

103^D CONGRESS
1ST SESSION

H. R. 267

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to establish procedures for the adjudication by courts-martial of sentences of capital punishment.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. McCOLLUM introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to establish procedures for the adjudication by courts-martial of sentences of capital punishment.

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. PROCEDURES FOR ADJUDICATION OF CAPITAL**
4 **PUNISHMENT BY COURTS-MARTIAL.**

5 (a) NEW UCMJ ARTICLE.—(1)(A) Chapter 47 of
6 title 10, United States Code (the Uniform Code of Military
7 Justice), is amended by inserting after section 852 (article
8 52) the following new section (article):

1 **“§852a. Art. 52a. Procedures for adjudging capital**
2 **punishment**

3 “(a) No person may be sentenced by a court-martial
4 to suffer death except as provided in this section (article).

5 “(b) No person may be sentenced by a court-martial
6 to suffer death unless convicted by the concurrence of all
7 the members of the court-martial present at the time the
8 vote is taken of an offense in this chapter expressly made
9 punishable by death.

10 “(c) If the trial counsel at a court-martial of an of-
11 fense under this chapter expressly made punishable by
12 death intends to prove at the trial any aggravating factor
13 set out in subsection (e), the trial counsel shall provide
14 the accused before arraignment with written notice of each
15 such aggravating factor the trial counsel intends to prove.
16 However, failure to provide such notice of an aggravating
17 factor set out in subsection (e) before arraignment shall
18 not bar later notice and proof of that aggravating factor
19 unless the accused demonstrates—

20 “(1) that the failure resulted in specific preju-
21 dice to the accused; and

22 “(2) that a continuance or recess is not an ade-
23 quate remedy for such failure.

24 “(d)(1) A person may not be sentenced to death by
25 a court-martial unless—

1 “(A) the members of the court-martial unani-
2 mously find at least one of the aggravating factors
3 set out in subsection (e);

4 “(B) notice of that aggravating factor was pro-
5 vided in accordance with subsection (c); and

6 “(C) each member of the court-martial concurs
7 in finding that any extenuating or mitigating cir-
8 cumstances are substantially outweighed by aggra-
9 vating circumstances, including the aggravating fac-
10 tors set out in subsection (e).

11 “(2) Findings by the members of a court-martial
12 under paragraph (1) may be based on—

13 “(A) evidence introduced on the issue of guilt
14 or innocence;

15 “(B) evidence introduced during the sentencing
16 proceeding; or

17 “(C) all such evidence.

18 “(3) The accused shall be given broad latitude to
19 present matters in extenuation and mitigation.

20 “(e)(1) A sentence of death may be adjudged by a
21 court-martial only if the members of the court-martial
22 unanimously find, beyond a reasonable doubt, one or more
23 of the following aggravating factors:

24 “(A) That the offense was committed before or
25 in the presence of the enemy (except that this sub-

1 paragraph does not apply in the case of an offense
2 under section 918 or 920 of this title (article 118 or
3 120)).

4 “(B) That, in committing the offense, the ac-
5 cused intended—

6 “(i) to cause a grave risk of substantial
7 damage to the national security; or

8 “(ii) to cause a grave risk of substantial
9 damage to a mission, system, or function of the
10 United States, but only if substantial damage
11 to the national security of the United States
12 would have resulted had the intended damage
13 been effected.

14 “(C) That the offense caused substantial dam-
15 age to the national security of the United States,
16 whether or not the accused intended such damage
17 (except that this subparagraph does not apply in the
18 case of an offense under section 918 or 920 of this
19 title (article 118 or 120)).

20 “(D) That the accused knowingly created a
21 grave risk of death to one or more persons in addi-
22 tion to the victim of the offense (except that this
23 factor does not apply in the case of an offense under
24 section 920 of this title (article 120)).

1 “(E) That the accused committed the offense
2 with the intent to avoid hazardous duty.

3 “(F) That, only in the case of an offense under
4 section 918 or 920 of this title (article 118 or 120),
5 the offense was committed in time of war and in ter-
6 ritory in which—

7 “(i) the United States or an ally of the
8 United States was then an occupying power; or

9 “(ii) the armed forces of the United States
10 were then engaged in active hostilities.

11 “(G) That, only in the case of an offense under
12 section 918(l) of this title (article 118(l)), any of the
13 following is applicable:

14 “(i) The accused was serving a sentence of
15 confinement for 30 years or more or for life at
16 the time of the offense.

17 “(ii) The offense was committed while the
18 accused—

19 “(I) was engaged in the commission
20 or attempted commission of robbery, rape,
21 aggravated arson, sodomy, burglary, kid-
22 napping, mutiny, sedition, or piracy of an
23 aircraft or vessel; or

1 “(II) was engaged in flight or at-
2 tempted flight after the commission or at-
3 tempted commission of any such offense.

4 “(iii) The offense was committed for the
5 purpose of receiving money or a thing of value.

6 “(iv) The accused procured another by
7 means of compulsion, coercion, or a promise of
8 an advantage, a service, or a thing of value to
9 commit the offense.

10 “(v) The offense was committed with the
11 intent to avoid or to prevent lawful apprehen-
12 sion or effect an escape from custody or con-
13 finement.

