

110TH CONGRESS  
1ST SESSION

# H. R. 845

To improve and consolidate the law relating to restitution in criminal cases.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2007

Mr. CHABOT (for himself, Mr. SMITH of Texas, Mr. GALLEGLY, Mr. FRANKS of Arizona, and Mr. PENCE) introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To improve and consolidate the law relating to restitution  
in criminal cases.

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 “Criminal Restitution  
5 Improvement Act of 2007”.

**6 SEC. 2. MANDATORY RESTITUTION FOR FEDERAL OF-**  
7       **FENSES.**

8       Title 18, United States Code, is amended by striking  
9 section 3663 and all that follows through section 3664 and  
10 inserting the following:

1   **“§ 3663. Mandatory restitution**

2       “(a) RESTITUTION REQUIRED.—The court shall  
3 order a convicted defendant to make restitution for all pe-  
4 cuniary loss to identifiable victims, including pecuniary  
5 loss resulting from physical injury to, or the death of, an-  
6 other, proximately resulting from the offense.

7       “(b) TO WHOM MADE.—

8           “(1) GENERALLY.—The court shall order res-  
9 titution be made to each victim of the offense.

10          “(2) DEFINITION OF VICTIM.—As used in this  
11 section and section 3664, the term ‘victim’ means—

12           “(A) each identifiable person or entity suf-  
13 fering the pecuniary loss (and any successor to  
14 that person or entity); and

15           “(B) others, as agreed to in a plea agree-  
16 ment or otherwise provided by law.

17          “(c) EXTENT OF RESTITUTION.—Restitution shall  
18 compensate the victim for all of the victim’s pecuniary  
19 loss, including—

20           “(1) an amount equal to the greater of the  
21 value of the property on the date of the damage,  
22 loss, or destruction or the value of the property on  
23 the date of sentencing;

24           “(2) an amount equal to the cost of necessary  
25 medical and related professional services and devices  
26 relating to physical, psychiatric, and psychological

1        care, including nonmedical care and treatment ren-  
2        dered in accordance with a method of healing recog-  
3        nized by the law of the place of treatment;

4                “(3) an amount equal to the cost of necessary  
5        physical and occupational therapy and rehabilitation;  
6        and

7                “(4) income lost by such victim as a result of  
8        such offense;

9                “(5) lost income and necessary child care,  
10        transportation, and other expenses incurred during  
11        participation in the investigation or prosecution of  
12        the offense or attendance at proceedings related to  
13        the offense, including attorneys’ fees necessarily and  
14        reasonably incurred for representation of the victim  
15        except for payment of salaries of government law-  
16        yers; and

17                “(6) in the case of an offense resulting in the  
18        death of the victim, an amount equal to the cost of  
19        necessary funeral and related services.

20        “(d) **SPECIAL RULE FOR MISDEMEANORS.**—In the  
21        case of a misdemeanor, an order of restitution may be in  
22        lieu of any other penalty.

23        “(e) **ALTERNATIVE ARRANGEMENTS IN LIGHT OF**  
24 **PRACTICAL PROBLEMS.**—The court shall provide as com-  
25        plete a restitution to as many victims as possible, though

- 1 not the full restitution to all victims otherwise required
- 2 by this section, to the extent the court finds on the record
- 3 that—

4                   “(1) the number of identifiable victims is so  
5                   large as to make restitution impracticable; or

6               “(2) determining complex issues of fact related  
7                to the cause or amount of a victim’s losses would  
8                complicate or prolong the sentencing process to such  
9                a degree that the need to provide restitution to that  
10               victim is outweighed by the burden on the sen-  
11               tencing process.

12 "§ 3664. Procedure for issuance and enforcement of  
13 order of restitution

14        "(a) REPORT BY PROBATION OFFICER.—

15       “(1) DUTY TO MAKE.—The probation officer  
16       shall obtain and include in the presentence report, or  
17       in a separate report, as the court may direct, infor-  
18       mation sufficient for the court to fashion a restitu-  
19       tion order.

