

**Union Calendar No. 259**

103D CONGRESS  
2D SESSION

**H. R. 4035**

**[Report No. 103-467]**

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**A BILL**

To establish constitutional procedures for the  
imposition of the death penalty.

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MARCH 25, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1994

Mr. EDWARDS of California (for himself and Mr. SCHUMER) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 25, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 15, 1994]

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## A BILL

To establish constitutional procedures for the imposition of the death penalty.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. CONSTITUTIONAL PROCEDURES FOR THE IM-**  
 2 **POSITION OF THE SENTENCE OF DEATH.**

3 *Part II of title 18 of the United States Code is amend-*  
 4 *ed by adding the following new chapter after chapter 227:*

5 **“CHAPTER 228—DEATH SENTENCE**

*“Sec.*

*“3591. Sentence of death.*

*“3592. Mitigating and aggravating factors to be considered in determining wheth-*  
*er 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. Special provisions for Indian country.*

6 **“§ 3591. Sentence of death**

7 *“A defendant who has been found guilty of—*

8 *“(1) an offense described in section 794 or sec-*  
 9 *tion 2381 of this title; or*

10 *“(2) any other offense for which a sentence of*  
 11 *death is provided, if the defendant, as determined be-*  
 12 *yond a reasonable doubt at the hearing under section*  
 13 *3593—*

14 *“(A) intentionally killed the victim;*

15 *“(B) intentionally inflicted serious bodily*  
 16 *injury that resulted in the death of the victim;*

17 *“(C) intentionally participated in an act,*  
 18 *contemplating that the life of a person would be*  
 19 *taken or intending that lethal force would be*  
 20 *used in connection with a person, other than one*

1           *of the participants in the offense, and the victim*  
2           *died as a direct result of the act; or*

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

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

16 **“§ 3592. Mitigating and aggravating factors to be con-**  
17 **sidered in determining whether a sen-**  
18 **tence of death is justified**

19           “(a) *MITIGATING FACTORS.—In determining whether*  
20 *a sentence of death is to be imposed on a defendant, the*  
21 *finder of fact shall consider any mitigating factor, includ-*  
22 *ing the following:*

23                   “(1) *IMPAIRED CAPACITY.—The defendant’s ca-*  
24 *capacity to appreciate the wrongfulness of the defend-*  
25 *ant’s conduct or to conform conduct to the require-*

1        *ments of law was significantly impaired, regardless of*  
2        *whether the capacity was so impaired as to constitute*  
3        *a defense to the charge.*

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

8            “(3) *MINOR PARTICIPATION.*—*The defendant is*  
9        *punishable as a principal (as defined in section 2 of*  
10       *title 18 of the United States Code) in the offense,*  
11       *which was committed by another, but the defendant’s*  
12       *participation was relatively minor, regardless of*  
13       *whether the participation was so minor as to con-*  
14       *stitute a defense to the charge.*

15           “(4) *EQUALLY CULPABLE DEFENDANTS.*—*An-*  
16       *other defendant or defendants, equally culpable in the*  
17       *crime, will not be punished by death.*

18           “(5) *NO PRIOR CRIMINAL RECORD.*—*The defend-*  
19       *ant did not have a significant prior history of other*  
20       *criminal conduct.*

21           “(6) *DISTURBANCE.*—*The defendant committed*  
22       *the offense under severe mental or emotional disturb-*  
23       *ance.*

1           “(7) *VICTIM’S CONSENT.*—*The victim consented*  
2           *to the criminal conduct that resulted in the victim’s*  
3           *death.*

4           “(8) *OTHER FACTORS.*—*Other factors in the de-*  
5           *fendant’s background, record, or character or any*  
6           *other circumstance of the offense that mitigate against*  
7           *imposition of the death sentence.*

8           “(b) *AGGRAVATING FACTORS FOR ESPIONAGE AND*  
9           *TREASON.*—*In determining whether a sentence of death is*  
10          *justified for an offense described in section 3591(1), the*  
11          *jury, or if there is no jury, the court, shall consider each*  
12          *of the following aggravating factors for which notice has*  
13          *been given and determine which, if any, exist:*

14               “(1) *PRIOR ESPIONAGE OR TREASON OFFENSE.*—  
15               *The defendant has previously been convicted of an-*  
16               *other offense involving espionage or treason for which*  
17               *a sentence of either life imprisonment or death was*  
18               *authorized by law.*

