

Public Law 98-596
98th Congress

An Act

Oct. 30, 1984
[H.R. 5846]

To amend title 18, United States Code, to improve collection and administration of criminal fines, and for other purposes.

Criminal Fine
Enforcement Act
of 1984.
18 USC 3611
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Fine Enforcement Act of 1984".

SEC. 2. Section 3565 of title 18, United States Code, is amended—

(1) in the sentence beginning "In all criminal", by striking out "In" and inserting in lieu thereof "(a)(1) Except as provided in paragraph (2) of this subsection, in";

(2) in the sentence beginning "Where the judgment", by striking out "Where the" and all that follows through "is paid," and inserting in lieu thereof: "If the court finds by a preponderance of the information relied upon in imposing sentence that the defendant has the present ability to pay a fine or penalty, the judgment may direct imprisonment until the fine or penalty is paid, and"; and

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

"(2) A judgment imposing the payment of a fine or penalty shall, upon the filing of notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f) of the Internal Revenue Code of 1954, be a lien in favor of the United States upon all property and rights of property belonging to the defendant, except with respect to properties or transactions specified in subsections (b), (c) or (d) of section 6323 of the Internal Revenue Code of 1954 for which a notice of tax lien properly filed on the same date would not be valid and except with respect to property that would be exempt from levy for taxes under section 6334(a) of the Code. Such lien shall be valid against any subsequent purchaser, holder of a security interest, mechanic's lienor or judgment creditor. A writ of execution may be issued with respect to any property or rights to property subject to such lien.

"(3) Such lien is valid against property referred to in paragraph (2) of this subsection if, but for such paragraph, applicable law would permit enforcement of the lien.

"(4) The effect of any execution, whether by attachment, garnishment, levy or other means, on salary, wages or other income payable to or receivable by a defendant shall be continuous from the date such execution is first made until the liability for the fine or penalty to which the execution relates is satisfied, the liability ceases to exist or becomes unenforceable, or the execution is released. Salaries, wages and other income shall be exempt from execution only to the extent of the exemptions from levy for taxes provided in section 6334(d) of the Internal Revenue Code of 1954.

"(5) For the purposes of any State or local law providing for the filing of a notice of a tax lien, a notice of lien for a judgment imposing the payment of a fine or penalty shall be considered a notice of lien for taxes payable to the United States. If such notice is

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26 USC 6323.

26 USC 6334.

not accepted for filing, the registration, recording, docketing, or indexing, of the judgment imposing payment of a fine or penalty in accordance with section 1962 of title 28, United States Code shall be considered for all purposes as the filing prescribed by this subsection.

“(b)(1) A judgment imposing the payment of a fine or penalty shall—

“(A) provide for immediate payment unless, in the interest of justice, the court specifies payment on a date certain or in installments;

“(B) include the name and address of the defendant, the docket number of the case, the amount of the fine, and the schedule of payments (if other than immediate payment is specified); and

“(C) if other than immediate payment is specified, require the defendant to notify the appropriate United States Attorney of any change in the name or address of the defendant.

“(2) If the judgment specifies other than immediate payment of a fine or penalty, the period provided for payment shall not exceed five years, excluding any period served by the defendant as imprisonment for the offense. The defendant shall pay interest on any amount payment of which is deferred under this paragraph. The interest shall be computed on the unpaid balance at the rate of 1.5 percent per month for each full calendar month for which such amount is unpaid.

“(3) If the judgment specifies other than immediate payment of a fine or penalty, and the defendant does not pay an amount due, at the discretion of the Attorney General, the entire unpaid balance shall be payable immediately.

“(c)(1) The defendant shall pay interest on any amount of a fine or penalty (other than a penalty under paragraph (2) of this subsection) that is past due. The interest shall be computed on the unpaid balance at the rate of 1.5 percent per month.

“(2) If an amount owed by a defendant as a fine or penalty is past due for more than 90 days, the defendant shall pay, in addition to any amount otherwise payable, a penalty equal to 25 percent of the amount past due.

“(d)(1) Except as provided in paragraph (2) of this subsection, the defendant shall pay to the Attorney General any amount due as a fine or penalty.

“(2) The Attorney General and the Director of the Administrative Office of the United States Courts may jointly provide by regulation that fines and penalties for specified categories of offenses shall be paid to the clerk of the court.

“(e) If a fine or penalty exceeds \$500, the clerk of the court shall furnish to the Attorney General a certified copy of the judgment.

“(f) If a fine or penalty is imposed on an organization, it is the duty of each individual authorized to make disbursements for the organization to make payment from assets of the organization. If a fine or penalty is imposed on a director, officer, employee, or agent of an organization, payment shall not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

“(g) When a fine or penalty is satisfied as provided by law, the Attorney General shall file with the court a notice of satisfaction of judgment if the defendant makes a written request to the Attorney General for such filing, or if the amount of the fine or penalty

exceeds \$500. Upon request of the defendant, the clerk shall furnish to the defendant a certified copy of the notice.

