Eliminating Political Bias in Death Penalty Sentencing: Ending Judicial Override

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Thesis
Alabama’s current sentencing rules often lead to the excessive prescription of death sentences. To remedy this issue, the Alabama Legislature should pass a law preventing judges from imposing the death penalty against the recommendation of a jury.

Background Analysis
Alabama is the only state that allows judges to override the sentencing recommendations of a jury to impose the death penalty. It also has an elected judiciary. Both of these policies are problematic in isolation, and the combination of the two makes for a unique and particularly nasty cocktail. Judges running for reelection in a conservative state like Alabama must be prepared to prove to the citizenry that they are “tough on crime,” and nothing communicates toughness like the death penalty.

Though in theory judges can override juries to impose the death penalty or to reduce a sentence of death to life without parole, in 92 percent of cases judges have overridden to impose capital punishment. Moreover, study after study has shown that a higher proportion of death sentences are imposed by judicial override during election years.

When a citizen’s life is at stake, the political needs of an elected official should have zero impact on decision-making. Yet, as long as Alabama’s judges know declining to impose the death penalty could negatively impact their careers, their decision to impose capital punishment cannot be free of bias. Whether conscious or not, it is currently in the political interest of judges to send defendants to death row. This conflict of interest is impermissible.

Talking Points

- Allowing an elected judge to override the sentence chosen by a jury creates a dangerous conflict of interest that can lead to unnecessarily harsh punishment.
- Alabama law allows judges to override jury sentences for any reason, which means they can let political considerations influence their decisions without having to justify it.
- When determining whether a citizen will live or die, nothing but the facts of the case should be taken into account.

KEY FACTS

- Judges are more likely to override juries to impose a death sentence in election years.

- Twenty-one percent of the 199 people on Alabama’s death row were placed there by judicial override.

- Judges may override a jury’s sentence for any reason, leaving them especially susceptible to bias, as they do not need to justify the increased punishment.
Policy Idea
Though the stakes in this issue are literally life and death, the solution is simple. The Alabama Legislature must pass a law preventing judges from overriding juries to impose the death penalty. This change would remove political bias from death penalty sentencing and reduce the use of excessively harsh punishment. Currently, 21 percent of the 199 people on Alabama’s death row were placed there by judicial override. All of these lives would be saved if judges were forced to honor the decision of the jury.

Policy Analysis
There is evidence that removing the ability of judges to impose the death penalty unilaterally will help to remedy the unequal treatment of black and white defendants in Alabama’s criminal justice system. Though less than 35 percent of Alabama’s homicide victims are white, 75 percent of all death sentences imposed by override involve white victims. Political bias is the root of this injustice as well. Judges know that citizens will be more outraged by the murder of a white person than by the murder of a black person. Thus, judges can score more political points in harshly punishing a white person’s killer. The roots of racial bias in Alabama’s criminal justice system are deep, and no one statutory change can fix the issue. However, banning judicial override would be one small step in the right direction.

Judicial override is unfair, cruel, and bad policy. Alabama must banish this draconian practice and follow the rest of the nation into the 21st century.

Next Steps
Because Alabamians generally support the death penalty, framing this issue will be very important. Though this policy would reduce the number of death sentences imposed, presenting that as the policy’s goal would be a mistake. When advocating for this change, it will be important to emphasize how it will reduce political conflicts of interest and improve judicial ethics. Alabama has seen many instances of political corruption in recent years, making citizens highly distrustful of elected officials. This policy could be popular because it puts power in the hands of citizen juries rather than “career politicians.”

The Equal Justice Initiative in Montgomery, Alabama will likely be a powerful coalition partner in this effort. EJI has already done excellent work studying the effects of judicial override on death penalty sentencing in Alabama and publicizing the extent of the problem. As a nationally renowned legal nonprofit, EJI will be a strong ally in seeking this policy change.

It is also very possible that judges themselves would support this policy change. It cannot be easy to unilaterally condemn a person to death. This change would take that choice out of a judge’s hands.
End Notes


5 Ibid.
