

WHITE PAPER

THE HIGH COSTS OF THE DEATH PENALTY

American Civil Liberties Union

Capital Punishment Project

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INTRODUCTION

Every serious study on the costs of the federal or state capital punishment system has concluded that it is significantly more expensive than a system in which life in prison without the possibility of parole is the most severe penalty. Capital cases are more complex, require more attention and have higher burdens associated with them. As such, they divert significant resources—financial and personnel—that could be used elsewhere. More often than not, money is taken from other law enforcement and public safety needs. In some cases, death penalty trials have nearly bankrupted local communities.

A system for achieving society's goal of preventing crime while providing a consistent and evenhanded punishment system requires wise use of the resources available to the administration of justice. Maintaining a system of capital punishment, however, deviates from and distorts these goals. The costly, time consuming, controversial and devastating process of capital punishment drains the criminal justice system of necessary resources that it could otherwise use to meet its goals. This issue is especially acute when the national trend is moving towards a reduction of public budgets in tighter economic times when there is less money to spend, fewer taxes being collected, and increased strain on the social services net.

Simply stated, a criminal justice system that includes the death penalty costs more than a system that chooses life imprisonment without the possibility of parole as its ultimate penalty.

I. Death Penalty Cases are Much More Expensive than Those Involving Life Imprisonment

Supporters of the death penalty often argue that abolishing the death penalty is unfair to the taxpayer, based on the assumption that life imprisonment is more expensive than execution. They contend that the cost of executing convicted murderers is less than the cost of imprisoning them for life. In fact, the opposite is true. Once all the relevant costs associated with a capital punishment system are taken into account, the death penalty is far more expensive than life imprisonment without the possibility of parole.

There are many reasons why the death penalty is more expensive than life imprisonment without the possibility of parole.

- A much higher percentage of cases go to trial when prosecutors seek the death penalty over life in prison.
- Murder trials normally take longer when the death penalty is at issue.
 - One study has concluded that, on average, capital murder trials last over 3.5 times longer than non-capital murder trials.ⁱ
 - The Supreme Court has declared that “death is different” and as such, certain constitutional safeguards must be taken into account during a death penalty trial.
 - The jury selection procedure is often more complex due to the fact that prospective jurors are polled extensively on their feelings about sentencing someone to death.ⁱⁱ In California, for example, prosecutors and defense attorneys are given 20 peremptory challenges in capital cases as opposed to 10 peremptory challenges allowed in common criminal cases.ⁱⁱⁱ
- Death penalty trials require more intense pretrial preparation and more elaborate, two-phased trial proceedings for determining guilt or innocence and for sentencing.

- The sentencing phase alone almost amounts to a second trial in itself and frequently involves the examination of the defendant's whole life through the presentation of mitigating evidence.
- Litigation costs, including the time of judges, prosecutors, public defenders, and court reporters, as well as the high costs of briefs, are mostly borne by the taxpayers.

A less costly death penalty system that is also constitutional does not exist. Eliminating or cutting back on post-conviction appeals would destroy the minimum constitutional safeguards established by the Supreme Court to prevent the arbitrary and capricious application of the death penalty. Economizing on capital punishment appeals is unconstitutional. Moreover, the bulk of the costs to implement a death penalty system occur at the trial level, not in the post-conviction appeals or habeas corpus proceedings process. Despite the common belief that the high cost of the death penalty comes from “endless appeals”, studies have shown that the trials themselves produce the largest share of capital costs. In fact, one California study found that 87% of the costs in capital cases were incurred at the trial level,^{iv} and a Duke University study in 1993 concluded that typical trial costs of each trial were about \$200,000 more than if no death penalty had been sought.^v

II. The High Costs of the Death Penalty Impose a Financial Burden on Local Governments

Every serious study, at the federal and state level, that has analyzed the costs of the death penalty compared to the costs of life imprisonment has concluded that the death penalty is much more expensive to administer than life imprisonment without the possibility of parole. Consider the following state statistics:

