

103D CONGRESS
1ST SESSION

H. R. 638

To amend title 18, United States Code, regarding sentencing for capital offenses.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1993

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

A BILL

To amend title 18, United States Code, regarding sentencing for capital offenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. PROCEDURE IN CAPITAL CASES.

4 Part II of title 18 of the United States Code is
5 amended by inserting after chapter 227 the following new
6 chapter:

“Sec.

“3591. Hearing required.

“3592. Notice by the Government.

“3593. Hearing before court or jury.

“3594. Proof of aggravating and mitigating factors.

- “3595. Return of findings.
- “3596. Imposition of sentence.
- “3597. Mitigating factors.
- “3598. Aggravating factors for treason and espionage.
- “3599. Aggravating factors for homicide.
- “3600. Instruction to jury on right of the defendant to justice without discrimination.
- “3600A. Sentencing in capital cases in which death penalty is not sought or imposed.

1 **“§ 3591. Hearing required**

2 “A person shall be subjected to the penalty of death
3 for any offense against the United States only if a hearing
4 is held in accordance with this chapter.

5 **“§ 3592. Notice by the Government**

6 “Whenever the Government intends to seek the death
7 penalty for an offense for which one of the sentences pro-
8 vided is death, the attorney for the Government, a reason-
9 able time before trial or acceptance by the court of a plea
10 of guilty, shall sign and file with the court, and serve upon
11 the defendant, a notice (1) that the Government in the
12 event of conviction will seek the sentence of death, and
13 (2) setting forth the aggravating factor or factors which
14 the Government will seek to prove as the basis for the
15 death penalty. The court may permit the attorney for the
16 Government to amend this notice for good cause shown.

17 **“§ 3593. Hearing before court or jury**

18 “When the attorney for the Government has filed a
19 notice as required under section 3592 and the defendant
20 is found guilty of or pleads guilty to an offense for which
21 one of the sentences provided is death, the judge who pre-

1 sided at the trial or before whom the guilty plea was en-
2 tered, or any other judge if the judge who presided at the
3 trial or before whom the guilty plea was entered is unavail-
4 able, shall conduct a separate sentencing hearing to deter-
5 mine the punishment to be imposed. The hearing shall be
6 conducted—

7 “(1) before the jury which determined the de-
8 fendant’s guilt;

9 “(2) before a jury impaneled for the purpose of
10 the hearing if—

11 “(A) the defendant was convicted upon a
12 plea of guilty;

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

15 “(C) the jury which determined the de-
16 fendant’s guilt has been discharged for good
17 cause; or

18 “(D) after initial imposition of a sentence
19 under this chapter, redetermination of the sen-
20 tence under this chapter is necessary; or

21 “(3) before the court alone, upon the motion of
22 the defendant and with the approval of the Govern-
23 ment.

24 A jury impaneled pursuant to paragraph (2) of this sec-
25 tion shall consist of twelve members, unless, at any time

1 before the conclusion of the hearing, the parties stipulate
2 with the approval of the court that it shall consist of any
3 number less than twelve.

4 **“§ 3594. Proof of aggravating and mitigating factors**

5 “Notwithstanding rule 32(c) of the Federal Rules of
6 Criminal Procedure, when a defendant is found guilty of
7 or pleads guilty to an offense for which one of the sen-
8 tences provided is death, no presentence report shall be
9 prepared. In the sentencing hearing, information may be
10 presented as to any matter relevant to the sentence and
11 shall include matters relating to any of the aggravating
12 or mitigating factors set forth in sections 3597, 3598, and
13 3599, or any other mitigating factor. Where information
14 is presented relating to any of the aggravating factors set
15 forth in section 3598 or 3599, information may be pre-
16 sented relating to any other aggravating factor. Informa-
17 tion presented may include the trial transcript and exhib-
18 its if the hearing is held before a jury or judge not present
19 during the trial. Any other information relevant to such
20 mitigating or aggravating factors may be presented by ei-
21 ther the Government or the defendant, regardless of its
22 admissibility under the rules governing admission of evi-
23 dence at criminal trials, except that information may be
24 excluded if its probative value is substantially outweighed
25 by the danger of unfair prejudice, confusion of the issues,

