

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 4055

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2006

Referred to the Committee on the Judiciary

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## AN ACT

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 2006”.

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

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

6 **“§ 3560. Effect of death of a defendant in Federal**  
7 **criminal proceedings**

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

18 “(b) DEATH AFTER PLEA OR VERDICT.—

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

26 “(2) PUNITIVE SANCTIONS.—

1           “(A) DEATH BEFORE SENTENCE AN-  
2 NOUNCED.—If a defendant dies after a plea of  
3 guilty or nolo contendere has been accepted or  
4 a verdict has been returned and before a sen-  
5 tence has been announced, no sentence of pro-  
6 bation, supervision, or imprisonment may be  
7 imposed, no criminal forfeiture may be ordered,  
8 and no liability for a fine or special assessment  
9 may be imposed on the defendant or the de-  
10 fendant’s estate.

11           “(B) DEATH AFTER SENTENCING OR  
12 JUDGMENT.—The death of a defendant after a  
13 sentence has been announced or a judgment has  
14 been entered, and before that defendant has ex-  
15 hausted or waived the right to a direct appeal—

16           “(i) shall terminate any term of pro-  
17 bation, supervision, or imprisonment, and  
18 shall terminate the liability of that defend-  
19 ant to pay any amount remaining due of a  
20 criminal forfeiture, of a fine under section  
21 3613(b), or of a special assessment under  
22 section 3013; and

23           “(ii) shall not require return of any  
24 portion of any criminal forfeiture, fine, or  
25 special assessment already paid.

1           “(3) RESTITUTION.—

2                   “(A) DEATH BEFORE SENTENCE AN-  
3           NOUNCED.—If a defendant dies after a plea of  
4           guilty or nolo contendere has been accepted or  
5           a verdict has been returned and before a sen-  
6           tence has been announced, the court shall, upon  
7           a motion under subsection (c)(2) by the Gov-  
8           ernment or any victim of that defendant’s  
9           crime, commence a special restitution pro-  
10          ceeding at which the court shall adjudicate and  
11          enter a final order of restitution against the es-  
12          tate of that defendant in an amount equal to  
13          the amount that would have been imposed if  
14          that defendant were alive.

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

22                   “(4) CIVIL PROCEEDINGS.—The death of a de-  
23          fendant after a plea of guilty or nolo contendere has  
24          been accepted, a verdict returned, a sentence an-  
25          nounced, or a judgment entered, shall not prevent

1 the use of that plea, verdict, sentence, or judgment  
2 in civil proceedings, to the extent otherwise per-  
3 mitted by law.

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

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

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

18 “(B) any pending motion, petition, or ap-  
19 peal in that case shall be dismissed with the no-  
20 tation that the dismissal is due to the death of  
21 the defendant.

22 “(2) EXCEPTIONS.—

23 “(A) RESTITUTION.—After the death of a  
24 defendant convicted in a criminal case, the per-  
25 sonal representative of that defendant, the Gov-

1           ernment, or any victim of that defendant’s  
 2           crime may file or pursue an otherwise permis-  
 3           sible direct appeal, petition for mandamus or a  
 4           writ of certiorari, or an otherwise permissible  
 5           motion described in section 3663, 3663A, 3664,  
 6           or 3771, to the extent that the appeal, petition,  
 7           or motion raises an otherwise permissible claim  
 8           to—

9                   “(i) obtain, in a special restitution  
 10                   proceeding, a final order of restitution  
 11                   under subsection (b)(3);

12                   “(ii) enforce, correct, amend, adjust,  
 13                   reinstate, or challenge any order of restitu-  
 14                   tion; or

15                   “(iii) challenge or reinstate a verdict,  
 16                   plea of guilty or nolo contendere, sentence,  
 17                   or judgment on which—

18                           “(I) a restitution order is based;

19                           or

20                           “(II) restitution is being or will  
 21                           be sought by an appeal, petition, or  
 22                           motion under this paragraph.

23                   “(B) OTHER CIVIL ACTIONS AFFECTED.—

24           After the death of a defendant convicted in a  
 25           criminal case, the personal representative of

1 that defendant, the Government, or any victim  
2 of that defendant's crime may file or pursue an  
3 otherwise permissible direct appeal, petition for  
4 mandamus or a writ of certiorari, or an other-  
5 wise permissible motion under the Federal  
6 Rules of Criminal Procedure, to the extent that  
7 the appeal, petition, or motion raises an other-  
8 wise permissible claim to challenge or reinstate  
9 a verdict, plea of guilty or nolo contendere, sen-  
10 tence, or judgment that the appellant, peti-  
11 tioner, or movant shows by a preponderance of  
12 the evidence is, or will be, material in a pending  
13 or reasonably anticipated civil proceeding, in-  
14 cluding civil forfeiture proceedings.

15 “(C) COLLATERAL CONSEQUENCES.—

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

1 Government gives notice to that estate or  
2 family member of the intent of the Govern-  
3 ment to take such action.

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

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

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

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

24 “(1) IN GENERAL.—The standards and proce-  
25 dures for a permitted appeal, petition, motion, or

1 other proceeding under subsection (c)(2) shall be the  
2 standards and procedures otherwise provided by law,  
3 except that the personal representative of the de-  
4 fendant shall be substituted for the defendant.

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

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

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

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

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

1 that defendant requests counsel and otherwise  
2 qualifies for the appointment of counsel, under  
3 section 3006A.

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

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

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

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

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

1           whether that property is included in the es-  
2           tate of that defendant;

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

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

16          “(e) FORFEITURE.—

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

22                 “(2) TOLLING OF LIMITATIONS FOR CIVIL FOR-  
23                 FEITURE.—Notwithstanding the expiration of any  
24                 civil forfeiture statute of limitations or any time lim-  
25                 itation set forth in section 983(a) of this title, not

1 later than the later of the time period otherwise au-  
2 thorized by law and 2 years after the date of the  
3 death of an individual against whom a criminal in-  
4 dictment alleging forfeiture is pending, the Govern-  
5 ment may commence civil forfeiture proceedings  
6 against any interest in any property alleged to be  
7 forfeitable in the indictment of that individual.

8 “(f) DEFINITIONS.—In this section—

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

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

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

21 “(A) whose plea of guilty or nolo  
22 contendere has been accepted; or

23 “(B) against whom a verdict of guilty has  
24 been returned;

1           “(4) the term ‘direct appeal’ means an appeal  
2 filed, within the period provided by rule 4(b) of the  
3 Federal Rules of Appellate Procedure, from the  
4 entry of the judgment or order of restitution, includ-  
5 ing review by the Supreme Court of the United  
6 States; and

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

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

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

13 **SEC. 3. EFFECTIVE DATE.**

14       The amendments made by this Act shall apply to any  
15 criminal case or appeal pending on or after July 1, 2006.

16 **SEC. 4. SEVERABILITY.**

17       If any provision of this Act, any amendment made  
18 by this Act, or the application of such provision or amend-  
19 ment to any person or circumstance is held to be unconsti-  
20 tutional, the remainder of the provisions of this Act, the  
21 amendments made by this Act, and the application of such

- 1 provisions or amendments to any person or circumstance
- 2 shall not be affected.

Passed the Senate December 9 (legislative day, December 8), 2006.

Attest:

EMILY J. REYNOLDS,

*Secretary.*