

Death Penalty In Some Cases Of Child Sex Is Widening

By ADAM LIPTAK

Oklahoma became the fifth state to allow the death penalty for sex crimes against children yesterday, a day after South Carolina enacted a similar law. The constitutionality of the new laws is unclear.

The Oklahoma measure, signed into law by Gov. Brad Henry, a Democrat, makes people found guilty of rape and other sex crimes more than once against children younger than 14 eligible for the death penalty.

The South Carolina law also requires multiple offenses, but against children under 11. Gov. Mark Sanford, a Republican, said in a statement that the law would "be an incredibly powerful deterrent to offenders that have already been released."

But Richard C. Dieter, executive director of the Death Penalty Information Center, a research group that opposes capital punishment, said the new laws were largely symbolic, would impose disproportionate punishment and were probably unconstitutional.

There has not been an execution for rape in the United States since 1964, and no one has been executed for any crime that did not involve a killing since the Supreme Court reinstated the death penalty in 1976. Before the Supreme Court suspended the death penalty in 1972, 16 states and the federal government authorized it for rape.

In 1977, the Supreme Court ruled that the death penalty could not be imposed for the rape of an adult woman. The penalty was, the court ruled, disproportionate to the crime and therefore forbidden as cruel and unusual punishment under the Eighth Amendment.

"Life is over for the victim of the murderer," Justice Byron R. White wrote for the majority. "For the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair."

The defendant in that case, Ehr-

Oklahoma and South Carolina act on repeat child molesters.

lich Coker, escaped from a state prison in Georgia where he was serving time for a murder and two rapes. He soon raped another woman in front of her husband. He was sentenced to death for that last crime.

Dissenting from the majority decision to overturn Mr. Coker's death sentence, Chief Justice Warren E. Burger wrote that the ruling "prevents the state from imposing any effective punishment upon Coker for his latest rape."

At the time, Georgia was the lone state that permitted the death penalty for the rape of adult women, a fact that the Supreme Court found significant. In recent decisions barring the execution of juvenile offenders and the mentally retarded, the court took careful stock of state laws and trends in state legislatures to evaluate whether a societal consensus existed to permit or bar capital punishment in given classes of cases.

Trey Walker, chief executive assistant to Attorney General Henry McMaster of South Carolina, said in an interview yesterday that "there will be more and more" laws making sex crimes against children capital offenses.

"This is something the Supreme Court takes into account," Mr. Walker said. "There is not much doubt that this law would be upheld and found constitutional."

The other states with such laws are Florida, Louisiana and Montana. In 2003, a Louisianan, Patrick O. Kennedy, was sentenced to death under a law enacted in 1995 that allows the death penalty for the rape of a child under 12. His case is working its way through the courts.

In 1996, the Louisiana Supreme Court, in a 5-to-2 decision, ruled that the law was constitutional.

The United States Supreme Court declined to hear an appeal in that case in 1997, with three justices — Stephen G. Breyer, Ruth Bader Ginsburg and John Paul Stevens — issuing an unusual explanatory statement. They noted that deciding not to hear the case did "not in any way, constitute a ruling on the merits."

That is a legal truism that does not ordinarily need saying. Legal experts said the statement suggested at least those three justices had reservations about the Louisiana law.

Mr. Dieter of the death penalty center said the new laws could be counterproductive. If offenders have nothing left to lose, they may be more likely to kill victims. And the death penalty threat could make victims of sex crimes by family members less likely to report them.

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