

Topic – Capital Cases and their Impact on a Judicial District’s Resources

I. Capital Offenses –

A. First Degree Murder

1. 18-4003. **DEGREES OF MURDER.** (a) All murder which is perpetrated by means of poison, or lying in wait, or torture, when torture is inflicted with the intent to cause suffering, to execute vengeance, to extort something from the victim, or to satisfy some sadistic inclination, or which is perpetrated by any kind of willful, deliberate and premeditated killing is murder of the first degree.

(b) Any murder of any peace officer, executive officer, officer of the court, fireman, judicial officer or prosecuting attorney who was acting in the lawful discharge of an official duty, and was known or should have been known by the perpetrator of the murder to be an officer so acting, shall be murder of the first degree.

(c) Any murder committed by a person under a sentence for murder of the first or second degree, including such persons on parole or probation from such sentence, shall be murder of the first degree.

(d) Any murder committed in the perpetration of, or attempt to perpetrate, aggravated battery on a child under twelve (12) years of age, arson, rape, robbery, burglary, kidnapping or mayhem, or an act of terrorism, as defined in section 18-8102, Idaho Code, or the use of a weapon of mass destruction, biological weapon or chemical weapon, is murder of the first degree.

(e) Any murder committed by a person incarcerated in a penal institution upon a person employed by the penal institution, another inmate of the penal institution or a visitor to the penal institution shall be murder of the first degree.

(f) Any murder committed by a person while escaping or attempting to escape from a penal institution is murder of the first degree.

(g) All other kinds of murder are of the second degree.

B. First Degree Kidnapping -

According to Idaho Code § 18-4504, a person guilty of kidnapping in the first degree will be punished with death or life imprisonment. However, under Section 18-4504A, the death sentence will not be imposed unless the prosecuting attorney files a written notice asking for death penalty. Likewise, the death sentence will not be imposed, if the kidnapped person was discharged without any harm. **(I could not find an instance where a person was put to death for first degree kidnapping unless the person was also convicted of murder).**

II. Execution Statistics –

A total of **29 men** have been executed in Idaho since our existence as a territory. Each has been convicted of at least one count of murder. Idaho has never executed a woman. 14 men were executed, all by hanging, in the Idaho territory between 1864 and 1890, when Idaho was admitted to the Union. Another 12 men were executed, again all by hanging, between 1890 and 1957.

After 1957, there were no executions in Idaho for 37 years – until January 1994.

In 1973, Idaho amended our death penalty statute. The new statute provided that the **method of execution** would be by firing squad. In 1978, the legislature added lethal injection as a second method of execution. In 2009, the firing squad option was removed leaving lethal injection as the sole method of execution. No one was ever executed in Idaho by firing squad.

On January 7, **1994**, Keith Eugene Wells was executed by lethal injection. He was convicted of beating 2 people to death in a Boise bar in 1990 and executed four years later.

After 1994, there were no executions in Idaho for another 17 years.

Ring v. Arizona 2002- held that Arizona statute pursuant to which, following a jury adjudication of a defendant's guilt of first-degree murder, the trial judge, sitting alone, determines the presence or absence of the aggravating factors required by Arizona law for imposition of the death penalty, violates the Sixth Amendment right to a jury trial in capital prosecutions. **Following Ring, everyone on Idaho's death row had to either have their sentence changed to life imprisonment or be resentenced by a jury.**

On November 18, 2011, Paul Ezra Rhoades was executed by lethal injection for kidnapping and murdering two women. Rhoades was convicted and sentenced to death in 1988. It took 23 years before he exhausted all his appeals and was executed.

The following year, on June 12, 2012, Richard Albert Leavitt was executed for the 1984 murder of a woman in Blackfoot. Leavitt was convicted in 1985 and executed in 2012 – 27 years later.

III. Death Row - Since Idaho adopted its most recent death penalty statute in 1977, 40 people have been sentenced to death. Of those 40, 3 have been executed. 2 have died in prison, 26 have had their sentenced reduced; and 9 remain on death row - 8 men, 1 woman.

Longest -Thomas Creech has been on death row the longest for 34 years. The most recent are Azad Abdullah and Erick Hall. Both on death row for 12 years.

According to the IDOC website prisoners under the sentence of death are kept in their cells 23 hours a day. They have the option of being in an outside recreation area for 1 hour a day. The only other time they are out of their cells are for showers, attorney meetings and medical care.

IV. Cost in dollars and resources.

As the above stats indicate, death penalty cases can literally take decades to reach a final resolution. As a result they are extremely costly both in dollars and in resources expended.

Everything is different and takes much longer in a death penalty case. Special counsel is required, experts on aggravation and mitigation are required. There are 2 trials, one on guilty, one on sentencing. Juries may have to be sequestered and the case may have to be tried in another District. There are mandatory appeals and post conviction proceedings, first in State Court and then in Federal Court.

Judge must appoint 2 death penalty qualified attorneys to represent the D from a list of approved Capital Defense Counsel maintained by ISC. A lead attorney and a second chair attorney. (ICR 44.3)

Point out how few attorneys on the list. In my District there 6 attys on list. 3 lead, 3 2nd chair. 4 of the 6 work for the KCPD office and 2 of them, 2 of 3 who are qualified to be lead counsel are retiring.

V. Capital Crimes Defense Fund

In 1998, the legislature authorized Idaho's Counties (19-863A) to create a voluntary CCDF to ease the burden on a county trying to pay for a capital case.

County obligated to pay the cost of one of the attorneys and a 10,000 deductible. The CCDF then pays for the other attorney and all other trial costs. State appellate public defender and the attorney general's office handle the appeals.

At the conclusion of the trial, the Trial Judge must appoint at least one new attorney to handle post conviction proceedings. The attorney must be death penalty qualified for post conviction. The CCDF does not pay for post conviction.

All 44 counties have now joined the CCDF. The Fund levies \$600,000 a year against the Counties on a per capita basis until they reach full funding of 5 million. I spoke to Dan Chadwick who oversees the CCDF last week. He indicated that the Fund is fully funded at 5 million and is not currently levying.

VI. 2 capital cases currently pending – 1. In 1st, one in 6th?

The CCDF has made a huge difference for Counties. It has made it possible for every County in Idaho to fund a Capital Case. Managing a capital case is still a huge endeavor for a judge and a judicial district however. Capital cases involve many, many motions and hearings - literally weeks of motions, many weeks of trials, and years of appeals. The 2 attorneys who handle a capital case must significantly reduce their case load. The same thing is true for the District Judge who is assigned a Capital Case. Unfortunately, the CCDF does not pay for additional judge time. Only realistic way to do that is with the assistance of senior judges. Senior judges have also been invaluable in mediating criminal cases, including capital cases. There is no way to predict when or how many capital cases will be filed in any District. The 1st District had 3 last year. In closing, I want to thank you for funding the senior judge program and urge you to continue your support.