

modifies, amends, or reinterprets United States or Russian obligations under the START II Treaty, including the time frame for implementation of the Treaty, should be submitted to the Senate for its advice and consent to ratification.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) NATURE OF DETERRENCE.—(A) On June 17, 1992, Presidents Bush and Yeltsin issued a Joint Understanding and a Joint Statement at the conclusion of their Washington Summit, the first of which became the foundation for the START II Treaty. The second, the Joint Statement on a Global Protection System, endorsed the cooperative development of a defensive system against ballistic missile attack and demonstrated the belief by the governments of the United States and the Russian Federation that strategic offensive reductions and certain defenses against ballistic missiles are stabilizing, compatible, and reinforcing.

(B) It is, therefore, the sense of the Senate that:

(i) The long-term perpetuation of deterrence based on mutual and severe offensive nuclear threats would be outdated in a strategic environment in which the United States and the Russian Federation are seeking to put aside their past adversarial relationship and instead build a relationship based upon trust rather than fear.

(ii) An offense-only form of deterrence cannot address by itself the emerging strategic environment in which, as Secretary of Defense Les Aspin said in January 1994, proliferators acquiring missiles and weapons of mass destruction "may have acquired such weapons for the express purpose of blackmail or terrorism and thus have a fundamentally different calculus not amenable to deterrence. . . . New deterrent approaches are needed as well as new strategies should deterrence fail."

(iii) Defenses against ballistic missiles are essential for new deterrent strategies and for new strategies should deterrence fail. Because deterrence may be inadequate to protect United States forces and allies abroad, theater missile defense is necessary, particularly the most capable systems of the United States such as THAAD, Navy Upper Tier, and the Space and Missile Tracking System. Similarly, because deterrence may be inadequate to protect the United States against long-range missile threats, missile defenses are a necessary part of new deterrent strategies. Such defenses also are wholly in consonance with the summit statements from June 1992 of the Presidents of the United States and the Russian Federation and the September 1994 statement by Secretary of Defense William J. Perry, who said, "We now have the opportunity to create a new relationship, based not on MAD, not on Mutual Assured Destruction, but rather on another acronym, MAS, or Mutual Assured Safety."

(iv) As the governments of the United States and Russia have built upon the June 17, 1992, Joint Understanding in agreeing to the START II Treaty, so too should these governments promptly undertake discussions based on the Joint Statement to move forward cooperatively in the development and deployment of defenses against ballistic missiles.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) REPORT ON USE OF FOREIGN EXCESS BALLISTIC MISSILES FOR LAUNCH SERVICES.—It is the sense of the Senate that the President should not issue licenses for the use of a foreign excess ballistic missile for launch services without first submitting a report to Congress, on a one-time basis, on the impli-

cations of the licensing approval on non-proliferation efforts under the Treaty and on the United States space launch industry.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) UNITED STATES COMMITMENTS ENSURING THE SAFETY, RELIABILITY, AND PERFORMANCE OF ITS NUCLEAR FORCES.—The Senate declares that the United States is committed to ensuring the safety, reliability, and performance of its nuclear forces. To this end, the United States undertakes the following additional commitments:

(A) The United States is committed to proceeding with a robust stockpile stewardship program, and to maintaining nuclear weapons production capabilities and capacities, that will ensure the safety, reliability, and performance of the United States nuclear arsenal at the START II levels and meet requirements for hedging against possible international developments or technical problems, in conformance with United States policies and to underpin deterrence.

(B) The United States is committed to re-establishing and maintaining sufficient levels of production to support requirements for the safety, reliability, and performance of United States nuclear weapons and demonstrate and sustain production capabilities and capacities.

(C) The United States is committed to maintaining United States nuclear weapons laboratories and protecting the core nuclear weapons competencies therein.

(D) As tritium is essential to the performance of modern nuclear weapons, but decays radioactively at a relatively rapid rate, and the United States now has no meaningful tritium production capacity, the United States is committed to ensuring rapid access to a new production source of tritium within the next decade.

