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S	25	1	8	3

1 defendant was aware of the presence of the
2 adulterant.

3 The jury, or if there is no jury, the court, may consider
4 whether any other aggravating factor for which notice has
5 been given exists.

6 **“§ 3593. Special hearing to determine whether a sen-**
7 **tence of death is justified**

8 “(a) NOTICE BY THE GOVERNMENT.—If, in a case
9 involving an offense described in section 3591, the attor-
10 ney for the government believes that the circumstances of
11 the offense are such that a sentence of death is justified
12 under this chapter, the attorney shall, a reasonable time
13 before the trial or before acceptance by the court of a plea
14 of guilty, sign and file with the court, and serve on the
15 defendant, a notice—

16 “(1) stating that the government believes that
17 the circumstances of the offense are such that, if the
18 defendant is convicted, a sentence of death is justi-
19 fied under this chapter and that the government will
20 seek the sentence of death; and

21 “(2) setting forth the aggravating factor or fac-
22 tors that the government, if the defendant is con-
23 victed, proposes to prove as justifying a sentence of
24 death.

230
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1 The factors for which notice is provided under this sub-
2 section may include factors concerning the effect of the
3 offense on the victim and the victim's family, and may
4 include oral testimony, a victim impact statement that
5 identifies the victim of the offense and the extent and
6 scope of the injury and loss suffered by the victim and
7 the victim's family, and any other relevant information.
8 The court may permit the attorney for the government
9 to amend the notice upon a showing of good cause.

10 “(b) HEARING BEFORE A COURT OR JURY.—If the
11 attorney for the government has filed a notice as required
12 under subsection (a) and the defendant is found guilty of
13 or pleads guilty to an offense described in section 3591,
14 the judge who presided at the trial or before whom the
15 guilty plea was entered, or another judge if that judge is
16 unavailable, shall conduct a separate sentencing hearing
17 to determine the punishment to be imposed. The hearing
18 shall be conducted—

19 “(1) before the jury that determined the de-
20 fendant's guilt;

21 “(2) before a jury impaneled for the purpose of
22 the hearing if—

23 “(A) the defendant was convicted upon a
24 plea of guilty;

231
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1 “(B) the defendant was convicted after a
2 trial before the court sitting without a jury;

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

5 “(D) after initial imposition of a sentence
6 under this section, reconsideration of the sen-
7 tence under this section is necessary; or

8 “(3) before the court alone, upon the motion of
9 the defendant and with the approval of the attorney
10 for the government.

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

15 “(c) PROOF OF MITIGATING AND AGGRAVATING FAC-
16 TORS.—Notwithstanding rule 32(c) of the Federal Rules
17 of Criminal Procedure, when a defendant is found guilty
18 or pleads guilty to an offense under section 3591, no
19 presentence report shall be prepared. At the sentencing
20 hearing, information may be presented as to any matter
21 relevant to the sentence, including any mitigating or ag-
22 gravating factor permitted or required to be considered
23 under section 3592. Information presented may include
24 the trial transcript and exhibits if the hearing is held be-
25 fore a jury or judge not present during the trial, or at

1 the trial judge's discretion. The defendant may present
2 any information relevant to a mitigating factor. The gov-
3 ernment may present any information relevant to an ag-
4 gravating factor for which notice has been provided under
5 subsection (a). Information is admissible regardless of its
6 admissibility under the rules governing admission of evi-
7 dence at criminal trials except that information may be
8 excluded if its probative value is outweighed by the danger
9 of creating unfair prejudice, confusing the issues, or mis-
10 leading the jury. The government and the defendant shall
11 be permitted to rebut any information received at the
12 hearing, and shall be given fair opportunity to present ar-
13 gument as to the adequacy of the information to establish
14 the existence of any aggravating or mitigating factor, and
15 as to the appropriateness in the case of imposing a sen-
16 tence of death. The government shall open the argument.
17 The defendant shall be permitted to reply. The govern-
18 ment shall then be permitted to reply in rebuttal. The bur-
19 den of establishing the existence of any aggravating factor
20 is on the government, and is not satisfied unless the exist-
21 ence of such a factor is established beyond a reasonable
22 doubt. The burden of establishing the existence of any
23 mitigating factor is on the defendant, and is not satisfied
24 unless the existence of such a factor is established by a
25 preponderance of the information.

1 “(d) RETURN OF SPECIAL FINDINGS.—The jury, or
2 if there is no jury, the court, shall consider all the informa-
3 tion received during the hearing. It shall return special
4 findings identifying any aggravating factor or factors set
5 forth in section 3592 found to exist and any other aggra-
6 vating factor for which notice has been provided under
7 subsection (a) found to exist. A finding with respect to
8 a mitigating factor may be made by 1 or more members
9 of the jury, and any member of the jury who finds the
10 existence of a mitigating factor may consider such factor
11 established for purposes of this section regardless of the
12 number of jurors who concur that the factor has been es-
13 tablished. A finding with respect to any aggravating factor
14 must be unanimous. If no aggravating factor set forth in
15 section 3592 is found to exist, the court shall impose a
16 sentence other than death authorized by law.

17 “(e) RETURN OF A FINDING CONCERNING A SEN-
18 TENCE OF DEATH.—If, in the case of—

19 “(1) an offense described in section 3591(1), an
20 aggravating factor required to be considered under
21 section 3592(b) is found to exist; or

22 “(2) an offense described in section 3591 (2) or
23 (3), an aggravating factor required to be considered
24 under section 3592(c) is found to exist,

234
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1 the jury, or if there is no jury, the court, shall consider
2 whether all the aggravating factor or factors found to exist
3 sufficiently outweigh all the mitigating factor or factors
4 found to exist to justify a sentence of death, or, in the
5 absence of a mitigating factor, whether the aggravating
6 factor or factors alone are sufficient to justify a sentence
7 of death. Based upon this consideration, the jury by unan-
8 imous vote, or if there is no jury, the court, shall rec-
9 ommend whether the defendant should be sentenced to
10 death, to life imprisonment without possibility of release
11 or some other lesser sentence.

12 “(f) SPECIAL PRECAUTION TO ENSURE AGAINST
13 DISCRIMINATION.—In a hearing held before a jury, the
14 court, prior to the return of a finding under subsection
15 (e), shall instruct the jury that, in considering whether
16 a sentence of death is justified, it shall not consider the
17 race, color, religious beliefs, national origin, or sex of the
18 defendant or of any victim and that the jury is not to rec-
19 ommend a sentence of death unless it has concluded that
20 it would recommend a sentence of death for the crime in
21 question no matter what the race, color, religious beliefs,
22 national origin, or sex of the defendant or of any victim
23 may be. The jury, upon return of a finding under sub-
24 section (e), shall also return to the court a certificate,
25 signed by each juror, that consideration of the race, color,

235
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1 religious beliefs, national origin, or sex of the defendant
2 or any victim was not involved in reaching his or her indi-
3 vidual decision and that the individual juror would have
4 made the same recommendation regarding a sentence for
5 the crime in question no matter what the race, color, reli-
6 gious beliefs, national origin, or sex of the defendant or
7 any victim may be.

8 **“§ 3594. Imposition of a sentence of death**

9 “Upon a recommendation under section 3593(e) that
10 the defendant should be sentenced to death or life impris-
11 onment without possibility of release, the court shall sen-
12 tence the defendant accordingly. Otherwise, the court shall
13 impose any lesser sentence that is authorized by law. Not-
14 withstanding any other law, if the maximum term of im-
15 prisonment for the offense is life imprisonment, the court
16 may impose a sentence of life imprisonment without possi-
17 bility of release.

