

105TH CONGRESS
1ST SESSION

S. 518

To control crime by requiring mandatory victim restitution.

IN THE SENATE OF THE UNITED STATES

APRIL 8, 1997

Mr. ABRAHAM introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To control crime by requiring mandatory victim restitution.

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 “Victim Restitution En-
5 forcement Act of 1997”.

6 **SEC. 2. PROCEDURE FOR ISSUANCE AND ENFORCEMENT**
7 **OF RESTITUTION ORDER.**

8 Section 3664 of title 18, United States Code, is
9 amended to read as follows:

10 **“§ 3664. Procedure for issuance and enforcement of**
11 **order of restitution**

12 **“(a) IN GENERAL.—**

1 “(1) RELIANCE ON INFORMATION IN
2 PRESENTENCE REPORT.—With respect to each order
3 of restitution under this title, the court shall order
4 the probation service of the court to obtain and in-
5 clude in its presentence report, or in a separate re-
6 port, as the court directs, information sufficient for
7 the court to exercise its discretion in fashioning a
8 restitution order.

9 “(2) CONTENTS OF REPORT.—Each report de-
10 scribed in paragraph (1) shall include, to the extent
11 practicable, a complete accounting of the losses to
12 each victim, any restitution owed pursuant to a plea
13 agreement, and information relating to the economic
14 circumstances of each defendant. If the number or
15 identity of victims cannot be reasonably ascertained,
16 or other circumstances exist that make this require-
17 ment clearly impracticable, the probation service
18 shall so inform the court.

19 “(b) DISCLOSURES.—The court shall disclose to both
20 the defendant and the attorney for the Government all
21 portions of the presentence or other report pertaining to
22 the matters described in subsection (a).

23 “(c) APPLICABILITY OF OTHER LAW.—This chapter,
24 chapter 227, and Rule 32(c) of the Federal Rules of

1 Criminal Procedure are the only laws and rules applicable
 2 to proceedings under this section.

3 “(d) ENSURING AVAILABILITY OF PROPERTY OR AS-
 4 SETS.—

5 “(1) IN GENERAL.—

6 “(A) RESTRAINING ORDER, INJUNCTION,
 7 EXECUTION OF PERFORMANCE BOND.—Upon
 8 application of the United States, the court may
 9 enter a restraining order or injunction, require
 10 the execution of a satisfactory performance
 11 bond, or take any other action to preserve the
 12 availability of property or assets necessary to
 13 satisfy a criminal restitution order under this
 14 subchapter. An order under this subparagraph
 15 may be entered in the following circumstances:

16 “(i) Prior to the filing of an indict-
 17 ment or information charging an offense
 18 that may result in a criminal restitution
 19 order, and upon the United States showing
 20 that—

21 “(I) there is a substantial prob-
 22 ability that the United States will ob-
 23 tain a criminal restitution order;

24 “(II) the defendant has or is like-
 25 ly to take action to dissipate or hide

1 the property or assets of the defend-
2 ant; and

3 “(III) the need to preserve the
4 availability of the property or assets
5 through the requested order outweighs
6 the hardship of any party against
7 whom the order is entered.

8 “(ii) Upon the filing of an indictment
9 or information charging an offense that
10 may result in a criminal restitution order,
11 and upon the United States showing that
12 the defendant has or is likely to take ac-
13 tion to dissipate or hide the property or as-
14 sets of the defendant.

15 “(iii) Upon the conviction, or entry of
16 a guilty plea, to an indictment or informa-
17 tion charging an offense that may result in
18 a criminal restitution order, and upon the
19 United States showing that the defendant
20 may take action to dissipate or hide the
21 property or assets of the defendant or that
22 an order is necessary to marshal and de-
23 termine the property or assets of the de-
24 fendant.

1 “(B) PERIOD OF EFFECTIVENESS.—An
2 order entered under subparagraph (A) shall be
3 effective for not more than 90 days, unless ex-
4 tended by the court for good cause shown or
5 unless an indictment or information described
6 in subparagraph (A)(ii) has been filed.

