

109TH CONGRESS
2^D SESSION

H. R. 6374

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2006

Mr. SCHIFF (for himself, Mr. GOHMERT, and Mr. FEENEY) introduced the following bill; which was referred to the Committee on the Judiciary

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 2006”.

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.—After the death of a
20 defendant convicted in a criminal case, the per-
21 sonal representative of that defendant, the Gov-
22 ernment, or any victim of that defendant’s
23 crime may file or pursue an otherwise permis-
24 sible direct appeal, petition for mandamus or a
25 writ of certiorari, or an otherwise permissible

1 motion described in section 3663, 3663A, 3664,
2 or 3771, to the extent that the appeal, petition,
3 or motion raises an otherwise permissible claim
4 to—

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

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

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

14 “(I) a restitution order is based;

15 or

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

19 “(B) OTHER CIVIL ACTIONS AFFECTED.—

20 After the death of a defendant convicted in a
21 criminal case, the personal representative of
22 that defendant, the Government, or any victim
23 of that defendant’s crime may file or pursue an
24 otherwise permissible direct appeal, petition for
25 mandamus or a writ of certiorari, or an other-

1 wise permissible motion under the Federal
2 Rules of Criminal Procedure, to the extent that
3 the appeal, petition, or motion raises an other-
4 wise permissible claim to challenge or reinstate
5 a verdict, plea of guilty or nolo contendere, sen-
6 tence, or judgment that the appellant, peti-
7 tioner, or movant shows by a preponderance of
8 the evidence is, or will be, material in a pending
9 or reasonably anticipated civil proceeding, in-
10 cluding civil forfeiture proceedings.

11 “(C) COLLATERAL CONSEQUENCES.—

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

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

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

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

19 “(d) PROCEDURES REGARDING CONTINUING LITIGA-
20 TION.—

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

1 except that the personal representative of the de-
2 fendant shall be substituted for the defendant.

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

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

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

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

19 “(B) COUNSEL.—Counsel shall be ap-
20 pointed for the personal representative of a de-
21 fendant convicted in a criminal case who dies if
22 counsel would have been available to that de-
23 fendant, or if the personal representative of
24 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, 2006.

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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