18 **“§ 3595. Review of a sentence of death**

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

236
80

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

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

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

6 “(3) the procedures employed in the sentencing
7 hearing; and

8 “(4) the special findings returned under section
9 3593(d).

10 “(c) DECISION AND DISPOSITION.—

11 “(1) The court of appeals shall address all sub-
12 stantive and procedural issues raised on the appeal
13 of a sentence of death, and shall consider whether
14 the sentence of death was imposed under the influ-
15 ence of passion, prejudice, or any other arbitrary
16 factor and whether the evidence supports the special
17 finding of the existence of an aggravating factor re-
18 quired to be considered under section 3592.

19 “(2) Whenever the court of appeals finds
20 that—

21 “(A) the sentence of death was imposed
22 under the influence of passion, prejudice, or any
23 other arbitrary factor;

24 “(B) the admissible evidence and informa-
25 tion adduced does not support the special find-

1 ing of the existence of the required aggravating
2 factor: or

3 "(C) the proceedings involved any other
4 legal error requiring reversal of the sentence
5 that was properly preserved for appeal under
6 the rules of criminal procedure,
7 the court shall remand the case for reconsideration
8 under section 3593 or imposition of a sentence other
9 than death. The court of appeals shall not reverse or
10 vacate a sentence of death on account of any error
11 which can be harmless, including any erroneous spe-
12 cial finding of an aggravating factor, where the Gov-
13 ernment establishes beyond a reasonable doubt that
14 the error was harmless.

15 "(3) The court of appeals shall state in writing
16 the reasons for its disposition of an appeal of a sen-
17 tence of death under this section.

18 **"§ 3596. Implementation of a sentence of death**

19 "(a) IN GENERAL.—A person who has been sen-
20 tenced to death pursuant to this chapter shall be commit-
21 ted to the custody of the Attorney General until exhaus-
22 tion of the procedures for appeal of the judgment of con-
23 viction and for review of the sentence. When the sentence
24 is to be implemented, the Attorney General shall release
25 the person sentenced to death to the custody of a United

1 States marshal, who shall supervise implementation of the
2 sentence in the manner prescribed by the law of the State
3 in which the sentence is imposed. If the law of the State
4 does not provide for implementation of a sentence of
5 death, the court shall designate another State, the law of
6 which does provide for the implementation of a sentence
7 of death, and the sentence shall be implemented in the
8 latter State in the manner prescribed by such law.

9 “(b) PREGNANT WOMAN.—A sentence of death shall
10 not be carried out upon a woman while she is pregnant.

11 “(c) MENTAL CAPACITY.—A sentence of death shall
12 not be carried out upon a person who is mentally retarded.
13 A sentence of death shall not be carried out upon a person
14 who, as a result of mental disability, lacks the mental ca-
15 pacity to understand the death penalty and why it was
16 imposed on that person.

17 **“§ 3597. Use of State facilities**

18 “(a) IN GENERAL.—A United States marshal
19 charged with supervising the implementation of a sentence
20 of death may use appropriate State or local facilities for
21 the purpose, may use the services of an appropriate State
22 or local official or of a person such an official employs
23 for the purpose, and shall pay the costs thereof in an
24 amount approved by the Attorney General.

1 “(b) EXCUSE OF AN EMPLOYEE ON MORAL OR RELI-
2 GIOUS GROUNDS.—No employee of any State department
3 of corrections, the United States Department of Justice,
4 the Federal Bureau of Prisons, or the United States Mar-
5 shals Service, and no employee providing services to that
6 department, bureau, or service under contract shall be re-
7 quired, as a condition of that employment or contractual
8 obligation, to be in attendance at or to participate in any
9 prosecution or execution under this section if such partici-
10 pation is contrary to the moral or religious convictions of
11 the employee. In this subsection, ‘participation in execu-
12 tions’ includes personal preparation of the condemned in-
13 dividual and the apparatus used for execution and super-
14 vision of the activities of other personnel in carrying out
15 such activities.

16 **“§ 3598. Special provisions for Indian country**

17 “Notwithstanding sections 1152 and 1153, no person
18 subject to the criminal jurisdiction of an Indian tribal gov-
19 ernment shall be subject to a capital sentence under this
20 chapter for any offense the Federal jurisdiction for which
21 is predicated solely on Indian country (as defined in sec-
22 tion 1151 of this title) and which has occurred within the
23 boundaries of Indian country, unless the governing body
24 of the tribe has elected that this chapter have effect over
25 land and persons subject to its criminal jurisdiction.”.

240
04

1 (b) TECHNICAL AMENDMENT.—The part analysis for
2 part II of title 18, United States Code, is amended by
3 inserting after the item relating to chapter 227 the follow-
4 ing new item:

“228. Death sentence 3591”.

5 **SEC. 203. SPECIFIC OFFENSES FOR WHICH DEATH PEN-**
6 **ALTY IS AUTHORIZED.**

7 (a) CONFORMING CHANGES IN TITLE 18.—Title 18,
8 United States Code, is amended as follows:

9 (1) AIRCRAFT AND MOTOR VEHICLES.—Section
10 34 of title 18, United States Code, is amended by
11 striking the comma after “imprisonment for life”,
12 inserting a period, and striking the remainder of the
13 section.

14 (2) ESPIONAGE.—Section 794(a) of title 18,
15 United States Code, is amended by striking the pe-
16 riod at the end of the section and inserting “, except
17 that the sentence of death shall not be imposed un-
18 less the jury or, if there is no jury, the court, further
19 finds that the offense resulted in the identification
20 by a foreign power (as defined in section 101(a) of
21 the Foreign Intelligence Surveillance Act of 1978) of
22 an individual acting as an agent of the United
23 States and consequently in the death of that individ-
24 ual, or directly concerned nuclear weaponry, military
25 spacecraft or satellites, early warning systems, or

241
83

1 other means of defense or retaliation against large-
2 scale attack; war plans; communications intelligence
3 or cryptographic information; or any other major
4 weapons system or major element of defense strat-
5 egy.”.

6 (3) EXPLOSIVE MATERIALS.—(A) Section
7 844(d) of title 18, United States Code, is amended
8 by striking “as provided in section 34 of this title”.

9 (B) Section 844(f) of title 18, United States
10 Code, is amended by striking “as provided in section
11 34 of this title”.

12 (C) Section 844(i) of title 18, United States
13 Code, is amended by striking “as provided in section
14 34 of this title”.

15 (4) MURDER.—The second undesignated para-
16 graph of section 1111(b) of title 18, United States
17 Code, is amended to read as follows:

18 “Whoever is guilty of murder in the first degree
19 shall be punished by death or by imprisonment for
20 life;”.

21 (5) KILLING OF FOREIGN OFFICIAL.—Section
22 1116(a) of title 18, United States Code, is amended
23 by striking “any such person who is found guilty of
24 murder in the first degree shall be sentenced to im-
25 prisonment for life, and”.

23
242

1 (6) KIDNAPPING.—Section 1201(a) of title 18,
2 United States Code, is amended by inserting after
3 “or for life” the following: “and, if the death of any
4 person results, shall be punished by death or life im-
5 prisonment”.

6 (7) NONMAILABLE INJURIOUS ARTICLES.—The
7 last paragraph of section 1716 of title 18, United
8 States Code, is amended by striking the comma
9 after “imprisonment for life” and inserting a period
10 and striking the remainder of the paragraph.