(E) As warhead design flaws or aging problems may occur that a robust stockpile stewardship program cannot solve, the United States reserves the right, consistent with United States law, to resume underground nuclear testing if that is necessary to maintain confidence in the nuclear weapons stockpile. The United States is committed to maintaining the Nevada Test Site at a level in which the United States will be able to resume testing, within one year, following a national decision to do so.

(F) The United States reserves the right to invoke the supreme national interest of the United States to withdraw from any future arms control agreement to limit underground nuclear testing.

CONDITION

(a) CONDITIONS.—The Senate's advice and consent to the ratification of the START II Treaty is subject to the following condition, which shall be binding upon the President:

(1) PRESIDENTIAL CERTIFICATION AND REPORT ON NATIONAL TECHNICAL MEANS.—Within ninety days after the United States deposits instruments of ratification of the START II Treaty, the President shall certify that U.S. National Technical Means are sufficient to ensure effective monitoring of Russian compliance with the provisions of the Treaty governing the capabilities of strategic missile systems. This certification shall be accompanied by a report to the Senate of the United States indicating how U.S. National Technical Means, including collection, processing and analytic resources, will be marshalled to ensure effective monitoring. Such report may be supplemented by a classified annex, which shall be submitted to the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Armed Services and the Select Committee on Intelligence of the Senate.

THE VICTIM RESTITUTION ACT OF 1995

HATCH (AND BIDEN) AMENDMENT NO. 3112

Mr. WARNER (for Mr. HATCH, for himself and Mr. BIDEN) proposed an amendment to the bill (H.R. 665) to control crime by mandatory victim restitution; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Victims Justice Act of 1995".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—RESTITUTION

Sec. 101. Order of restitution.

Sec. 102. Conditions of probation.

Sec. 103. Mandatory restitution.

Sec. 104. Order of restitution to victims of other crimes.

Sec. 105. Procedure for issuance and enforcement of restitution order.

Sec. 106. Procedure.

Sec. 107. Instruction to Sentencing Commission.

Sec. 108. Justice Department regulations.

Sec. 109. Special assessments on convicted persons.

Sec. 110. Effective date.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Crime victims fund.

Sec. 202. Victims of terrorism act.

Sec. 203. Vulnerability.

Sec. 204. Study and report.

TITLE I—RESTITUTION

SEC. 101. ORDER OF RESTITUTION.

Section 3556 of title 18, United States Code, is amended—

(1) by striking "may" and inserting "shall"; and

(2) by striking "sections 3663 and 3664." and inserting "3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section."

SEC. 102. CONDITIONS OF PROBATION.

Section 3563 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking "and" at the end;

(B) in the first paragraph (4) (relating to conditions of probation for a domestic crime of violence), by striking the period and inserting a semicolon;

(C) by redesignating the second paragraph (4) (relating to conditions of probation concerning drug use and testing) as paragraph (5);

(D) in paragraph (5), as redesignated, by striking the period at the end and inserting a semicolon; and

(E) by inserting after paragraph (5), as redesignated, the following new paragraphs:

"(6) that the defendant—

"(A) make restitution in accordance with sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and

"(B) pay the assessment imposed in accordance with section 3013; and

"(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments."; and

(2) in subsection (b)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (22) as paragraphs (2) through (21), respectively; and

(C) by amending paragraph (2), as redesignated, to read as follows:

“(2) make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A));”.

SEC. 103. MANDATORY RESTITUTION.

(a) IN GENERAL.—Chapter 232 of title 18, United States Code, is amended by inserting immediately after section 3663 the following new section:

“§ 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 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, trans-

portation, 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, including any offense committed by fraud or deceit; or

“(iii) an offense described in section 1365 (relating to tampering with consumer 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 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 outweighed by the burden on the sentencing process.

“(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 232 of title 18, United States Code, is amended by inserting immediately after the matter relating to section 3663 the following:

“3663A. Mandatory restitution to victims of certain crimes.”.

SEC. 104. ORDER OF RESTITUTION TO VICTIMS OF OTHER CRIMES.