1 or misleading the jury. The Government and the defendant
2 shall be permitted to rebut any information received
3 at the hearing and shall be given fair opportunity to
4 present argument as to the adequacy of the information
5 to establish the existence of any of the aggravating or mitigating
6 factors, and as to the appropriateness in that case
7 of imposing a sentence of death. The Government shall
8 open the argument. The defendant shall be permitted to
9 reply. The Government shall then be permitted to reply
10 in rebuttal. The burden of establishing the existence of
11 any aggravating factor is on the Government, and is not
12 satisfied unless established beyond a reasonable doubt.
13 The burden of establishing the existence of any mitigating
14 factor is on the defendant, and is not satisfied unless established
15 by a preponderance of the information.

16 **“§ 3595. Return of findings”**

17 “The jury, or if there is no jury, the court shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in section 3598 or 3599, found to exist. If, in the case of an offense of treason or espionage, one of the aggravating factors set forth in section 3598 is found to exist, or in the case of any other offense one of the aggravating factors set forth in section 3599(1) and another of the aggravating factors

1 set forth in section 3599 (2) through (10) is found to
2 exist, a special finding identifying any other aggravating
3 factor may be returned. A finding of such a factor by a
4 jury shall be made by unanimous vote. If, in the case of
5 an offense of treason or espionage, no aggravating factor
6 set forth in section 3598 is found to exist, or, in the case
7 of any other offense, an aggravating factor set forth in
8 section 3599(1) is not found to exist or an aggravating
9 factor set forth in section 3599(1) is found to exist but
10 no other aggravating factor set forth in section 3599 is
11 found to exist, the court shall impose a sentence, other
12 than death, authorized by law. If, in the case of an offense
13 of espionage or treason, one or more of the aggravating
14 factors set forth in section 3598 is found to exist, or, in
15 the case of any other offense, an aggravating factor set
16 forth in section 3599(1) and one or more of the other ag-
17 gravating factors set forth in section 3599 are found to
18 exist, the jury, or if there is no jury, the court, shall then
19 consider whether the aggravating factor or factors found
20 to exist sufficiently outweigh any mitigating factor or fac-
21 tors found to exist, or in the absence of mitigating factors,
22 whether the aggravating factors are themselves sufficient
23 to justify a sentence of death. Based upon this consider-
24 ation, the jury by unanimous vote, or if there is no jury,

1 the court shall return a finding as to whether a sentence
2 of death is justified.

3 **“§ 3596. Imposition of sentence”**

4 “Upon a finding that a sentence of death is justified,
5 the court shall sentence the defendant to death. Otherwise
6 the court shall impose a sentence, other than death, au-
7 thorized by law. In no event shall a sentence of death be
8 carried out on a pregnant woman.

9 **“§ 3597. Mitigating factors”**

10 “In determining whether a sentence of death is to be
11 imposed on a defendant, the following mitigating factors
12 shall be considered but are not exclusive:

13 “(1) the defendant was less than eighteen years
14 of age at the time of the crime;

15 “(2) the defendant’s capacity to appreciate the
16 wrongfulness of his conduct or to conform his con-
17 duct to the requirements of law was significantly im-
18 paired, but not so impaired as to constitute a de-
19 fense to the charge;

20 “(3) the defendant was under unusual and sub-
21 stantial duress, although not such duress as con-
22 stitutes a defense to the charge;

23 “(4) the defendant is punishable as a principal
24 (as defined in section 2(a) of this title) in the of-
25 fense, which was committed by another, but his par-

1 ticipation was relatively minor, although not so
2 minor as to constitute a defense to the charge;

3 “(5) the defendant could not reasonably have
4 foreseen that his conduct in the course of the com-
5 mission of murder, or other offense resulting in
6 death for which he was convicted, would cause, or
7 would create a grave risk of causing, death to any
8 person.

