

114TH CONGRESS
2D SESSION

H. R. 6440

To amend title 18, United States Code, to provide for new procedures regarding the payment of restitution by defendants convicted of child pornography offenses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2016

Mr. GOWDY (for himself, Mr. GOODLATTE, and Ms. JACKSON LEE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide for new procedures regarding the payment of restitution by defendants convicted of child pornography offenses, 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 “Justice for Child Vic-

5 tims Act of 2016”.

1 **SEC. 2. RESTITUTION IN THE CASE OF TRAFFICKING IN**
2 **CHILD PORNOGRAPHY CONVICTIONS.**

3 (a) RESTITUTION IN THE CASE OF TRAFFICKING IN
4 CHILD PORNOGRAPHY CONVICTIONS.—Section 2259(b) of
5 title 18, United States Code, is amended—

6 (1) in paragraph (1)—

7 (A) by striking “The order” and inserting
8 “Except as provided in paragraph (2), the
9 order”; and

10 (B) by striking “as determined by the
11 court pursuant to paragraph (2)” after “of the
12 victim’s losses”;

13 (2) by inserting after paragraph (1) the fol-
14 lowing:

15 “(2) RESTITUTION FOR TRAFFICKING IN CHILD
16 PORNOGRAPHY CONVICTIONS.—In the case of a con-
17 viction for trafficking in child pornography, the
18 order of restitution under this section shall direct
19 the defendant to pay the victim (through the appro-
20 priate court mechanism) an amount of restitution
21 determined by the court as follows:

22 “(A) FULL AMOUNT OF VICTIM’S LOSSES
23 DETERMINED.—The court shall first determine
24 the full amount of the victim’s losses that were
25 incurred or reasonably projected to be incurred
26 by the victim as a result of the trafficking in

child pornography on or after the date of the
conduct constituting the offense.

“(B) TERMINATION OF PAYMENT.—A victim’s total aggregate recovery pursuant to this section shall not exceed the full amount of the victim’s proven losses. After the victim has received restitution in the full amount of the victim’s losses as measured by the greatest amount of such losses found, in any case involving that victim that has resulted in a final restitution under this section, the liability of each defendant who is or has been ordered to pay restitution for such losses to that victim shall be terminated. The court may direct the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.”;

(3) by striking paragraph (3); and

(4) by redesignating paragraph (2) as paragraph (3).

(b) ADDITIONAL DEFINITIONS.—Section 2259(c) of title 18, United States Code, is amended—

(1) in the heading, to read as follows: “DEFINITIONS”;

1 (2) by striking “For purposes” and inserting
2 the following:

3 “(1) VICTIM.—For purposes”;

4 (3) by striking “under this chapter, including,
5 in the case” and inserting “under this chapter. In
6 the case”;

7 (4) by inserting after “or any other person ap-
8 pointed as suitable by the court,” the following:
9 “may assume the crime victim’s rights under this
10 section,”; and

11 (5) by adding at the end the following:

12 “(2) TRAFFICKING IN CHILD PORNOGRAPHY.—
13 For purposes of this section and section 2259A, the
14 term ‘trafficking in child pornography’ means con-
15 duct proscribed by section 2251(d), section 2252,
16 paragraphs (1) through (5) of section 2252A(a), sec-
17 tion 2252A(g) (in cases in which the series of felony
18 violations exclusively involves violations of section
19 2251(d), 2252, 2252A(a)(1)–(5), or 2260(b)), or
20 section 2260(b).

21 “(3) CHILD PORNOGRAPHY PRODUCTION.—For
22 purposes of this section and section 2259A, the term
23 ‘child pornography production’ means conduct pro-
24 scribed by subsections (a) through (c) of section
25 2251, section 2252A(g) (in cases in which the series

1 of felony violations involves at least one violation of
2 such subsections), or section 2260(a).