7 “(2) NOTICE OF ORDER.—

8 “(A) IN GENERAL.—Except as provided in
9 paragraph (3), an order entered under this sub-
10 section shall be after notice to persons appear-
11 ing to have an interest in the property and op-
12 portunity for a hearing, and upon the United
13 States carrying the burden of proof by a pre-
14 ponderance of the evidence.

15 “(B) ADMISSIBLE EVIDENCE.—The court
16 may receive and consider, at a hearing held
17 under this subsection, evidence and information
18 that would be inadmissible under the Federal
19 Rules of Evidence.

20 “(3) TEMPORARY RESTRAINING ORDER.—

21 “(A) IN GENERAL.—A temporary restrain-
22 ing order may be entered without notice or op-
23 portunity for a hearing if the United States
24 demonstrates that—

1 “(i) there is probable cause to believe
2 that the property or assets with respect to
3 which the order is sought would be subject
4 to execution upon the entry of a criminal
5 restitution order;

6 “(ii) there is a substantial probability
7 that the United States will obtain a crimi-
8 nal restitution order; and

9 “(iii) the provision of notice would
10 jeopardize the availability of the property
11 or assets for execution.

12 “(B) EXPIRATION OF ORDER.—A tem-
13 porary order under this paragraph shall expire
14 not later than 10 days after the date on which
15 it is entered, unless—

16 “(i) the court grants an extension for
17 good cause shown; or

18 “(ii) the party against whom the
19 order is entered consents to an extension
20 for a longer period.

21 “(C) HEARING.—A hearing requested con-
22 cerning an order entered under this paragraph
23 shall be held at the earliest possible time, and
24 prior to the expiration of the temporary order.

1 “(4) DISCLOSURE OF CERTAIN INFORMA-
2 TION.—

3 “(A) IN GENERAL.—Information concern-
4 ing the net worth, financial affairs, transactions
5 or interests of the defendant presented to the
6 grand jury may be disclosed to an attorney for
7 the Government assisting in the enforcement of
8 criminal restitution orders, for use in the per-
9 formance of the duties of that attorney.

10 “(B) USE OF CONSUMER CREDIT RE-
11 PORTS.—

12 “(i) IN GENERAL.—An attorney for
13 the Government responsible for the pros-
14 ecution of criminal offenses, or responsible
15 for the enforcement of criminal restitution
16 orders, may obtain and use consumer cred-
17 it reports to—

18 “(I) obtain an order under this
19 section;

20 “(II) determine the amount of
21 restitution that is appropriate; or

22 “(III) enforce a criminal restitu-
23 tion order.

24 “(ii) GRAND JURY SUBPOENA.—This
25 subparagraph does not limit the availabil-

ity of grand jury subpoenas to obtain a
consumer credit report.

“(iii) PROBATION SERVICE.—Upon
conviction, a consumer credit report used
under this subparagraph may be furnished
to the United States Probation Service.

“(e) INFORMATION TO PROBATION SERVICE.—

“(1) IN GENERAL.—

“(A) PROVISION OF INFORMATION BY GOV-
ERNMENT.—Not later than 60 days after con-
viction, and in any event not later than 10 days
prior to sentencing, the attorney for the Gov-
ernment after consulting with all victims (when
practicable), shall promptly provide the proba-
tion service of the court all information readily
available to the attorney, including matters oc-
curring before the grand jury relating to the
identity of the victim or victims, the amount of
losses, and financial matters relating to the de-
fendant.

“(B) PROVISION OF INFORMATION BY DE-
FENDANTS.—Each defendant shall prepare and
file with the probation officer an affidavit fully
describing the financial resources of the defend-
ant, including a complete listing of all assets

1 owned or controlled by the defendant as of the
2 date on which the defendant was arrested, the
3 financial needs and earning ability of the de-
4 fendant and the defendant's dependents, and
5 any other information that the court requires
6 relating to such other factors as the court de-
7 termines to be appropriate.

