

110TH CONGRESS  
1ST SESSION

# S. 149

To address the effect of the death of a defendant in Federal criminal proceedings.

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IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mrs. FEINSTEIN (for herself and Mr. SESSIONS) introduced the following bill;  
which was read twice and referred to the Committee on the Judiciary

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## A BILL

To address the effect of the death of a defendant in Federal criminal proceedings.

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 “Preserving Crime Vic-  
5 tims’ Restitution Act of 2007”.

6 **SEC. 2. EFFECT OF DEATH OF A DEFENDANT IN FEDERAL**  
7 **CRIMINAL PROCEEDINGS.**

8 (a) IN GENERAL.—Subchapter A of chapter 227 of  
9 title 18, United States Code, is amended by adding at the  
10 end the following:

1 **“§ 3560. Effect of death of a defendant in Federal**  
2 **criminal proceedings**

3 “(a) GENERAL RULE.—Notwithstanding any other  
4 provision of law, the death of a defendant who has been  
5 convicted of a Federal criminal offense shall not be the  
6 basis for abating or otherwise invalidating a plea of guilty  
7 or nolo contendere accepted, a verdict returned, a sentence  
8 announced, or a judgment entered prior to the death of  
9 that defendant, or for dismissing or otherwise invalidating  
10 the indictment, information, or complaint on which such  
11 a plea, verdict, sentence, or judgment is based, except as  
12 provided in this section.

13 “(b) DEATH AFTER PLEA OR VERDICT.—

14 “(1) ENTRY OF JUDGMENT.—If a defendant  
15 dies after a plea of guilty or nolo contendere has  
16 been accepted or a verdict has been returned, but  
17 before judgment is entered, the court shall enter a  
18 judgment incorporating the plea of guilty or nolo  
19 contendere or the verdict, with the notation that the  
20 defendant died before the judgment was entered.

21 “(2) PUNITIVE SANCTIONS.—

22 “(A) DEATH BEFORE SENTENCE AN-  
23 NOUNCED.—If a defendant dies after a plea of  
24 guilty or nolo contendere has been accepted or  
25 a verdict has been returned and before a sen-  
26 tence has been announced, no sentence of pro-

1           bation, supervision, or imprisonment may be  
2           imposed, no criminal forfeiture may be ordered,  
3           and no liability for a fine or special assessment  
4           may be imposed on the defendant or the de-  
5           fendant's estate.

6           “(B) DEATH AFTER SENTENCING OR  
7           JUDGMENT.—The death of a defendant after a  
8           sentence has been announced or a judgment has  
9           been entered, and before that defendant has ex-  
10          hausted or waived the right to a direct appeal—

11                 “(i) shall terminate any term of pro-  
12                 bation, supervision, or imprisonment, and  
13                 shall terminate the liability of that defend-  
14                 ant to pay any amount remaining due of a  
15                 criminal forfeiture, of a fine under section  
16                 3613(b), or of a special assessment under  
17                 section 3013; and

18                 “(ii) shall not require return of any  
19                 portion of any criminal forfeiture, fine, or  
20                 special assessment already paid.

21          “(3) RESTITUTION.—

22                 “(A) DEATH BEFORE SENTENCE AN-  
23                 NOUNCED.—If a defendant dies after a plea of  
24                 guilty or nolo contendere has been accepted or  
25                 a verdict has been returned and before a sen-

1           tence has been announced, the court shall, upon  
2           a motion under subsection (c)(2) by the Gov-  
3           ernment or any victim of that defendant’s  
4           crime, commence a special restitution pro-  
5           ceeding at which the court shall adjudicate and  
6           enter a final order of restitution against the es-  
7           tate of that defendant in an amount equal to  
8           the amount that would have been imposed if  
9           that defendant were alive.

10           “(B) DEATH AFTER SENTENCING OR  
11           JUDGMENT.—The death of a defendant after a  
12           sentence has been announced shall not be a  
13           basis for abating or otherwise invalidating res-  
14           titution announced at sentencing or ordered  
15           after sentencing under section 3664(d)(5) of  
16           this title or any other provision of law.

17           “(4) CIVIL PROCEEDINGS.—The death of a de-  
18           fendant after a plea of guilty or nolo contendere has  
19           been accepted, a verdict returned, a sentence an-  
20           nounced, or a judgment entered, shall not prevent  
21           the use of that plea, verdict, sentence, or judgment  
22           in civil proceedings, to the extent otherwise per-  
23           mitted by law.