- In the **federal system**, from 1990 to 1997, the average total cost per representation in a sample of cases in which the defendant was charged with an offense punishable by death but the prosecution did not seek the death penalty totaled \$55,772 compared to \$218,112 per case when the prosecution did seek the death penalty. In the same period, the average cost of prosecuting a death penalty case totaled \$365,000.^{vi}
- The most comprehensive state study in the country revealed that the death penalty costs **North Carolina** at least an extra \$2.16 million per execution over the costs of a non-death penalty murder case with a sentence of life imprisonment. The extra costs to the state associated only with the death penalty were estimated to be \$4 million per year.^{vii} Moreover, the study found that defense and state attorneys spent over 600 hours, and the governor close to 60 hours, on a single clemency proceeding.^{viii}
- A 1982 study showed that were the death penalty to be reintroduced in **New York**, the cost of a capital trial alone would be more than double the cost of a life term in prison.^{ix} Despite this enormous projected cost, New York reintroduced the death penalty system in 1995. The department of corrections estimated that it would cost \$2 million per execution and \$118 million annually.^x In 1999, the New York Daily News estimated that the costs associated with pursuing the death penalty in New York could reach \$238 million by the time of the first execution. Suffolk County and New York State paid \$2.5 million for the capital murder trial of Robert Schulman, who was sentenced to death on May 6, 1999. The trial was 3.5 times more expensive than a typical murder trial because the death penalty was sought and cost more than double what it would have cost to keep Schulman in prison for 40 years, at an annual cost of imprisonment being \$30,484.^{xi}

- In **Maryland**, a comparison of capital trial costs with and without the death penalty for the years 1979 to 1984 concluded that a death penalty case costs “approximately 42% more than a case resulting in a non-death sentence.”^{xii} It costs approximately \$2.3 million dollars to move a death penalty case all the way through the system. It costs approximately \$19,200 per year to keep the same person in prison. Incarcerating someone for 40 years costs the Maryland taxpayers about \$768,000.^{xiii}
- One estimate puts the total **California** death penalty expense bill at \$1 billion from 1977 to 1993. In San Diego County, the prosecution costs alone (not counting the defense or appeal costs) for three capital cases averaged over \$500,000 each. In Los Angeles County, the total cost of a capital murder of capital punishment, including defense and prosecution costs, court, jail, and incarceration costs, averages \$2,087,926; whereas, the total cost of life imprisonment without the possibility of parole averages \$1,448,935.^{xiv} Capital cases in California, as a class, pose a great burden on the court. For example, from 1987 to 1993, capital cases accounted for 26% of the California Supreme Court’s opinions and nearly 56% of its headnotes in legal opinions. Capital cases presented, on average, more than three times as many issues requiring analysis by the court as non-capital cases.^{xv}
- **Florida**, with one of the nation’s most populous death rows, has estimated that, in enforcing the death penalty, it spends \$51 million per year—above and beyond what it would cost to punish all first-degree murderers with life in prison without parole.^{xvi} Based upon the 44 executions Florida had carried out from 1976 to 2000, that amounts to a cost of \$24 million for each execution. Each life imprisonment case, meanwhile, would cost about \$23 million less. The Florida Supreme Court spends approximately half of its time devoted to death penalty cases. Gerald Kogan, Chief Justice to the Florida Supreme Court, therefore, has proposed Florida should “seriously reconsider whether the death penalty is a truly viable remedy for first degree murder.” Chief Justice Kogan noted that capital punishment causes the Florida Supreme Court to spend “an inordinate amount of time...when there is so much out there that affects the average citizen much more.”^{xvii}

