

PROHIBITING INTERMENT OR MEMORIALIZATION IN CERTAIN CEMETERIES OF PERSONS COMMITTING FEDERAL CAPITAL CRIMES

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OCTOBER 9, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed  
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Mr. STUMP, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany S. 923]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the Act (S. 923) to deny veterans benefits to persons convicted of Federal capital offenses, having considered the same, reports favorably thereon with amendments and recommends that the Act as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. DENIAL OF ELIGIBILITY FOR INTERMENT OR MEMORIALIZATION IN CERTAIN CEMETERIES OF PERSONS COMMITTING FEDERAL CAPITAL CRIMES.**

(a) PROHIBITION AGAINST INTERMENT OR MEMORIALIZATION IN CERTAIN FEDERAL CEMETERIES.—Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

**“§ 2411. Prohibition against interment or memorialization in the National Cemetery System or Arlington National Cemetery of persons committing Federal capital crimes**

“(a) The remains of a person described in subsection (c) may not be interred in a cemetery in the National Cemetery System or in Arlington National Cemetery.

“(b) The memory of a person described in subsection (c) may not be honored in a memorial area in a cemetery in the National Cemetery System (described in section 2403(a) of this title) or in such an area in Arlington National Cemetery (described in section 2409(a) of this title).

“(c) A person referred to in subsections (a) and (b) is any of the following:

“(1) A person who has been convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment.

“(2) A person who—

“(A) is found (as provided in subsection (d)) to have committed a Federal capital crime, but

“(B) has not been convicted of such crime by reason of such person not being available for trial due to death, flight to avoid prosecution, or determination of insanity.

“(d) A finding under subsection (c)(2) shall be made by the Secretary, in the case of a cemetery in the National Cemetery System, or by the Secretary of the Army, in the case of Arlington National Cemetery. Any such finding may only be made based upon a showing of clear and convincing evidence, after an opportunity for a hearing in a manner prescribed by the Secretary or the Secretary of the Army, as the case may be.

“(e) For purposes of this section, the term ‘Federal capital crime’ means an offense under Federal law for which the death penalty may be imposed.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 24 of such title is amended by adding at the end the following new item:

“2411. Prohibition against interment or memorialization in the National Cemetery System or Arlington National Cemetery of persons committing Federal capital crimes.”.

(c) EFFECTIVE DATE.—Section 2411 of title 38, United States Code, as added by subsection (a), shall apply with respect to applications for interment or memorialization made on or after the date of the enactment of this Act.

#### SEC. 2. CONDITION ON GRANTS TO STATE-OWNED VETERAN CEMETERIES.

Section 2408 of title 38, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

“(d)(1) In addition to the conditions specified in subsections (b) and (c), any grant made on or after the date of the enactment of this subsection to a State under this section to assist such State in establishing, expanding, or improving a veterans’ cemetery shall be made on the condition described in paragraph (2).

“(2) For purposes of paragraph (1), the condition described in this paragraph is that, after the date of the receipt of the grant, such State prohibit the interment or memorialization in that cemetery of a person described in section 2411(c) of this title (except that a finding described in paragraph (2)(A) of such section shall be made for purposes of this subsection by an appropriate official of such State).”.

Amend the title so as to read:

An Act to amend title 38, United States Code, to prohibit interment or memorialization in certain cemeteries of persons committing Federal capital crimes.

#### INTRODUCTION

The Senate passed S. 923 amended on June 18, 1997, without prior Senate Committee consideration. The full Committee met on September 11, 1997 and ordered S. 923 reported favorably with an amendment in the nature of a substitute by unanimous voice vote.

#### SUMMARY OF THE REPORTED BILL

S. 923, as amended, would:

1. Deny burial and memorialization in a cemetery operated by the Department of Veterans Affairs, Arlington National Cemetery and certain state veterans’ cemeteries to persons convicted of Federal capital crimes.
2. Authorize the appropriate Secretary or state official to deny burial and memorialization on the grounds of clear and convincing evidence that the person committed a Federal capital crime but was never tried because the person died prior to trial, avoided prosecution through flight, or was determined to be insane.

