

103^D CONGRESS
2^D SESSION

H. R. 3936

To provide the penalty of death for federally prescribed kidnappings resulting in the death of a minor.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1994

Mr. DUNCAN (for himself, Mr. SOLOMON, Mr. BAKER of California, Mr. CANADY, Mr. FROST, Mr. DOOLITTLE, Mr. MCHUGH, and Mr. LEVY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide the penalty of death for federally prescribed kidnappings resulting in the death of a minor.

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 “Children’s Protection
5 Act of 1994”.

6 **SEC. 2. DEATH PENALTY PROCEDURES.**

7 Title 18 of the United States Code is amended—

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

1 **“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.

“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 an offense
4 for which the penalty of death may be imposed under sec-
5 tion 1201(g) of this title, if the defendant, as determined
6 beyond a reasonable doubt at a hearing under section
7 3593 of this title—

8 “(1) caused the death of a kidnapping victim
9 who had not attained the age of 18 years inten-
10 tionally, knowingly, or through recklessness mani-
11 festing extreme indifference to human life; or

12 “(2) caused, by the intentional infliction of seri-
13 ous bodily injury, the death of a kidnapping victim
14 who had not attained the age of 18 years;

15 shall be sentenced to death if, after consideration of the
16 factors set forth in section 3592 of this title in the course
17 of a hearing held pursuant to section 3593 of this title,
18 it is determined that imposition of a sentence of death is
19 justified. A person who has not attained the age of 18

1 years at the time of the offense or who is mentally re-
2 tarded may not be sentenced to death under this chapter.

3 **“§ 3592. Factors to be considered in determining**
4 **whether a sentence of death is justified**

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

10 “(1) MENTAL CAPACITY.—The defendant’s
11 mental capacity to appreciate the wrongfulness of
12 his conduct or to conform his conduct to the require-
13 ments of law was significantly impaired, regardless
14 of whether the capacity was so impaired as to con-
15 stitute a defense to the charge.

16 “(2) DURESS.—The defendant was under un-
17 usual and substantial duress, regardless of whether
18 the duress was of such a degree as to constitute a
19 defense to the charge.

20 “(3) PARTICIPATION IN OFFENSE MINOR.—The
21 defendant’s participation in the offense, which was
22 committed by another, was relatively minor, regard-
23 less of whether the participation was so minor as to
24 constitute a defense to the charge.

1 “(4) NO SIGNIFICANT CRIMINAL HISTORY.—
2 The defendant did not have a significant history of
3 other criminal conduct.

4 “(5) DISTURBANCE.—The defendant committed
5 the offense under severe mental or emotional dis-
6 turbance.

7 “(6) VICTIM’S CONSENT.—The victim consented
8 to the criminal conduct that resulted in the victim’s
9 death.

10 The jury, or if there is no jury, the court, shall consider
11 whether any other aspect of the defendant’s background,
12 character or record or any other circumstance of the of-
13 fense that the defendant may proffer as a mitigating fac-
14 tor exists.

15 “(b) AGGRAVATING FACTORS FOR DEATH OCCUR-
16 RING DURING KIDNAPPING.—In determining whether a
17 sentence of death is justified for an offense described in
18 section 3591 of this title, the jury, or if there is no jury,
19 the court, shall consider each of the following aggravating
20 factors and determine which, if any, exist:

21 “(1) INVOLVEMENT OF FIREARM OR PREVIOUS
22 CONVICTION OF VIOLENT FELONY INVOLVING FIRE-
23 ARM.—The defendant—

24 “(A) during and in relation to the commis-
25 sion of the offense or in escaping or attempting

1 to escape apprehension used or possessed a fire-
2 arm as defined in section 921 of this title; or

3 “(B) has previously been convicted of a
4 Federal or State offense punishable by a term
5 of imprisonment of more than one year, involv-
6 ing the use of attempted or threatened use of
7 a firearm, as defined in section 921 of this title,
8 against another person.

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

16 “(3) PREVIOUS CONVICTION OF OTHER SERI-
17 OUS OFFENSES.—The defendant has previously been
18 convicted of two or more Federal or State offenses,
19 each punishable by a term of imprisonment of more
20 than one year, committed on different occasions, in-
21 volving the importation, manufacture, or distribution
22 of a controlled substance (as defined in section 102
23 of the Controlled Substances Act or the infliction of,
24 or attempted infliction of, serious bodily injury or
25 death upon another person.

1 showing of good cause, shall sign and file with the court,
2 and serve on the defendant, a notice that the Government
3 in the event of conviction will seek the sentence of death.
4 The notice shall set forth the aggravating factor or factors
5 enumerated in section 3592 of this title, and any other
6 aggravating factor not specifically enumerated in section
7 3592 of this title, that the Government, if the defendant
8 is convicted, will seek to prove as the basis for the death
9 penalty. The factors for which notice is provided under
10 this subsection may include factors concerning the effect
11 of the offense on the victim and the victim's family. The
12 court may permit the attorney for the Government to
13 amend the notice upon a showing of good cause.