- The average cost of a capital trial in **Texas** is \$2.3 million: *three times* the cost of incarceration of a single individual at the highest security level for 40 years.^{xviii} In 1991, **New Jersey** implemented a death penalty system, which would cost an estimated \$16 million per year, more than enough to hire 500 police officers at a salary of \$30,000 per year.^{xix} According to a study by the Indiana Legislative Services Agency, if all offenders who received the death penalty between 1979 and 2000 had instead received the sentence of life without parole, the savings to **Indiana** would have been about \$37.1 million.^{xx} **Colorado** taxpayers have spent more than \$2.5 million on five death penalty cases under the state’s new three-judge panel sentencing system. In 1988 and 1989, the **Kansas** legislature voted against reinstating the death penalty after it was informed that reintroduction would involve a first-year cost of “more than \$11 million.” A 2001 survey by former **Oregon** Supreme Court Chief Justice Richard Guy found that a death penalty trial costs an average of \$338,680 and takes 11 years to go through state and federal appeals.^{xxi}

A. Impact of Death Penalty on State Budgets & Taxpayer Services

An increasingly significant consequence of the capital punishment system in the United States is the crushing financial burden it places on local governments. Counties, in addition to state and federal systems, often bear the brunt of the costs of death penalty trials, but are also the primary deliverers of local health and human services in the public sector. The millions of dollars spent on capital punishment deplete significant resources for other community interests, such as schools, hospitals, public safety and job creation. States and counties face the difficult choice in deciding how to spend their money. In Georgia, Long County Administrator Richard Douglas complained, “[i]f you’re spending \$300,000 for a death penalty case, that’s \$300,000 that could be used for buying road equipment, paying salaries, the fire and sheriff’s departments. We don’t have a lot of room to play with.”^{xxii} Similarly, the Joint Legislative Budget Committee of the California Legislature has concluded that “elimination of the death penalty would result in a net savings to the state of at least several tens of millions of dollars annually, and a net savings to local governments in the millions to tens of millions of dollars on a statewide basis.”^{xxiii}

The county government is typically responsible for the costs of prosecution and the costs of conducting the criminal trial. Some of the costs involved include hiring additional attorneys to staff the cases, new computers and private labs to do DNA testing, and overtime pay for police officers and deputies in charge of the investigation. In some instances, the county is also responsible for the costs of the defending the indigent. In King County, Washington, taking a case against a quadruple-murder suspect to trial and investigating the cases of missing women may cost \$8-12 million over two years.^{xxiv} Some counties have gone nearly bankrupt because of the costs of a single death penalty case. In Okanogam County, Washington, for example, commissioners had to delay paying out raises to the county's 350 employees, because of anticipated death penalty trial costs. The county also decided not to replace two of four public-health nurses, ordered a halt on non-emergency travel and put a hold on updating computers and county vehicles.^{xxv}

In order to pay for the high costs associated with administering a death penalty system, most counties, small and large alike, are often forced to raise taxes. Dartmouth College Professor, Katherine Baicker, has concluded, "the estimated increase in taxes and expenditures [borne by counties] is significant, amounting to more than \$1.6 billion over a 15-year period."^{xxvi} Her statistical examination of 14 years of budget data from all U.S. counties showed that those with the death penalty also spent 3.3% less on law enforcement and highways.^{xxvii} In Jasper County, Texas, the cost of three capital murder trials against the men accused of killing James Byrd, Jr., who was dragged to death in a 1998 case that attracted national attention, exceeded \$1.02 million to date and forced the county to raise property taxes 6.7% over two years to pay for the trial.^{xxviii}

Now, the exorbitant costs associated with death penalty cases and the strain it puts on the local counties have forced counties to seek assistance from state lawmakers. Counties have begun to persuade lawmakers to create "risk pools" or expand programs to deflect many of the costs in the event a local county has to prosecute death penalty case.^{xxix} For example, in Polk County, Texas, after the U.S. Supreme Court reversed the death sentence of Johnny Paul Penry and sent the case back to Polk County for a third trial, county officials were able to receive \$100,000 from state discretionary funds designed to help counties pay for the extraordinary costs of prosecuting capital murder cases.

