

109TH CONGRESS
2^D SESSION

H. R. 5673

To amend title 18, United States Code, to make restitution mandatory for Federal crimes, and to simplify and streamline its procedures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2006

Mr. CHABOT (for himself, Mr. POE, Mr. GOHMERT, and Mr. GINGREY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to make restitution mandatory for Federal crimes, and to simplify and streamline its procedures, 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 “Criminal Restitution
5 Improvement Act of 2006”.

1 **SEC. 2. MANDATORY RESTITUTION FOR FEDERAL OF-**
2 **FENSES.**

3 Title 18, United States Code, is amended by striking
4 section 3663 and all that follows through section 3664 and
5 inserting the following:

6 **“§ 3663. Mandatory restitution**

7 “(a) RESTITUTION REQUIRED.—The court shall
8 order a convicted defendant to make restitution for all pe-
9 cuniary loss to identifiable victims, including pecuniary
10 loss resulting from physical injury to, or the death of, an-
11 other, proximately resulting from the offense.

12 “(b) TO WHOM MADE.—

13 “(1) GENERALLY.—The court shall order res-
14 titution be made to each victim of the offense.

15 “(2) DEFINITION OF VICTIM.—As used in this
16 section and section 3664, the term ‘victim’ means—

17 “(A) each identifiable person or entity suf-
18 fering the pecuniary loss (and any successor to
19 that person or entity); and

20 “(B) others, as agreed to in a plea agree-
21 ment or otherwise provided by law.

22 “(c) EXTENT OF RESTITUTION.—Restitution shall
23 compensate the victim for all of the victim’s pecuniary
24 loss, including—

25 “(1) the victim’s costs of seeking and collecting
26 restitution;

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

3 “(A) an amount equal to the cost of nec-
4 essary medical and related professional services
5 and devices relating to physical, psychiatric,
6 and psychological care, including nonmedical
7 care and treatment rendered in accordance with
8 a method of healing recognized by the law of
9 the place of treatment;

10 “(B) an amount equal to the cost of nec-
11 essary physical and occupational therapy and
12 rehabilitation; and

13 “(C) income lost by such victim as a result
14 of such offense;

15 “(3) in the case of an offense resulting in bodily
16 injury that results in the death of the victim,
17 amount equal to the cost of necessary funeral and
18 related services; and

19 “(4) lost income and necessary child care,
20 transportation, and other expenses incurred during
21 participation in the investigation or prosecution of
22 the offense or attendance at proceedings related to
23 the offense.

1 “(d) SPECIAL RULE FOR MISDEMEANORS.—In the
2 case of a misdemeanor, an order of restitution may be in
3 lieu of any other penalty.

4 “(e) ALTERNATIVE ARRANGEMENTS IN LIGHT OF
5 PRACTICAL PROBLEMS.—The court shall provide as com-
6 plete a restitution to as many victims as possible, though
7 not the full restitution to all victims otherwise required
8 by this section, to the extent the court finds on the record
9 that—

10 “(1) the number of identifiable victims is so
11 large as to make restitution impracticable; or

12 “(2) determining complex issues of fact related
13 to the cause or amount of a victim’s losses would
14 complicate or prolong the sentencing process to such
15 a degree that the need to provide restitution to that
16 victim is outweighed by the burden on the sen-
17 tencing process.

18 **“§ 3664. Procedure for issuance and enforcement of**
19 **order of restitution**

20 “(a) REPORT BY PROBATION OFFICER.—

21 “(1) DUTY TO MAKE.—The probation officer
22 shall obtain and include in the presentence report, or
23 in a separate report, as the court may direct, infor-
24 mation sufficient for the court to fashion a restitu-
25 tion order.

1 “(2) CONTENTS.—The report shall include, to
2 the extent practicable, a complete accounting of the
3 losses to each victim, any restitution owed pursuant
4 to a plea agreement, and information relating to the
5 economic circumstances of each defendant. If the
6 number or identity of victims cannot be reasonably
7 ascertained, or other circumstances exist that make
8 this requirement impracticable, the probation officer
9 shall so inform the court and make the best efforts
10 possible to estimate the loss and identify the victims.

11 “(b) DISCLOSURE TO PARTIES.—The court shall dis-
12 close to the defendant, the attorney for the Government,
13 and, upon request, potential recipients of restitution, all
14 portions of the presentence or other report pertaining to
15 the matters described in subsection (a).

16 “(c) INFORMATION FROM ATTORNEY FOR THE GOV-
17 ERNMENT.—The attorney for the Government shall pro-
18 vide to the probation officer any information the Attorney
19 for the Government has relevant to the matters required
20 to be reported under subsection (a).

