

103^D CONGRESS
1ST SESSION

H. R. 1220

To provide the penalty of death for certain Federal crimes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1993

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide the penalty of death for certain Federal crimes.

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 “Federal Death Penalty
5 Act of 1993”.

6 **SEC. 2. DEATH PENALTY PROCEDURES.**

7 Title 18 of the United States Code is amended—

8 (1) by adding the following new chapter after
9 chapter 227:

10 **“CHAPTER 228—DEATH PENALTY PROCEDURES**

“Sec.

“3591. Sentence of death.

- “3592. Factors to be considered in determining whether a sentence of death is justified.
- “3593. Special hearing to determine whether a sentence of death is justified.
- “3594. Imposition of a sentence of death.
- “3595. Review of a sentence of death.
- “3596. Implementation of a sentence of death.
- “3597. Use of State facilities.
- “3598. Appointment of counsel.
- “3599. Collateral attack on judgment imposing sentence of death.
- “3600. Application in Indian country.

1 **“§ 3591. Sentence of death**

2 “A defendant who has been found guilty of—

3 “(1) an offense described in section 794 or sec-
4 tion 2381 of this title;

5 “(2) an offense described in section 1751(c) of
6 this title if the offense, as determined beyond a rea-
7 sonable doubt at a hearing under section 3593, con-
8 stitutes an attempt to murder the President of the
9 United States and results in bodily injury to the
10 President or comes dangerously close to causing the
11 death of the President;

12 “(3) an offense referred to in section 408(c)(1)
13 of the Controlled Substances Act (21 U.S.C.
14 848(c)(1)), committed as part of a continuing crimi-
15 nal enterprise offense under the conditions described
16 in subsection (b) of that section which involved not
17 less than twice the quantity of controlled substance
18 described in subsection (b)(2)(A) or twice the gross
19 receipts described in subsection (b)(2)(B);

1 “(4) an offense referred to in section 408(c)(1)
2 of the Controlled Substances Act (21 U.S.C.
3 848(c)(1)), committed as part of a continuing crimi-
4 nal enterprise offense under that section, where the
5 defendant is a principal administrator, organizer, or
6 leader of such an enterprise, and the defendant, in
7 order to obstruct the investigation or prosecution of
8 the enterprise or an offense involved in the enter-
9 prise, attempts to kill or knowingly directs, advises,
10 authorizes, or assists another to attempt to kill any
11 public officer, juror, witness, or members of the fam-
12 ily or household of such a person;

13 “(5) an offense constituting a felony violation of
14 the Controlled Substances Act (21 U.S.C. 801 et
15 seq.) or the Controlled Substances Import and Ex-
16 port Act (21 U.S.C. 951 et seq.), or the Maritime
17 Drug Law Enforcement Act (46 U.S.C. App. 1901
18 et seq.), where the defendant, intending to cause
19 death or acting with reckless disregard for human
20 life, engages in such a violation, and the death of
21 another person results in the course of the violation
22 or from the use of the controlled substance involved
23 in the violation; or

24 “(6) any other offense for which a sentence of
25 death is provided, if the defendant, as determined

1 beyond a reasonable doubt at a hearing under sec-
2 tion 3593, caused the death of a person inten-
3 tionally, knowingly, or through recklessness mani-
4 festing extreme indifference to human life, or caused
5 the death of a person through the intentional inflic-
6 tion of serious bodily injury;

7 shall be sentenced to death if, after consideration of the
8 factors set forth in section 3592 in the course of a hearing
9 held pursuant to section 3593, it is determined that impo-
10 sition of a sentence of death is justified: *Provided*, That
11 no person may be sentenced to death who was less than
12 eighteen years of age at the time of the offense or who
13 is mentally retarded.

14 **“§3592. Factors to be considered in determining**
15 **whether a sentence of death is justified**

16 “(a) MITIGATING FACTORS.—In determining wheth-
17 er a sentence of death is justified for any offense, the jury,
18 or if there is no jury, the court, shall consider each of
19 the following mitigating factors and determine which, if
20 any, exist:

21 “(1) MENTAL CAPACITY.—The defendant’s
22 mental capacity to appreciate the wrongfulness of
23 his conduct or to conform his conduct to the require-
24 ments of law was significantly impaired, regardless

1 of whether the capacity was so impaired as to con-
2 stitute a defense to the charge.

3 “(2) DURESS.—The defendant was under un-
4 usual and substantial duress, regardless of whether
5 the duress was of such a degree as to constitute a
6 defense to the charge.

7 “(3) PARTICIPATION IN OFFENSE MINOR.—The
8 defendant’s participation in the offense, which was
9 committed by another, was relatively minor, regard-
10 less of whether the participation was so minor as to
11 constitute a defense to the charge.

12 “(4) NO SIGNIFICANT CRIMINAL HISTORY.—
13 The defendant did not have a significant history of
14 other criminal conduct.

15 “(5) DISTURBANCE.—The defendant committed
16 the offense under severe mental or emotional dis-
17 turbance.

18 “(6) VICTIM’S CONSENT.—The victim consented
19 to the criminal conduct that resulted in the victim’s
20 death.

21 The jury, or if there is no jury, the court, shall consider
22 whether any other aspect of the defendant’s background,
23 character or record or any other circumstance of the of-
24 fense that the defendant may proffer as a mitigating fac-
25 tor exists.

1 “(b) AGGRAVATING FACTORS FOR ESPIONAGE AND
2 TREASON.—In determining whether a sentence of death
3 is justified for an offense described in section 3591(a), the
4 jury, or if there is no jury, the court, shall consider each
5 of the following aggravating factors and determine which,
6 if any, exist:

7 “(1) PREVIOUS ESPIONAGE OR TREASON CON-
8 VICTION.—The defendant has previously been con-
9 victed of another offense involving espionage or trea-
10 son for which a sentence of life imprisonment or
11 death was authorized by statute.

12 “(2) RISK OF SUBSTANTIAL DANGER TO NA-
13 TIONAL SECURITY.—In the commission of the of-
14 fense the defendant knowingly created a grave risk
15 to the national security.

16 “(3) RISK OF DEATH TO ANOTHER.—In the
17 commission of the offense the defendant knowingly
18 created a grave risk of death to another person.

19 The jury, or if there is no jury, the court, may consider
20 whether any other aggravating factor exists.

21 “(c) AGGRAVATING FACTORS FOR HOMICIDE AND
22 FOR ATTEMPTED MURDER OF THE PRESIDENT.—In de-
23 termining whether a sentence of death is justified for an
24 offense described in section 3591 (b) or (f), the jury, or
25 if there is no jury, the court, shall consider each of the

1 following aggravating factors and determine which, if any,
2 exist:

3 “(1) CONDUCT OCCURRED DURING COMMISSION
4 OF SPECIFIED CRIMES.—The conduct resulting in
5 death occurred during the commission or attempted
6 commission of, or during the immediate flight from
7 the commission of, an offense under section 32 (de-
8 struction of aircraft or aircraft facilities), section 33
9 (destruction of motor vehicles or motor vehicle facili-
10 ties), section 36 (violence at international airports),
11 section 351 (violence against Members of Congress,
12 Cabinet officers, or Supreme Court Justices), section
13 751 (prisoners in custody of institution or officer),
14 section 794 (gathering or delivering defense informa-
15 tion to aid foreign government), section 844(d)
16 (transportation of explosives in interstate commerce
17 for certain purposes), section 844(f) (destruction of
18 Government property by explosives), section 844(i)
19 (destruction of property affecting interstate com-
20 merce by explosives), section 1116 (killing or at-
21 tempted killing of diplomats), section 1118 (pris-
22 oners serving life term), section 1201 (kidnapping),
23 section 1203 (hostage taking), section 1751 (violence
24 against the President or Presidential staff), section
25 1992 (wrecking trains), section 2280 (maritime vio-

1 lence), section 2281 (maritime platform violence),
2 section 2331 (terrorist acts abroad against United
3 States nationals), section 2332 (use of weapons of
4 mass destruction), or section 2381 (treason) of this
5 title, section 1826 of title 28 (persons in custody as
6 recalcitrant witnesses or hospitalized following insan-
7 ity acquittal), or section 902 (i) or (n) of the Fed-
8 eral Aviation Act of 1958, as amended (49 U.S.C.
9 App. 1472 (i) or (n) (aircraft piracy)).

