

Criminal Justice Legal Foundation



December 12, 2019

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Tracy L. Snell
Bureau of Justice Statistics
810 Seventh Street NW
Washington, DC 20531

Re: Data Collection for Capital Punishment Report (NPS-8)

Dear Ms. Snell:

The Criminal Justice Legal Foundation (CJLF) submits this comment in response to the notice of October 16, 2019, 84 Fed. Reg. 55333. CJLF is a nonprofit corporation formed to protect and advance the interests of victims of crime. Our interest in this data collection is in its utility, i.e., the usefulness of the data in deciding questions of criminal justice policy.

As is common with BJS products, the utility of this one is diminished by excessive emphasis on demographic information of little policy relevance and insufficient information on the crimes committed, the primary determinant of just punishment. On Form NPS-8, question 7 asks for marital status, and question 8 asks for education level at the detail of individual grades of schooling. These questions have little or no relevance to any policy questions, and respondents' time answering them could be better spent on more relevant data.

On the other hand, question 6 asks for the offense for which death is imposed merely by checking boxes for murder, kidnap, rape, or other. The answer will never be kidnap or rape because the Supreme Court has declared the death penalty unconstitutional for nonhomicide offenses. See *Kennedy v. Louisiana*, 554 U.S. 407 (2008). Everyone on state death row is there for murder, although the federal situation is a bit more complicated.

The most hotly debated policy questions that this data collection can help answer involve issues as to whether the murderers selected for the sentence of death are selected for legitimate reasons of their crimes and

their criminal history or rather for impermissible reasons. One step that legislatures can take to make capital punishment more regular and less arbitrary is to shape the requirements for imposing it to fit the kinds of crimes that sentencers actually decide warrants the penalty. The present data are not much help in answering those questions.

Simply saying that the inmate is sentenced to death for murder does not begin to answer the important questions regarding what kinds of murders result in death sentences. The Supreme Court has long required that eligibility for the death penalty be narrowed to something less than all murders. This requirement is met by some additional finding. See *Brown v. Sanders*, 546 U.S. 212, 216 (2006). This additional finding is called an “aggravating factor” or “aggravating circumstance” in most states. In California it is a “special circumstance.” In Texas it is a finding that elevates the murder conviction to the degree of “capital murder.”

For each capital sentence, NPS-8 should ask the specific code section of the capital offense and the designation of each eligibility factor found, however the state defines eligibility factors. That would require instructions for each state, but that information can easily be obtained from the state attorney general. Using this information for research would similarly require coding for each state, but that is readily done with computers. If BJS provides the code sections, researchers can do their own state-by-state mapping.

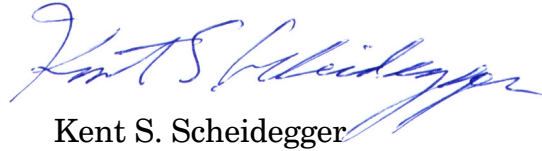
Along with the eligibility factors, concurrent crimes and criminal history are also important in determining which murderers are justly sentenced to death. The present form provides no information at all on concurrent offenses that do not result in a death sentence. The information on priors is limited to a yes-or-no on felonies, whether any were homicides, and, if so, what type. It would be useful to know what other felonies a condemned murderer has been convicted of, either concurrently or previously, particularly violent ones.

The burden of reporting this information would not be large. It only needs to be done once per case, and there are less than 50 new death sentences per year nationwide. A shift from marginally relevant demographic information to pertinent information about crimes and criminal history would significantly enhance the usefulness of the product.

Tracy L. Snell
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Thank you for your consideration of this suggestion.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Kent S. Scheidegger". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kent S. Scheidegger

KSS:iha