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Alabama's death penalty system plagued by inexperienced counsel, racial disparities, advocates tell Senate panel

The Senate Judiciary Committee heard testimony on a slate of five death penalty reform bills Wednesday. The bills, all sponsored by Sen. Hank Sanders, D-Selma, ranged from suggesting that Alabama reconsider how capital punishment is applied to abolishing it altogether.

"Alabama has one of the highest incarceration rates in the world," Sanders told a packed committee room. "That means we either have the worst people in the world, or one of the worst systems."

Sanders has pushed for many years for a three-year moratorium on executions in Alabama, which SB 33 would establish. He also defended his introduction of SB 30, which would put a permanent end to executions in the state. "After introducing a bill every year since 2000 pushing for a moratorium on the death penalty in Alabama, I finally decided that I needed to go further," he said.

Finding common ground

Sen. Cam Ward, R-Alabaster, who chairs the committee, pointed to several areas of common ground with Sanders. Ward said he too was troubled by criminal cases in which low-income defendants received less-than-optimal legal representation during trials. "I agree that there are too many cases where our indigent defense system is lacking," he said.

Though Ward said he supported the use of the death penalty in some cases, he said it fails to deter crime in cases where defendants are unable to understand the consequences of their actions. SB 31, one of the bills before the committee, would align Alabama law with [a 2002 U.S. Supreme Court ruling](#) that forbids execution of defendants who have mental retardation. Another bill, SB 34, would bring the state into line with [a 2005 U.S. Supreme Court decision](#) that bars the death penalty for defendants who were under 18 when they committed a capital crime.

Further, Ward said he was concerned about Alabama's policy of judicial override, which allows an elected judge to disregard a jury's recommended sentence during a murder trial. This policy allows a judge to convert a recommended death sentence into life without parole, but in practice, judges far more often issue death sentences despite a jury recommendation of life without parole. "I've always had a little uneasiness on a judge going back behind the jury on a sentence," Ward said. SB 32 would forbid judicial override in capital cases.

Before the public hearing, Sanders made a point about the adequacy of trial-level counsel for indigent defendants in murder trials. Suggesting that [low-income defendants often are handed inexperienced attorneys](#), Sanders said many people accused of murder were easily convicted by savvy district

attorneys. “Against some of these prosecutors, the usual attorneys handling a death penalty case would be like me playing basketball against LeBron James,” Sanders said.

‘We just can’t kill everything that we don’t think is right’

Esther Brown, executive director of Project Hope Against the Death Penalty in Alabama, told lawmakers that racial disparities abound in the state’s capital punishment system. “As long as you can’t take race out of the death penalty – and in Alabama you can’t – it’s a disgrace and we’re all guilty,” Brown said.

The committee also heard testimony from Gary Drinkard, who spent five years on Alabama’s death row for a crime he did not commit. Drinkard used his exoneration as an example of wrongful conviction and errors within the capital punishment system. But Sen. Phil Williams, R-Rainbow City, said Drinkard’s exoneration was proof that the system corrects its own errors. “You being here and being able to show up here today is proof that the system works,” Williams said.

Another proponent of Sanders’ slate of bills was Jeffrey Gibson, a retired law enforcement officer who stressed the importance of having a compassionate policy in place to handle crimes committed by veterans who return from war with post-traumatic stress disorder (PTSD). After Gibson’s testimony, Barry Matson, deputy director of the Alabama District Attorneys Association, testified against Sanders’ proposed legislation. Matson said he opposed capital punishment until he prosecuted his first murder case, which he described in grisly detail.

Finally, the committee heard from Montgomery resident Callie Greer, the mother of a murder victim who advocated for leniency for her son’s killer. “I understand an eye for an eye and a tooth for a tooth, but I just don’t walk that path,” Greer said.

Greer occupies a rare position because her brother also was convicted of capital murder. Her son’s killer received a light sentence, she said, while her brother’s prosecutor sought the death penalty. The difference? According to Greer, it was the victims’ race. Her son was black, while the victim in her brother’s case was white.

“This is going to be a problem as long as we treat some people in this state with lesser value,” Greer said. “We just can’t kill everything that we don’t think is right.”

Stephen Stetson, policy analyst