10 “(2) INVOLVEMENT OF FIREARM OR PREVIOUS
11 CONVICTION OF VIOLENT FELONY INVOLVING FIRE-
12 ARM.—The defendant—

13 “(A) during and in relation to the commis-
14 sion of the offense or in escaping or attempting
15 to escape apprehension used or possessed a fire-
16 arm as defined in section 921 of this title; or

17 “(B) has previously been convicted of a
18 Federal or State offense punishable by a term
19 of imprisonment of more than one year, involv-
20 ing the use of attempted or threatened use of
21 a firearm, as defined in section 921 of this title,
22 against another person.

23 “(3) PREVIOUS CONVICTION OF OFFENSE FOR
24 WHICH A SENTENCE OF DEATH OR LIFE IMPRISON-
25 MENT WAS AUTHORIZED.—The defendant has pre-

1 viously been convicted of another Federal or State
2 offense resulting in the death of a person, for which
3 a sentence of life imprisonment or death was author-
4 ized by statute.

5 “(4) PREVIOUS CONVICTION OF OTHER SERI-
6 OUS OFFENSES.—The defendant has previously been
7 convicted of two or more Federal or State offenses,
8 each punishable by a term of imprisonment of more
9 than one year, committed on different occasions, in-
10 volving the importation, manufacture, or distribution
11 of a controlled substance (as defined in section 102
12 of the Controlled Substances Act (21 U.S.C. 802))
13 or the infliction of, or attempted infliction of, serious
14 bodily injury or death upon another person.

15 “(5) GRAVE RISK OF DEATH TO ADDITIONAL
16 PERSONS.—The defendant, in the commission of the
17 offense or in escaping or attempting to escape ap-
18 prehension, knowingly created a grave risk of death
19 to one or more persons in addition to the victim of
20 the offense.

21 “(6) HEINOUS, CRUEL, OR DEPRAVED MANNER
22 OF COMMISSION.—The defendant committed the of-
23 fense in an especially heinous, cruel, or depraved
24 manner in that it involved torture or serious physical
25 abuse to the victim.

1 “(7) PROCUREMENT OF OFFENSE BY PAY-
2 MENT.—The defendant procured the commission of
3 the offense by payment, or promise of payment, of
4 anything of pecuniary value.

5 “(8) COMMISSION OF THE OFFENSE FOR PECU-
6 NIARY GAIN.—The defendant committed the offense
7 as consideration for the receipt, or in the expectation
8 of the receipt, of anything of pecuniary value.

9 “(9) SUBSTANTIAL PLANNING AND
10 PREMEDITATION.—The defendant committed the of-
11 fense after substantial planning and premeditation.

12 “(10) VULNERABILITY OF VICTIM.—The victim
13 was particularly vulnerable due to old age, youth, or
14 infirmity.

15 “(11) TYPE OF VICTIM.—The defendant com-
16 mitted the offense against—

17 “(A) the President of the United States,
18 the President-elect, the Vice President, the Vice
19 President-elect, the Vice President-designate,
20 or, if there was no Vice President, the officer
21 next in order of succession to the office of the
22 President of the United States, or any person
23 acting as President under the Constitution and
24 laws of the United States;

1 “(B) a chief of state, head of government,
2 or the political equivalent, of a foreign nation;

3 “(C) a foreign official listed in section
4 1116(b)(3)(A) of this title, if that official was
5 in the United States on official business; or

6 “(D) a Federal public servant who was
7 outside of the United States or who was a Fed-
8 eral judge, a Federal law enforcement officer,
9 an employee (including a volunteer or contract
10 employee) of a Federal prison, or an official of
11 the Federal Bureau of Prisons—

12 “(i) while such public servant was en-
13 gaged in the performance of his official du-
14 ties;

15 “(ii) because of the performance of
16 such public servant’s official duties; or

17 “(iii) because of such public servant’s
18 status as a public servant.

19 For purposes of this paragraph, the terms ‘Presi-
20 dent-elect’ and ‘Vice President-elect’ mean such per-
21 sons as are the apparent successful candidates for
22 the offices of President and Vice President, respec-
23 tively, as ascertained from the results of the general
24 elections held to determine the electors of President
25 and Vice President in accordance with title 3, Unit-

1 ed States Code, sections 1 and 2; a ‘Federal law en-
2 forcement officer’ is a public servant authorized by
3 law or by a Government agency or Congress to con-
4 duct or engage in the prevention, investigation, or
5 prosecution of an offense; ‘Federal prison’ means a
6 Federal correctional, detention, or penal facility,
7 Federal community treatment center, or Federal
8 halfway house, or any such prison operated under
9 contract with the Federal Government; and ‘Federal
10 judge’ means any judicial officer of the United
11 States, and includes a justice of the Supreme Court
12 and a United States magistrate judge.

13 The jury, or if there is no jury, the court, may consider
14 whether any other aggravating factor exists.

15 “(d) AGGRAVATING FACTORS FOR DRUG OFFENSE
16 DEATH PENALTY.—In determining whether a sentence of
17 death is justified for an offense described in section
18 3591(c)-(e), the jury, or if there is no jury, the court, shall
19 consider each of the following aggravating factors and de-
20 termine which, if any, exist—

21 “(1) PREVIOUS CONVICTION OF OFFENSE FOR
22 WHICH A SENTENCE OF DEATH OR LIFE IMPRISON-
23 MENT WAS AUTHORIZED.—The defendant has pre-
24 viously been convicted of another Federal or State
25 offense resulting in the death of a person, for which

1 a sentence of life imprisonment or death was author-
2 ized by statute.

3 “(2) PREVIOUS CONVICTION OF OTHER SERI-
4 OUS OFFENSES.—The defendant has previously been
5 convicted of two or more Federal or State offenses,
6 each punishable by a term of imprisonment of more
7 than one year, committed on different occasions, in-
8 volving the importation, manufacture, or distribution
9 of a controlled substance (as defined in section 102
10 of the Controlled Substances Act (21 U.S.C. 802))
11 or the infliction of, or attempted infliction of, serious
12 bodily injury or death upon another person.

13 “(3) PREVIOUS SERIOUS DRUG FELONY CONVICT-
14 TION.—The defendant has previously been convicted
15 of another Federal or State offense involving the
16 manufacture, distribution, importation, or possession
17 of a controlled substance (as defined in section 102
18 of the Controlled Substances Act (21 U.S.C. 802))
19 for which a sentence of five or more years of impris-
20 onment was authorized by statute.

21 “(4) USE OF FIREARM.—In committing the of-
22 fense, or in furtherance of a continuing criminal en-
23 terprise of which the offense was a part, the defend-
24 ant used a firearm or knowingly directed, advised,
25 authorized, or assisted another to use a firearm, as

1 defined in section 921 of this title, to threaten, in-
2 timidate, assault, or injure a person.

3 “(5) DISTRIBUTION TO PERSONS UNDER TWEN-
4 TY-ONE.—The offense, or a continuing criminal en-
5 terprise of which the offense was a part, involved
6 conduct proscribed by section 418 of the Controlled
7 Substances Act which was committed directly by the
8 defendant or for which the defendant would be liable
9 under section 2 of this title.

10 “(6) DISTRIBUTION NEAR SCHOOLS.—The of-
11 fense, or a continuing criminal enterprise of which
12 the offense was a part, involved conduct proscribed
13 by section 419 of the Controlled Substances Act
14 which was committed directly by the defendant or
15 for which the defendant would be liable under sec-
16 tion 2 of this title.

17 “(7) USING MINORS IN TRAFFICKING.—The of-
18 fense or a continuing criminal enterprise of which
19 the offense was a part, involved conduct proscribed
20 by section 420 of the Controlled Substances Act
21 which was committed directly by the defendant or
22 for which the defendant would be liable under sec-
23 tion 2 of this title.

24 “(8) LETHAL ADULTERANT.—The offense in-
25 volved the importation, manufacture, or distribution

1 of a controlled substance (as defined in section 102
2 of the Controlled Substances Act (21 U.S.C. 802)),
3 mixed with a potentially lethal adulterant, and the
4 defendant was aware of the presence of the
5 adulterant.

6 The jury, or if there is no jury, the court, may consider
7 whether any other aggravating factor exists.

8 **“§ 3593. Special hearing to determine whether a sen-**
9 **tence of death is justified**

10 “(a) NOTICE BY THE GOVERNMENT.—Whenever the
11 Government intends to seek the death penalty for an of-
12 fense described in section 3591, the attorney for the Gov-
13 ernment, a reasonable time before the trial, or before ac-
14 ceptance by the court of a plea of guilty, or at such time
15 thereafter as the court may permit upon a showing of good
16 cause, shall sign and file with the court, and serve on the
17 defendant, a notice that the Government in the event of
18 conviction will seek the sentence of death. The notice shall
19 set forth the aggravating factor or factors enumerated in
20 section 3592, and any other aggravating factor not specifi-
21 cally enumerated in section 3592, that the Government,
22 if the defendant is convicted, will seek to prove as the basis
23 for the death penalty. The factors for which notice is pro-
24 vided under this subsection may include factors concerning
25 the effect of the offense on the victim and the victim’s

1 family. The court may permit the attorney for the Govern-
2 ment to amend the notice upon a showing of good cause.

