

H.L.C.

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(Original Signature of Member)

109TH CONGRESS

2D SESSION **H. R. _____**

To modify the law with respect to the death penalty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GOHMERT introduced the following bill; which was referred to the
Committee on _____

A BILL

To modify the law with respect to the death penalty, AND
for other purposes.

*1 Be it enacted by the Senate and House of Representa2
tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

**4 This Act may be cited as the “Death Penalty Reform
5 Act of 2006”.**

6 SEC. 2. AMENDMENTS RELATING TO TITLE 28.

**7 Chapter 153 of title 28, United States Code, is
8 amended—**

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**1 (1) in section 2254(h) by striking “section 408
2 of the Controlled Substances Act” and inserting
3 “section 3599 of title 18”; and**

**4 (2) in section 2255 by striking “section 408 of
5 the Controlled Substances Act” and inserting “sec6
tion 3599 of title 18”.**

**7 SEC. 3. AMENDMENTS RELATING TO SECTION 3592 OF
8 TITLE 18.**

**9 Section 3592 of title 18, United States Code, is
10 amended—**

**11 (1) in subsection (a), by inserting “for which
12 notice has been provided” after “factor”;**

13 (2) in subsection (c)(1)—

**14 (A) by inserting “section 241 (conspiracy
15 against rights), section 245 (federally protected
16 activities), section 247 (interference with reli17**

gious exercise)” after “section 37 (violence at
18 international airports),”; and
19 (B) by inserting “section 1512 (tampering
20 with a witness, victim, or an informant), section
21 1513 (retaliating against a witness, victim, or
22 an informant),” after “section 1203 (hostage
23 taking),”;

24 (3) in subsection (c)(2)—

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1 (A) by striking “For any offense, other
2 than an offense for which a sentence of death
3 is sought on the basis of section 924(c), the”

4 and inserting “The”; and

5 (B) by striking “previously” and inserting

6 “, in a prior adjudication,”;

7 (4) in subsection (c)(8)—

8 (A) by striking “or”; and

9 (B) by inserting “or in order to retain ille10
gal possession” before “of anything”;

11 (5) in subsection (c)(12), by striking “had pre12
viously” each place that term appears and inserting
13 “has previously”; and

14 (6) in subsection (c), by inserting after para15
graph (16) the following:

16 “(17) OBSTRUCTION OF JUSTICE.—The defend17
ant engaged in any conduct resulting in physical
18 harm or the threat of physical harm to another per19
son in order to obstruct the investigation or prosecu20
tion of any offense.”.

21 **SEC. 4. AMENDMENTS RELATING TO SECTION 3593 OF**
22 **TITLE 18.**

23 Section 3593 of title 18, United States Code, is
24 amended—

25 (1) in subsection (a)—

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1 (A) by striking “, a reasonable time before
2 the trial or before acceptance by the court of a
3 plea of guilty,”;

4 (B) by inserting after paragraph (2) the
5 following:

6 “The notice must be filed a reasonable time before trial
7 or before acceptance by the court of a plea of guilty. The
8 court shall, where necessary to ensure adequate prepara
9 tion time for the defense, grant a reasonable continuance
10 of the trial. If the government has not filed a notice of
11 intent to seek the death penalty or informed the court that
12 a notice of intent to seek the death penalty will not be
13 filed, the court shall not accept a plea of guilty to an of
14 fense described in section 3591 without the concurrence
15 of the government.”; and

16 (C) by inserting before the last sentence
17 the following: “The government may also pro
18 vide notice under this subsection of any factor
19 concerning the state of mind, intent or other
20 culpability of the defendant in committing the
21 offense.”;

22 (2) in subsection (b), by inserting at the end of
23 paragraph (3) the following:

24 “The court shall not dismiss alternate jurors impaneled
25 during the guilt phase unless for good cause as to indi-

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1 vidual alternates or upon a finding, under this subsection,
2 that the sentencing hearing will be heard by the court
3 alone. The court shall retain such alternate jurors to hear
4 the sentencing trial until the completion of the hearing.
5 If at any time, whether before or after the final submission
6 of the sentencing case to the jury, a sitting juror dies or
7 becomes ill, or upon other good cause shown to the court
8 is found to be unable to perform his or her duty in a timely
9 manner, or if a juror requests a discharge and good cause

10 appears therefor, the court shall order the juror to be dis11
charged and draw the name of an alternate, who shall then
12 take a place in the jury box, and be subject to the same
13 rules and regulations as though the alternate juror had
14 been selected as one of the original jurors. If deliberations
15 have begun when the substitution is made, the court shall
16 instruct the newly constituted jury to recommence delib17
erations as if none had previously taken place. The panel,
18 in all other respects, shall be considered unaltered by the
19 substitution of a duly seated alternate.’’;

20 (3) in subsection (c) —

21 (A) in the fourth sentence, by inserting
22 ‘‘for which notice has been provided under sub23
section (b)’’ before the period;

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1 (B) in the fifth sentence, by inserting ‘‘,
2 including information pertaining to
3 unadjudicated conduct’’ before the period;

