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N.C. takes aim at bias in death penalty

Racial Justice Act, signed by governor Tuesday, allows inmates to claim bias influenced death sentences.

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Posted: Wednesday, Aug. 12, 2009

Gov. Bev Perdue on Tuesday signed a bill that will allow murder suspects and death-row inmates to try to prove racial bias was behind prosecutors' decision to seek the death penalty or jurors' decision to impose it.

North Carolina is the second state in the nation with a law designed to stop black defendants from being punished more severely than whites. Kentucky is the other state.

"I have always been a supporter of the death penalty, but I have always believed it must be carried out fairly," Perdue said. "The Racial Justice Act ensures that when North Carolina hands down our state's harshest punishment to our most heinous criminals – the decision is based on the facts and the law, not racial prejudice."

The governor said the Racial Justice Act aims to ensure that prosecutors and jurors are colorblind. It allows defendants to present statistical evidence that suggests racial bias may have played a role in their cases.

"While our criminal justice system will continue to have the death penalty, racial disparities have no place whatsoever in North Carolina's criminal justice system," Perdue said.

Death penalty critics have long argued that black suspects, particularly those who are poor, are more likely to get the death penalty than white suspects – especially when the person they kill is white.

Recent cases of prosecutorial misconduct in North Carolina involving black defendants helped fuel demands for reform. At least two black death row inmates have been exonerated after misconduct came to light.

Of 163 inmates now on North Carolina's death row, slightly more than half – 88 – are black. African Americans make up about 21 percent of the state's population.

"I'm convinced that race has played a role in the system," said Charlotte lawyer and death penalty expert Jim Cooney. "It's hard to believe it hasn't over the past 30 years."

"That doesn't mean that prosecutors are racists. There are any number of points where race could have an influence. It could be in the jury selection process or in the decision of the jury."

An Observer investigation in 2000 found that those who killed whites in the Carolinas were more likely to wind up on death row than those who killed blacks. The paper also found that blacks who killed whites were three times more likely to face execution as murder suspects generally.

The new law will allow murder suspects at trial, as well those already sentenced to death, to present evidence of bias.

It would also allow judges, for the first time, to consider statistical evidence that suggests race played a key factor in putting a disproportionate number of people from a racial group on trial for their lives or on death row. If the judge agrees with the evidence, prosecutors could be prohibited from seeking a death sentence. A judge could also overturn a death sentence on appeal and impose life without parole.

Courts have not considered statistical evidence suggesting racial discrimination since 1987, when the U.S. Supreme Court ruled that such evidence is not relevant to individual cases. The justices, however, said states could enact laws to allow it.

"This is a very auspicious and also historic occasion for the state of North Carolina," said Rep. Larry Womble, D-Forsyth, one of the legislation's sponsors. "This is about justice for our state, and North Carolina is leading the nation in this particular area. ... We want the world to know that we will be fair and objective in this area."

Said the Rev. William Barber, president of North Carolina's NAACP "This Racial Justice Act is not about trying to let criminals go, as some have absurdly suggested. ... The injustice within the application of the death penalty is pandemic. By passing the Racial Justice Act we have infused antibiotic treatment to a system that is diseased with the infection of racism."

Mecklenburg District Attorney Peter Gilchrist said nobody should be prosecuted because of their race. But he worries that the new law will lead to unfounded bias claims and more work for his already overburdened prosecutors.

"We make our decisions based on the facts – not on the race of the defendant or the victim," Gilchrist said. "Race has nothing to do with our decisions."

The law was opposed by district attorneys, sheriffs and victims' advocates who said it would make death penalty prosecutions too difficult. North Carolina has not had an execution in nearly three years.

"Make no mistake, this law has little to do with justice and nothing to do with guilt or innocence," said Senate Minority Leader Phil Berger, R-Rockingham. "For the first time in North Carolina, the statistical composition of the inmates on death row will outweigh the facts of a particular case in the determination of punishment. Families of the victims of the most heinous crimes will now be subjected to the further delay of true justice for them and their murdered loved ones."

But House Speaker Joe Hackney, D-Orange, said the law keeps the death penalty while adding a condition that tries to ensure it is applied evenly.

"I've spent most of my life in courtrooms across North Carolina, and I have seen the subtle impact of race in our courtrooms," Hackney, an attorney, said. "This opens the courtroom door for those who believe that they can show that it had an impact on their case."

A 2001 study in North Carolina found that the likelihood of murder suspects' receiving a death sentence was 3.5 times higher for those who killed whites than for those who killed blacks and other minorities.

Allegations of racial bias have surfaced in death penalty cases across the Carolinas:

Two white jurors reportedly threw around the "n" word during the Lancaster County, S.C., trial of Louis Truesdale. According to a statement by the only black juror on the panel, the men made comments "to the effect that this n----- had to fry." The black juror swore out her statement the day before Truesdale's December 1998 execution. The S.C. Supreme Court, without comment, declined to spare his life.

After the 1992 capital trial of Kenneth Bernard Rouse, a woman accused a white male juror of using racial slurs while recounting the Randolph County case. The juror allegedly said blacks "don't care about living as much as whites do" and that black men rape white women so they can brag to their friends. A judge dismissed the allegations, noting that the juror said during jury selection that he considered blacks his equals.

Since North Carolina's last execution in August 2006, successful death penalty prosecutions have nearly come to a halt and public support for executions has waned. Just one convicted killer was sent to death row last year.

A November 2005 poll from Elon University found that 64 percent of the state's adults supported capital punishment. The same poll found this March that 58 percent supported the death penalty.

Cooney said judges and lawyers should be given the tools, as the new law does, to determine if race played a role in a death-penalty case. He expressed concern about small counties where the death penalty is used a lot and the juries are sometimes all-white.

"The statistics show that race of the victim is a strong factor in whether the death penalty is imposed," he said.

Mecklenburg, considering its size, has relatively few killers – five – on death row. Three are black. Two are white.

Johnston County, a rural county southeast of Raleigh with roughly a fifth of Mecklenburg's population, has seven people on death row. Four of them are black.

Ken Rose, a staff attorney with the Center for Death Penalty Litigation in Durham, said some critics of the Racial Justice Act are upset because they think the law will end the death penalty. That, he said, is not true.

“This is a remarkable piece of legislation that provides tools to expose racial discrimination in the use of the death penalty,” Rose said. “It’s a needed reform.” The Associated Press and Staff Writers Ames Alexander and Cleve R. Wootson Jr. contributed.



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