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

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

3 “(2) before a jury impaneled for the purpose of
4 the hearing if—

5 “(A) the defendant was convicted upon a
6 plea of guilty;

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

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

11 “(D) after initial imposition of a sentence
12 under this section, reconsideration of the sen-
13 tence under the section is necessary; or

14 “(3) before the court alone, upon motion of the
15 defendant and with the approval of the attorney for
16 the Government.

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

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

1 “(1) any matter relating to any mitigating fac-
2 tor listed in section 3592 of this title and any other
3 mitigating factor; and

4 “(2) any matter relating to any aggravating
5 factor listed in section 3592 of this title for which
6 notice has been provided under subsection (a) of this
7 section and (if information is presented relating to
8 such a listed factor) any other aggravating factor for
9 which notice has been so provided.

10 The information presented may include the trial transcript
11 and exhibits. Any other information relevant to such miti-
12 gating or aggravating factors may be presented by either
13 the Government or the defendant. The information pre-
14 sented by the Government in support of factors concerning
15 the effect of the offense on the victim and the victim’s
16 family may include oral testimony, a victim impact state-
17 ment that identifies the victim of the offense and the na-
18 ture and extent of harm and loss suffered by the victim
19 and the victim’s family, and other relevant information.
20 Information is admissible regardless of its admissibility
21 under the rules governing admission of evidence at crimi-
22 nal trials, except that information may be excluded if its
23 probative value is outweighed by the danger of creating
24 unfair prejudice, confusing the issues, or misleading the
25 jury. The attorney for the Government and for the defend-

1 ant shall be permitted to rebut any information received
2 at the hearing, and shall be given fair opportunity to
3 present argument as to the adequacy of the information
4 to establish the existence of any aggravating or mitigating
5 factor, and as to the appropriateness in that case of im-
6 posing a sentence of death. The attorney for the Govern-
7 ment shall open the argument. The defendant shall be per-
8 mitted to reply. The Government shall then be permitted
9 to reply in rebuttal. The burden of establishing the exist-
10 ence of an aggravating factor is on the Government, and
11 is not satisfied unless the existence of such a factor is es-
12 tablished beyond a reasonable doubt. The burden of estab-
13 lishing the existence of any mitigating factor is on the de-
14 fendant, and is not satisfied unless the existence of such
15 a factor is established by a preponderance of the evidence.

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

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

8 “(e) RETURN OF A FINDING CONCERNING A SEN-
9 TENCE OF DEATH.—If an aggravating factor required to
10 be considered under section 3592 of this title is found to
11 exist, the jury, or if there is no jury, the court, shall then
12 consider whether the aggravating factor or factors found
13 to exist under subsection (d) of this section outweigh any
14 mitigating factor or factors. The jury, or if there is no
15 jury, the court shall recommend a sentence of death if it
16 unanimously finds at least one aggravating factor and no
17 mitigating factor or if it finds one or more aggravating
18 factors which outweigh any mitigating factors. In any
19 other case, it shall not recommend a sentence of death.
20 The jury shall be instructed that it must avoid any influ-
21 ence of sympathy, sentiment, passion, prejudice, or other
22 arbitrary factors in its decision, and should make such a
23 recommendation as the information warrants.

24 “(f) SPECIAL PRECAUTION TO ASSURE AGAINST
25 DISCRIMINATION.—In a hearing held before a jury, the

1 court, before the return of a finding under subsection (e)
2 of this section, shall instruct the jury that, in considering
3 whether a sentence of death is justified, it shall not be
4 influenced by prejudice or bias relating to the race, color,
5 religion, national origin, or sex of the defendant or of any
6 victim and that the jury is not to recommend a sentence
7 of death unless it has concluded that it would recommend
8 a sentence of death for the crime in question no matter
9 what the race, color, religion, national origin, or sex of
10 the defendant or of any victim may be. The jury, upon
11 return of a finding under subsection (e) of this section,
12 shall also return to the court a certificate, signed by each
13 juror, that prejudice or bias relating to the race, color,
14 religion, national origin, or sex of the defendant or any
15 victim was not involved in reaching his or her individual
16 decision and that the individual juror would have made
17 the same recommendation regarding a sentence for the
18 crime in question no matter what the race, color, religion,
19 national origin, or sex of the defendant or any victim may
20 be.

