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Ban on executing pregnant women under consideration

By **JESSE J. HOLLAND**

July 25, 2000 | WASHINGTON (AP) -- Nine days after Al Gore stumbled over whether pregnant women on death row should be executed, the Republican-controlled House tweaked the vice president by pushing an "innocent child protection" bill to prohibit states from putting to death mothers-to-be.

"This bill is to ensure that a convicted killer doesn't kill again, namely the unborn child in her womb," said Rep. Joseph Pitts, R-Pa. However, the bill -- introduced two days after the vice president's hesitation -- clearly had a presidential campaign slant as representatives criticized him personally: Gore's position is "breathtakingly insensitive," said Rep. Christopher Smith, R-N.J.

The bill passed unanimously Tuesday.

The GOP jumped on the issue July 16 when the Democratic presidential nominee awkwardly declined to say on NBC's "Meet the Press" whether he supported a federal law that would bar the execution of pregnant women.

Republican presidential nominee George W. Bush -- who has presided over more than 130 executions as Texas governor -- immediately said the choice to exempt pregnant women from executions was easy for him to make.

The next day, Gore said he does support the law and he noted that such a woman also would have the right to choose whether to have an abortion. "I support the statute to spare that hypothetical person," Gore said. "It should be her right to choose."



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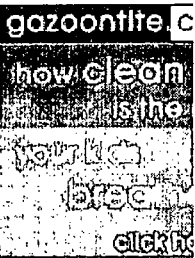
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Rep. Ileana Ros-Lehtinen, R-Fla., introduced the bill last Wednesday, saying there were 51 women on state death rows in January and that all 38 death-penalty states don't have laws to protect pregnant women from being executed.

"No unborn child can possibly be guilty of committing a crime, therefore no unborn child should be punished by death," she said.

There are 50 women on state death rows now, according to a June report by Victor Streib, dean of the Claude W. Pettit College of Law at Ohio Northern University. The 51st, Betty Lou Beets, was executed in Bush's state, Texas, in February.

Democrats found themselves fighting for states' rights in their opposition to the bill. Rep. John LaFalce, D-N.Y., called the bill an "unbelievable intrusion into state law" and accused Republicans of partisan politics. "If there's a TV show that can give us a temporary political advantage by the introduction and passage of a bill, let's do it regardless of the Constitution," he said.

Rep. John Conyers, D-Mich., the ranking Democrat on the House Judiciary Committee, noted that the states' rights issue would probably end up in court. "The execution of pregnant women is already illegal under federal law and it is doubtful that the Supreme Court will uphold our edict on the state courts," Conyers said. "This bill is likely to affect no one, but it is rushed through at lightning speed to satisfy some political need."

Rep. Asa Hutchinson, R-Ark., said there were international treaties banning the execution of pregnant women and the federal government has the right to uphold those treaties.

Associated Press | July 25, 2000

Sound Off

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As requested, a copy of 18 U.S.C. 3596(b)(barring execution of pregnant women) is
attached.

22-33-19

18 § 3593

CRIMINAL PROCEDURE

Part 1

Prior Provisions

A prior section 3593 provided for modification or remission of fines. See Codification note preceding section 3591.

Applicability to Uniform Code of Military Justice

Section not to apply to prosecutions under the Uniform Code of Military Justice (chapter 47 [section 801 et seq.] of Title 10, Armed Forces), see section 60004 of Pub.L. 103-322, set out as a note under section 3591 of this title.

§ 3594. Imposition of a sentence of death

Upon a recommendation under section 3593(e) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law. Notwithstanding any other law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without possibility of release.

(Added Pub.L. 103-322, Title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1966.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 3594 required clerks to forward fine payments to the United States Treasury and to notify the Attorney General of receipt and sentencing courts to certify to the Attorney General the imposition of and changes in fines. See Codification note preceding section 3591.

Applicability to Uniform Code of Military Justice

Section not to apply to prosecutions under the Uniform Code of Military Justice (chapter 47 [section 801 et seq.] of Title 10, Armed Forces), see section 60004 of Pub.L. 103-322, set out as a note under section 3591 of this title.

§ 3595. Review of a sentence of death

(a) **Appeal.**—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

(b) **Review.**—The court of appeals shall review the entire record in the case, including—

- (1) the evidence submitted during the trial;
- (2) the information submitted during the sentencing hearing;
- (3) the procedures employed in the sentencing hearing; and
- (4) the special findings returned under section 3593(d).