19               “(2) *GRAVE RISK TO NATIONAL SECURITY.*—*In*  
20               *the commission of the offense the defendant knowingly*  
21               *created a grave risk of substantial danger to the na-*  
22               *tional security.*

23               “(3) *GRAVE RISK OF DEATH.*—*In the commis-*  
24               *sion of the offense the defendant knowingly created a*  
25               *grave risk of death to another person.*

1 *The jury, or if there is no jury, the court, may consider*  
2 *whether any other aggravating factor for which notice has*  
3 *been given exists.*

4       “(c) *AGGRAVATING FACTORS FOR HOMICIDE.—In de-*  
5 *termining whether a sentence of death is justified for an*  
6 *offense described in section 3591(2), the jury, or if there*  
7 *is no jury, the court, shall consider each of the following*  
8 *aggravating factors for which notice has been given and de-*  
9 *termine which, if any, exist:*

10           “(1) *DEATH DURING COMMISSION OF ANOTHER*  
11 *CRIME.—The death, or injury resulting in death, oc-*  
12 *curred during the commission or attempted commis-*  
13 *sion of, or during the immediate flight from the com-*  
14 *mission of, an offense under section 32 (destruction of*  
15 *aircraft or aircraft facilities), section 33 (destruction*  
16 *of motor vehicles or motor vehicle facilities), section*  
17 *36 (violence at international airports), section 351*  
18 *(violence against Members of Congress, Cabinet offi-*  
19 *cers, or Supreme Court Justices), an offense under*  
20 *section 751 (prisoners in custody of institution or of-*  
21 *ficer), section 794 (gathering or delivering defense in-*  
22 *formation to aid foreign government), section 844(d)*  
23 *(transportation of explosives in interstate commerce*  
24 *for certain purposes), section 844(f) (destruction of*  
25 *Government property by explosives), section 1118*

1        (prisoners serving life term), section 1201 (kidnap-  
2        ping), section 844(i) (destruction of property affecting  
3        interstate commerce by explosives), section 1116 (kill-  
4        ing or attempted killing of diplomats), section 1203  
5        (hostage taking), section 1992 (wrecking trains), sec-  
6        tion 2280 (maritime violence), section 2281 (mari-  
7        time platform violence), section 2332 (terrorist acts  
8        abroad against United States nationals), section 2339  
9        (use of weapons of mass destruction), or section 2381  
10       (treason) of this title, or section 902 (i) or (n) of the  
11       Federal Aviation Act of 1958 (49 U.S.C. 1472 (i) or  
12       (n)) (aircraft piracy).

13            “(2) *PREVIOUS CONVICTION OF VIOLENT FELONY*  
14        *INVOLVING FIREARM.*—For any offense, other than an  
15        offense for which a sentence of death is sought on the  
16        basis of section 924(c) of this title, as amended by this  
17        Act, the defendant has previously been convicted of a  
18        Federal or State offense punishable by a term of im-  
19        prisonment of more than one year, involving the use  
20        or attempted or threatened use of a firearm, as de-  
21        fined in section 921 of this title, against another  
22        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 of-*  
2 *fense resulting in the death of a person, for which a*  
3 *sentence of life imprisonment or a sentence of death*  
4 *was authorized by statute.*

5 *“(4) PREVIOUS CONVICTION OF OTHER SERIOUS*  
6 *OFFENSES.—The defendant has previously been con-*  
7 *victed of two or more Federal or State offenses, pun-*  
8 *ishable by a term of imprisonment of more than one*  
9 *year, committed on different occasions, involving the*  
10 *infliction of, or attempted infliction of, serious bodily*  
11 *injury or death upon another person.*

12 *“(5) GRAVE RISK OF DEATH TO ADDITIONAL*  
13 *PERSONS.—The defendant, in the commission of the*  
14 *offense, or in escaping apprehension for the violation*  
15 *of the offense, knowingly created a grave risk of death*  
16 *to one or more persons in addition to the victim of*  
17 *the offense.*

18 *“(6) HEINOUS, CRUEL, OR DEPRAVED MANNER*  
19 *OF COMMITTING OFFENSE.—The defendant committed*  
20 *the offense in an especially heinous, cruel, or depraved*  
21 *manner in that it involved torture or serious physical*  
22 *abuse to the victim.*

23 *“(7) PROCUREMENT OF OFFENSE BY PAYMENT.—*  
24 *The defendant procured the commission of the offense*

