

Daniel Borenstein: Can California really afford the death penalty?

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Posted: 11/14/2008 12:01:00 AM PST

Updated: 11/17/2008 05:45:00 PM PST

In a Contra Costa courtroom, a 72-year-old man in a wheelchair stands trial for allegedly raping and murdering a jogger 30 years ago at Lafayette Reservoir.

Darryl Kemp is a nasty guy who has spent all but eight years of his adult life behind bars. He murdered and raped before the 1978 East Bay killing. He raped again after. For his first crimes, he was sentenced to death in 1960 but was paroled 18 years later after the U.S. Supreme Court held death penalty statutes from that era unconstitutional. He was serving a life sentence in Texas for an aggravated rape committed in 1983 when investigators linked him to the Contra Costa case through DNA evidence.

Thus, it's not surprising that District Attorney Bob Kochly is seeking the death penalty. "It's hard to fathom anyone more deserving," he says. Indeed, if we are going to have a death penalty, Kemp, if found guilty, is probably near the top of the list of people who deserve to die.

But the chances of that happening are slim to none. Kemp, who is hard of hearing, sensitive to light, severely overweight and looks older than his years, will almost certainly die in prison before his appeals can be heard. Which raises the bigger question of

whether we can afford the death penalty in California — not just for the old and infirm like Kemp, but for all murderers.

The elapsed time between judgment and execution in California is 20 to 25 years, according to a report this year by the California Commission on the Fair Administration of Justice. That time span exceeds every other death penalty state in the nation.

As a result, California has about 670 inmates on death row, or roughly one out of every five death row inmates in the nation.

"With a dysfunctional death penalty law," the commission found, "the reality is that most California death sentences are actually sentences of lifetime incarceration. The defendant will die in prison before he or she is ever executed."

Indeed, of the 813 people sentenced to death in California between 1977 and 2007, more have died by natural causes (38) or suicide (14) than the 13 who have been executed.

In each county, it's up to the district attorney to decide whether to seek the death penalty. The state's current law, enacted by the Legislature in 1977 and amended by voters in 1978, provides for life in prison without parole or capital punishment for cases of first-degree murder that involve any of 21 "special circumstances," such as killing a police officer, a drive-by shooting, use of a hidden bomb or murder while attempting rape.

The death penalty process in California is lengthy and costly. It's difficult to find jurors for a trial because they must be open to the possibility of sentencing someone to die. Two trials must be held, one to determine guilt or innocence, the second to decide the sentence. From there, each death penalty

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sentence is automatically appealed to the state Supreme Court and federal District Court, with possible federal appeals as high as the U.S. Supreme Court.

Abolishing the death penalty, the commission concluded, would save well over \$100 million a year. Money could be saved on the trial, on appeals and on the added cost of incarceration.

For example, the commission estimated, the cost of a trial increases by at least \$500,000 when the defendant's life is at stake, and confinement on death row adds \$90,000 per inmate to the normal annual incarceration bill of \$34,150.

Last year, New Jersey abolished the death penalty in favor of life in prison without possibility of parole. The state's Death Penalty Commission concluded that it was costly, didn't deter crime and risked execution of innocent people. In signing the bill passed by the Legislature, Gov. Jon Corzine said that "state-endorsed killing" was wrong.

"I believe society must first determine if its endorsement of violence begets violence, and if violence undermines our commitment to the sanctity of life. To these questions, I answer, "Yes."

It was a gutsy decision, making New Jersey the first state in a generation to outlaw capital punishment. Indeed, it's hard for politicians to back away from capital punishment — especially when a despicable person like Kemp is involved. It's hard to explain to the family of Armida Wiltsey, the jogger found raped and strangled at the reservoir three decades ago. In 2003, when prosecutors linked Kemp to her killing, her husband was clear: He wants Kemp to die.

"He's nothing but an animal," Boyd Wiltsey said. "Society would be much better off without him around."

But can we afford to kill him?

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