3 “(b) HEARING BEFORE A COURT OR JURY.—When
4 the attorney for the Government has filed a notice as re-
5 quired under subsection (a) and the defendant is found
6 guilty of an offense described in section 3591, the judge
7 who presided at the trial or before whom the guilty plea
8 was entered, or another judge if that judge is unavailable,
9 shall conduct a separate sentencing hearing to determine
10 the punishment to be imposed. Prior to such a hearing,
11 no presentence report shall be prepared by the United
12 States Probation Service, notwithstanding the provisions
13 of the Federal Rules of Criminal Procedure. The hearing
14 shall be conducted—

15 “(1) before the jury that determined the de-
16 fendant’s guilt;

17 “(2) before a jury impaneled for the purpose of
18 the hearing if—

19 “(A) the defendant was convicted upon a
20 plea of guilty;

21 “(B) the defendant was convicted after a
22 trial before the court sitting without a jury;

23 “(C) the jury that determined the defend-
24 ant’s guilt was discharged for good cause; or

1 “(D) after initial imposition of a sentence
2 under this section, reconsideration of the sen-
3 tence under the section is necessary; or

4 “(3) before the court alone, upon motion of the
5 defendant and with the approval of the attorney for
6 the Government.

7 A jury impaneled pursuant to paragraph (2) shall consist
8 of twelve members, unless, at any time before the conclu-
9 sion of the hearing, the parties stipulate, with the approval
10 of the court, that it shall consist of a lesser number.

11 “(c) PROOF OF MITIGATING AND AGGRAVATING FAC-
12 TORS.—At the hearing, information may be presented as
13 to—

14 “(1) any matter relating to any mitigating fac-
15 tor listed in section 3592 and any other mitigating
16 factor; and

17 “(2) any matter relating to any aggravating
18 factor listed in section 3592 for which notice has
19 been provided under subsection (a) and (if informa-
20 tion is presented relating to such a listed factor) any
21 other aggravating factor for which notice has been
22 so provided.

23 The information presented may include the trial transcript
24 and exhibits. Any other information relevant to such miti-
25 gating or aggravating factors may be presented by either

1 the Government or the defendant. The information pre-
2 sented by the Government in support of factors concerning
3 the effect of the offense on the victim and the victim's
4 family may include oral testimony, a victim impact state-
5 ment that identifies the victim of the offense and the na-
6 ture and extent of harm and loss suffered by the victim
7 and the victim's family, and other relevant information.
8 Information is admissible regardless of its admissibility
9 under the rules governing admission of evidence at crimi-
10 nal trials, except that information may be excluded if its
11 probative value is outweighed by the danger of creating
12 unfair prejudice, confusing the issues, or misleading the
13 jury. The attorney for the Government and for the defend-
14 ant shall be permitted to rebut any information received
15 at the hearing, and shall be given fair opportunity to
16 present argument as to the adequacy of the information
17 to establish the existence of any aggravating or mitigating
18 factor, and as to the appropriateness in that case of im-
19 posing a sentence of death. The attorney for the Govern-
20 ment shall open the argument. The defendant shall be per-
21 mitted to reply. The Government shall then be permitted
22 to reply in rebuttal. The burden of establishing the exist-
23 ence of an aggravating factor is on the Government, and
24 is not satisfied unless the existence of such a factor is es-
25 tablished beyond a reasonable doubt. The burden of estab-

1 lishing the existence of any mitigating factor is on the de-
2 fendant, and is not satisfied unless the existence of such
3 a factor is established by a preponderance of the evidence.

4 “(d) RETURN OF SPECIAL FINDINGS.—The jury, or
5 if there is no jury, the court, shall consider all the informa-
6 tion received during the hearing. It shall return special
7 findings identifying any aggravating factor or factors set
8 forth in section 3592 found to exist and any other aggra-
9 vating factor for which notice has been provided under
10 subsection (a) found to exist. A finding with respect to
11 a mitigating factor may be made by one or more members
12 of the jury, and any member of the jury who finds the
13 existence of a mitigating factor may consider such factor
14 established for purposes of this section regardless of the
15 number of jurors who concur that the factor has been es-
16 tablished. A finding with respect to any aggravating factor
17 must be unanimous. If no aggravating factor set forth in
18 section 3592 is found to exist, the court shall impose a
19 sentence other than death authorized by law.

20 “(e) RETURN OF A FINDING CONCERNING A SEN-
21 TENCE OF DEATH.—If, in the case of—

22 “(1) an offense described in section 3591(a), an
23 aggravating factor required to be considered under
24 section 3592(b) is found to exist;

1 “(2) an offense described in section 3591 (b) or
2 (f), an aggravating factor required to be considered
3 under section 3592(c) is found to exist; or

4 “(3) an offense described in section 3591(c)-(e),
5 an aggravating factor required to be considered
6 under section 3592(d) is found to exist;

7 the jury, or if there is no jury, the court, shall then con-
8 sider whether the aggravating factor or factors found to
9 exist under subsection (d) outweigh any mitigating factor
10 or factors. The jury, or if there is no jury, the court shall
11 recommend a sentence of death if it unanimously finds at
12 least one aggravating factor and no mitigating factor or
13 if it finds one or more aggravating factors which outweigh
14 any mitigating factors. In any other case, it shall not rec-
15 ommend a sentence of death. The jury shall be instructed
16 that it must avoid any influence of sympathy, sentiment,
17 passion, prejudice, or other arbitrary factors in its deci-
18 sion, and should make such a recommendation as the in-
19 formation warrants.

20 “(f) SPECIAL PRECAUTION TO ASSURE AGAINST DIS-
21 CRIMINATION.—In a hearing held before a jury, the court,
22 before the return of a finding under subsection (e), shall
23 instruct the jury that, in considering whether a sentence
24 of death is justified, it shall not be influenced by prejudice
25 or bias relating to the race, color, religion, national origin,

1 or sex of the defendant or of any victim and that the jury
2 is not to recommend a sentence of death unless it has con-
3 cluded that it would recommend a sentence of death for
4 the crime in question no matter what the race, color, reli-
5 gion, national origin, or sex of the defendant or of any
6 victim may be. The jury, upon return of a finding under
7 subsection (e), shall also return to the court a certificate,
8 signed by each juror, that prejudice or bias relating to the
9 race, color, religion, national origin, or sex of the defend-
10 ant or any victim was not involved in reaching his or her
11 individual decision and that the individual juror would
12 have made the same recommendation regarding a sentence
13 for the crime in question no matter what the race, color,
14 religion, national origin, or sex of the defendant or any
15 victim may be.

16 **“§ 3594. Imposition of a sentence of death**

17 “Upon the recommendation under section 3593(e)
18 that a sentence of death be imposed, the court shall sen-
19 tence the defendant to death. Otherwise the court shall
20 impose a sentence, other than death, authorized by law.
21 Notwithstanding any other provision of law, if the maxi-
22 mum term of imprisonment for the offense is life imprison-
23 ment, the court may impose a sentence of life imprison-
24 ment without the possibility of release.

1 **“§ 3595. Review of a sentence of death**

2 “(a) APPEAL.—In a case in which a sentence of death
3 is imposed, the sentence shall be subject to review by the
4 court of appeals upon appeal by the defendant. Notice of
5 appeal of the sentence must be filed within the time speci-
6 fied for the filing of a notice of appeal of the judgment
7 of conviction. An appeal of the sentence under this section
8 may be consolidated with an appeal of the judgment of
9 conviction and shall have priority over all other cases.

10 “(b) REVIEW.—The court of appeals shall review the
11 entire record in the case, including—

12 “(1) the evidence submitted during the trial;

13 “(2) the information submitted during the sen-
14 tencing hearing;

15 “(3) the procedures employed in the sentencing
16 hearing; and

17 “(4) the special findings returned under section
18 3593(d).