21 **“§ 3594. Imposition of a sentence of death**

22 “Upon the recommendation under section 3593(e) of
23 this title that a sentence of death be imposed, the court
24 shall sentence the defendant to death. Otherwise the court
25 shall impose a sentence, other than death, authorized by

1 law. Notwithstanding any other provision of law, if the
2 maximum term of imprisonment for the offense is life im-
3 prisonment, the court may impose a sentence of life im-
4 prisonment without the possibility of release.

5 **“§ 3595. Review of a sentence of death**

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

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

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

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

19 “(3) the procedures employed in the sentencing
20 hearing; and

21 “(4) the special findings returned under section
22 3593(d) of this title.

23 “(c) DECISION AND DISPOSITION.—

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

1 “(A) the sentence of death was not im-
2 posed under the influence of passion, prejudice,
3 or any other arbitrary factor;

4 “(B) the evidence and information support
5 the special findings of the existence of an ag-
6 gravating factor or factors; and

7 “(C) the proceedings did not involve any
8 other prejudicial error requiring reversal of the
9 sentence that was properly preserved for and
10 raised on appeal;

11 it shall affirm the sentence.

12 “(2) In any other case, the court of appeals
13 shall remand the case for reconsideration under sec-
14 tion 3593 of this title or for imposition of another
15 authorized sentence as appropriate, except that the
16 court shall not reverse a sentence of death on the
17 ground that an aggravating factor was invalid or
18 was not supported by the evidence and information
19 if at least one aggravating factor required to be con-
20 sidered under section 3592 of this title remains
21 which was found to exist and the court, on the basis
22 of the evidence submitted at trial and the informa-
23 tion submitted at the sentencing hearing, finds no
24 mitigating factor or finds that the remaining aggra-

1 vating factor or factors which were found to exist
2 outweigh any mitigating factors.

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

6 **“§ 3596. Implementation of a sentence of death**

7 “(a) IN GENERAL.—A person who has been sen-
8 tenced to death under this chapter shall be committed to
9 the custody of the Attorney General until exhaustion of
10 the procedures for appeal of the judgment of conviction
11 and for review of the sentence. When the sentence is to
12 be implemented, the Attorney General shall release the
13 person sentenced to death to the custody of a United
14 States Marshal, who shall supervise implementation of the
15 sentence in the manner prescribed by the law of the State
16 in which the sentence is imposed. If the law of such State
17 does not provide for implementation of a sentence of
18 death, the court shall designate another State, the law of
19 which does so provide, and the sentence shall be imple-
20 mented in the manner prescribed by such law.

21 “(b) SPECIAL BARS TO EXECUTION.—A sentence of
22 death shall not be carried out upon a person who lacks
23 the mental capacity to understand the death penalty and
24 why it was imposed on that person, or upon a woman while
25 she is pregnant.

1 “(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—
2 No employee of any State department of corrections, the
3 Federal Bureau of Prisons, or the United States Marshals
4 Service, and no employee providing services to that depart-
5 ment, bureau, or service under contract shall be required,
6 as a condition of that employment or contractual obliga-
7 tion, to be in attendance at or to participate in any execu-
8 tion carried out under this section if such participation
9 is contrary to the moral or religious convictions of the em-
10 ployee. For purposes of this subsection, the term ‘partici-
11 pate in any execution’ includes personal preparation of the
12 condemned individual and the apparatus used for the exe-
13 cution, and supervision of the activities of other personnel
14 in carrying out such activities.

15 **“§ 3597. Use of State facilities**

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

23 **“§ 3598. Appointment of counsel**

24 “(a) REPRESENTATION OF INDIGENT DEFEND-
25 ANTS.—Notwithstanding any other provision of law, this

1 section shall govern the appointment of counsel for any
2 defendant against whom a sentence of death is sought,
3 or on whom a sentence of death has been imposed, for
4 an offense against the United States, where the defendant
5 is or becomes financially unable to obtain adequate rep-
6 resentation. Such a defendant shall be entitled to appoint-
7 ment of counsel from the commencement of trial proceed-
8 ings until one of the conditions specified in section
9 3599(b) of this title has occurred.

10 “(b) REPRESENTATION BEFORE FINALITY OF JUDG-
11 MENT.—A defendant within the scope of this section shall
12 have counsel appointed for trial representation as provided
13 in section 3005 of this title. At least one counsel so ap-
14 pointed shall continue to represent the defendant until the
15 conclusion of direct review of the judgment, unless re-
16 placed by the court with other qualified counsel.