"(h) The obligation to pay a fine or penalty ceases upon the death of the defendant or the expiration of twenty years after the date of the entry of the judgment, whichever occurs earlier. The defendant and the Attorney General may agree in writing to extend such twenty-year period."

SEC. 3. Section 3569 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "(a)" at the beginning of the subsection; and

(B) by striking out "thirty days" in the sentence beginning "When a poor"; and

(2) by striking out subsection (b).

SEC. 4. Section 3651 of title 18, United States Code, is amended in the paragraph beginning "The defendant's"—

(1) by striking out "fine or other punishment" and inserting in lieu thereof "punishment (other than a fine)"; and

(2) by adding at the end the following new sentence: "If at the end of the period of probation, the defendant has not complied with a condition of probation, the court may nevertheless terminate proceedings against the defendant, but no such termination shall affect the defendant's obligation to pay a fine imposed or made a condition of probation, and such fine shall be collected in the manner provided in section 3565 of this title."

SEC. 5. Section 3655 of title 18, United States Code, is amended by inserting after the paragraph beginning "He shall keep records" the following new paragraph:

"He shall report to the court any failure of a probationer under his supervision to pay an amount due as a fine or as restitution."

SEC. 6. (a) Chapter 229 of title 18, United States Code, is amended by adding at the end the following new sections:

18 USC 3621.

"§ 3621. Criminal default on fine

"(a) Whoever, having been sentenced to pay a fine or penalty, willfully does not pay an amount due—

"(1) in the case of an individual, shall be fined not more than the greater of \$100,000 or twice the unpaid balance of the fine or penalty, or imprisoned not more than one year, or both; and

"(2) in the case of a person other than an individual, shall be fined not more than the greater of \$250,000 or twice the unpaid balance of the fine or penalty.

"(b) It is a defense to a prosecution under subsection (a)(1) of this section that the individual was unable to make the payment because of such individual's responsibility to provide necessities for such individual or other individuals financially dependent upon such individual. The defendant has the burden of establishing the defense under this subsection by a preponderance of the evidence.

18 USC 3622.

"§ 3622. Factors relating to imposition of fines

"(a) In determining whether to impose a fine and the amount of a fine, the court shall consider, in addition to other relevant factors—

"(1) the nature and circumstances of the offense;

"(2) the history and characteristics of the defendant;

"(3) the defendant's income, earning capacity, and financial resources;

“(4) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

“(5) any pecuniary loss inflicted upon others as a result of the offense;

“(6) whether restitution is ordered and the amount of such restitution;

“(7) the need to deprive the defendant of illegally obtained gains from the offense;

“(8) whether the defendant can pass on to consumers or other persons the expense of the fine; and

“(9) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

“(b) If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, the court shall impose a fine or penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

“§ 3623. Alternative fines

18 USC 3623.

“(a) An individual convicted of an offense may be fined not more than the greatest of—

“(1) the amount specified in the law setting forth the offense;

“(2) the applicable amount under subsection (c) of this section;

“(3) in the case of a felony, \$250,000;

“(4) in the case of a misdemeanor resulting in death, \$250,000;

or

“(5) in the case of a misdemeanor punishable by imprisonment for more than six months, \$100,000.

“(b) A person (other than an individual) convicted of an offense may be fined not more than the greatest of—

“(1) the amount specified in the law setting forth the offense;

“(2) the applicable amount under subsection (c) of this section;

“(3) in the case of a felony, \$500,000;

“(4) in the case of a misdemeanor resulting in death, \$500,000;

or

“(5) in the case of a misdemeanor punishable by imprisonment for more than six months, \$100,000.

“(c)(1) If the defendant derives pecuniary gain from the offense, or if the offense results in pecuniary loss to another person, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

“(2) Except as otherwise expressly provided, the aggregate of fines that a court may impose on a defendant at the same time for different offenses that arise from a common scheme or plan, and that do not cause separable or distinguishable kinds of harm or damage, is twice the amount imposable for the most serious offense.

18 USC 3624.

"§ 3624. Security for stayed fine

"If a sentence imposing a fine is stayed, the court shall, absent exceptional circumstances (as determined by the court)—

"(1) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;

"(2) require the defendant to provide a bond or other security to ensure payment of the fine; or

"(3) restrain the defendant from transferring or dissipating assets."

(b) The table of sections for chapter 229 of title 18, United States Code, is amended by inserting after the item relating to section 3620 the following new items:

"3621. Criminal default on fine.

"3622. Factors relating to imposition of fines.

"3623. Alternative fines.

"3624. Security for stayed fine."

SEC. 7. The sentence beginning "In every" in section 4209(a) of title 18, United States Code, is amended—

(1) by striking out "a condition" and inserting in lieu thereof "conditions"; and

(2) by inserting after "local crime" the following: "and, if a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment".