20           “(2) CONTENTS.—The report shall include, to  
21           the extent practicable, a complete accounting of the  
22           losses to each victim, any restitution owed pursuant  
23           to a plea agreement, and information relating to the  
24           economic circumstances of each defendant. If the  
25           number or identity of victims cannot be reasonably

1 ascertained, or other circumstances exist that make  
2 this requirement impracticable, the probation officer  
3 shall so inform the court and make the best efforts  
4 possible to estimate the loss and identify the victims.

5 “(b) DISCLOSURE TO PARTIES.—The court shall dis-  
6 close to the defendant, the attorney for the Government,  
7 and, upon request, potential recipients of restitution, all  
8 portions of the presentence or other report pertaining to  
9 the matters described in subsection (a).

10 “(c) INFORMATION FROM ATTORNEY FOR THE GOV-  
11 ERNMENT.—The attorney for the Government shall pro-  
12 vide to the probation officer any information the Attorney  
13 for the Government has relevant to the matters required  
14 to be reported under subsection (a).

15 “(d) NOTICE TO VICTIMS.—The probation officer  
16 shall, before submitting the presentence report under sub-  
17 section (a), to the extent practicable—

18 “(1) provide notice to all identified victims of—  
19 “(A) the offense or offenses of which the  
20 defendant was convicted;

21 “(B) the amounts subject to restitution  
22 submitted to the probation officer;

23 “(C) the opportunity of the victim to sub-  
24 mit information to the probation officer con-  
25 cerning the amount of the victim’s losses;

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

3                   “(E) the availability of a lien in favor of  
4                   the victim; and

5                   “(F) the opportunity of the victim to file  
6                   with the probation officer a separate affidavit  
7                   relating to the amount of the victim’s losses  
8                   subject to restitution; and

9                   “(2) provide the victim with an affidavit form  
10                  to submit pursuant to paragraph (1)(F).

11                 “(e) DEFENDANT’S AFFIDAVIT AS TO FINANCES.—

12                 Each defendant shall prepare and file with the probation  
13                 officer an affidavit fully describing the financial resources  
14                 of the defendant, including a complete listing of all assets  
15                 owned or controlled by the defendant as of the date on  
16                 which the defendant was arrested, the financial needs and  
17                 earning ability of the defendant and the defendant’s de-  
18                 pendents, and such other information that the court re-  
19                 quires relating to such other factors as the court deems  
20                 appropriate.

21                 “(f) ADDITIONAL DOCUMENTATION OR TESTI-  
22                 MONY.—After reviewing the report of the probation offi-  
23                 cer, the court may require additional documentation or  
24                 hear testimony. The privacy of any records filed, or testi-  
25                 mony heard, pursuant to this section shall be maintained

1 to the greatest extent possible, and such records may be  
2 filed or testimony heard in camera.

3       “(g) DATE FOR FINAL DETERMINATION.—If a vic-  
4 tim’s losses are not ascertainable by the date that is 10  
5 days before sentencing, the attorney for the Government  
6 or the probation officer shall so inform the court, and the  
7 court shall set a date for the final determination of the  
8 victim’s losses, not to exceed 90 days after sentencing. If  
9 the victim subsequently discovers further losses, the victim  
10 shall have 60 days after discovery of those losses in which  
11 to petition the court for an amended restitution order.  
12 Such order may be granted only upon a showing of good  
13 cause for the failure to include such losses in the initial  
14 claim for restitution.

15       “(h) REFERRAL TO MAGISTRATE OR SPECIAL MAS-  
16 TER.—The court may refer any issue arising in connection  
17 with a proposed order of restitution to a magistrate judge  
18 or special master for proposed findings of fact and rec-  
19 ommendations as to disposition, subject to a de novo de-  
20 termination of the issue by the court.

21       “(i) BURDENS OF PROOF.—Any dispute as to the  
22 proper amount or type of restitution shall be resolved by  
23 the court by the preponderance of the evidence. The bur-  
24 den of demonstrating the amount of the loss sustained by  
25 a victim of restitution as a result of the offense shall be

1 on the attorney for the Government. The burden of dem-  
2 onstrating the financial resources of the defendant and the  
3 financial needs of the defendant's dependents, shall be on  
4 the defendant. The burden of demonstrating such other  
5 matters as the court deems appropriate shall be upon the  
6 party designated by the court as justice requires.

