

106TH CONGRESS  
1ST SESSION

# S. 145

To control crime by requiring mandatory victim restitution.

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IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

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

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## 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 1999”.

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.

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

“(2) NOTICE OF ORDER.—

“(A) IN GENERAL.—Except as provided in paragraph (3), an order entered under this subsection shall be after notice to persons appearing to have an interest in the property and opportunity for a hearing, and upon the United States carrying the burden of proof by a preponderance of the evidence.

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

“(3) TEMPORARY RESTRAINING ORDER.—

“(A) IN GENERAL.—A temporary restraining order may be entered without notice or opportunity for a hearing if the United States 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 restitue-  
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  
18 United States for its benefit or for the  
19 benefit of any non-Federal victims against  
20 all property belonging to the defendant or  
21 defendants.

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”.

○