

103^D CONGRESS
1ST SESSION

H. R. 3329

To assure due process and equal protection of the law by permitting the use of statistical and other evidence to challenge the death penalty on the grounds of disproportionate patterns of imposition with respect to racial groups, to prohibit such patterns, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1993

Mr. CONYERS introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To assure due process and equal protection of the law by permitting the use of statistical and other evidence to challenge the death penalty on the grounds of disproportionate patterns of imposition with respect to racial groups, to prohibit such patterns, and for other purposes.

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 of
5 1993”.

1 **SEC. 2. PROHIBITION OF DEATH PENALTY IN DISPROPOR-**
2 **TIONATE PATTERN.**

3 (a) IN GENERAL.—A government shall not impose or
4 carry out the penalty of death in criminal cases in a ra-
5 cially disproportionate pattern. An individual shall not be
6 put to death in execution of a death sentence imposed
7 under law administered in violation of this subsection.

8 (b) DISPROPORTIONATE PATTERN.—For purposes of
9 subsection (a), a racially disproportionate pattern occurs
10 when the penalty of death is imposed—

11 (1) more frequently upon persons of one race
12 than upon persons of other races convicted of crimes
13 for which such penalty may be imposed; or

14 (2) more frequently as punishment for crimes
15 against persons of one race than as punishment for
16 crimes against persons of another race;

17 and the greater frequency is not explained by relevant
18 nonracial circumstances.

19 **SEC. 3. PROOF REQUIREMENTS.**

20 (a) ESTABLISHING PATTERN.—To establish that a
21 racially disproportionate pattern exists for the purposes of
22 this Act—

23 (1) ordinary methods of statistical proof suffice;
24 and

1 (2) it shall not be necessary to show discrimina-
2 tory motive, intent, or purpose on the part of any in-
3 dividual or institution.

4 (b) PRIMA FACIE CASE.—To establish a prima facie
5 showing that a racially disproportionate pattern exists for
6 purposes of this Act, it suffices to show that death sen-
7 tences are being imposed or executed—

8 (1) upon persons of one race with a frequency
9 that is disproportioned to their representation
10 among the total numbers of persons arrested for,
11 charged with, or convicted of, death eligible crimes;
12 or

13 (2) as punishment for crimes against persons of
14 one race with a frequency that is disproportioned to
15 their representation among the numbers of persons
16 against whom death eligible crimes have been the
17 subject of arrests, charges, or convictions.

18 (c) REBUTTAL OF PRIMA FACIE CASE.—To rebut a
19 prima facie showing of a racially disproportionate pattern,
20 a government must establish by clear and convincing evi-
21 dence that identifiable and pertinent nondiscriminatory
22 factors persuasively explain the observable racial dispari-
23 ties comprising the disproportion.

1 **SEC. 4. DATA ON DEATH PENALTY CASES.**

2 (a) DESIGNATION OF CENTRAL AGENCY.—Any State
3 or Federal entity that provides by law for death to be im-
4 posed as a punishment for any crime shall designate a
5 central agency to collect and maintain pertinent data on
6 the charging, disposition, and sentencing patterns for all
7 cases of death-eligible crimes.

8 (b) FORM FOR DATA.—The central agency so des-
9 ignated shall devise and distribute to every local official
10 or agency responsible for the investigation or prosecution
11 of death-eligible crimes a standard form to collect perti-
12 nent data.

13 (c) PREPARATION OF DATA BY LOCAL OFFICIALS.—
14 Each local official responsible for the investigation or pros-
15 ecution of death-eligible crimes shall complete a standard
16 form on every case of death-eligible crime and shall trans-
17 mit it to the central agency no later than three months
18 after the disposition of each such case whether that dis-
19 position is by dismissal of charges, reduction of charges,
20 acceptance of a plea of guilty to the death-eligible crime
21 or to another crime, acquittal, conviction, or any decision
22 not to proceed with prosecution.

23 (d) POLICE AND INVESTIGATIVE REPORT.—In addi-
24 tion to the standard form, the local official or agency shall
25 transmit to the central agency one copy of all police and

1 investigative reports made in connection with each case
2 of death-eligible crime.

3 (e) OTHER DUTIES OF CENTRAL AGENCY.—The
4 central agency shall affirmatively monitor compliance with
5 this section by local officials and agencies. It shall main-
6 tain all standard forms, compile and index all information
7 contained in the forms, and make both the forms and the
8 compiled information publicly available. The compiled in-
9 formation shall be made publicly available in machine
10 readable form. The central agency shall also maintain a
11 centralized, alphabetically indexed file of all police and in-
12 vestigative reports transmitted to it by local officials or
13 agencies in every case of death-eligible crime. It shall allow
14 access to its file of police and investigative reports to coun-
15 sel of record for any person charged with any death-eli-
16 ble crime or sentenced to death who has made, or intends
17 to make, a claim under section 2; and it may also allow
18 access to this file to other persons.

19 **SEC. 5. LEGAL COUNSEL.**

20 (a) REQUIREMENT.—In any action brought in a court
21 of the United States within the jurisdiction conferred by
22 sections 2241, 2254, or 2255 of title 28, United States
23 Code, in which any person raises a claim under section
24 2—

1 (1) the court shall appoint counsel for any such
2 person who is financially unable to retain counsel;
3 and

4 (2) the court shall furnish investigative, expert
5 or other services necessary for the adequate develop-
6 ment of the claim to any such person who is finan-
7 cially unable to obtain such services.

8 (b) NONAPPLICATION OF PRESUMPTION OF COR-
9 RECTNESS.—Notwithstanding section 2254 of title 28,
10 United States Code, no determination on the merits of a
11 factual issue made by a State court pertinent to any claim
12 under section 2 shall be presumed to be correct unless—

13 (1) the State is in compliance with section 4;

14 (2) the determination was made in a proceeding
15 in a State court in which the person asserting the
16 claim was afforded rights to the appointment of
17 counsel and to the furnishing of investigative, ex-
18 pert, and other services necessary for the adequate
19 development of the claim which were substantially
20 equivalent to those provided by subsection (a); 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.

24 **SEC. 6. DEFINITIONS.**

25 As used in this Act—

1 (1) the term “pertinent data” means the data
2 to be collected in the standard form as designated
3 by the central agency. Such term includes, at a min-
4 imum—

5 (A) pertinent demographic information on
6 all persons charged with the crime and all vic-
7 tims (including race, sex, age, and national ori-
8 gin);

9 (B) information on the principal features
10 of the crime;

11 (C) information on the aggravating and
12 mitigating factors of the crime, and on the
13 background and character of every person
14 charged with the crime; and

15 (D) a narrative summary of the crime;

16 (2) the term “case of death-eligible crime”
17 means a case in which the complaint, indictment, in-
18 formation, or any other initial or later charging
19 paper charges any person with a crime for which the
20 punishment of death is authorized to be imposed
21 under any circumstances upon conviction.

22 **SEC. 7. CLAIMS BEFORE ENACTMENT NOT BARRED.**

23 A person is not barred from raising a claim under
24 section 2 on the ground of having failed to raise or to
25 prosecute the same or a similar claim before the date of

- 1 enactment of this Act, not by reason of any adjudication
- 2 before this date.

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