

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3037

To provide the penalty of death for certain killings of Federal law enforcement officers.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1993

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

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## A BILL

To provide the penalty of death for certain killings of Federal law enforcement officers.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Law Enforcement Offi-  
5 cers Death Penalty Act of 1993”.

6 **SEC. 2. ESTABLISHMENT OF DEATH PENALTY FOR KILLING**

7 **FEDERAL LAW ENFORCEMENT OFFICERS.**

8 Section 1114 of title 18, United States Code, is  
9 amended—

1 (1) by inserting after “except that any such  
 2 person” the following: “who is found guilty of first  
 3 degree murder shall also be subject to the penalty of  
 4 death in accordance with chapter 228 of this title  
 5 and any such person”; and

6 (2) by adding at the end “Whoever kills a State  
 7 or local law enforcement officer, while such officer is  
 8 in the course of duty assisting a Federal law en-  
 9 forcement officer whose killing is a violation of this  
 10 section, shall be subject to the same punishment as  
 11 is provided under this section for the killing of such  
 12 Federal law enforcement officer in the same cir-  
 13 cumstances.”.

14 **SEC. 3. DEATH PENALTY PROCEDURES.**

15 (a) IN GENERAL.—Title 18 of the United States  
 16 Code is amended by inserting after chapter 227 the follow-  
 17 ing:

18 **“CHAPTER 228—DEATH PENALTY 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.

19 **“§ 3591. Sentence of death**

20 “A defendant who commits an offense under section  
 21 1114 of this title for which the death penalty may be im-

1 posed shall be sentenced to death if, after consideration  
2 of the factors set forth in section 3592 of this title in the  
3 course of a hearing held pursuant to section 3593 of this  
4 title, it is determined that imposition of a sentence of  
5 death is justified. However, no person may be sentenced  
6 to death who was less than 18 years of age at the time  
7 of the offense.

8 **“§ 3592. Factors to be considered in determining**  
9 **whether a sentence of death is justified**

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

15 “(1) MENTAL CAPACITY.—The defendant’s  
16 mental capacity was significantly impaired, although  
17 the impairment was not such as to constitute a de-  
18 fense to prosecution.

19 “(2) DURESS.—The defendant was under un-  
20 usual and substantial duress, although not such du-  
21 ress as would constitute a defense to prosecution.

22 “(3) PARTICIPATION IN OFFENSE MINOR.—The  
23 defendant was an accomplice whose participation in  
24 the offense was relatively minor.

1 The jury, or if there is no jury, the court, shall consider  
2 whether any other mitigating factor exists.

3 “(b) AGGRAVATING FACTORS.—In determining  
4 whether a sentence of death is justified the jury, or if there  
5 is no jury, the court, shall consider each of the following  
6 aggravating factors and determine which, if any, exist:

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

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

22 “(3) GRAVE RISK OF DEATH TO ADDITIONAL  
23 PERSONS.—The defendant, in the commission of the  
24 offense, knowingly created a grave risk of death to

1 one or more persons in addition to the victim of the  
2 offense.

3 “(4) HEINOUS, CRUEL, OR DEPRAVED MANNER  
4 OF COMMISSION.—The defendant committed the of-  
5 fense in an especially heinous, cruel, or depraved  
6 manner.

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

11 “(6) COMMISSION OF THE OFFENSE FOR PAY-  
12 MENT.—The defendant committed the offense as  
13 consideration for the receipt, or in the expectation of  
14 the receipt, of anything of pecuniary value.

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

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

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

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

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

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

17 “(2) setting forth the aggravating factor or fac-  
18 tors, including a factor or factors not specifically  
19 enumerated in section 3592, that the Government, if  
20 the defendant is convicted, proposes to prove as jus-  
21 tifying a sentence of death.

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

24 “(b) HEARING BEFORE A COURT OR JURY.—If the  
25 attorney for the Government has filed a notice as required  
26 under subsection (a) of this section and the defendant is

1 found guilty of an offense described in section 3591 of  
2 this title, the judge who presided at the trial or before  
3 whom the guilty plea was entered, or another judge if that  
4 judge is unavailable, shall conduct a separate sentencing  
5 hearing to determine the punishment to be imposed. Be-  
6 fore such a hearing, no presentence report shall be pre-  
7 pared by the United States Probation Service, notwith-  
8 standing the provisions of the Federal Rules of Criminal  
9 Procedure. The hearing shall be conducted—

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

12           “(2) before a jury impaneled for the purpose of  
13           the hearing if—

14                   “(A) the defendant was convicted upon a  
15                   plea of guilty;

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

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

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

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

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

5       “(c) PROOF OF MITIGATING AND AGGRAVATING FAC-  
6 TORS.—At the hearing, information may be presented as  
7 to any matter relevant to the sentence, including any miti-  
8 gating or aggravating factor permitted or required to be  
9 considered under section 3592 of this title. Information  
10 presented may include the trial transcript and exhibits if  
11 the hearing is held before a jury or judge not present dur-  
12 ing the trial. Any other information relevant to a mitigat-  
13 ing or aggravating factor may be presented by either the  
14 attorney for the Government or the defendant, regardless  
15 of its admissibility under the rules governing admission  
16 of evidence at criminal trials, except that information may  
17 be excluded if its probative value is outweighed by the dan-  
18 ger of creating unfair prejudice, confusing the issues, or  
19 misleading the jury. The attorney for the Government and  
20 for the defendant shall be permitted to rebut any informa-  
21 tion received at the hearing, and shall be given fair oppor-  
22 tunity to present argument as to the adequacy of the in-  
23 formation to establish the existence of any aggravating or  
24 mitigating factor, and as to the appropriateness of impos-  
25 ing a sentence of death in the case. The attorney for the

1 Government shall open the argument. The defendant shall  
2 be permitted to reply. The attorney for the Government  
3 shall then be permitted to reply in rebuttal. The burden  
4 of establishing the existence of an aggravating factor is  
5 on the Government, and is not satisfied unless the exist-  
6 ence of such a factor is established beyond a reasonable  
7 doubt. The burden of establishing the existence of any  
8 mitigating factor is on the defendant, and is not satisfied  
9 unless the existence of such a factor is established by a  
10 preponderance of the information.

