

103^D CONGRESS
1ST SESSION

H. R. 2215

To amend title 18, United States Code, to provide a death penalty for the murder of Federal law enforcement officers.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1993

Mr. FRANKS of Connecticut introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide a death penalty for the murder of Federal law enforcement officers.

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 Law Enforce-
5 ment Officers Protection Act of 1993”.

6 **SEC. 2. DEATH PENALTY FOR THE MURDER OF FEDERAL**
7 **LAW ENFORCEMENT OFFICIALS.**

8 Section 1114(a) of title 18, United States Code, is
9 amended by striking “punished as provided under sections
10 1111 and 1112 of this title,” and inserting “punished, in

1 the case of murder, by a sentence of death or life imprison-
 2 ment as provided under section 1111 of this title, or, in
 3 the case of manslaughter, a sentence as provided under
 4 section 1112 of this title.”.

5 **SEC. 3. CONSTITUTIONAL PROCEDURES FOR THE IMPOSI-**
 6 **TION OF THE SENTENCE OF DEATH.**

7 (a) IN GENERAL.—Part II of title 18 of the United
 8 States Code is amended by adding the following new chap-
 9 ter after chapter 227:

10 **“CHAPTER 228—DEATH SENTENCE**

“Sec.

“3591. Sentence of death.

“3592. Mitigating and aggravating 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.

11 **“§ 3591. Sentence of death**

12 “A defendant who has been found guilty of an offense
 13 under section 1114 of this title for which a sentence of
 14 death is provided, if the defendant, as determined beyond
 15 a reasonable doubt at the hearing under section 3593—

16 “(A) intentionally killed the victim;

17 “(B) intentionally inflicted serious bodily
 18 injury that resulted in the death of the victim;

19 “(C) intentionally participated in an act,
 20 contemplating that the life of a person would be
 21 taken or intending that lethal force would be

1 used in connection with a person, other than
2 one of the participants in the offense, and the
3 victim died as a direct result of the act; or

4 “(D) intentionally and specifically engaged
5 in an act, knowing that the act created a grave
6 risk of death to a person, other than one of the
7 participants in the offense, such that participa-
8 tion in the act constituted a reckless disregard
9 for human life and the victim died as a direct
10 result of the act,

11 shall be sentenced to death if, after consideration of the
12 factors set forth in section 3592 in the course of a hearing
13 held pursuant to section 3593, it is determined that im-
14 position of a sentence of death is justified, except that no
15 person may be sentenced to death who was less than 18
16 years of age at the time of the offense.

17 **“§ 3592. Mitigating and aggravating factors to be con-**
18 **sidered in determining whether a sen-**
19 **tence of death is justified**

20 “(a) MITIGATING FACTORS.—In determining wheth-
21 er a sentence of death is to be imposed on a defendant,
22 the finder of fact shall consider any mitigating factor, in-
23 cluding the following:

24 “(1) IMPAIRED CAPACITY.—The defendant’s ca-
25 pacity to appreciate the wrongfulness of the defend-

1 ant's conduct or to conform conduct to the require-
2 ments of law was significantly impaired, regardless
3 of whether the capacity was so impaired as to con-
4 stitute a defense to the charge.

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

9 “(3) MINOR PARTICIPATION.—The defendant is
10 punishable as a principal in the offense, which was
11 committed by another, but the defendant's participa-
12 tion was relatively minor, regardless of whether the
13 participation was so minor as to constitute a defense
14 to the charge.

15 “(4) FORSEEABILITY.—The defendant could
16 not reasonably have foreseen that the defendant's
17 conduct in the course of the commission of murder,
18 or other offense resulting in death for which the de-
19 fendant was convicted, would cause, or would create
20 a grave risk of causing, death to any person.

21 “(5) NO PRIOR CRIMINAL RECORD.—The de-
22 fendant did not have a significant prior history of
23 other criminal conduct.