24           “(c) APPEALS, MOTIONS, AND PETITIONS.—

1           “(1) IN GENERAL.—Except as provided in para-  
2 graph (2), after the death of a defendant convicted  
3 in a criminal case—

4           “(A) no appeal, motion, or petition by or  
5 on behalf of that defendant or the personal rep-  
6 resentative or estate of that defendant, the Gov-  
7 ernment, or a victim of that defendant’s crime  
8 seeking to challenge or reinstate a plea of guilty  
9 or nolo contendere accepted, a verdict returned,  
10 a sentence announced, or a judgment entered  
11 prior to the death of that defendant shall be  
12 filed in that case after the death of that defend-  
13 ant; and

14           “(B) any pending motion, petition, or ap-  
15 peal in that case shall be dismissed with the no-  
16 tation that the dismissal is due to the death of  
17 the defendant.

18           “(2) EXCEPTIONS.—

19           “(A) RESTITUTION.—If a defendant dies  
20 after being convicted in a criminal case but  
21 prior to sentencing or the exhaustion or waiver  
22 of direct appeal, the personal representative of  
23 that defendant, the Government, or any victim  
24 of that defendant’s crime may file or pursue an  
25 otherwise permissible direct appeal, petition for

1 mandamus or a writ of certiorari, or an other-  
 2 wise permissible motion described in section  
 3 3663, 3663A, 3664, or 3771, to the extent that  
 4 the appeal, petition, or motion raises an other-  
 5 wise permissible claim to—

6 “(i) obtain, in a special restitution  
 7 proceeding, a final order of restitution  
 8 under subsection (b)(3);

9 “(ii) enforce, correct, amend, adjust,  
 10 reinstate, or challenge any order of restitu-  
 11 tion; or

12 “(iii) challenge or reinstate a verdict,  
 13 plea of guilty or nolo contendere, sentence,  
 14 or judgment on which—

15 “(I) a restitution order is based;

16 or

17 “(II) restitution is being or will  
 18 be sought by an appeal, petition, or  
 19 motion under this paragraph.

20 “(B) OTHER CIVIL ACTIONS AFFECTED.—

21 If a defendant dies after being convicted in a  
 22 criminal case but prior to sentencing or the ex-  
 23 haustion or waiver of direct appeal, the per-  
 24 sonal representative of that defendant, the Gov-  
 25 ernment, or any victim of that defendant’s

1 crime may file or pursue an otherwise permis-  
2 sible direct appeal, petition for mandamus or a  
3 writ of certiorari, or an otherwise permissible  
4 motion under the Federal Rules of Criminal  
5 Procedure, to the extent that the appeal, peti-  
6 tion, or motion raises an otherwise permissible  
7 claim to challenge or reinstate a verdict, plea of  
8 guilty or nolo contendere, sentence, or judgment  
9 that the appellant, petitioner, or movant shows  
10 by a preponderance of the evidence is, or will  
11 be, material in a pending or reasonably antici-  
12 pated civil proceeding, including civil forfeiture  
13 proceedings.

14 “(C) COLLATERAL CONSEQUENCES.—

15 “(i) IN GENERAL.—Except as pro-  
16 vided in subparagraphs (A) and (B), the  
17 Government may not restrict any Federal  
18 benefits or impose collateral consequences  
19 on the estate or a family member of a de-  
20 ceased defendant based solely on the con-  
21 viction of a defendant who died before that  
22 defendant exhausted or waived the right to  
23 direct appeal unless, not later than 90  
24 days after the death of that defendant, the  
25 Government gives notice to that estate or

1 family member of the intent of the Govern-  
2 ment to take such action.

3 “(ii) PERSONAL REPRESENTATIVE.—  
4 If the Government gives notice under  
5 clause (i), the court shall appoint a per-  
6 sonal representative for the deceased de-  
7 fendant that is the subject of that notice,  
8 if not otherwise appointed, under section  
9 (d)(2)(A).

10 “(iii) TOLLING.—If the Government  
11 gives notice under clause (i), any filing  
12 deadline that might otherwise apply  
13 against the defendant, the estate of the de-  
14 fendant, or a family member of the defend-  
15 ant shall be tolled until the date of the ap-  
16 pointment of that defendant’s personal  
17 representative under clause (ii).

18 “(3) BASIS.—In any appeal, petition, or motion  
19 under paragraph (2), the death of the defendant  
20 shall not be a basis for relief.

21 “(d) PROCEDURES REGARDING CONTINUING LITIGA-  
22 TION.—

23 “(1) IN GENERAL.—The standards and proce-  
24 dures for a permitted appeal, petition, motion, or  
25 other proceeding under subsection (c)(2) shall be the

1 standards and procedures otherwise provided by law,  
2 except that the personal representative of the de-  
3 fendant shall be substituted for the defendant.

4 “(2) SPECIAL PROCEDURES.—If continuing liti-  
5 gation is initiated or could be initiated under sub-  
6 section (c)(2), the following procedures shall apply:

7 “(A) NOTICE AND APPOINTMENT OF PER-  
8 SONAL REPRESENTATIVE.—The district court  
9 before which the criminal case was filed (or the  
10 appellate court if the matter is pending on di-  
11 rect appeal) shall—

12 “(i) give notice to any victim of the  
13 convicted defendant under section  
14 3771(a)(2), and to the personal represent-  
15 ative of that defendant or, if there is none,  
16 the next of kin of that defendant; and

17 “(ii) appoint a personal representative  
18 for that defendant, if not otherwise ap-  
19 pointed.