## BACKGROUND AND DISCUSSION

The commission of certain crimes has long been the basis for denial of veterans' benefits. Sections 6103, 6104, and 6105 of title 38, United States Code, authorize denial of some or all Department of Veterans Affairs (VA) benefits for more than twenty Federal crimes, including fraud, treason, and subversive activities. Additionally, section 5313 of title 38, United States Code, provides for the reduction of VA disability compensation paid to felons serving sixty or more days in a Federal, state, or local penal institution. Under this section, the maximum rate of compensation payable is reduced to 10 percent for a veteran rated at 20 percent or more disabled. Compensation for a veteran rated at less than 20 percent disabled is reduced to an amount equal to one-half of the 10 percent rate. As amended, S. 923 would deny burial in certain veterans' cemeteries for those convicted of a Federal capital crime.

A Federal capital offense is a crime punishable by death. Most of the 51 Federal capital offenses require that a death occur as a result of, or during, the commission of a crime. This includes the classic case of first-degree murder and many felony-murder offenses such as willful destruction of an aircraft, hostage taking, violence in an international airport, and train wrecking, which result in the death of one or more persons. However, there are several felony-murder offenses which do not require the death of a person in the commission of the crime but are capital offenses. The "drug king-pin" offenses are an example. (See 18 U.S.C. 3591(b)(1)(2) and 21 U.S.C. 848.)

Denial of veterans' benefits to those with qualifying military service is an extraordinary act. Veterans' benefits are, in the words of General Omar Bradley, ". . . one means by which society attempts to ameliorate the human tragedy of war and distribute its burdens." In most cases, post-service conduct is irrelevant to the veteran's status and eligibility for benefits. However, when a person is convicted of a heinous crime and sentenced to death or life imprisonment under Federal law, then such post-service conduct becomes relevant for a regulatory purpose—establishing additional qualifications for those persons who can be buried in Federal cemeteries.

Veterans' cemeteries are intended to be national shrines that honor both those buried therein as well as the principle of service to the nation. Thus, Congress has a duty to protect the integrity of veterans' benefits programs and the honor of those buried in veterans cemeteries.

The Department of Veterans Affairs currently operates or maintains 115 national cemeteries and 35 soldiers lots and Confederate cemeteries. The VA also funds the construction and improvement of state veterans' cemeteries through grants. Twenty-three states and territories have received funding for these cemeteries, and eight states and territories have applications for cemetery grants pending at the Department of Veterans Affairs. The Department of the Army has operational jurisdiction over Arlington National Cemetery.

Under S. 923, a bill passed by the U.S. Senate in the 105th Congress, a veteran convicted of any Federal capital offense would be

ineligible for all VA benefits. As ordered reported by the House Committee on Veterans' Affairs on September 11, 1997, S. 923 would be more narrow in its sanctions than the passed Senate bill. It would limit the loss of benefits to burial or memorialization in a cemetery operated by the Department of Veterans Affairs, Arlington National Cemetery, and any veterans' cemetery for which a state receives a VA grant after enactment of the bill. This loss of benefit would apply to a person convicted of a Federal capital crime who was sentenced to death or life imprisonment. It would not affect any other veterans' burial benefit such as a flag, Presidential Memorial Certificate or payments to spouses and dependents. Spouses and dependent children who are now eligible for burial benefits under title 38 would not be affected by this bill unless convicted of a Federal capital crime in their own right.