11 “(d) RETURN OF SPECIAL FINDINGS.—The jury, or  
12 if there is no jury, the court, shall consider all the informa-  
13 tion received during the hearing. It shall return special  
14 findings with respect to the mitigating and aggravating  
15 factors concerning which information is received at the  
16 hearing, stating—

17 “(1) whether some mitigating factor required to  
18 be considered under section 3592 exists;

19 “(2) whether some aggravating factor required  
20 to be considered under section 3592 exists; and

21 “(3) which specific mitigating or aggravating  
22 factor or factors exist.

23 A finding under paragraph (1) or (2) that some mitigating  
24 or aggravating factor exists must be unanimous. A finding  
25 under paragraph (3) that a specific mitigating or aggra-

1 vating factor exists may be made by a majority of at least  
2 nine members of the jury.

3       “(e) RETURN OF A FINDING CONCERNING A SEN-  
4 TENCE OF DEATH.—If, in the case of an offense described  
5 in section 3591, an aggravating factor required to be con-  
6 sidered under section 3592 is found to exist, the jury, or  
7 if there is no jury, the court, shall then consider whether  
8 the aggravating factor or factors found to exist sufficiently  
9 outweigh all the mitigating factors found to exist to justify  
10 a sentence of death, or, in the absence of a mitigating fac-  
11 tor, whether the aggravating factor or factors alone are  
12 sufficient to justify a sentence of death. Based upon this  
13 consideration, the jury by unanimous vote, or if there is  
14 no jury, the court, shall return a finding as to whether  
15 a sentence of death is justified. The jury or the court, re-  
16 gardless of its findings with respect to aggravating and  
17 mitigating factors, is never required to impose a death  
18 sentence and the jury shall be so instructed.

19       “(f) SPECIAL PRECAUTION TO ASSURE AGAINST DIS-  
20 CRIMINATION.—In a hearing held before a jury, the court,  
21 before the return of a finding under subsection (e) of this  
22 section, shall instruct the jury that, in considering whether  
23 a sentence of death is justified, it shall not consider the  
24 race, color, national origin, creed, or sex of the defendant  
25 or of any victim. The jury, upon return of a finding under

1 subsection (e) of this section, shall also return to the court  
2 a certificate, signed by each juror, that consideration of  
3 the race, color, national origin, creed, or sex of the defend-  
4 ant or any victim was not involved in reaching the juror's  
5 individual decision.

6 **“§ 3594. Imposition of a sentence of death**

7 “Upon a finding under section 3593(e) of this title  
8 that a sentence of death is justified, the court shall sen-  
9 tence the defendant to death. Upon finding under section  
10 3593(e) of this title that no aggravating factor required  
11 to be found exists or that a sentence of death is not justi-  
12 fied, the court shall impose any sentence other than death  
13 that is authorized by law.

14 **“§ 3595. Review of a sentence of death**

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

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

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

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

3           “(3) the procedure employed in the sentencing  
4           hearing; and

5           “(4) the special findings returned under section  
6           3593(d) of this title.

7           “(c) DECISION AND DISPOSITION.—

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

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

12                   “(B) the information supports the special  
13                  findings of the existence of an aggravating fac-  
14                  tor or factors;

15           it shall affirm the sentence.

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

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

23   **“§ 3596. Implementation of sentence of death**

24           “A person who has been sentenced to death pursuant  
25   to this chapter shall be committed to the custody of the

1 Attorney General until exhaustion of the procedures for  
2 appeal of the judgment of conviction and for review of the  
3 sentence. When the sentence is to be implemented, the At-  
4 torney General shall release the person sentenced to death  
5 to the custody of a United States marshal, who shall su-  
6 pervise implementation of the sentence in the manner pre-  
7 scribed by law of the State in which the sentence is im-  
8 posed. If the law of such State does not provide for imple-  
9 mentation of a sentence of death, the court shall designate  
10 another State, the law of which does so provide, and the  
11 sentence shall be implemented in the manner prescribed  
12 by such law. A sentence of death shall not be carried out  
13 upon a person who lacks the mental capacity to under-  
14 stand the death penalty and why it was imposed on that  
15 person, or upon a woman while she is pregnant.

16 **“§ 3597. Use of State facilities**

17 “A United States marshal charged with supervising  
18 the implementation of a sentence of death may use appro-  
19 priate State or local facilities for the purpose, may use  
20 the services of an appropriate State or local official or of  
21 a person such as an official employed for the purpose, and  
22 shall pay the costs thereof in the amount approved by the  
23 Attorney General.”.

24 (b) CLERICAL AMENDMENT TO CHAPTER ANALY-  
25 SIS.—Title 18, United States Code, is amended in the

- 1 chapter analysis of part II, by adding the following new
- 2 item after the item relating to chapter 227:

**“228. Death penalty procedures ..... 3591”.**