11 (8) PRESIDENTIAL ASSASSINATIONS.—Sub-
12 section (c) of section 1751 of title 18, United States
13 Code, is amended to read as follows:

14 “(c) Whoever attempts to kill or kidnap any individ-
15 ual designated in subsection (a) of this section, shall be
16 punished—

17 “(1) by imprisonment for any term of years or
18 for life; or

19 “(2) if the conduct constitutes an attempt to in-
20 tentionally kill the President of the United States
21 and results in bodily injury to the President or oth-
22 erwise comes dangerously close to causing the death
23 of the President, by death or imprisonment for any
24 term of years or for life.”.

1 (9) WRECKING TRAINS.—The second to the last
2 undesignated paragraph of section 1992 of title 18,
3 United States Code, is amended by striking the
4 comma after “imprisonment for life”, inserting a pe-
5 riod, and striking the remainder of the section.

6 (10) BANK ROBBERY.—Section 2113(e) of title
7 18, United States Code, is amended by striking “or
8 punished by death if the verdict of the jury shall so
9 direct” and inserting “or if death results shall be
10 punished by death or life imprisonment”.

11 (11) HOSTAGE TAKING.—Section 1203(a) of
12 title 18, United States Code, is amended by insert-
13 ing after “or for life” the following: “and, if the
14 death of any person results, shall be punished by
15 death or life imprisonment”.

16 (12) MURDER FOR HIRE.—Section 1958 of title
17 18, United States Code, is amended by striking
18 “and if death results, shall be subject to imprison-
19 ment for any term of years or for life, or shall be
20 fined not more than \$50,000, or both” and inserting
21 “and if death results, shall be punished by death or
22 life imprisonment, or shall be fined not more than
23 \$250,000, or both”.

244
32

1 (13) RACKETEERING.—Section 1959(a)(1) of
2 title 18, United States Code, is amended to read as
3 follows:

4 “(1) for murder, by death or life imprisonment,
5 or a fine of not more than \$250,000, or both; and
6 for kidnapping, by imprisonment for any term of
7 years or for life, or a fine of not more than
8 \$250,000, or both;”.

9 (14) GENOCIDE.—Section 1091(b)(1) of title
10 18, United States Code, is amended by striking “a
11 fine of not more than \$1,000,000 or imprisonment
12 for life,” and inserting “, where death results, by
13 death or imprisonment for life and a fine of not
14 more than \$1,000,000, or both;”.

15 (15) CARJACKING.—Section 2119(3) of title 18,
16 United States Code, is amended by striking the pe-
17 riod after “both” and inserting “, or sentenced to
18 death.”; and by striking “, possessing a firearm as
19 defined in section 921 of this title,”.

20 (b) CONFORMING AMENDMENT TO FEDERAL AVIA-
21 TION ACT OF 1954.—Section 903 of the Federal Aviation
22 Act of 1958 (49 U.S.C. 1473) is amended by striking sub-
23 section (c).

245
28

1 **SEC. 204. APPLICABILITY TO UNIFORM CODE OF MILITARY**
2 **JUSTICE.**

3 Chapter 228 of title 18, United States Code, as added
4 by this title, shall not apply to prosecutions under the Uni-
5 form Code of Military Justice (10 U.S.C. 801).

6 **SEC. 205. DEATH PENALTY FOR MURDER BY A FEDERAL**
7 **PRISONER.**

8 (a) IN GENERAL.—Chapter 51 of title 18, United
9 States Code, is amended by adding at the end the follow-
10 ing new section:

11 **“§ 1118. Murder by a Federal prisoner**

12 “(a) OFFENSE.—A person who, while confined in a
13 Federal correctional institution under a sentence for a
14 term of life imprisonment, commits the murder of another
15 shall be punished by death or by life imprisonment.

16 “(b) DEFINITIONS.—In this section—

17 “‘Federal correctional institution’ means any
18 Federal prison, Federal correctional facility, Federal
19 community program center, or Federal halfway
20 house.

21 “‘murder’ means a first degree or second de-
22 gree murder (as defined by section 1111).

23 “‘term of life imprisonment’ means a sentence
24 for the term of natural life, a sentence commuted to
25 natural life, an indeterminate term of a minimum of

246
40

1 at least fifteen years and a maximum of life, or an
2 unexecuted sentence of death.”.

3 (b) TECHNICAL AMENDMENT.—The chapter analysis
4 for chapter 51 of title 18, United States Code, is amended
5 by adding at the end the following new item:

“1118. Murder by a Federal prisoner.”.

6 **SEC. 206. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.**

7 (a) CONSPIRACY AGAINST RIGHTS.—Section 241 of
8 title 18, United States Code, is amended by striking the
9 period at the end of the last sentence and inserting “, or
10 may be sentenced to death.”.

11 (b) DEPRIVATION OF RIGHTS UNDER COLOR OF
12 LAW.—Section 242 of title 18, United States Code, is
13 amended by striking the period at the end of the last sen-
14 tence and inserting “, or may be sentenced to death.”.

15 (c) FEDERALLY PROTECTED ACTIVITIES.—Section
16 245(b) of title 18, United States Code, is amended in the
17 matter following paragraph (5) by inserting “, or may be
18 sentenced to death” after “or for life”.

19 (d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUC-
20 TION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—
21 Section 247(c)(1) of title 18, United States Code, is
22 amended by inserting “, or may be sentenced to death”
23 after “or both”.

247
34

1 **SEC. 207. DEATH PENALTY FOR THE MURDER OF FEDERAL**
2 **LAW ENFORCEMENT OFFICIALS.**

3 Section 1114(a) of title 18, United States Code, is
4 amended by striking “punished as provided under sections
5 1111 and 1112 of this title,” and inserting “punished, in
6 the case of murder, by a sentence of death or life imprison-
7 ment as provided under section 1111, or, in the case of
8 manslaughter, a sentence as provided under section
9 1112.”.

10 **SEC. 208. NEW OFFENSE FOR THE INDISCRIMINATE USE OF**
11 **WEAPONS TO FURTHER DRUG CONSPIR-**
12 **ACIES.**

13 (a) **SHORT TITLE.**—This section may be cited as the
14 “Drive-By Shooting Prevention Act of 1993”.

15 (b) **IN GENERAL.**—Chapter 2 of title 18, United
16 States Code, is amended by adding at the end the follow-
17 ing new section:

18 **“§ 36. Drive-by shooting**

19 “(a) **DEFINITION.**—In this section, ‘major drug of-
20 fense’ means—

21 “(1) a continuing criminal enterprise punish-
22 able under section 403(c) of the Controlled Sub-
23 stances Act (21 U.S.C. 848(c));

24 “(2) a conspiracy to distribute controlled sub-
25 stances punishable under section 406 of the Con-
26 trolled Substances Act (21 U.S.C. 846) section 1013

248
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1 of the Controlled Substances Import and Export
2 Control Act (21 U.S.C. 963); and

3 “(3) an offense involving major quantities of
4 drugs and punishable under section 401(b)(1)(A) of
5 the Controlled Substances Act (21 U.S.C.
6 841(b)(1)(A)) or section 1010(b)(1) of the Con-
7 trolled Substances Import and Export Act (21
8 U.S.C. 960(b)(1)).

9 “(b) OFFENSE AND PENALTIES.—(1) A person who,
10 in furtherance or to escape detection of a major drug of-
11 fense and with the intent to intimidate, harass, injure, or
12 maim, fires a weapon into a group of two or more persons
13 and who, in the course of such conduct, causes grave risk
14 to any human life shall be punished by a term of no more
15 than 25 years, by fine under this title, or both.

