

103^D CONGRESS
1ST SESSION

H. R. 3367

To provide restitution to crime victims.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 1993

Mr. OXLEY (for himself and Mr. MICHEL) introduced the following bill; which
was referred to the Committee on the Judiciary

A BILL

To provide restitution to crime victims.

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’ Res-
5 titution Act of 1993”.

6 **SEC. 2. AMENDMENT OF RESTITUTION PROVISIONS.**

7 (a) ORDER OF RESTITUTION.—Section 3663 of title
8 18, United States Code, is amended—

9 (1) in subsection (a) by—

10 (A) striking “(a) The court” and inserting

11 “(a)(1) The court”;

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

3 (C) adding at the end thereof the following
4 new 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)(A) by striking “imprac-
16 tical” 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); and

24 (6) by adding at the end thereof the following
25 new subsections:

1 “(d)(1) The court shall order restitution to a victim
2 in the full amount of the victim’s losses as determined by
3 the court and without consideration of—

4 “(A) the economic circumstances of the of-
5 fender; or

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

9 “(2) Upon determination of the amount of restitution
10 owed to each victim, the court shall specify in the restitu-
11 tion order the manner in which and the schedule according
12 to which the restitution is to be paid, in consideration of—

13 “(A) the financial resources and other assets of
14 the offender;

15 “(B) projected earnings and other income of
16 the offender; and

17 “(C) any financial obligations of the offender,
18 including obligations to dependents.

19 “(3) A restoration order may direct the offender to
20 make a single, lump-sum payment, partial payment at
21 specified intervals, or such in-kind payments as may be
22 agreeable to the victim and the offender.

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

25 “(A) return of property;

1 “(B) replacement of property; or

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

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

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

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

23 “(2) The issuance of a restitution order shall not af-
24 fect the entitlement of a victim to receive compensation
25 with respect to a loss from insurance or any other source

1 until the payments actually received by the victim under
2 the restitution order fully compensate the victim for the
3 loss, at which time a person that has provided compensa-
4 tion to the victim shall be entitled to receive any payments
5 remaining to be paid under the restitution order.

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

9 “(A) any Federal civil proceeding; and

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

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

13 “(1) all fines, penalties, costs, restitution pay-
14 ments and other forms of transfers of money or
15 property made pursuant to the sentence of the court
16 shall be made by the offender to the clerk of the
17 court for accounting and payment by the clerk in ac-
18 cordance with this subsection;

19 “(2) the clerk of the court shall—

20 “(A) log all transfers in a manner that
21 tracks the offender’s obligations and the cur-
22 rent status in meeting those obligations, unless,
23 after efforts have been made to enforce the res-
24 titution order and it appears that compliance
25 cannot be obtained, the court determines that

1 continued recordkeeping under this subpara-
2 graph would not be useful;

3 “(B) notify the court and the interested
4 parties when an offender is 90 days in arrears
5 in meeting those obligations; and

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

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

11 “(ii) restitution of all victims; and

12 “(iii) all other fines, penalties, costs,
13 and other payments required under the
14 sentence; and

15 “(3) the offender shall advise the clerk of the
16 court of any change in the offender’s address during
17 the term of the restitution order.

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

22 “(j) Compliance with the schedule of payment and
23 other terms of a restitution order shall be a condition of
24 any probation, parole, or other form of release of an of-
25 fender. If a defendant fails to comply with a restitution

1 order, the court may revoke probation or a term of super-
2 vised release, modify the term or conditions of probation
3 or a term of supervised release, hold the defendant in con-
4 tempt of court, enter a restraining order or injunction,
5 order the sale of property of the defendant, accept a per-
6 formance bond, or take any other action necessary to ob-
7 tain compliance with the restitution order. In determining
8 what action to take, the court shall consider the defend-
9 ant's employment status, earning ability, financial re-
10 sources, the willfulness in failing to comply with the res-
11 titution order, and any other circumstances that may have
12 a bearing on the defendant's ability to comply with the
13 restitution order.

14 “(k) An order of restitution may be enforced—

15 “(1) by the United States—

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

19 “(B) in the same manner as a judgment in
20 a civil action; and

21 “(2) by a victim named in the order to receive
22 the restitution, in the same manner as a judgment
23 in a civil action.

24 “(l) A victim or the offender may petition the court
25 at any time to modify a restitution order as appropriate

1 in view of a change in the economic circumstances of the
2 offender.”.

3 (b) PROCEDURE FOR ISSUING ORDER OF RESTITU-
4 TION.—Section 3664 of title 18, United States Code, is
5 amended—

6 (1) by striking subsection (a);

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

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

11 “(a) The court may order the probation service of the
12 court to obtain information pertaining to the amount of
13 loss sustained by any victim as a result of the offense,
14 the financial resources of the defendant, the financial
15 needs and earning ability of the defendant and the defend-
16 ant’s dependents, and such other factors as the court
17 deems appropriate. The probation service of the court
18 shall include the information collected in the report of
19 presentence investigation or in a separate report, as the
20 court directs.”; and

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

23 “(e) The court may refer any issue arising in connec-
24 tion with a proposed order of restitution to a magistrate
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.”.

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