

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**S. 3178**

To amend title 18, United States Code, to specify lynching as a deprivation of civil rights, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by \_\_\_\_\_

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for Victims  
5 of Lynching Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The crime of lynching succeeded slavery as  
9 the ultimate expression of racism in the United  
10 States following Reconstruction.

1           (2) Lynching was a widely acknowledged prac-  
2           tice in the United States until the middle of the  
3           20th century.

4           (3) Lynching was a crime that occurred  
5           throughout the United States, with documented inci-  
6           dents in all but 4 States.

7           (4) At least 4,742 people, predominantly Afri-  
8           can Americans, were reported lynched in the United  
9           States between 1882 and 1968.

10          (5) Ninety-nine percent of all perpetrators of  
11          lynching escaped from punishment by State or local  
12          officials.

13          (6) Lynching prompted African Americans to  
14          form the National Association for the Advancement  
15          of Colored People (referred to in this section as the  
16          “NAACP”) and prompted members of B’nai B’rith  
17          to found the Anti-Defamation League.

18          (7) Mr. Walter White, as a member of the  
19          NAACP and later as the executive secretary of the  
20          NAACP from 1931 to 1955, meticulously inves-  
21          tigated lynchings in the United States and worked  
22          tirelessly to end segregation and racialized terror.

23          (8) Nearly 200 anti-lynching bills were intro-  
24          duced in Congress during the first half of the 20th  
25          century.

1           (9) Between 1890 and 1952, 7 Presidents peti-  
2           tioned Congress to end lynching.

3           (10) Between 1920 and 1940, the House of  
4           Representatives passed 3 strong anti-lynching meas-  
5           ures.

6           (11) Protection against lynching was the min-  
7           imum and most basic of Federal responsibilities, and  
8           the Senate considered but failed to enact anti-lynch-  
9           ing legislation despite repeated requests by civil  
10          rights groups, Presidents, and the House of Rep-  
11          resentatives to do so.

12          (12) The publication of “Without Sanctuary:  
13          Lynching Photography in America” helped bring  
14          greater awareness and proper recognition of the vic-  
15          tims of lynching.

16          (13) Only by coming to terms with history can  
17          the United States effectively champion human rights  
18          abroad.

19          (14) An apology offered in the spirit of true re-  
20          pentance moves the United States toward reconcili-  
21          ation and may become central to a new under-  
22          standing, on which improved racial relations can be  
23          forged.

24          (15) Having concluded that a reckoning with  
25          our own history is the only way the country can ef-

1       fectively champion human rights abroad, 90 Mem-  
2       bers of the United States Senate agreed to Senate  
3       Resolution 39, 109th Congress, on June 13, 2005,  
4       to apologize to the victims of lynching and the de-  
5       scendants of those victims for the failure of the Sen-  
6       ate to enact anti-lynching legislation.

7           (16) The National Memorial for Peace and Jus-  
8       tice, which opened to the public in Montgomery, Ala-  
9       bama, on April 26, 2018, is the Nation's first memo-  
10      rial dedicated to the legacy of enslaved Black people,  
11      people terrorized by lynching, African Americans hu-  
12      miliated by racial segregation and Jim Crow, and  
13      people of color burdened with contemporary pre-  
14      sumptions of guilt and police violence.

15           (17) Notwithstanding the Senate's apology and  
16      the heightened awareness and education about the  
17      Nation's legacy with lynching, it is wholly necessary  
18      and appropriate for the Congress to enact legisla-  
19      tion, after 100 years of unsuccessful legislative ef-  
20      forts, finally to make lynching a Federal crime.

21           (18) Further, it is the sense of Congress that  
22      criminal action by a group increases the likelihood  
23      that the criminal object of that group will be suc-  
24      cessfully attained and decreases the probability that  
25      the individuals involved will depart from their path

1 of criminality. Therefore, it is appropriate to specify  
2 criminal penalties for the crime of lynching, or any  
3 attempt or conspiracy to commit lynching.

