

## **DA: Death penalty not practical in Colorado**

*By Stan Garnett Boulder Daily Camera*

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As the Colorado legislature prepares for the possible consideration of a bill to repeal the death penalty, I have offered my views on the practicality of the death penalty to many in the legislature. I am not morally or philosophically opposed to the death penalty. As the elected District Attorney in Colorado's 20th Judicial District (Boulder County), I see plenty of violence where a state imposed imposition of death is hypothetically acceptable to me, and not morally objectionable, as a punishment. My view of the human condition recognizes that human beings are capable of unspeakable acts towards each other. And, as long as the death penalty is the law of Colorado, my office will, in consultation with a victim's family, formally review every class one felony to determine whether it will be sought.

However, the practical problems with the death penalty make it of limited relevance to Colorado law enforcement:

The first problem is the expense. Prosecuting a death penalty case through a verdict in the trial court can cost the prosecution well over \$ 1 million dollars (not to mention the expense incurred by the judiciary and the cost of defense counsel, which is almost always funded with taxpayer funds in a death penalty case). To put this in context, my total operating budget for this office is \$4.6 million and with that budget we prosecute 1,900 felonies, per year (and my office tried nearly 50 felony jury trials, including six homicides in calendar 2012). Given that a first degree murder conviction carries an automatic life without parole sentence, and that convicted class one felons serve their life sentence in modern, highly secure prisons where escape is impossible, the additional expense to obtain a death sentence hardly seems cost effective and adds nothing to a primary goal of the justice system: to maintain public safety. The appellate costs are even greater: the estimate is that a 1994 Colorado death verdict currently pending before the U.S. Supreme Court has cost the state of Colorado nearly \$18 million to fund through all the appeals.

The next is the time. Every murder case that has occurred in my first term we have gotten to verdict and sentence within a year of the murder. Even in jurisdictions that are less efficient than the 20th judicial district, a murder trial where the death penalty is not sought will reach verdict many months sooner than one where it is sought. In fact, a death penalty case can take several years to get to verdict in the trial court. A prompt trial permits the victim's family to have closure and put the case behind them because the life without parole sentence is imposed immediately. Once sentenced to life without parole, the defendant fades from public consciousness and the victim's family can begin healing. Even when a death penalty verdict is obtained, after the lengthy trial court process, death penalty appellate litigation can go on for years (18 years in the Colorado case currently before the U.S. Supreme Court -- so far) with multiple appellate decisions on arcane legal issues that are very difficult for the victim's family to appreciate. Often during this period of time, the defendant can achieve a sort of morbid "folk hero" status, as those advocating

for his commutation publicly discuss the killer's mental health, childhood and other issues, a difficult experience for victim's families, still coping with the violent death of a loved one.

My final concern is the randomness. Most murders, charged as first degree, could qualify to seek the death penalty under the Colorado statutory scheme. Though Boulder County has had plenty of heinous murders over the years, there has never been a death verdict imposed here in the nearly 140 years since statehood (the one time it was sought here, in 1978, the case plead out during jury selection due to the unwieldiness of seating a death qualified jury). The 18th Judicial District (Arapahoe/Douglas County), on the other hand, has several pending death cases currently...for murders that are not significantly different than what we prosecute in Boulder. What is the point of a penalty that is only sought in a tiny percentage of the cases where it could be sought, or where geography is a factor in whether it is sought? Obviously, the risk of racial or other subjective factors being considered (or appearing to be considered) in selecting who is put to death is significant.

As the state moves into the public discussion that should accompany consideration of possible repeal of the death penalty, these are issues that should be kept in mind.

Stan Garnett is the Boulder County District Attorney.