(a) IN GENERAL.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking “(a)(1) The court” and inserting “(a)(1)(A) The court”; and

(B) by inserting “, 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.”;

(C) by inserting “other than an offense described in section 3663A(c),” after “title 49.”;

(D) by inserting before the period at the end the following: “, or if the victim is deceased, to the victim's estate”; and

(E) by adding at the end the following new subparagraph:

“(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.”; and

(F) by amending paragraph (2) to read as follows:

“(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.”;

(2) by striking subsections (c) through (i); and

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

“(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B) (i)(II) and (ii), 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 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 Victim Assistance Administration of 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 section 981 or 982.

“(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 shall 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.”.

(b) SEXUAL ABUSE.—Section 2248 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting “or 3663A” after “3663”; and

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

“(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of

the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

(c) SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN.—Section 2259 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (e).

(d) DOMESTIC VIOLENCE.—Section 2264 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (g); and

(4) by adding at the end the following new subsection (c):

"(c) VICTIM DEFINED.—For purposes of this section, the term 'victim' means the individual harmed as a result of a commission of a crime under this chapter, including, 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, but in no event shall the defendant be named as such representative or guardian.";

(e) TELEMARKETING FRAUD.—Section 2327 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

SEC. 105. PROCEDURE FOR ISSUANCE AND ENFORCEMENT OF RESTITUTION ORDER.

(a) IN GENERAL.—Section 3664 of title 18, United States Code, is amended to read as follows:

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

"(a) For orders of restitution under this title, the court shall order the probation service of the court to obtain and include in its presentence report, or in a separate report, as the court directs, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation service shall so inform the court.

"(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

"(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

"(d)(1) Within 60 days after conviction and, in any event, not later than 10 days prior to sentencing—

"(A)(i) the attorney for the Government, after consulting with all identified victims, shall promptly provide the probation service of the court with a listing of the amounts subject to restitution;

"(ii) the attorney for the Government shall provide notice to all identified victims, informing the victims of the offenses of which the defendant was convicted, the listing of amounts subject to restitution submitted to the probation service, the victim's right to submit information to the probation service concerning the amount of the victim's losses, and the scheduled date, time, and place of the sentencing hearing; and

"(iii) if any victim objects to any of the information provided to the probation service relating to the amount of the victim's losses subject to restitution, the attorney for the Government shall advise the victim that the victim may file a separate affidavit and shall provide the victim with an affidavit form which may be used to do so; and

"(B) each defendant shall prepare and file with the probation service of the court an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled

by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and other information the court requires relating to such other factors as the court deems appropriate.

"(2) After reviewing the report of the probation service of the court, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

"(3) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the attorney for the Government shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(4) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

"(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

"(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

"(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

"(B) projected earnings and other income of the defendant; and

"(C) any financial obligations of the defendant, including obligations to dependents.

"(3)(A) A restitution order may direct the defendant to make a single, lump-sum payment, partial payment at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

"(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of

a restitution order in the foreseeable future under any reasonable schedule of payments.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

"(g)(1) No victim shall be required to participate in any phase of a restitution order.

"(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

"(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

"(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may issue an order of priority based on the type and amount of each victim's loss, accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all individual victims receive full restitution before the United States receives any restitution.

"(j)(1) If a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution shall be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to such a provider of compensation.

"(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(k) A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

"(l) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

"(m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or

"(ii) by all other available and reasonable means.

"(B) An order of restitution may also be enforced by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

"(2) An order of in-kind restitution in the form of services shall be enforced by the probation service of the court.

"(n) If a person obligated to provide restitution or pay a fine receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed."

(b) TECHNICAL AMENDMENT.—The item relating to section 3664 in the analysis for chapter 232 of title 18, United States Code, is amended to read as follows:

"3664. Procedure for issuance and enforcement of order of restitution."

SEC. 106. PROCEDURE.