16 “(2) A person who, in furtherance or to escape detec-
17 tion of a major drug offense and with the intent to intimi-
18 date, harass, injure, or maim, fires a weapon into a group
19 of 2 or more persons and who, in the course of such con-
20 duct, kills any person shall, if the killing—

21 “(A) is a first degree murder (as defined in sec-
22 tion 1111(a)), be punished by death or imprison-
23 ment for any term of years or for life, fined under
24 this title, or both; or

249
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1 “(B) is a murder other than a first degree mur-
2 der (as defined in section 1111(a)), be fined under
3 this title, imprisoned for any term of years or for
4 life, or both.”.

5 (c) TECHNICAL AMENDMENT.—The chapter analysis
6 for chapter 2 of title 18, United States Code, is amended
7 by adding at the end the following new item:

“36. Drive-by shooting.”.

8 **SEC. 209. FOREIGN MURDER OF UNITED STATES NATION-**
9 **ALS.**

10 (a) IN GENERAL.—Chapter 51 of title 18, United
11 States Code, is amended by adding at the end the follow-
12 ing new section:

13 **“§ 1118. Foreign murder of United States nationals**

14 “(a) DEFINITION.—In this section, ‘national of the
15 United States’ has the meaning stated in section
16 101(a)(22) of the Immigration and Nationality Act (8
17 U.S.C. 1101(a)(22)).

18 “(b) OFFENSE.—A person who, being a national of
19 the United States, kills or attempts to kill a national of
20 the United States while such national is outside the
21 United States but within the jurisdiction of another coun-
22 try shall be punished as provided under sections 1111,
23 1112, and 1113.

24 “(c) LIMITATIONS ON PROSECUTION.—(1) No pros-
25 ecution may be instituted against any person under this

1 section except upon the written approval of the Attorney
2 General, the Deputy Attorney General, or an Assistant At-
3 torney General, which function of approving prosecutions
4 may not be delegated. No prosecution shall be approved
5 if prosecution has been previously undertaken by a foreign
6 country for the same conduct.

7 “(2) No prosecution shall be approved under this sec-
8 tion unless the Attorney General, in consultation with the
9 Secretary of State, determines that the conduct took place
10 in a country in which the person is no longer present, and
11 the country lacks the ability to lawfully secure the person’s
12 return. A determination by the Attorney General under
13 this paragraph is not subject to judicial review.”.

14 (b) TECHNICAL AMENDMENTS.—(1) Section 1117 of
15 title 18, United States Code, is amended by striking “or
16 1116” and inserting “1116, or 1118”.

17 (2) The chapter analysis for chapter 51 of title 18,
18 United States Code, is amended by adding at the end the
19 following new item:

“1118. Foreign murder of United States nationals.”.

20 **SEC. 210. DEATH PENALTY FOR RAPE AND CHILD MOLES-**
21 **TATION MURDERS.**

22 (a) OFFENSE.—Chapter 109A of title 18, United
23 States Code, is amended—

24 (1) by redesignating section 2245 as section
25 2246; and

251
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1 (2) by inserting after section 2244 the following
2 new section:

3 **“§ 2245. Sexual abuse resulting in death**

4 “A person who, in the course of an offense under this
5 chapter, engages in conduct that results in the death of
6 a person, shall be punished by death or imprisoned for
7 any term of years or for life.”.

8 (b) TECHNICAL AMENDMENTS.—The chapter analy-
9 sis for chapter 109A of title 18, United States Code, is
10 amended by striking the item for section 2245 and insert-
11 ing the following:

“2245. Sexual abuse resulting in death.

“2246. Definitions for chapter.”.

12 **SEC. 211. DEATH PENALTY FOR SEXUAL EXPLOITATION OF**
13 **CHILDREN.**

14 Section 2251(d) of title 18, United States Code, is
15 amended by adding at the end the following: “Whoever,
16 in the course of an offense under this section, engages in
17 conduct that results in the death of a person, shall be pun-
18 ished by death or imprisoned for any term of years or for
19 life.”.

20 **SEC. 212. MURDER BY ESCAPED PRISONERS.**

21 (a) IN GENERAL.—Chapter 51 of title 18, United
22 States Code, as amended by section 109(a), is amended
23 by adding at the end the following new section:

1 **“§ 1119. Murder by escaped prisoners**

2 “(a) DEFINITION.—In this section, ‘Federal prison’
3 and ‘term of life imprisonment’ have the meanings stated
4 in section 1118.

5 “(b) OFFENSE AND PENALTY.—A person, having es-
6 caped from a Federal prison where the person was con-
7 fined under a sentence for a term of life imprisonment,
8 kills another shall be punished as provided in sections
9 1111 and 1112.”.

10 (b) TECHNICAL AMENDMENT.—The chapter analysis
11 for chapter 51 of title 18, United States Code, as amended
12 by section 109(b)(2), is amended by adding at the end
13 the following new item:

“1119. Murder by escaped prisoners.”.

14 **SEC. 213. DEATH PENALTY FOR GUN MURDERS DURING**
15 **FEDERAL CRIMES OF VIOLENCE AND DRUG**
16 **TRAFFICKING CRIMES.**

17 Section 924 of title 18, United States Code, is
18 amended by adding at the end the following new sub-
19 section:

20 “(i) A person who, in the course of a violation of sub-
21 section (c), causes the death of a person through the use
22 of a firearm, shall—

23 “(1) if the killing is a murder (as defined in
24 section 1111), be punished by death or by imprison-
25 ment for any term of years or for life; and

1 “(2) if the killing is manslaughter (as defined
2 in section 1112), be punished as provided in that
3 section.”.

4 **SEC. 214. HOMICIDES AND ATTEMPTED HOMICIDES IN-**
5 **VOLVING FIREARMS IN FEDERAL FACILITIES.**

6 Section 930 of title 18, United States Code, is
7 amended—

8 (1) by redesignating subsections (c), (d), (e),
9 and (f) as subsections (d), (e), (f), and (g), respec-
10 tively;

11 (2) in subsection (a) by striking “(c)” and in-
12 serting “(d)”; and

13 (3) by inserting after subsection (b) the follow-
14 ing new subsection:

15 “(c) A person who kills or attempts to kill any person
16 in the course of a violation of subsection (a) or (b), or
17 in the course of an attack on a Federal facility involving
18 the use of a firearm or other dangerous weapon, shall be
19 punished as provided in sections 1111, 1112, and 1113.”.

20 **SEC. 215. ALIEN SMUGGLING.**

21 **TO BE SUPPLIED**

1 **SEC. 216. DEATH PENALTY FOR THE MURDER OF STATE OR**
2 **LOCAL OFFICIALS ASSISTING FEDERAL LAW**
3 **ENFORCEMENT OFFICIALS AND STATE COR-**
4 **RECTIONAL OFFICERS.**

5 (a) IN GENERAL.—Chapter 51 of title 18, United
6 States Code, is amended by adding at the end the follow-
7 ing new section:

8 **“§ 1121. Killing persons aiding Federal investigations**
9 **or State correctional officers**

10 “(a) Whoever intentionally kills—

11 “(1) a State or local official, law enforcement
12 officer, or other officer or employee while working
13 with Federal law enforcement officials in furtherance
14 of a Federal criminal investigation—

15 “(A) while the victim is engaged in the
16 performance of official duties;

17 “(B) because of the performance of the
18 victim’s official duties; or

19 “(C) because of the victim’s status as a
20 public servant; or

21 “(2) any person assisting a Federal criminal in-
22 vestigation, while that assistance is being rendered
23 and because of it,

24 shall be sentenced according to the terms of section 1111,
25 including by sentence of death or by imprisonment for life.