1 “(6) DISTURBANCE.—The defendant committed
2 the offense under severe mental or emotional dis-
3 turbance.

4 “(7) VICTIM’S CONSENT.—The victim consented
5 to the criminal conduct that resulted in the victim’s
6 death.

7 “(8) OTHER FACTORS.—Other factors in the
8 defendant’s background, record, or character or any
9 other circumstance of the offense that mitigate
10 against imposition of the death sentence.

11 “(b) AGGRAVATING FACTORS.—In determining
12 whether a sentence of death is justified for an offense de-
13 scribed in section 3591, the jury, or if there is no jury,
14 the court, shall consider each of the following aggravating
15 factors for which notice has been given and determine
16 which, if any, exist:

17 “(1) DEATH DURING COMMISSION OF ANOTHER
18 CRIME.—The death, or injury resulting in death, oc-
19 curred during the commission or attempted commis-
20 sion of, or during the immediate flight from the
21 commission of, an offense under section 32 (destruc-
22 tion of aircraft or aircraft facilities), section 33 (de-
23 struction of motor vehicles or motor vehicle facili-
24 ties), section 36 (violence at international airports),
25 section 351 (violence against Members of Congress,

1 Cabinet officers, or Supreme Court Justices), an of-
2 fense under section 751 (prisoners in custody of in-
3 stitution or officer), section 794 (gathering or deliv-
4 ering defense information to aid foreign govern-
5 ment), section 844(d) (transportation of explosives
6 in interstate commerce for certain purposes), section
7 844(f) (destruction of Government property in inter-
8 state commerce by explosives), section 1118 (pris-
9 oners serving life term), section 1201 (kidnaping),
10 section 844(i) (destruction of property affecting
11 interstate commerce by explosives), section 1116
12 (killing or attempted killing of diplomats), section
13 1203 (hostage taking), section 1992 (wrecking
14 trains), section 2280 (maritime violence), section
15 2281 (maritime platform violence), section 2332
16 (terrorist acts abroad against United States nation-
17 als), section 2339 (use of weapons of mass destruc-
18 tion), or section 2381 (treason) of this title, or sec-
19 tion 902 (i) or (n) of the Federal Aviation Act of
20 1958 (49 U.S.C. 1472 (i) or (n)) (aircraft piracy).

21 “(2) INVOLVEMENT OF FIREARM OR PREVIOUS
22 CONVICTION OF VIOLENT FELONY INVOLVING FIRE-
23 ARM.—The defendant—

24 “(A) during and in relation to the commis-
25 sion of the offense or in escaping or attempting

1 to escape apprehension used or possessed a fire-
2 arm as defined in section 921 of this title; or

3 “(B) has previously been convicted of a
4 Federal or State offense punishable by a term
5 of imprisonment of more than one year, involv-
6 ing the use of attempted or threatened use of
7 a firearm, as defined in section 921 of this title,
8 against another person.

9 “(3) PREVIOUS CONVICTION OF OFFENSE FOR
10 WHICH A SENTENCE OF DEATH OR LIFE IMPRISON-
11 MENT WAS AUTHORIZED.—The defendant has pre-
12 viously been convicted of another Federal or State
13 offense resulting in the death of a person, for which
14 a sentence of life imprisonment or a sentence of
15 death was authorized by statute.

16 “(4) PREVIOUS CONVICTION OF OTHER SERI-
17 OUS OFFENSES.—The defendant has previously been
18 convicted of two or more Federal or State offenses,
19 punishable by a term of imprisonment of more than
20 one year, committed on different occasions, involving
21 the infliction of, or attempted infliction of, serious
22 bodily injury or death upon another person.

23 “(5) GRAVE RISK OF DEATH TO ADDITIONAL
24 PERSONS.—The defendant, in the commission of the
25 offense, or in escaping apprehension for the violation

1 of the offense, knowingly created a grave risk of
2 death to one or more persons in addition to the vic-
3 tim of the offense.

