

109TH CONGRESS
2^D SESSION

H. R. 5040

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2006

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

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 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 “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—

9 (1) in section 2254(h) by striking “section 408
10 of the Controlled Substances Act” and inserting
11 “section 3599 of title 18”; and

1 (2) in section 2255 by striking “section 408 of
2 the Controlled Substances Act” and inserting “sec-
3 tion 3599 of title 18”.

4 **SEC. 3. AMENDMENTS RELATING TO SECTION 3592 OF**
5 **TITLE 18.**

6 Section 3592 of title 18, United States Code, is
7 amended—

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

10 (2) in subsection (c)(1)—

11 (A) by inserting “section 241 (conspiracy
12 against rights), section 245 (federally protected
13 activities), section 247 (interference with reli-
14 gious exercise)” after “section 37 (violence at
15 international airports),”; and

16 (B) by inserting “section 1512 (tampering
17 with a witness, victim, or an informant), section
18 1513 (retaliating against a witness, victim, or
19 an informant),” after “section 1203 (hostage
20 taking),”;

21 (3) in subsection (c)(2)—

22 (A) by striking “For any offense, other
23 than an offense for which a sentence of death
24 is sought on the basis of section 924(c), the”
25 and inserting “The”; and

1 (B) by striking “previously” and inserting
2 “, in a prior adjudication,”;

3 (4) in subsection (c)(8)—

4 (A) by striking “or”; and

5 (B) by inserting “or in order to retain ille-
6 gal possession” before “of anything”;

7 (5) in subsection (c)(12), by striking “had pre-
8 viously” each place that term appears and inserting
9 “has previously”; and

10 (6) in subsection (c), by inserting after para-
11 graph (16) the following:

12 “(17) OBSTRUCTION OF JUSTICE.—The defend-
13 ant engaged in any conduct resulting in the death of
14 another person in order to obstruct the investigation
15 or prosecution of any offense.”.

16 **SEC. 4. AMENDMENTS RELATING TO SECTION 3593 OF**
17 **TITLE 18.**

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

20 (1) in subsection (a)—

21 (A) by striking “, a reasonable time before
22 the trial or before acceptance by the court of a
23 plea of guilty,”;

24 (B) by inserting after paragraph (2) the
25 following:

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

11 (C) by inserting before the last sentence
12 the following: “The government may also pro-
13 vide notice under this subsection of any factor
14 concerning the state of mind, intent or other
15 culpability of the defendant in committing the
16 offense.”;

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

19 “The court shall not dismiss alternate jurors impaneled
20 during the guilt phase unless for good cause as to indi-
21 vidual alternates or upon a finding, under this subsection,
22 that the sentencing hearing will be heard by the court
23 alone. The court shall retain such alternate jurors to hear
24 the sentencing trial until the completion of the hearing.
25 If at any time, whether before or after the final submission

1 of the sentencing case to the jury, a sitting juror dies or
2 becomes ill, or upon other good cause shown to the court
3 is found to be unable to perform his or her duty in a timely
4 manner, or if a juror requests a discharge and good cause
5 appears therefor, the court shall order the juror to be dis-
6 charged and draw the name of an alternate, who shall then
7 take a place in the jury box, and be subject to the same
8 rules and regulations as though the alternate juror had
9 been selected as one of the original jurors. If deliberations
10 have begun when the substitution is made, the court shall
11 instruct the newly constituted jury to recommence delib-
12 erations as if none had previously taken place. The panel,
13 in all other respects, shall be considered unaltered by the
14 substitution of a duly seated alternate.”;

15 (3) in subsection (c) —

16 (A) in the fourth sentence, by inserting
17 “for which notice has been provided under sub-
18 section (b)” before the period;

19 (B) in the fifth sentence, by inserting “,
20 including information pertaining to
21 unadjudicated conduct” before the period;

22 (C) by inserting after the eighth sentence
23 the following: “The government shall be per-
24 mitted to cross-examine the defendant regard-

1 ing any statements or testimony by the defend-
2 ant to the sentencing jury.”;

3 (D) by inserting after the fourth sentence
4 the following: “If the defendant has raised the
5 issue of mental retardation as required under
6 subsection (b), the defendant may introduce in-
7 formation relevant to mental retardation.”; and

8 (E) by inserting at the end the following:
9 “The defendant shall have the burden of prov-
10 ing mental retardation by the preponderance of
11 the information.”;

