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WHNT

Judicial Override Allowed In Alabama, But Still Controversial

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Convicted cop killer Kenneth Shipp's life hangs in the balance even though the jury that convicted Shipp recommended he be sentenced to life in prison without the possibility of parole. The judge can exercise what's known as [judicial override](#) and sentence Shipp to death instead.

A lot of people have been trying to convince the judge to impose the death penalty. That has prompted WHNT NEWS 19 to take a closer look at this unique law.

Alabama is one of only three states that has judicial override. Delaware and Florida are the other two. However, Alabama is the only state in the nation where there are no restrictions on the judge. Judicial override

is the reason legal experts say we have the highest death sentencing rate per capita in the country.

The [Fraternal Order of Police](#) wants execution for Kenneth Shipp.

"We think the judge should set aside the jury's recommendation of life without parole, and sentence him to death," said Bill Davis, President of the [Alabama FOP](#).

So does Leslie Freeman, widow of slain police officer Eric Freeman.

And so does [Alabama Attorney General Troy King](#). We obtained a copy of the [letter](#) King sent to Judge Bruce Williams, who will sentence Shipp.

It reads in part, "While I value and appreciate the service rendered by the jury, there is only one appropriate sentence for attacks such as the one that resulted in the cold-blooded murder of Officer Eric Freeman, and it is the death penalty. I urge you to impose it."

The Executive Director of the [Death Penalty Information Center](#) in Washington, D.C. says he's surprised that King's trying to influence a judge's decision.

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[Richard Dieter](#) tells WHNT News 19, "I was very surprised to see that the Attorney General of Alabama is attempting to influence a judge's decision outside of the judicial proceedings. I believe it is inappropriate for a state official to attempt to pressure a judge in this way. Just as it would be wrong to lobby the jury as it is deliberating, so, too, would it be improper for a high official to use inflammatory rhetoric to try to influence a judge's legal deliberations. The time for argument ceases after the case is submitted to the judge. This is a despicable crime, but that is all the more reason that the judge's ruling must be a matter of law, and not the popular sentiment as expressed by an elected official. Not only does this conduct distort the judicial process, it may make the ultimate judgment more likely to be overturned on appeal."

So we asked former defense attorney and WHNT News 19 Legal Analyst Harvey Morris to weigh in on the issue of [Judicial Override](#).

"When a jury sits there and listens for days and days to the testimony and they have a good feel as for what's just and fair under the circumstances, so I don't know if I agree with the judicial override. But it's the law," says Morris.

A law that is somewhat controversial and here's why.

In Alabama judges are elected -and campaign - in part - on their record of imposing the death penalty to show they're tough on crime.

And that means politics can enter into the mix.

Morris says, "I can understand the police officers widow. I can understand those individuals. I maybe can understand the Fraternal Order of Police. But I don't understand why Troy King would be trying to write a letter, a scathing letter, to the judge about the sentencing in this case. Do I think that may be political? Maybe."

According to the [Equal Justice Initiative](#) based in Montgomery, about a quarter of Alabama's death row prisoners received jury verdicts sentencing them to life in prison without parole that were overridden by "elected" trial judges.

[Bryan Stevenson](#), the Executive Director of the Equal Justice Initiative says Alabama leads the nation in death sentencing because of judicial override.

Statistics kept by that group show since the death penalty was reinstated in 1976 Alabama judges have overridden more than 80 cases from life to death.

[Bryan Stevenson](#) further says, there is a disparity when it comes to judges who overrode death sentences in favor of life without parole. Only a handful of those cases exist, according to EJI.

There are currently 205 condemned killers on Alabama's Death Row. EJI says more than 40 were sentenced to life without parole by juries.

Furthermore, the group says Alabama is the only state in the country that allows what it deems "standardless" judicial override. Meaning, Alabama is the only state that gives a trial judge unrestricted authority to overrule the jury's sentencing decision.

Florida and Delaware, according to EJI permit judicial override but there are restrictions upon judges.

As for Kenneth Shipp's fate, Harvey Morris believes justice will be served when it comes to the sentence.

He says, "I don't think under the circumstances that these judges in our county yield to political pressure. Am I gonna look at you and say it's never happened, I can't do that."

Kenneth Shipp's criminal defense attorney Robert Tuten says, "General King's actions in trying to put political pressure on the judge is unprecedented and outside the law. He should be ashamed of himself."

Attorney General Troy King's office issued a response to the Death Penalty Information Center's position which reads as follows:

"The Attorney General has an interest in this case as the chief law enforcement officer in this State, and it is entirely proper for him to express his opinion that Kenneth Shipp should receive a death sentence for the cold-blooded murder of a police officer. In sentencing a capital defendant to death, a judge must determine that the aggravating circumstances outweigh the mitigating circumstances. The judge is competent and qualified to carry out his duty to follow the law, and it is inappropriate to suggest that any statement by the Attorney General would make him stray from that duty."

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