7       “(j) ORDER OF PAYMENT.—

8           “(1) Upon determination of the amount of res-  
9 titution owed to each victim, the court shall order  
10 that the full amount of restitution is due and pay-  
11 able immediately.

12           “(2) The court shall specify in the restitution  
13 order the manner in which the restitution is to be  
14 paid. The court may provide for payment in install-  
15 ments according to a schedule. The length of time  
16 over which scheduled payments are established shall  
17 be the shortest time in which full payment reason-  
18 ably can be made and based on—

19           “(A) the financial resources and other as-  
20 sets of the defendant, including whether any of  
21 these assets are jointly controlled;

22           “(B) projected earnings and other income  
23 of the defendant; and

24           “(C) any financial obligations of the de-  
25 fendant; including obligations to dependents.

1           “(3) The court may direct the defendant to  
2           take any action, including the repatriation of assets  
3           or the surrender of the interest of the defendant in  
4           any asset, in order to pay restitution in accordance  
5           with this section.

6           “(4) The Attorney General may collect and  
7           apply unreported or otherwise newly available assets  
8           to the payment of restitution, without regard to any  
9           installment payment provisions.

10          “(k) ORDER AS FINAL JUDGMENT.—A sentence that  
11          imposes an order of restitution is a final judgment not-  
12          withstanding the fact that—

13           “(1) such a sentence can subsequently be—

14            “(A) corrected under Rule 35 of the Fed-  
15            eral Rules of Criminal Procedure and section  
16            3742 of chapter 235 of this title;

17            “(B) appealed and modified under section  
18            3742;

19            “(C) amended under subsection (g); or

20            “(D) adjusted under section 3664(q),  
21            3572, or 3613A; or

22            “(2) the defendant may be resentenced under  
23            section 3565 or 3614.

24          “(l) JOINT AND SEVERAL RESPONSIBILITY.—If the  
25          offense involves more than one defendant, the court may

1 order each defendant jointly and severally liable for any  
2 or all of the restitution.

3       “(m) SUPERVISED RELEASE.—A court shall not ter-  
4 minate a term of supervised release under section 3583(e)  
5 before the order to pay restitution has been completely  
6 satisfied. A court shall extend a term of supervised release  
7 beyond that otherwise imposed under other provisions of  
8 law, until the defendant has paid the restitution in full  
9 or the court determines the economic circumstances of the  
10 defendant do not allow the payment of any further restitu-  
11 tion. Such determination is only for the purposes of this  
12 subsection and does not affect the obligation to pay res-  
13 titution or the ability of any entity to enforce restitution  
14 under any other provision of law. If the supervised release  
15 is extended under this subsection, the court shall order  
16 that the sole condition of supervised release shall be pay-  
17 ment of restitution.

18       “(n) EFFECT OF INSURANCE AND OTHER COM-  
19 PENSATION.—

20       “(1) INSURANCE.—In no case shall the fact  
21 that a victim receives or is entitled to receive com-  
22 pensation with respect to a loss from insurance or  
23 any other source be considered in determining the  
24 amount of restitution. If a victim receives compensa-  
25 tion from insurance or any other source with respect

1 to a loss, the court shall order that restitution be  
2 paid to the person who provided or is obligated to  
3 provide the compensation, but the restitution order  
4 shall provide that all victims be paid before such a  
5 provider of compensation.

6       “(2) OTHER COMPENSATION.—Any amount  
7 paid to a victim under an order of restitution shall  
8 be reduced by any amount later recovered as com-  
9 pensatory damages for the same loss by the victim  
10 in—

11           “(A) any Federal civil proceeding; and  
12           “(B) any State civil proceeding, to the ex-  
13 tent provided by the law of the State.

14       “(o) DETAILS OF PAYMENTS.—

15           “(1) MINIMUM PAYMENT REQUIRED.—A res-  
16 titution order may direct the defendant to make  
17 nominal periodic payments if the court finds on the  
18 record that the economic circumstances of the de-  
19 fendant do not allow the payment of any amount of  
20 a restitution order, and do not allow for the payment  
21 of the full amount of a restitution order in the fore-  
22 seeable future under any reasonable schedule of pay-  
23 ments.