19 “(c) DECISION AND DISPOSITION.—

20 “(1) If the court of appeals determines that—

21 “(A) the sentence of death was not im-
22 posed under the influence of passion, prejudice,
23 or any other arbitrary factor;

24 “(B) the evidence and information support
25 the special findings of the existence of an ag-
26 gravating factor or factors; and

1 “(C) the proceedings did not involve any
2 other prejudicial error requiring reversal of the
3 sentence that was properly preserved for and
4 raised on appeal;
5 it shall affirm the sentence.

6 “(2) In any other case, the court of appeals
7 shall remand the case for reconsideration under sec-
8 tion 3593 or for imposition of another authorized
9 sentence as appropriate, except that the court shall
10 not reverse a sentence of death on the ground that
11 an aggravating factor was invalid or was not sup-
12 ported by the evidence and information if at least
13 one aggravating factor required to be considered
14 under section 3592 remains which was found to
15 exist and the court, on the basis of the evidence sub-
16 mitted at trial and the information submitted at the
17 sentencing hearing, finds no mitigating factor or
18 finds that the remaining aggravating factor or fac-
19 tors which were found to exist outweigh any mitigat-
20 ing factors.

21 “(3) The court of appeals shall state in writing
22 the reasons for its disposition of an appeal of a sen-
23 tence of death under this section.

1 **“§ 3596. Implementation of a sentence of death**

2 “(a) IN GENERAL.—A person who has been sen-
3 tenced to death pursuant to the provisions of this chapter
4 shall be committed to the custody of the Attorney General
5 until exhaustion of the procedures for appeal of the judg-
6 ment of conviction and for review of the sentence. When
7 the sentence is to be implemented, the Attorney General
8 shall release the person sentenced to death to the custody
9 of a United States Marshal, who shall supervise implemen-
10 tation of the sentence in the manner prescribed by the law
11 of the State in which the sentence is imposed. If the law
12 of such State does not provide for implementation of a
13 sentence of death, the court shall designate another State,
14 the law of which does so provide, and the sentence shall
15 be implemented in the manner prescribed by such law.

16 “(b) SPECIAL BARS TO EXECUTION.—A sentence of
17 death shall not be carried out upon a person who lacks
18 the mental capacity to understand the death penalty and
19 why it was imposed on that person, or upon a woman while
20 she is pregnant.

21 “(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—
22 No employee of any State department of corrections, the
23 Federal Bureau of Prisons, or the United States Marshals
24 Service, and no employee providing services to that depart-
25 ment, bureau, or service under contract shall be required,
26 as a condition of that employment or contractual obliga-

1 tion, to be in attendance at or to participate in any execu-
2 tion carried out under this section if such participation
3 is contrary to the moral or religious convictions of the em-
4 ployee. For purposes of this subsection, the term ‘partici-
5 pate in any execution’ includes personal preparation of the
6 condemned individual and the apparatus used for the exe-
7 cution, and supervision of the activities of other personnel
8 in carrying out such activities.

9 **“§ 3597. Use of State facilities**

10 “A United States Marshal charged with supervising
11 the implementation of a sentence of death may use appro-
12 priate State or local facilities for the purpose, may use
13 the services of an appropriate State or local official or of
14 a person such an official employs for the purpose, and
15 shall pay the costs thereof in an amount approved by the
16 Attorney General.

17 **“§ 3598. Appointment of counsel**

18 “(a) REPRESENTATION OF INDIGENT DEFEND-
19 ANTS.—Notwithstanding any other provision of law, this
20 section shall govern the appointment of counsel for any
21 defendant against whom a sentence of death is sought,
22 or on whom a sentence of death has been imposed, for
23 an offense against the United States, where the defendant
24 is or becomes financially unable to obtain adequate rep-
25 resentation. Such a defendant shall be entitled to appoint-

1 ment of counsel from the commencement of trial proceed-
2 ings until one of the conditions specified in section
3 3599(b) of this title has occurred.

4 “(b) REPRESENTATION BEFORE FINALITY OF JUDG-
5 MENT.—A defendant within the scope of this section shall
6 have counsel appointed for trial representation as provided
7 in section 3005 of this title. At least one counsel so ap-
8 pointed shall continue to represent the defendant until the
9 conclusion of direct review of the judgment, unless re-
10 placed by the court with other qualified counsel.

11 “(c) REPRESENTATION AFTER FINALITY OF JUDG-
12 MENT.—When a judgment imposing a sentence of death
13 has become final through affirmance by the Supreme
14 Court on direct review, denial of certiorari by the Supreme
15 Court on direct review, or expiration of the time for seek-
16 ing direct review in the court of appeals or the Supreme
17 Court, the Government shall promptly notify the district
18 court that imposed the sentence. Within ten days of re-
19 ceipt of such notice, the district court shall proceed to
20 make a determination whether the defendant is eligible
21 under this section for appointment of counsel for subse-
22 quent proceedings. On the basis of the determination, the
23 court shall issue an order—

24 “(1) appointing one or more counsel to rep-
25 resent the defendant upon a finding that the defend-

1 ant is financially unable to obtain adequate rep-
2 resentation and wishes to have counsel appointed or
3 is unable competently to decide whether to accept or
4 reject appointment of counsel;

5 “(2) finding, after a hearing if necessary, that
6 the defendant rejected appointment of counsel and
7 made the decision with an understanding of its legal
8 consequences; or

9 “(3) denying the appointment of counsel upon
10 a finding that the defendant is financially able to ob-
11 tain adequate representation.

12 Counsel appointed pursuant to this subsection shall be dif-
13 ferent from the counsel who represented the defendant at
14 trial and on direct review unless the defendant and counsel
15 request a continuation or renewal of the earlier represen-
16 tation.

17 “(d) STANDARDS FOR COMPETENCE OF COUNSEL.—
18 In relation to a defendant who is entitled to appointment
19 of counsel under this section, at least one counsel ap-
20 pointed for trial representation must have been admitted
21 to the bar for at least five years and have at least three
22 years of experience in the trial of felony cases in the fed-
23 eral district courts. If new counsel is appointed after judg-
24 ment, at least one counsel so appointed must have been
25 admitted to the bar for at least five years and have at

1 least three years of experience in the litigation of felony
2 cases in the Federal courts of appeals or the Supreme
3 Court. The court, for good cause, may appoint counsel
4 who does not meet these standards, but whose back-
5 ground, knowledge, or experience would otherwise enable
6 him or her to properly represent the defendant, with due
7 consideration of the seriousness of the penalty and the na-
8 ture of the litigation.

9 “(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—
10 Except as otherwise provided in this section, the provisions
11 of section 3006A of this title shall apply to appointments
12 under this section.

13 “(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—
14 The ineffectiveness or incompetence of counsel during pro-
15 ceedings on a motion under section 2255 of title 28, Unit-
16 ed States Code, in a capital case shall not be a ground
17 for relief from the judgment or sentence in any proceed-
18 ing. This limitation shall not preclude the appointment of
19 different counsel at any stage of the proceedings.

20 **“§ 3599. Collateral attack on judgment imposing sen-
21 tence of death**

22 “(a) TIME FOR MAKING SECTION 2255 MOTION.—
23 In a case in which sentence of death has been imposed,
24 and the judgment has become final as described in section
25 3598(c) of this title, a motion in the case under section

1 2255 of title 28, United States Code, must be filed within
2 ninety days of the issuance of the order relating to ap-
3 pointment of counsel under section 3598(c) of this title.
4 The court in which the motion is filed, for good cause
5 shown, may extend the time for filing for a period not
6 exceeding sixty days. A motion described in this section
7 shall have priority over all noncapital matters in the dis-
8 trict court, and in the court of appeals on review of the
9 district court's decision.

10 “(b) STAY OF EXECUTION.—The execution of a sen-
11 tence of death shall be stayed in the course of direct review
12 of the judgment and during the litigation of an initial mo-
13 tion in the case under section 2255 of title 28, United
14 States Code. The stay shall run continuously following im-
15 position of the sentence, and shall expire if—

16 “(1) the defendant fails to file a motion under
17 section 2255 of title 28, United States Code, within
18 the time specified in subsection (a), or fails to make
19 a timely application for court of appeals review fol-
20 lowing the denial of such motion by a district court;
21 or

22 “(2) upon completion of district court and court
23 of appeals review under section 2255 of title 28,
24 United States Code, the motion under that section
25 is denied and (A) the time for filing a petition for

1 certiorari has expired and no petition has been filed;
2 (B) a timely petition for certiorari was filed and the
3 Supreme Court denied the petition; or (C) a timely
4 petition for certiorari was filed and upon consider-
5 ation of the case, the Supreme Court disposed of it
6 in a manner that left the capital sentence undis-
7 turbed; or

8 “(3) before a district court, in the presence of
9 counsel and after having been advised of the con-
10 sequences of his decision, the defendant waives the
11 right to file a motion under section 2255 of title 28.

