "impracticable";~~

~~(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";~~

~~(4) in subsection (b)—~~

~~(A) by striking "and" at the end of paragraph (4);~~

~~(B) by redesignating paragraph (5) as paragraph (6); and~~

~~(C) by inserting after paragraph (4) the following new paragraph:~~

~~"(5) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and";~~

~~(5) in subsection (c) by striking "If the court decides to order restitution under this section, the" and inserting "The";~~

~~(6) by striking subsections (d), (e), (f), (g), and (h);~~

~~(7) by redesignating subsection (i) as subsection (m); and~~

~~(8) by inserting after subsection (c) the following:~~

~~"(d)(1) The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—~~

~~"(A) the economic circumstances of the offender; or~~

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

~~"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—~~

~~"(A) the financial resources and other assets of the offender;~~

~~"(B) projected earnings and other income of the offender; and~~

~~"(C) any financial obligations of the offender, including obligations to dependents.~~

~~"(3) A restitution order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender. A restitution order shall direct the offender to give appropriate notice to victims and other persons in cases where there are multiple victims or other persons who may receive restitution,~~

~~and where the identity of such victims and other persons can be reasonably determined.~~

~~"(4) An in-kind payment described in paragraph (3) may be in the form of—~~

~~"(A) return of property;~~

~~"(B) replacement of property; or~~

~~"(C) services rendered to the victim or to a person or organization other than the victim.~~

~~"(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.~~

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

~~"(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution to victims required by the order~~

be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

"(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

"(A) any Federal civil proceeding; and

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

"(h) A restitution order shall provide that—

"(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to an entity designated by the Director of the Administrative Office of the United States Courts for accounting and payment by the entity in accordance with this subsection;

~~"(2) the entity designated by the Director of the Administrative Office of the United States Courts shall—~~

~~"(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful; and~~

~~"(B) notify the court and the interested parties when an offender is 30 days in arrears in meeting those obligations; and~~

~~"(3) the offender shall advise the entity designated by the Director of the Administrative Office of the United States Courts of any change in the offender's address during the term of the restitution order.~~

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

~~"(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of~~

~~any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.~~

~~"(k) An order of restitution may be enforced—~~

~~"(1) by the United States—~~

~~"(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or~~

~~"(B) in the same manner as a judgment in a civil action; and~~

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

~~"(l) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.".~~

~~(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—~~

~~(1) by striking subsection (a);~~

~~(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);~~

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

~~"(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.";~~ ~~and~~

~~(4) by adding at the end thereof the following new subsection:~~

~~"(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.".~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Victims Justice Act of 1995".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—RESTITUTION

Sec. 101. Order of restitution.
Sec. 102. Conditions of probation.
Sec. 103. Mandatory restitution.
Sec. 104. Order of restitution to victims of other crimes.
Sec. 105. Procedure for issuance and enforcement of restitution order.
Sec. 106. Procedure.
Sec. 107. Juvenile delinquency; dispositional hearing.
Sec. 108. Instruction to Sentencing Commission.
Sec. 109. Justice Department regulations.
Sec. 110. Special assessments on convicted persons.
Sec. 111. Crime Victims Fund.
Sec. 112. Victims of terrorism act.
Sec. 113. Effective date.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Severability.
Sec. 202. Study and report.

TITLE I—RESTITUTION

SEC. 101. ORDER OF RESTITUTION.

Section 3556 of title 18, United States Code, is amended—

(1) by striking "may" and inserting "shall"; and

(2) by striking "sections 3663 and 3664." and inserting "3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.".

SEC. 102. CONDITIONS OF PROBATION.

Section 3563 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking "and" at the end;

(B) in the first paragraph (4) (relating to conditions of probation for a domestic crime of violence), by striking the period and inserting a semicolon;

(C) by redesignating the second paragraph (4) (relating to conditions of probation concerning drug use and testing) as paragraph (5);

(D) in paragraph (5), as redesignated, by striking the period at the end and inserting a semicolon; and

(E) by inserting after paragraph (5), as redesignated, the following new paragraphs:

"(6) that the defendant—

"(A) make restitution in accordance with sections 2248, 2259, 2264, 3663, 3663A, and 3664;

"(B) pay the assessment imposed in accordance with section 3013; and

"(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments."; and

(2) in subsection (b)—

(A) by striking paragraphs (2) and (3); and

(B) by redesignating paragraphs (4) through (22) as paragraphs (2) through (20), respectively.

SEC. 103. MANDATORY RESTITUTION.