12 (4) in subsection (d)—

13 (A) in the second sentence by inserting
14 “determine the truth of the allegations in the
15 notice filed under subsection (a) of this section
16 regarding any mental state set forth in section
17 3591(a), and” after “It shall”;

18 (B) by inserting after the second sentence
19 the following: “In any case in which the defend-
20 ant has raised the issue of mental retardation
21 as required under subsection (b), the jury, or if
22 there is no jury, the court, shall determine the
23 issue of mental retardation only if any aggra-
24 vating factor set forth in section 3592 is found
25 to exist. Such determination shall occur prior to

1 the consideration of any mitigating factor.”;
2 and

3 (C) by inserting at the end the following:
4 “If the jury, or if there is no jury, the court,
5 determines that the defendant is mentally re-
6 tarded, the court shall sentence the defendant
7 to life imprisonment without the possibility of
8 release, or some other lesser sentence author-
9 ized by law.”;

10 (5) in subsection (e)—

11 (A) by inserting before the last sentence
12 the following: “In assessing the appropriateness
13 of a sentence of death, the jury, or if there is
14 no jury, the court must base the decision on the
15 facts of the offense and the aggravating and
16 mitigating factors and avoid any influence of
17 sympathy, sentiment, passion, prejudice, or
18 other arbitrary factor when imposing sen-
19 tence.”; and

20 (B) by striking “, to life imprisonment”
21 and all that follows through “lesser sentence”
22 and inserting “or to life imprisonment without
23 possibility of release”.

24 (6) by redesignating subsections (b) through (f)
25 as subsections (c) through (g); and

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

2 “(b) NOTICE BY THE DEFENDANT.—

3 “(1) If, as required under subsection (a), the
4 government has filed notice seeking a sentence of
5 death, the defendant shall, a reasonable time before
6 the trial, sign and file with the court, and serve on
7 the attorney for the government, notice setting forth
8 the mitigating factor or factors that the defendant
9 proposes to prove mitigate against imposition of a
10 sentence of death. In any case in which the defend-
11 ant intends to raise the issue of mental retardation
12 as precluding a sentence of death, the defendant
13 shall, a reasonable time before trial, sign and file
14 with the court, and serve on the attorney for the
15 government, notice of such intent.

16 “(2) When a defendant makes a claim of men-
17 tal retardation or intends to rely on evidence of men-
18 tal impairment, or other mental defect or disease as
19 a mitigating factor under this section, the govern-
20 ment shall have the right to an independent mental
21 health examination of the defendant. A mental
22 health examination ordered under this subsection
23 shall be conducted by a licensed or certified psychia-
24 trist, psychologist, neurologist,
25 psychopharmacologist, or other allied mental health

1 professional. If the court finds it appropriate, more
2 than one such professional shall perform the exam-
3 ination. To facilitate the examination, the court may
4 commit the person to be examined for a reasonable
5 period, but not to exceed 30 days, to the custody of
6 the Attorney General for placement in a suitable fa-
7 cility. Unless impracticable, the psychiatric or psy-
8 chological examination shall be conducted in a suit-
9 able facility reasonably close to the court. The direc-
10 tor of the facility may apply for a reasonable exten-
11 sion, but not to exceed 15 days upon a showing of
12 good cause that the additional time is necessary to
13 observe and evaluate the defendant.

14 “(3) Following the filing of a defendant’s notice
15 under this subsection, the court shall, where nec-
16 essary to ensure adequate preparation time for the
17 government, grant a reasonable continuance of the
18 trial.

19 “(4) For purposes of this section, a defendant
20 is mentally retarded if, since some point in time
21 prior to age 18, he or she has continuously had an
22 intelligence quotient of 70 or lower and, as a result
23 of that significantly subaverage mental functioning,
24 has since that point in time continuously had a di-
25 minished capacity to understand and process infor-

1 mation, abstract from mistakes and learn from expe-
2 rience, engage in logical reasoning, control impulses,
3 and understand others’ reactions.”.

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

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

8 (1) in the first sentence—

9 (A) by striking “3593(e)” and inserting
10 “3593(f)”; and

11 (B) by striking “or life imprisonment with-
12 out possibility of release”;

13 (2) in the second sentence—

14 (A) by striking “any lesser sentence that is
15 authorized by law” and inserting “life imprison-
16 ment without the possibility of release”; and

17 (B) by inserting “as limited by section
18 3593(f)” before the period.