1     *by payment, or promise of payment, of anything of*  
2     *pecuniary value.*

3             “(8) *PECUNIARY GAIN.*—*The defendant commit-*  
4     *ted the offense as consideration for the receipt, or in*  
5     *the expectation of the receipt, of anything of pecu-*  
6     *niary value.*

7             “(9)     *SUBSTANTIAL        PLANNING        AND*  
8     *PREMEDITATION.*—*The defendant committed the of-*  
9     *fense after substantial planning and premeditation to*  
10    *cause the death of a person or commit an act of*  
11    *terrorism.*

12            “(10) *CONVICTION FOR TWO FELONY DRUG OF-*  
13    *FENSES.*—*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    *distribution of a controlled substance.*

18            “(11) *VULNERABILITY OF VICTIM.*—*The victim*  
19    *was particularly vulnerable due to old age, youth, or*  
20    *infirmity.*

21            “(12) *CONVICTION FOR SERIOUS FEDERAL DRUG*  
22    *OFFENSES.*—*The defendant had previously been con-*  
23    *victed of violating title II or title III of the Controlled*  
24    *Substances Act for which a sentence of 5 or more*  
25    *years may be imposed or had previously been con-*

1       *victed of engaging in a continuing criminal enter-*  
2       *prise.*

3               “(13) *CONTINUING CRIMINAL ENTERPRISE IN-*  
4       *VOLVING DRUG SALES TO MINORS.—The defendant*  
5       *committed the offense in the course of engaging in a*  
6       *continuing criminal enterprise in violation of section*  
7       *408(c) of the Controlled Substances Act and that vio-*  
8       *lation involved the distribution of drugs to persons*  
9       *under the age of 21 in violation of section 418 of such*  
10       *Act.*

11               “(14) *HIGH PUBLIC OFFICIALS.—The defendant*  
12       *committed the offense against—*

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

21                       “(B) *a Chief of State, head of government,*  
22       *or the political equivalent, of a foreign nation;*

23                       “(C) *a foreign official listed in section*  
24       *1116(b)(3)(A) of this title, if the official is in the*  
25       *United States on official business; or*

1           “(D) a Federal public servant who is a  
2 judge, a law enforcement officer, or an employee  
3 of a United States penal or correctional institu-  
4 tion—

5                   “(i) while he or she is engaged in the  
6 performance of his or her official duties;

7                   “(ii) because of the performance of his  
8 or her official duties; or

9                   “(iii) because of his or her status as a  
10 public servant.

11           For purposes of this subparagraph, a ‘law en-  
12 forcement officer’ is a public servant authorized  
13 by law or by a Government agency or Congress  
14 to conduct or engage in the prevention, inves-  
15 tigation, or prosecution or adjudication of an of-  
16 fense, and includes those engaged in corrections,  
17 parole, or probation functions.

18           “(15) PRIOR CONVICTION OF SEXUAL ASSAULT  
19 OR CHILD MOLESTATION.—In the case of an offense  
20 under chapter 109A (sexual abuse) or chapter 110  
21 (sexual abuse of children), the defendant has pre-  
22 viously been convicted of a crime of sexual assault or  
23 crime of child molestation.

1 *The jury, or if there is no jury, the court, may consider*  
2 *whether any other aggravating factor for which notice has*  
3 *been given exists.*

4 ***“§ 3593. Special hearing to determine whether a sen-***  
5 ***tence of death is justified***

6 *“(a) NOTICE BY THE GOVERNMENT.—If, in a case in-*  
7 *volving an offense described in section 3591, the attorney*  
8 *for the government believes that the circumstances of the of-*  
9 *fense are such that a sentence of death is justified under*  
10 *this chapter, the attorney shall, a reasonable time before the*  
11 *trial or before acceptance by the court of a plea of guilty,*  
12 *sign and file with the court, and serve on the defendant,*  
13 *a notice—*

14 *“(1) stating that the government believes that the*  
15 *circumstances of the offense are such that, if the de-*  
16 *fendant is convicted, a sentence of death is justified*  
17 *under this chapter and that the government will seek*  
18 *the sentence of death; and*

19 *“(2) setting forth the aggravating factor or fac-*  
20 *tors that the government, if the defendant is convicted,*  
21 *proposes to prove as justifying a sentence of death.*