(a) IN GENERAL.—Chapter 232 of title 18, United States Code, is amended by inserting immediately after section 3663 the following new section:

"§ 3663A. Mandatory restitution to victims of certain crimes

"(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to any other penalty authorized by law, that the defendant

make restitution to the victim of the offense, or, if the victim is deceased, to the victim's estate.

"(2) For purposes of restitution, a victim of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity means any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court. In no event shall the defendant be named as such representative or guardian.

"(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

"(b) The order of restitution shall require that such defendant—

"(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

"(A) return the property to the owner of the property or someone designated by the owner; or

"(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

"(i) the greater of—

"(I) the value of the property on the date of the damage, loss, or destruction; or

"(II) the value of the property on the date of sentencing, less

"(ii) the value (as of the date the property is returned) of any part of the property that is returned;

"(2) in the case of an offense resulting in bodily injury to a victim—

"(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

"(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

"(C) reimburse the victim for income lost by such victim as a result of such offense;

"(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

"(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

"(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

"(A) that is—

"(i) a crime of violence, as defined in section 16;

"(ii) a felony against property under this title, including any felony committed by fraud or deceit;

"(iii) an offense described in section 1365 (relating to tampering with consumer products); or

"(iv) an offense described in part D of the Controlled Substances Act (21 U.S.C. 841 et seq.); and

"(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

"(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

"(3) This section shall not apply if the court finds, from facts on the record, that—

"(A) the number of identifiable victims is so large as to make restitution impracticable; or

"(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

"(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 232 of title 18, United States Code, is amended by inserting immediately after the matter relating to section 3663 the following:

"3663A. Mandatory restitution to victims of certain crimes.".

SEC. 104. ORDER OF RESTITUTION TO VICTIMS OF OTHER CRIMES.

(a) IN GENERAL.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking "(a)(1) The court" and inserting "(a)(1)(A) The court";

(B) by inserting "other than an offense described in section 3663A(c)," after "under this title or section 46312, 46502, or 46504 of title 49,";

(C) by inserting before the period at the end the following: ", or if the victim is deceased, to the victim's estate"; and

(D) by adding at the end the following new subparagraph:

"(B) The court, in determining whether to order restitution under this section, shall consider the amount of the loss sustained by each victim as a result of the offense, and may consider the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to pro-

vide restitution to any victims, the court may decline to make such an order.";

(2) by striking subsections (c) through (i); and

(3) by adding at the end the following new subsection:

"(c) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.".

(b) SEXUAL ABUSE.—Section 2248 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in ac-

cordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

(c) SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN.—Section 2259 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (e).

(d) DOMESTIC VIOLENCE.—Section 2264 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (g); and

(4) by adding at the end the following new subsection (c):

"(c) VICTIM DEFINED.—For purposes of this section, the term 'victim' means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.".

SEC. 105. PROCEDURE FOR ISSUANCE AND ENFORCEMENT OF RESTITUTION ORDER.

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

"§ 3664. Procedure for issuance and enforcement of order of restitution

"(a) For orders of restitution under this title, the court shall order the probation service of the court to obtain and include in its presentence report, or in a separate report, as the court directs, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant.

"(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

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

"(d)(1) Within 60 days after conviction and, in any event, not later than 10 days prior to sentencing—

"(A)(i) the United States Attorney (or the United States Attorney's delegee), after consulting with all victims, shall prepare and file a statement with the probation service of the court listing the amounts subject to restitution;

"(ii) the statement shall be signed by the United States Attorney (or the United States Attorney's delegee) and the victims; and

"(iii) if any victim objects to any of the information included in the statement, the United States Attorney (or the United States Attorney's delegee) shall advise the victim that the victim may file a separate affidavit and shall provide the victim with an affidavit form which may be used to do so; and

"(B) each defendant shall prepare and file with the probation service of the court an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and other information the court requires relating to such other factors as the court deems appropriate.

"(2) If the court concludes, after reviewing the report of the probation service of the court and the supporting documentation, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. The privacy of any records filed,

or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

"(3) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the United States Attorney (or the United States Attorney's delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(4) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

"(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The

burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

"(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

"(B) Subject to subsection (k), subparagraph (A) shall not apply if—

"(i) the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments; and

"(ii) the court enters in its order the full amount of each victim's losses and provides a full restitution award with nominal periodic payments.

"(C) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

"(B) projected earnings and other income of the defendant; and

"(C) any financial obligations of the defendant; including obligations to dependents.

