

103D CONGRESS  
1ST SESSION

# H. R. 696

Entitled the “Drug Kingpin Death Penalty Act”.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1993

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

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## A BILL

Entitled the “Drug Kingpin Death Penalty Act”.

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

3 **SEC . SHORT TITLE.**

4 This Act may be cited as the “Drug Kingpin Death  
5 Penalty Act”.

6 **SEC. . DEATH PENALTY AUTHORIZATIONS AND PROCE-**  
7 **DURES.**

8 Title 18 of the United States Code is amended—

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

1                   **“CHAPTER 228—DEATH PENALTY**

“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 sentence of death.

“3597. Use of State facilities.

“3598. Appointment of counsel.

“3599. Collateral Attack on Judgment Imposing Sentence of Death.

2                   **“§ 3591. Sentence of death**

3                   “A defendant who has been found guilty of—

4                   “(1) an offense referred to in section 408(c)(1)  
5                   of the Controlled Substances Act (21 U.S.C.  
6                   848(c)(1)), committed as part of a continuing crimi-  
7                   nal enterprise offense under the conditions described  
8                   in subsection (b) of that section;

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

1           “(3) an offense constituting a felony violation of  
2           the Controlled Substances Act (21 U.S.C. 801 et  
3           seq.), the Controlled Substances Import and Export  
4           Act (21 U.S.C. 951 et seq.), or the Maritime Drug  
5           Law Enforcement Act (46 U.S.C. App. 1901 et  
6           seq.), where the defendant, intending to cause death  
7           or acting with reckless disregard for human life, en-  
8           gages in such a violation, and the death of another  
9           person results in the course of the violation or from  
10          the use of the controlled substance involved in the  
11          violation;

12 shall be sentenced to death if, after consideration of the  
13 factors set forth in section 3592 in the course of a hearing  
14 held pursuant to section 3593, it is determined that impo-  
15 sition of a sentence of death is justified: *Provided*, That  
16 no person may be sentenced to death who was less than  
17 eighteen years of age at the time of the offense: *And pro-*  
18 *vided further*, That if a defendant described in section  
19 3591 (b) or (c), is not sentenced to death, said defendant  
20 shall be sentenced to life in prison.

21 **“§ 3592. Factors to be considered in determining**  
22 **whether a sentence of death is justified**

23           “(a) MITIGATING FACTORS.—In determining wheth-  
24 er a sentence of death is justified for an offense described  
25 in section 3591, the jury, or if there is no jury, the court,

1 shall consider each of the following mitigating factors and  
2 determine which, if any, exist:

3 “(1) MENTAL CAPACITY.—The defendant’s  
4 mental capacity to appreciate the wrongfulness of  
5 his conduct or to conform his conduct to the require-  
6 ments of law was significantly impaired, regardless  
7 of whether the capacity was so impaired as to con-  
8 stitute a defense to the charge.

9 “(2) DURESS.—The defendant was under un-  
10 usual and substantial duress, regardless of whether  
11 the duress was of such a degree as to constitute a  
12 defense to the charge.

13 “(3) PARTICIPATION IN OFFENSE MINOR.—The  
14 defendant is punishable as a principal (as defined in  
15 section 2 of title 18 of the United States Code) in  
16 the offense, which was committed by another, but  
17 the defendant’s participation was relatively minor,  
18 regardless of whether the participation was so minor  
19 as to constitute a defense to the charge.

20 The jury, or if there is no jury, the court, shall consider  
21 whether any other aspect of the defendant’s character or  
22 record or any other circumstance of the offense that the  
23 defendant may proffer as a mitigating factor exists.

24 “(b) AGGRAVATING FACTORS.—In determining  
25 whether a sentence of death is justified for an offense de-

1 scribed in section 3591, the jury, or if there is no jury,  
2 the court, shall consider each of the following aggravating  
3 factors and determine which, if any, exist—

4           “(1) PREVIOUS CONVICTION OF OFFENSE FOR  
5           WHICH A SENTENCE OF DEATH OR LIFE IMPRISON-  
6           MENT WAS AUTHORIZED.—The defendant has pre-  
7           viously been convicted of another Federal or State  
8           offense resulting in the death of a person, for which  
9           a sentence of life imprisonment or death was author-  
10          ized by statute.