CONCLUSION

The available evidence is clear: the death penalty costs more than life imprisonment without the possibility of parole. At every step in the process, a capital defendant receives greater constitutional guarantees than non-capital defendants, which costs time and resources. As a result, total costs for each capital case run into the millions of dollars. While it is the politicians and legislators who often support the death penalty, local counties and communities must bear the financial burden of imposing a capital punishment system, often to the detriment of other health and social services. With life imprisonment available at a much cheaper, fairer, and more humane form of punishment, the high costs of the death penalty, and their burdens on local governments, simply are not worth whatever benefits may be claimed for it.

REFERENCES

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- ⁱⁱ Margot Garey, Comment, *The Cost of Taking a Life: Dollars and Sense of the Death Penalty*, 18 U.C. Davis. L. Rev. 1221, 1257 (1985) (estimating that jury selection in capital cases takes 5.3 times longer than in non-capital cases based on an informal study of 20 cases).
- ⁱⁱⁱ California Civil Code § 231 (West 2001).
- ^{iv} Sacramento Bee, March 28, 1988.
- ^v The Duke Study.
- ^{vi} This estimate is based on a sample of cases resolved by guilty pleas and by trial selected by the Department of Justice and does not include any non-attorney investigative costs or the costs of the expert and other assistance provided by law enforcement agencies; figures provided by the Department of Justice.
- ^{vii} The Duke Study.
- ^{viii} *Id.*
- ^{ix} N.Y. State Defenders Association, “*Capital Losses: The Price of the Death Penalty in New York State*” (1982).
- ^x National Coalition to Abolish the Death Penalty, “*Millions to Kill, Pennies to Heal*,” at www.ncadp.org, visited 12/11/01.
- ^{xi} Newsday, July 12, 1999.
- ^{xii} U.S. Gov’t Accounting Office, “*Limited Data Available in Costs of Death Sentences*” (1989), p.50.
- ^{xiii} MD Dept. of Legislative Services. *See also*, Maryland Coalition Against State Executions, www.mdcase.org, visited 12/14/01.
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- ^{xv} William C. Vickrey, “*Opinion Filings and Appellate Court Productivity*”, 78 JUDICATURE 47, 50 (1994).
- ^{xvi} S.V. Date, “*The High Price of Killing Killers*”, PALM BEACH POST, Jan. 4, 2000, at 1A. The Post’s figure was derived using estimate of how much time prosecutors and public defenders at the trial courts and the Florida Supreme Court spend on extra work needed in capital cases. It accounts also for the time and effort expended on defendants who are tried but convicted of a lesser murder charge and whose death sentences are overturned on appeal as well as those handful of condemned inmates who are actually executed.
- ^{xvii} Martin Dyckman, “*Death Penalty Repair*,” ST. PETERSBURG TIMES, Dec. 7, 1997 at 1D.
- ^{xviii} Dallas Morning News, March 8, 1992.
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- ^{xxi} Alex Fryer and Carol Ostrom, “*Cost of Trying Ridgeway Likely in the Millions*,” SEATTLE TIMES.
- ^{xxii} Savannah Morning News, Jan. 14, 2001.
- ^{xxiii} Joint Legislative Budget Committee of the California Legislature, September 9, 1999.

^{xxiv} Alex Fryer and Carol Ostrom, “*Cost of Trying Ridgeway Likely in the Millions,*” SEATTLE TIMES

^{xxv} Associated Press, April 2, 1999.

^{xxvi} National Bureau of Economic Research, “*The Budgetary Repercussions of Capital Convictions,*” July, 2001.

^{xxvii} See Russell Gold, “*Counties Struggle With High Cost of Prosecuting Death-Penalty Cases,*” WALL STREET JOURNAL, Jan. 9, 2002.

^{xxviii} *Id.*

^{xxix} *Id.* The “risk pools” allow counties to pay in annually and receive funds in the event of a death penalty case.