4 “(6) HEINOUS, CRUEL, OR DEPRAVED MANNER
5 OF COMMITTING OFFENSE.—The defendant commit-
6 ted the offense in an especially heinous, cruel, or de-
7 praved manner in that it involved torture or serious
8 physical abuse to the victim.

9 “(7) PROCUREMENT OF OFFENSE BY PAY-
10 MENT.—The defendant procured the commission of
11 the offense by payment, or promise of payment, of
12 anything of pecuniary value.

13 “(8) PECUNIARY GAIN.—The defendant com-
14 mitted the offense as consideration for the receipt,
15 or in the expectation of the receipt, of anything of
16 pecuniary value.

17 “(9) SUBSTANTIAL PLANNING AND
18 PREMEDITATION.—The defendant committed the of-
19 fense after substantial planning and premeditation
20 to cause the death of a person or commit an act of
21 terrorism.

22 “(10) CONVICTION FOR TWO FELONY DRUG OF-
23 FENSES.—The defendant has previously been con-
24 victed of two or more State or Federal offenses pun-
25 ishable by a term of imprisonment of more than one

1 year, committed on different occasions, involving the
2 distribution of a controlled substance.

3 “(11) VULNERABILITY OF VICTIM.—The victim
4 was particularly vulnerable due to old age, youth, or
5 infirmity.

6 “(12) CONVICTION FOR SERIOUS FEDERAL
7 DRUG OFFENSES.—The defendant had previously
8 been convicted of violating title II or title III of the
9 Controlled Substances Act for which a sentence of 5
10 or more years may be imposed or had previously
11 been convicted of engaging in a continuing criminal
12 enterprise.

13 “(13) CONTINUING CRIMINAL ENTERPRISE IN-
14 VOLVING DRUG SALES TO MINORS.—The defendant
15 committed the offense in the course of engaging in
16 a continuing criminal enterprise in violation of sec-
17 tion 408(c) of the Controlled Substances Act and
18 that violation involved the distribution of drugs to
19 persons under the age of 21 in violation of section
20 418 of such Act.

21 The jury, or if there is no jury, the court, may consider
22 whether any other aggravating factor for which notice has
23 been given exists.

1 **“§ 3593. Special hearing to determine whether a sen-**
2 **tence of death is justified**

3 “(a) NOTICE BY THE GOVERNMENT.—If, in a case
4 involving an offense described in section 3591 of this title,
5 the attorney for the Government believes that the cir-
6 cumstances of the offense are such that a sentence of
7 death is justified under this chapter, the attorney shall,
8 a reasonable time before the trial or before acceptance by
9 the court of a plea of guilty, sign and file with the court,
10 and serve on the defendant, a notice—

11 “(1) stating that the Government believes that
12 the circumstances of the offense are such that, if the
13 defendant is convicted, a sentence of death is justi-
14 fied under this chapter and that the Government will
15 seek the sentence of death; and

16 “(2) setting forth the aggravating factor or fac-
17 tors that the Government, if the defendant is con-
18 victed, proposes to prove as justifying a sentence of
19 death.

20 The factors for which notice is provided under this sub-
21 section may include factors concerning the effect of the
22 offense on the victim and the victim’s family, and may
23 include oral testimony, a victim impact statement that
24 identifies the victim of the offense and the extent and
25 scope of the injury and loss suffered by the victim and
26 the victim’s family, and any other relevant information.