4 (C) by inserting after the eighth sentence
5 the following: ‘‘The government shall be per6
mitted to cross-examine the defendant regard7
ing any statements or testimony by the defend8
ant to the sentencing jury.’’;

9 (D) by inserting after the fourth sentence
10 the following: ‘‘If the defendant has raised the
11 issue of mental retardation as required under
12 subsection (b), the defendant may introduce in13
formation relevant to mental retardation.’’; and

14 (E) by inserting at the end the following:
15 ‘‘The defendant shall have the burden of prov16
ing mental retardation by the preponderance of
17 the information.’’;

18 (4) in subsection (d)—

19 (A) in the second sentence by inserting
20 ‘‘determine the truth of the allegations in the
21 notice filed under subsection (a) of this section
22 regarding any mental state set forth in section

23 3591(a), and” after “It shall”;
24 (B) by inserting after the second sentence
25 the following: “In any case in which the defend-
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1 ant has raised the issue of mental retardation
2 as required under subsection (b), the jury, or if
3 there is no jury, the court, shall determine the
4 issue of mental retardation only if any aggra5
vating factor set forth in section 3592 is found
6 to exist. Such determination shall occur prior to
7 the consideration of any mitigating factor.”;
8 and

9 (C) by inserting at the end the following:

10 “If the jury, or if there is no jury, the court,
11 determines that the defendant is mentally re12
tarded, the court shall sentence the defendant
13 to life imprisonment without the possibility of
14 release, or some other lesser sentence author15
ized by law.”;

16 (5) in subsection (e)—

17 (A) by inserting before the last sentence
18 the following: “In assessing the appropriateness
19 of a sentence of death, the jury, or if there is
20 no jury, the court must base the decision on the
21 facts of the offense and the aggravating and
22 mitigating factors and avoid any influence of
23 sympathy, sentiment, passion, prejudice, or
24 other arbitrary factor when imposing sen25
tence.”; and

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1 (B) by striking “, to life imprisonment”
2 and all that follows through “lesser sentence”
3 and inserting “or to life imprisonment without

4 possibility of release”.

5 (6) by redesignating subsections (b) through (f)

6 as subsections (c) through (g); and

7 (7) by adding after subsection (a) the following:

8 “(b) NOTICE BY THE DEFENDANT.—

9 “(1) If, as required under subsection (a), the

10 government has filed notice seeking a sentence of

11 death, the defendant shall, a reasonable time before

12 the trial, sign and file with the court, and serve on

13 the attorney for the government, notice setting forth

14 the mitigating factor or factors that the defendant

15 proposes to prove mitigate against imposition of a

16 sentence of death. In any case in which the defend17

ant intends to raise the issue of mental retardation

18 as precluding a sentence of death, the defendant

19 shall, a reasonable time before trial, sign and file

20 with the court, and serve on the attorney for the

21 government, notice of such intent.

22 “(2) When a defendant makes a claim of men23

tal retardation or intends to rely on evidence of men24

tal impairment, or other mental defect or disease as

25 a mitigating factor under this section, the govern-

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1 ment shall have the right to an independent mental

2 health examination of the defendant. A mental

3 health examination ordered under this subsection

4 shall be conducted by a licensed or certified psychia5

trist, psychologist, neurologist,

6 psychopharmacologist, or other allied mental health

7 professional. If the court finds it appropriate, more

8 than one such professional shall perform the exam9

ination. To facilitate the examination, the court may

10 commit the person to be examined for a reasonable

11 period, but not to exceed 30 days, to the custody of

12 the Attorney General for placement in a suitable fa13

cility. Unless impracticable, the psychiatric or psy14

chological examination shall be conducted in a suit15

able facility reasonably close to the court. The director of the facility may apply for a reasonable extension, but not to exceed 15 days upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant.

“(3) Following the filing of a defendant’s notice under this subsection, the court shall, where necessary to ensure adequate preparation time for the government, grant a reasonable continuance of the trial.

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“(4) For purposes of this section, a defendant is mentally retarded if, since some point in time prior to age 18, he or she has continuously had an intelligence quotient of 70 or lower and, as a result of that significantly subaverage mental functioning, has since that point in time continuously had a diminished capacity to understand and process information, abstract from mistakes and learn from experience, engage in logical reasoning, control impulses, and understand others’ reactions.’’.

SEC. 5. AMENDMENTS RELATING TO SECTION 3594 OF TITLE 18.

Section 3594 of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by striking “3593(e)” and inserting

“3593(f)”; and

(B) by striking “or life imprisonment without possibility of release”;

(2) in the second sentence—

(A) by striking “any lesser sentence that is authorized by law” and inserting “life imprisonment without the possibility of release”; and

(B) by inserting “as limited by section 3593(f)” before the period.

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1 SEC. 6. AMENDMENTS RELATING TO SECTIONS 3595, 3596,
2 AND 3597 OF TITLE 18.

