

Time to end the death penalty | Prothero

by [MARK PROTHERO](#), Kent Reporter Columnist
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On Sept. 20, 2006, the King County Journal published an essay I wrote on the death penalty. In that essay, I recommended a moratorium on capital punishment while we studied and debated the law's efficacy and efficiency.

After thorough scrutiny of the issues involved, Gov. Jay Inslee has now taken the courageous step of imposing a moratorium under the powers authorized to him by the Legislature and the state constitution.

I say "courageous" because it is a politically risky move.

Many in the public equate opposition to the death penalty statute as being "soft on crime," making a politician more vulnerable come election time. But the two concepts do not equate. Putting emotions aside and addressing the issue from an objective, public policy standpoint, ending the death penalty would strengthen the criminal justice system by allowing more resources to be put into public safety and crime prevention programs while keeping those convicted of aggravated murder locked up and out of society forever.

Some thoughts on why we should abolish the death penalty:

Arbitrariness: Two percent of those convicted of murder face the death penalty. But this ultimate punishment is not simply reserved for the "worst of the worst." U.S. Supreme Court Justice Potter Stewart analogized imposition of the death penalty to being "struck by lightning." Life and death decisions vary from state to state, county to county, prosecutor to prosecutor. There are no standards. One murder may result in a capital prosecution in one county, but not in another. Same state, same law, same aggravating and mitigating factors, but one defendant faces the death penalty and one does not. Capital punishment is applied arbitrarily, subject to the political decisions of a county's elected prosecutor.

Deterrence: People who support the death penalty argue that it is a deterrent to murder. The vast majority of research disproves that argument. Beyond the research and statistics, I have front line, real world experience on the issue. The nature of the potential punishment is simply not part of the equation when someone contemplates murder. There is no thought process that goes, "Well, I'd kill him if I only got life in prison but since Washington has the death penalty, I won't." We are deterred by how we are raised, by our moral compass of right and wrong, by our respect for life and the laws that govern our civilized society. A person committing murder is acting outside that realm of rational thought.

Costs: A criminal justice system with a death penalty is much more costly to taxpayers than one without. There is no argument. It's much more expensive to seek a death sentence than life in prison. Study after study, including one chaired by then Washington Supreme Court Justice Richard Guy and another by a blue ribbon panel of the Washington State Bar Association, has shown this to be true. Any other law that was so costly and so inefficient would be scrapped. Then, on top of the costs to get the death sentence imposed by a jury, approximately 70-75 percent nationwide (and closer to 90 percent in Washington) are reversed on appeal. A huge amount of money is essentially wasted in the name of vengeance, while other criminal justice needs go woefully under-funded, causing further problems and frustrations with the administration of justice at all levels.

Race: It is a fact that there are a highly disproportionate number of people of color on death row, and not just in the Southern states. Statistically, a murderer of a white victim is much more likely to receive a death sentence than when the victim is a person of color. This racial disparity is glaring and shameful evidence that capital punishment does not live up to our nation's ideal of providing "equal justice for all."

Innocence/wrongful convictions: The developments in forensic DNA technology in the past thirty years have resulted in the greatest advances and improvements in the criminal justice system in history. Innocent suspects can now be excluded through DNA.

Since the death penalty was reinstated in 1973, 143 people in 26 states have been released from death row based on forensic DNA and other exculpatory evidence. Since 1989, the Innocence Project has utilized forensic DNA to help exonerate 312 innocent individuals who were wrongfully convicted of their crimes, 18 of whom were released from death row. The exonerated spent an average of over 13.5 years in prison for crimes they did not commit. To those who argue there are too many appeals, this is another example of why we need a thorough and lengthy appeal process.

Forensic DNA has established without a doubt that there are many persons in prison and on death row who have been wrongfully convicted. The primary reasons include faulty eyewitness testimony, false confessions, incompetent crime labs, junk science, jailhouse snitches, bad cops, bad prosecutors, bad judges, and bad defense lawyers. These problems exist everywhere and existed before the advent of forensic DNA. There is no doubt this has resulted in the execution of innocent people.

LWOP: The alternative - Life without possibility of release or parole - means just that: the individual will die within the prison walls. Prior to 1983, a "life" sentence could have resulted in release in 13 years, 7 months. That is simply not the case anymore in Washington. Life means life. Lock 'em up and throw away the key. Let them rot in prison dealing with what they have done until they die within those walls. Never get out. Never heard from again. Period.

End the death penalty: I believe Washington ought to follow the lead of many other states and get rid of the death penalty. I commend the governor for pushing the debate.

When I was assigned my first death penalty case as a public defender in 1987, I had not really formed a strong opinion about capital punishment. Like many others, although I didn't like it, I felt it had to be on the books as a "last resort" punishment for the "worst of the worst." However, as I studied and learned more and more about the death penalty and how the law was actually applied in practice, I came to see how it didn't work. I came to realize that the law is fallible and imperfect. Mistakes can be made. Biases and prejudices can impact life and death decisions. After all, human beings are making these ultimate decisions. We all make mistakes, and we all have biases and prejudices.

I understand the argument made by families of victims – what if it was your wife or child that had been murdered? To be honest, I would want that person to get the death penalty. But public policy and what is best for society cannot be determined by the families of victims of heinous crimes. It is impossible, understandably so, to be fair and objective under those circumstances. And growing numbers of victims' families are speaking out against the death penalty.

Most death penalty proponents, including many prosecutors, acknowledge the law doesn't work well or, at least, not as it is intended. Remove the emotion from the debate and it is clear to see that capital punishment is not a deterrent, is very expensive to implement, is arbitrarily imposed, and simply doesn't work. It is a bad law and it is time to end the death penalty.

For more information, I recommend the Death Penalty Information Center website – www.deathpenaltyinfo.org and also the Innocence Project website – www.innocenceproject.org.

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