11          “(2) PREVIOUS CONVICTIONS OF VIOLENT OF-  
12          FENSES.—The defendant has previously been con-  
13          victed of two or more Federal or State offenses, each  
14          punishable by a term of imprisonment of more than  
15          one year, committed on different occasions, involving  
16          the infliction of, or attempted infliction, serious bod-  
17          ily injury or death upon another person.

18          “(3) PREVIOUS CONVICTIONS OF DRUG OF-  
19          FENSES.—The defendant has previously been con-  
20          victed of two or more Federal or State offenses, each  
21          punishable by a term of imprisonment of more than  
22          one year, committed on different occasions, involving  
23          the importation, manufacture, or distribution of a  
24          controlled substance (as defined in section 102 of  
25          the Controlled Substances Act (21 U.S.C. 802)).

1           “(4) PREVIOUS CONVICTIONS OF VIOLENT  
2 DRUG OFFENSES.—The defendant has previously  
3 been convicted of a Federal or State offense, punish-  
4 able by a term of imprisonment of more than one  
5 year, involving the infliction of, or attempted inflic-  
6 tion of, serious bodily injury or death upon another  
7 person, and has previously been convicted of a Fed-  
8 eral or State offense, committed on a different occa-  
9 sion and punishable by a term of imprisonment of  
10 more than one year, involving the importation, man-  
11 ufacture, or distribution of a controlled substance  
12 (as defined in section 102 of the Controlled Sub-  
13 stances Act (21 U.S.C. 802)).

14           “(5) SERIOUS DRUG FELONY CONVICTION.—  
15 The defendant has previously been convicted of an-  
16 other Federal or State offense involving the manu-  
17 facture, distribution, importation, or possession of a  
18 controlled substance (as defined in section 102 of  
19 the Controlled Substances Act (21 U.S.C. 802)) for  
20 which a sentence of five or more years of imprison-  
21 ment was authorized by statute.

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

1 authorized, or assisted another to use a firearm, as  
2 defined in section 921 of this title, to threaten, in-  
3 timidate, assault, or injure a person.

4 “(7) DISTRIBUTION TO PERSONS UNDER TWEN-  
5 TY-ONE.—The offense, or a continuing criminal en-  
6 terprise of which the offense was a part, involved a  
7 violation of section 405 of the Controlled Substances  
8 Act (21 U.S.C. 845) which was committed directly  
9 by the defendant or for which the defendant would  
10 be liable under section 2 of this title.

11 “(8) DISTRIBUTION NEAR SCHOOLS.—The of-  
12 fense, or a continuing criminal enterprise of which  
13 the offense was a part, involved a violation of section  
14 405A of the Controlled Substances Act (21 U.S.C.  
15 845a) which was committed directly by the defend-  
16 ant or for which the defendant would be liable under  
17 section 2 of this title.

18 “(9) USING MINORS IN TRAFFICKING.—The of-  
19 fense, or a continuing criminal enterprise of which  
20 the offense was a part, involved a violation of section  
21 405B of the Controlled Substances Act (21 U.S.C.  
22 845b) which was committed directly by the defend-  
23 ant or for which the defendant would be liable under  
24 section 2 of this title.

1           “(10) LETHAL ADULTERANT.—The offense in-  
2           volved the importation, manufacture, or distribution,  
3           of a controlled substance (as defined in section 102  
4           of the Controlled Substances Act (21 U.S.C. 802))  
5           mixed with a potentially lethal adulterant, and the  
6           defendant was aware of the presence of the  
7           adulterant.

8           The jury, or if there is no jury, the court, may consider  
9           whether any other aggravating factors exist.

10   **§3593. Special hearing to determine whether a sen-**  
11                           **tence of death is justified**

12           “(a) NOTICE BY THE GOVERNMENT.—Whenever the  
13           Government intends to seek the death penalty for an of-  
14           fense described in section 3591, the attorney for the Gov-  
15           ernment, a reasonable time before the trial, or before ac-  
16           ceptance by the court of a plea of guilty, or at such time  
17           thereafter as the court may permit upon a showing of good  
18           cause, shall sign and file with the court, and serve on the  
19           defendant, a notice—

20                   “(1) that the Government in the event of con-  
21           viction will seek the sentence of death; and

22                   “(2) setting forth the aggravating factor or fac-  
23           tors enumerated in section 3592 and any other ag-  
24           gravating factor not specifically enumerated in sec-  
25           tion 3592, that the Government, if the defendant is

1 convicted, will seek to prove as the basis for the  
2 death penalty.