20 “(B) COUNSEL.—Counsel shall be ap-  
21 pointed for the personal representative of a de-  
22 fendant convicted in a criminal case who dies if  
23 counsel would have been available to that de-  
24 fendant, or if the personal representative of  
25 that defendant requests counsel and otherwise

1           qualifies for the appointment of counsel, under  
2           section 3006A.

3           “(C) TOLLING.—The court shall toll any  
4           applicable deadline for the filing of any motion,  
5           petition, or appeal during the period beginning  
6           on the date of the death of a defendant con-  
7           victed in a criminal case and ending on the  
8           later of—

9                   “(i) the date of the appointment of  
10                   that defendant’s personal representative;  
11                   or

12                   “(ii) where applicable, the date of the  
13                   appointment of counsel for that personal  
14                   representative.

15           “(D) RESTITUTION.—If restitution has not  
16           been fully collected on the date on which a de-  
17           fendant convicted in a criminal case dies—

18                   “(i) any amount owed under a restitu-  
19                   tion order (whether issued before or after  
20                   the death of that defendant) shall be col-  
21                   lectible from any property from which the  
22                   restitution could have been collected if that  
23                   defendant had survived, regardless of  
24                   whether that property is included in the es-  
25                   tate of that defendant;

1           “(ii) any restitution protective order  
2           in effect on the date of the death of that  
3           defendant shall continue in effect unless  
4           modified by the court after hearing or pur-  
5           suant to a motion by the personal rep-  
6           resentative of that defendant, the Govern-  
7           ment, or any victim of that defendant’s  
8           crime; and

9           “(iii) upon motion by the Government  
10          or any victim of that defendant’s crime,  
11          the court shall take any action necessary to  
12          preserve the availability of property for  
13          restitution under this section.

14       “(e) FORFEITURE.—

15           “(1) IN GENERAL.—Except as provided in para-  
16          graph (2), the death of an individual does not affect  
17          the Government’s ability to seek, or to continue to  
18          pursue, civil forfeiture of property as authorized by  
19          law.

20           “(2) TOLLING OF LIMITATIONS FOR CIVIL FOR-  
21          FEITURE.—Notwithstanding the expiration of any  
22          civil forfeiture statute of limitations or any time lim-  
23          itation set forth in section 983(a) of this title, not  
24          later than the later of the time period otherwise au-  
25          thorized by law and 2 years after the date of the

1 death of an individual against whom a criminal in-  
2 dictment alleging forfeiture is pending, the Govern-  
3 ment may commence civil forfeiture proceedings  
4 against any interest in any property alleged to be  
5 forfeitable in the indictment of that individual.

6 “(f) DEFINITIONS.—In this section—

7 “(1) the term ‘accepted’, relating to a plea of  
8 guilty or nolo contendere, means that a court has  
9 determined, under rule 11(b) of the Federal Rules of  
10 Criminal Procedure, that the plea is voluntary and  
11 supported by a factual basis, regardless of whether  
12 final acceptance of that plea may have been deferred  
13 pending review of a presentence report or otherwise;

14 “(2) the term ‘announced’, relating to a sen-  
15 tence, means that the sentence has been orally stat-  
16 ed in open court;

17 “(3) the term ‘convicted’ refers to a defend-  
18 ant—

19 “(A) whose plea of guilty or nolo  
20 contendere has been accepted; or

21 “(B) against whom a verdict of guilty has  
22 been returned;

23 “(4) the term ‘direct appeal’ means an appeal  
24 filed, within the period provided by rule 4(b) of the  
25 Federal Rules of Appellate Procedure, from the

1 entry of the judgment or order of restitution, includ-  
2 ing review by the Supreme Court of the United  
3 States; and

4 “(5) the term ‘returned’, relating to a verdict,  
5 means that the verdict has been orally stated in  
6 open court.”.

7 (b) CONFORMING AMENDMENT.—The table of sec-  
8 tions for chapter 227 of title 18, United States Code, is  
9 amended by adding at the end the following:

“3560. Effect of death of a defendant in Federal criminal proceedings.”.

10 **SEC. 3. EFFECTIVE DATE.**

11 The amendments made by this Act shall apply to any  
12 criminal case or appeal pending on or after July 1, 2007.

13 **SEC. 4. SEVERABILITY.**

14 If any provision of this Act, any amendment made  
15 by this Act, or the application of such provision or amend-  
16 ment to any person or circumstance is held to be unconsti-  
17 tutional, the remainder of the provisions of this Act, the  
18 amendments made by this Act, and the application of such  
19 provisions or amendments to any person or circumstance  
20 shall not be affected.

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