1 The court may permit the attorney for the Government
2 to amend the notice upon a showing of good cause.

3 “(b) HEARING BEFORE A COURT OR JURY.—If the
4 attorney for the Government has filed a notice as required
5 under subsection (a) of this section and the defendant is
6 found guilty of or pleads guilty to an offense described
7 in section 3591 of this title, the judge who presided at
8 the trial or before whom the guilty plea was entered, or
9 another judge if that judge is unavailable, shall conduct
10 a separate sentencing hearing to determine the punish-
11 ment to be imposed. The hearing shall be conducted—

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

14 “(2) before a jury impaneled for the purpose of
15 the hearing if—

16 “(A) the defendant was convicted upon a
17 plea of guilty;

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

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

22 “(D) after initial imposition of a sentence
23 under this section, reconsideration of the sen-
24 tence under this section is necessary; or

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

4 A jury impaneled pursuant to paragraph (2) of this sub-
5 section shall consist of 12 members, unless, at any time
6 before the conclusion of the hearing, the parties stipulate,
7 with the approval of the court, that it shall consist of a
8 lesser number.

9 “(c) PROOF OF MITIGATING AND AGGRAVATING FAC-
10 TORS.—Notwithstanding rule 32(c) of the Federal Rules
11 of Criminal Procedure, when a defendant is found guilty
12 or pleads guilty to an offense under section 3591 of this
13 title, no presentence report shall be prepared. At the sen-
14 tencing hearing, information may be presented as to any
15 matter relevant to the sentence, including any mitigating
16 or aggravating factor permitted or required to be consid-
17 ered under section 3592 of this title. Information pre-
18 sented may include the trial transcript and exhibits if the
19 hearing is held before a jury or judge not present during
20 the trial. The defendant may present any information rel-
21 evant to a mitigating factor. The Government may present
22 any information relevant to an aggravating factor. The
23 Government and the defendant shall be permitted to rebut
24 any information received at the hearing, and shall be given
25 fair opportunity to present argument as to the adequacy

1 of the information to establish the existence of any aggra-
2 vating or mitigating factor, and as to the appropriateness
3 in the case of imposing a sentence of death. The Govern-
4 ment shall open the argument. The defendant shall be per-
5 mitted to reply. The Government shall then be permitted
6 to reply in rebuttal. The burden of establishing the exist-
7 ence of any aggravating factor is on the Government, and
8 is not satisfied unless the existence of such a factor is es-
9 tablished beyond a reasonable doubt. The burden of estab-
10 lishing the existence of any mitigating factor is on the de-
11 fendant, and is not satisfied unless the existence of such
12 a factor is established by a preponderance of the informa-
13 tion.

14 “(d) RETURN OF SPECIAL FINDINGS.—The jury, or
15 if there is no jury, the court, shall consider all the informa-
16 tion received during the hearing. It shall return special
17 findings identifying any aggravating factor or factors set
18 forth in section 3592 of this title found to exist and any
19 other aggravating factor for which notice has been pro-
20 vided under subsection (a) of this section found to exist.
21 A finding with respect to a mitigating factor may be made
22 by one or more members of the jury, and any member
23 of the jury who finds the existence of a mitigating factor
24 may consider such factor established for purposes of this
25 section regardless of the number of jurors who concur that

1 the factor has been established. A finding with respect to
2 any aggravating factor must be unanimous. If no aggra-
3 vating factor set forth in section 3592 of this title is found
4 to exist, the court shall impose a sentence other than
5 death authorized by law.

6 “(e) RETURN OF A FINDING CONCERNING A SEN-
7 TENCE OF DEATH.—If an aggravating factor required to
8 be considered under section 3592 of this title is found to
9 exist the jury, or if there is no jury, the court, shall con-
10 sider whether all the aggravating factor or factors found
11 to exist sufficiently outweigh all the mitigating factor or
12 factors found to exist to justify a sentence of death, or,
13 in the absence of a mitigating factor, whether the aggra-
14 vating factor or factors alone are sufficient to justify a
15 sentence of death. Based upon this consideration, the jury
16 by unanimous vote, or if there is no jury, the court, shall
17 recommend whether a sentence of death shall be imposed
18 rather than a lesser sentence. The jury or the court, if
19 there is no jury, regardless of its findings with respect to
20 aggravating and mitigating factors, is never required to
21 impose a death sentence.