9 **“§ 3598. Aggravating factors for treason and espio-**
10 **nage**

11 “If the defendant is found guilty of or pleads guilty
12 to an offense under section 794 or section 2381 of this
13 title, the following aggravating factors shall be considered
14 but are not exclusive:

15 “(1) the defendant has been convicted of an-
16 other offense involving espionage or treason for
17 which either a sentence of life imprisonment or
18 death was authorized by statute;

19 “(2) in the commission of the offense the de-
20 fendant knowingly created a grave risk of substan-
21 tial danger to the national security;

22 “(3) in the commission of the offense the de-
23 fendant knowingly created a grave risk of death to
24 another person.

1 **“§ 3599. Aggravating factors for homicide**

2 “If the defendant is found guilty of or pleads guilty
3 to any other offense for which one of the sentences pro-
4 vided is death, the following aggravating factors shall be
5 considered but are not exclusive:

6 “(1) the defendant—

7 “(A) intentionally killed the victim;

8 “(B) intentionally inflicted serious bodily
9 injury which resulted in the death of the victim;

10 “(C) intentionally participated in an act
11 which he knew or reasonably should have
12 known would create a grave risk of death to a
13 person, other than one of the participants in
14 the offense, and the victim did die as a direct
15 result of the act; or

16 “(D) attempted to kill the President of the
17 United States under the circumstances provided
18 in section 1751(c) of this title;

19 “(2) the death or injury resulting in death oc-
20 curred during the commission or attempted commis-
21 sion of, or during the immediate flight from the
22 commission or attempted commission of, an offense
23 under section 751 (prisoners in custody of institu-
24 tion or officer), section 794 (gathering or delivering
25 defense information to aid foreign government), sec-
26 tion 844(d) (transportation of explosives in inter-

1 state commerce for certain purposes), section 844(f)
2 (destruction of Government property by explosives),
3 section 844(i) (destruction of property in interstate
4 commerce by explosives), section 1201 (kidnapping),
5 or section 2381 (treason) of this title, or section 902
6 (i) or (n) of the Federal Aviation Act of 1958, as
7 amended (49 U.S.C. 1472 (i), (n)) (aircraft piracy);

8 “(3) the defendant has been convicted of an-
9 other Federal offense, or a State offense resulting in
10 the death of a person, for which a sentence of life
11 imprisonment or a sentence of death was authorized
12 by statute;

13 “(4) the defendant has previously been con-
14 victed of two or more State or Federal offenses pun-
15 ishable by a term of imprisonment of more than one
16 year, committed on different occasions, involving the
17 infliction of, or attempted infliction of, serious bodily
18 injury upon another person;

19 “(5) in the commission of the offense the de-
20 fendant knowingly created a grave risk of death to
21 one or more persons in addition to the victim of the
22 offense;

23 “(6) the defendant committed the offense in an
24 especially heinous, cruel, or depraved manner;

1 “(7) the defendant procured the commission of
2 the offense by payment, or promise of payment, of
3 anything of pecuniary value;

4 “(8) the defendant committed the offense as
5 consideration for the receipt, or in the expectation of
6 the receipt, of anything of pecuniary value;

7 “(9) the defendant committed the offense after
8 substantial planning and premeditation to cause the
9 death of a person or commit an act of terrorism;

10 “(10) the defendant committed the offense
11 against—

12 “(A) the President of the United States,
13 the President-elect, the Vice President, the Vice
14 President-elect, the Vice President-designate,
15 or, if there is no Vice President, the officer next
16 in order of succession to the office of the Presi-
17 dent of the United States, or any person who
18 is acting as President under the Constitution
19 and laws of the United States;

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

22 “(C) a foreign official listed in section
23 1116(b)(3)(A) of this title, if he is in the Unit-
24 ed States because of his official duties; or

1 “(D) a Federal judge, a Federal law-en-
2 forcement officer, or an employee of a United
3 States penal or correctional institution, while
4 performing his official duties or because of his
5 status as a public servant. For purposes of this
6 subsection, a ‘law-enforcement officer’ is a pub-
7 lic servant authorized by law or by a Govern-
8 ment agency or Congress to conduct or engage
9 in the prevention, investigation, or prosecution
10 of an offense.