(a) AMENDMENT OF FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 32(b) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (1), by adding at the end the following: "Notwithstanding the preceding sentence, a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court directs, shall be required in any case in which restitution is required to be ordered."; and

(2) in paragraph (4)—

(A) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(B) by inserting after subparagraph (E), the following new subparagraph:

"(F) in appropriate cases, information sufficient for the court to enter an order of restitution";

(b) FINES.—Section 3572 of title 18, United States Code, is amended—

(1) in subsection (b) by inserting "other than the United States," after "offense";

(2) in subsection (d)—

(A) in the first sentence, by striking "A person sentenced to pay a fine or other monetary penalty" and inserting "(1) A person sentenced to pay a fine or other monetary penalty, including restitution";

(B) by striking the third sentence; and

(C) by adding at the end the following:

"(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

"(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require."

(3) in subsection (f), by inserting "restitution" after "special assessment";

(4) in subsection (h), by inserting "or payment of restitution" after "A fine"; and

(5) in subsection (i)—

(A) in the first sentence, by inserting "or payment of restitution" after "A fine"; and

(B) by amending the second sentence to read as follows: "Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3613A."

(c) POSTSENTENCE ADMINISTRATION.—

(1) PAYMENT OF A FINE OR RESTITUTION.—Section 3611 of title 18, United States Code, is amended—

(A) by amending the heading to read as follows:

"§3611. Payment of a fine or restitution";

and

(B) by striking "or assessment shall pay the fine or assessment" and inserting "assessment, or restitution, shall pay the fine, assessment, or restitution".

(2) COLLECTION.—Section 3612 of title 18, United States, is amended—

(A) by amending the heading to read as follows:

"§3612. Collection of unpaid fine or restitution";

(B) in subsection (b)(1)—

(i) in the matter preceding subparagraph (A), by inserting "or restitution order" after "fine";

(ii) in subparagraph (C), by inserting "or restitution order" after "fine";

(iii) in subparagraph (E), by striking "and";

(iv) in subparagraph (F)—

(I) by inserting "or restitution order" after "fine"; and

(II) by striking the period at the end and inserting "; and"; and

(v) by adding at the end the following new subparagraph:

"(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, or the appropriate entity of the court, by means of a form to be provided by the Attorney General or the court, of any change in the victim's mailing address while restitution is still owed the victim. The confidentiality of any information relating to a victim shall be maintained."

(C) in subsection (c)—

(i) in the first sentence, by inserting "or restitution" after "fine"; and

(ii) by adding at the end the following: "Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

"(1) A penalty assessment under section 3013 of title 18, United States Code.

"(2) Restitution of all victims.

"(3) All other fines, penalties, costs, and other payments required under the sentence."

(D) in subsection (d)—

(i) by inserting "or restitution" after "fine"; and

(ii) by striking "is delinquent, to inform him that the fine is delinquent" and inserting "or restitution is delinquent, to inform the person of the delinquency";

(E) in subsection (e)—

(i) by inserting "or restitution" after "fine"; and

(ii) by striking "him that the fine is in default" and inserting "the person that the fine or restitution is in default";

(F) in subsection (f)—

(i) in the heading, by inserting "and restitution" after "on fines"; and

(ii) in paragraph (1), by inserting "or restitution" after "any fine";

(G) in subsection (g), by inserting "or restitution" after "fine" each place it appears; and

(H) in subsection (i), by inserting "and restitution" after "fines".

(3) CIVIL REMEDIES.—Section 3613 of title 18, United States Code, is amended—

(A) in subsection (b), by amending paragraph (1) to read as follows:

"(1) the later of 20 years after the entry of the judgment or 20 years after the release from imprisonment of the person fined or ordered to pay restitution; or"; and

(B) in subsection (e), by striking “, but in no event” and all that follows through the end of the subsection and inserting a period.

(4) **DEFAULT.**—Chapter 229 of title 18, United States Code, is amended by inserting after section 3613 the following new section:

“§3613A. Effect of default

“(a)(1) Upon a finding that the defendant is in default on a payment of a fine or restitution, the court may, pursuant to section 3565, revoke probation or a term of supervised release or modify the terms or conditions of probation on a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

“(2) In determining what action to take, the court shall consider the defendant’s employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant’s ability to comply with the order of a fine or restitution.

“(b)(1) Any hearing held pursuant to this section may be conducted by a magistrate judge, subject to de novo review by the court.