22 “(f) SPECIAL PRECAUTION TO ENSURE AGAINST
23 DISCRIMINATION.—In a hearing held before a jury, the
24 court, prior to the return of a finding under subsection
25 (e) of this section, shall instruct the jury that, in consider-

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

18 **“§ 3594. Imposition of a sentence of death**

19 “Upon a finding under section 3593(e) of this title
20 that a sentence of death is justified, the court shall sen-
21 tence the defendant to death. Otherwise, the court shall
22 impose any sentence other than death that is authorized
23 by law. Notwithstanding any other provision of law, if the
24 maximum term of imprisonment for the offense is life im-

1 imprisonment, the court may impose a sentence of life im-
2 imprisonment without parole.

3 **“§ 3595. Review of a sentence of death**

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

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

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

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

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

18 “(4) the special findings returned under section
19 3593(d) of this title.

20 “(c) DECISION AND DISPOSITION.—

21 “(1) The court of appeals shall address all sub-
22 stantive and procedural issues raised on the appeal
23 of a sentence of death, and shall consider whether
24 the sentence of death was imposed under the influ-
25 ence of passion, prejudice, or any other arbitrary

1 factor and whether the evidence supports the special
2 finding of the existence of an aggravating factor re-
3 quired to be considered under section 3592 of this
4 title.

5 “(2) Whenever the court of appeals finds
6 that—

7 “(A) the sentence of death was imposed
8 under the influence of passion, prejudice, or any
9 other arbitrary factor;

10 “(B) the admissible evidence and informa-
11 tion adduced does not support the special find-
12 ing of the existence of the required aggravating
13 factor; or

14 “(C) the proceedings involved any other
15 legal error requiring reversal of the sentence
16 that was properly preserved for appeal under
17 the rules of criminal procedure;

18 the court shall remand the case for reconsideration
19 under section 3593 of this title or imposition of a
20 sentence other than death.

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 provide for the implementation of
15 a sentence of death, and the sentence shall be implemented
16 in the latter State in the manner prescribed by such law.

17 “(b) PREGNANT WOMAN.—A sentence of death shall
18 not be carried out upon a woman while she is pregnant.

19 “(c) MENTAL CAPACITY.—A sentence of death shall
20 not be carried out upon a person who is mentally retarded.
21 A sentence of death shall not be carried out upon a person
22 who, as a result of mental disability, lacks the mental ca-
23 pacity to understand the death penalty and why it was
24 imposed on that person.

1 **“§ 3597. Use of State facilities**

2 “(a) IN GENERAL.—A United States marshal
3 charged with supervising the implementation of a sentence
4 of death may use appropriate State or local facilities for
5 the purpose, may use the services of an appropriate State
6 or local official or of a person such an official employs
7 for the purpose, and shall pay the costs thereof in an
8 amount approved by the Attorney General.

9 “(b) EXCUSE OF AN EMPLOYEE ON MORAL OR RELI-
10 GIOUS GROUNDS.—No employee of any State department
11 of corrections, the United States Department of Justice,
12 the Federal Bureau of Prisons, or the United States Mar-
13 shals Service, and no employee providing services to that
14 department, bureau, or service under contract shall be re-
15 quired, as a condition of that employment or contractual
16 obligation, to be in attendance at or to participate in any
17 prosecution or execution under this section if such partici-
18 pation is contrary to the moral or religious convictions of
19 the employee. For purposes of this subsection, the term
20 ‘participation in executions’ includes personal preparation
21 of the condemned individual and the apparatus used for
22 execution and supervision of the activities of other person-
23 nel in carrying out such activities.’”.

24 (b) CLERICAL AMENDMENT.—The table of chapters
25 at the beginning of part II of title 18, United States Code,

1 is amended by adding the following new item after the
2 item relating to chapter 227:

“228. Death sentence 3591”.

○

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