11 **“§ 3600. Instruction to jury on right of the defendant
12 to justice without discrimination”**

13 “In any hearing held before a jury under this chapter,
14 the court shall instruct the jury that in its consideration
15 of whether the sentence of death is justified it shall not
16 consider the race, color, national origin, creed, or sex of
17 the defendant. The jury shall return to the court a certifi-
18 cate signed by each juror that consideration of race, color,
19 national origin, creed, or sex of the defendant was not in-
20 volved in reaching his or her individual decision.

21 **“§ 3600A. Sentencing in capital cases in which death
22 penalty is not sought or imposed”**

23 “Notwithstanding the provisions of chapter 311 of
24 this title, upon conviction of a person for an offense for
25 which one of the sentences provided is death, the court

1 may impose a sentence of life imprisonment without the
2 possibility of parole.”.

3 **SEC. 2. CONFORMING AMENDMENTS.**

4 (a) DEATH RESULTING FROM CERTAIN AIRCRAFT
5 DESTRUCTION OFFENSES.—Section 34 of title 18 of the
6 United States Code is amended by changing the comma
7 after the words “imprisonment for life” to a period and
8 deleting the remainder of the section.

9 (b) ESPIONAGE.—Section 794(a) of title 18 of the
10 United States Code is amended by striking out the period
11 at the end of the section and inserting in lieu thereof the
12 following: “, except that the sentence of death shall not
13 be imposed unless the jury or, if there is no jury, the
14 court, further finds that the offense directly concerned nu-
15 clear weaponry, military spacecraft or satellites, early
16 warning systems, or other means of defense or retaliation
17 against large-scale attack; war plans; communications in-
18 telligence or cryptographic information; or any other
19 major weapons system or major element of defense strat-
20 egy.”.

21 (c) EXPLOSIVES.—(1) Section 844(d) of title 18 of
22 the United States Code is amended by striking out “as
23 provided in section 34 of this title”.

1 (2) Section 844(f) of title 18 of the United States
2 Code is amended by striking out “as provided in section
3 34 of this title”.

4 (3) Section 844(i) of title 18 of the United States
5 Code is amended by striking out “as provided in section
6 34 of this title”.

7 (d) HOMICIDE.—(1) The second paragraph of section
8 1111(b) of title 18 of the United States Code is amended
9 to read as follows: “Whoever is guilty of murder in the
10 first degree shall be punished by death or by imprisonment
11 for life.”.

12 (2) Section 1116(a) of title 18 of the United States
13 Code is amended by striking the words “any such person
14 who is found guilty of murder in the first degree shall be
15 sentenced to imprisonment for life, and”.

16 (3) Chapter 51 of title 18 of the United States Code
17 is amended—

18 (A) by adding at the end the following:

19 **“§ 1118. Murder by a Federal prisoner”**

20 “(a) Whoever, while under a sentence for a term of
21 life imprisonment with respect to which time remains to
22 be served in prison under applicable law, commits murder
23 in the first degree (as defined in section 1111 of this title)
24 shall be punished by death or by life imprisonment without
25 the possibility of parole.

1 “(b) As used in the section, the term ‘term of life
2 imprisonment’ means a sentence for a term of natural life,
3 a sentence commuted to natural life, an indeterminate
4 term of a minimum of at least fifteen years and a maxi-
5 mum of life, or an unexecuted sentence of death.”; and

6 (B) in the table of sections at the beginning of
7 such chapter, by adding at the end the following new
8 item:

“1118. Murder by a Federal prisoner.”.