“(2) To the extent practicable, in a hearing held pursuant to this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner’s participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.

“(3) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.”

(5) **RESENTENCING.**—Section 3614 of title 18, United States Code, is amended—

(A) in the heading, by inserting “or restitution” after “fine”;

(B) in subsection (a), by inserting “or restitution” after “fine”; and

(C) by adding at the end the following new subsection:

“(c) **EFFECT OF INDIGENCY.**—In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent.”

(d) **CONFORMING AMENDMENT.**—The analysis for subchapter B of chapter 229 of title 18, United States Code, is amended to read as follows:

“Sec.

“3611. Payment of a fine or restitution.

“3612. Collection of an unpaid fine or restitution.

“3613. Civil remedies for collection of an unpaid fine or restitution.

“3613A. Effect of default.

“3614. Resentencing upon failure to pay a fine or restitution.

“3615. Criminal default.”

SEC. 107. INSTRUCTION TO SENTENCING COMMISSION.

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to reflect this Act and the amendments made by this Act.

SEC. 108. JUSTICE DEPARTMENT REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General

shall promulgate guidelines, or amend existing guidelines, to carry out this Act and to ensure that—

(1) in all plea agreements negotiated by the United States, consideration is given to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually pleaded; and

(2) orders of restitution made pursuant to the amendments made by this Act are enforced to the fullest extent of the law.

SEC. 109. SPECIAL ASSESSMENTS ON CONVICTED PERSONS.

Section 3013(a)(2) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking “\$50” and inserting “not less than \$100”; and

(2) in subparagraph (B), by striking “\$200” and inserting “not less than \$400”.

SEC. 110. EFFECTIVE DATE.

The amendments made by this title shall be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. CRIME VICTIMS FUND.

(a) **PROHIBITION OF PAYMENTS TO DELINQUENT CRIMINAL DEBTORS BY STATE CRIME VICTIM COMPENSATION PROGRAMS.**—

(1) **IN GENERAL.**—Section 1403(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended—

(A) by striking “and” at the end of paragraph (7);

(B) by redesignating paragraph (8) as paragraph (9); and

(C) by inserting after paragraph (7) the following new paragraph:

“(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine or other monetary penalty imposed for the offense; and”

(2) **APPLICATION OF AMENDMENT.**—The amendment made by paragraph (1) shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victims compensation programs that are sufficient to ensure that victims compensation is not denied to any person except as authorized by law.

(b) **EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.**—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by inserting after subsection (b) the following new subsection:

“(c) **EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.**—Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all

such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.”

SEC. 202. VICTIMS OF TERRORISM ACT.

(a) **AUTHORITY TO PROVIDE ASSISTANCE AND COMPENSATION TO VICTIMS OF TERRORISM.**—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404A the following new section:

“SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

“(a) **VICTIMS OF ACTS OF TERRORISM OUTSIDE THE UNITED STATES.**—The Director may make supplemental grants to States to provide compensation and assistance to the residents of such States who, while outside the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

“(b) **VICTIMS OF DOMESTIC TERRORISM.**—The Director may make supplemental grants to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney’s Offices for use in coordination with State victims compensation and assistance efforts in providing emergency relief.”

(b) **FUNDING OF COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM, MASS VIOLENCE, AND CRIME.**—Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as follows:

“(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed \$50,000,000.

“(B) The emergency reserve may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.”

(c) **CRIME VICTIMS FUND AMENDMENTS.**—

(1) **UNOBLIGATED FUNDS.**—Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(A) in subsection (c), by striking “subsection” and inserting “chapter”; and

(B) by amending subsection (e) to read as follows:

“(e) **AMOUNTS AWARDED AND UNSPENT.**—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums in excess of \$500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than \$500,000 shall be returned to the Fund.”