3 “(4) FULL AMOUNT OF THE VICTIM’S
4 LOSSES.—For purposes of this section, the term ‘full
5 amount of the victim’s losses’ includes any costs in-
6 curred, or reasonably projected to be incurred in the
7 future, by the victim, as a proximate result of the
8 offense of conviction or, in the case of a trafficking
9 in child pornography conviction, as a proximate re-
10 sult of all trafficking in child pornography offenses
11 involving the same victim, including—

12 “(A) medical services relating to physical,
13 psychiatric, or psychological care;

14 “(B) physical and occupational therapy or
15 rehabilitation;

16 “(C) necessary transportation, temporary
17 housing, and child care expenses;

18 “(D) lost income;

19 “(E) attorneys’ fees, as well as other costs
20 incurred; and

21 “(F) any other relevant losses incurred by
22 the victim.”.

23 (c) FIXED COMPENSATION.—Section 2259 of title
24 18, United States Code, is amended by adding at the end
25 the following:

1 “(d) CHOICE TO RECEIVE FIXED COMPENSATION.—

2 “(1) FIXED COMPENSATION MADE AVAILABLE
3 AT VICTIM’S ELECTION.—

4 “(A) ELECTION TO RECEIVE COMPENSA-
5 TION.—A victim of trafficking in child pornog-
6 raphy may opt to receive fixed compensation
7 from the Child Pornography Victims’ Fund.
8 The court must first make a finding that the
9 claimant is a victim of trafficking in child por-
10 nography. Upon such a finding and a deter-
11 mination by the victim to receive fixed com-
12 pensation, the court shall order payment in ac-
13 cordance with subparagraph (B) to the victim
14 from the Child Pornography Victims’ Fund.

15 “(B) AMOUNT OF COMPENSATION.—The
16 amount of compensation payable is equal to—

17 “(i) for calendar year 1st effective
18 year, \$35,000; and

19 “(ii) for each calendar year thereafter,
20 \$35,000 multiplied by the ratio (not less
21 than 1) of—

22 “(I) the Consumer Price Index
23 for all Urban Consumer (CPI-U, as
24 published by the Bureau of Labor
25 Statistics of the Department of

1 Labor) for the calendar year pre-
2 ceding such calendar year, to

3 “(II) the CPI–U for calendar
4 year 2 years prior to effective year.

5 “(2) LIMITATIONS ON FIXED COMPENSATION.—

6 A victim may only obtain fixed compensation once.
7 Obtaining fixed compensation shall not bar or limit
8 the victim from receiving restitution against any de-
9 fendant for any offenses other than trafficking in
10 child pornography. A victim who receives fixed com-
11 pensation from the Child Pornography Victims’
12 Fund may subsequently seek restitution under this
13 section in trafficking in child pornography cases.
14 However, when determining the amount of restitu-
15 tion, the court shall deduct the amount the victim
16 received in fixed compensation from the full amount
17 of the victim’s losses and shall exclude losses in-
18 curred prior to the payment of fixed compensation.

19 “(3) ACCEPTANCE OF RESTITUTION TO MAKE
20 VICTIM INELIGIBLE FOR FIXED COMPENSATION.—A
21 victim who has collected payment of restitution pur-
22 suant to this section in an amount greater than the
23 amount provided for under paragraph (1)(B) in a
24 trafficking in child pornography case shall be ineli-
25 gible to receive fixed compensation.

1 “(4) ATTORNEY’S FEES.—

2 “(A) IN GENERAL.—An attorney may not
3 charge, receive, or collect, and the court may
4 not approve, any payment of fees and costs that
5 in the aggregate exceeds 25 percent of any pay-
6 ment made under this section.

7 “(B) PENALTY.—Any attorney who vio-
8 lates paragraph (1) shall be fined under this
9 title or imprisoned for not more than 1 year, or
10 both.”.

11 (d) CLERICAL AMENDMENT.—Section 1593(b)(3) of
12 title 18, United States Code, is amended by striking “sec-
13 tion 2259(b)(3)” and inserting “section 2259(c)(4)”.