14 “(vi) The victim of the offense was—

15 “(I) the President, the President-
16 elect, the Vice President (or, if there was
17 no Vice President, the officer next in the
18 order of succession to the office of Presi-
19 dent), the Vice President-elect, or an indi-
20 vidual who is acting as President under the
21 Constitution and laws of the United
22 States;

23 “(II) a Member of Congress (includ-
24 ing a Delegate to, or Resident Commis-

1 sioner in, the Congress) or Member-of-
2 Congress elect;

3 “(III) a justice or judge of the United
4 States;

5 “(IV) a chief of state or head of gov-
6 ernment (or the political equivalent) of a
7 foreign nation; or

8 “(V) a foreign official (as such term is
9 defined in section 1116(b)(3)(A) of title
10 18), if the official was in the United States
11 or on military property of the United
12 States on official business at the time of
13 the offense.

14 “(vi) The accused at the time of the of-
15 fense knew that the victim was any of the fol-
16 lowing in the execution of such person’s office:

17 “(I) A commissioned, warrant, non-
18 commissioned, or petty officer of the
19 armed forces.

20 “(II) A member of a law enforcement
21 or security activity or agency, including
22 correctional custody personnel.

23 “(III) A firefighter.

24 “(viii) The offense was committed with in-
25 tent to obstruct justice.

1 “(ix) The offense was preceded by the in-
2 tentional infliction of substantial physical harm
3 or prolonged, substantial mental or physical
4 pain and suffering to the victim.

5 “(x) The accused has been found guilty in
6 the same case of another offense under section
7 918 of this title (article 118).

8 “(H) That, only in the case of an offense under
9 section 918(4) of this title (article 118(4)), the ac-
10 cused was the actual perpetrator of the killing.

11 “(I) That, only in the case of an offense under
12 section 920 of this title (article 120)—

13 “(i) the victim was under the age of 12; or

14 “(ii) the accused maimed or attempted to
15 kill the victim.

16 “(J) That, only in the case of an offense under
17 the law of war, a sentence of death is authorized
18 under the law of war for the offense.

19 “(K) That, only in the case of an offense under
20 section 904 or 906a the accused has previously been
21 convicted of this title (article 104 or 106a), of an-
22 other offense involving espionage or treason for
23 which either a sentence of death or a sentence of life
24 imprisonment was authorized by statute.

1 “(L) That the offense involved such other fac-
2 tors as may be prescribed by the President by regu-
3 lation, to the extent that such factors concern the
4 national security or otherwise involve a function of
5 the armed forces related to the conduct of hostilities.

6 “(2) In this subsection, ‘national security’ means the
7 national defense and foreign relations of the United States
8 and specifically includes—

9 “(A) a military or defense advantage over any
10 foreign nation or group of nations;

11 “(B) a favorable foreign relations position; or

12 “(C) a defense posture capable of successfully
13 resisting hostile or destructive action from within or
14 without.

15 “(f) The military judge, in the presence of the ac-
16 cused and counsel, shall instruct the members of the
17 court-martial on—

18 “(1) such aggravating factors set forth in sub-
19 section (e) as may be in issue in the case;

20 “(2) the requirements and procedures under
21 this section; and

22 “(3) the requirement to consider all evidence in
23 extenuation and mitigation before they may adjudge
24 a sentence of death.

1 “(g)(1) In closed session, before voting on a sen-
2 tence—

3 “(A) the members of the court-martial shall
4 vote by secret written ballot separately on each ag-
5 gravating factor set out in subsection (e) on which
6 they have been instructed; and

7 “(B) if one or more of the aggravating factors
8 set forth in subsection (e) is found to exist, the
9 members shall then vote by secret written ballot on
10 whether the aggravating circumstances (including
11 any aggravating factors set out in subsection (e))
12 substantially outweigh any extenuating or mitigating
13 circumstances or, in the absence of any extenuating
14 or mitigating circumstances, whether the aggravat-
15 ing circumstances are themselves sufficient to justify
16 a sentence of death.

17 “(2) A sentence of death may not be adjudged unless
18 each member of the court-martial concurs—

19 “(A) that, with respect to at least one aggravat-
20 ing factor, the existence of such factor has been
21 proved beyond a reasonable doubt; and

22 “(B) that the aggravating circumstances (in-
23 cluding any aggravating factors set out in subsection
24 (e)) substantially outweigh any extenuating or miti-
25 gating circumstances or, in the absence of any ex-

1 tenuating or mitigating circumstances, that the ag-
2 gravating circumstances are themselves sufficient to
3 justify a sentence of death.

4 “(3) The members of the court-martial shall vote on
5 a sentence under section 852 of this title (article 52).

6 “(h) If a sentence of death is adjudged, the president
7 of the court-martial shall announce which aggravating fac-
8 tors under subsection (e) were unanimously found by the
9 members.

10 “(i) Subsections (c) through (h) do not apply with
11 respect to the sentence for an offense under section 106
12 of this title (article 106).”.

13 (B) The table of sections at the beginning of sub-
14 chapter VII of such chapter is amended by inserting after
15 the item relating to section 852 (article 52) the following
16 new item:

“852a. Art. 52a. Procedures for adjudging capital punishment.”.

17 (2) Section 852(b)(1) of such title (article 52(b)(1))
18 is amended by inserting “as provided in section 852a of
19 this title (article 52a)” after “taken”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 subsection (a) shall take effect on the 90th day after the
22 date of the enactment of this Act and shall apply to
23 charges first preferred on or after that date.

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