8 “(C) NOTICE TO VICTIMS.—The attorney
9 for the Government shall, to the maximum ex-
10 tent practicable and as soon as practicable after
11 the provision of information by the Government
12 to the probation service under subparagraph
13 (A), provide notice to all victims. The notice
14 shall inform the victims of—

15 “(i) the offenses for which the defend-
16 ant was convicted;

17 “(ii) the amounts subject to restitu-
18 tion and any other information that is rel-
19 evant to restitution submitted to the pro-
20 bation service;

21 “(iii) the right of the victim to submit
22 information to the probation service con-
23 cerning the amount of the losses of the vic-
24 tim;

1 “(iv) the scheduled date, time, and
2 place of the sentencing hearing;

3 “(v) the availability of a lien in favor
4 of the victim under subsection (n)(1)(D);
5 and

6 “(vi) the opportunity of the victim to
7 file a separate affidavit with the court
8 under subparagraph (E).

9 “(D) LIMITATIONS ON INFORMATION.—
10 Upon ex parte application to the court, and a
11 showing that the requirements of subparagraph
12 (A) may cause harm to any victim, or jeopard-
13 ize an ongoing investigation, the court may
14 limit the information to be provided to or
15 sought by the probation service of the court.

16 “(E) AFFIDAVIT OF OBJECTION.—If any
17 victim objects to any of the information pro-
18 vided to the probation service by the attorney
19 for the Government under this paragraph, the
20 victim may file a separate affidavit with the
21 court.

22 “(2) ADDITIONAL DOCUMENTATION OR TESTI-
23 MONY.—After reviewing the report of the probation
24 service of the court, the court may require additional
25 documentation or hear testimony. The privacy of

1 any records filed, or testimony heard, under this sec-
2 tion shall be maintained to the greatest extent pos-
3 sible and those records may be filed or testimony
4 heard in camera.

5 “(3) ADDITIONAL TIME FOR DETERMINATION
6 OF LOSSES.—If the losses to the victim are not as-
7 certainable by the date that is 10 days prior to sen-
8 tencing as provided in paragraph (1), the United
9 States Attorney (or a designee of the United States
10 Attorney) shall so inform the court, and the court
11 shall set a date for the final determination of the
12 losses of the victim, not to exceed 90 days after sen-
13 tencing. If the losses to the victim cannot reasonably
14 be ascertained, the court shall determine an appro-
15 priate amount of restitution based on the available
16 information. If the victim subsequently discovers fur-
17 ther losses, the victim shall have 60 days after dis-
18 covery of those losses during which to petition the
19 court for an amended restitution order. The order
20 may be granted only upon a showing of good cause
21 for the failure to include those losses in the initial
22 claim for restitutionary relief.

23 “(4) REFERRAL TO MAGISTRATE OR SPECIAL
24 MASTER.—The court may refer any issue arising in
25 connection with a proposed order of restitution to a

1 magistrate or special master for proposed findings of
2 fact and recommendations as to disposition, subject
3 to a de novo determination of the issue by the court.

4 “(5) INSURANCE OF VICTIM NOT CONSID-
5 ERED.—In no case shall the fact that a victim has
6 received or is entitled to receive compensation with
7 respect to a loss from insurance or any other source
8 be considered in determining the amount of restitu-
9 tion.

10 “(f) EVIDENTIARY STANDARD.—Any dispute as to
11 the proper amount or type of restitution shall be resolved
12 by the court by the preponderance of the evidence. The
13 burden of demonstrating the amount of the loss sustained
14 by a victim as a result of the offense shall be on the attor-
15 ney for the Government. The burden of demonstrating the
16 financial resources of the defendant and the financial
17 needs of the defendant and the dependents of the defend-
18 ant shall be on the defendant. The burden of demonstrat-
19 ing such other matters as the court deems appropriate
20 shall be upon the party designated by the court as justice
21 requires.

22 “(g) FACTORS FOR CONSIDERATION.—

23 “(1) IN GENERAL.—

24 “(A) ECONOMIC CIRCUMSTANCES OF VIC-
25 TIM NOT CONSIDERED.—In each order of res-

1 tution, the court shall order restitution to each
 2 victim in the full amount of the losses of each
 3 victim as determined by the court and without
 4 consideration of the economic circumstances of
 5 the defendant.