21 “(d) NOTICE TO VICTIMS.—The probation officer
22 shall, before submitting the presentence report under sub-
23 section (a), to the extent practicable—

24 “(1) provide notice to all identified victims of—

1 “(A) the offense or offenses of which the
2 defendant was convicted;

3 “(B) the amounts subject to restitution
4 submitted to the probation officer;

5 “(C) the opportunity of the victim to sub-
6 mit information to the probation officer con-
7 cerning the amount of the victim’s losses;

8 “(D) the scheduled date, time, and place of
9 the sentencing hearing;

10 “(E) the availability of a lien in favor of
11 the victim; and

12 “(F) the opportunity of the victim to file
13 with the probation officer a separate affidavit
14 relating to the amount of the victim’s losses
15 subject to restitution; and

16 “(2) provide the victim with an affidavit form
17 to submit pursuant to paragraph (1)(F).

18 “(e) DEFENDANT’S AFFIDAVIT AS TO FINANCES.—
19 Each defendant shall prepare and file with the probation
20 officer an affidavit fully describing the financial resources
21 of the defendant, including a complete listing of all assets
22 owned or controlled by the defendant as of the date on
23 which the defendant was arrested, the financial needs and
24 earning ability of the defendant and the defendant’s de-
25 pendants, and such other information that the court re-

1 quires relating to such other factors as the court deems
2 appropriate.

3 “(f) ADDITIONAL DOCUMENTATION OR TESTI-
4 MONY.—After reviewing the report of the probation offi-
5 cer, the court may require additional documentation or
6 hear testimony. The privacy of any records filed, or testi-
7 mony heard, pursuant to this section shall be maintained
8 to the greatest extent possible, and such records may be
9 filed or testimony heard in camera.

10 “(g) DATE FOR FINAL DETERMINATION.—If a vic-
11 tim’s losses are not ascertainable by the date that is 10
12 days before sentencing, the attorney for the Government
13 or the probation officer shall so inform the court, and the
14 court shall set a date for the final determination of the
15 victim’s losses, not to exceed 90 days after sentencing. If
16 the victim subsequently discovers further losses, the victim
17 shall have 60 days after discovery of those losses in which
18 to petition the court for an amended restitution order.
19 Such order may be granted only upon a showing of good
20 cause for the failure to include such losses in the initial
21 claim for restitution.

22 “(h) REFERRAL TO MAGISTRATE OR SPECIAL MAS-
23 TER.—The court may refer any issue arising in connection
24 with a proposed order of restitution to a magistrate judge
25 or special master for proposed findings of fact and rec-

1 ommendations as to disposition, subject to a de novo de-
2 termination of the issue by the court.

3 “(i) BURDENS OF PROOF.—Any dispute as to the
4 proper amount or type of restitution shall be resolved by
5 the court by the preponderance of the evidence. The bur-
6 den of demonstrating the amount of the loss sustained by
7 a victim of restitution as a result of the offense shall be
8 on the attorney for the Government. The burden of dem-
9 onstrating the financial resources of the defendant and the
10 financial needs of the defendant’s dependents, shall be on
11 the defendant. The burden of demonstrating such other
12 matters as the court deems appropriate shall be upon the
13 party designated by the court as justice requires.

14 “(j) ORDER OF PAYMENT.—

15 “(1) Upon determination of the amount of res-
16 titution owed to each victim, the court shall order
17 that the full amount of restitution is due and pay-
18 able immediately.

19 “(2) The court shall specify in the restitution
20 order the manner in which the restitution is to be
21 paid. The court may provide for payment in install-
22 ments according to a schedule, based on—

23 “(A) the financial resources and other as-
24 sets of the defendant, including whether any of
25 these assets are jointly controlled;

1 “(B) projected earnings and other income
2 of the defendant; and

3 “(C) any financial obligations of the de-
4 fendant; including obligations to dependents.

5 “(3) The Attorney General may collect and
6 apply unreported or otherwise newly available assets
7 to the payment of restitution, without regard to any
8 installment payment provisions.

9 “(k) ORDER AS FINAL JUDGMENT.—A sentence that
10 imposes an order of restitution is a final judgment not-
11 withstanding the fact that—

12 “(1) such a sentence can subsequently be—

13 “(A) corrected under Rule 35 of the Fed-
14 eral Rules of Criminal Procedure and section
15 3742 of chapter 235 of this title;

16 “(B) appealed and modified under section
17 3742;

18 “(C) amended under subsection (d)(5); or

19 “(D) adjusted under section 3664(k),
20 3572, or 3613A; or

21 “(2) the defendant may be resentenced under
22 section 3565 or 3614.

23 “(l) JOINT AND SEVERAL RESPONSIBILITY.—If the
24 offense involves more than one defendant, the court may

1 order each defendant jointly and severally liable for any
2 or all of the restitution.