19 **SEC. 6. AMENDMENTS RELATING TO SECTIONS 3595, 3596,**
20 **AND 3597 OF TITLE 18.**

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

23 (1) in subsection (a), by striking “When the
24 sentence is to be implemented” and all that follows
25 through “such law” and inserting the following: “A

1 sentence of death for any offense against the United
2 States shall be implemented pursuant to regulations
3 promulgated by the Attorney General”; and

4 (2) in subsection (c)—

5 (A) by striking the first sentence; and

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

7 “The government shall not be limited in its op-
8 portunities to seek rehearing, based on changed
9 circumstances, of a finding of mental incapacity
10 under this subsection.”.

11 (b) SECTION 3595.—Section 3595 of title 18, United
12 States Code, is amended by striking “3593(d)” and insert-
13 ing “3593(e)”.

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

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

17 (2) in subsection (a), by striking “A United
18 States marshal” and all that follows through “Attor-
19 ney General” and inserting the following: “An offi-
20 cial charged with supervising the implementation of
21 a sentence of death shall use appropriate Federal or
22 State facilities for such purpose”; and

23 (3) by adding at the end the following new sub-
24 section:

1 “(c) CONFIDENTIALITY.—Notwithstanding any other
 2 law, the identity of any employee of the United States De-
 3 partment of Justice, the Federal Bureau of Prisons, the
 4 United States Marshals Service, or any State department
 5 of corrections, or of any person providing services relating
 6 to an execution under contract or victim or victim’s sur-
 7 vivor, who participates in or witnesses the administration
 8 of an execution pursuant to this section shall not be pub-
 9 licly disclosed, absent the consent of any such individual.”.

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

“3597. Use of facilities.”.

14 **SEC. 7. AMENDMENT RELATING TO SECTION 3005 OF TITLE**
 15 **18.**

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

18 **“§ 3005. Counsel and voir dire in capital cases**

19 “(a) In any case in which the Government files a no-
 20 tice of intent to seek a sentence of death, the court shall
 21 promptly, upon the defendant’s request, assign a second
 22 counsel for the defendant in addition to any previously as-
 23 signed counsel. At least one assigned counsel shall be
 24 learned in the law applicable to capital cases. Both counsel
 25 shall have free access to the accused at all reasonable

1 hours. In assigning counsel under this section, the court
2 shall consider the recommendation of the Federal Public
3 Defender organization, or, if no such organization exists
4 in the district, of the Administrative Office of the United
5 States Courts.

6 “(b) In any case in which the government files a no-
7 tice of intent to seek the death penalty, the court shall,
8 at the outset of any trial, permit voir dire of the venire
9 concerning personal scruples with regard to the death pen-
10 alty. The trial court shall allow strikes for cause as to any
11 member of the venire whose personal views would prevent
12 or substantially impair the performance of a juror’s sworn
13 duties under the court’s instructions in a death penalty
14 case.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-
16 tions at the beginning of chapter 201 of title 18, United
17 States Code is amended by striking the item relating to
18 section 3005 and inserting the following:

“3005. Counsel and voir dire in capital cases.”.

19 **SEC. 8. ADDITIONAL PROCEDURAL MODIFICATIONS.**

20 (a) MODIFICATION OF MITIGATING FACTORS.—Sec-
21 tion 3592(a)(4) of title 18, United States Code, is amend-
22 ed—

23 (1) by striking “Another” and inserting “The
24 Government could have, but has not, sought the
25 death penalty against another”; and

1 (2) by striking “, will not be punished by
2 death”.

3 (b) MODIFICATION OF AGGRAVATING FACTORS FOR
4 OFFENSES RESULTING IN DEATH.—Section 3592(c) of
5 title 18, United States Code, is amended in paragraph (1),
6 by inserting “section 2339D (terrorist offenses resulting
7 in death),” after “destruction),”.

8 (c) JURIES OF LESS THAN 12 MEMBERS.—Sub-
9 section (c), as redesignated by section 4(6) of this Act,
10 of section 3593 of title 18, United States Code, is amend-
11 ed by striking “unless” and all that follows through the
12 end of the subsection and inserting “unless the court finds
13 good cause, or the parties stipulate, with the approval of
14 the court, a lesser number.”.

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

17 (1) in paragraph (1), by striking “6” and in-
18 serting “9”; and

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

21 “(D) SEVEN, EIGHT OR NINE ALTER-
22 NATES.—Four additional peremptory challenges
23 are permitted when seven, eight, or nine alter-
24 nates are impaneled.”.

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