12 “(c) FINALITY OF THE DECISION ON REVIEW.—If
13 one of the conditions specified in subsection (b) has oc-
14 curred, no court thereafter shall have the authority to
15 enter a stay of execution or grant relief in the case un-
16 less—

17 “(1) the basis for the stay and request for relief
18 is a claim not presented in earlier proceedings;

19 “(2) the failure to raise the claim was (A) the
20 result of governmental action in violation of the Con-
21 stitution or laws of the United States; (B) the result
22 of the Supreme Court recognition of a new Federal
23 right that is retroactively applicable; or (C) based on
24 a factual predicate that could not have been discov-

1 ered through the exercise of reasonable diligence in
2 time to present the claim in earlier proceedings; and

3 “(3) the facts underlying the claim would be
4 sufficient, if proven, to undermine the court’s con-
5 fidence in the determination of guilt on the offense
6 or offenses for which the death penalty was imposed.

7 **“§ 3600. Application in Indian country**

8 “Notwithstanding sections 1152 and 1153 of this
9 title, no person subject to the criminal jurisdiction of an
10 Indian tribal government shall be subject to a capital sen-
11 tence under this chapter for any offense the Federal juris-
12 diction for which is predicated solely on Indian country
13 as defined in section 1151 of this title and which has oc-
14 curred within the boundaries of such Indian country, un-
15 less the governing body of the tribe has made an election
16 that this chapter have effect over land and persons subject
17 to its criminal jurisdiction.”; and

18 (2) in the table of chapters at the beginning of
19 part II, by adding the following new item after the
20 item relating to chapter 227:

“228. Death penalty procedures 3591.”.

21 **SEC. 3. CONFORMING AMENDMENT RELATING TO DE-**
22 **STRUCTION OF AIRCRAFT OR AIRCRAFT FA-**
23 **CILITIES.**

24 Section 34 of title 18, United States Code, is amend-
25 ed by changing the comma after the words “imprisonment

1 for life” to a period and deleting the remainder of the sec-
2 tion.

3 **SEC. 4. CONFORMING AMENDMENT RELATING TO ESPIO-**
4 **NAGE.**

5 Section 794(a) of title 18, United States Code, is
6 amended by changing the period at the end of the section
7 to a comma and by adding immediately thereafter the fol-
8 lowing: “except that the sentence of death shall not be
9 imposed unless the jury or, if there is no jury, the court,
10 further finds beyond a reasonable doubt at a hearing
11 under section 3593 of this title that the offense directly
12 concerned nuclear weaponry, military spacecraft and sat-
13 ellites, early warning systems, or other means of defense
14 or retaliation against large-scale attack; war plans; com-
15 munications intelligence or cryptographic information;
16 sources or methods of intelligence or counterintelligence
17 operations; or any other major weapons system or major
18 element of defense strategy.”.

19 **SEC. 5. CONFORMING AMENDMENT RELATING TO TRANS-**
20 **PORTING EXPLOSIVES.**

21 Section 844(d) of title 18, United States Code, is
22 amended by striking “as provided in section 34 of this
23 title”.

1 (1) by adding at the end thereof the following:

2 **“§ 1118. Murder by a Federal prisoner**

3 “(a) Whoever, while confined in a Federal prison
4 under a sentence for a term of life imprisonment, murders
5 another shall be punished by death or by life imprisonment
6 without the possibility of release.

7 “(b) For purposes of this section—

8 “(1) ‘Federal prison’ means any Federal correc-
9 tional, detention, or penal facility, Federal commu-
10 nity treatment center, or Federal halfway house, or
11 any such prison operated under contract with the
12 Federal Government; and

13 “(2) ‘term of life imprisonment’ means a sen-
14 tence for the term of natural life, a sentence com-
15 muted to natural life, an indeterminate term of a
16 minimum of at least fifteen years and a maximum
17 of life, or an unexecuted sentence of death.”; and

18 (2) in the table of sections at the beginning of
19 the chapter, by adding at the end the following:

“1118. Murder by a Federal prisoner.”.

20 **SEC. 11. CONFORMING AMENDMENT RELATING TO KIDNAP-**
21 **PING.**

22 Section 1201 of title 18, United States Code, is
23 amended by inserting after “or for life” in subsection (a)
24 the following: “and, if the death of any person results,
25 shall be punished by death or life imprisonment”.

1 **SEC. 12. CONFORMING AMENDMENT RELATING TO HOS-**
2 **TAGE TAKING.**

3 Section 1203 of title 18, United States Code, is
4 amended by inserting after “or for life” in subsection (a)
5 the following: “and, if the death of any person results,
6 shall be punished by death or life imprisonment”.

7 **SEC. 13. CONFORMING AMENDMENT RELATING TO MAIL-**
8 **ABILITY OF INJURIOUS ARTICLES.**

9 The last paragraph of section 1716 of title 18, United
10 States Code, is amended by changing the comma after
11 “imprisonment for life” to a period and deleting the re-
12 mainder of the paragraph.

13 **SEC. 14. CONFORMING AMENDMENT RELATING TO PRESI-**
14 **DENTIAL ASSASSINATION.**

15 Subsection (c) of section 1751 of title 18, United
16 States Code, is amended to read as follows:

17 “(c) Whoever attempts to murder or kidnap any indi-
18 vidual designated in subsection (a) of this section shall be
19 punished (1) by imprisonment for any term of years or
20 for life, or (2) by death or imprisonment for any term of
21 years or for life if the conduct constitutes an attempt to
22 murder the President of the United States and results in
23 bodily injury to the President or otherwise comes dan-
24 gerously close to causing the death of the President.”.

1 **SEC. 15. CONFORMING AMENDMENT RELATING TO MUR-**
2 **DER FOR HIRE.**

3 Subsection (a) of section 1958 of title 18, United
4 States Code, is amended by deleting “and if death results,
5 shall be subject to imprisonment for any term of years
6 or for life, or shall be fined not more than \$50,000, or
7 both” and inserting “and if death results, shall be pun-
8 ished by death or life imprisonment, or shall be fined in
9 accordance with this title, or both”.

10 **SEC. 16. CONFORMING AMENDMENT RELATING TO VIO-**
11 **LENT CRIMES IN AID OF RACKETEERING AC-**
12 **TIVITY.**

13 Paragraph (1) of section 1959(a) of title 18, United
14 States Code, is amended to read as follows:

15 “(1) for murder, by death or life imprisonment,
16 or a fine in accordance with this title, or both; and
17 for kidnapping, by imprisonment for any term of
18 years or for life, or a fine in accordance with this
19 title, or both;”.

20 **SEC. 17. CONFORMING AMENDMENT RELATING TO WRECK-**
21 **ING TRAINS.**

22 The second to the last paragraph of section 1992 of
23 title 18, United States Code, is amended by changing the
24 comma after “imprisonment for life” to a period and delet-
25 ing the remainder of the section.

1 **SEC. 18. CONFORMING AMENDMENT RELATING TO BANK**
2 **ROBBERY.**

3 Section 2113(e) of title 18, United States Code, is
4 amended by striking “or punished by death if the verdict
5 of the jury shall so direct” and inserting “or if death re-
6 sults shall be punished by death or life imprisonment”.

7 **SEC. 19. CONFORMING AMENDMENT RELATING TO TER-**
8 **RORIST ACTS.**

9 Paragraph (1) of section 2331(a) of title 18, United
10 States Code, is amended to read as follows:

11 “(1)(A) if the killing is murder as defined in
12 section 1111(a) of this title, be fined under this title,
13 punished by death or imprisonment for any term of
14 years or for life, or both;”.

15 **SEC. 20. CONFORMING AMENDMENT RELATING TO AIR-**
16 **CRAFT HIJACKING.**

17 Section 903 of the Federal Aviation Act of 1958, as
18 amended (49 U.S.C. App. 1473), is amended by striking
19 subsection (c).

20 **SEC. 21. CONFORMING AMENDMENT TO CONTROLLED SUB-**
21 **STANCES ACT.**

22 Section 408 of the Controlled Substances Act is
23 amended by striking subsections (g)–(r).

1 **SEC. 22. CONFORMING AMENDMENT RELATING TO GENO-**
2 **CIDE.**

3 Section 1091(b)(1) of title 18, United States Code,
4 is amended by striking “a fine of not more than
5 \$1,000,000 and imprisonment for life;” and inserting
6 “death or imprisonment for life and a fine of not more
7 than \$1,000,000;”.