6 “(B) AWARD OF REASONABLY ASCERTAIN-
 7 ABLE LOSSES.—The court shall order restitu-
 8 tion in the amount of the total loss that is rea-
 9 sonably ascertainable, if—

10 “(i) the number of victims is too
 11 great;

12 “(ii) the actual identity of the victims
 13 cannot be ascertained; and

14 “(iii) or the full amount of the losses
 15 of each victim cannot be reasonably
 16 ascertained;

17 “(2) AMOUNT AND TIMING OF RESTITUTION.—

18 The restitution order shall be for a sum certain and
 19 payable immediately.

20 “(3) NOMINAL PERIODIC PAYMENTS.—If the
 21 court finds from facts on the record that the eco-
 22 nomic circumstances of the defendant do not allow
 23 and are not likely to allow the defendant to make
 24 more than nominal payments under the restitution
 25 order, the court shall direct the defendant to make

1 nominal periodic payments in the amount the de-
2 fendant can reasonably be expected to pay by mak-
3 ing a diligent and bona fide effort toward the res-
4 titution order entered under paragraph (1). Nothing
5 in the paragraph shall impair the obligation of the
6 defendant to make full restitution under this sub-
7 section.

8 “(4) STATUS OF DEBT.—Notwithstanding any
9 payment schedule entered by the court under para-
10 graph (2), each order of restitution shall be a civil
11 debt, payable immediately, and subject to the en-
12 forcement procedures provided in subsection (n). In
13 no event shall a defendant incur any criminal pen-
14 alty for failure to make a restitution payment under
15 the restitution order because of the indigency of the
16 defendant.

17 “(h) VICTIM RIGHTS.—

18 “(1) NO PARTICIPATION REQUIRED.—No victim
19 shall be required to participate in any phase of a
20 restitution order. If a victim declines to receive res-
21 titution made mandatory by this title, the court shall
22 order that the share of the victim of any restitution
23 owed be deposited in the Crime Victims Fund in the
24 Treasury.

1 “(2) ASSIGNMENT OF INTEREST.—A victim
2 may at any time assign the interest of the victim in
3 restitution payments to the Crime Victims Fund in
4 the Treasury without in any way impairing the obli-
5 gation of the defendant to make those payments.

6 “(3) VICTIMS NOT IDENTIFIED OR LOCATED.—
7 If the victim cannot be located or identified, the
8 court shall direct that the restitution payments be
9 made to the Crime Victims Fund of the Treasury.
10 This paragraph shall not be construed to impair the
11 obligation of the defendant to make those payments.

12 “(i) JOINT AND SEVERAL LIABILITY OF MULTIPLE
13 DEFENDANTS.—If the court finds that more than 1 de-
14 fendant has contributed to the loss of a victim, the court
15 may make each defendant jointly and severally liable for
16 payment of the full amount of restitution or may appor-
17 tion liability among the defendants to reflect the level of
18 contribution to the loss of the victim and economic cir-
19 cumstances of each defendant.

20 “(j) PRIORITY OF PAYMENTS.—If the court finds
21 that more than 1 victim has sustained a loss requiring
22 restitution by a defendant, the court may issue an order
23 of priority for restitution payments based on the type and
24 amount of the loss of the victim accounting for the eco-
25 nomic circumstances of each victim. In any case in which

1 the United States is a victim, the court shall ensure that
 2 all individual victims receive full restitution before the
 3 United States receives any restitution.

4 “(k) INSURANCE.—

5 “(1) IN GENERAL.—If a victim has received or
 6 is entitled to receive compensation with respect to a
 7 loss from insurance or any other source, the court
 8 shall order that restitution shall be paid to the per-
 9 son who provided or is obligated to provide the com-
 10 pensation, but the restitution order shall provide
 11 that all restitution of victims required by the order
 12 be paid to the victims before any restitution is paid
 13 to any such provider of compensation.

