

103^D CONGRESS
1ST SESSION

S. 488

To provide Federal penalties for drive-by shootings.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 1993

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide Federal penalties for drive-by shootings.

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. DRIVE-BY SHOOTING IN CONNECTION WITH**
4 **MAJOR DRUG OFFENSE.**

5 (a) OFFENSE.—

6 (1) IN GENERAL.—Chapter 2 of title 18, Unit-
7 ed States Code, is amended by adding at the end the
8 following new section:

9 **“§ 36. Drive-by shooting**

10 “(a) DEFINITION.—In this section, ‘major drug
11 offense’ means—

1 “(1) a continuing criminal enterprise punish-
2 able under section 403(c) of the Controlled Sub-
3 stances Act (21 U.S.C. 848(c));

4 “(2) a conspiracy to distribute controlled sub-
5 stances punishable under section 406 of the Con-
6 trolled Substances Act (21 U.S.C. 846) or section
7 1013 of the Controlled Substances Import and Ex-
8 port Control Act (21 U.S.C. 963); and

9 “(3) an offense involving large quantities of
10 drugs and punishable under section 401(b)(1)(A) of
11 the Controlled Substances Act (21 U.S.C.
12 841(b)(1)(A)) or section 1010(b)(1) of the Con-
13 trolled Substances Import and Export Act (21
14 U.S.C. 960(b)(1)).

15 “(b) OFFENSES AND PENALTIES.—

16 “(1) A person who, in furtherance of or to
17 avoid detection of a major drug offense, with the in-
18 tent to intimidate, harass, injure, or maim another
19 person, fires a weapon into a group of 2 or more
20 persons shall be imprisoned not more than 25 years,
21 fined under this title, or both.

22 “(2) A person who, in furtherance of or to
23 avoid detection of a major drug offense, with the in-
24 tent to intimidate, harass, injure, or maim another
25 person, fires a weapon into a group of 2 or more

1 persons and thereby causes the death of any person
2 shall—

3 “(A) if the killing is a first degree murder
4 (as defined in section 1111(a)), be punished by
5 death or imprisonment for any term of years or
6 for life, fined under this title, or both: or

7 “(B) if the killing is a murder other than
8 a first degree murder (as defined in section
9 1111(a)), be fined under this title, imprisoned
10 for any term of years or for life, or both.”.

11 (2) TECHNICAL AMENDMENT.—The chapter
12 analysis for chapter 2 of title 18, United States
13 Code, is amended by adding at the end the following
14 new item:

“36. Drive-by shooting.”.

15 (b) DEATH PENALTY PROCEDURES.—

16 (1) ADDITION OF CHAPTER TO TITLE 18, UNIT-
17 ED STATES CODE.—Title 18, United States Code, is
18 amended by inserting after chapter 227 the follow-
19 ing new chapter:

20 **“CHAPTER 228—DEATH PENALTY**
21 **PROCEDURES**

“Sec.

“3591. Sentence of death.

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

“3593. Special hearing to determine whether a sentence of death is justified.

“3594. Imposition of a sentence of death.

“3595. Review of a sentence of death.

“3596. Implementation of a sentence of death.

“3597. Use of State facilities.

“3598. Appointment of counsel.

“3599. Collateral attack on judgment imposing sentence of death.

1 **“§ 3591. Sentence of death**

2 “A defendant who has been found guilty of an offense
3 under section 36, if the defendant, as determined beyond
4 a reasonable doubt at a hearing under section 3593,
5 caused the death of a person intentionally, knowingly, or
6 through recklessness manifesting extreme indifference to
7 human life, or caused the death of a person through the
8 intentional infliction of serious bodily injury, shall be sen-
9 tenced to death if, after consideration of the factors set
10 forth in section 3592 in the course of a hearing held pur-
11 suant to section 3593, it is determined that imposition of
12 a sentence of death is justified, except that no person may
13 be sentenced to death who was less than 18 years of age
14 at the time of the offense.

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

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

22 “(1) MENTAL CAPACITY.—The defendant’s
23 mental capacity to appreciate the wrongfulness of

1 the defendant's conduct or to conform the defend-
2 ant's conduct to the requirements of law was signifi-
3 cantly impaired, regardless of whether the capacity
4 was so impaired as to constitute a defense to the
5 charge.

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

10 “(3) PARTICIPATION IN OFFENSE MINOR.—The
11 defendant is punishable as a principal in the offense,
12 which was committed by another, but the defend-
13 ant's participation was relatively minor, regardless
14 of whether the participation was so minor as to con-
15 stitute a defense to the charge.