24           “(2) IN-KIND PAYMENTS.—An in-kind payment  
25 may be in the form of return of property, replace-

1       ment of property, or if the victim agrees, services  
2       rendered to the victim or a person or organization  
3       other than the victim.

4       “(p) DIFFERENT PAYMENT SCHEDULES FOR MUL-  
5       TIPLE VICTIMS.—If the court finds that more than 1 vic-  
6       tim has sustained a loss requiring restitution by a defend-  
7       ant, the court may provide for a different payment sched-  
8       ule for each victim, based on their individual losses and  
9       economic circumstances. In any case in which the United  
10      States is a victim, the court shall ensure that all other  
11      victims receive full restitution before the United States re-  
12      ceives any restitution.

13       “(q) MATERIAL CHANGE IN DEFENDANT’S ABILITY  
14      TO PAY.—The defendant shall notify the court and the  
15      Attorney General of any material change in the defend-  
16      ant’s economic circumstances that might affect the de-  
17      fendant’s ability to pay restitution. The court may also  
18      accept notification of a material change in the defendant’s  
19      economic circumstances from the United States or from  
20      the victim. The Attorney General shall certify to the court  
21      that the victims have been notified of the change in cir-  
22      cumstances. Upon receipt of the notification, the court  
23      may, on its own motion, or the motion of any party, in-  
24      cluding the victim, adjust the payment schedule, or require

1 immediate payment in full, as the interests of justice re-  
2 quire.

3       “(r) NAME AND ADDRESS CHANGES.—It is the re-  
4 sponsibility of the victim to provide any change in name  
5 or mailing address to the court while restitution is still  
6 owed. Not later than 30 days after any change in name  
7 or mailing or residence address, a person owing restitution  
8 shall promptly report the change to the court. The con-  
9 fidentiality of any information relating to a victim shall  
10 be maintained.

11       “(s) ENFORCEMENT.—

12       “(1) GENERALLY.—An order of restitution may  
13 be enforced by the United States in the manner pro-  
14 vided for in subchapter C of chapter 227 and sub-  
15 chapter B of chapter 229 of this title, or by all other  
16 available and necessary means.

17       “(2) ABSTRACT OF JUDGMENT.—At the request  
18 of a victim named in a restitution order, the clerk  
19 of the court shall issue an abstract of judgment cer-  
20 tifying that a judgment has been entered in favor of  
21 such victim in the amount specified in the restitution  
22 order. Upon registering, recording, docketing, or in-  
23 dexing such abstract in accordance with the rules  
24 and requirements relating to judgments of the court  
25 of the State where the district court is located, the

1 abstract of judgment shall be a lien on the property  
2 of the defendant located in such State in the same  
3 manner and to the same extent and under the same  
4 conditions as a judgment of a court of general juris-  
5 diction in that State.

6       “(3) SPECIAL RULE FOR IN-KIND ORDERS.—An  
7 order of in-kind restitution in the form of services  
8 shall be enforced by the probation officer.

9       “(t) EFFECT OF ADDITIONAL RESOURCES.—If a per-  
10 son obligated to provide restitution, or pay a fine, receives  
11 additional resources from any source, including inherit-  
12 ance, settlement, or other judgment, such person shall be  
13 required to apply the value of such resources to any res-  
14 titution or fine still owed.

15       “(u) RIGHTS OF VICTIMS.—

16       “(1) NOT REQUIRED TO PARTICIPATE.—No vic-  
17 tim shall be required to participate in any phase of  
18 a restitution order.

19       “(2) ASSIGNMENT TO FUND.—A victim may at  
20 any time assign an interest in restitution payments  
21 to the Crime Victims Fund in the Treasury without  
22 in any way impairing the obligation of the defendant  
23 to make such payments.

24       “(v) NO CAUSE OF ACTION CREATED AGAINST THE  
25 UNITED STATES OR ITS OFFICERS OR EMPLOYEES.—

1 Nothing in this section or section or 3663 shall be con-  
2 strued to create a cause of action not otherwise authorized  
3 in favor of any person against the United States or any  
4 officer or employee of the United States.

5       “(w) COLLATERAL ESTOPPEL.—A conviction of a de-  
6 fendant for an offense involving the act giving rise to an  
7 order of restitution shall estop the defendant from denying  
8 the essential allegations of that offense in any subsequent  
9 Federal civil proceeding or State civil proceeding, to the  
10 extent consistent with State law, brought by the victim.”.

