

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in par. (1), are set out in the Appendix to this title.

Section 1101 of the Internet Tax Freedom Act, referred to in par. (4), is section 1101 of title XI of div. C of Pub. L. 105-277, which is set out in a note under section 151 of Title 47, Telecommunications.

AMENDMENTS

2018—Pub. L. 115-395, §6(1), substituted “2258E” for “2258D” in introductory provisions.

Pars. (6) to (8). Pub. L. 115-395, §6(2)–(4), added pars. (6) and (7) and redesignated former par. (6) as (8).

§ 2259. Mandatory restitution

(a) **IN GENERAL.**—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) **SCOPE AND NATURE OF ORDER.**—

(1) **DIRECTIONS.**—Except as provided in paragraph (2), 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.

(2) **RESTITUTION FOR TRAFFICKING IN CHILD PORNOGRAPHY.**—If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

(A) **DETERMINING THE FULL AMOUNT OF A VICTIM’S LOSSES.**—The court shall determine the full amount of the victim’s losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

(B) **DETERMINING A RESTITUTION AMOUNT.**—After completing the determination required under subparagraph (A), the court shall order restitution in an amount that reflects the defendant’s relative role in the causal process that underlies the victim’s losses, but which is no less than \$3,000.

(C) **TERMINATION OF PAYMENT.**—A victim’s total aggregate recovery pursuant to this section shall not exceed the full amount of the victim’s demonstrated losses. After the victim has received restitution in the full amount of the victim’s losses as measured by the greatest amount of such losses found in any case involving that victim that has resulted in a final restitution order under this section, the liability of each defendant who is or has been ordered to pay restitution for such losses to that victim shall be terminated. The court may require the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.

(3) **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.

(4) **ORDER MANDATORY.**—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) **DEFINITIONS.**—

(1) **CHILD PORNOGRAPHY PRODUCTION.**—For purposes of this section and section 2259A, the term “child pornography production” means conduct proscribed by subsections (a) through (c) of section 2251, section 2251A, section 2252A(g) (in cases in which the series of felony violations involves at least 1 of the violations listed in this subsection), section 2260(a), or any offense under chapter 109A or chapter 117 that involved the production of child pornography (as such term is defined in section 2256).

(2) **FULL AMOUNT OF THE VICTIM’S LOSSES.**—For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim, including—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) reasonable attorneys’ fees, as well as other costs incurred; and

(F) any other relevant losses incurred by the victim.

(3) **TRAFFICKING IN CHILD PORNOGRAPHY.**—For purposes of this section and section 2259A, the term “trafficking in child pornography” means conduct proscribed by section 2251(d), 2252, 2252A(a)(1) through (5), 2252A(g) (in cases in which the series of felony violations exclusively involves violations of section 2251(d), 2252, 2252A(a)(1) through (5), or 2260(b)), or 2260(b).

(4) **VICTIM.**—For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter. 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 crime victim’s rights under this section, but in no event shall the defendant be named as such representative or guardian.

(d) **DEFINED MONETARY ASSISTANCE.**—

(1) **DEFINED MONETARY ASSISTANCE MADE AVAILABLE AT VICTIM’S ELECTION.**—

(A) **ELECTION TO RECEIVE DEFINED MONETARY ASSISTANCE.**—Subject to paragraphs (2) and (3), when a defendant is convicted of trafficking in child pornography, any victim

of that trafficking in child pornography may choose to receive defined monetary assistance from the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984 (34 U.S.C. 20101(d)).

(B) FINDING.—To be eligible for defined monetary assistance under this subsection, a court shall determine whether the claimant is a victim of the defendant who was convicted of trafficking in child pornography.

(C) ORDER.—If a court determines that a claimant is a victim of trafficking in child pornography under subparagraph (B) and the claimant chooses to receive defined monetary assistance, the court shall order payment in accordance with subparagraph (D) to the victim from the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984.

(D) AMOUNT OF DEFINED MONETARY ASSISTANCE.—The amount of defined monetary assistance payable under this subparagraph shall be equal to—

(i) for the first calendar year after the date of enactment of this subsection, \$35,000; and

(ii) for each calendar year after the year described in clause (i), \$35,000 multiplied by the ratio (not less than one) of—

(I) the Consumer Price Index for all Urban Consumers (CPI-U, as published by the Bureau of Labor Statistics of the Department of Labor) for the calendar year preceding such calendar year; to

(II) the CPI-U for the calendar year 2 years before the calendar year described in clause (i).

