

STATE V. KENNEDY: DEATH PENALTY FOR NON-HOMICIDAL AGGRAVATED RAPE OF A CHILD

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INTRODUCTION

Increasingly, state governments are finding it necessary to protect children from those who could potentially sexually abuse or even forcefully rape them. Scholars have found that child sexual abuse is more likely to be committed by someone the child is familiar with and has confidence in—such as a loved one or trusted friend—rather than an unfamiliar stranger.¹ Louisiana courts have declared that the harm inflicted upon children in these scenarios is so tremendous “that sex offenses against children cause untold psychological harm not only to the victim, but also to generations to come.”² Childhood rape has not only been found to cause serious psychological effects to children, but serious physical damage is produced as well, including weight loss, vomiting,³ perineal tears, and even the possibility of early onset of cervical cancer.³ In response to these concerns, the Louisiana legislature has chosen to protect children under thirteen by imposing the death penalty for non-homicidal aggravated rape.⁴

This case note covers the issues occurring in *State v. Kennedy*, a Louisiana Supreme Court case, wherein the court grapples with applying title 14, section 42 of the Louisiana Revised Statutes, which allows the application of the death penalty for aggravated rape not resulting in the death of the victim.⁵ This considerable step taken by Louisiana to impose the death penalty for a crime non-homicidal in nature must be weighed against the Eighth Amendment’s prohibition of cruel and unusual

1. Morrison Torrey, *Feminist Legal Scholarship on Rape: A Maturing Look at One Form of Violence Against Women*, 2 WM. & MARY J. WOMEN & L. 35 (1995).

2. *State v. Kennedy*, 2005-1981 (La. 5/22/07); 957 So. 2d 757, 781 (citing *State v. Wilson*, 96-1392 (La. 12/13/96); 685 So. 2d 1063, 1070).

3. Yale Glazer, *Child Rapists Beware! The Death Penalty and Louisiana’s Amended Aggravated Rape Statute*, 25 AM. J. CRIM. L. 79 (1997).

4. LA. REV. STAT. ANN. § 14:42 (D)(2)(a) (2006).

5. *Id.*; *Kennedy*, 957 So. 2d at 757.