3 The court may permit the attorney for the government  
4 to amend the notice upon a showing of good cause.

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

17 “(1) before the jury that determined the de-  
18 fendant’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 sen-  
5 tence under the section is necessary; or

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

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

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

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

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

1 Information presented may include the trial transcript and  
2 exhibits. Any other information relevant to such mitigat-  
3 ing or aggravating factors may be presented by either the  
4 Government or the defendant, regardless of its admissibil-  
5 ity under the rules governing admission of evidence at  
6 criminal trials, except that information may be excluded  
7 if its probative value is outweighed by the danger of creat-  
8 ing unfair prejudice, confusing the issues, or misleading  
9 the jury. The attorney for the Government and for the  
10 defendant shall be permitted to rebut any information re-  
11 ceived at the hearing, and shall be given fair opportunity  
12 to present argument as to the adequacy of the information  
13 to establish the existence of any aggravating or mitigating  
14 factor, and as to the appropriateness in that case of im-  
15 posing a sentence of death. The attorney for the Govern-  
16 ment shall open the argument. The defendant shall be per-  
17 mitted to reply. The Government shall then be permitted  
18 to reply in rebuttal. The burden of establishing the exist-  
19 ence of an aggravating factor is on the Government, and  
20 is not satisfied unless the existence of such a factor is es-  
21 tablished beyond a reasonable doubt. The burden of estab-  
22 lishing the existence of any mitigating factor is on the de-  
23 fendant, and is not satisfied unless the existence of such  
24 a factor is established by a preponderance of the evidence.

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

17       “(e) RETURN OF A FINDING CONCERNING A SEN-  
18 TENCE OF DEATH.—If an aggravating factor required to  
19 be considered under section 3592(b) is found to exist, the  
20 jury, or if there is no jury, the court, shall then consider  
21 whether the aggravating factor or factors found to exist  
22 outweigh any mitigating factor or factors. The jury, or if  
23 there is no jury, the court, shall recommend a sentence  
24 of death if it unanimously finds at least one aggravating  
25 factor and no mitigating factor or if it finds one or more

1 aggravating factors which outweigh any mitigating fac-  
2 tors. In any other case, it shall not recommend a sentence  
3 of death. The jury shall be instructed that it must avoid  
4 any influence of sympathy, sentiment, passion, prejudice,  
5 or other arbitrary factors in its decision, and should make  
6 such a recommendation as the information warrants.

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

1 gious beliefs, national origin, or sex of the defendant or  
2 any victim may be.

3 **“§ 3594. Imposition of a sentence of death**

4 “Upon the recommendation under section 3593(e)  
5 that a sentence of death be imposed, the court shall sen-  
6 tence the defendant to death. Otherwise the court shall  
7 impose a sentence, other than death, authorized by law.  
8 Notwithstanding any other provision of law, if the maxi-  
9 mum term of imprisonment for the offense is life imprison-  
10 ment, the court may impose a sentence of life imprison-  
11 ment without the possibility of release or furlough.

12 **“§ 3595. Review of a sentence of death**

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

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

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

24 “(2) the information submitted during the sen-  
25 tencing hearing;

1           “(3) the procedures employed in the sentencing  
2 hearing; and

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

5           “(c) DECISION AND DISPOSITION.—

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

7               “(A) the sentence of death was not im-  
8 posed under the influence of passion, prejudice,  
9 or any other arbitrary factor; and

10               “(B) the evidence and information support  
11 the special findings of the existence of an ag-  
12 gravating factor or factors;

13 it shall affirm the sentence.

14           “(2) In any other case, the court of appeals  
15 shall remand the case for reconsideration under sec-  
16 tion 3593 or for imposition of another authorized  
17 sentence as appropriate.

18           “(3) The court of appeals shall state in writing  
19 the reasons for its disposition of an appeal of sen-  
20 tence of death under this section.

21 **“§ 3596. Implementation of sentence of death**

22           “(a) A person who has been sentenced to death pur-  
23 suant to the provisions of this chapter shall be committed  
24 to the custody of the Attorney General until exhaustion  
25 of the procedures for appeal of the judgment of conviction

1 and for review of the sentence. When the sentence is to  
2 be implemented, the Attorney General shall release the  
3 person sentenced to death to the custody of a United  
4 States Marshal, who shall supervise implementation of the  
5 sentence in the manner prescribed by the law of the State  
6 in which the sentence is imposed. If the law of such State  
7 does not provide for implementation of a sentence of  
8 death, the court shall designate another State, the law of  
9 which does so provide, and the sentence shall be imple-  
10 mented in the manner prescribed by such law.