"(3) A restitution order may direct the defendant to make a single, lump-sum payment, partial payment at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

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

"(A) return of property;

"(B) replacement of property; or

"(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

"(g)(1) No victim shall be required to participate in any phase of a restitution order. If a victim declines to re-

ceive restitution made mandatory by this title, the court shall order that the victim's share of any restitution owed be deposited in the Crime Victims Fund in the Treasury. In the case of in-kind restitution ordered pursuant to subsection (f)(1)(B) or (f)(3), the court shall order that restitution be made to the State crime victim compensation program in the State in which the victim resides.

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

"(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

"(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for different payment schedules to reflect the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all individual victims receive full restitution before the United States receives any restitution.

"(j)(1) If a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution shall be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

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

"(A) any Federal civil proceeding; and

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

"(k) A restitution order shall provide the following:

"(1) That the entry, collection, and enforcement of an order of restitution shall be governed by the provisions of this section, subchapter C of chapter 227, and subchapter B of chapter 229.

"(2) That the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The Attorney General shall certify to the court that the vic-

tim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

"(l)(1) An order of restitution shall be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title, and may be enforced by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

"(2) An order of in-kind restitution in the form of services shall be enforced by the probation service of the court.

"(m) If a person obligated to provide restitution receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution still owed.".

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

"3664. Procedure for issuance and enforcement of order of restitution.".

SEC. 106. PROCEDURE.

(a) AMENDMENT OF FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 32(b) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (1), by adding at the end the following: "Notwithstanding the preceding sentence, a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court directs, shall be required in any case in which restitution is required to be ordered."; and

(2) in paragraph (4)—

(A) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(B) by inserting after subparagraph (E), the following new subparagraph:

"(F) in appropriate cases, information sufficient for the court to enter an order of restitution;".

(b) FINES.—Section 3572 of title 18, United States Code, is amended—

(1) in subsection (b) by inserting "other than the United States," after "offense,";

(2) in subsection (d)—

(A) in the first sentence, by striking "A person sentenced to pay a fine or other monetary penalty" and inserting "(1) A person sentenced to pay a fine or other monetary penalty, including restitution,";

(B) by striking the third sentence; and

(C) by adding at the end the following:

"(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

"(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.";

(3) in subsection (f), by inserting "restitution" after "special assessment,";

(4) in subsection (h), by inserting "or payment of restitution" after "A fine"; and

(5) in subsection (i)—

(A) in the first sentence, by inserting "or payment of restitution" after "A fine"; and

(B) by amending the second sentence to read as follows: "Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3616A.".

(c) POSTSENTENCE ADMINISTRATION.—

(1) PAYMENT OF A FINE OR RESTITUTION.—Section 3611 of title 18, United States Code, is amended—

(A) by amending the heading to read as follows:

"§ 3611. Payment of a fine or restitution";

(B) by striking "or assessment shall pay the fine or assessment" and inserting ", assessment, or restitution, shall pay the fine, assessment, or restitution"; and

(C) by adding at the end the following: "In the case of restitution, the victim may request that payment be made directly to the victim or the victim's designee.".

(2) COLLECTION.—Section 3612 of title 18, United States, is amended—

(A) by amending the heading to read as follows:

"§ 3612. Collection of unpaid fine or restitution";

(B) in subsection (b)(1)—

(i) in the matter preceding subparagraph (A), by inserting "or restitution order" after "fine";

(ii) in subparagraph (C), by inserting "or restitution order" after "fine";

(iii) in subparagraph (E), by striking "and";

(iv) in subparagraph (F)—

(I) by inserting "or restitution order" after "fine"; and

(II) by inserting "and" at the end; and

(v) by adding at the end the following new subparagraph:

"(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, by means of a form to be provided by

the Attorney General, of any change in the victim's mailing address while restitution is still owed the victim.";

(C) in subsection (c)—

(i) in the first sentence, by inserting "or restitution" after "fine";

(ii) by inserting between the first and second sentences the following: "In the case of restitution, the Attorney General shall ensure that payments are transferred to the victim."; and

(iii) by adding at the end the following: "Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

"(1) A penalty assessment under section 3013 of title 18, United States Code.

"(2) Restitution of all victims.