11 **SEC. 3. TABLE OF SECTIONS AMENDMENT.**

12       The table of sections at the beginning of chapter 232  
13 of title 18, United States Code, is amended by striking  
14 the item relating to sections 3663 and all that follows the  
15 item relating to section 3664 and inserting the following:

“3663. Mandatory restitution.

“3664. Procedure for issuance and enforcement of order of restitution.”.

16 **SEC. 4. EFFECT OF RESTITUTION ORDER ON SENTENCE OF**

17                   **PROBATION.**

18       Section 3564 of title 18, United States Code, is  
19 amended by adding at the end the following:

20       “(f) RELATION TO RESTITUTION ORDER.—The court  
21 shall not terminate a term of probation under section  
22 3564(c) if the defendant has an unsatisfied order of res-  
23 titution. The court shall extend probation for such a de-  
24 fendant beyond any term otherwise provided by law until

1 the order is satisfied or the court determines the economic  
2 circumstances of the defendant do not allow the payment  
3 of any further restitution. Such determination is only for  
4 the purposes of this subsection and does not affect the  
5 obligation to pay restitution or the ability of any entity  
6 to enforce restitution under any other provision of law.  
7 The sole condition of such extended probation shall be the  
8 satisfaction of that order.”.

9 **SEC. 5. CONFORMING AMENDMENTS AND REPEALS.**

10 (a) ELIMINATION OF SPECIALIZED MANDATORY  
11 RESTITUTION PROVISIONS.—

12 (1) IN TITLE 18.—Title 18, United States Code,  
13 is amended by striking—  
14 (A) section 1593;  
15 (B) section 2248;  
16 (C) section 2259;  
17 (D) section 2264; and  
18 (E) section 2327.

19 (2) CONFORMING AMENDMENTS TO TABLES IN  
20 TITLE 18.—The table of sections for each of the  
21 chapters of title 18, United States Code, from which  
22 a section is stricken by subsection (a) is amended by  
23 striking the item relating to that section.

1 (3) IN THE CONTROLLED SUBSTANCES ACT.—

2 The Controlled Substances Act (21 U.S.C. 801 et  
3 seq.) is amended—

4 (A) in section 413(q), by striking  
5 “shall—” and all that follows through “3663A  
6 of title 18, United States Code.” and inserting  
7 “order the defendant to reimburse the United  
8 States, the State or local government con-  
9 cerned, or both the United States and the State  
0 or local government concerned for the costs in-  
1 curred by the United States or the State or  
2 local government concerned, as the case may be,  
3 for the cleanup associated with the manufacture  
4 of amphetamine or methamphetamine by the  
5 defendant, or on premises or in property that  
6 the defendant owns, resides, or does business  
7 in.”; and

18 (B) in section 416, by striking subsection  
19 (c).

20 (b) ELIMINATION OF PROCEDURAL MATTERS MOVED  
21 TO RESTITUTION SECTIONS.—Section 3612(b)(1) of title  
22 18, United States Code, is amended—

23 (1) by striking subparagraphs (F) and (G);

24 (2) by inserting "and" at the end of subparagraph-  
25 graph (D); and

1 (3) by striking the semicolon at the end of sub-  
2 paragraph (E) and inserting a period.

3 (c) CROSS REFERENCE CORRECTIONS.—

12 SEC. 6. SPECIAL FORFEITURE OF COLLATERAL PROFITS  
13 FROM CRIME.

14 Subsection (a) of section 3681 of title 18, United  
15 States Code, is amended by striking “ the interest of jus-  
16 tice or an order of restitution” and all that follows through  
17 the end of the subsection and inserting “the compelling  
18 interest of preventing wrongdoers from profiting from  
19 their crimes or of providing restitution to the victims of  
20 those crimes so requires, order the offender (or any trans-  
21 feree of that defendant) to forfeit any profits made pos-  
22 sible by the offense.”.

