

**OPPOSITION Response to SB 1037**  
**Repealing [the] prohibition on [the] death penalty**  
**February 26, 2026**

Senate Judiciary Committees:

[West Virginians for Rational Sexual Offence Laws \(WVRSOL\)](#) is a West Virginia non-profit association and an affiliate of the [National Association for Rational Sexual Offence Laws \(NARSOL\)](#), which advocates for society's segment that is adversely affected by the sex offender registry. We strive to assist families affected by the registry, explore ways to enhance and maintain public safety, recommend prudent use of state funding in this area, and work to ensure that proposed legislation is constitutional.

WVRSOL **OPPOSES SB 1037** because imposition of the death penalty for any reason when the victim does not die is unconstitutional... period, full stop. SB-1037 presents an immediate constitutional conflict with controlling United States Supreme Court precedent, as well as additional West Virginia and Sixth and Fourteenth Amendment constitutional vulnerabilities.

### **Controlling Eighth Amendment Precedent**

1. In *Coker v. Georgia*, 433 U.S. 584 (1977), the Supreme Court held that imposing death for rape where the victim does not die is unconstitutional. The Court explained: "Rape is without doubt deserving of serious punishment; but in terms of moral depravity and of the injury to the person and to the public, it does not compare with murder, which does involve the unjustified taking of human life." 433 U.S. at 598.
  - a. The Court concluded that a death sentence for rape is "grossly disproportionate and excessive punishment forbidden by the Eighth Amendment." *Id.* at 592.
2. In *Kennedy v. Louisiana*, 554 U.S. 407 (2008), the Court extended this categorical rule to child rape. The Court held unequivocally: "The Eighth Amendment prohibits the death penalty for this offense." 554 U.S. at 413.
  - a. Kennedy further emphasized: "In cases of crimes against individuals, the death penalty should not be expanded to instances where the victim's life was not taken." *Id.* at 437.

### **Direct Conflict with SB-1037**

SB-1037 predicates capital eligibility on a conviction that includes first-degree sexual abuse of a child. Because Kennedy establishes a categorical prohibition against imposing death for child rape where the victim survives, the bill presents a high probability of facial invalidation under the Eighth Amendment.

### **Additional Constitutional Vulnerabilities**

- West Virginia Constitution Art. III, §5 – Independent state constitutional grounds may invalidate reinstatement of capital punishment.
- Sixth Amendment – The bill permits a death recommendation with fewer than unanimous jurors, creating serious concerns about the unanimity requirement.
- Fourteenth Amendment – Due process challenges may arise from relaxed evidentiary standards in the penalty phase.

WVRSOL is committed to legislation that measurably reduces sexual offenses, protects families, and enhances public safety. SB 1037 does none of these things. Moreover, given the Supreme Court's categorical holdings in Coker and Kennedy, SB-1037 presents a near-certain risk of constitutional invalidation, substantial fiscal exposure, and significant implementation uncertainty. Consequently, WVRSOL **OPPOSES SB 1037**, and we respectfully urge the Senate Judiciary leadership and Committee to oppose the bill's capital punishment provisions and **vote 'No' on SB 1037**.

Sincerely,

*Philip W. Kaso*

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## Works Cited

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