SEC. 8. Section 1 of title 18, United States Code, is amended in paragraph (3)—

(1) by inserting after "which" the following: "as set forth in the provision defining the offense,"; and

(2) by striking out "\$500" and inserting in lieu thereof "\$5,000 for an individual and \$10,000 for a person other than an individual".

SEC. 9. Section 3579 of title 18, United States Code, is amended—

(1) in subsection (c), by striking out "Court" and inserting in lieu thereof "court"; and

(2) in subsection (f), by adding at the end the following new paragraph:

"(4) The order of restitution shall require the defendant to make restitution directly to the victim or other person eligible under this section, or to deliver the amount or property due as restitution to the Attorney General for transfer to such victim or person."

Effective date.
18 USC 1 note.

SEC. 10. The amendments made by sections 2 through 9 of this Act shall apply with respect to offenses committed after December 31, 1984.

18 USC app.

SEC. 11. (a) RULE 12.2 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE IS AMENDED—

(1) by striking out "to a mental examination by a psychiatrist or other expert designated for this purpose in the order of the court" in subdivision (c) and inserting in lieu thereof "to an examination pursuant to 18 U.S.C. 4242"; and

(2) by striking out "mental condition" in subdivision (d) and inserting in lieu thereof "guilt".

Ante, p. 2067.

(b) Section 404(b) and section 404(d) of chapter IV of title II of the joint resolution entitled "Joint resolution making continuing appropriations for the fiscal year 1985, and for other purposes", H.J. Res. 648, Ninety-eighth Congress, are repealed.

Effective date.

(c) The amendments and repeals made by subsections (a) and (b) of this section shall apply on and after the enactment of the joint

resolution entitled "Joint resolution making continuing appropriations for the fiscal year 1985, and for other purposes", H.J. Res. 648, Ninety-eighth Congress.

Sec. 12. (a)(1) Title 18, United States Code, is amended by striking out chapter 228.

Repeal.
Ante, p. 2034.

(2) Section 3651 of title 18, United States Code, is amended by striking out the following paragraph:

"If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation."

(3) Section 3651 of title 18, United States Code, as amended by paragraph (2) of this subsection, is further amended by striking out the last paragraph and inserting in lieu thereof the following:

"The defendant's liability for any fine or other punishment imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation."

(4) The second paragraph of section 3655 of title 18, United States Code, is amended to read as follows:

"He shall keep informed concerning the conduct and condition of each probationer under his supervision and shall report thereon to the court placing such person on probation."

Report.

(5) The first sentence of section 4209(a) of title 18, United States Code, is amended by striking out "and, in a case" and all that follows through the end of the sentence and inserting in lieu thereof a period.

(6) Section 4214(b)(1) of title 18, United States Code, is amended by striking out "or a failure to pay a fine in default within thirty days after notification that it is in default" each place it appears.

(7)(A) Chapter 227 of title 18, United States Code, is amended by inserting after section 3564 the following:

"§ 3565. Collection and payment of fines and penalties

18 USC 3565.

"In all criminal cases in which judgment or sentence is rendered, imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, such judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases. Where the judgment directs imprisonment until the fine or penalty imposed is paid, the issue of execution on the judgment shall not discharge the defendant from imprisonment until the amount of the judgment is paid."

(B) The table of sections for chapter 227 of title 18, United States Code, is amended by striking out the item relating to section 3565 and inserting in lieu thereof the following:

"3565. Collection and payment of fines and penalties."

(8) Section 3569 of title 18, United States Code, is amended—

(A) by inserting "(a)" before "When a" at the beginning of the first paragraph; and

(B) by adding at the end the following:

"(b) Any such indigent prisoner in a Federal institution may, in the first instance, make his application to the warden of such institution, who shall have all the powers of a United States magistrate in such matters, and upon proper showing in support of the application shall administer the oath required by subsection (a) of

Prisoners.

this section, discharge the prisoner, and file his certificate to that effect in the records of the institution.

"Any such indigent prisoner, to whom the warden shall fail or refuse to administer the oath may apply to the nearest magistrate for the relief authorized by this section and the magistrate shall proceed de novo to hear and determine the matter."

Ante, p. 2034.

(9) Section 238(i) of chapter II of title II of the joint resolution entitled "Joint resolution making continuing appropriations for the fiscal year 1985, and for other purposes", H.J. Res. 648, Ninety-eighth Congress, is repealed.

Effective date.
18 USC 3565
note.
Ante, p. 1837.

(b) The amendments and the repeal made by subsection (a) of this section shall apply on and after the enactment of the joint resolution entitled "Joint resolution making continuing appropriations for the fiscal year 1985, and for other purposes", H.J. Res. 648, Ninety-eighth Congress.

Approved October 30, 1984.

LEGISLATIVE HISTORY—H.R. 5846:

HOUSE REPORT No. 98-906 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 130 (1984):

July 30, considered and passed House.

Oct. 11, considered and passed Senate, amended; House concurred in Senate amendments.