(2) LIMITATIONS ON DEFINED MONETARY ASSISTANCE.—

(A) IN GENERAL.—A victim may only obtain defined monetary assistance under this subsection once.

(B) EFFECT ON RECOVERY OF OTHER RESTITUTION.—A victim who obtains defined monetary assistance under this subsection shall not be barred or limited from receiving restitution against any defendant for any offenses not covered by this section.

(C) DEDUCTION.—If a victim who received defined monetary assistance under this subsection subsequently seeks restitution under this section, the court shall deduct the amount the victim received in defined monetary assistance when determining the full amount of the victim's losses.

(3) LIMITATIONS ON ELIGIBILITY.—A victim who has collected payment of restitution pursuant to this section in an amount greater than the amount provided for under paragraph (1)(D) shall be ineligible to receive defined monetary assistance under this subsection.

(4) ATTORNEY FEES.—

(A) IN GENERAL.—An attorney representing a victim seeking defined monetary assistance under this subsection may not charge, receive, or collect, and the court may not approve, any payment of fees and costs that in the aggregate exceeds 15 percent of any payment made under this subsection.

(B) PENALTY.—An attorney who violates subparagraph (A) shall be fined under this title, imprisoned not more than 1 year, or both.

(Added Pub. L. 103-322, title IV, §40113(b)(1), Sept. 13, 1994, 108 Stat. 1907; amended Pub. L. 104-132, title II, §205(c), Apr. 24, 1996, 110 Stat. 1231; Pub. L. 115-299, §§3(a), (b), 4, Dec. 7, 2018, 132 Stat. 4384, 4385.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (d)(1)(D)(i), is the date of enactment of Pub. L. 115-299, which was approved Dec. 7, 2018.

AMENDMENTS

2018—Subsec. (b)(1). Pub. L. 115-299, §3(a)(1), substituted "Except as provided in paragraph (2), the order" for "The order" and struck out "as determined by the court pursuant to paragraph (2)" after "of the victim's losses".

Subsec. (b)(2). Pub. L. 115-299, §3(a)(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 115-299, §3(a)(2), (3), redesignated par. (2) as (3) and struck out former par. (3) which defined "full amount of the victim's losses".

Subsec. (c). Pub. L. 115-299, §3(b)(1), (2), (5), substituted "Definitions" for "Definition" in subsec. heading, designated existing provisions as par. (4) and inserted par. heading, and added pars. (1) to (3).

Subsec. (c)(4). Pub. L. 115-299, §3(b)(3), (4), substituted "under this chapter. In the case" for "under this chapter, including, in the case", and inserted "may assume the crime victim's rights under this section," after "or any other person appointed as suitable by the court,".

Subsec. (d). Pub. L. 115-299, §4, added subsec. (d).

1996—Subsec. (a). Pub. L. 104-132, §205(c)(1), inserted "or 3663A" after "3663".

Subsec. (b)(1). Pub. L. 104-132, §205(c)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The order of restitution under this section shall direct that—

"(A) the defendant 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 (3); and

"(B) the United States Attorney enforce the restitution order by all available and reasonable means."

Subsec. (b)(2). Pub. L. 104-132, §205(c)(2)(B), struck out "by victim" after "Enforcement" in heading and amended text generally. Prior to amendment, text read as follows: "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."

Subsec. (b)(4)(C), (D). Pub. L. 104-132, §205(c)(2)(C), struck out subpars. (C) and (D), which related to court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104-132, §205(c)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104-132, §205(c)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.

Subsecs. (d), (e). Pub. L. 104-132, §205(c)(3), struck out subsecs. (d) and (e) which read as follows:

"(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a

restitution order as appropriate in view of a change in the economic circumstances of the offender.

“(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—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.”

Subsec. (f). Pub. L. 104-132, §205(c)(4), redesignated subsec. (f) as (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

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

FINDINGS

Pub. L. 115-299, §2, Dec. 7, 2018, 132 Stat. 4383, provided that: “Congress finds the following:

“(1) The demand for child pornography harms children because it drives production, which involves severe child sexual abuse and exploitation.

