

To the office of U.S. Representative Nancy Mace

Re: HR 10098 (119th Congress), Restoring the Death Penalty in DC Act • Latest action (2026-08-13): Referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

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District of Columbia Capital Punishment for Heinous Crimes Act of 2025

The measure, as described from the official record: To authorize the death penalty for certain serious crimes committed in the District of Columbia, ensuring that the most heinous offenses are subject to capital punishment while respecting constitutional safeguards.

THE PROPOSAL

This Act authorizes the death penalty in the District of Columbia exclusively for the following crimes when committed intentionally and resulting in death: (1) premeditated murder of a law enforcement officer or firefighter in the line of duty; (2) murder committed as part of an act of terrorism as defined in 18 U.S.C. § 2331; (3) murder of two or more persons in a single criminal episode. No other crimes shall be eligible for capital punishment under this Act.

Any defendant charged with a capital offense under this Act shall be entitled to: (a) appointment of two qualified defense attorneys with experience in capital cases; (b) a separate sentencing hearing before the same jury that determined guilt, with full opportunity to present mitigating evidence; (c) automatic direct appeal to the United States Court of Appeals for the District of Columbia Circuit, which shall review the proportionality of the sentence; (d) a petition for clemency to the President of the United States, which shall be decided within 180 days.

The death penalty shall not be imposed on any person who was under 18 years of age at the time of the offense, or who is intellectually disabled as defined by current medical standards. The sentence shall be carried out by lethal injection in accordance with protocols established by the District of Columbia Department of Corrections, subject to approval by the United States Attorney General.

A Capital Punishment Review Commission is established within the District of Columbia government, composed of five members appointed by the Mayor with the advice and consent of the Council. The Commission shall review every case in which the death penalty is sought or imposed, and shall report annually to Congress on the fairness, accuracy, and cost of capital proceedings. The Commission may recommend a moratorium if systemic problems are identified.

OPERATIVE PROVISIONS (VFA PROPOSAL)

Funding Source	Appropriations from the general fund of the District of Columbia, with a federal backstop of up to \$5 million per fiscal year from the Department of Justice Assets Forfeiture Fund for extraordinary defense costs.
Funding Amount	Total annual funding cap of \$10 million for all capital case expenses, including defense, prosecution, appeals, and commission operations.
Sunset Years	5 years
Oversight Body	District of Columbia Capital Punishment Review Commission (5 members, appointed as described above).
Enforcement Mechanism	The United States Attorney for the District of Columbia shall have exclusive authority to seek the death penalty under this Act. Any sentence of death shall be carried out only after all appeals are exhausted and the President has denied clemency. The Attorney General may intervene to ensure compliance with constitutional standards.
Effective Date	The Act shall take effect 180 days after enactment, allowing time for implementation of procedural safeguards and appointment of the Commission.

CONSTITUTIONAL BASIS

- Article I, Section 8, Clause 17 (plenary authority over the District of Columbia)
- Fifth Amendment (Due Process Clause — requires fair procedures in capital cases)
- Eighth Amendment (prohibition on cruel and unusual punishments — requires proportionality and non-arbitrariness)
- Fourteenth Amendment (Equal Protection Clause — applied to D.C. through *Bolling v. Sharpe*, requiring non-discriminatory application)

Concerns with the measure as written:

- The original bill may lack sufficient procedural safeguards to satisfy Fifth Amendment due process and Eighth Amendment proportionality requirements.
- The definition of 'certain crimes' may be overly broad, risking arbitrary or discriminatory application.
- The bill may not provide for mandatory appellate review or clemency procedures, which are constitutionally required for capital cases.

WHY BOTH SIDES CAN BACK IT (VFA'S ASSESSMENT)

Democratic priorities honored: robust due process protections (two attorneys, automatic appeal, proportionality review, exclusion of juveniles and intellectually disabled), a sunset clause to allow evaluation, and an independent oversight commission to prevent arbitrary application. Republican priorities honored: authorizing the death penalty for the most heinous crimes (murder of law enforcement, terrorism, mass murder), ensuring swift justice through clear procedures, and maintaining federal authority over D.C. crimes.

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