

‘Drug and Alcohol Dependent Offenders Treatment Act of 1989.’”

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-570, title I, §1861(a), Oct. 27, 1986, 100 Stat. 3207-53, provided that: “This section [amending sections 3672 and 4255 of this title, enacting provisions set out as a note under section 3672 of this title, and amending provisions set out as a note under section 4255 of this title] may be cited as the ‘Drug and Alcohol Dependent Offenders Treatment Act of 1986.’”

**§ 3662. Conviction records**

(a) The Attorney General of the United States is authorized to establish in the Department of Justice a repository for records of convictions and determinations of the validity of such convictions.

(b) Upon the conviction thereafter of a defendant in a court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court shall cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe.

(c) Records maintained in the repository shall not be public records. Certified copies thereof—

(1) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(2) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of a State, any political subdivision, or any department, agency, or instrumentality thereof, if a statute of such State requires that, upon the conviction of a defendant in a court of the State or any political subdivision thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe; and

(3) shall be prima facie evidence in any court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof, that the convictions occurred and whether they have been judicially determined to be invalid on collateral review.

(d) The Attorney General of the United States shall give reasonable public notice, and afford to

interested parties opportunity for hearing, prior to prescribing regulations under this section.

(Added Pub. L. 91-452, title X, §1001(a), Oct. 15, 1970, 84 Stat. 951, §3578; renumbered §3662, Pub. L. 98-473, title II, §212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

**§ 3663. Order of restitution**

(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim’s estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(B)(i) The court, in determining whether to order restitution under this section, shall consider—

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant’s dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term “victim” means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, may assume the victim’s rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

- (i) the value of the property on the date of the damage, loss, or destruction, or
- (ii) the value of the property on the date of sentencing,

less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

(5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate; and

(6) in the case of an offense under sections 1028(a)(7) or 1028A(a) of this title, pay an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense.

(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B)(i)(II) and (ii),<sup>1</sup> when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine which may be ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under chapter 46 or chapter 96 of this title or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.

(Added Pub. L. 97-291, §5(a), Oct. 12, 1982, 96 Stat. 1253, §3579; renumbered §3663 and amended Pub. L. 98-473, title II, §212(a)(1), (3), Oct. 12, 1984, 98 Stat. 1987, 2010; Pub. L. 98-596, §9, Oct. 30, 1984, 98 Stat. 3138; Pub. L. 99-646, §§8(b), 20(a), 77(a), 78(a), 79(a), Nov. 10, 1986, 100 Stat. 3593, 3596, 3618, 3619; Pub. L. 100-182, §13, Dec. 7, 1987, 101 Stat. 1268; Pub. L. 100-185, §12, Dec. 11, 1987, 101 Stat. 1285; Pub. L. 100-690, title VII, §7042, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 101-647, title XXV, §2509, title XXXV, §3595, Nov. 29, 1990, 104 Stat. 4863, 4931; Pub. L. 103-272, §5(e)(12), July 5, 1994, 108 Stat. 1374; Pub. L. 103-322, title IV, §§40504, 40505, Sept. 13, 1994, 108 Stat. 1947; Pub. L. 104-132, title II, §205(a), Apr. 24, 1996, 110 Stat. 1229; Pub. L. 104-294, title VI, §§601(r)(1), (2), 605(l), Oct. 11, 1996, 110 Stat. 3502, 3510; Pub. L. 106-310, div. B, title XXXVI, §3613(c), Oct. 17, 2000, 114 Stat. 1230; Pub. L. 109-59, title VII, §7128(b), Aug. 10, 2005, 119 Stat. 1910; Pub. L. 110-326, title II, §202, Sept. 26, 2008, 122 Stat. 3561.)

#### REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (c)(4), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

#### AMENDMENTS

2008—Subsec. (b)(6). Pub. L. 110-326 added par. (6).

2005—Subsec. (a)(1)(A). Pub. L. 109-59 inserted “5124,” before “46312.”

2000—Subsec. (c)(2)(B). Pub. L. 106-310 inserted “which may be” after “fine”.

<sup>1</sup> So in original. Probably should be “(ii),”.

1996—Subsec. (a)(1). Pub. L. 104-132, § 205(a)(1)(A)–(E), substituted “(a)(1)(A) The court” for “(a)(1) The court”, inserted “, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section),” before “or section 46312,” “other than an offense described in section 3663A(c),” after “title 49”, and “, or if the victim is deceased, to the victim’s estate” before period at end, and added subpar. (B).

Subsec. (a)(1)(A). Pub. L. 104-294, § 601(r)(1), inserted at end “The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.”

Subsec. (a)(2). Pub. L. 104-132, § 205(a)(1)(F), as amended by Pub. L. 104-294, § 605(l), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For the purposes of restitution, a victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity means any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern.”

Subsec. (c). Pub. L. 104-132, § 205(a)(2), (3), added subsec. (c) and struck out former subsec. (c) which read as follows: “If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim’s estate.”

Subsec. (c)(4). Pub. L. 104-294, § 601(r)(2), inserted “or chapter 96” after “under chapter 46”.

Subsec. (d). Pub. L. 104-132, § 205(a)(2), (3), added subsec. (d) and struck out former subsec. (d) which read as follows: “To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.”

Subsecs. (e) to (i). Pub. L. 104-132, § 205(a)(2), struck out subsecs. (e) to (i), relating to provisions for restitution to persons who had compensated victims for their loss as well as offsets for restitution received by victims against amounts later recovered as compensatory damages, court orders that defendant make restitution in specified time period or in specified installments, payment of restitution as condition of probation or of supervised release, enforcement of restitution orders by United States or by victim, and supervision, termination, or restoration of eligibility for Federal benefits of persons delinquent in making restitution, respectively.

