



Jurisprudence Section - 2016

F34 Debating Death: Examining Capital Punishment Legislation More Than 40 Years After *Furman*

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After attending this presentation, attendees will better understand the variances in capital punishment legislation in the United States. Attendees will consider the extent to which the combination of differences in legislation and the discretion of sentencing authorities influences the probability that the courts will sentence individuals to death arbitrarily.

This presentation will impact the forensic science community by compelling attendees to consider how United States Supreme Court decisions have either positively or negatively affected capital punishment legislation since *Furman vs. Georgia* (1972). This presentation will encourage attendees to identify the strengths and weaknesses of this legislation in order to foster discussion regarding how to modify legislation in the future and to transform the atmosphere of capital punishment in the United States.

Since it first ruled on the issue in *Furman v. Georgia*, the United States Supreme Court has addressed repeatedly the process through which the government chooses to charge an individual with a capital offense, as well as the particular criterion that must be present in order for a jury to return a death sentence.

Prior to *Furman*, death sentencing in any given jurisdiction in the United States was characterized by a substantial number of death-eligible criminal offenses, a unitary trial system that combined the issues of guilt and punishment, and/or little or no guidance provided to jurors in regard to sentencing.

Subsequent to the ruling in *Furman*, which held that capital punishment violated the United States Constitution, between 1976 and 2008 the Supreme Court provided further guidance and instruction in regard to legislation of the death penalty. The results of these decisions included prohibiting mandatory death sentences and requiring bifurcated trials as well as necessitating guided discretion for juries during deliberation. In addition, the Court limited the opportunities for death sentences by specifying which crimes and what individuals are death-eligible. The purpose of these requirements and specifications was to minimize the potential for the courts to impose death sentences arbitrarily; however, the successfulness of these instructions in reducing arbitrary sentencing is debatable. Variances in capital punishment legislation combined with the sentencing authority's discretion have the potential to influence the probability that the courts will arbitrarily sentence an individual to death.

The sample for this research study included ten states, five with the largest death row populations and five with the smallest death row populations. This study examined the capital offenses and aggravating circumstances for each state as defined by their criminal or penal code. Among the ten states, there were eight categories of capital offenses with a total of 135 aggravating circumstances. Of those circumstances, 72 belonged to the states with the largest death row populations, and 63 belonged to the states with the smallest death row populations. When combined based on the particular elements of the statutes, the number of aggravating circumstances across the ten states was reduced to 60. Only nine of the combined factors appeared in legislation for more than 50% of the states, while 24 of the combined aggravating circumstances appear in statutes for only one state.

The results of this study suggest that the overall lack of consistency between states' capital punishment legislation and the sentencing authorities' discretion in evaluating aggravating circumstances increases the likelihood that the courts will arbitrarily sentence individuals to death.

The data tends to suggest that an excessive number of aggravating circumstances has the same potential to influence sentencing decisions as having no aggravating circumstances or aggravating circumstances that are overly broad and vague. The number of statutorily defined aggravating circumstances in a given jurisdiction does not necessarily correlate with the number of individuals sentenced to death in that state as there was no significant difference between the number of aggravating factors in the states with the smallest and largest death row populations. The failure of jurisdictions to provide statutory definitions for terms within its legislation leaves the jurors with discretion regarding interpretation, which can also create the potential for arbitrary sentencing.

Capital Punishment, Aggravating Circumstances, Legislation