3 “(m) SUPERVISED RELEASE.—A court shall not ter-
4 minate a term of supervised release under section 3583(e)
5 before the order to pay restitution has been completely
6 satisfied. A court shall extend a term of supervised release
7 beyond that otherwise imposed under other provisions of
8 law, until the defendant has paid the restitution in full
9 or the court determines the economic circumstances of the
10 defendant do not allow the payment of any further restitu-
11 tion. If the supervised release is extended under this sub-
12 section, the court shall order that the sole condition of
13 supervised release shall be payment of restitution.

14 “(n) EFFECT OF INSURANCE AND OTHER COM-
15 PENSATION.—

16 “(1) INSURANCE.—In no case shall the fact
17 that a victim receives or is entitled to receive com-
18 pensation with respect to a loss from insurance or
19 any other source be considered in determining the
20 amount of restitution. If a victim receives compensa-
21 tion from insurance or any other source with respect
22 to a loss, the court shall order that restitution be
23 paid to the person who provided or is obligated to
24 provide the compensation, but the restitution order

1 shall provide that all victims be paid before such a
2 provider of compensation.

3 “(2) OTHER COMPENSATION.—Any amount
4 paid to a victim under an order of restitution shall
5 be reduced by any amount later recovered as com-
6 pensatory damages for the same loss by the victim
7 in—

8 “(A) any Federal civil proceeding; and

9 “(B) any State civil proceeding, to the ex-
10 tent provided by the law of the State.

11 “(o) DETAILS OF PAYMENTS.—

12 “(1) MINIMUM PAYMENT REQUIRED.—A res-
13 titution order may direct the defendant to make
14 nominal periodic payments if the court finds on the
15 record that the economic circumstances of the de-
16 fendant do not allow the payment of any amount of
17 a restitution order, and do not allow for the payment
18 of the full amount of a restitution order in the fore-
19 seeable future under any reasonable schedule of pay-
20 ments.

21 “(2) IN-KIND PAYMENTS.—An in-kind payment
22 may be in the form of return of property, replace-
23 ment of property, or if the victim agrees, services
24 rendered to the victim or a person or organization
25 other than the victim.

1 “(p) DIFFERENT PAYMENT SCHEDULES FOR MUL-
2 TIPLE VICTIMS.—If the court finds that more than 1 vic-
3 tim has sustained a loss requiring restitution by a defend-
4 ant, the court may provide for a different payment sched-
5 ule for each victim, based on their individual losses and
6 economic circumstances. In any case in which the United
7 States is a victim, the court shall ensure that all other
8 victims receive full restitution before the United States re-
9 ceives any restitution.

10 “(q) MATERIAL CHANGE IN DEFENDANT’S ABILITY
11 TO PAY.—The defendant shall notify the court and the
12 Attorney General of any material change in the defend-
13 ant’s economic circumstances that might affect the de-
14 fendant’s ability to pay restitution. The court may also
15 accept notification of a material change in the defendant’s
16 economic circumstances from the United States or from
17 the victim. The Attorney General shall certify to the court
18 that the victims have been notified of the change in cir-
19 cumstances. Upon receipt of the notification, the court
20 may, on its own motion, or the motion of any party, in-
21 cluding the victim, adjust the payment schedule, or require
22 immediate payment in full, as the interests of justice re-
23 quire.

24 “(r) NAME AND ADDRESS CHANGES.—It is the re-
25 sponsibility of the victim to provide any change in name

1 or mailing address to the court while restitution is still
2 owed. Not later than 30 days after any change in name
3 or mailing or residence address, a person owing restitution
4 shall promptly report the change to the court. The con-
5 fidentiality of any information relating to a victim shall
6 be maintained.

7 “(s) ENFORCEMENT.—

8 “(1) GENERALLY.—An order of restitution may
9 be enforced by the United States in the manner pro-
10 vided for in subchapter C of chapter 227 and sub-
11 chapter B of chapter 229 of this title.

12 “(2) ABSTRACT OF JUDGMENT.—At the request
13 of a victim named in a restitution order, the clerk
14 of the court shall issue an abstract of judgment cer-
15 tifying that a judgment has been entered in favor of
16 such victim in the amount specified in the restitution
17 order. Upon registering, recording, docketing, or in-
18 dexing such abstract in accordance with the rules
19 and requirements relating to judgments of the court
20 of the State where the district court is located, the
21 abstract of judgment shall be a lien on the property
22 of the defendant located in such State in the same
23 manner and to the same extent and under the same
24 conditions as a judgment of a court of general juris-
25 diction in that State.

1 “(3) SPECIAL RULE FOR IN-KIND ORDERS.—An
2 order of in-kind restitution in the form of services
3 shall be enforced by the probation officer.

4 “(t) EFFECT OF ADDITIONAL RESOURCES.—If a per-
5 son obligated to provide restitution, or pay a fine, receives
6 additional resources from any source, including inherit-
7 ance, settlement, or other judgment, during a period of
8 incarceration or supervision, such person shall be required
9 to apply the value of such resources to any restitution or
10 fine still owed.