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1 “(b)(1) Whoever, in a circumstance described in
2 paragraph (3) of this subsection, while incarcerated, inten-
3 tionally kills any State correctional officer engaged in, or
4 on account of the performance of such officer’s official du-
5 ties, shall be sentenced to a term of imprisonment which
6 shall not be less than 20 years, and may be sentenced to
7 life imprisonment or death.

8 “(2) As used in this section, the term, ‘State correc-
9 tional officer’ includes any officer or employee of any pris-
10 on, jail, or other detention facility, operated by, or under
11 contract to, either a State or local governmental agency,
12 whose job responsibilities include providing for the custody
13 of incarcerated individuals.

14 “(3) The circumstance referred to in paragraph (1)
15 is that—

16 “(A) the correctional officer is engaged in
17 transporting the incarcerated person interstate; or

18 “(B) the incarcerated person is incarcerated
19 pursuant to a conviction for an offense against the
20 United States.”.

21 (b) TECHNICAL AMENDMENT.—The chapter analysis
22 for chapter 51 of title 18, United States Code, is amended
23 by adding at the end the following new item:

“1121. Killing persons aiding Federal investigations or State correctional offi-
cers.”.

256

1 **SEC. 217. PROTECTION OF COURT OFFICERS AND JURORS.**

2 Section 1503 of title 18, United States Code, is
3 amended—

4 (1) by inserting “(a)” before “Whoever”;

5 (2) by striking “fined not more than \$5,000 or
6 imprisoned not more than five years, or both.” and
7 inserting “punished as provided in subsection (b).”;

8 (3) by adding at the end the following new sub-
9 section:

10 “(b) The punishment for an offense under this sec-
11 tion is—

12 “(1) in the case of a killing, the punishment
13 provided in sections 1111 and 1112;

14 “(2) in the case of an attempted killing, or a
15 case in which the offense was committed against a
16 petit juror and in which a class A or B felony was
17 charged, imprisonment for not more than 20 years;
18 and

19 “(3) in any other case, imprisonment for not
20 more than 10 years.”; and

21 (4) in subsection (a), as designated by para-
22 graph (1), by striking “commissioner” each place it
23 appears and inserting “magistrate judge”.

257

1 **SEC. 218. PROHIBITION OF RETALIATORY KILLINGS OF**
2 **WITNESSES, VICTIMS, AND INFORMANTS.**

3 Section 1513 of title 18, United States Code, is
4 amended—

5 (1) by redesignating subsections (a) and (b) as
6 subsections (b) and (c), respectively; and

7 (2) by inserting after the section heading the
8 following new subsection:

9 “(a)(1) Whoever kills or attempts to kill another per-
10 son with intent to retaliate against any person for—

11 “(A) the attendance of a witness or party at an
12 official proceeding, or any testimony given or any
13 record, document, or other object produced by a wit-
14 ness in an official proceeding; or

15 “(B) any information relating to the commis-
16 sion or possible commission of a Federal offense or
17 a violation of conditions of probation, parole, or re-
18 lease pending judicial proceedings given by a person
19 to a law enforcement officer; shall be punished as
20 provided in paragraph (2).

21 “(2) The punishment for an offense under this sub-
22 section is—

23 “(A) in the case of a killing, the punishment
24 provided in sections 1111 and 1112; and

25 “(B) in the case of an attempt, imprisonment
26 for not more than 20 years.”.

258

1 **SEC. 219. PROTECTION OF JURORS AND WITNESSES IN**
2 **CAPITAL CASES.**

3 Section 3432 of title 18, United States Code, is
4 amended by inserting before the period the following: “.
5 except that such list of the veniremen and witnesses need
6 not be furnished if the court finds by a preponderance of
7 the evidence that providing the list may jeopardize the life
8 or safety of any person”.

9 **SEC. 220. DEATH PENALTY FOR THE MURDER OF STATE OF-**
10 **FICIALS ASSISTING FEDERAL LAW ENFORCE-**
11 **MENT OFFICIALS.**

12 (a) IN GENERAL.—Chapter 51 of title 18, United
13 States Code, as amended by section 112(a), is amended
14 by adding at the end the following new section:

15 **“§ 1120. Killing persons aiding Federal investigations**

16 “A person who intentionally kills—

17 “(1) a State or local official, law enforcement
18 officer, or other officer or employee while working
19 with Federal law enforcement officials in furtherance
20 of a Federal criminal investigation—

21 “(A) while the victim is engaged in the
22 performance of official duties;

23 “(B) because of the performance of the
24 victim’s official duties; or

25 “(C) because of the victim’s status as a
26 public servant; or

254

1 “(2) any person assisting a Federal criminal in-
2 vestigation, while that assistance is being rendered
3 and because of it.

4 shall be sentenced as provided in section 1111, including
5 by sentence of death or by imprisonment for life.”.

6 (b) TECHNICAL AMENDMENT.—The chapter analysis
7 for chapter 51 of title 18, United States Code, as amended
8 by section 112(b), is amended by adding at the end the
9 following new item:

 “1120. Killing persons aiding Federal investigations.”.

10 **SEC. 221. DEATH PENALTY FOR MURDER OF FEDERAL WIT-**
11 **NESSES.**

12 Section 1512(a)(2)(A) of title 18, United States
13 Code, is amended to read as follows:

14 “(A) in the case of murder (as defined in
15 section 1111), the death penalty or imprison-
16 ment for life, and in the case of any other kill-
17 ing, the punishment provided in in section
18 1112;”.

19 **SEC. 222. OFFENSES OF VIOLENCE AGAINST MARITIME**
20 **NAVIGATION OR FIXED PLATFORMS.**

21 (a) IN GENERAL.—Chapter 111 of title 18, United
22 States Code, is amended by adding at the end the follow-
23 ing new sections:

24 **“§ 2280. Violence against maritime navigation**

25 “(a) OFFENSES.—

260

1 “(1) IN GENERAL.—A person who unlawfully
2 and intentionally—

3 “(A) seizes or exercises control over a ship
4 by force or threat thereof or any other form of
5 intimidation;

6 “(B) performs an act of violence against a
7 person on board a ship if that act is likely to
8 endanger the safe navigation of that ship;

9 “(C) destroys a ship or causes damage to
10 a ship or to its cargo which is likely to endan-
11 ger the safe navigation of that ship;

12 “(D) places or causes to be placed on a
13 ship, by any means whatsoever, a device or sub-
14 stance which is likely to destroy that ship, or
15 cause damage to that ship or its cargo which
16 endangers or is likely to endanger the safe navi-
17 gation of that ship;

18 “(E) destroys or seriously damages mari-
19 time navigational facilities or seriously inter-
20 feres with their operation, if such act is likely
21 to endanger the safe navigation of a ship;

22 “(F) communicates information, knowing
23 the information to be false and under cir-
24 cumstances in which such information may rea-

241
38

1 sonably be believed, thereby endangering the
2 safe navigation of a ship:

3 “(G) injures or kills any person in connec-
4 tion with the commission or the attempted com-
5 mission of any of the offenses set forth in sub-
6 paragraphs (A) through (F); or

7 “(H) attempts to do any act prohibited
8 under subparagraphs (A) through (G),
9 shall be fined under this title, imprisoned not more
10 than 20 years, or both; and if the death of any per-
11 son results from conduct prohibited by this para-
12 graph, shall be punished by death or imprisoned for
13 any term of years or for life.