4 (19) The United States Senate agreed to unani-  
5 mously Senate Resolution 118, 115th Congress, on  
6 April 5, 2017, “[c]ondemning hate crime and any  
7 other form of racism, religious or ethnic bias, dis-  
8 crimination, incitement to violence, or animus tar-  
9 geting a minority in the United States” and taking  
10 notice specifically of Federal Bureau of Investigation  
11 statistics demonstrating that “among single-bias  
12 hate crime incidents in the United States, 59.2 per-  
13 cent of victims were targeted due to racial, ethnic,  
14 or ancestral bias, and among those victims, 52.2  
15 percent were victims of crimes motivated by the of-  
16 fenders’ anti-Black or anti-African American bias”.

17 (20) On September 14, 2017, President Donald  
18 J. Trump signed into law Senate Joint Resolution  
19 49 (Public Law 115–58; 131 Stat. 1149), wherein  
20 Congress “condemn[ed] the racist violence and do-  
21 mestic terrorist attack that took place between Au-  
22 gust 11 and August 12, 2017, in Charlottesville,  
23 Virginia” and “urg[ed] the President and his admin-  
24 istration to speak out against hate groups that  
25 espouse racism, extremism, xenophobia, anti-Semi-

1 tism, and White supremacy; and use all resources  
2 available to the President and the President’s Cabi-  
3 net to address the growing prevalence of those hate  
4 groups in the United States”.

5 (21) Senate Joint Resolution 49 (Public Law  
6 115–58; 131 Stat. 1149) specifically took notice of  
7 “hundreds of torch-bearing White nationalists,  
8 White supremacists, Klansmen, and neo-Nazis [who]  
9 chanted racist, anti-Semitic, and anti-immigrant slo-  
10 gans and violently engaged with counter-demonstra-  
11 tors on and around the grounds of the University of  
12 Virginia in Charlottesville” and that these groups  
13 “reportedly are organizing similar events in other  
14 cities in the United States and communities every-  
15 where are concerned about the growing and open  
16 display of hate and violence being perpetrated by  
17 those groups”.

18 **SEC. 3. LYNCHING.**

19 (a) OFFENSE.—Chapter 13 of title 18, United States  
20 Code, is amended by adding at the end the following:

21 **“§ 250. Lynching**

22 “(a) IN GENERAL.—

23 “(1) OFFENSES INVOLVING ACTUAL OR PER-  
24 CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-  
25 GIN.—If 2 or more persons willfully cause bodily in-

1 jury to any other person, because of the actual or  
2 perceived race, color, religion, or national origin of  
3 any person—

4 “(A) each shall be imprisoned not more  
5 than 10 years, fined in accordance with this  
6 title, or both, if bodily injury results from the  
7 offense; or

8 “(B) each shall be imprisoned for any term  
9 of years or for life, fined in accordance with  
10 this title, or both, if death results from the of-  
11 fense or if the offense includes kidnapping or  
12 aggravated sexual abuse.

13 “(2) OFFENSES INVOLVING ACTUAL OR PER-  
14 CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-  
15 UAL ORIENTATION, GENDER IDENTITY, OR DIS-  
16 ABILITY.—

17 “(A) IN GENERAL.—If 2 or more persons,  
18 in any circumstance described in subparagraph  
19 (B), willfully cause bodily injury to any other  
20 person because of the actual or perceived reli-  
21 gion, national origin, gender, sexual orientation,  
22 gender identity, or disability of any person—

23 “(i) each shall be imprisoned not more  
24 than 10 years, fined in accordance with

1           this title, or both, if bodily injury results  
2           from the offense; or

3           “(ii) each shall be imprisoned for any  
4           term of years or for life, fined in accord-  
5           ance with this title, or both, if death re-  
6           sults from the offense or if the offense in-  
7           cludes kidnapping or aggravated sexual  
8           abuse.