## 1 SEC. 7. AMENDMENTS TO THE MANDATORY VICTIMS RES-

## 2 TITUTION ACT.

3 (a) IN GENERAL.—Chapter 232 of title 18, United  
4 States Code, is amended by inserting after section 3664  
5 the following:

6 **“§ 3664A. Preservation of assets for restitution**

7 “(a) PROTECTIVE ORDERS TO PRESERVE ASSETS.—

8 “(1) IN GENERAL.—Upon the Government’s ex  
9 parte application and a finding of probable cause  
10 that a defendant, if convicted, will be ordered to pay  
11 an approximate amount of restitution for an offense  
12 punishable by imprisonment for more than 1 year,  
13 the court—

14 “(A) shall—

15 “(i) enter a restraining order or in-  
16 junction;

17 “(ii) require the execution of a satis-  
18 factory performance bond; or

19 “(iii) take any other action necessary  
20 to preserve the availability of any property  
21 traceable to the commission of the offense  
22 charged; and

23 “(B) if it determines that it is in the inter-  
24 ests of justice to do so, shall issue any order  
25 necessary to preserve any nonexempt asset (as

1                   defined in section 3613) of the defendant that  
2                   may be used to satisfy such restitution order.

3                   “(2) EFFECT OF PROBABLE CAUSE FINDING.—  
4                   Any probable cause finding by the court under para-  
5                   graph (1) shall not limit the amount of restitution  
6                   the court may impose at the time of sentencing.

7                   “(3) PROCEDURES.—Applications and orders  
8                   issued under paragraph (1) shall be governed by the  
9                   procedures under section 413(e) of the Controlled  
10                   Substances Act (21 U.S.C. 853(e)) and in this sec-  
11                   tion.

12                   “(4) MONETARY INSTRUMENTS.—If the prop-  
13                   erty in question is a monetary instrument (as de-  
14                   fined in section 1956(c)(5)) or funds in electronic  
15                   form, the protective order issued under paragraph  
16                   (1) may take the form of a warrant authorizing the  
17                   Government to seize the property and to deposit it  
18                   into an interest-bearing account in the Registry of  
19                   the Court in the district in which the warrant was  
20                   issued, or into another such account maintained by  
21                   a substitute property custodian, as the court may di-  
22                   rect.

23                   “(5) POST-INDICTMENT.—A post-indictment  
24                   protective order entered under paragraph (1) shall  
25                   remain in effect through the conclusion of the crimi-

1       nal case, including sentencing and any post-sen-  
2       tencing proceedings, until seizure or other disposi-  
3       tion of the subject property, unless modified by the  
4       court upon a motion by the Government or under  
5       subsection (b) or (c).

6       **“(b) DEFENDANT’S RIGHT TO A HEARING.—**

7           “(1) IN GENERAL.—In the case of a  
8       preindictment protective order entered under sub-  
9       section (a)(1), the defendant’s right to a post-re-  
10       straint hearing shall be governed by paragraphs  
11       (1)(B) and (2) of section 413(e) of the Controlled  
12       Substances Act (21 U.S.C. 853(e)).

13       “(2) POST-INDICTMENT.—In the case of a post-  
14       indictment protective order entered under subsection  
15       (a)(1), the defendant shall have a right to a post-re-  
16       straint hearing regarding the continuation or modi-  
17       fication of the order if the defendant—

18           “(A) establishes by a preponderance of the  
19       evidence that there are no assets, other than  
20       the restrained property, available to the defend-  
21       ant to retain counsel in the criminal case or to  
22       provide for a reasonable living allowance for the  
23       necessary expenses of the defendant and the de-  
24       fendant’s lawful dependents; and

1                 “(B) makes a prima facie showing that  
2                 there is bona fide reason to believe that the  
3                 court’s ex parte finding of probable cause under  
4                 subsection (a)(1) was in error.

5                 “(3) HEARING.—

6                 “(A) IN GENERAL.—If the court deter-  
7                 mines that the defendant has satisfied the re-  
8                 quirements of paragraph (2), it may hold a  
9                 hearing to determine whether there is probable  
10                 cause to believe that the defendant, if convicted,  
11                 will be ordered to satisfy an order of restitution  
12                 for an offense punishable by imprisonment for  
13                 more than 1 year, and that the seized or re-  
14                 strained property may be needed to satisfy such  
15                 restitution order.