"(3) All other fines, penalties, costs, and other payments required under the sentence.";

(D) in subsection (d)—

(i) by inserting "or restitution" after "fine"; and

(ii) by striking "is delinquent, to inform him that the fine is delinquent" and inserting "or restitution is delinquent, to inform the person of the delinquency";

(E) in subsection (e)—

(i) by inserting "or restitution" after "fine"; and

(ii) by striking "him that the fine is in default" and inserting "the person that the fine or restitution is in default";

(F) in subsection (f)—

(i) in the heading, by inserting "and restitution" after "on fines"; and

(ii) in paragraph (1), by inserting "or restitution" after "any fine";

(G) in subsection (g), by inserting "or restitution" after "fine" each place it appears; and

(H) in subsection (i), by inserting "and restitution" after "fines".

(3) CIVIL REMEDIES.—Section 3613 of title 18, United States Code, is amended—

(A) in the heading, by inserting "or restitution" after "fine";

(B) in subsection (a)—

(i) by striking "A fine" and inserting the following:

"(1) FINES.—A fine";

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

(iii) by adding at the end the following new paragraph:

"(2) RESTITUTION.—(A) An order of restitution shall operate as a lien in favor of the United States and crime victims against all property belonging to the defendant or defendants. The lien shall arise at the time of the entry of judgment or order and shall continue until the liability is satisfied, remitted, or set aside, or until it becomes otherwise unenforceable. Such lien shall apply against all property and property interests owned by the defendants at the time of arrest as well as all property subsequently acquired by the defendant or defendants.

"(B)(i) In a case in which some or all of the victims are not ascertainable at the time the restitution order is issued, the lien shall be entered in the name of all ascertained victims, if any, and the United States in behalf of the unascertained victims.

"(ii) If the court determines that all victims have been ascertained, no lien interest shall arise in favor of the United States, unless a person entitled to restitution chooses not to participate in the restitution program.

"(iii) In a case in which persons entitled to restitution cannot assert their interests in the lien for any reason, a lien shall arise in favor of the United States acting in behalf of such persons.

"(iv) In any action to enforce a restitution lien in which there is more than one lienholder for the subject property—

"(I) the lienholder seeking to enforce the lien must notify all other lienholders; and

"(II) the court shall make a determination, in the interest of justice, of the equitable distribution of the property subject to the lien.

"(3) JOINTLY HELD PROPERTY.—If property subject to a lien pursuant to this subsection is held jointly by the defendant and a third party or parties, the court shall make a determination, in the interest of justice, as to—

"(A) the enforceability of the lien; and

"(B) the proper distribution of the property.";

(C) in subsection (b)—

(i) by amending paragraph (1) to read as follows:

"(1) the later of 20 years after the entry of the judgment or 20 years after the release from imprisonment of the person fined or ordered to pay restitution; or";

(ii) in paragraph (2), by inserting "or ordered to pay restitution" before the period at the end; and

(iii) in the second sentence, by inserting "or ordered to pay restitution" after "person fined";

(D) in subsection (c)—

(i) by inserting "or restitution" after "to a fine";

(ii) by inserting "or ordered to pay restitution" after "fined"; and

(iii) by striking " 'fine' " and inserting " 'fine or restitution' ";

(E) in subsection (d), by inserting "or restitution" after "fine"; and

(F) in subsection (e)—

(i) by inserting "or restitution" after "fine";

(ii) by inserting "or ordered to pay restitution" after "fined"; and

(iii) by striking "but in no event" and all that follows through the end of the subsection and inserting a period.

(4) HEARING.—Chapter 229 of title 18, United States Code, is amended by inserting after section 3613 the following new section:

"§ 3613A. Hearing for delinquency

"(a)(1) When a fine or payment of restitution is 60 or more days delinquent, or in default, the court shall, upon the motion of the United States or of any victim named in the order to receive restitution, schedule a hearing to consider the delinquency or default. Upon a finding that the defendant is 60 or more days delinquent in payment, or in default, of a fine or restitution, the court may, pursuant to section 3565, revoke probation or a term of supervised release or modify the terms or conditions of probation on a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

"(2) In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the order of a fine or restitution.

"(b)(1) A hearing under this subsection may be conducted by a magistrate judge, subject to de novo review by the court.

"(2) To the extent practicable, in a hearing under this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.

"(3) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.".

(5) RESENTENCING.—Section 3614 of title 18, United States Code, is amended—

(A) in the heading, by inserting "or restitution" after "fine";

(B) in subsection (a), by inserting "or restitution" after "fine";

(C) by adding at the end the following new subsection:

"(c) EFFECT OF INDIGENCY.—In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent.".

(d) CONFORMING AMENDMENT.—The analysis for subchapter B of chapter 229 of title 18, United States Code, is amended to read as follows:

"Sec.
"3611. Payment of a fine or restitution.
"3612. Collection of an unpaid fine or restitution.
"3613. Civil remedies for collection of an unpaid fine or restitution.
"3613A. Hearing for delinquency.
"3614. Resentencing upon failure to pay a fine or restitution.
"3615. Criminal default.