11 “(u) RIGHTS OF VICTIMS.—

12 “(1) NOT REQUIRED TO PARTICIPATE.—No vic-
13 tim shall be required to participate in any phase of
14 a restitution order.

15 “(2) ASSIGNMENT TO FUND.—A victim may at
16 any time assign an interest in restitution payments
17 to the Crime Victims Fund in the Treasury without
18 in any way impairing the obligation of the defendant
19 to make such payments.

20 “(v) NO CAUSE OF ACTION CREATED AGAINST THE
21 UNITED STATES OR ITS OFFICERS OR EMPLOYEES.—
22 Nothing in this section or section or 3663 shall be con-
23 strued to create a cause of action not otherwise authorized
24 in favor of any person against the United States or any
25 officer or employee of the United States.”.

1 **SEC. 3. TABLE OF SECTIONS AMENDMENT.**

2 The table of sections at the beginning of chapter 232
3 of title 18, United States Code, is amended by striking
4 the item relating to sections 3663 and all that follows the
5 item relating to section 3664 and inserting the following:

“3663. Mandatory restitution.

“3664. Procedure for issuance and enforcement of order of restitution.”.

6 **SEC. 4. EFFECT OF RESTITUTION ORDER ON SENTENCE OF**
7 **PROBATION.**

8 Section 3564 of title 18, United States Code, is
9 amended by adding at the end the following:

10 “(f) RELATION TO RESTITUTION ORDER.—The court
11 shall not terminate a term of probation under section
12 3564(c) if the defendant has an unsatisfied order of res-
13 titution. The court shall extend probation for such a de-
14 fendant beyond any term otherwise provided by law until
15 the order is satisfied or the court determines the economic
16 circumstances of the defendant do not allow the payment
17 of any further restitution.. The sole condition of such ex-
18 tended probation shall be the satisfaction of that order.”.

19 **SEC. 5. CONFORMING AMENDMENTS AND REPEALS.**

20 (a) ELIMINATION OF SPECIALIZED MANDATORY
21 RESTITUTION PROVISIONS.—Title 18, United States
22 Code, is amended by striking—

23 (1) section 1593;

24 (2) section 2248;

1 (3) section 2259;

2 (4) section 2264; and

3 (5) section 2327.

4 (b) CONFORMING AMENDMENTS TO TABLES.—The
5 table of sections for each of the chapters of title 18,
6 United States Code, from which a section is stricken by
7 subsection (a) is amended by striking the item relating
8 to that section.

9 (c) ELIMINATION OF PROCEDURAL MATTERS MOVED
10 TO RESTITUTION SECTIONS.—Section 3612(b)(1) of title
11 18, United States Code, is amended—

12 (1) by striking subparagraphs (F) and (G);

13 (2) by inserting “and” at the end of subpara-
14 graph (D); and

15 (3) by striking the semicolon at the end of sub-
16 paragraph (E) and inserting a period.

17 (d) CROSS REFERENCE CORRECTIONS.—Section
18 3563(a)(6)(A) of title 18, United States Code, is amended
19 by striking “2248, 2259, 2327, 3663, 3663A, and 3664”
20 and inserting “3663 and 3664”.

21 **SEC. 6. SPECIAL FORFEITURE OF COLLATERAL PROFITS**
22 **FROM CRIME.**

23 Subsection (a) of section 3681 of title 18, United
24 States Code, is amended by striking “ the interest of jus-
25 tice or an order of restitution” and all that follows through

1 the end of the subsection and inserting “the compelling
 2 interest of preventing wrongdoers from profiting from
 3 their crimes or of providing restitution to the victims of
 4 those crimes so requires, order the offender (or any trans-
 5 feree of that defendant) to forfeit any profits made pos-
 6 sible by the offense.”.

7 **SEC. 7. MASHA’S LAW.**

8 (a) IN GENERAL.—Section 2255 of title 18, United
 9 States Code, is amended to read as follows:

10 **“§ 2255. Civil remedy**

11 “(a) Any person who is a victim while a minor of a
 12 violation of section 2241(e), 2242, 2251, 2251A, 2252,
 13 2252A, 2260, 2421, 2422, or 2423 may in a civil action
 14 obtain appropriate relief.

15 “(b) A plaintiff in an action under this section shall
 16 be deemed to have sustained damages of no less than
 17 \$150,000 in value.

18 “(c) An action under this section is barred if the com-
 19 plaint is filed more than 10 years after the right of action
 20 accrues.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
 22 at the beginning of chapter 110 of title 18, United States
 23 Code, is amended so that the item relating to section 2255
 24 reads as follows:

“2255. Civil remedy.”.