(2) **BASE AMOUNT.**—Section 1404(a)(5) of such Act (42 U.S.C. 10603(a)(5)) is amended to read as follows:

“(5) As used in this subsection, the term ‘base amount’ means—

“(A) except as provided in subparagraph (B), \$500,000; and

“(B) for the territories of the Northern Mariana Islands, Guam, American Samoa,

and the Republic of Palau, \$200,000, with the Republic of Palau's share governed by the Compact of Free Association between the United States and the Republic of Palau."

SEC. 203. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 204. STUDY AND REPORT.

(a) STUDY.—The Attorney General, in cooperation with the Director of the Administrative Office of the United States Courts, shall conduct a study of the funds paid out of the Crime Victims Fund and the impact that the amendments made by this Act have on funds available in the Crime Victims Fund, including an assessment of any reduction or increase in fines collected and deposited into the Fund directly attributable to the amendments made by this Act.

(b) REPORT.—The Attorney General and the Director of the Administrative Office of the United States Courts shall report interim findings to the Chairman and ranking Member of the Committees on the Judiciary of the Senate and House of Representatives 1 year after the date of enactment of this Act, an annually thereafter until issuing a final report, together with recommendations, not later than 4 years after the date of enactment of this Act.

THE NATIONAL MARINE FISHERIES SERVICE LABORATORY CONVEYANCE ACT

PRESSLER (AND OTHERS) AMENDMENT NO. 3113

Mr. WARNER (for Mr. PRESSLER, for himself, Mr. KERRY, and Mr. STEVENS) proposed an amendment to the bill (H.R. 1358) to require the Secretary of Commerce to convey to the Commonwealth of Massachusetts the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, MA; as follows:

SECTION 1. CONVEYANCES.

(a) NATIONAL MARINE FISHERIES SERVICE LABORATORY AT GLOUCESTER, MASSACHUSETTS.—

(1) IN GENERAL.—The Secretary of Commerce shall convey to the Commonwealth of Massachusetts, all right, title, and interest of the United States in and to the property comprising the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, Massachusetts.

(2) TERMS.—A conveyance of property under paragraph (1) shall be made—

(A) without payment of consideration; and

(B) subject to the terms and conditions specified under paragraphs (3) and (4).

(3) CONDITIONS FOR TRANSFER.—

(A) IN GENERAL.—As a condition of any conveyance of property under this subsection, the Commonwealth of Massachusetts shall assume full responsibility for maintenance of the property for as long as the Commonwealth retains the right and title to that property.

(B) CONTINUED USE OF PROPERTY BY NMFS.—The Secretary may enter into a memorandum of understanding with the Commonwealth of Massachusetts under which the National Marine Fisheries Service is authorized to occupy existing laboratory space on the property conveyed under this subsection, if—

(i) the term of the memorandum of understanding is for a period of not longer than 5 years beginning on the date of enactment of this Act; and

(ii) the square footage of the space to be occupied by the National Marine Fisheries Service does not conflict with the needs of, and is agreeable to, the Commonwealth of Massachusetts.

(4) REVERSIONARY INTEREST.—All right, title, and interest in and to all property conveyed under this subsection shall revert to the United States on the date on which the Commonwealth of Massachusetts uses any of the property for any purpose other than the Commonwealth of Massachusetts Division of Marine Fisheries resource management program.

(5) RESTRICTION.—Amounts provided by the South Essex Sewage District may not be used by the Commonwealth of Massachusetts to transfer existing activities to, or conduct activities at, property conveyed under this section.

(b) PIER IN CHARLESTON, SOUTH CAROLINA.—Section 22(a) of the Marine Mammal Protection Act Amendments of 1994 (Pub. Law 103-238; 108 Stat. 561) is amended—

(1) by inserting "(1)" before "Not"; and

(2) by adding at the end thereof the following:

"(2) Not later than December 31, 1996, the Secretary of the Navy may convey, without payment or other consideration, to the Secretary of Commerce, all right, title, and interest to the property comprising that portion of the Naval Base, Charleston, South Carolina, bounded by Hobson Avenue, the Cooper River, the landward extension of the property line located 70 feet northwest of and parallel to the centerline of Pier Q, and the northwest property line of the parking area associated with Pier R. The property shall include Pier Q, all towers and out-buildings on that property, and walkways and parking areas associated with those buildings and Pier Q."