14 **SEC. 3. ASSESSMENTS IN CHILD PORNOGRAPHY CASES.**

15 (a) ASSESSMENTS IN CHILD PORNOGRAPHY
16 CASES.—Chapter 110 of title 18, United States Code, is
17 amended by inserting after section 2259 the following:

18 **“§ 2259A. Assessments in trafficking in child pornog-**
19 **raphy cases**

20 “(a) IN GENERAL.—In addition to any other criminal
21 penalty, restitution, or special assessment authorized by
22 law, the court shall assess—

23 “(1) not more than \$17,000 on any person con-
24 victed of an offense under sections 2252(a)(4) or
25 2252A(a)(5);

1 “(2) not more than \$35,000 on any person con-
2 victed of any other offense for trafficking in child
3 pornography; and

4 “(3) not more than \$50,000 on any person con-
5 victed of a child pornography production offense.

6 “(b) ANNUAL ADJUSTMENT.—The dollar amounts in
7 subsection (a) shall be adjusted annually in conformity
8 with the Consumer Price Index.

9 “(c) FACTORS CONSIDERED.—In determining the
10 amount of the assessment under subsection (a), the court
11 shall consider the factors set forth in sections 3553(a) and
12 3572.

13 “(d) IMPOSITION AND IMPLEMENTATION.—

14 “(1) IN GENERAL.—The provisions of sub-
15 chapter C of chapter 227 (other than section 3571)
16 and subchapter B of chapter 229 (relating to fines)
17 apply to assessments under this section, except that
18 paragraph (2) applies in lieu of any contrary provi-
19 sions of law relating to fines or disbursement of
20 money received from a defendant.

21 “(2) EFFECT ON OTHER PENALTIES.—Imposi-
22 tion of an assessment under this section does not re-
23 lieve a defendant of, or entitle a defendant to reduce
24 the amount of any other penalty by the amount of
25 the assessment. Any money received from a defend-

1 ant shall be disbursed so that each of the following
 2 obligations is paid in full in the following sequence:

3 “(A) A special assessment under section
 4 3013.

5 “(B) Restitution to victims of any child
 6 pornography production offense that the de-
 7 fendant committed.

8 “(C) An assessment under this section.

9 “(D) Other orders under section 2259 or
 10 any other section of this title.

11 “(E) All other fines, penalties, costs, and
 12 other payments required under the sentence.

13 **“§ 2259B. Establishment of fund**

14 “(a) ESTABLISHMENT.—There is established in the
 15 general fund of the Treasury a separate account to be
 16 known as the ‘Child Pornography Victim’s Fund’ (herein-
 17 after in this section referred to as the ‘Fund’).

18 “(b) DEPOSITS IN FUND.—Notwithstanding any
 19 other provision of law, there shall be deposited in the Fund
 20 all assessments collected under section 2259A and any
 21 gifts, bequests, or donations to the Fund from private en-
 22 tities or individuals.

23 “(c) RETENTION OF SUMS IN FUND; AVAILABILITY
 24 FOR EXPENDITURE WITHOUT FISCAL YEAR LIMITA-
 25 TION.—Sums deposited in the Fund shall remain in the

1 Fund and be available for expenditure without fiscal year
2 limitation.

3 “(d) AVAILABILITY FOR COMPENSATION PAY-
4 MENTS.—Amounts in the Fund shall be available for pay-
5 ment of compensation pursuant to section 2259(d). If at
6 any time the Fund has insufficient funds to make all of
7 the payments ordered under section 2259(d), the Fund
8 shall make such payments as it can satisfy in full with
9 the available funds. In determining the order in which
10 such payments shall be made, the Fund shall make pay-
11 ments based on the date they were ordered, with the ear-
12 liest-ordered payments made first. Sums shall be eligible
13 to be disbursed from the Fund beginning on the date that
14 is 6 months after the date of enactment of this title.

15 “(e) ADMINISTRATION.—The Attorney General shall
16 administer the Child Pornography Victim’s Fund and
17 shall issue guidelines and regulations to implement this
18 section.

19 “(f) SENSE OF CONGRESS.—It is the intent of Con-
20 gress that individuals who violate this Chapter before this
21 legislation is enacted, but who are sentenced after this leg-
22 islation is enacted, shall be subject to the statutory scheme
23 that was in effect at the time the offenses were com-
24 mitted.”

