



## Senators Feinstein, Sessions Introduce Bill to Ensure Restitution Remains Available to Victims After a Criminal Defendant Dies

*- Legislation would ensure that victims, like those of Enron, continue to have a right to restitution, even when a criminal defendant dies before the appeals process is complete -*

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**Washington, DC** – U.S. Senators Dianne Feinstein (D-Calif.) and Jeff Sessions (R-Ala.), members of the Senate Judiciary Committee, today introduced a bill to clarify the legal procedures that should be applied when criminal defendants, such as former Enron CEO Kenneth Lay, die after they have been duly convicted, but before their appeals are final. Under current law, convictions are dismissed whenever a criminal defendant dies before the appeals process is complete.

On October 17, U.S. District Judge Sim Lake, of the Southern District of Texas, dismissed the criminal convictions of Enron founder Kenneth Lay, even after Lay had been found guilty of 10 criminal charges, including securities fraud, wire fraud involving false and misleading statements, bank fraud and conspiracy.

**“The legislation introduced today offers a fair solution and orderly process in the event that a criminal defendant dies prior to his or her final appeal. This bill would correct a problem recently highlighted in the criminal case of former Enron CEO Kenneth Lay, when a U.S. District Judge overturned his criminal convictions – not because of any error in the case, but simply because he had died,”** Senator Feinstein said. **“We need to ensure that, in these types of cases, hard-won convictions are preserved and restitution remains available for the victims of crime.”**

**“Taking a criminal case to trial and obtaining a conviction can involve thousands of hours of work, and a huge commitment of resources,”** Senator Sessions said. **“In the recent conviction of Ken Lay, for example, the trial took nearly four months and cost the taxpayers millions of dollars. When a criminal conviction involves financial restitution to the victims of the crime, or when the conviction could be used in a later civil law suit, those effects of the conviction should not be erased by the death of the defendant. It is wrong to force the victims or the government to start over from scratch.”**

The legislation has been crafted in coordination with the Justice Department, which has indicated its support for the principles contained in this bill, and the efforts by Senators Feinstein and Sessions to fix this problem now.

## **Bill Summary**

Specifically, the bill would:

- **Establish that, if a defendant dies after being convicted of a federal offense, his conviction will not be vacated.** Instead, the court will be directed to issue a statement stating that the defendant was convicted (either by a guilty plea or a verdict finding him guilty) but then died before his case or appeal was final.
- **Codify the current rule that no further criminal punishments can be imposed on a person who is convicted if they die before a sentence is imposed or they have an opportunity to appeal their conviction.**
- **Clarify that, unlike criminal punishment, all other relief (such as restitution to the victims) that could have been sought against a convicted defendant can continue to be pursued and collected after the defendant's death.**
- **Establish a process to ensure that after a person dies, a representative of his estate can stand in the shoes of the defendant and challenge or appeal his conviction if they want, and can also secure a lawyer - either on their own or by having one appointed.**

Additionally, if the Government had filed a criminal forfeiture action — seeking a criminal punishment to reach assets which it had sought to reach the defendant's assets that were linked to his crimes — the Government would get an extra 2 years after the defendant's death to file a parallel civil forfeiture lawsuit so that it could try to recover those same assets in a different and traditionally-accepted manner.