22 *The factors for which notice is provided under this sub-*  
23 *section may include factors concerning the effect of the of-*  
24 *fense on the victim and the victim’s family, and may in-*  
25 *clude oral testimony, a victim impact statement that identi-*

1 *fies the victim of the offense and the extent and scope of*  
2 *the injury and loss suffered by the victim and the victim's*  
3 *family, and any other relevant information. The court may*  
4 *permit the notice to include any aggravating factor that*  
5 *is not an element of the underlying offense. The court may*  
6 *also permit the attorney for the government to amend the*  
7 *notice upon a showing of good cause.*

8       “(b) HEARING BEFORE A COURT OR JURY.—If the at-  
9 *torney for the government has filed a notice as required*  
10 *under subsection (a) and the defendant is found guilty of*  
11 *or pleads guilty to an offense described in section 3591, the*  
12 *judge who presided at the trial or before whom the guilty*  
13 *plea was entered, or another judge if that judge is unavail-*  
14 *able, shall conduct a separate sentencing hearing to deter-*  
15 *mine the punishment to be imposed. The hearing shall be*  
16 *conducted—*

17               “(1) *before the jury that determined the defend-*  
18               *ant's guilt;*

19               “(2) *before a jury impaneled for the purpose of*  
20               *the hearing if—*

21                       “(A) *the defendant was convicted upon a*  
22                       *plea of guilty;*

23                       “(B) *the defendant was convicted after a*  
24                       *trial before the court sitting without a jury;*

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

3           “(D) after initial imposition of a sentence  
4           under this section, reconsideration of the sentence  
5           under this section is necessary; or

6           “(3) before the court alone, upon the motion of  
7           the defendant.

8           A jury impaneled pursuant to paragraph (2) shall consist  
9           of 12 members, unless, at any time before the conclusion  
10          of the hearing, the parties stipulate, with the approval of  
11          the court, that it shall consist of a lesser number.

12          “(c) *PROOF OF MITIGATING AND AGGRAVATING FAC-*  
13          *TORS.—Notwithstanding rule 32(c) of the Federal Rules of*  
14          *Criminal Procedure, when a defendant is found guilty or*  
15          *pleads guilty to an offense under section 3591, no*  
16          *presentence report shall be prepared. At the sentencing hear-*  
17          *ing, information may be presented as to any matter rel-*  
18          *evant to the sentence, including any mitigating or aggra-*  
19          *vating factor permitted or required to be considered under*  
20          *section 3592. Information presented may include the trial*  
21          *transcript and exhibits if the hearing is held before a jury*  
22          *or judge not present during the trial. The defendant may*  
23          *present any information relevant to a mitigating factor.*  
24          *The government may present any information relevant to*  
25          *an aggravating factor for which notice has been provided*

1 *under subsection (a). The government and the defendant*  
2 *shall be permitted to rebut any information received at the*  
3 *hearing, and shall be given fair opportunity to present ar-*  
4 *gument as to the adequacy of the information to establish*  
5 *the existence of any aggravating or mitigating factor, and*  
6 *as to the appropriateness in the case of imposing a sentence*  
7 *of death. The government shall open the argument. The de-*  
8 *fendant shall be permitted to reply. The government shall*  
9 *then be permitted to reply in rebuttal. The burden of estab-*  
10 *lishing the existence of any aggravating factor is on the gov-*  
11 *ernment, and is not satisfied unless the existence of such*  
12 *a factor is established beyond a reasonable doubt. The bur-*  
13 *den of establishing the existence of any mitigating factor*  
14 *is on the defendant, and is not satisfied unless the existence*  
15 *of such a factor is established by a preponderance of the*  
16 *information.*

17       “(d) *RETURN OF SPECIAL FINDINGS.—The jury, or if*  
18 *there is no jury, the court, shall consider all the information*  
19 *received during the hearing. It shall return special findings*  
20 *identifying any aggravating factor or factors set forth in*  
21 *section 3592 found to exist and any other aggravating fac-*  
22 *tor for which notice has been provided under subsection (a)*  
23 *found to exist. A finding with respect to a mitigating factor*  
24 *may be made by 1 or more members of the jury, and any*  
25 *member of the jury who finds the existence of a mitigating*

1 *factor may consider such factor established for purposes of*  
2 *this section regardless of the number of jurors who concur*  
3 *that the factor has been established. A finding with respect*  
4 *to any aggravating factor must be unanimous. If no aggra-*  
5 *vating factor set forth in section 3592 is found to exist, the*  
6 *court shall impose a sentence other than death authorized*  
7 *by law.*