11       “(b) A sentence of death shall not be carried out upon  
12 a person who lacks the mental capacity to understand the  
13 death penalty and why it was imposed on that person, or  
14 upon a woman while she is pregnant.

15       “(c) No employee of any State department of correc-  
16 tions or the Federal Bureau of Prisons and no employee  
17 providing services to that department or bureau under  
18 contract shall be required, as a condition of that employ-  
19 ment or contractual obligation, to be in attendance at or  
20 to participate in any execution carried out under this sec-  
21 tion if such participation is contrary to the moral or reli-  
22 gious convictions of the employee. For purposes of this  
23 subsection, the term ‘participate in any execution’ includes  
24 personal preparation of the condemned individual and the

1 apparatus used for the execution, and supervision of the  
2 activities of other personnel in carrying out such activities.

3 **“§ 3597. Use of State facilities**

4 “A United States Marshal charged with supervising  
5 the implementation of a sentence of death may use appro-  
6 priate State or local facilities for the purpose, may use  
7 the services of an appropriate State or local official or of  
8 a person such as an official employed for the purpose, and  
9 shall pay the costs thereof in an amount approved by the  
10 Attorney General.

11 **“§ 3598. Appointment of counsel**

12 “(a) FEDERAL CAPITAL CASES.—

13 “(1) REPRESENTATION OF INDIGENT DEFEND-  
14 ANTS.—Notwithstanding any other provision of law,  
15 this subsection shall govern the appointment of  
16 counsel for any defendant against whom a sentence  
17 of death is sought, or on whom a sentence of death  
18 has been imposed, for an offense against the United  
19 States, where the defendant is or becomes financially  
20 unable to obtain adequate representation. Such a de-  
21 fendant shall be entitled to appointment of counsel  
22 from the commencement of trial proceedings until  
23 one of the conditions specified in section 3599(b) of  
24 this title has occurred.

1           “(2) REPRESENTATION BEFORE FINALITY OF  
2 JUDGMENT.—A defendant within the scope of this  
3 subsection shall have counsel appointed for trial rep-  
4 resentation as provided in section 3005 of this title.  
5 At least one counsel so appointed shall continue to  
6 represent the defendant until the conclusion of direct  
7 review of the judgment, unless replaced by the court  
8 with other qualified counsel.

9           “(3) REPRESENTATION AFTER FINALITY OF  
10 JUDGMENT.—When a judgment imposing a sentence  
11 of death has become final through affirmance by the  
12 Supreme Court on direct review, denial of certiorari  
13 by the Supreme Court on direct review, or expiration  
14 of the time for seeking direct review in the court of  
15 appeals or the Supreme Court, the Government shall  
16 promptly notify the district court that imposed the  
17 sentence. Within ten days of receipt of such notice,  
18 the district court shall proceed to make a determina-  
19 tion whether the defendant is eligible under this sub-  
20 section for appointment of counsel for subsequent  
21 proceedings. On the basis of the determination, the  
22 court shall issue an order: (A) appointing one or  
23 more counsel to represent the defendant upon a  
24 finding that the defendant is financially unable to  
25 obtain adequate representation and wishes to have

1 counsel appointed or is unable competently to decide  
2 whether to accept or reject appointment of counsel;  
3 (B) finding, after a hearing if necessary, that the  
4 defendant rejected appointment of counsel and made  
5 the decision with an understanding of its legal con-  
6 sequences; or (C) denying the appointment of coun-  
7 sel upon a finding that the defendant is financially  
8 able to obtain adequate representation. Counsel ap-  
9 pointed pursuant to this paragraph shall be different  
10 from the counsel who represented the defendant at  
11 trial and on direct review unless the defendant and  
12 counsel request a continuation or renewal of the ear-  
13 lier representation.

14 “(4) STANDARDS FOR COMPETENCE OF COUN-  
15 SEL.—In relation to a defendant who is entitled to  
16 appointment of counsel under this subsection, at  
17 least one counsel appointed for trial representation  
18 must have been admitted to the bar for at least five  
19 years and have at least three years of experience in  
20 the trial of felony cases in the Federal district  
21 courts. If new counsel is appointed after judgment,  
22 at least one counsel so appointed must have been ad-  
23 mitted to the bar for at least five years and have at  
24 least three years of experience in the litigation of fel-  
25 ony cases in the Federal courts of appeals or the Su-

1 preme Court. The court, for good cause, may ap-  
2 point counsel who does not meet these standards,  
3 but whose background, knowledge, or experience  
4 would otherwise enable him or her to properly rep-  
5 resent the defendant, with due consideration of the  
6 seriousness of the penalty and the nature of the liti-  
7 gation.

