

104TH CONGRESS
1ST SESSION

S. 173

To provide for restitution of victims of crimes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6 (legislative day, JANUARY 5), 1995

Mr. NICKLES (for himself, Mr. KYL, Mr. THURMOND, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for restitution of victims of crimes, 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 Victims Restitu-

5 tion Act of 1995”.

6 **SEC. 2. ORDER OF RESTITUTION.**

7 Section 3663 of title 18, United States Code, is

8 amended—

9 (1) in subsection (a)—

1 (A) by striking “may order” and inserting
2 “shall order”; and

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

5 “(4) In addition to ordering restitution of the victim
6 of the offense of which a defendant is convicted, a court
7 may order restitution of 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; or

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 “im-
16 practical” 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 new subsections:

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 restoration 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.

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

3 “(A) return of property;

4 “(B) replacement of property; or

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

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

13 “(f) When the court finds that more than 1 victim
14 has sustained a loss requiring restitution by an offender,
15 the court shall order full restitution of each victim but may
16 provide for different payment schedules to reflect the eco-
17 nomic circumstances of each victim.

18 “(g)(1) If the victim has received or is entitled to re-
19 ceive compensation with respect to a loss from insurance
20 or any other source, the court shall order that restitution
21 be paid to the person who provided or is obligated to pro-
22 vide the compensation, but the restitution order shall pro-
23 vide that all restitution of victims required by the order
24 be paid to the victims before any restitution is paid to
25 such a provider of compensation.

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

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

12 “(A) any Federal civil proceeding; and

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

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

16 “(1) all fines, penalties, costs, restitution pay-
17 ments and other forms of transfers of money or
18 property made pursuant to the sentence of the court
19 shall be made by the offender to an entity des-
20 ignated by the Director of the Administrative Office
21 of the United States Courts for accounting and pay-
22 ment by the entity in accordance with this sub-
23 section;

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

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

12 “(B) notify the court and the interested
13 parties when an offender is 90 days in arrears
14 in meeting those obligations; and

15 “(C) disburse money received from an of-
16 fender so that each of the following obligations
17 is paid in full in the following sequence:

18 “(i) a penalty assessment under sec-
19 tion 3013 of title 18, United States Code;

20 “(ii) restitution of all victims; and

21 “(iii) all other fines, penalties, costs,
22 and other payments required under the
23 sentence; and

24 “(3) the offender shall advise the entity des-
25 ignated by the Director of the Administrative Office

1 of the United States Courts of any change in the of-
2 fender's address during the term of the restitution
3 order.

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

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

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

1 “(1) by the United States—

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

5 “(B) in the same manner as a judgment in
6 a civil action; and

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

10 “(l) A victim or the offender may petition the court
11 at any time to modify a restitution order as appropriate
12 in view of a change in the economic circumstances of the
13 offender.”.

14 **SEC. 3. PROCEDURE FOR ISSUING ORDER OF RESTITUTION.**

15 Section 3664 of title 18, United States Code, is
16 amended—

17 (1) by striking subsection (a);

18 (2) by redesignating subsections (b), (c), (d),
19 and (e) as subsections (a), (b), (c), and (d), respec-
20 tively;

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

23 “(a) The court may order the probation service of the
24 court to obtain information pertaining to the amount of
25 loss sustained by any victim as a result of the offense,

1 the financial resources of the defendant, the financial
2 needs and earning ability of the defendant and the defend-
3 ant's dependents, and such other factors as the court
4 deems appropriate. The probation service of the court
5 shall include the information collected in the report of
6 presentence investigation or in a separate report, as the
7 court directs."; and

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

10 "(e) The court may refer any issue arising in connec-
11 tion with a proposed order of restitution to a magistrate
12 or special master for proposed findings of fact and rec-
13 ommendations as to disposition, subject to a de novo de-
14 termination of the issue by the court."

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