14 “(2) THREAT TO NAVIGATION.—A person who
15 threatens to do any act prohibited under paragraph
16 (1) (B), (C) or (E), with apparent determination
17 and will to carry the threat into execution, if the
18 threatened act is likely to endanger the safe naviga-
19 tion of the ship in question, shall be fined under this
20 title, imprisoned not more than 5 years, or both.

21 “(b) JURISDICTION.—There is jurisdiction over the
22 prohibited activity in subsection (b)—

23 “(1) in the case of a covered ship, if—

24 “(A) such activity is committed—

1 “(i) against or on board a ship flying
2 the flag of the United States at the time
3 the prohibited activity is committed;

4 “(ii) in the United States and the ac-
5 tivity is not prohibited as a crime by the
6 State in which the activity takes place; or

7 “(iii) the activity takes place on a ship
8 flying the flag of a foreign country or out-
9 side the United States, by a national of the
10 United States or by a stateless person
11 whose habitual residence is in the United
12 States;

13 “(B) during the commission of such activ-
14 ity, a national of the United States is seized,
15 threatened, injured or killed; or

16 “(C) the offender is later found in the
17 United States after such activity is committed;

18 “(2) in the case of a ship navigating or sched-
19 uled to navigate solely within the territorial sea or
20 internal waters of a country other than the United
21 States, if the offender is later found in the United
22 States after such activity is committed; and

23 “(3) in the case of any vessel, if such activity
24 is committed in an attempt to compel the United
25 States to do or abstain from doing any act.

1 “(c) BAR TO PROSECUTION.—It is a bar to Federal
2 prosecution under subsection (a) for conduct that occurred
3 within the United States that the conduct involved was
4 during or in relation to a labor dispute, and such conduct
5 is prohibited as a felony under the law of the State in
6 which it was committed. For purposes of this section, the
7 term ‘labor dispute’ has the meaning set forth in section
8 2(c) of the Norris-LaGuardia Act, as amended (29 U.S.C.
9 113(c)).

10 “(d) DEFINITIONS.—In this section—

11 “‘covered ship’ means a ship that is navigating
12 or is scheduled to navigate into, through or from wa-
13 ters beyond the outer limit of the territorial sea of
14 a single country or a lateral limit of that country’s
15 territorial sea with an adjacent country.

16 “‘national of the United States’ has the mean-
17 ing stated in section 101(a)(22) of the Immigration
18 and Nationality Act (8 U.S.C. 1101(a)(22)).

19 “‘territorial sea of the United States’ means all
20 waters extending seaward to 12 nautical miles from
21 the baselines of the United States determined in ac-
22 cordance with international law.

23 “‘ship’ means a vessel of any type whatsoever
24 not permanently attached to the sea-bed, including
25 dynamically supported craft, submersibles or any

264
52

1 other floating craft, but does not include a warship.
2 a ship owned or operated by a government when
3 being used as a naval auxiliary or for customs or po-
4 lice purposes, or a ship which has been withdrawn
5 from navigation or laid up.

6 “‘United States’, when used in a geographical
7 sense, includes the Commonwealth of Puerto Rico,
8 the Commonwealth of the Northern Mariana Islands
9 and all territories and possessions of the United
10 States.

11 **“§ 2281. Violence against maritime fixed platforms**

12 “(a) OFFENSES.—

13 “(1) IN GENERAL.—A person who unlawfully
14 and intentionally—

15 “(A) seizes or exercises control over a fixed
16 platform by force or threat thereof or any other
17 form of intimidation;

18 “(B) performs an act of violence against a
19 person on board a fixed platform if that act is
20 likely to endanger its safety;

21 “(C) destroys a fixed platform or causes
22 damage to it which is likely to endanger its
23 safety;

24 “(D) places or causes to be placed on a
25 fixed platform, by any means whatsoever, a de-

265
59

1 vice or substance which is likely to destroy that
2 fixed platform or likely to endanger its safety;

3 “(E) injures or kills any person in connec-
4 tion with the commission or the attempted com-
5 mission of any of the offenses set forth in sub-
6 paragraphs (A) through (D); or

7 “(F) attempts to do anything prohibited
8 under subparagraphs (A) through (E),
9 shall be fined under this title, imprisoned not more
10 than 20 years, or both; and if death results to any
11 person from conduct prohibited by this paragraph,
12 shall be punished by death or imprisoned for any
13 term of years or for life.

14 “(2) THREAT TO SAFETY.—A person who
15 threatens to do anything prohibited under paragraph
16 (1) (B) or (C), with apparent determination and will
17 to carry out threat into execution, if the threatened
18 act is likely to endanger the safety of the fixed plat-
19 form, shall be fined under this title, imprisoned not
20 more than 5 years, or both.

21 “(b) JURISDICTION.—There is jurisdiction over the
22 prohibited activity in subsection (b) if—

23 “(1) such activity is committed against or on
24 board a fixed platform—

2660

1 “(A) that is located on the continental
2 shelf of the United States;

3 “(B) that is located on the continental
4 shelf of another country, by a national of the
5 United States or by a stateless person whose
6 habitual residence is in the United States; or

7 “(C) in an attempt to compel the United
8 States to do or abstain from doing any act;

9 “(2) during the commission of such activity
10 against or on board a fixed platform located on a
11 continental shelf, a national of the United States is
12 seized, threatened, injured or killed; or

13 “(3) such activity is committed against or on
14 board a fixed platform located outside the United
15 States and beyond the continental shelf of the Unit-
16 ed States and the offender is later found in the
17 United States.

18 “(c) BAR TO PROSECUTION.—It is a bar to Federal
19 prosecution under subsection (a) for conduct that occurred
20 within the United States that the conduct involved was
21 during or in relation to a labor dispute, and such conduct
22 is prohibited as a felony under the law of the State in
23 which it was committed. For purposes of this section, the
24 term ‘labor dispute’ has the meaning set forth in section

67
61

1 2(c) of the Norris-LaGuardia Act, as amended (29 U.S.C.
2 113(c)).

3 “(d) DEFINITIONS.—In this section—

4 “‘continental shelf’ means the sea-bed and sub-
5 soil of the submarine areas that extend beyond a
6 country’s territorial sea to the limits provided by
7 customary international law as reflected in Article
8 76 of the 1982 Convention on the Law of the Sea.

9 “‘fixed platform’ means an artificial island, in-
10 stallation or structure permanently attached to the
11 sea-bed for the purpose of exploration or exploitation
12 of resources or for other economic purposes.

13 “‘national of the United States’ has the mean-
14 ing stated in section 101(a)(22) of the Immigration
15 and Nationality Act (8 U.S.C. 1101(a)(22)).

16 “‘territorial sea of the United States’ means all
17 waters extending seaward to 12 nautical miles from
18 the baselines of the United States determined in ac-
19 cordance with international law.

20 “‘United States’, when used in a geographical
21 sense, includes the Commonwealth of Puerto Rico,
22 the Commonwealth of the Northern Mariana Islands
23 and all territories and possessions of the United
24 States.”.

268
62

1 (b) TECHNICAL AMENDMENT.—The chapter analysis
2 for chapter 111 of title 18, United States Code, is amend-
3 ed by adding at the end the following new items:

“2280. Violence against maritime navigation.

“2281. Violence against maritime fixed platforms.”.