16 The jury, or if there is no jury, the court, shall consider
17 whether any other aspect of the defendant's character or
18 record or any other circumstances of the offense that the
19 defendant may proffer as a mitigating factor exists.

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

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

6 “(2) RISK OF SUBSTANTIAL DANGER TO NA-
7 TIONAL SECURITY.—In the commission of the of-
8 fense the defendant knowingly created a grave risk
9 to the national security.

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

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

15 “(c) AGGRAVATING FACTORS FOR HOMICIDE AND
16 FOR ATTEMPTED MURDER OF THE PRESIDENT.—In de-
17 termining whether a sentence of death is justified for an
18 offense described in section 3591 (2) or (6), the jury, or
19 if there is no jury, the court, shall consider each of the
20 following aggravating factors and determine which, if any,
21 exist:

22 “(1) DEATH OCCURRED DURING COMMISSION
23 OF ANOTHER CRIME.—The death occurred during
24 the commission or attempted commission of, or dur-
25 ing the immediate flight from the commission of, an

1 offense under section 751 (prisoners in custody of
2 institution or officer), section 794 (gathering or de-
3 livering defense information to aid foreign govern-
4 ment), section 844(d) (transportation of explosives
5 in interstate commerce for certain purposes), section
6 844(f) (destruction of Government property by ex-
7 plosives), section 1118 (prisoners serving life term),
8 section 1201 (kidnapping), or section 2381 (treason)
9 of this title, section 1826 of title 28 (persons in cus-
10 tody as recalcitrant witnesses or hospitalized follow-
11 ing a finding of not guilty only by reason of insan-
12 ity), or section 902 (i) or (n) of the Federal Aviation
13 Act of 1958 (49 U.S.C. 1472 (i) and (n) (aircraft
14 piracy)).

15 “(2) INVOLVEMENT OF FIREARM OR PREVIOUS
16 CONVICTION OF VIOLENT FELONY INVOLVING FIRE-
17 ARM.—The defendant—

18 “(A) during and in relation to the commis-
19 sion of the offense or in escaping apprehension
20 used or possessed a firearm (as defined in sec-
21 tion 921); or

22 “(B) has previously been convicted of a
23 Federal or State offense punishable by a term
24 of imprisonment of more than 1 year, involving
25 the use or attempted or threatened use of a

1 firearm (as defined in section 921) against an-
2 other person.

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

10 “(4) PREVIOUS CONVICTION OF OTHER SERI-
11 OUS OFFENSES.—The defendant has previously been
12 convicted of 2 or more Federal or State offenses,
13 each punishable by a term of imprisonment of more
14 than 1 year, committed on different occasions, in-
15 volving the importation, manufacture, or distribution
16 of a controlled substance (as defined in section 102
17 of the Controlled Substances Act (21 U.S.C. 802))
18 or the infliction of, or attempted infliction of, serious
19 bodily injury or death upon another person.

20 “(5) GRAVE RISK OF DEATH TO ADDITIONAL
21 PERSONS.—The defendant, in the commission of the
22 offense or in escaping apprehension, knowingly cre-
23 ated a grave risk of death to 1 or more persons in
24 addition to the victim of the offense.

1 “(6) HEINOUS, CRUEL, OR DEPRAVED MANNER
2 OF COMMISSION.—The defendant committed the of-
3 fense in an especially heinous, cruel, or depraved
4 manner in that it involved torture or serious physical
5 abuse to the victim.

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

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

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

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

20 “(11) TYPE OF VICTIM.—(A) The defendant
21 committed the offense against—

22 “(i) the President of the United States, the
23 President-elect, the Vice President, the Vice
24 President-elect, the Vice President-designate,
25 or, if there is no Vice President, the officer next

1 in order of succession to the office of the Presi-
2 dent of the United States, or any person who
3 is acting as President under the Constitution
4 and laws of the United States;

5 “(ii) a chief of state, head of government,
6 or the political equivalent, of a foreign nation;

7 “(iii) a foreign official described in section
8 1116(b)(3)(A), if the official is in the United
9 States on official business; or

10 “(iv) a public servant who is a Federal
11 judge, a Federal law enforcement officer, an
12 employee (including a volunteer or contract em-
13 ployee) of a Federal prison, or an official of the
14 Federal Bureau of Prisons—

15 “(I) while the public servant is en-
16 gaged in the performance of the public
17 servant’s official duties;

18 “(II) because of the performance of
19 the public servant’s official duties; or

20 “(III) because of the public servant’s
21 status as a public servant.

