

Death penalty may await Venice senior citizen

By [Todd Ruger](#)

Published: Monday, January 24, 2011 at 1:00 a.m.

David Myers is 68. But this week, prosecutors intend to try the Venice man on capital murder charges and make him among the oldest people ever sentenced to Florida's death row.

Death penalty opponents question the wisdom of seeking the death penalty for someone who will probably die naturally before the state could execute him.

Typical death penalty cases cost millions of dollars and drive up the cost of everything from court hearings to prison housing. The mandatory appeals process would almost surely last beyond Myers' 80th birthday.

"I think there's no reasonable possibility this defendant would ever be executed," said Sarasota lawyer Adam Tebrugge, who teaches other Florida lawyers about defending death penalty cases. "I think it's a terrible waste of resources."

Prosecutors say Myers' age should not play into their decision to seek a death sentence. Rather, they say the brutality of the crime is paramount.

Authorities say a long-standing feud between Myers and his ex-wife over their rural Venice home boiled over in 2009. Myers broke in, shot Maureen Modlin in the face, turned the gun on her boyfriend and hid their bodies so he could move into the house, prosecutors will argue.

Assistant State Attorney Karen Fraivillig said older defendants do not deserve a pass simply because of age. She declined to discuss other details of the Myers case.

"There are many facts that will come out during the trial that led us to make that decision," Fraivillig said.

Myers' attorneys plan to argue at his trial that he is not guilty because he was insane at the time of the crime. An insanity defense is difficult to prove and could simply be a strategy to convince the jury to recommend a life sentence instead of the death penalty. The trial judge ultimately decides the sentence.

But if prosecutors get their way during a three-week trial starting today, Myers would enter a Florida death row where the average inmate arrived at age 30 and has been there for more than a decade.

Available records show only one person has arrived on death row after turning 68. That inmate is a Bartow man sentenced in 1997 for killing four people, including a prosecutor, after a soured business deal.

The oldest man ever executed in Florida was 72; that happened in 1951. The oldest man currently on Florida's death row, at 79, has been there for 20 years.

Death penalty trials for people over 65 are rare in the United States. Only one of the 112 people committed to death row nationwide in 2009 was over 65, according to the nonprofit Death Penalty Information Center in Washington D.C.

"People that age don't commit many murders, and certainly don't commit the most violent murders," said Richard Deiter, the center's executive director. "And you're drawing from a diminishing population."

Seeking the death penalty means a longer case with more extensive legal work for prosecutors, public defenders and judges. A death sentence is automatically appealed to the Florida Supreme Court, a process that takes years.

Florida has never had an official study of the cost of the death penalty, but the most widely quoted cost analysis is a 2000 report in The Palm Beach Post that concluded the state spends \$24 million to execute each person because of appeals that stretch an average of 12 years.

In the alternative, it costs the state \$72 per day to house an inmate on a life sentence, or about \$1.3 million over 50 years, the newspaper found.

Life on death row means about 23 hours a day alone in a 6-foot-by-9-foot cell, no air conditioning and a 13-inch black and white television. Florida's two death row wings are at Florida State Prison and Union Correctional Institute, both near Starke.

Robert Blecker, a New York Law School professor and death penalty supporter, says cost, age and the likelihood of execution do not matter when it comes to seeking justice for the community.

In some ways, an older defendant's crimes are all the worse because they had the maturity and time to reflect on life experiences, Blecker said.

"Justice isn't cheap, and the question shouldn't be cost," Blecker said. "It should be a function of who he is and what he did."

Police say Myers shot Modlin, 58, in the face at her home on June 27, 2009, and then shot her three more times before shooting Michael Lee Bistranin, 60. Myers is charged with first-degree murder, which has only two possible sentences: death or life in prison without parole.

At the heart of the case will be the events leading up to the murders. Modlin installed security cameras outside her rural Venice property on Kennedy Boulevard, alerted her neighbors about

Myers, pleaded with a judge for a restraining order and frequently called the Sheriff's Office for help.

Modlin reported that Myers stole her mail and vandalized her property. Myers was convicted in 2006 of fraud for forging deed documents to get the property back and then taking out a mortgage.

Investigators said Myers moved the bodies to a wooded area behind the house and hid them, then parked the victims' two vehicles deep into the property so they could not easily be spotted.

Myers went home, but eventually returned and moved into Modlin's property.

Myers' defense attorneys did not return calls for comment. Jury selection starts today and will likely take a week. If he is found guilty, jurors will vote on whether to recommend the death penalty.

This story appeared in print on page A1

Copyright © 2011 HeraldTribune.com — All rights reserved. Restricted use only.