Editorial: State’s death penalty too costly, not applied fairly

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By The Herald Editorial Board

The particular reasons they cite may differ, but the desired outcome is the same: an end to the death penalty in Washington state.

Gov. Jay Inslee and Attorney General Bob Ferguson, both Democrats, requested legislation to abolish capital punishment, codifying the moratorium that Inslee imposed in 2014, which he then invoked last month when he issued a reprieve to Clark Elmore, sentenced to death for the rape and murder of a 14-year-old girl in Whatcom County in 1995.

The Democrats, including two senators and a House member, were joined at a Monday news conference by prominent Republicans in seeking the legislation: former Attorney General Rob McKenna, who ran against Inslee in 2012, and Sens. Maureen Walsh of Walla Walla and Mark Miloscia of Federal Way.

In supporting the repeal of the death penalty, Inslee faulted capital punishment for being unevenly applied, frequently overturned and costly. McKenna said that the appeals process is so lengthy, “this is a system in which justice is delayed and delayed to the point where the system is broken,” the Associated Press reported. That’s a sentiment that was echoed by Walsh in a story by The Spokesman-Review: “It’s the fiscal conservative in me that says we’re spending a lot of money on what’s basically a broken system,” Walsh said.

The case against capital punishment has been building since the passage of the current law in 1981.

A 2006 report by the Washington State Bar Association, found that in the 79 death penalty cases brought between 1981 and 2006, the jury imposed the death sentence in 30 cases. Of those, 19 were reversed on appeal and seven had appeals pending at the time. Four cases resulted in executions, three of which involved defendants who waived their right to appeal.

The bar association report also found that during the initial trial and on direct appeal, the costs to prosecution and defense in death penalty cases were more than $750,000 more costly than non-capital punishment cases, costs that didn’t include potential subsequent appeals to the state Supreme Court, the federal appeals court and the U.S. Supreme Court.
A 2015 study by Seattle University, reported by the Death Penalty Information Center, found that costs of prosecuting death penalty cases are now more than $1 million more on average than those where the death penalty is not sought. Defense costs were about three times as high for death penalty cases compared to cases in which execution was not sought.

Beyond the cost savings, the bar association report found that an end to the death penalty would allow county prosecutor’s offices, public defenders and the courts to redirect time and resources to other cases.

The 2006 bar association report was limited in scope to the costs associated with the death penalty, but it pointed to other issues worth the consideration of the public and state lawmakers.

The report notes the debate about whether the death penalty is applied fairly to racial and ethnic minorities, citing two studies that came to different conclusions. One study cited a 1995 state Supreme Court case that found that a review of first-degree aggravated murder cases found no racial pattern in the imposition of capital punishment. But a 2004 study cited statistics that showed that 18 percent of death penalty defendants were black while comprising only 3 percent of the population. By comparison, 67 percent of death penalty defendants were whites, but comprised 82 percent of the population.

The bar association report also touches on the issue of fair application of the death penalty, comparing how it has been applied to some of the state’s most heinous mass murderers, among them the Green River Killer, Gary Ridgeway, who was responsible for at least 48 murders but was sentenced to life in prison.

The state Supreme Court, in a 2006 case where a defendant had killed his wife and her two daughters, found in a 5-4 decision that the state’s use of the death penalty was not unconstitutional, regardless of the sentence allowed Ridgeway and others. But Justice Charles Johnson, in a dissenting opinion, compared the state’s use of the death penalty to lightning, “randomly striking some some defendants and not others. … No rational explanation exists to explain why some individuals escape the penalty of death and others do not.”

The court’s majority carried the day, but in its opinion noted: “We do not minimize the importance of this moral question. But it is a question best left to the people and to their elected representatives.”

With respected Democrats and Republicans calling for an end to capital punishment — and no lack of relevant information — it’s time to take up that question.