8       “(e) *RETURN OF A FINDING CONCERNING A SENTENCE*  
9 *OF DEATH.—If, in the case of—*

10               “(1) *an offense described in section 3591(1), an*  
11 *aggravating factor required to be considered under*  
12 *section 3592(b) is found to exist; or*

13               “(2) *an offense described in section 3591(2), an*  
14 *aggravating factor required to be considered under*  
15 *section 3592(c) is found to exist,*

16 *the jury, or if there is no jury, the court, shall consider*  
17 *whether all the aggravating factor or factors found to exist*  
18 *sufficiently outweigh all the mitigating factor or factors*  
19 *found to exist to justify a sentence of death, or, in the ab-*  
20 *sence of a mitigating factor, whether the aggravating factor*  
21 *or factors alone are sufficient to justify a sentence of death.*  
22 *Based upon this consideration, the jury by unanimous vote,*  
23 *or if there is no jury, the court, shall recommend whether*  
24 *the defendant should be sentenced to death, to life imprison-*  
25 *ment without possibility of release, or to some other lesser*

1 sentence. The jury or the court, if there is no jury, regardless  
2 of its findings with respect to aggravating and mitigating  
3 factors, is never required to impose a death sentence and  
4 the jury shall be so instructed.

5       “(f) *SPECIAL PRECAUTION TO ENSURE AGAINST DIS-*  
6 *CRIMINATION.*—In a hearing held before a jury, the court,  
7 prior to the return of a finding under subsection (e), shall  
8 instruct the jury that, in considering whether a sentence  
9 of death is justified, it shall not consider the race, color,  
10 religious beliefs, national origin, or sex of the defendant or  
11 of any victim and that the jury is not to recommend a sen-  
12 tence of death unless it has concluded that it would rec-  
13 ommend a sentence of death for the crime in question no  
14 matter what the race, color, religious beliefs, national ori-  
15 gin, or sex of the defendant or of any victim may be. The  
16 jury, upon return of a finding under subsection (e), shall  
17 also return to the court a certificate, signed by each juror,  
18 that consideration of the race, color, religious beliefs, na-  
19 tional origin, or sex of the defendant or any victim was  
20 not involved in reaching his or her individual decision and  
21 that the individual juror would have made the same rec-  
22 ommendation regarding a sentence for the crime in question  
23 no matter what the race, color, religious beliefs, national  
24 origin, or sex of the defendant or any victim may be.

1 **“§ 3594. Imposition of a sentence of death**

2       *“Upon a recommendation under section 3593(e) that*  
3 *the defendant should be sentenced to death or life imprison-*  
4 *ment without possibility of release, the court shall sentence*  
5 *the defendant accordingly. Otherwise, the court shall impose*  
6 *any lesser sentence that is authorized by law. Notwithstand-*  
7 *ing any other provision of law, if the maximum term of*  
8 *imprisonment for the offense is life imprisonment, the court*  
9 *may impose a sentence of life imprisonment without possi-*  
10 *bility of release.*

11 **“§ 3595. Review of a sentence of death**

12       *“(a) APPEAL.—In a case in which a sentence of death*  
13 *is imposed, the sentence shall be subject to review by the*  
14 *court of appeals upon appeal by the defendant. Notice of*  
15 *appeal must be filed within the time specified for the filing*  
16 *of a notice of appeal. An appeal under this section may*  
17 *be consolidated with an appeal of the judgment of convic-*  
18 *tion and shall have priority over all other cases.*

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

21             *“(1) the evidence submitted during the trial;*

22             *“(2) the information submitted during the sen-*  
23 *tencing hearing;*

24             *“(3) the procedures employed in the sentencing*  
25 *hearing; and*

1           “(4) *the special findings returned under section*  
2           *3593(d).*

3           “(c) *DECISION AND DISPOSITION.*—

4           “(1) *The court of appeals shall address all sub-*  
5           *stantive and procedural issues raised on the appeal of*  
6           *a sentence of death, and shall consider whether the*  
7           *sentence of death was imposed under the influence of*  
8           *passion, prejudice, or any other arbitrary factor and*  
9           *whether the evidence supports the special finding of*  
10           *the existence of an aggravating factor required to be*  
11           *considered under section 3592.*