8 **SEC. 23. PROTECTION OF COURT OFFICERS AND JURORS.**

9 Section 1503 of title 18, United States Code, is
10 amended—

11 (1) by designating the current text as sub-
12 section (a);

13 (2) by striking the words “fined not more than
14 \$5,000 or imprisoned not more than five years, or
15 both.” and inserting in lieu thereof “punished as
16 provided in subsection (b).”;

17 (3) by adding at the end thereof a new sub-
18 section (b) as follows:

19 “(b) The punishment for an offense under this sec-
20 tion is—

21 “(1) in the case of a killing, the punishment
22 provided in sections 1111 and 1112 of this title;

23 “(2) in the case of an attempted killing, or a
24 case in which the offense was committed against a
25 petit juror and in which a class A or B felony was

1 charged, imprisonment for not more than twenty
2 years; and

3 “(3) in any other case, imprisonment for not
4 more than ten years.”; and

5 “(4) in subsection (a), as designated by this
6 section, by striking “commissioner” each place it ap-
7 pears and inserting in lieu thereof “magistrate
8 judge”.

9 **SEC. 24. PROHIBITION OF RETALIATORY KILLINGS OF WIT-**
10 **NESSES, VICTIMS AND INFORMANTS.**

11 Section 1513 of title 18, United States Code, is
12 amended—

13 (1) by redesignating subsections (a) and (b) as
14 subsections (b) and (c), respectively; and

15 (2) by inserting a new subsection (a) as follows:

16 “(a)(1) Whoever kills or attempts to kill another per-
17 son with intent to retaliate against any person for—

18 “(A) the attendance of a witness or party at an
19 official proceeding, or any testimony given or any
20 record, document, or other object produced by a wit-
21 ness in an official proceeding; or

22 “(B) any information relating to the commis-
23 sion or possible commission of a Federal offense or
24 a violation of conditions of probation, parole or re-

1 lease pending judicial proceedings given by a person
2 to a law enforcement officer;
3 shall be punished as provided in paragraph (2).

4 “(2) The punishment for an offense under this sub-
5 section is—

6 “(A) in the case of a killing, the punishment
7 provided in sections 1111 and 1112 of this title; and

8 “(B) in the case of an attempt, imprisonment
9 for not more than twenty years.”.

10 **SEC. 25. DEATH PENALTY FOR MURDER OF FEDERAL LAW**
11 **ENFORCEMENT OFFICERS.**

12 Section 1114(a) of title 18, United States Code, is
13 amended by striking “be punished as provided under sec-
14 tions 1111 and 1112 of this title, except that” and insert-
15 ing “, in the case of murder as defined in section 1111
16 of this title, be punished by death or imprisonment for
17 life, and, in the case of manslaughter as defined in section
18 1112 of this title, be punished as provided in that section,
19 and”.

20 **SEC. 26. DEATH PENALTY FOR MURDER OF STATE OR**
21 **LOCAL LAW ENFORCEMENT OFFICERS AS-**
22 **SISTING FEDERAL LAW ENFORCEMENT OFFI-**
23 **CERS.**

24 Section 1114 of title 18, United States Code, is
25 amended by inserting “, or any State or local law enforce-

1 ment officer while assisting, or on account of his or her
2 assistance of, any Federal officer or employee covered by
3 this section in the performance of duties,” before “shall
4 be punished”.

5 **SEC. 27. IMPLEMENTATION OF THE 1988 PROTOCOL FOR**
6 **THE SUPPRESSION OF UNLAWFUL ACTS OF**
7 **VIOLENCE AT AIRPORTS SERVING INTER-**
8 **NATIONAL CIVIL AVIATION.**

9 (a) OFFENSE.—Chapter 2 of title 18, United States
10 Code, is amended by adding at the end thereof the follow-
11 ing new section:

12 **“§ 36. Violence at international airports**

13 “(a) Whoever unlawfully and intentionally, using any
14 device, substance or weapon,—

15 “(1) performs an act of violence against a per-
16 son at an airport serving international civil aviation
17 which causes or is likely to cause serious injury or
18 death; or

19 “(2) destroys or seriously damages the facilities
20 of an airport serving international civil aviation or a
21 civil aircraft not in service located thereon or dis-
22 rupts the services of the airport;

23 if such an act endangers or is likely to endanger safety
24 at that airport, or attempts to do such an act, shall be
25 fined under this title or imprisoned not more than twenty

1 years, or both; and if the death of any person results from
2 conduct prohibited by this subsection, shall be punished
3 by death or imprisoned for any term of years or for life.

4 “(b) There is jurisdiction over the prohibited activity
5 in subsection (a) if (1) the prohibited activity takes place
6 in the United States or (2) the prohibited activity takes
7 place outside of the United States and the offender is later
8 found in the United States.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
10 at the beginning of chapter 2 of title 18, United States
11 Code, is amended by adding at the end the following:

“36. Violence at international airports.”.

12 (c) EFFECTIVE DATE.—This section shall take effect
13 on the later of—

14 (1) the date of the enactment of this subtitle;

15 or

16 (2) the date the Protocol for the Suppression of
17 Unlawful Acts of Violence at Airports Serving Inter-
18 national Civil Aviation, Supplementary to the Con-
19 vention for the Suppression of Unlawful Acts against
20 the Safety of Civil Aviation, done at Montreal on 23
21 September 1971, has come into force and the United
22 States has become a party to the Protocol.

23 **SEC. 28. AMENDMENT TO FEDERAL AVIATION ACT.**

24 Section 902(n) of the Federal Aviation Act of 1958
25 (49 U.S.C. App. 1472(n)) is amended by—

- 1 (1) striking out paragraph (3); and
2 (2) renumbering paragraph (4) as paragraph
3 (3).

4 **SEC. 29. OFFENSES OF VIOLENCE AGAINST MARITIME**
5 **NAVIGATION OR FIXED PLATFORMS.**

6 (a) OFFENSE.—Chapter 111 of title 18, United
7 States Code, is amended by adding at the end the follow-
8 ing:

9 **“§ 2280. Violence against maritime navigation**

10 “(a) Whoever unlawfully and intentionally—

11 “(1) seizes or exercises control over a ship by
12 force or threat thereof or any other form of intimi-
13 dation;

14 “(2) performs an act of violence against a per-
15 son on board a ship if that act is likely to endanger
16 the safe navigation of that ship;

17 “(3) destroys a ship or causes damage to a ship
18 or to its cargo which is likely to endanger the safe
19 navigation of that ship;

20 “(4) places or causes to be placed on a ship, by
21 any means whatsoever, a device or substance which
22 is likely to destroy that ship, or cause damage to
23 that ship or its cargo which endangers or is likely
24 to endanger the safe navigation of that ship;

1 “(5) destroys or seriously damages maritime
2 navigational facilities or seriously interferes with
3 their operation, if such act is likely to endanger the
4 safe navigation of a ship;

5 “(6) communicates information, knowing the
6 information to be false and under circumstances in
7 which such information may reasonably be believed,
8 thereby endangering the safe navigation of a ship;

9 “(7) injures or kills any person in connection
10 with the commission or the attempted commission of
11 any of the offenses set forth in paragraphs (1) to
12 (6); or

13 “(8) attempts to do any act prohibited under
14 paragraphs (1)–(7);

15 shall be fined under this title or imprisoned not more than
16 twenty years, or both; and if the death of any person re-
17 sults from conduct prohibited by this subsection, shall be
18 punished by death or imprisoned for any term of years
19 or for life.

20 “(b) Whoever threatens to do any act prohibited
21 under paragraphs (2), (3) or (5) of subsection (a), with
22 apparent determination and will to carry the threat into
23 execution, if the threatened act is likely to endanger the
24 safe navigation of the ship in question, shall be fined

1 under this title or imprisoned not more than five years,
2 or both.

3 “(c) There is jurisdiction over the prohibited activity
4 in subsections (a) and (b)—

5 “(1) in the case of a covered ship, if—

6 “(A) such activity is committed—

7 “(i) against or on board a ship flying
8 the flag of the United States at the time
9 the prohibited activity is committed;

10 “(ii) in the United States; or

11 “(iii) by a national of the United
12 States or by a stateless person whose ha-
13 bitual residence is in the United States;

14 “(B) during the commission of such activ-
15 ity, a national of the United States is seized,
16 threatened, injured or killed; or

17 “(C) the offender is later found in the
18 United States after such activity is committed;

19 “(2) in the case of a ship navigating or sched-
20 uled to navigate solely within the territorial sea or
21 internal waters of a country other than the United
22 States, if the offender is later found in the United
23 States after such activity is committed; and

1 “(3) in the case of any vessel, if such activity
2 is committed in an attempt to compel the United
3 States to do or abstain from doing any act.