On July 9, 1997, the Committee held a hearing on S. 923 and H.R. 2040. H.R. 2040 would limit its burial forfeiture sanctions to those sentenced to death or life imprisonment for murdering Federal officials and for terrorist acts. Representatives of veterans organizations clearly favored the less draconian forfeiture of burial and memorialization contained in H.R. 2040 over the broad denial of all benefits proposed by S. 923. However, several members of the Committee raised the issue of inconsistency in denying benefits only in the case of murdering a Federal official as called for in H.R. 2040. These members clearly preferred to expand the category of crimes which warrant revocation of eligibility to include all Federal capital crimes, and one member argued strongly for inclusion of state capital crimes. Concern was also expressed about provisions relating to persons who are insane or mentally ill. Mr. Quinn offered the amendment to S. 923 to accommodate the concerns of the veterans organizations and those members who believed that the full range of Federal capital crimes should be included. The Committee believes this approach is consistent with existing restrictions in title 38, United States Code, and preserves the unique status of veterans' benefits.

The Committee received testimony from Mr. Johnny H. Killian, Senior Specialist in American Constitutional Law, Congressional Research Service, with regard to the constitutional issues of *ex post facto* laws and bills of attainder that may be raised by S. 923, as amended. For a law to be an unconstitutional *ex post facto* law or in violation of one of the other limits on Congressional power, the law must impose punishment. It is reasonable and permissible under the Constitution of the United States for Congress to regulate eligibility for the Federal benefits administered by VA. As amended, S. 923 is an exercise of Congress' power to establish qualifications for entitlement to a Federal benefit. Further, establishment of additional qualifications for burial or memorialization in a Federally funded cemetery is not a punitive action, as that term has been used in decisions of the United States Supreme Court construing section 9 or Article I, and thus does not violate the prohibition on *ex post facto* legislation. Finally, since the bill applies to a broad class of persons, it is not a bill of attainder.

## SECTION-BY-SECTION ANALYSIS

Section 1(a) would amend chapter 24 of title 38, United States Code, to add a new section 2411, to deny burial or memorialization in cemeteries operated by the Department of Veterans Affairs, Arlington National Cemetery, and certain state cemeteries to a person convicted of a Federal capital crime, who was sentenced to death or life imprisonment. It would also authorize the appropriate Secretary, after an administrative hearing at which clear and convincing evidence of the guilt of the individual was presented, to deny burial or memorialization rights to individuals not available for trial due to death, flight to avoid prosecution, or insanity.

Section 1(b) would amend the table of sections at the beginning of chapter 24.

Section 1(c) would establish the date of enactment as the effective date for all applications made on or after that date.

Section 2 would amend chapter 24 of title 38, United States Code, to require any state that receives funding for a state veterans' cemetery under the VA's state cemetery grant program to deny burial or memorialization in that cemetery to a persons convicted of a Federal capital crime, who was sentenced to death or life imprisonment. It would also authorize the appropriate state official, after an administrative hearing at which clear and convincing evidence of the guilt of the individual was presented, to deny burial or memorialization rights to individuals not available for trial due to death, flight to avoid prosecution, or insanity.

## OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 30, 1997.*

Hon. BOB STUMP,  
*Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 923, as amended, an act to amend title 38, United States Code, to prohibit interment or memorialization in certain cemeteries of persons convicted of federal capital crimes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO contact is Mary Helen Petrus, who can be reached at 226-2840.

Sincerely,

JUNE E. O'NEILL,  
*Director*

Enclosure

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

**S. 923, As Amended—An act to amend title 38, United States Code, to prohibit interment or memorialization in certain cemeteries of persons convicted of federal capital crime**

*As ordered reported by the House Committee on Veterans' Affairs on September 11, 1997*

Veterans are eligible for burial in a national cemetery if they were discharged or separated from active duty under conditions other than dishonorable. Members of the armed forces who die on active duty, spouses, and minor children of veterans are also eligible. In addition, areas in national cemeteries may be set aside to honor the memory of veterans who are missing in action or whose remains are not available for burial. This act would prohibit burial in federally funded cemeteries of persons convicted of federal capital crimes for which the death penalty or a sentence of life imprisonment was imposed. It would also prohibit memorial areas for such persons.