12           “(2) *Whenever the court of appeals finds that—*

13           “(A) *the sentence of death was imposed*  
14           *under the influence of passion, prejudice, or any*  
15           *other arbitrary factor;*

16           “(B) *the admissible evidence and informa-*  
17           *tion adduced does not support the special finding*  
18           *of the existence of the required aggravating*  
19           *factor; or*

20           “(C) *the proceedings involved any other*  
21           *legal error requiring reversal of the sentence that*  
22           *was properly preserved for appeal under the*  
23           *rules of criminal procedure,*

1       *the court shall remand the case for reconsideration*  
2       *under section 3593 or imposition of a sentence other*  
3       *than death.*

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

7               “(4) *The sentence shall be affirmed if the court*  
8       *finds that a remaining aggravating factor found to*  
9       *exist is one allowed under section 3592 of this title*  
10       *and that the remaining aggravating factor or factors*  
11       *found to exist sufficiently outweigh any mitigating*  
12       *factors found to exist.*

13       **“§ 3596. Implementation of a sentence of death**

14               “(a) *IN GENERAL.—A person who has been sentenced*  
15       *to death pursuant to the provisions of this chapter shall*  
16       *be committed to the custody of the Attorney General until*  
17       *exhaustion of the procedures for appeal of the judgment of*  
18       *conviction and for review of the sentence. When the sentence*  
19       *is to be implemented, the Attorney General shall release the*  
20       *person sentenced to death to the custody of a United States*  
21       *marshal, who shall supervise implementation of the sentence*  
22       *in the manner prescribed by the law of the State in which*  
23       *the sentence is imposed. If the law of such State does not*  
24       *provide for implementation of a sentence of death, the court*  
25       *shall designate another State, the law of which does provide*

1 *for the implementation of a sentence of death, and the sen-*  
2 *tence shall be implemented in the latter State in the manner*  
3 *prescribed by such law.*

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

6       “(c) *MENTAL CAPACITY.*—*A sentence of death shall not*  
7 *be carried out upon a person who is mentally retarded. A*  
8 *sentence of death shall not be carried out upon a person*  
9 *who, as a result of mental disability, lacks the mental ca-*  
10 *capacity to understand the death penalty and why it was im-*  
11 *posed on that person.*

12 **“§ 3597. Use of State facilities**

13       “(a) *IN GENERAL.*—*A United States marshal charged*  
14 *with supervising the implementation of a sentence of death*  
15 *may use appropriate State or local facilities for the pur-*  
16 *pose, may use the services of an appropriate State or local*  
17 *official or of a person such an official employs for the pur-*  
18 *pose, and shall pay the costs thereof in an amount approved*  
19 *by the Attorney General.*

20       “(b) *EXCUSE OF AN EMPLOYEE ON MORAL OR RELI-*  
21 *GIOUS GROUNDS.*—*No employee of any State department*  
22 *of corrections, the United States Department of Justice, 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,*

1 *as a condition of that employment or contractual obliga-*  
 2 *tion, to be in attendance at or to participate in any pros-*  
 3 *ecution or execution under this section if such participation*  
 4 *is contrary to the moral or religious convictions of the em-*  
 5 *ployee. For purposes of this subsection, the term ‘participa-*  
 6 *tion’ includes personal preparation of the condemned indi-*  
 7 *vidual and the apparatus used for execution and super-*  
 8 *vision of the activities of other personnel in carrying out*  
 9 *such activities.*

10 **“§ 3598. Special provisions for Indian country**

11 *“Notwithstanding sections 1152 and 1153, no person*  
 12 *subject to the criminal jurisdiction of an Indian tribal gov-*  
 13 *ernment shall be subject to a capital sentence under this*  
 14 *chapter for any offense the Federal jurisdiction for which*  
 15 *is predicated solely on Indian country as defined in section*  
 16 *1151 of this title, and which has occurred within the bound-*  
 17 *aries of such Indian country, unless the governing body of*  
 18 *the tribe has elected that this chapter have effect over land*  
 19 *and persons subject to its criminal jurisdiction.”.*

20 *(b) AMENDMENT OF CHAPTER ANALYSIS.—The chap-*  
 21 *ter analysis of part II of title 18, United States Code, is*  
 22 *amended by adding the following new item after the item*  
 23 *relating to chapter 227:*

**“228. Death sentence ..... 3591”.**

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