

Statement of
The Honorable Byron Dorgan

United States Senator
North Dakota
September 19, 2006

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Chairman Specter and Ranking Member Leahy, I would like to thank you for holding a hearing today to examine the financial and human impact of crime in this country. As all of us know, victims of crime and their families often face a significant challenge trying to rebuild their lives and recover a sense of emotional and financial security after a crime has been perpetrated against them.

By law, victims of federal crimes are generally entitled to "full and timely restitution" for losses from a convicted offender. In recent years, however, the amount of uncollected restitution and other federal criminal debt has spiraled upward while the percentage of that debt ultimately recovered for crime victims has plummeted. The amount of uncollected federal criminal debt has increased from \$6 billion in 1996 to over \$41 billion by the end of fiscal year 2005. To make matters worse, Government Accountability Office (GAO) investigators found that federal criminal justice officials collected an average of only four cents on every dollar of criminal debt that was owed to crime victims in years 2000, 2001 and 2002.

These figures are disheartening, and the victims of crime in this country deserve better. At the very least, crime victims should not be concerned that their prospects for financial restitution are being diminished because criminal offenders are frittering away their ill-gotten gains on lavish lifestyles and the like.

I have introduced with Senator Grassley and several of our colleagues legislation called the Restitution for Victims of Crime Act of 2006 (S. 3561) to give Justice Department officials the tools they have requested to help them do a better job of collecting court-ordered federal restitution and fines. Our bill includes provisions that will remove many existing impediments to increased collections. For example, Justice Department officials have described a circumstance where they were prevented by a court from accessing \$400,000 held in a criminal offender's 401(k) plan to pay a \$4 million restitution debt to a victim because that court said the defendant was complying with a \$250 minimum monthly payment plan and that payment schedule precluded any other enforcement actions. S. 3561 would remove impediments like this in the future.

Our legislation also addresses a major problem identified by the GAO for federal officials in charge of criminal debt collection; that is, many years can pass between the date a crime occurs and the date a court orders restitution. This gives criminal defendants ample opportunity to spend

or hide their ill-gotten gains. Our bill sets up pre-conviction procedures for preserving assets to help ensure that financial assets traceable to a crime are available when a court imposes a final restitution order on behalf of a victim. These tools are similar to those already used by federal officials in some asset forfeiture cases and upheld by the courts.

Some of the key provisions of S. 3561 would do the following:

? Clarify that court-ordered federal criminal restitution is due immediately in full upon imposition, just like in civil cases and that any payment schedule ordered by a court is only a minimum obligation of a convicted offender.

? Allow federal prosecutors to access financial information about a defendant in the possession of the U.S. Probation Office - without the need for a court order.

? Clarify that final restitution orders can be enforced by criminal justice officials through the Bureau of Prisons' Inmate Financial Responsibility Program.

? Ensure that if a court restricts the ability of criminal justice officials to enforce a financial judgment, the court must do so expressly for good cause on the record. Absent exceptional circumstances, the court must require a deposit, the posting of a bond or impose additional restraints upon the defendant from transferring or dissipating assets.

? Help ensure better recovery of restitution by requiring a court to enter a pre-conviction restraining order or injunction, require a satisfactory performance bond, or take other action necessary to preserve property that is traceable to the commission of a charged offense or to preserve other nonexempt assets if the court determines that it is in the interest of justice to do so. Under the bill, a criminal defendant is allowed to challenge a court's pre-judgment asset preservation order. For example, a defendant may challenge a post-indictment restraining order if he or she can show that there is no probable cause to justify the restraint or the order does not provide the accused with adequate resources for attorney fees or reasonable living expenses.

? Permit the Attorney General to commence a civil action under the Anti-Fraud Injunction Statute to enjoin a person who is committing or about to commit a federal offense that may result in a restitution order; and permit a court to restrain the dissipation of assets in any case where it has power to enjoin the commission of a crime, not just banking or health care fraud as permitted under current law.

? Allow the United States under the Federal Debt Collections Procedure Act to use prejudgment remedies to preserve assets in criminal cases that are similar to those used in civil cases when it is needed to preserve a defendant's assets for restitution. Such remedies, including attachment, garnishment, and receivership, are not currently available in criminal cases because there is no enforceable debt prior to offender's conviction and judgment.

? Clarify that a victim's attorney fees may be included in restitution orders, including cases where such fees are a foreseeable result from the commission of the crime, are incurred to help recover lost property or expended by a victim to defend against third party lawsuits resulting from the defendant's crime.

? Allow courts in their discretion to order immediate restitution to those that have suffered economic losses or serious bodily injury or death as the result of environmental felonies. Under current law, courts can impose restitution in such cases as a condition of probation or supervised release but this means that many victims of environment crimes must wait for years to be compensated for their losses, if at all.

I hope that members of the Senate Judiciary Committee will agree that the current state of our federal criminal debt collection effort is not acceptable and that this legislation is a serious effort to improve it. The Restitution for Victims of Crime Act of 2006 has already been endorsed by a number of organizations concerned about the well-being of crime victims, including: The National Center for Victims of Crime, Mothers Against Drunk Driving, the National Organization for Victims Assistance (NOVA), the National Alliance to End Sexual Violence, Parents of Murdered Children, Inc., Justice Solutions, the National Network to End Domestic Violence and the National Association of VOCA Assistance Administrators (NAVAA).

I think that swift passage of our legislation to enhance federal criminal debt collection will send a clear and much-needed message to white collar and other criminals: if you commit a crime you will be held accountable and will not be allowed to benefit in any way from your criminal activity and ill-gotten gains. This bill will reassure many innocent victims of federal crime that the federal criminal justice system is doing everything in its power to recover court-ordered restitution that is owed to them.

Mr. Chairman, I look forward to working with the members of the Judiciary Committee to address any remaining questions about our legislation and to move the legislation forward in the U.S. Senate in the remaining days of this session.