CBO estimates that enactment of this legislation would have an insignificant effect on the federal budget. Using data from the U.S. Bureau of Justice Statistics and the Federal Bureau of Prisons, CBO estimates that the act would apply to few, if any, persons each year. According to information from the National Cemetery Service and the Department of Veterans Affairs, the cost savings would be several hundred dollars per person.

Because the act could affect direct spending, pay-as-you-go procedures would apply—but any such effects would be negligible. The act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The estimate was prepared by Mary Helen Petrus, who can be reached at 226-2840. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

APPLICABILITY TO LEGISLATIVE BRANCH

The reported bill would not be applicable to the legislative branch under the Congressional Accountability Act, Public Law 104-1, because it would apply only to certain programs and facilities of the Department of Veterans Affairs.

STATEMENT OF FEDERAL MANDATES

The reported bill would not establish a Federal mandate under the Unfunded Mandates Reform Act, Public Law 104-4.

## STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill would be authorized by Congress' power to "provide for the common Defence and general Welfare of the United States."

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## TITLE 38, UNITED STATES CODE

\* \* \* \* \*

## PART I—GENERAL PROVISIONS

\* \* \* \* \*

## CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

Sec.  
2400. Establishment of National Cemetery System; composition of such system; appointment of director.

\* \* \* \* \*

2411. *Prohibition against interment or memorialization in the National Cemetery System or Arlington National Cemetery of persons committing Federal capital crimes.*

\* \* \* \* \*

**§ 2408. Aid to States for establishment, expansion, and improvement of veterans' cemeteries**

(a) \* \* \*

\* \* \* \* \*

*(d)(1) In addition to the conditions specified in subsections (b) and (c), any grant made on or after the date of the enactment of this subsection to a State under this section to assist such State in establishing, expanding, or improving a veterans' cemetery shall be made on the condition described in paragraph (2).*

*(2) For purposes of paragraph (1), the condition described in this paragraph is that, after the date of the receipt of the grant, such State prohibit the interment or memorialization in that cemetery of a person described in section 2411(c) of this title (except that a finding described in paragraph (2)(A) of such section shall be made for purposes of this subsection by an appropriate official of such State).*

**[(d)] (e)** Sums appropriated under subsection (a) of this section shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated. If all funds from a grant under this section have not been utilized by a State for the purpose for which the grant was made within three years

after such grant is made, the United States shall be entitled to recover any such unused grant funds from such State.

\* \* \* \* \*

**§2411. Prohibition against interment or memorialization in the National Cemetery System or Arlington National Cemetery of persons committing Federal capital crimes**

(a) *The remains of a person described in subsection (c) may not be interred in a cemetery in the National Cemetery System or in Arlington National Cemetery.*

(b) *The memory of a person described in subsection (c) may not be honored in a memorial area in a cemetery in the National Cemetery System (described in section 2403(a) of this title) or in such an area in Arlington National Cemetery (described in section 2409(a) of this title).*

(c) *A person referred to in subsections (a) and (b) is any of the following:*

(1) *A person who has been convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment.*

(2) *A person who—*

*(A) is found (as provided in subsection (d)) to have committed a Federal capital crime, but*

*(B) has not been convicted of such crime by reason of such person not being available for trial due to death, flight to avoid prosecution, or determination of insanity.*

(d) *A finding under subsection (c)(2) shall be made by the Secretary, in the case of a cemetery in the National Cemetery System, or by the Secretary of the Army, in the case of Arlington National Cemetery. Any such finding may only be made based upon a showing of clear and convincing evidence, after an opportunity for a hearing in a manner prescribed by the Secretary or the Secretary of the Army, as the case may be.*

(e) *For purposes of this section, the term “Federal capital crime” means an offense under Federal law for which the death penalty may be imposed.*

\* \* \* \* \*