“(2) The harms caused by child pornography begin, but do not end, with child sex assault because child pornography is a permanent record of that abuse and trafficking in those images compounds the harm to the child.

“(3) In *Paroline v. United States* (2014), the Supreme Court recognized that ‘every viewing of child pornography is a repetition of the victim’s abuse’.

“(4) The American Professional Society on the Abuse of Children has stated that for victims of child pornography, ‘the sexual abuse of the child, the memorialization of that abuse which becomes child pornography, and its subsequent distribution and viewing become psychologically intertwined and each compound the harm suffered by the child-victim’.

“(5) Victims suffer continuing and grievous harm as a result of knowing that a large, indeterminate number of individuals have viewed and will in the future view images of their childhood sexual abuse. Harms of this sort are a major reason that child pornography is outlawed.

“(6) The unlawful collective conduct of every individual who reproduces, distributes, or possesses the images of a victim’s childhood sexual abuse plays a part in sustaining and aggravating the harms to that individual victim.

“(7) It is the intent of Congress that victims of child pornography be compensated for the harms resulting from every perpetrator who contributes to their anguish. Such an aggregate causation standard reflects the nature of child pornography and the unique ways that it actually harms victims.”

§ 2259A. Assessments in child pornography cases

(a) IN GENERAL.—In addition to any other criminal penalty, restitution, or special assessment authorized by law, the court shall assess—

(1) not more than \$17,000 on any person convicted of an offense under section 2252(a)(4) or 2252A(a)(5);

(2) not more than \$35,000 on any person convicted of any other offense for trafficking in child pornography; and

(3) not more than \$50,000 on any person convicted of a child pornography production offense.

(b) ANNUAL ADJUSTMENT.—The dollar amounts in subsection (a) shall be adjusted annually in conformity with the Consumer Price Index.

(c) FACTORS CONSIDERED.—In determining the amount of the assessment under subsection (a),

the court shall consider the factors set forth in sections 3553(a) and 3572.

(d) IMPOSITION AND IMPLEMENTATION.—

(1) IN GENERAL.—The provisions of subchapter C of chapter 227 (other than section 3571) and subchapter B of chapter 229 (relating to fines) apply to assessments under this section, except that paragraph (2) applies in lieu of any contrary provisions of law relating to fines or disbursement of money received from a defendant.

(2) EFFECT ON OTHER PENALTIES.—Imposition of an assessment under this section does not relieve a defendant of, or entitle a defendant to reduce the amount of any other penalty by the amount of the assessment. Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

(A) A special assessment under section 3013.

(B) Restitution to victims of any child pornography production or trafficking offense that the defendant committed.

(C) An assessment under this section.

(D) Other orders under any other section of this title.

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

(Added Pub. L. 115-299, §5(a), Dec. 7, 2018, 132 Stat. 4386.)

§ 2259B. Child pornography victims reserve

(a) DEPOSITS INTO THE RESERVE.—Notwithstanding any other provision of law, there shall be deposited into the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984 (34 U.S.C. 20101(d)) all assessments collected under section 2259A and any gifts, bequests, or donations to the Child Pornography Victims Reserve from private entities or individuals.

(b) AVAILABILITY FOR DEFINED MONETARY ASSISTANCE.—Amounts in the Child Pornography Victims Reserve shall be available for payment of defined monetary assistance pursuant to section 2259(d). If at any time the Child Pornography Victims Reserve has insufficient funds to make all of the payments ordered under section 2259(d), the Child Pornography Victims Reserve shall make such payments as it can satisfy in full from available funds. In determining the order in which such payments shall be made, the Child Pornography Victims Reserve shall make payments based on the date they were ordered, with the earliest-ordered payments made first.

(c) ADMINISTRATION.—The Attorney General shall administer the Child Pornography Victims Reserve and shall issue guidelines and regulations to implement this section.

(d) SENSE OF CONGRESS.—It is the sense of Congress that individuals who violate this chapter prior to the date of the enactment of the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, but who are sentenced after such date, shall be subject to the statutory scheme that was in effect at the time the offenses were committed.

(Added Pub. L. 115-299, §5(c), Dec. 7, 2018, 132 Stat. 4387.)