4 “(d) The master of a covered ship flying the flag of
5 the United States who has reasonable grounds to believe
6 that he has on board his ship any person who has commit-
7 ted an offense under Article 3 of the Convention for the
8 Suppression of Unlawful Acts Against the Safety of Mari-
9 time Navigation may deliver such person to the authorities
10 of a State Party to that Convention. Before delivering
11 such person to the authorities of another country, the
12 master shall notify in an appropriate manner the Attorney
13 General of the United States of the alleged offense and
14 await instructions from the Attorney General as to what
15 action he should take. When delivering the person to a
16 country which is a State Party to the Convention, the mas-
17 ter shall, whenever practicable, and if possible before en-
18 tering the territorial sea of such country, notify the au-
19 thorities of such country of his intention to deliver such
20 person and the reason therefor. If the master delivers such
21 person, he shall furnish the authorities of such country
22 with the evidence in the master’s possession that pertains
23 to the alleged offense.

24 “(e) As used in this section, the term—

1 “(1) ‘ship’ means a vessel of any type whatso-
2 ever not permanently attached to the sea-bed, in-
3 cluding dynamically supported craft, submersibles or
4 any other floating craft: *Provided*, That the term
5 does not include a warship, a ship owned or operated
6 by a government when being used as a naval auxil-
7 iary or for customs or police purposes, or a ship
8 which has been withdrawn from navigation or laid
9 up;

10 “(2) ‘covered ship’ means a ship that is navi-
11 gating or is scheduled to navigate into, through or
12 from waters beyond the outer limit of the territorial
13 sea of a single country or a lateral limit of that
14 country’s territorial sea with an adjacent country;

15 “(3) ‘national of the United States’ has the
16 meaning given such term in section 101(a)(22) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1101(a)(22));

19 “(4) ‘territorial sea of the United States’ means
20 all waters extending seaward to 12 nautical miles
21 from the baselines of the United States determined
22 in accordance with international law; and

23 “(5) ‘United States’, when used in a geographi-
24 cal sense, includes the Commonwealth of Puerto
25 Rico, the Commonwealth of the Northern Marianas

1 Islands and all territories and possessions of the
2 United States.

3 **“§ 2281. Violence against maritime fixed platforms**

4 “(a) Whoever unlawfully and intentionally—

5 “(1) seizes or exercises control over a fixed
6 platform by force or threat thereof or any other
7 form of intimidation;

8 “(2) performs an act of violence against a per-
9 son on board a fixed platform if that act is likely to
10 endanger its safety;

11 “(3) destroys a fixed platform or causes dam-
12 age to it which is likely to endanger its safety;

13 “(4) places or causes to be placed on a fixed
14 platform, by any means whatsoever, a device or sub-
15 stance which is likely to destroy that fixed platform
16 or likely to endanger its safety;

17 “(5) injures or kills any person in connection
18 with the commission or the attempted commission of
19 any of the offenses set forth in paragraphs (1) to
20 (4); or

21 “(6) attempts to do anything prohibited under
22 paragraphs (1)–(5);

23 shall be fined under this title or imprisoned not more than
24 twenty years, or both; and if death results to any person
25 from conduct prohibited by this subsection, shall be pun-

1 ished by death or imprisoned for any term of years or for
2 life.

3 “(b) Whoever threatens to do anything prohibited
4 under paragraphs (2) or (3) of subsection (a), with appar-
5 ent determination and will to carry the threat into execu-
6 tion, if the threatened act is likely to endanger the safety
7 of the fixed platform, shall be fined under this title or im-
8 prisoned not more than five years, or both.

9 “(c) There is jurisdiction over the prohibited activity
10 in subsections (a) and (b) if—

11 “(1) such activity is committed against or on
12 board a fixed platform—

13 “(A) that is located on the continental
14 shelf of the United States;

15 “(B) that is located on the continental
16 shelf of another country, by a national of the
17 United States or by a stateless person whose
18 habitual residence is in the United States; or

19 “(C) in an attempt to compel the United
20 States to do or abstain from doing any act;

21 “(2) during the commission of such activity
22 against or on board a fixed platform located on a
23 continental shelf, a national of the United States is
24 seized, threatened, injured or killed; or

1 “(3) such activity is committed against or on
2 board a fixed platform located outside the United
3 States and beyond the continental shelf of the Unit-
4 ed States and the offender is later found in the
5 United States.

6 “(d) As used in this section, the term—

7 “(1) ‘continental shelf’ means the sea-bed and
8 subsoil of the submarine areas that extend beyond a
9 country’s territorial sea to the limits provided by
10 customary international law as reflected in Article
11 76 of the 1982 Convention on the Law of the Sea;

12 “(2) ‘fixed platform’ means an artificial island,
13 installation or structure permanently attached to the
14 sea-bed for the purpose of exploration or exploitation
15 of resources or for other economic purposes;

16 “(3) ‘national of the United States’ has the
17 meaning given such term in section 101(a)(22) of
18 the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(22));

20 “(4) ‘territorial sea of the United States’ means
21 all waters extending seaward to 12 nautical miles
22 from the baselines of the United States determined
23 in accordance with international law; and

24 “(5) ‘United States’, when used in a geographi-
25 cal sense, includes the Commonwealth of Puerto

1 Rico, the Commonwealth of the Northern Marianas
2 Islands and all territories and possessions of the
3 United States.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of chapter 111 of title 18, United States
6 Code, is amended by adding at the end thereof the follow-
7 ing:

“2280. Violence against maritime navigation.

“2281. Violence against maritime fixed platforms.”.

8 (c) EFFECTIVE DATES.—This section shall take ef-
9 fect on the later of—

10 (1) the date of the enactment of this Act; or

11 (2)(A) in the case of section 2280 of title 18,
12 United States Code, the date the Convention for the
13 Suppression of Unlawful Acts Against the Safety of
14 Maritime Navigation has come into force and the
15 United States has become a party to that Conven-
16 tion; and

17 (B) in the case of section 2281 of title 18,
18 United States Code, the date the Protocol for the
19 Suppression of Unlawful Acts Against the Safety of
20 Fixed Platforms Located on the Continental Shelf
21 has come into force and the United States has be-
22 come a party to that Protocol.

1 **SEC. 30. TORTURE.**

2 (a) IN GENERAL.—Part I of title 18, United States
3 Code, is amended by inserting after chapter 113A the fol-
4 lowing new chapter:

5 **“CHAPTER 113B—TORTURE**

“Sec.
2340. Definitions.
2340A. Torture.
2340B. Exclusive remedies.

6 **“§ 2340. Definitions**

7 “As used in this chapter—

8 “(1) ‘torture’ means an act committed by a per-
9 son acting under the color of law specifically in-
10 tended to inflict severe physical or mental pain or
11 suffering (other than pain or suffering incidental to
12 lawful sanctions) upon another person within his
13 custody or physical control.

14 “(2) ‘severe mental pain or suffering’ means
15 the prolonged mental harm caused by or resulting
16 from: (a) the intentional infliction or threatened in-
17 fliction of severe physical pain or suffering; (b) the
18 administration or application, or threatened adminis-
19 tration or application, of mind altering substances or
20 other procedures calculated to disrupt profoundly
21 the senses or the personality; (c) the threat of immi-
22 nent death; or (d) the threat that another person
23 will imminently be subjected to death, severe phys-

1 ical pain or suffering, or the administration or appli-
2 cation of mind altering substances or other proce-
3 dures calculated to disrupt profoundly the senses or
4 personality.

5 “(3) ‘United States’ includes all areas under
6 the jurisdiction of the United States including any
7 of the places within the provisions of sections 5 and
8 7 of this title and section 101(38) of the Federal
9 Aviation Act of 1958, as amended (49 U.S.C. App.
10 1301(38)).

11 **“§ 2340A. Torture**

12 “(a) Whoever outside the United States commits or
13 attempts to commit torture shall be fined under this title
14 or imprisoned not more than twenty years, or both; and
15 if death results to any person from conduct prohibited by
16 this subsection, shall be punished by death or imprisoned
17 for any term of years or for life.