4 (c) EFFECTIVE DATES.—This section and the
5 amendments made by this section shall take effect on the
6 later of—

7 (1) the date of the enactment of this Act; or

8 (2)(A) in the case of section 2280 of title 18,
9 United States Code, the date the Convention for the
10 Suppression of Unlawful Acts Against the Safety of
11 Maritime Navigation has come into force and the
12 United States has become a party to that Conven-
13 tion; and

14 (B) in the case of section 2281 of title 18,
15 United States Code, the date the Protocol for the
16 Suppression of Unlawful Acts Against the Safety of
17 Fixed Platforms Located on the Continental Shelf
18 has come into force and the United States has be-
19 come a party to that Protocol.

20 **SEC. 223. TORTURE.**

21 Section 2340A(a) title 18, United States Code, is
22 amended to read as follows:

23 “(a) OFFENSES.—A person who outside the United
24 States commits or attempts to commit torture shall be

269

1 fined under this title, imprisoned not more than 20 years.
2 or both; and if death results to any person from conduct
3 prohibited by this subsection, shall be punished by death
4 or imprisoned for any term of years or for life.”.

5 **SEC. 224. VIOLENCE AT AIRPORTS SERVING INTER-**
6 **NATIONAL CIVIL AVIATION.**

7 (a) OFFENSE.—Chapter 2 of title 18, United States
8 Code, is amended by adding at the end the following new
9 section:

10 **“§ 36. Violence at international airports**

11 “(a) OFFENSE.—A person who unlawfully and inten-
12 tionally, using any device, substance, or weapon—

13 “(1) performs an act of violence against a per-
14 son at an airport serving international civil aviation
15 that causes or is likely to cause serious bodily injury
16 (as defined in section 1365 of this title) or death; or

17 “(2) destroys or seriously damages the facilities
18 of an airport serving international civil aviation or a
19 civil aircraft not in service located thereon or dis-
20 rupts the services of the airport,

21 if such an act endangers or is likely to endanger safety
22 at that airport, or attempts to do such an act, shall be
23 fined under this title, imprisoned not more than 20 years,
24 or both; and if the death of any person results from con-

270
64

duct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

“(b) JURISDICTION.—There is jurisdiction over the prohibited activity in subsection (a) if—

“(1) the prohibited activity takes place in the United States; or

“(2) the prohibited activity takes place outside the United States and the offender is later found in the United States.

“(c) It is a bar to Federal presecution under subsection (a) for conduct that occurred within the United States that the conduct involved was during or in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed. For purposes of this section, the term ‘labor dispute’ has the meaning set forth in section 2(c) of the Norris-LaGuardia Act, as amended (29 U.S.C. 113(c)).

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 2 of title 18, United States Code, is amended by adding at the end the following new item:

“36. Violence at international airports.”.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the later of—

(1) the date of enactment of this Act; or

(2) the date on which the Protocol for the Suppression of Unlawful Acts of Violence at Airports

271
65

1 Serving International Civil Aviation, Supplementary
2 to the Convention for the Suppression of Unlawful
3 Acts Against the Safety of Civil Aviation, done at
4 Montreal on 23 September 1971, has come into
5 force and the United States has become a party to
6 the Protocol.

7 **SEC. 225. TERRORIST DEATH PENALTY ACT.**

8 Section 2332(a)(1) of title 18, United States Code
9 is amended to read as follows:

10 “(1) if the killing is murder (as defined in sec-
11 tion 1111(a)), be fined under this title, punished by
12 death or imprisonment for any term of years or for
13 life, or both;”.

14 **SEC. 226. WEAPONS OF MASS DESTRUCTION.**

15 (a) OFFENSE.—Chapter 113A of title 18, United
16 States Code, is amended by inserting after section 2332
17 the following new section:

18 **“§ 2332a. Use of weapons of mass destruction**

19 “(a) OFFENSE.—A person who uses, or attempts or
20 conspires to use, a weapon of mass destruction—

21 “(1) against a national of the United States
22 while such national is outside of the United States;

23 “(2) against any person within the United
24 States; or

272
88

1 “(3) against any property that is owned, leased
2 or used by the United States or by any department
3 or agency of the United States, whether the property
4 is within or outside of the United States;

5 shall be imprisoned for any term of years or for life, and
6 if death results, shall be punished by death or imprisoned
7 for any term of years or for life.

8 “(b) DEFINITIONS.—For purposes of this section—

9 “(1) the term ‘national of the United States’
10 has the meaning given in section 101(a)(22) of the
11 Immigration and Nationality Act (8 U.S.C.
12 1101(a)(22)); and

13 “(2) the term ‘weapon of mass destruction’
14 means—

15 “(A) any destructive device as defined in
16 section 921 of this title;

17 “(B) poison gas;

18 “(C) any weapon involving a disease orga-
19 nism; or

20 “(D) any weapon that is designed to re-
21 lease radiation or radioactivity at a level dan-
22 gerous to human life.”.

23 (b) TECHNICAL AMENDMENT.—The chapter analysis
24 for chapter 113A of title 18, United States Code, is

273
65

1 amended by inserting after the item relating to section
2 2332 the following:

“2332a. Use of weapons of mass destruction.”.

3 **SEC. 5008. ENHANCED PENALTIES FOR ALIEN SMUGGLING.**

4 Section 274(a) of the Immigration and Nationality
5 Act (8 U.S.C. 1324(a)) is amended—

6 (1) in paragraph (1)—

7 (A) by striking “(1) Any person” and in-
8 serting “(1)(A) Any person”;

9 (B) by striking “(A) knowing” and insert-
10 ing “(i) knowing”;

11 (C) by striking “(B) knowing” and insert-
12 ing “(ii) knowing”

13 (D) by striking “(C) knowing” and insert-
14 ing “(iii) knowing”

15 (E) by striking “(D) encourages” and in-
16 serting “(iv) encourages”;

17 (F) by striking “shall be fined in accord-
18 ance with title 18, or imprisoned not more than
19 five years, or both, for each alien in respect to
20 whom any violation of this paragraph occurs”
21 and inserting “shall be punished as provided in
22 subparagraph (B)”;

23 (G) by adding at the end the following new
24 subparagraph:

274
68

1 “(B) A person who violates subparagraph (A) shall,
2 for each alien in respect to whom such a violation occurs—

3 “(i) in the case of a violation of subparagraph
4 (A)(i), be fined under title 18, United States Code,
5 imprisoned not more than 10 years, or both;

6 “(ii) in the case of a violation of subparagraph
7 (A) (ii), (iii), or (iv), be fined under title 18, United
8 States Code, imprisoned not more than 5 years, or
9 both;

10 “(iii) in the case of a violation of subparagraph
11 (A) (i), (ii), (iii), or (iv) during and in relation to
12 which the person causes serious bodily injury (as de-
13 fined in section 1365 of title 18, United States
14 Code) to, or places in jeopardy the life of, any per-
15 son, be fined under title 18, United States Code, im-
16 prisoned not more than 20 years, or both; and

17 “(iv) in the case of a violation of subparagraph
18 (A) (i), (ii), (iii), or (iv) resulting in the death of any
19 person, punished by death or imprisoned for any
20 term of years for life, fined under title 18 United
21 States Code, or both.”; and

22 (2) in paragraph (2) by striking “or imprisoned
23 not more than five years, or both” and inserting “,
24 or in the case of a violation of subparagraph (B)(ii),
25 imprisoned not more than 10 years, or both, or in

69

275

1 the case of a violation of subparagraph (B)(i) or
2 (B)(iii), imprisoned not more than 5 years, or
3 both.”.