22 “(B) For purposes of this paragraph—

23 “(i) the terms ‘President-elect’ and ‘Vice
24 President-elect’ mean persons that are the ap-
25 parent successful candidates for the offices of

1 President and Vice President, respectively, as
2 ascertained from the results of the general elec-
3 tions held to determine the electors of President
4 and Vice President in accordance with sections
5 1 and 2 of title 3, United States Code;

6 “(ii) the term ‘Federal law enforcement of-
7 ficer’ means a public servant authorized by law
8 or by a government agency or Congress to con-
9 duct or engage in the prevention, investigation,
10 or prosecution of an offense;

11 “(iii) the term ‘Federal prison’ means a
12 Federal correctional, detention, or penal facility,
13 Federal community treatment center, or Fed-
14 eral halfway house, or any such prison operated
15 under contract with the Federal Government;
16 and

17 “(iv) the term ‘Federal judge’ means a ju-
18 dicial officer of the United States (including a
19 justice of the Supreme Court and a magistrate).

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

22 **“§ 3593. Special hearing to determine whether a sen-
23 tence of death is justified**

24 “(a) NOTICE BY THE GOVERNMENT.—When the Gov-
25 ernment intends to seek the death penalty for an offense

1 described in section 3591, the attorney for the Govern-
2 ment, a reasonable time before the trial, or before accept-
3 ance by the court of a plea of guilty, or at such time there-
4 after as the court may permit upon a showing of good
5 cause, shall sign and file with the court, and serve on the
6 defendant, a notice—

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

9 “(2) setting forth the aggravating factor or fac-
10 tors enumerated in section 3592 and any other ag-
11 gravating factor not specifically enumerated in sec-
12 tion 3592, that the Government, if the defendant is
13 convicted, will seek to prove as the basis for the
14 death penalty.

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

17 “(b) HEARING BEFORE A COURT OR JURY.—When
18 the attorney for the Government has filed a notice as re-
19 quired under subsection (a) of this section and the defend-
20 ant is found guilty of an offense described in section 3591,
21 the judge who presided at the trial or before whom the
22 guilty plea was entered, or another judge if that judge is
23 unavailable, shall conduct a separate sentencing hearing
24 to determine the punishment to be imposed. Before such
25 a hearing, no presentence report shall be prepared by the

1 United States Probation Service, notwithstanding the
2 Federal Rules of Criminal Procedure. The hearing shall
3 be conducted—

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

6 “(2) before a jury impaneled for the purpose of
7 the hearing if—

8 “(A) the defendant was convicted upon a
9 plea of guilty;

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

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

14 “(D) after initial imposition of a sentence
15 under this section, reconsideration of the sen-
16 tence under the section is necessary; or

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

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

1 “(c) PROOF OF MITIGATING AND AGGRAVATING FAC-
2 TORS.—At the hearing, information may be presented con-
3 cerning—

4 “(1) any matter relating to any mitigating fac-
5 tor listed in section 3592 and any other mitigating
6 factor; and

7 “(2) any matter relating to any aggravating
8 factor listed in section 3592 for which notice has
9 been provided under subsection (a)(2) and (if infor-
10 mation is presented relating to such a listed factor)
11 any other aggravating factor for which notice has
12 been so provided.

13 Information presented may include the trial transcript and
14 exhibits. Any other information relevant to such mitigat-
15 ing or aggravating factors may be presented by either the
16 Government or the defendant, regardless of its admissibil-
17 ity under the rules governing admission of evidence at
18 criminal trials, except that information may be excluded
19 if its probative value is outweighed by the danger of creat-
20 ing unfair prejudice, confusing the issues, or misleading
21 the jury. The Government and the defendant shall be per-
22 mitted to rebut any information received at the hearing
23 and shall be given fair opportunity to present argument
24 as to the adequacy of the information to establish the ex-
25 istence of any aggravating or mitigating factor and as to

1 the appropriateness in that case of imposing a sentence
2 of death. The Government shall open the argument. The
3 defendant shall be permitted to reply. The Government
4 shall then be permitted to reply in rebuttal. The burden
5 of establishing the existence of an aggravating factor is
6 on the Government, and it is not satisfied unless the exist-
7 ence of such a factor is established beyond a reasonable
8 doubt. The burden of establishing the existence of any
9 mitigating factor is on the defendant, and it is not satis-
10 fied unless the existence of such a factor is established
11 by a preponderance of the evidence.

12 “(d) RETURN OF SPECIAL FINDINGS.—The jury, or
13 if there is no jury, the court, shall consider all the informa-
14 tion received during the hearing. It shall return special
15 findings identifying any aggravating factor or factors set
16 forth in section 3592 found to exist and any other aggra-
17 vating factor for which notice has been provided under
18 subsection (a) found to exist. A finding with respect to
19 a mitigating factor may be made by 1 or more members
20 of the jury, and any member of the jury who finds the
21 existence of a mitigating factor may consider such factor
22 established for purposes of this section regardless of the
23 number of jurors who concur that the factor has been es-
24 tablished. A finding with respect to any aggravating factor
25 must be unanimous. If no aggravating factor set forth in

1 section 3592 is found to exist, the court shall impose a
2 sentence other than death authorized by law.