16                 “(B) PROBABLE CAUSE.—If the court  
17                 finds probable cause under subparagraph (A),  
18                 the protective order shall remain in effect.

19                 “(C) NO PROBABLE CAUSE.—If the court  
20                 finds under subparagraph (A) that no probable  
21                 cause exists as to some or all of the property,  
22                 or determines that more property has been  
23                 seized and restrained than may be needed to  
24                 satisfy a restitution order, it shall modify the  
25                 protective order to the extent necessary to re-

1           lease the property that should not have been re-  
2           strained.

3           “(4) REBUTTAL.—If the court conducts an evi-  
4           dentiary hearing under paragraph (3), the court  
5           shall afford the Government an opportunity to  
6           present rebuttal evidence and to cross-examine any  
7           witness that the defendant may present.

8           “(5) PRETRIAL HEARING.—In any pretrial  
9           hearing on a protective order issued under sub-  
10           section (a)(1), the court may not entertain chal-  
11           lenges to the grand jury’s finding of probable cause  
12           regarding the criminal offense giving rise to a poten-  
13           tial restitution order. The court shall ensure that  
14           such hearings are not used to obtain disclosure of  
15           evidence or the identities of witnesses earlier than  
16           required by the Federal Rules of Criminal Procedure  
17           or other applicable law.

18           “(c) THIRD PARTY’S RIGHT TO POST-RESTRAINT  
19           HEARING.—

20           “(1) IN GENERAL.—A person other than the  
21           defendant who has a legal interest in property af-  
22           fected by a protective order issued under subsection  
23           (a)(1) may move to modify the order on the grounds  
24           that—

1                   “(A) the order causes an immediate and ir-  
2                   reparable hardship to the moving party; and

3                   “(B) less intrusive means exist to preserve  
4                   the property for the purpose of restitution.

5                   “(2) MODIFICATION.—If, after considering any  
6                   rebuttal evidence offered by the Government, the  
7                   court determines that the moving party has made  
8                   the showings required under paragraph (1), the  
9                   court shall modify the order to mitigate the hard-  
10                   ship, to the extent that it is possible to do so while  
11                   preserving the asset for restitution.

12                   “(3) INTERVENTION.—

13                   “(A) IN GENERAL.—Except as provided in  
14                   subparagraph (B) or paragraph (1), a person  
15                   other than a defendant has no right to inter-  
16                   vene in the criminal case to object to the entry  
17                   of any order issued under this section or other-  
18                   wise to object to an order directing a defendant  
19                   to pay restitution.

20                   “(B) EXCEPTION.—If, at the conclusion of  
21                   the criminal case, the court orders the defen-  
22                   dant to use particular assets to satisfy an order  
23                   of restitution (including assets that have been  
24                   seized or restrained pursuant to this section)  
25                   the court shall give persons other than the de-

1           fendant the opportunity to object to the order  
2           on the ground that the property belonged in  
3           whole or in part to the third party and not to  
4           the defendant, as provided in section 413(n) of  
5           the Controlled Substances Act (21 U.S.C.  
6           853(n)).

7        “(d) GEOGRAPHIC SCOPE OF ORDER.—

8           “(1) IN GENERAL.—A district court of the  
9           United States shall have jurisdiction to enter an  
10          order under this section without regard to the loca-  
11          tion of the property subject to the order.

12          “(2) OUTSIDE THE UNITED STATES.—If the  
13          property subject to an order issued under this sec-  
14          tion is located outside of the United States, the  
15          order may be transmitted to the central authority of  
16          any foreign state for service in accordance with any  
17          treaty or other international agreement.

18        “(e) NO EFFECT ON OTHER GOVERNMENT AC-  
19          TION.—Nothing in this section shall be construed to pre-  
20          clude the Government from seeking the seizure, restraint,  
21          or forfeiture of assets under the asset forfeiture laws of  
22          the United States.

23        “(f) LIMITATION ON RIGHTS CONFERRED.—Nothing  
24          in this section shall be construed to create any enforceable

- 1 right to have the Government seek the seizure or restraint
- 2 of property for restitution.