4 **TITLE VII—MANDATORY LIFE IM-**
5 **PRISONMENT FOR PERSONS**
6 **CONVICTED OF CERTAIN**
7 **FELONIES**

8 **SEC. 501. MANDATORY LIFE IMPRISONMENT FOR PERSONS**
9 **CONVICTED OF CERTAIN FELONIES.**

10 Section 3559 of title 18, United States Code, is
11 amended—

12 (1) in subsection (b), by striking “An” and in-
13 serting “Except as provided in subsection (c), an” in
14 lieu thereof; and

15 (2) by adding the following new subsection at
16 the end:

17 “(c) IMPRISONMENT OF CERTAIN CRIMINALS.—

18 “(1) MANDATORY LIFE IMPRISONMENT.—Not-
19 withstanding any other provision of law, a person
20 who is convicted in a court of the United States of
21 a serious violent felony or a serious drug offense
22 shall be sentenced to life imprisonment if—

23 “(A) the person has been convicted (and
24 those convictions have become final) on 2 or
25 more prior occasions, in a court of the United

276

1 States or of a State, of serious violent felonies
2 or serious drug offenses, or any combination of
3 such felonies and offenses; and

4 “(B) each serious violent felony or serious
5 drug offense used as a basis for sentencing
6 under this subsection, other than the first, was
7 committed after the defendant’s conviction of
8 the preceding serious violent felony or serious
9 drug offense.

10 “(2) DEFINITIONS.—For purposes of this
11 subsection—

12 “(A) the term ‘assault with intent to com-
13 mit rape’ means an offense that has as its ele-
14 ments engaging in physical contact with an-
15 other person or using or brandishing a weapon
16 against another person with intent to commit
17 aggravated sexual abuse or sexual abuse (as de-
18 scribed in sections 2241 and 2242);

19 “(B) the term ‘arson’ means an offense
20 that has as its elements maliciously damaging
21 or destroying any building, inhabited structure,
22 vehicle, vessel, or real property by means of fire
23 or an explosive;

24 “(C) the term ‘extortion’ means an offense
25 that has as its elements the extraction of any-

27

1 thing of value from another person by threaten-
2 ing or placing that person in fear of injury to
3 any person or kidnapping of any person;

4 “(D) the term ‘firearms use’ means an of-
5 fense that has as its elements those described
6 in section 924(c) or 929(a), if the firearm was
7 brandished, discharged, or otherwise used as a
8 weapon and the crime of violence or drug traf-
9 ficking crime during and relation to which the
10 firearm was used was subject to prosecution in
11 a court of the United States or a court of a
12 State, or both;

13 “(E) the term ‘kidnapping’ means an of-
14 fense that has as its elements the abduction, re-
15 straining, confining, or carrying away of an-
16 other person by force or threat of force;

17 “(F) the term ‘serious violent felony’
18 means—

19 “(i) a Federal or State offense, by
20 whatever designation and wherever com-
21 mitted, consisting of murder (as described
22 in section 1111); manslaughter other than
23 involuntary manslaughter (as described in
24 section 1112); assault with intent to com-
25 mit murder (as described in section

278

1 113(a)); assault with intent to commit
2 rape; aggravated sexual abuse and sexual
3 abuse (as described in sections 2241 and
4 2242); abusive sexual contact (as described
5 in sections 2244 (a)(1) and (a)(2)); kid-
6 napping; aircraft piracy (as described in
7 section 902 (i)(2) or (n)(2) of the Federal
8 Aviation Act of 1958 (49 App. U.S.C.
9 1472 (i)(2), (n)(2))); robbery (as described
10 in section 2111, 2113, or 2118);
11 carjacking (as described in section 2119);
12 extortion; arson; firearms use; or attempt,
13 conspiracy, or solicitation to commit any of
14 the above offenses;

15 “(ii) any other offense punishable by
16 a maximum term of imprisonment of 10
17 years or more that has as an element the
18 use, attempted use, or threatened use of
19 physical force against the person of an-
20 other or that, by its nature, involves a sub-
21 stantial risk that physical force against the
22 person of another may be used in the
23 course of committing the offense;

24 “(G) the term ‘State’ means a State of the
25 United States, the District of Columbia, and a

279

1 commonwealth, territory, or possession of the
2 United States; and

3 “(H) the term ‘serious drug offense’
4 means—

5 “(i) an offense subject to a penalty
6 provided for in section 401(b)(1)(A) or
7 408 of the Controlled Substances Act (21
8 U.S.C. 841(b)(1)(A), 848) or section
9 1010(b)(1)(A) of the Controlled Sub-
10 stances Import and Export Act (21 U.S.C.
11 960(b)(1)(A)); or

12 “(ii) an offense under State law that,
13 had the offense been prosecuted in a court
14 of the United States, would have been sub-
15 ject to a penalty provided for in section
16 401(b)(1)(A) or 408 of the Controlled Sub-
17 stances Act (21 U.S.C. 841(b)(1)(A), 848)
18 or section 1010(b)(1)(A) of the Controlled
19 Substances Import and Export Act (21
20 U.S.C. 960(b)(1)(A)).

21 “(3) NONQUALIFYING FELONIES.—

22 “(A) ROBBERY IN CERTAIN CASES.—Rob-
23 bery, an attempt, conspiracy, or solicitation to
24 commit robbery; or an offense described in
25 paragraph (2)(F)(ii) shall not serve as a basis

280

1 for sentencing under this subsection if the de-
2 fendant establishes by clear and convincing evi-
3 dence that—

4 “(i) no firearm or other dangerous
5 weapon was used in the offense and no
6 threat of use of a firearm or other dan-
7 gerous weapon was involved in the offense;
8 and

9 “(ii) the offense did not result in
10 death or serious bodily injury (as defined
11 in section 1365) to any person.

12 “(B) ARSON IN CERTAIN CASES.—Arson
13 shall not serve as a basis for sentencing under
14 this subsection if the defendant establishes by
15 clear and convincing evidence that—

16 “(i) the offense posed no threat to
17 human life; and

18 “(ii) the defendant reasonably believed
19 the offense posed no threat to human life.

20 “(4) INFORMATION FILED BY UNITED STATES
21 ATTORNEY.—The provisions of section 411(a) of the
22 Controlled Substances Act (21 U.S.C. 851(a)) shall
23 apply to the imposition of sentence under this sub-
24 section.

1 “(5) RULE OF CONSTRUCTION.—This sub-
2 section shall not be construed to preclude imposition
3 of the death penalty.

4 “(6) SPECIAL PROVISION FOR INDIAN COUN-
5 TRY.—No person subject to the criminal jurisdiction
6 of an Indian tribal government shall be subject to
7 this subsection for any offense for which Federal ju-
8 risdiction is solely predicated on Indian country (as
9 defined in section 1151) and which occurs within the
10 boundaries of such Indian country unless the gov-
11 erning body of the tribe has elected that this sub-
12 section have effect over land and persons subject to
13 the criminal jurisdiction of the tribe.

14 “(7) RESENTENCING UPON OVERTURNING OF
15 PRIOR CONVICTION.—If the conviction for a serious
16 violent felony or serious drug offense that was a
17 basis for sentencing under this subsection is found,
18 pursuant to any appropriate State or Federal proce-
19 dure, to be unconstitutional or is vitiated on the ex-
20 plicit basis of innocence, or if the convicted person
21 is pardoned on the explicit basis of innocence, the
22 person serving a sentence imposed under this sub-
23 section shall be resentenced to any sentence that was
24 available at the time of the original sentencing.”.