9 (e) KIDNAPPINGS.—Section 1201(a) of title 18 of the
10 United States Code is amended by inserting after “or for
11 life” the following: “and, if the death of any person re-
12 sults, shall be punished by death or life imprisonment”.

13 (f) DEATH RESULTING FROM NONMAILABLE ARTI-
14 CLES.—The last paragraph of section 1716 of title 18 of
15 the United States Code is amended by striking out “, if
16 the jury shall in its discretion” and all that follows
17 through the end of such section.

18 (g) ATTEMPTED PRESIDENTIAL KILLING OR KID-
19 NAPPING.—Subsection (c) of section 1751 of title 18 of
20 the United States Code is amended to read as follows:

21 “(c) Whoever attempts to kill or kidnap any individ-
22 ual designated in subsection (a) of this section shall be
23 punished (1) by imprisonment for any term of years or
24 for life, or (2) by death or imprisonment for any term of
25 years or for life, if the conduct constitutes an attempt to

1 kill the President of the United States and results in bod-
2 ily injury to the President or otherwise comes dangerously
3 close to causing the death of the President.”.

4 (h) WRECKING TRAINS.—The second to the last
5 paragraph of section 1992 of title 18 of the United States
6 Code is amended by striking out “, if the jury in its discre-
7 tion” and all that follows through the end of such para-
8 graph.

9 (i) BANK ROBBERY AND INCIDENTAL CRIMES.—Sec-
10 tion 2113(e) of title 18 of the United States Code is
11 amended by striking out “or punished by death if the ver-
12 dict of the jury shall so direct” and inserting in lieu there-
13 of the words “or if death results shall be punished by
14 death or life imprisonment”.

15 (j) AIRCRAFT HIJACKINGS.—Section 903 of the Fed-
16 eral Aviation Act of 1958, as amended (49 U.S.C. 1473),
17 is amended by striking out subsection (c).

18 (k) TABLE OF CHAPTERS.—The table of chapters at
19 the beginning of part II of title 18 of the United States
20 Code is amended by inserting after the item relating to
21 chapter 227 the following new item:

“**228. Sentencing for capital offenses 3591**”.

22 SEC. 3. APPEAL FROM SENTENCE OF DEATH.

23 (a) IN GENERAL.—Chapter 235 of title 18 of the
24 United States Code is amended by adding at the end the
25 following new section:

1 **“§ 3743. Appeal from sentence of death**

2 “In any case in which the sentence of death is im-
3 posed under chapter 228 of this title, the sentence of death
4 shall be subject to review by the court of appeals upon
5 appeal by the defendant. Notice of appeal must be filed
6 within the time prescribed for appeal of judgment in sec-
7 tion 2107 of title 28. An appeal under this section may
8 be consolidated with an appeal of the judgment of convic-
9 tion. Such review shall have priority over all other cases.

10 “On review of the sentence, the court of appeals shall
11 consider the record, the evidence submitted during the
12 trial, the information submitted during the sentencing
13 hearing, the procedures employed in the sentencing hear-
14 ing, and the special findings returned under section 3596
15 of this title.

16 “The court shall affirm the sentence if it determines
17 that, (1) the sentence of death was not imposed under the
18 influence of passion, prejudice, or any other arbitrary fac-
19 tor; and (2) the information supports the special finding
20 of the existence of any aggravating factor, or the failure
21 to find any mitigating factors as set forth or allowed in
22 chapter 228 of this title. In all other cases the court shall
23 remand the case for reconsideration under chapter 228 of
24 this title. The court of appeals shall state in writing the
25 reasons for its disposition of the review of the sentence.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of chapter 235 of title 18 of the United
3 States Code is amended by adding at the end thereof the
4 following new item:

“3743. Appeal from sentence of death.”.

5 **SEC. 4. APPLICABILITY IN MILITARY CASES.**

6 Chapter 228 and section 3743 of title 18 of the Unit-
7 ed States Code, as added by this Act, shall not apply to
8 prosecutions under the Uniform Code of Military Justice
9 (10 U.S.C. 801).

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