17 “(c) REPRESENTATION AFTER FINALITY OF JUDG-
18 MENT.—When a judgment imposing a sentence of death
19 has become final through affirmance by the Supreme
20 Court on direct review, denial of certiorari by the Supreme
21 Court on direct review, or expiration of the time for seek-
22 ing direct review in the court of appeals or the Supreme
23 Court, the Government shall promptly notify the district
24 court that imposed the sentence. Not later than 10 days
25 after receipt of such notice, the district court shall proceed

1 to make a determination whether the defendant is eligible
2 under this section for appointment of counsel for subse-
3 quent proceedings. On the basis of the determination, the
4 court shall issue an order—

5 “(1) appointing one or more counsel to rep-
6 resent the defendant upon a finding that the defend-
7 ant is financially unable to obtain adequate rep-
8 resentation and wishes to have counsel appointed or
9 is unable competently to decide whether to accept or
10 reject appointment of counsel;

11 “(2) finding, after a hearing if necessary, that
12 the defendant rejected appointment of counsel and
13 made the decision with an understanding of its legal
14 consequences; or

15 “(3) denying the appointment of counsel upon
16 a finding that the defendant is financially able to ob-
17 tain adequate representation.

18 Counsel appointed pursuant to this subsection shall be dif-
19 ferent from the counsel who represented the defendant at
20 trial and on direct review unless the defendant and counsel
21 request a continuation or renewal of the earlier represen-
22 tation.

23 “(d) STANDARDS FOR COMPETENCE OF COUNSEL.—
24 In relation to a defendant who is entitled to appointment
25 of counsel under this section, at least one counsel ap-

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

15 “(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—
16 Except as otherwise provided in this section, section
17 3006A of this title applies to appointments under this sec-
18 tion.

19 “(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—
20 The ineffectiveness or incompetence of counsel during pro-
21 ceedings on a motion under section 2255 of title 28, in
22 a capital case shall not be a ground for relief from the
23 judgment or sentence in any proceeding. This limitation
24 shall not preclude the appointment of different counsel at
25 any stage of the proceedings.

1 **“§ 3599. Collateral attack on judgment imposing sen-**
2 **tence of death**

3 “(a) TIME FOR MAKING SECTION 2255 MOTION.—
4 In a case in which sentence of death has been imposed,
5 and the judgment has become final as described in section
6 3598(c) of this title, a motion in the case under section
7 2255 of title 28, must be filed not later than 90 days after
8 the issuance of the order relating to appointment of coun-
9 sel under section 3598(c) of this title. The court in which
10 the motion is filed, for good cause shown, may extend the
11 time for filing for a period not exceeding 60 days. A mo-
12 tion described in this section shall have priority over all
13 noncapital matters in the district court, and in the court
14 of appeals on review of the district court’s decision.

15 “(b) STAY OF EXECUTION.—The execution of a sen-
16 tence of death shall be stayed in the course of direct review
17 of the judgment and during the litigation of an initial mo-
18 tion in the case under section 2255 of title 28. The stay
19 shall run continuously following imposition of the sen-
20 tence, and shall expire if—

21 “(1) the defendant fails to file a motion under
22 section 2255 of title 28, within the time specified in
23 subsection (a) of this section, or fails to make a
24 timely application for court of appeals review follow-
25 ing the denial of such motion by a district court; or

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

4 “(A) the time for filing a petition for cer-
5 tiorari has expired and no petition has been
6 filed;

7 “(B) a timely petition for certiorari was
8 filed and the Supreme Court denied the peti-
9 tion; or

10 “(C) a timely petition for certiorari was
11 filed and upon consideration of the case, the
12 Supreme Court disposed of it in a manner that
13 left the capital sentence undisturbed; or

14 “(3) before a district court, in the presence of
15 counsel and after having been advised of the con-
16 sequences of that waiver, the defendant waives the
17 right to file a motion under section 2255 of title 28.

18 “(c) FINALITY OF THE DECISION ON REVIEW.—If
19 one of the conditions specified in subsection (b) of this
20 section has occurred, no court thereafter shall have the
21 authority to enter a stay of execution or grant relief in
22 the case unless—

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

25 “(2) the failure to raise the claim was—

1 “(A) the result of governmental action in
2 violation of the Constitution or laws of the
3 United States;

4 “(B) the result of the Supreme Court rec-
5 ognition of a new Federal right that is retro-
6 actively applicable; or

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

11 “(3) the facts underlying the claim would be
12 sufficient, if proven, to undermine the court’s con-
13 fidence in the determination of guilt with respect to
14 the offense or offenses for which the death penalty
15 was imposed.”; and

16 (2) in the table of chapters at the beginning of
17 part II, by adding the following new item after the
18 item relating to chapter 227:

“228. Death penalty procedures 3591.”.

19 **SEC. 3. CONFORMING AMENDMENT RELATING TO KIDNAP-**
20 **PING.**

21 Section 1201(g)(1) of title 18, United States Code,
22 is amended by inserting “to the penalty of death if the
23 death of the victim results and, in any other case,” after
24 “shall be subject”.



HR 3936 IH—2

HR 3936 IH—3