14 “(2) REDUCTION OF AMOUNT.—Any amount
 15 paid to a victim under an order of restitution shall
 16 be reduced by any amount later recovered as com-
 17 pensatory damages for the same loss by the victim
 18 in—

19 “(A) any Federal civil proceeding; and

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

22 “(3) OTHER RESOURCES.—If a person obli-
 23 gated to provide restitution receives substantial re-
 24 sources from any source, including inheritance, set-
 25 tlement, or other judgment, that person shall be re-

1 quired to apply the value of those resources to any
2 restitution still owed.

3 “(l) MATERIAL CHANGES IN ECONOMIC STATUS OF
4 DEFENDANT.—The defendant shall notify the court and
5 the Attorney General of any material change in the eco-
6 nomic circumstances of the defendant that might affect
7 the ability of the defendant to pay restitution. Upon re-
8 ceipt of the notification, the court may, on its own motion,
9 or the motion of any party, including the victim, adjust
10 the payment schedule, or require immediate payment in
11 full, as the interests of justice require.

12 “(m) JURISDICTION OF COURT.—

13 “(1) IN GENERAL.—The court shall retain ju-
14 risdiction over any criminal restitution judgment or
15 amended criminal restitution judgment for a period
16 of 5 years from the date the sentence was imposed.
17 This limitation shall be tolled during any period of
18 time that the defendant—

19 “(A) was incarcerated;

20 “(B) was a fugitive; or

21 “(C) was granted a stay that prevented the
22 enforcement of the restitution order.

23 “(2) FAILURE TO PAY.—While within the juris-
24 diction of the court, if the defendant knowingly fails
25 to make a bona fide effort to pay whatever amount

1 of restitution is ordered by the court, or knowingly
 2 and willfully refuses to pay restitution, the court
 3 may—

4 “(A) modify the terms or conditions of the
 5 probation or supervised release of the defend-
 6 ant;

7 “(B) extend the probation or supervised
 8 release of the defendant until a date not later
 9 than 10 years from the date the sentence was
 10 imposed;

11 “(C) revoke the probation or supervised re-
 12 lease of the defendant;

13 “(D) hold the defendant in contempt; or

14 “(E) increase the sentence of the defend-
 15 ant to any sentence that might originally have
 16 been imposed under the applicable statute,
 17 without regard to the sentencing guidelines.

18 “(n) ENFORCEMENT OF ORDER OF RESTITUTION.—

19 “(1) IN GENERAL.—An order of restitution may
 20 be enforced—

21 “(A) through civil or administrative meth-
 22 ods during the period that the restitution lien
 23 provided for in section 3613 of title 18, United
 24 States Code, is enforceable;

1 “(B) by the United States in the manner
2 provided for in subchapter C of chapter 227
3 and subchapter B of chapter 229;

4 “(C) by the United States regardless of
5 whether for the benefit of the United States, in
6 accordance with the procedures of chapter 176
7 of part VI of title 28, or in accordance with any
8 other administrative or civil enforcement means
9 available to the United States to enforce a debt
10 due the United States; or

11 “(D) by any victim named in the restitu-
12 tion order as a lien under section 1962 of title
13 28.

14 “(2) ESTOPPEL.—A conviction of a defendant
15 for an offense giving rise to restitution under this
16 section shall estop the defendant from denying the
17 essential allegations of that offense in any subse-
18 quent Federal civil proceeding or State civil proceed-
19 ing, regardless of any State law precluding estoppel
20 for a lack of mutuality. The victim, in the subse-
21 quent proceeding, shall not be precluded from estab-
22 lishing a loss that is greater than the loss deter-
23 mined by the court in the earlier criminal proceed-
24 ing.”.

1 **SEC. 3. CIVIL REMEDIES.**

2 Section 3613 of title 18, United States Code, is
3 amended—

4 (1) in the section heading, by inserting “or res-
5 titution” after “fine”; and

6 (2) in subsection (a)—

7 (A) by striking “The United States” and
8 inserting the following:

9 “(1) FINES.—The United States”;

10 (B) by redesignating paragraphs (1), (2),
11 and (3) as subparagraphs (A), (B), and (C), re-
12 spectively, and indenting accordingly; and

13 (C) by adding at the end the following:

14 “(2) RESTITUTION.—

15 “(A) IN GENERAL.—

16 “(i) LIEN.—An order of restitution
17 shall operate as a lien in favor of the Unit-
18 ed States for its benefit or for the benefit
19 of any non-Federal victims against all
20 property belonging to the defendant or de-
21 fendants.