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

5 “(1) an offense described in section 3591(1), an
6 aggravating factor required to be considered under
7 section 3592(b) is found to exist; or

8 “(2) an offense described in section 3591 (2) or
9 (6), an aggravating factor required to be considered
10 under section 3592(c) is found to exist,

11 the jury, or if there is no jury, the court, shall then con-
12 sider whether the aggravating factor or factors found to
13 exist outweigh any mitigating factor or factors. The jury,
14 or if there is no jury, the court, shall recommend a sen-
15 tence of death if it unanimously finds at least 1 aggravat-
16 ing factor and no mitigating factor or if it finds 1 or more
17 aggravating factors which outweigh any mitigating fac-
18 tors. In any other case, it shall not recommend a sentence
19 of death. The jury shall be instructed that it must avoid
20 any influence of sympathy, sentiment, passion, prejudice,
21 or other arbitrary factors in its decision and should make
22 such a recommendation as the information warrants.

23 “(f) SPECIAL PRECAUTION TO ENSURE AGAINST
24 DISCRIMINATION.—In a hearing held before a jury, the
25 court, before the return of a finding under subsection (e),

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

19 **“§ 3594. Imposition of a sentence of death**

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

1 court may impose a sentence of life imprisonment without
2 the possibility of release or furlough.

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 of the sentence must be filed within the time speci-
8 fied for the filing of a notice of appeal of the judgment
9 of conviction. An appeal of the sentence under this section
10 may be consolidated with an appeal of the judgment of
11 conviction and shall have priority over all other cases.

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

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

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

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

19 “(4) the special findings returned under section
20 3593(d).

21 “(c) DECISION AND DISPOSITION.—

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

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

1 “(B) the evidence and information support
2 the special findings of the existence of an ag-
3 gravating factor or factors,
4 it shall affirm the sentence.

5 “(2) In any other case, the court of appeals
6 shall remand the case for reconsideration under sec-
7 tion 3593 or for imposition of another authorized
8 sentence as appropriate.

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

12 **“§ 3596. Implementation of a sentence of death**

13 “(a) IN GENERAL.—A person who has been sen-
14 tenced to death pursuant to this chapter shall be commit-
15 ted to the custody of the Attorney General until exhaus-
16 tion of the procedures for appeal of the judgment of con-
17 viction and for review of the sentence. When the sentence
18 is to be implemented, the Attorney General shall release
19 the person sentenced to death to the custody of a United
20 States marshal, who shall supervise implementation of the
21 sentence in the manner prescribed by the law of the State
22 in which the sentence is imposed. If the law of that State
23 does not provide for implementation of a sentence of
24 death, the court shall designate another State, the law of

1 which does so provide, and the sentence shall be imple-
2 mented in the manner prescribed by that law.

3 “(b) IMPAIRED MENTAL CAPACITY, AGE, OR PREG-
4 NANCY.—A sentence of death shall not be carried out upon
5 a person who is under 18 years of age at the time the
6 crime was committed. A sentence of death shall not be
7 carried out upon a person who is mentally retarded. A sen-
8 tence of death shall not be carried out upon a person who,
9 as a result of mental disability—

10 “(1) cannot understand the nature of the pend-
11 ing proceedings, what the person was tried for, the
12 reason for the punishment, or the nature of the
13 punishment; or

14 “(2) lacks the capacity to recognize or under-
15 stand facts that would make the punishment unjust
16 or unlawful or lacks the ability to convey such infor-
17 mation to counsel or to the court.

18 A sentence of death shall not be carried out upon a woman
19 while she is pregnant.

20 “(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—
21 No employee of any State department of corrections or
22 the Federal Bureau of Prisons and no employee providing
23 services to that department or bureau under contract shall
24 be required, as a condition of that employment or contrac-
25 tual obligation, to be in attendance at or to participate

1 in any execution carried out under this section, if such
2 participation is contrary to the moral or religious convic-
3 tions of the employee. For purposes of this subsection, the
4 term ‘participate in any execution’ includes personal prep-
5 aration of the condemned individual and the apparatus
6 used for the execution, and supervision of the activities
7 of other personnel in carrying out such activities.