18 “(b) There is jurisdiction over the prohibited activity
19 in subsection (a) if: (1) the alleged offender is a national
20 of the United States; or (2) the alleged offender is present
21 in the United States, irrespective of the nationality of the
22 victim or the alleged offender.

23 **“§ 2340B. Exclusive remedies**

24 “Nothing in this chapter shall be construed as pre-
25 cluding the application of State or local laws on the same

1 subject, nor shall anything in this chapter be construed
 2 as creating any substantive or procedural right enforceable
 3 by law by any party in any civil proceeding.”.

4 (b) CLERICAL AMENDMENT.—The table of chapters
 5 for part I of title 18, United States Code, is amended by
 6 inserting after the item for chapter 113A the following
 7 new item:

“**113B. Torture** **2340.**”.

8 (c) EFFECTIVE DATE.—This section shall take effect
 9 on the later of—

10 (1) the date of enactment of this section; or

11 (2) the date the United States has become a
 12 party to the Convention Against Torture and Other
 13 Cruel, Inhuman or Degrading Treatment or Punish-
 14 ment.

15 **SEC. 31. WEAPONS OF MASS DESTRUCTION.**

16 (a) FINDINGS.—The Congress finds that the use and
 17 threatened use of weapons of mass destruction, as defined
 18 in the statute enacted by subsection (b) of this section,
 19 gravely harm the national security and foreign relations
 20 interests of the United States, seriously affect interstate
 21 and foreign commerce, and disturb the domestic tran-
 22 quility of the United States.

23 (b) OFFENSE.—Chapter 113A of title 18, United
 24 States Code, is amended by adding the following new sec-
 25 tion:

1 **“§ 2332. Use of weapons of mass destruction**

2 “(a) Whoever uses, or attempts or conspires to use,
3 a weapon of mass destruction—

4 “(1) against a national of the United States
5 while such national is outside of the United States;

6 “(2) against any person within the United
7 States; or

8 “(3) against any property that is owned, leased
9 or used by the United States or by any department
10 or agency of the United States, whether the property
11 is within or outside of the United States;

12 shall be imprisoned for any term of years or for life, and
13 if death results, shall be punished by death or imprisoned
14 for any term of years or for life.

15 “(b) For purposes of this section—

16 “(1) the term ‘national of the United States’
17 has the meaning given in section 101(a)(22) of the
18 Immigration and Nationality Act (8 U.S.C.
19 1101(a)(22)); and

20 “(2) the term ‘weapon of mass destruction’
21 means—

22 “(A) any destructive device as defined in
23 section 921 of this title;

24 “(B) poison gas;

25 “(C) any weapon involving a disease orga-
26 nism; or

1 “(D) any weapon that is designed to re-
2 lease radiation or radioactivity at a level dan-
3 gerous to human life.”.

4 (c) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of chapter 113A of title 18, United States
6 Code, is amended by adding the following:

“2332. Use of weapons of mass destruction.”.

7 **SEC. 32. HOMICIDES AND ATTEMPTED HOMICIDES INVOLV-**
8 **ING FIREARMS IN FEDERAL FACILITIES.**

9 Section 930 of title 18, United States Code, is
10 amended by—

11 (1) redesignating subsections (c), (d), (e), and
12 (f) as subsections (d), (e), (f), and (g) respectively;

13 (2) in subsection (a), deleting “(c)” and insert-
14 ing in lieu thereof “(d)”; and

15 (3) inserting after subsection (b) the following:

16 “(c) Whoever kills or attempts to kill any person in
17 the course of a violation of subsection (a) or (b), or in
18 the course of an attack on a Federal facility involving the
19 use of a firearm or other dangerous weapon, shall—

20 “(1) in the case of a killing constituting murder
21 as defined in section 1111(a) of this title, be pun-
22 ished by death or imprisoned for any term of years
23 or for life; and

24 “(2) in the case of any other killing or an at-
25 tempted killing, be subject to the penalties provided

1 for engaging in such conduct within the special mar-
2 itime and territorial jurisdiction of the United States
3 under sections 1112 and 1113 of this title.”.

4 **SEC. 33. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.**

5 (a) CONSPIRACY AGAINST RIGHTS.—Section 241 of
6 title 18, United States Code, is amended by striking “shall
7 be subject to imprisonment for any term of years or for
8 life” and inserting in lieu thereof “shall be punished by
9 death or imprisonment for any term of years or for life”.

10 (b) DEPRIVATION OF RIGHTS UNDER COLOR OF
11 LAW.—Section 242 of title 18, United States Code, is
12 amended by striking “shall be subject to imprisonment for
13 any term of years or for life” and inserting in lieu thereof
14 “shall be punished by death or imprisonment for any term
15 of years or for life”.

16 (c) FEDERALLY PROTECTED ACTIVITIES.—Section
17 245(b) of title 18, United States Code, is amended by
18 striking “shall be subject to imprisonment for any term
19 of years or for life” and inserting in lieu thereof “shall
20 be punished by death or imprisonment for any term of
21 years or for life”.

22 (d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUC-
23 TION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—
24 Section 247(c)(1) of title 18, United States Code, is

1 amended by inserting “the death penalty or” before “im-
2 prisonment”.

3 **SEC. 34. DEATH PENALTY FOR MURDER OF FEDERAL WIT-**
4 **NESSES.**

5 Section 1512(a)(2)(A) of title 18, United States
6 Code, is amended to read as follows:

7 “(A) in the case of murder as defined in section
8 1111 of this title, the death penalty or imprisonment
9 for life, and in the case of any other killing, the pun-
10 ishment provided in section 1112 of this title;”.

11 **SEC. 35. DRIVE-BY SHOOTINGS.**

12 (a) OFFENSE.—Chapter 44 of title 18, United States
13 Code, is amended by adding the following new section:

14 **“§931. Drive-by shootings**

15 “(a) Whoever knowingly discharges a firearm at a
16 person—

17 “(1) in the course of or in furtherance of drug
18 trafficking activity; or

19 “(2) from a motor vehicle;

20 shall be punished by imprisonment for up to 25 years, and
21 if death results shall be punished by death or by imprison-
22 ment for any term of years or for life.

23 “(b) For purposes of this section, “drug trafficking
24 activity” means a drug trafficking crime as defined in sec-

1 tion 929(a)(2) of this title, or a pattern or series of acts
2 involving one or more drug trafficking crimes.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 45 of title 18, United States
5 Code, is amended by adding the following:

“931. Drive-by shootings.”.

6 **SEC. 36. DEATH PENALTY FOR GUN MURDERS DURING FED-**
7 **ERAL CRIMES OF VIOLENCE AND DRUG**
8 **TRAFFICKING CRIMES.**

9 Section 924 of title 18, United States Code, is
10 amended by adding at the end thereof the following new
11 subsection:

12 “(i) Whoever, in the course of a violation of sub-
13 section (c) of this section, causes the death of a person
14 through the use of a firearm, shall—

15 “(1) if the killing is a murder as defined in sec-
16 tion 1111 of this title, be punished by death or by
17 imprisonment for any term of years or for life; and

18 “(2) if the killing is manslaughter as defined in
19 section 1112 of this title, be punished as provided in
20 that section.”.

21 **SEC. 37. DEATH PENALTY FOR RAPE AND CHILD MOLESTA-**
22 **TION MURDERS.**

23 (a) OFFENSE.—Chapter 109A of title 18, United
24 States Code, is amended by redesignating section 2245 as
25 section 2246, and by adding the following new section:

1 **“§ 2245. Sexual abuse resulting in death**

2 “Whoever, in the course of an offense under this
3 chapter, engages in conduct that results in the death of
4 a person, shall be punished by death or imprisoned for
5 any term of years or for life.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 at the beginning of chapter 109A of title 18, United States
8 Code, is amended by striking the item for section 2245
9 and adding the following:

“2245. Sexual abuse resulting in death.
“2246. Definitions for chapter.”.

10 **SEC. 38. PROTECTION OF JURORS AND WITNESSES IN CAP-**
11 **ITAL CASES.**

12 Section 3432 of title 18, United States Code, is
13 amended by inserting before the period the following: “,
14 except that such list of the veniremen and witnesses need
15 not be furnished if the court finds by a preponderance of
16 the evidence that providing the list may jeopardize the life
17 or safety of any person”.

18 **SEC. 39. INAPPLICABILITY TO UNIFORM CODE OF MILI-**
19 **TARY JUSTICE.**

20 The provisions of chapter 228 of title 18, United
21 States Code, as added by this Act, shall not apply to pros-
22 ecutions under the Uniform Code of Military Justice (10
23 U.S.C. 801 et seq.).



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