

DeKalb lawmakers say changing death sentence rules could be mistake

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by Nigel Roberts

A hung jury defeated the Fulton County prosecutor's effort to win a death sentence against convicted murderer **Brian Nichols**.

Following the Dec. 12 announcement that three of the 12 jurors would not budge on their decision to recommend life in prison instead of death, District Attorney **Paul Howard** urged state lawmakers to change the requirement of a unanimous jury to win a death sentence.

Howard is not alone. In the wake of the Nichols sentencing verdict, a chorus of voices has proposed various changes to Georgia's death penalty law that would change the requirement for unanimity among jurors.

Sen. **Dan Weber** (R – Dunwoody) called Nichols' sentence "a bad result." He noted that some news reports suggested that the three dissenting jurors made up their minds to vote for a life sentence long before hearing the evidence.

Weber said he would need to see and carefully review specific pieces of legislation before making a comment on the several proposals to change the number of jurors required to win a death sentence. Still, he recommends caution and intelligent deliberation.

"The unanimous jury verdict system provides a safeguard in case you get the wrong guy," he stated. "Sometimes people who get the death penalty are later found innocent." He recalled that one of his law school professors said that it's better for nine guilty men to go free than for one innocent person to die. "There's a lot of truth in that," he said.

Rep. **Stephanie Stuckey Benfield** (D – Decatur) has been a vocal critic of changing the unanimous jury verdict requirement. She said the Nichols verdict was a bad case that could lead to bad law if legislators act too hastily. The Nichols sentence alone is not a good reason to change the law, she stated. "I could point to cases in which unanimous juries sentenced innocent people to death. Does that mean that we should do away with the death penalty altogether?" she asked.

With the 2009 legislative session set to begin on Jan. 12, Rep. **Tim Bearden** (R – Villa Rica) pre-filed House Bill 32, a measure that would make Georgia one of a handful of states that allow a death sentence verdict without a unanimous jury decision. It would allow the judge to issue the death sentence if at least 10 of the 12 jurors vote for capital punishment.

Only four of the 36 states that actively use the death penalty allow a judge to sentence

convicted criminals to death with jurors' recommendation. And one state, Nebraska, requires a three-judge panel to issue a death sentence.

These calls for changes to the death penalty law are not new. In 2007, legislators debated House Bill 185, a similar measure to House Bill 32, which would have eliminated the requirement for a unanimous jury to issue a death sentence.

During deliberations of House Bill 185, its sponsors argued that prosecutors needed the legislation because jurors are sometimes dishonest during jury selection by saying they would impose the death penalty but then later refuse on moral grounds.

Many opponents counter that the ultimate punishment requires unanimity—not a majority—of jurors who live in the community. And leaving the decision to an elected judge raises concerns that some judges could fold under public pressure, whereas anonymous jurors would not.

“A unanimous jury helps safeguard against the inherent problems in the legal system,” Benfield said. “Requiring unanimity ensures that the views of minority jurors are heard and meaningfully considered by all the jurors.”

She added that a unanimous jury decision adds legitimacy to the death sentences. That legitimacy comes from the consensus views of jurors representing the entire community. House Bill 185 and similar measures would “diminish each juror’s right as a citizen to bring their own life experience into the jury box,” said Benfield.

What’s more, plans to eliminate required unanimity would only be counterproductive, she said. If jurors who oppose the death penalty suspect that a judge would nullify their life in prison vote, they would likely cast a not-guilty vote in the guilt or innocence phase of trials. And that would lead to unfortunate instances of “guilty parties going free instead of assuring them just punishment.”

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