1994—Subsec. (a)(1). Pub. L. 103-272 substituted “section 46312, 46502, or 46504 of title 49” for “under subsection (h), (i), (j), or (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472)”.

Subsec. (b)(2). Pub. L. 103-322, § 40504(1), in introductory provisions, inserted “including an offense under chapter 109A or chapter 110” after “victim”.

Subsec. (b)(3) to (5). Pub. L. 103-322, § 40504(2)–(4), struck out “and” at end of par. (3), added par. (4), and redesignated former par. (4) as (5).

Subsec. (i). Pub. L. 103-322, § 40505, added subsec. (i).

1990—Subsec. (a). Pub. L. 101-647, § 2509, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f)(4). Pub. L. 101-647, § 3595, substituted “604(a)(18)” for “604(a)(17)”.

1988—Subsec. (h). Pub. L. 100-690 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “An order of restitution may be enforced by the United States in the manner provided in sections 3812 and 3813 or in the same manner as a judgment in a civil action, and by the victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”

1987—Subsec. (f)(4). Pub. L. 100-185 inserted “or the person designated under section 604(a)(17) of title 28” after “Attorney General”.

Subsec. (g). Pub. L. 100-182 substituted “revoke probation or a term of supervised release,” for “revoke

probation,” in two places and inserted “probation or” after “modify the term or conditions of” in two places.

1986—Subsec. (a). Pub. L. 99-646, § 20(a), which directed that subsec. (a)(1) be amended by inserting “, in the case of a misdemeanor,” after “in addition to or”, was executed to subsec. (a) to reflect the probable intent of Congress and the prior amendment to subsec. (a) by Pub. L. 99-646, § 8(b), below.

Pub. L. 99-646, § 8(b), struck out par. (1) designation, and struck out par. (2) which read as follows: “If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.”

Subsec. (a)(1). Pub. L. 99-646, § 79(a), substituted “such offense” for “the offense”.

Subsec. (d). Pub. L. 99-646, § 77(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The court shall impose an order of restitution to the extent that such order is as fair as possible to the victim and the imposition of such order will not unduly complicate or prolong the sentencing process.”

Subsec. (h). Pub. L. 99-646, § 78(a), substituted “in the manner provided for the collection of fines and penalties by section 3565 or by a victim” for “or a victim”.

1984—Pub. L. 98-473, § 212(a)(1), renumbered section 3579 of this title as this section.

Subsec. (c). Pub. L. 98-596, § 9(1), substituted “court” for “Court” after “If the”.

Subsec. (f)(4). Pub. L. 98-596, § 9(2), added par. (4).

Subsec. (g). Pub. L. 98-473, § 212(a)(3)(A), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “If such defendant is placed on probation or paroled under this title, any restitution ordered under this section shall be a condition of such probation or parole. The court may revoke probation and the Parole Commission may revoke parole if the defendant fails to comply with such order. In determining whether to revoke probation or parole, the court or Parole Commission shall consider the defendant’s employment status, earning ability, financial resources, the willfulness of the defendant’s failure to pay, and any other special circumstances that may have a bearing on the defendant’s ability to pay.”

Subsec. (h). Pub. L. 98-473, § 212(a)(3)(B), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “An order of restitution may be enforced by the United States in the manner provided for the collection of fines and penalties by section 3565 or by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104-132, set out as a note under section 2248 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100-182, set out as a note under section 3006A of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 8(b) of Pub. L. 99-646 effective Nov. 1, 1987, see section 8(c) of Pub. L. 99-646, set out as a note under section 3553 of this title.

Amendment by section 20(a) of Pub. L. 99-646 effective Nov. 1, 1987, see section 20(c) of Pub. L. 99-646, set out as a note under section 3556 of this title.

Pub. L. 99-646, § 77(b), Nov. 10, 1986, 100 Stat. 3618, provided that: “The amendment made by this section [amending this section] shall take effect on the 30th day after the date of the enactment of this Act [Nov. 10, 1986].”

Pub. L. 99-646, § 78(b), Nov. 10, 1986, 100 Stat. 3618, provided that: “The amendment made by this section [amending this section] shall take effect on the 30th

day after the date of the enactment of this Act [Nov. 10, 1986].”

Pub. L. 99-646, §79(b), Nov. 10, 1986, 100 Stat. 3619, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].”

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-596 applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596.

Amendment by section 212(a)(3) of Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

#### EFFECTIVE DATE

Section effective with respect to offenses occurring after Jan. 1, 1983, see section 9(b)(2) of Pub. L. 97-291, set out as a note under section 1512 of this title.

#### PROFIT BY A CRIMINAL FROM SALE OF HIS STORY

Pub. L. 97-291, §7, Oct. 12, 1982, 96 Stat. 1257, required the Attorney General to report, by Oct. 12, 1982, to Congress regarding any laws that are necessary to ensure that no Federal felon derives any profit from the sale of the recollections, thoughts, and feelings of such felon with regards to the offense committed by the felon until any victim of the offense receives restitution.

### § 3663A. Mandatory restitution to victims of certain crimes

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For the purposes of this section, the term “victim” means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(b) The order of restitution shall require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

(i) the greater of—

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

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

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

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

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit;

(iii) an offense described in section 1365 (relating to tampering with consumer products); or

(iv) an offense under section 670 (relating to theft of medical products); and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) if the court finds, from facts on the record, that—

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is out-