22 “(ii) TIMING.—The lien shall arise at
23 the time of the entry of judgment or order
24 and shall continue until the liability is sat-
25 isfied, remitted, or set aside, or until it be-
26 comes otherwise unenforceable.

1 “(iii) PERSONS AGAINST WHOM LIEN
2 APPLIES.—The lien shall apply against all
3 property and property interests—

4 “(I) owned by the defendant or
5 defendants at the time of arrest; and

6 “(II) subsequently acquired by
7 the defendant or defendants.

8 “(B) ENTRY OF LIEN.—The lien shall be
9 entered in the name of the United States on be-
10 half of all ascertained victims, unascertained
11 victims, victims entitled to restitution who
12 choose not to participate in the restitution pro-
13 gram and victims entitled to restitution who
14 cannot assert their interests in the lien for any
15 reason.

16 “(3) JOINTLY HELD PROPERTY.—

17 “(A) IN GENERAL.—

18 “(i) DIVISION AND SALE OF PROP-
19 erty.—If the court enforcing an order of
20 restitution under this section determines
21 that the defendant has an interest in prop-
22 erty with another, and that the defendant
23 cannot satisfy the restitution order from
24 his or her separate property or income, the
25 court may, after considering all of the eq-

1 uities, order that jointly owned property be
2 divided and sold, upon such conditions as
3 the court deems just, notwithstanding any
4 Federal or State law to the contrary.

5 “(ii) PROTECTION OF INNOCENT PAR-
6 TIES.—The court shall take care to protect
7 the reasonable and legitimate interests of
8 the innocent spouse and minor children of
9 the defendant, especially real property used
10 as the actual home of that innocent spouse
11 and minor children, except to the extent
12 that the court determines that the interest
13 of that innocent spouse and children is the
14 product of the criminal activity of which
15 the defendant has been convicted, or is the
16 result of a fraudulent transfer.

17 “(B) FRAUDULENT TRANSFERS.—In de-
18 termining whether there was a fraudulent
19 transfer, the court shall consider whether the
20 debtor made the transfer—

21 “(i) with actual intent to hinder,
22 delay, or defraud the United States or
23 other victim; or

1 “(ii) without receiving a reasonably
 2 equivalent value in exchange for the trans-
 3 fer.

4 “(C) CONSIDERATIONS FOR PROTECTION
 5 OF INNOCENT PARTIES.—In determining what
 6 portion of the jointly owned property shall be
 7 set aside for the innocent spouse or children of
 8 the defendant, or whether to have sold or di-
 9 vided the jointly held property, the court shall
 10 consider—

11 “(i) the contributions of the other
 12 joint owner to the value of the property;

13 “(ii) the reasonable expectation of the
 14 other joint owner to be able to enjoy the
 15 continued use of the property; and

16 “(iii) the economic circumstances and
 17 needs of the defendant and dependents of
 18 the defendant and the economic cir-
 19 cumstances and needs of the victim and
 20 the dependents of the victim.”.

21 **SEC. 4. FINES.**

22 Section 3572(b) of title 18, United States Code, is
 23 amended to read as follows:

24 “(b) PAYMENTS; EFFECT OF INDIGENCY.—Any fine,
 25 special assessment, restitution, or cost shall be for a sum

1 certain and shall be payable immediately. In no event shall
2 a defendant incur any criminal penalty for failure to make
3 a payment on a fine, special assessment, restitution, or
4 cost as a result of the indigency of the defendant.”.

5 **SEC. 5. RESENTENCING.**

6 Section 3614(a) of title 18, United States Code, is
7 amended by inserting before the period at the end the fol-
8 lowing: “or may increase the sentence of the defendant
9 to any sentence that might originally have been imposed
10 under the applicable statute”.

○