8 **“§ 3597. Use of State facilities**

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

16 **“§ 3598. Appointment of counsel**

17 “(a) FEDERAL CAPITAL CASES.—

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

1 shall be entitled to appointment of counsel from the
2 commencement of trial proceedings until 1 of the
3 conditions specified in section 3599(b) has occurred.

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

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

1 “(A) appointing 1 or more counsel to rep-
2 resent the defendant upon a finding that the
3 defendant is financially unable to obtain ade-
4 quate representation and wishes to have counsel
5 appointed or is unable competently to decide
6 whether to accept or reject appointment of
7 counsel;

8 “(B) finding, after a hearing if necessary,
9 that the defendant rejected appointment of
10 counsel and made the decision with an under-
11 standing of its legal consequences; or

12 “(C) denying the appointment of counsel
13 upon a finding that the defendant is financially
14 able to obtain adequate representation. Counsel
15 appointed pursuant to this paragraph shall be
16 different from the counsel who represented the
17 defendant at trial and on direct review unless
18 the defendant and counsel request a continu-
19 ation or renewal of the earlier representation.

20 “(4) STANDARDS FOR COMPETENCE OF COUN-
21 SEL.—In relation to a defendant who is entitled to
22 appointment of counsel under this subsection, at
23 least 1 counsel appointed for trial representation
24 must have been admitted to the bar for at least 5
25 years and have at least 3 years of experience in the

1 trial of felony cases in Federal district court. If new
2 counsel is appointed after judgment, at least one
3 counsel so appointed must have been admitted to the
4 bar for at least 5 years and have at least 3 years
5 of experience in the litigation of felony cases in the
6 Federal courts of appeals or the Supreme Court.
7 The court, for good cause, may appoint counsel who
8 does not meet these standards, but whose back-
9 ground, knowledge, or experience would otherwise
10 enable counsel to properly represent the defendant,
11 with due consideration of the seriousness of the pen-
12 alty and the nature of the litigation.

13 “(5) APPLICABILITY OF CRIMINAL JUSTICE
14 ACT.—Except as otherwise provided in this sub-
15 section, section 3006A shall apply to appointments
16 under this subsection.

17 “(6) CLAIMS OF INEFFECTIVENESS OF COUN-
18 SEL.—The ineffectiveness or incompetence of coun-
19 sel during proceedings on a motion under section
20 2255 of title 28 in a capital case shall not be a
21 ground for relief from the judgment or sentence in
22 any proceeding. The limitation in the preceding sen-
23 tence shall not preclude the appointment of different
24 counsel at any stage of the proceedings.

1 trict court and in the court of appeals on review of the
2 district court's decision.

3 “(b) STAY OF EXECUTION.—The execution of a sen-
4 tence of death shall be stayed in the course of direct review
5 of the judgment and during the litigation of an initial mo-
6 tion in the case under section 2255 of title 28. The stay
7 shall run continuously following imposition of the sentence
8 and shall expire if—

9 “(1) the defendant fails to file a motion under
10 section 2255 of title 28, within the time specified in
11 subsection (a) or fails to make a timely application
12 for court of appeals review following the denial of
13 such a motion by a district court;

14 “(2) upon completion of district court and court
15 of appeals review under section 2255 of title 28, the
16 motion under that section is denied—

17 “(A) the time for filing a petition for cer-
18 tiorari has expired and no petition has been
19 filed;

20 “(B) a timely petition for certiorari was
21 filed and the Supreme Court denied the
22 petition; or

23 “(C) a timely petition for certiorari was
24 filed and upon consideration of the case, the

1 Supreme Court disposed of it in a manner that
2 left the capital sentence undisturbed; or

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

7 “(c) FINALITY OF THE DECISION ON REVIEW.—If 1
8 of the conditions specified in subsection (b) has occurred,
9 no court shall have the authority to enter a stay of execu-
10 tion or grant relief in the case unless—

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

13 “(2) the failure to raise the claim is—

14 “(A) the result of governmental action in
15 violation of the Constitution or laws of the
16 United States;

17 “(B) the result of the Supreme Court rec-
18 ognition of a new Federal right that is retro-
19 actively applicable; or

20 “(C) based on a factual predicate that
21 could not have been discovered through the ex-
22 ercise of reasonable diligence in time to present
23 the claim in earlier proceedings; and

24 “(3) the facts underlying the claim would be
25 sufficient, if proven, to undermine the court’s con-

1 fidence in the determination of guilt on the offense
2 or offenses for which the death penalty was
3 imposed.”.

4 (b) TECHNICAL AMENDMENT.—The part analysis for
5 part II of title 18, United States Code, is amended by
6 inserting after the item relating to chapter 227 the follow-
7 ing new item:

“228. Death penalty procedures 3591”.



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