

Email from Judge Michael Heavey to Chair Judge Saint Clair

Dear Judge Saint Clair,

Thanks for talking with me last week. If you feel it is appropriate please forward this email to the members of the Sentencing Guideline Commission (SGC).

Our small group, Racial Equity in Sentencing (Mike Heavey, Yaffa Maritz, Gilda Shepherd) asked Rep. Tarra Simmons to sponsor HB 1692. I would like to tell you why we felt the need for this legislation and why I believe it may be misunderstood.

I spent 14 years (1987 - 2000) in the Washington State legislature (eight House, six Senate). I chaired the House Commerce and Labor Committee and the Senate Judiciary Committee. I was a King County Superior Court judge from 2000 to 2013 having been appointed to the bench by Gov. Gary Locke. I was admitted to the Bar in 1976. In my 45 years in the law I always thought the worst crime you could commit was First Degree Murder, but I was wrong. I was never involved in or heard about Aggravated Murder (First Degree Murder plus an Aggravating Circumstance).

When I first heard about the prisoner Kimonti Carter and heard he was doing Life without Parole, I thought he must have been convicted of "Three Strikes You're Out." But that was not the case. Carter had been convicted of Aggravated Murder with a Driveby Shooting aggravating circumstance.

Because Rep. Simmons introduced our group's bill she has come under attack from some media members and has received death threats. Why would this happen? I think the biggest problem is that people (like me) do not understand the difference between First Degree Murder and Aggravated Murder.

Aggravated Murder is defined as - **First Degree Murder plus an Aggravating Circumstance.** Murder in the First Degree is "evil," but Aggravated Murder is "extra evil."

The Agg Murder law has about 13 aggravating circumstances. They include:

- hiring someone to commit a murder
- victim is a judge, law enforcement officer, other occupations
- multiple murders
- murder plus a serious violent felony like rape, kidnapping, etc.
- murder to avoid three strikes prosecution
- murder committed in prison or during escape
- the person drove or was in a car during or just before the murder

So which one doesn't fit? The bottom one which is called "Driveby Shooting." I would submit it doesn't fall into the category of "extra evil."

The Driveby Shooting aggravating circumstance was put into law during the 1995 legislature as part of the passing an initiative that was dubbed, "Hard Time for Armed Crime."

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Looking back, I was state senator in 1995, we were responding to the drug wars and the driveby shootings in Seattle and Tacoma. Most, if not all, were crimes committed by Black youth.

IMO, it is crime of youth, not extra evil and does not belong in Aggravated Murder.

Consider the lyrics from Bruce Springsteen's "My Hometown":

*In '65 tension was running high at my high school
There was a lot of fights 'tween the black and white
There was nothing you could do
Two cars at a light on a Saturday night
In the back seat there was a gun
Words were passed, then a shotgun blast
Troubled times had come to my hometown*

Whatever the race of the killer it is a crime of youth. It does not have that element of "extra evil." IMO, it does not belong in the Aggravated Murder law.

In the last 27 years, to our knowledge, only one person has been convicted of Aggravated Murder by Driveby Shooting. The crime was in the Hilltop area in 1997 and a 18-year-two-month-old-Black young man killed another young man. His name is Kimonti Carter, and he is doing Life with No Parole. Kimonti is an exceptional and exemplary force for good in prison.

Because of the aim of the 1995 Driveby aggravator law was aimed at primarily Black gangs and its only application has been to an 18-year-old-Black youth named Kimonti Carter, we feel this is an example of "systemic racism." We feel it is a subconscious bias which many, including me, had fallen into. Our title to HB 1692 was "racial equity in sentencing." I am sorry if the title offends anyone, it wasn't meant to.

The genesis of the Sentencing Guidelines Commission (SGC) was the Sentencing Reform Act of 1981. The purpose of the 1981 law was to attempt to cure a problem; that being, Black defendants were being sentenced to longer terms of imprisonment than white defendants for the same crime and with similar criminal history.

The opposite of "aggravating" is "mitigating."

"Aggravating" makes something bad - more severe.

"Mitigating" makes something bad - less severe.

Because this is mostly a crime of youth, I would argue that a Driveby Murder should be a mitigating factor not an aggravating factor.

We would be willing to change the title of the bill and drop the part about re-sentencing if anyone could support the proposed legislation without those attributes. It is our hope that the SGC will support HB 1692.

Our group is represented in Olympia by McBride Public Affairs, Tom McBride, (306) 481-1824 and Intisar Surur (206) 941-5053.

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Sincerely,

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"I expose slavery because to expose it is to kill it. Slavery is one of those monsters of darkness to whom the light of truth is death."

- Frederick Douglass