9           “(B) CIRCUMSTANCES DESCRIBED.—For  
10          purposes of subparagraph (A), the cir-  
11          cumstances described in this subparagraph are  
12          that—

13           “(i) the conduct described in subpara-  
14           graph (A) occurs during the course of, or  
15           as the result of, the travel of the defendant  
16           or the victim—

17           “(I) across a State line or na-  
18           tional border; or

19           “(II) using a phone, the internet,  
20           the mail, or any other channel, facil-  
21           ity, or instrumentality of interstate or  
22           foreign commerce;

23           “(ii) the defendant uses a phone, the  
24           internet, the mail, or any other channel,  
25           facility, or instrumentality of interstate or



1 foreign commerce in connection with the  
2 conduct described in subparagraph (A);

3 “(iii) in connection with the conduct  
4 described in subparagraph (A), the defend-  
5 ant employs a firearm, dangerous weapon,  
6 explosive or incendiary device, or other  
7 weapon that has traveled in interstate or  
8 foreign commerce; or

9 “(iv) the conduct described in sub-  
10 paragraph (A)—

11 “(I) interferes with commercial  
12 or other economic activity in which  
13 the victim is engaged at the time of  
14 the conduct;

15 “(II) otherwise affects interstate  
16 or foreign commerce; or

17 “(III) occurs within the special  
18 maritime or territorial jurisdiction of  
19 the United States.

20 “(3) OFFENSES OCCURRING IN THE SPECIAL  
21 MARITIME OR TERRITORIAL JURISDICTION OF THE  
22 UNITED STATES.—Whoever, within the special mari-  
23 time or territorial jurisdiction of the United States,  
24 engages in conduct described in paragraph (1) or in  
25 paragraph (2)(A) (without regard to whether that

1       conduct occurred in a circumstance described in  
2       paragraph (2)(B)) shall be subject to the same pen-  
3       alties as prescribed in those paragraphs.

4       “(b) ATTEMPT.—Whoever attempts to commit any  
5 offense under this section—

6               “(1) shall be imprisoned for not more than 10  
7       years, fined in accordance with this title, or both; or

8               “(2) if the offense includes kidnapping or an at-  
9       tempt to kidnap, aggravated sexual abuse or an at-  
10       tempt to commit aggravated sexual abuse, or an at-  
11       tempt to kill, shall be imprisoned for any term of  
12       years or for life, fined in accordance with this title,  
13       or both.

14       “(c) CONSPIRACY.—If 2 or more persons conspire to  
15       commit any offense under this section, and 1 or more of  
16       such persons do any act to effect the object of the con-  
17       spiracy, each shall be subject to the same penalties as  
18       those prescribed for the offense the commission of which  
19       was the object of the conspiracy.

20       “(d) CERTIFICATION REQUIREMENT.—

21               “(1) IN GENERAL.—No prosecution of any of-  
22       fense described in this section may be undertaken by  
23       the United States, except under the certification in  
24       writing of the Attorney General, or a designee,  
25       that—

1                   “(A) the State does not have jurisdiction;

2                   “(B) the State has requested that the Fed-  
3                   eral Government assume jurisdiction;

4                   “(C) the verdict or sentence obtained pur-  
5                   suant to State charges left demonstratively  
6                   unvindicated the Federal interest in eradicating  
7                   bias-motivated violence; or

8                   “(D) a prosecution by the United States is  
9                   in the public interest and necessary to secure  
10                  substantial justice.

11                  “(2) RULE OF CONSTRUCTION.—Nothing in  
12                  this subsection shall be construed to limit the au-  
13                  thority of Federal officers, or a Federal grand jury,  
14                  to investigate possible violations of this section.”.

15                  (b) TABLE OF SECTIONS AMENDMENT.—The table of  
16                  sections for chapter 13 of title 18, United States Code,  
17                  is amended by inserting after the item relating to section  
18                  249 the following:

                  “250. Lynching.”.