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

12 “(6) CLAIMS OF INEFFECTIVENESS OF COUN-  
13 SEL.—The ineffectiveness or incompetence of coun-  
14 sel during proceedings on a motion under section  
15 2255 of title 28, United States Code, in a capital  
16 case shall not be a ground for relief from the judg-  
17 ment or sentence in any proceeding. This limitation  
18 shall not preclude the appointment of different coun-  
19 sel at any stage of the proceedings.

20 “(b) STATE CAPITAL CASES.—The laws of the United  
21 States shall not be construed to impose any requirement  
22 with respect to the appointment of counsel in any proceed-  
23 ing in a State court or other State proceeding in a capital  
24 case, other than any requirement imposed by the Constitu-  
25 tion of the United States. In a proceeding under section

1 2254 of title 28, United States Code, relating to a State  
2 capital case, or any subsequent proceeding on review, ap-  
3 pointment of counsel for a petitioner who is or becomes  
4 financially unable to afford counsel shall be in the discre-  
5 tion of the court, except as provided by a rule promulgated  
6 by the Supreme Court pursuant to statutory authority.  
7 Such appointment of counsel shall be governed by the pro-  
8 visions of section 3006A of this title.

9 **“§ 3599. Collateral Attack on Judgment Imposing Sen-**  
10 **tence of Death**

11 “(a) TIME FOR MAKING SECTION 2255 MOTION.—In  
12 any case in which a sentence of death has been imposed  
13 for an offense against the United States and the judgment  
14 has become final as described in section 3598(a)(3) of this  
15 title, a motion in the case under section 2255 of title 28,  
16 United States Code, must be filed within 90 days of the  
17 issuance of the order relating to appointment of counsel  
18 under section 3598(a)(3) of this title. The court in which  
19 the motion is filed, for good cause shown, may extend the  
20 time for filing for a period not exceeding sixty days. A  
21 motion described in this section shall have priority over  
22 all non-capital matters in the district court, and in the  
23 court of appeals on review of the district court’s decision.

24 “(b) STAY OF EXECUTION.—The execution of a sen-  
25 tence of death shall be stayed in the course of direct review

1 of the judgment and during the litigation of an initial mo-  
2 tion in the case under section 2255 of title 28, United  
3 States Code. The stay shall run continuously following im-  
4 position of the sentence, and shall expire if—

5           “(1) the defendant fails to file a motion under  
6 section 2255 of title 28, United States Code, within  
7 the time specified in subsection (a), or fails to make  
8 a timely application for court of appeals review fol-  
9 lowing the denial of such a motion by a district  
10 court; or

11           “(2) upon completion of district court and court  
12 of appeals review under section 2255 of title 28,  
13 United States Code, the motion under that section  
14 is denied and (A) the time for filing a petition for  
15 certiorari has expired and no petition has been filed;  
16 (B) a timely petition of certiorari was filed and the  
17 Supreme Court denied the petition; or (C) a timely  
18 petition for certiorari was filed and upon consider-  
19 ation of the case, the Supreme Court disposed of it  
20 in a manner that left the capital sentence undis-  
21 turbed; or

22           “(3) before a district court, in the presence of  
23 counsel and after having been advised of the con-  
24 sequences of his decision, the defendant waives the

1 right to file a motion under section 2255 of title 28,  
2 United States Code.

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

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

10 “(2) the failure to raise the claim is (A) the re-  
11 sult of governmental action in violation of the Con-  
12 stitution or laws of the United States: (B) the result  
13 of the Supreme Court recognition of a new Federal  
14 right that is retroactively applicable; or (C) based on  
15 a factual predicate that could not have been discov-  
16 ered through the exercise of reasonable diligence in  
17 time to present the claim in earlier proceedings; and

18 “(3) the facts underlying the claim would be  
19 sufficient, if proven, to undermine the court’s con-  
20 fidence in the determination of guilt on the offense  
21 or offenses for which the death penalty was im-  
22 posed.”; and

23 (2) in the chapter analysis of part II, by adding  
24 the following new item after the item relating to  
25 chapter 227:

“228. Death penalty ..... 3591”.



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