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for chapter of title 18, United States Code, is amended
 3 by inserting after the item pertaining to section 2259 the
 4 following:

“Sec. 2259A. Assessments in trafficking in child pornography cases.
 “Sec. 2259B. Establishment of fund.”.

5 **SEC. 4. ALLOCATION OF AMOUNTS IN THE CRIME VICTIMS**
 6 **FUND.**

7 Section 1402(d)(3)(A) of chapter XIV of title II of
 8 Public Law 98–473 (42 U.S.C. 10601(d)(3)(A)) is amend-
 9 ed to read as follows:

10 “(A) Of the sums remaining in the
 11 Fund—

12 “(i) in any particular fiscal year after
 13 compliance with paragraph (2), such sums
 14 as may be necessary shall be available only
 15 for—

16 “(I) the United States Attorneys
 17 Offices and the Federal Bureau of In-
 18 vestigation to provide and improve
 19 services for the benefit of crime vic-
 20 tims in the Federal criminal justice
 21 system (as described in section 3771
 22 of title 18 and section 503 of the
 23 Crime Control Act of 1990) through
 24 victim coordinators, victims’ special-

1 ists, and advocates, including for the
 2 administrative support of victim coor-
 3 dinators and advocates providing such
 4 services; and

5 “(II) a Victim Notification Sys-
 6 tem; and

7 “(ii) in fiscal year 2017, \$5,000,000
 8 shall be transferred to the Child Pornog-
 9 raphy Victims Fund established under sec-
 10 tion 2259B of title 18, United States
 11 Code.”.

12 **SEC. 5. CLERICAL AMENDMENTS.**

13 (a) EXPANSION OF CIVIL REMEDIES FOR SATISFAC-
 14 TION OF AN UNPAID FINE.—Section 3613(c) of title 18,
 15 United States Code, is amended by inserting after “pursu-
 16 ant to the provisions of subchapter C of chapter 227 of
 17 this title,” the following: “an assessment imposed pursu-
 18 ant to section 2259A of this title,”.

19 (b) CLARIFICATION OF INTERSTATE OR FOREIGN
 20 COMMERCE PROVISION REGARDING CERTAIN ACTIVITIES
 21 PERTAINING TO CHILD PORNOGRAPHY.—Section 2252A
 22 of title 18, United States Code, is amended—

23 (1) in subsection (a)(2)(A)—

24 (A) by striking “using any means or facil-
 25 ity of interstate or foreign commerce” before

1 “shipped or transported” and inserting “has
2 been”; and

3 (B) by inserting after “child pornography”
4 the following: “using any means or facility of
5 interstate or foreign commerce or”; and
6 (2) in subsection (a)(2)(B)—

7 (A) by striking “using any means or facil-
8 ity of interstate or foreign commerce” before
9 “shipped or transported” and inserting “has
10 been”; and

11 (B) by inserting after “child pornography”
12 the following: “using any means or facility of
13 interstate or foreign commerce or”.

14 (c) CLARIFICATION OF THE DEFINITION OF “SEXU-
15 ALLY EXPLICIT CONDUCT”.—Section 2256(2) of title 18,
16 United States Code, is amended—

17 (1) in subparagraph (A)(v)—

18 (A) by inserting “anus,” before “genitals”;
19 and

20 (B) by inserting a comma after “genitals”;
21 and

22 (2) in subparagraph (B)(iii)—

23 (A) by inserting “anus,” before “genitals”;
24 and

25 (B) by inserting a comma after “genitals”.

1 (d) CLARIFICATION OF THE EXTENT OF THE OF-
2 FENSE OF COERCION AND ENTICEMENT OF A MINOR.—
3 Section 3559(e)(2)(A) of title18, United States Code, is
4 amended by striking “into prostitution”.

5 **SEC. 6. REPORT ON IMPLEMENTATION.**

6 Not later than 18 months after the date of enactment
7 of this Act, the Attorney General shall submit to Congress
8 a report on the progress, if any, of the Department of Jus-
9 tice in obtaining restitution for victims of any offense
10 under section 2251, 2251A, 2252, 2252A, or 2260 of title
11 18, United States Code.

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