



STATE OF FLORIDA

JAMES UTHMEIER ATTORNEY GENERAL

September 2, 2025

VIA EMAIL

Pamela Bondi, Attorney General of the United States
Dave Warrington, White House Counsel

Re: Laws Authorizing Capital Punishment for Child Rape

Dear General Bondi and Mr. Warrington,

In one of the first acts of his second term, President Trump instructed the Department of Justice to “take all appropriate action to seek the overruling of Supreme Court precedents that limit the authority of State and Federal governments to impose capital punishment.”¹ Many such precedents exist. Perhaps the worst is *Kennedy v. Louisiana*, in which the Supreme Court held that a state capital-sentencing scheme for child rape violated the Eighth Amendment. 554 U.S. 407 (2008).

We believe repairing *Kennedy*’s flawed outcome is within the power of the States.

Child rape is one of the most heinous crimes known to mankind. One in five girls and one in 17 boys will experience sexual abuse in childhood.² Sadly, our Nation is constantly confronted by agonizing reports of sexual violence against very young children, even infants.³ Sexual

¹ Exec. Order No. 14,164, “Restoring the Death Penalty and Protecting Public Safety” (Jan. 20, 2025).

² David Finkelhor et al., *The prevalence of child sexual abuse with online sexual abuse added*, 149 CHILD ABUSE & NEGLECT, at 1 (2024).

³ See, e.g., Kamren Phillips, “Former Iberville deputy sentenced to life in prison in heinous rape case,” WAFP.com (Nov. 8, 2024), <https://www.wafb.com/2024/11/08/former-iberville-deputy-sentenced-life-prison-heinous-rape-case/>; “Missouri man sentenced to 80 years in prison for recording rape of children,” U.S. Dep’t of Justice (Oct. 18, 2023), <https://www.justice.gov/usao-edmo/pr/missouri-man-sentenced-80-years-prison-recording-rape-children>; Annette Weston, “NC man convicted of rape of an infant, sentenced to 18-20 years in prison,” Nebraska.tv (Aug. 16, 2022), <https://nebraska.tv/news/nation-world/nc-man-convicted-of-rape-of-an-infant-sentenced-to-18-20-years-in-prison-ezekiel-coy-stone-onslow-county-sheriffs-office-special-victims-unit-naval-criminal-investigative-services>; “Tennessee mom, boyfriend charged with raping infant, 4-year-old daughter,” KATV.com (Jan. 31, 2020), <https://katv.com/news/nation-world/tennessee-mom-boyfriend-charged-with-raping-infant-4-year-old-daughters>; Ryan Ballogg, “Florida man raped baby, taped it and posted it on ‘dark web.’ He is now

assault in children is associated not only with the loss of innocence but with increased risks of depression,⁴ suicide,⁵ substance abuse,⁶ and “[r]isky sexual behaviors.”⁷ No civilized society should tolerate such cruelty.

Despite the terror this crime inflicts on innocent victims—and despite the Supreme Court’s recognition that the threat of recidivism by sexual offenders is “frightening and high,” *McKune v. Lile*, 536 U. S. 24, 34 (2002)—the Court in *Kennedy* thought that Louisiana’s scheme for executing child rapists was forbidden by the “evolving standards of decency that mark the progress of a maturing society,” the ahistorical test the Court has manufactured for deciding whether a particular punishment is cruel and unusual. 554 U.S. at 446–47. That grave intrusion upon state sovereignty is wrong by any fair metric. Critically, however, the Court’s holding in *Kennedy* turned on two premises that need not be set in stone and that States have the power to control.

First, the Court purported to find a “national consensus” against the imposition of capital punishment for child rape, a factor relevant to the “evolving standards of decency” test. *Id.* at 426. By its count, of the 37 American jurisdictions that had the death penalty as of 2008, “only six of those jurisdictions authorize[d] the death penalty for rape of a child.” *Id.* The Court acknowledged, though, the possibility of a “further or later consensus in favor of the penalty” that might “develop[]” and warrant a different result in future litigation. *Id.* at 446. Such a development is within reach. In one earlier case, for example, a shift in the laws of just *five States* was enough to signal a “consistent direction of [] change” that justified revisiting a prior Eighth Amendment holding. *Roper v. Simmons*, 543 U.S. 551, 565–66 (2005).