SEC. 2. FISHERIES RESEARCH FACILITIES.

(a) FORT JOHNSON.—The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct on land to be leased from the State of South Carolina, a facility at Fort Johnson, South Carolina, provided that the annual cost of leasing the required lands does not exceed one dollar.

(b) AUKE CAPE.—The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct a facility on Auke Cape near Juneau, Alaska, to provide consolidated office and laboratory space for National Oceanic and Atmospheric Administration personnel in Juneau, provided that the property for such facility is transferred to the National Oceanic and Atmospheric Administration from the United States Coast Guard or the City of Juneau.

(c) COMPLETION DATE FOR FUNDED WORK.—The Secretary of Commerce shall complete the architectural and engineering work for the facilities described in subsections (a) and (b) by not later than May 1, 1996, using funds that have been previously appropriated for that work.

(d) AVAILABILITY OF APPROPRIATIONS.—The authorizations contained in subsections (a) and (b) are subject to the availability of appropriations provided for the purpose stated in this section.

SEC. 3. PRIBILOF ISLANDS.

(a) IN GENERAL.—The Secretary of Commerce shall, subject to the availability of appropriations provided for the purposes of this section, clean up landfills, wastes, dumps, debris, storage tanks, property, hazardous or unsafe conditions, and contaminants, includ-

ing petroleum products and their derivatives, left by the National Oceanic and Atmospheric Administration on lands which it and its predecessor agencies abandoned, quit-claimed, or otherwise transferred or are obligated to transfer, to local entities or residents on the Pribilof Islands, Alaska, pursuant to the Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.), as amended, or other applicable law.

(b) OBLIGATIONS OF SECRETARY.—In carrying out cleanup activities under subsection (a), the Secretary of Commerce shall—

(1) to the maximum extent practicable, execute agreements with the State of Alaska, and affected local governments, entities, and residents eligible to receive conveyance of lands under Fur Seal Act of 1966 (16 U.S.C. 1161 et seq.) or other applicable law;

(2) manage such activities with the minimum possible overhead, delay, and duplication of State and local planning and design work;

(3) receive approval from the State of Alaska for agreements described in paragraph (1) where such activities are required by State law;

(4) receive approval from affected local entities or residents before conducting such activities on their property; and

(5) not seek or require financial contributions by or from local entities or landowners.

(c) RESOLUTION OF FEDERAL RESPONSIBILITIES.—(1) Within 9 months after the date of enactment of this section, and after consultation with the Secretary of the Interior, the State of Alaska, and local entities and residents of the Pribilof Islands, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Resources of the House of Representatives, a report proposing necessary actions by the Secretary of Commerce and Congress to resolve all claims with respect to, and permit the final implementation, fulfillment and completion of—

(A) title II of the Fur Seal Act Amendments of 1983 (16 U.S.C. 1161 et seq.);

(B) the land conveyance entitlements of local entities and residents of the Pribilof Islands under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(C) the provisions of this section; and

(D) any other matters which the Secretary deems appropriate.

(2) The report required under paragraph (1) shall include the estimated costs of all actions, and shall contain the statements of the Secretary of Commerce, the Secretary of the Interior, any statement submitted by the State of Alaska, and any statements of claims or recommendations submitted by local entities and residents of the Pribilof Islands.

(d) USE OF LOCAL ENTITIES.—Notwithstanding any other law to the contrary, the Secretary of Commerce shall, to the maximum extent practicable, carry out activities under subsection (a) and fulfill other obligations under federal and state law relating to the Pribilof Islands, through grants or other agreements with local entities and residents of the Pribilof Islands, unless specialized skills are needed for an activity, and the Secretary specifies in writing that such skills are not available through local entities and residents of the Pribilof Islands.

(e) DEFINITION.—For the purposes of this section, the term "clean up" means the planning and execution of remediation actions for lands described in subsection (a) and the redevelopment of landfills to meet statutory requirements.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated not to exceed \$10,000,000 in each of fiscal years 1996, 1997, and 1998 for the purposes of carrying out this section.