

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4017

To amend title 28, United States Code, to prevent racially discriminatory capital sentencing.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1994

Mr. EDWARDS of California introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, to prevent racially discriminatory capital sentencing.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Racial Justice Act”.

5 **SEC. 2. AMENDMENT TO TITLE 28.**

6 (a) PROCEDURE.—Part VI of title 28, United States  
7 Code, is amended by adding at the end thereof the follow-  
8 ing new chapter:

1       **“CHAPTER 177—RACIALLY DISCRIMINATORY**  
 2                                   **CAPITAL SENTENCING**

“Sec.

“2921. Prohibition against the execution of a sentence of death imposed on the basis of race.

“2922. Access to data on death eligible cases.

“2923. Enforcement of the chapter.

“2924. Construction of chapter.

3       **“§ 2921. Prohibition against the execution of a sen-**  
 4                                   **tence of death imposed on the basis of**  
 5                                   **race**

6           “(a) IN GENERAL.—No person shall be put to death  
 7 under color of State or Federal law in the execution of  
 8 a sentence that was imposed based on race.

9           “(b) INFERENCE OF RACE AS THE BASIS OF DEATH  
 10 SENTENCE.—An inference that race was the basis of a  
 11 death sentence is established if valid evidence is presented  
 12 demonstrating that, at the time the death sentence was  
 13 imposed, race was a statistically significant factor in deci-  
 14 sions to seek or to impose the sentence of death in the  
 15 jurisdiction in question.

16           “(c) RELEVANT EVIDENCE.—Evidence relevant to es-  
 17 tablish an inference that race was the basis of a death  
 18 sentence may include evidence that death sentences were,  
 19 at the time pertinent under subsection (b), being imposed  
 20 significantly more frequently in the jurisdiction in ques-  
 21 tion—

1           “(1) upon persons of one race than upon per-  
2           sons of another race; or

3           “(2) as punishment for capital offenses against  
4           persons of one race than as punishment for capital  
5           offenses against persons of another race.

6           “(d) VALIDITY OF EVIDENCE PRESENTED TO ES-  
7           TABLISH AN INFERENCE.—If statistical evidence is pre-  
8           sented to establish an inference that race was the basis  
9           of a sentence of death, the court shall determine the valid-  
10          ity of the evidence and if it provides a basis for the infer-  
11          ence. Such evidence must take into account, to the extent  
12          it is compiled and publicly made available, evidence of the  
13          statutory aggravating factors of the crimes involved, and  
14          shall include comparisons of similar cases involving per-  
15          sons of different races.

16          “(e) REBUTTAL.—If an inference that race was the  
17          basis of a death sentence is established under subsection  
18          (b), the death sentence may not be carried out unless the  
19          government rebuts the inference by a preponderance of the  
20          evidence. Unless it can show that the death penalty was  
21          sought in all cases fitting the statutory criteria for imposi-  
22          tion of the death penalty, the government cannot rely on  
23          mere assertions that it did not intend to discriminate or  
24          that the cases in which death was imposed fit the statutory  
25          criteria for imposition of the death penalty.

1 **“§ 2922. Access to data on death eligible cases**

2 “Data collected by public officials concerning factors  
3 relevant to the imposition of the death sentence shall be  
4 made publicly available.

5 **“§ 2923. Enforcement of the chapter**

6 “In any proceeding brought under section 2254, the  
7 evidence supporting a claim under this chapter may be  
8 presented in an evidentiary hearing and need not be set  
9 forth in the petition. Notwithstanding section 2254, no de-  
10 termination on the merits of a factual issue made by a  
11 State court pertinent to any claim under section 2921  
12 shall be presumed to be correct unless—

13 “(1) the State is in compliance with section  
14 2922;

15 “(2) the determination was made in a proceed-  
16 ing in a State court in which the person asserting  
17 the claim was afforded rights to the appointment of  
18 counsel and to the furnishing of investigative, expert  
19 and other services necessary for the adequate devel-  
20 opment of the claim; and

21 “(3) the determination is one which is otherwise  
22 entitled to be presumed to be correct under the cri-  
23 teria specified in section 2254.

1 **“§ 2924. Construction of chapter**

2 “Nothing contained in this chapter shall be construed  
3 to affect in one way or the other the lawfulness of any  
4 sentence of death that does not violate section 2921.”.

5 (b) AMENDMENT TO TABLE OF CHAPTERS.—The  
6 table of chapters of part VI of title 28, United States  
7 Code, is amended by adding at the end thereof the follow-  
8 ing new item:

“177. **Racially Discriminatory Capital Sentencing** ..... 2921.”.

9 **SEC. 3. ACTIONS BEFORE ENACTMENT.**

10 No person shall be barred from raising any claim  
11 under section 2921 of title 28, United States Code, as  
12 added by this Act, on the ground of having failed to raise  
13 or to prosecute the same or a similar claim before the en-  
14 actment of the Act, nor by reason of any adjudication ren-  
15 dered before that enactment.

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