### 3        "(g) RECEIVERS.—

4                   “(1) IN GENERAL.—A court issuing an order  
5 under this section may appoint a receiver under sec-  
6 tion 1956(b)(4) to collect, marshal, and take cus-  
7 tody, control, and possession of all assets of the de-  
8 fendant, wherever located, that have been restrained  
9 in accordance with this section.

10       “(2) DISTRIBUTION OF PROPERTY.—The re-  
11       ceiver shall have the power to distribute property in  
12       its control to each victim identified in an order of  
13       restitution at such time, and in such manner, as the  
14       court may authorize.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-  
16 tions at the beginning chapter 232 of title 18, United  
17 States Code, is amended by inserting after the item relat-  
18 ing to section 3664 the following:

“Sec. 3664A. Preservation of assets for restitution.”.

19 SEC. 8. AMENDMENTS TO THE ANTI-FRAUD INJUNCTION  
20 STATUTE.

21 Section 1345(a) of title 18, United States Code, is  
22 amended—

23 (1) in paragraph (1)—

24 (A) in subparagraph (B), by striking “or”  
25 at the end; and

1 (B) by inserting after subparagraph (C)  
2 the following:

3                             “(D) committing or about to commit a  
4                             Federal offense that may result in an order of  
5                             restitution;” and

6 (2) in paragraph (2)—

11 (B) by inserting “or offense” after “trace-  
12 able to such violation”.

13 SEC. 9. AMENDMENTS TO THE FEDERAL DEBT COLLECTION  
14 PROCEDURES ACT.

15 (a) PROCESS.—Section 3004(b)(2) of title 28, United  
16 States Code, is amended by inserting after “in which the  
17 debtor resides.” the following: “In a criminal case, the dis-  
18 trict court for the district in which the defendant was sen-  
19 tenced may deny the request.”.

20 (b) PREJUDGMENT REMEDIES.—Section 3101 of  
21 title 28, United States Code, is amended—

22 (1) in subsection (a)(1) by inserting after “the  
23 filing of a civil action on a claim for a debt” the fol-  
24 lowing: “or in any criminal action where the court  
25 may enter an order of restitution”; and

1 (2) in subsection (d)—

6        “In a criminal action, use the following opening  
7 paragraph: You are hereby notified that this [property]  
8 is being taken by the United States Government [the Gov-  
9 ernment], which says that [name of debtor], if convicted,  
10 may owe as restitution \$ [amount]. The Government says  
11 it must take this property at this time because [recite the  
12 pertinent ground or grounds from section 3101(b)]. The  
13 Government wants to make sure [name of debtor] will pay  
14 if the court determines that restitution is owed.””;

15 (B) by inserting after “a statement that  
16 different property may be so exempted with re-  
17 spect to the State in which the debtor re-  
18 sides.]” the following:

19       “[In a criminal action, the statement summarizing  
20 the types of property that may be exempt shall list only  
21 those types of property that may be exempt under section  
22 3613 of title 18.]”; and

23 (C) by inserting after "You must also send  
24 a copy of your request to the Government at  
25 [address], so the Government will know you

1           want the proceeding to be transferred.’’ the  
2           following:

3           ‘‘If this Notice is issued in conjunction with a crimi-  
4    nal case, the district court where the criminal action is  
5    pending may deny your request for a transfer of this pro-  
6    ceeding.’’.

7           (c) ENFORCEMENT.—Section 3202(b) of title 28,  
8    United States Code, is amended—

9           (1) by inserting after ‘‘a statement that dif-  
10          ferent property may be so exempted with respect to  
11          the State in which the debtor resides.]’’ the fol-  
12          lowing:

13          ‘‘[In a criminal action, the statement summarizing  
14          the types of property that may be exempt shall list only  
15          those types of property that may be exempt under section  
16          3613 of title 18.]’’; and

17          (2) by inserting after ‘‘you want the proceeding  
18          to be transferred.’’ the following:

19          ‘‘If this notice is issued in conjunction with a crimi-  
20          nal case, the district court where the criminal action is  
21          pending may deny your request for a transfer of this pro-  
22          ceeding.’’.

23 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

24          There are authorized to be appropriated to the Attor-  
25          ney General for enhancing the enforcement and litigation

1 of criminal debts owed to victims of Federal criminal of-  
2 fenses \$20 million for each of the fiscal years 2008  
3 through 2012.

○