



The death penalty: Arbitrary and deeply flawed

Guest Opinion: With Gov. Jay Inslee's recent decision to halt executions, an issue that has gripped public defenders for decades is finally getting the public attention it deserves.

By David Chapman

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Public defenders in King County have long voiced concern over the state's use of the death penalty, contending that it's a deeply flawed and arbitrary form of punishment. Now, thanks to Gov. Jay Inslee's decision last month to place a moratorium on executions, an issue that has gripped the public defense community for decades is getting the kind of public attention it deserves.

Why do I and my colleagues consider the death penalty system broken beyond repair?

First, racial disparity permeates the use of capital punishment, both in Washington and across the country. Since 1976, 20 white defendants have been executed for the murder of a black person in the United States, while 269 black people have been executed for the murder of a white person. In Washington, nine people are currently on death row, four of whom are African-American. That's nearly 50 percent, in a state where African-Americans comprise 4 percent of the population.

Second, no system of justice is flawless, but the price of a mistake when it comes to capital punishment is greater than we, as a civilized and democratic society, should bear. Since 1973, according to the Death Penalty Information Center, more than 140 men on death row have been exonerated, one of them from Washington state. At least 10 people, according to the organization, have been executed despite compelling evidence of innocence.

Finally, countless studies have shown that capital punishment is increasingly an arbitrary sanction — a punishment based not on some objective measure of the alleged crime but on geography, the beliefs of individual prosecutors and budgetary concerns. Currently, for instance, three death penalty cases are under way in King County, but Yakima County hasn't prosecuted one since 1989 — and not for a lack of opportunity. (A family of three was bludgeoned to death in Yakima in 2011.) What's more, several of the state's most notorious killers have been sentenced to life in prison without parole (Gary Ridgeway, for instance, who was convicted of murdering 49 women), while others who committed crimes not nearly as heinous have been executed.

Just how arbitrary is capital punishment in Washington state? Consider the words of State Supreme Court Justice Mary Fairhurst from a 2012 opinion: "One could better predict whether the death penalty will be imposed on Washington's most brutal murderers by flipping a coin than by evaluating the crime and the defendant."

As Gov. Inslee noted when he announced his moratorium on executions, the paramount duty of the state is ensuring equal justice under the law. When the death penalty is applied

arbitrarily, when geography and budgets — not the brutality of the crime — dictate its use, “equal justice” becomes, at best, a hollow and meaningless phrase.

This debate is hardly academic for us in public defense. King County's Department of Public Defense currently has eight attorneys assigned to three aggravated murder cases where the prosecutor is seeking the death penalty instead of life in prison without parole. These are the most serious and complex cases a public defender can take on — and ones with the most significant ramifications and the highest public costs. Every motion, every legal maneuver, gets scrutinized at the appellate level, meaning the attorney has to get it right the first time — or face a potential reversal, a much costlier proposition.

I welcome a discussion about our current criminal statutes. And I applaud the governor for giving us the time out we need to take a closer look at how the death penalty, the ultimate criminal sanction, plays out in Washington state. According to state statute, the presumed sentence for aggravated murder is life in prison without the possibility of release. My hope is that a thoughtful conversation will lead many to realize that life imprisonment provides both justice and protection and that capital punishment is no longer a humane or effective response to violence in our community.

David Chapman is the interim public defender for King County. He heads the county's Department of Public Defense, a new department in King County that employs more than 200 public defenders.

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