

tive of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

(b) FACTORS TO BE CONSIDERED IN IMPOSING CONCURRENT OR CONSECUTIVE TERMS.—The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).

(c) TREATMENT OF MULTIPLE SENTENCE AS AN AGGREGATE.—Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 2000.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

§ 3585. Calculation of a term of imprisonment

(a) COMMENCEMENT OF SENTENCE.—A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

(b) CREDIT FOR PRIOR CUSTODY.—A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—

- (1) as a result of the offense for which the sentence was imposed; or
(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

that has not been credited against another sentence.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

§ 3586. Implementation of a sentence of imprisonment

The implementation of a sentence of imprisonment is governed by the provisions of subchapter C of chapter 229 and, if the sentence includes a term of supervised release, by the provisions of subchapter A of chapter 229.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

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CHAPTER 228—DEATH SENTENCE

- Sec. 3591. Sentence of death.
3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified.
3593. Special hearing to determine whether a sentence of death is justified.
3594. Imposition of a sentence of death.
3595. Review of a sentence of death.
3596. Implementation of a sentence of death.
3597. Use of State facilities.
3598. Special provisions for Indian country.
3599. Counsel for financially unable defendants.

PRIOR PROVISIONS

A prior chapter 228 (§§3591 to 3599) relating to imposition, payment, and collection of fines was added by Pub. L. 98-473, title II, §238(a), Oct. 12, 1984, 98 Stat. 2034, effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Pub. L. 98-596, §12(a)(1), Oct. 30, 1984, 98 Stat. 3139, repealed chapter 228 applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596.

AMENDMENTS

2006—Pub. L. 109-177, title II, §222(b), Mar. 9, 2006, 120 Stat. 232, which directed amendment of the ‘‘table of sections of the bill’’ by adding item 3599 after item 3598, was executed by adding item 3599 to the table of sections for this chapter to reflect the probable intent of Congress.

§ 3591. Sentence of death

- (a) A defendant who has been found guilty of—
(1) an offense described in section 794 or section 2381; or
(2) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—
(A) intentionally killed the victim;
(B) intentionally inflicted serious bodily injury that resulted in the death of the victim;
(C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or
(D) intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

(b) A defendant who has been found guilty of—

(1) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B); or

(2) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

(Added Pub. L. 103-322, title VI, §60002(a), Sept. 13, 1994, 108 Stat. 1959.)

#### SHORT TITLE

Pub. L. 103-322, title VI, §60001, Sept. 13, 1994, 108 Stat. 1959, provided that: "This title [enacting this chapter and sections 36, 37, 1118 to 1121, 2245, 2280, 2281, and 2332a of this title, amending sections 34, 241, 242, 245, 247, 794, 844, 924, 930, 1091, 1111, 1114, 1116, 1117, 1201, 1203, 1503, 1512, 1513, 1716, 1958, 1959, 1992, 2113, 2119, 2251, 2332, 2340A, 3005, and 3432 of this title and section 1324 of Title 8, Aliens and Nationality, renumbering former section 2245 of this title as 2246, repealing section 46503 of Title 49, Transportation, and enacting provisions set out as notes under this section and sections 36, 37, and 2280 of this title] may be cited as the 'Federal Death Penalty Act of 1994'."

#### APPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE

Pub. L. 103-322, title VI, §60004, Sept. 13, 1994, 108 Stat. 1970, provided that: "Chapter 228 of title 18, United States Code, as added by this title, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801)."

### § 3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified

(a) **MITIGATING FACTORS.**—In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider any mitigating factor, including the following:

(1) **IMPAIRED CAPACITY.**—The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

(2) **DURESS.**—The defendant was under unusual and substantial duress, regardless of

whether the duress was of such a degree as to constitute a defense to the charge.

(3) **MINOR PARTICIPATION.**—The defendant is punishable as a principal in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

(4) **EQUALLY CULPABLE DEFENDANTS.**—Another defendant or defendants, equally culpable in the crime, will not be punished by death.

(5) **NO PRIOR CRIMINAL RECORD.**—The defendant did not have a significant prior history of other criminal conduct.

(6) **DISTURBANCE.**—The defendant committed the offense under severe mental or emotional disturbance.

(7) **VICTIM'S CONSENT.**—The victim consented to the criminal conduct that resulted in the victim's death.

(8) **OTHER FACTORS.**—Other factors in the defendant's background, record, or character or any other circumstance of the offense that mitigate against imposition of the death sentence.

(b) **AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.**—In determining whether a sentence of death is justified for an offense described in section 3591(a)(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) **PRIOR ESPIONAGE OR TREASON OFFENSE.**—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of either life imprisonment or death was authorized by law.

(2) **GRAVE RISK TO NATIONAL SECURITY.**—In the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security.

(3) **GRAVE RISK OF DEATH.**—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

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

(c) **AGGRAVATING FACTORS FOR HOMICIDE.**—In determining whether a sentence of death is justified for an offense described in section 3591(a)(2), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) **DEATH DURING COMMISSION OF ANOTHER CRIME.**—The death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 37 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense informa-