3 (a) SECTION 3596.—Section 3596 of title 18, United
4 States Code, is amended—

5 (1) in subsection (a), by striking “When the
6 sentence is to be implemented” and all that follows
7 through “such law” and inserting the following: “A
8 sentence of death for any offense against the United
9 States shall be implemented pursuant to regulations
10 promulgated by the Attorney General”; and

11 (2) in subsection (c)—

12 (A) by striking the first sentence; and

13 (B) by adding at the end the following:

14 “The government shall not be limited in its op15
portunities to seek rehearing, based on changed
16 circumstances, of a finding of mental incapacity
17 under this subsection.”.

18 (b) SECTION 3595.—Section 3595 of title 18, United
19 States Code, is amended by striking “3593(d)” and insert20
ing “3593(e)”.

21 (c) SECTION 3597.—Section 3597 of title 18, United
22 States Code, is amended—

23 (1) in the heading, by striking “State”;

24 (2) in subsection (a), by striking “A United
25 States marshal” and all that follows through “Attor26
ney General” and inserting the following: “An offi-

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1 cial charged with supervising the implementation of
2 a sentence of death shall use appropriate Federal or
3 State facilities for such purpose”; and

4 (3) by adding at the end the following new sub5
section:

6 “(c) CONFIDENTIALITY.—Notwithstanding any other
7 law, the identity of any employee of the United States De8

partment of Justice, the Federal Bureau of Prisons, the
9 United States Marshals Service, or any State department
10 of corrections, or of any person providing services under
11 contract or victim or victim's survivor, who participates
12 in or witnesses the administration of an execution pursu13
ant to this section shall not be publicly disclosed, absent
14 the consent of any such individual.''.
15

(d) CONFORMING AMENDMENT.—The table of sec16
tions at the beginning of chapter 228 of title 18, United
17 States Code, is amended by striking the item relating to
18 section 3597 and inserting the following:

“3597. Use of facilities.”.

19 SEC. 7. AMENDMENT RELATING TO SECTION 3005 OF TITLE
20 18.

(a) IN GENERAL.—Section 3005 of title 18, United
22 States Code, is amended to read as follows:

23 “§ 3005. Counsel and voir dire in capital cases

24 “(a) In any case in which the Government files a no25
tice of intent to seek a sentence of death, the court shall

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1 promptly, upon the defendant's request, assign a second
2 counsel for the defendant in addition to any previously as3
signed counsel. At least one assigned counsel shall be
4 learned in the law applicable to capital cases. Both counsel
5 shall have free access to the accused at all reasonable
6 hours. In assigning counsel under this section, the court
7 shall consider the recommendation of the Federal Public
8 Defender organization, or, if no such organization exists
9 in the district, of the Administrative Office of the United
10 States Courts.

11 “(b) In any case in which the government files a no12
tice of intent to seek the death penalty, the court shall,
13 at the outset of any trial, permit voir dire of the venire
14 concerning personal scruples with regard to the death pen15
alty. The trial court shall allow strikes for cause as to any
16 member of the venire whose personal views would prevent
17 or substantially impair the performance of a juror's sworn

18 duties under the court’s instructions in a death penalty
19 case.’’.

20 (b) CONFORMING AMENDMENT.—The table of sec21
22 tions at the beginning of chapter 201 of title 18, United
23 States Code is amended by striking the item relating to

section 3005 and inserting the following:
‘‘3005. Counsel and voir dire in capital cases.’’.

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1 SEC. 8. ADDITIONAL PROCEDURAL MODIFICATIONS.

2 (a) MODIFICATION OF MITIGATING FACTORS.—Sec3
3 tion 3592(a)(4) of title 18, United States Code, is
4 amended—

5 (1) by striking ‘‘Another’’ and inserting ‘‘The
6 Government could have, but has not, sought the
7 death penalty against another’’; and

8 (2) by striking ‘‘, will not be punished by
9 death’’.

10 (b) MODIFICATION OF AGGRAVATING FACTORS FOR
11 OFFENSES RESULTING IN DEATH.—Section 3592(c) of
12 title 18, United States Code, is amended in paragraph (1),
13 by inserting ‘‘section 2339D (terrorist offenses resulting
14 in death),’’ after ‘‘destruction),’’.

15 (c) JURIES OF LESS THAN 12 MEMBERS.—Sub16
16 section (c) as redesignated by section 3(6) of this Act of
17 section 3593 of title 18, United States Code, is amended
18 by striking ‘‘unless’’ and all that follows through the end
19 of the subsection and inserting ‘‘unless the court finds
20 good cause, or the parties stipulate, with the approval of
21 the court, a lesser number.’’.

22 (d) PEREMPTORY CHALLENGES.—Rule 24(c) of the
23 Federal Rules of Criminal Procedure is amended—

24 (1) in paragraph (1), by striking ‘‘6’’ and in25
serting ‘‘9’’; and

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1 (2) in paragraph (4), by adding at the end the
2 following:

3 “(D) SEVEN, EIGHT OR NINE ALTER4

NATES.—Four additional peremptory challenges
5 are permitted when seven, eight, or nine alter6
nates are impaneled.”

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