(c) **Decision and disposition.**—

- (1) The court of appeals shall address all substantive and procedural issues raised on the appeal

of a sentence of death, and shall consider whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor and whether the evidence supports the special finding of the existence of an aggravating factor required to be considered under section 3592.

(2) Whenever the court of appeals finds that—

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

(B) the admissible evidence and information adduced does not support the special finding of the existence of the required aggravating factor, or

(C) the proceedings involved any other legal error requiring reversal of the sentence that was properly preserved for appeal under the rules of criminal procedure,

the court shall remand the case for reconsideration under section 3593 or imposition of a sentence other than death. The court of appeals shall not reverse or vacate a sentence of death on account of any error which can be harmless, including any erroneous special finding of an aggravating factor, where the Government establishes beyond a reasonable doubt that the error was harmless.

(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

(Added Pub.L. 103-322, Title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1967.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 3595 provided for interest and monetary penalties for delinquency and default of fines. See Codification note preceding section 3591.

Applicability to Uniform Code of Military Justice

Section not to apply to prosecutions under the Uniform Code of Military Justice (chapter 47 [section 801 et seq.] of Title 10, Armed Forces), see section 60004 of Pub.L. 103-322, set out as a note under section 3591 of this title.

§ 3596. Implementation of a sentence of death

(a) **In general.**—A person who has been sentenced to death pursuant to this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of the State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which

POSTSENTENCE ADMINISTRATION

Part 2 Ch. 229

does provide for the implementation of a sentence of death, and the sentence shall be implemented in the latter State in the manner prescribed by such law.

(b) **Pregnant woman.**—A sentence of death shall not be carried out upon a woman while she is pregnant.

(c) **Mental capacity.**—A sentence of death shall not be carried out upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability, lacks the mental capacity to understand the death penalty and why it was imposed on that person. (Added Pub.L. 103-322, Title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1967.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 3596 provided civil remedies for satisfaction of unpaid fines. See Codification note preceding section 3591.

Applicability to Uniform Code of Military Justice

Section not to apply to prosecutions under the Uniform Code of Military Justice (chapter 47 [section 801 et seq.] of Title 10, Armed Forces), see section 60004 of Pub.L. 103-322, set out as a note under section 3591 of this title.

§ 3597. Use of State facilities

(a) **In general.**—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such as an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

(b) **Excuse of an employee on moral or religious grounds.**—No employee of any State department of corrections, the United States Department of Justice, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any prosecution or execution under this section if such participation is contrary to the moral or

religious convictions of the employee. In this subsection, "participation in executions" includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities. (Added Pub.L. 103-322, Title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1968.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 3597 authorized resentencing a person upon the failure to pay a fine. See Codification note preceding section 3591.

Applicability to Uniform Code of Military Justice

Section not to apply to prosecutions under the Uniform Code of Military Justice (chapter 47 [section 801 et seq.] of Title 10, Armed Forces), see section 60004 of Pub.L. 103-322, set out as a note under section 3591 of this title.

§ 3598. Special provisions for Indian country

Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151 of this title) and which has occurred within the boundaries of Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction. (Added Pub.L. 103-322, Title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1968.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 3598 established a statute of limitations on the liability to pay fines.

A prior section 3599 established penalties for the willful failure to pay fines.

See Codification note preceding section 3591.

Applicability to Uniform Code of Military Justice

Section not to apply to prosecutions under the Uniform Code of Military Justice (chapter 47 [section 801 et seq.] of Title 10, Armed Forces), see section 60004 of Pub.L. 103-322, set out as a note under section 3591 of this title.

CHAPTER 229¹—POSTSENTENCE ADMINISTRATION

SUBCHAPTER A—PROBATION

Subchapter	3601
A. Probation	3611
B. Fines	3621
C. Imprisonment	

¹ Another chapter 229 "FINES, PENALTIES, AND FORFEITURES" (§§ 3611 to 3624) was repealed, effective Nov. 1, 1987. For applicability to offenses committed before such date, see chapter 229, set out post.

Sec.	
3601.	Supervision of probation.
3602.	Appointment of probation officers.
3603.	Duties of probation officers.
3604.	Transportation of a probationer.
3605.	Transfer of jurisdiction over a probationer.