Second, in *Kennedy*, the Court believed that Louisiana’s scheme did not contain sufficient safeguards to prevent the “arbitrary” imposition of the death penalty. 554 U.S. at 439. It pointed, for instance, to a lack of “aggravating factors” in the state statute that might have appropriately “constrain[ed] the use of the death penalty.” *Id.* In other words, the fault was in how the specific statute was drawn, not with the concept of capital punishment in the abstract. Yet again, the Court did not foreclose States from attempting to “identify standards” in future cases that would suffice to ensure the “restrained application” of the death penalty to child rapists. *Id.*

Accepting the Supreme Court’s invitation to craft a more searching statute, Florida’s legislature in 2023 enacted a law that re-authorizes the death penalty for those who commit sexual battery on a child under the age of 12. *See* Laws of Fla., Ch. 2023-25, §§ 1–2. Florida’s new law lists aggravating factors that serve to identify the very worst sexual offenders. Those

going to prison,” Miami Herald (July 12, 2019), <https://www.miamiherald.com/news/state/florida/article232583157.html>; “Texas man sentenced to life after filming rape of infant,” Fox 7 Austin (Feb. 5, 2018), <https://www.fox7austin.com/news/texas-man-sentenced-to-life-after-filming-rape-of-infant>.

⁴ Frank W. Putnam, *Ten-year research update review: child sexual abuse*, 42(3) J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY 269–78 (2003).

⁵ Paul E. Bebbington et al., *Suicide attempts, gender, and sexual abuse: data from the 2000 British Psychiatric Morbidity Survey*, 166(10) AM. J. PSYCHIATRY 1135-40 (2009).

⁶ Shichao Tang et al., *Adverse childhood experiences, internalizing/externalizing symptoms, and associated prescription opioid misuse: A mediation analysis*, 134 PREVENTATIVE MEDICINE (2020).

⁷ Christine Wekerle et al., *Childhood sexual abuse, sexual motives, and adolescent sexual risk-taking among males and females receiving child welfare services*, 66 CHILD ABUSE & NEGLECT 101–11 (2017).

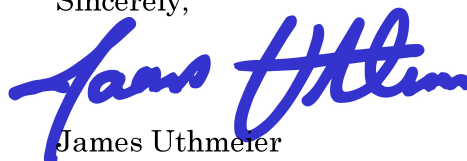
factors include that “[t]he victim of the capital felony was particularly vulnerable due to age or disability,” that the offense “was especially heinous, atrocious, or cruel,” and that the victim “sustained serious bodily injury.” Fla. Stat. § 921.1425(7). Moreover, before a trial judge may impose death, a jury must unanimously find two aggravating factors beyond a reasonable doubt, and a super-majority of jurors must recommend the death penalty. *Id.* § 921.1425(3)(a)-(c); see *Bartels v. State*, 410 So. 3d 21, 29-32 (Fla. Dist. Ct. App. 2025) (Artau, J., concurring specially) (concluding that Florida’s new law satisfies *Kennedy* and the Eighth Amendment). Tennessee, too, recently authorized the death penalty for the rape of a child, 2024 Tenn. Laws Pub., Ch. 951, § 1 (S.B. 1834), as did Arkansas, SB 375, 95th Gen. Assem., Reg. Sess., and Idaho, HB 380, 68th Leg. Sess.

But the work continues nationwide. The undersigned attorneys general therefore commit to urging their state legislatures (if they have not already done so) to promptly enact legislation authorizing the imposition of the death penalty for the rape of a child.⁸ We further commit to deploying the full resources of our offices to pursue death sentences for child rape in appropriate cases and to defend those judgments on appeal. Finally, we invite the Department of Justice to lend its support to States’ efforts to pursue justice by filing *amicus curiae* briefs in favor of upholding the death penalty in child-rape prosecutions. These measures will enable States to distinguish *Kennedy* or otherwise convince the Supreme Court to overrule that tragic and demonstrably erroneous decision.

We have every confidence that, with President Trump’s strong leadership and with principled, rule-of-law Justices on the Supreme Court, *Kennedy*’s days are numbered, and child rapists can be appropriately punished for their unspeakable crimes.

Adults who rape children “are the epitome of moral depravity,” *Kennedy*, 554 U.S. at 467 (2008) (Alito, J., dissenting), and our children deserve the protection of robust laws that deter and incapacitate child sexual abusers. Together, we will deliver on this moral imperative.

Sincerely,



James Uthmeier
FLORIDA ATTORNEY GENERAL

⁸ Legislatures can look to the state laws cited above as model legislation.



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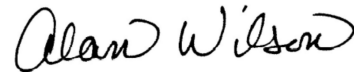
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