



Death Penalty Information Center

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U.S. SUPREME COURT RULES DEATH PENALTY FOR CHILD RAPE UNCONSTITUTIONAL

Court Strikes Down Capital Rape Statutes Where Victim Did Not Die

WASHINGTON, DC – On Wednesday, June 25, the U.S. Supreme Court struck down as unconstitutional the Louisiana statute that authorized the death penalty for child rape in the case of *Kennedy v. Louisiana*. The Court held that all such laws are not in keeping with the national consensus against the death penalty where there was no murder or intent to murder. As a result, the only two people sentenced to death for this crime in the modern capital punishment era no longer face execution. Both were sentenced under the Louisiana statute that was found unconstitutional. Today, no one is on death row for any other offense not involving murder.

The Court noted that Kennedy had been sentenced to death under a law that was not embraced by 44 out of the 50 states. Justice Anthony Kennedy, writing for the 5-4 majority, stated, "Based both on consensus and our own independent judgment, our holding is that a death sentence for one who raped but did not kill a child, and who did not intend to assist another in killing the child, is unconstitutional under the Eighth and Fourteenth Amendments."

The Court noted the danger in laws such as Louisiana's, which allowed the death penalty where no murder was committed: "When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." In an earlier decision, *Coker v. Georgia* (1977), the Court struck down the death penalty for the rape of an adult because the victim did not die. Today's decision reinforces the *Coker* ruling in an even broader context.

Victims' groups and child advocates had concluded that the death penalty for child rape could actually harm children, rather than protect them. They pointed out that:

* Child sexual abuse is one of the most underreported crimes. The vast majority of sex offenders who abuse children are family members or people close to the family. If the possibility of the death penalty is added to the equation, even more victims and family members will choose to remain silent rather than report the crime.

* Imposing the death penalty for child rape would subject victims to an increased number of trials and appeals, forcing them to relive painful events and seriously disrupting their healing process. The high reversal rate in death penalty cases would subject many victims to one or more re-trials.

* Life is not over for child sexual abuse survivors and the law should not take any action that suggests that it is. Equating rape and murder by giving both crimes the death penalty sends the wrong message to child victims; that is, that they are irreparably damaged and that their lives are effectively over.

Judy Benitez, Executive Director of the Louisiana Foundation Against Sexual Assault talked about the danger of such statutes as the Court struck down today, "Our great fear was that the death penalty would increase underreporting of sexual assaults." She argued that the "vast majority" of sexual assaults against children are committed by a family member or friend and other family members would be unwilling to turn over the rapist if the death penalty might be used.

This case comes at a time when the nation is moving away from the death penalty because of growing concerns about innocence, unfairness, discriminatory application, and lack of efficacy. These problems have contributed to an eight-year decline in death sentences nationwide. All five states that considered broadening their death penalty laws to include the offense of child rape this year defeated such measures in their legislatures.

Richard Dieter, Executive Director of the Death Penalty Information Center, said, "After more than 30 years, there is overwhelming evidence of a national consensus against imposing the death penalty for offenses such as the one addressed today. In fact, no one in America has been executed for any kind of rape in over 43 years and no Western nation authorizes the death penalty for rape regardless of the victim's age."

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