SEC. 107. JUVENILE DELINQUENCY; DISPOSITIONAL HEARING.

Section 5037 of title 18, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting immediately after subsection (c), the following new subsection:

"(d) If a juvenile has been adjudicated delinquent for an offense that would have been an offense described in section 3663A, 2248, 2259, or 2264 if the juvenile had been tried and convicted as an adult, the restitution provisions of such sections shall apply.".

SEC. 108. INSTRUCTION TO SENTENCING COMMISSION.

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to reflect this Act and the amendments made by this Act.

SEC. 109. JUSTICE DEPARTMENT REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines, or amend existing guidelines, to carry out this Act and to ensure that—

(1) in all plea agreements negotiated by the United States, consideration is given to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually pleaded; and

(2) orders of restitution made pursuant to the amendments made by this Act are enforced to the fullest extent of the law.

SEC. 110. SPECIAL ASSESSMENTS ON CONVICTED PERSONS.

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

(1) in subparagraph (A), by striking "$50" and inserting "not less than $100"; and

(2) in subparagraph (B), by striking "$200" and inserting "not less than $400".

SEC. 111. CRIME VICTIMS FUND.

(a) PROHIBITION OF PAYMENTS TO DELINQUENT CRIMINAL DEBTORS BY STATE CRIME VICTIM COMPENSATION PROGRAMS.—

(1) IN GENERAL.—Section 1403(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended—

(A) by striking "and" at the end of paragraph (7);

(B) by redesignating paragraph (8) as paragraph (9); and

(C) by inserting after paragraph (7) the following new paragraph:

"(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine or other monetary penalty imposed for the offense; and".

(2) APPLICATION OF AMENDMENT.—The amendment made by paragraph (1) shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victims compensation programs that are sufficient to ensure that victims compensation is not denied to any person except as authorized by law.

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

"(c) EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.—Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such

assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.".

SEC. 112. VICTIMS OF TERRORISM ACT.

(a) AUTHORITY TO PROVIDE ASSISTANCE AND COMPENSATION TO VICTIMS OF TERRORISM.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404A the following new section:

"SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

"(a) VICTIMS OF ACTS OF TERRORISM OUTSIDE THE UNITED STATES.—The Director may make supplemental grants to States to provide compensation and assistance to the residents of such States who, while outside the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

"(b) VICTIMS OF DOMESTIC TERRORISM.—The Director may make supplemental grants to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Offices for use in coordination with State victims compensation and assistance efforts in providing emergency relief.".

(b) FUNDING OF COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM, MASS VIOLENCE, AND CRIME.—Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as follows:

"(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed $50,000,000.

"(B) The emergency reserve may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States

for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.".

(c) CRIME VICTIMS FUND AMENDMENTS.—

(1) UNOBLIGATED FUNDS.—Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(A) in subsection (c), by striking "subsection" and inserting "chapter"; and

(B) by amending subsection (e) to read as follows:

"(e) AMOUNTS AWARDED AND UNSPENT.—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be returned to the Fund.".

(2) BASE AMOUNT.—Section 1404(a)(5) of such Act (42 U.S.C. 10603(a)(5)) is amended to read as follows:

"(5) As used in this subsection, the term 'base amount' means—

"(A) except as provided in subparagraph (B), $500,000; and

"(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and Palau, $200,000.".

SEC. 113. EFFECTIVE DATE.

The amendments made by this title shall be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 202. STUDY AND REPORT.

(a) STUDY.—The Attorney General, in cooperation with the Director of the Administrative Office of the United States Courts, shall conduct a study of the funds paid out of the Crime Victims Fund and the impact that the amendments made by this Act have on funds available in the Crime Victims Fund, including an assessment of any reduction or increase in fines collected and deposited into the

Fund directly attributable to the amendments made by this Act.

(b) REPORT.—The Attorney General and the Director of the Administrative Office of the United States Courts shall report the findings of the study to the Chairman and ranking Member of the Committees on the Judiciary of the Senate and House of Representatives not later than 4 years after the date of enactment of this Act, together with their recommendations.

Amend the title so as to read: "An Act entitled the Victims Justice Act of 1995".

Passed the House of Representatives February 7, 1995.

Attest: ROBIN H. CARLE,
Clerk.

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HR 665 RS——3

HR 665 RS——4