

AN ANALYSIS OF THE ECONOMIC COSTS OF SEEKING THE DEATH PENALTY IN WASHINGTON STATE[†]

Executive Summary by

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January 1, 2015



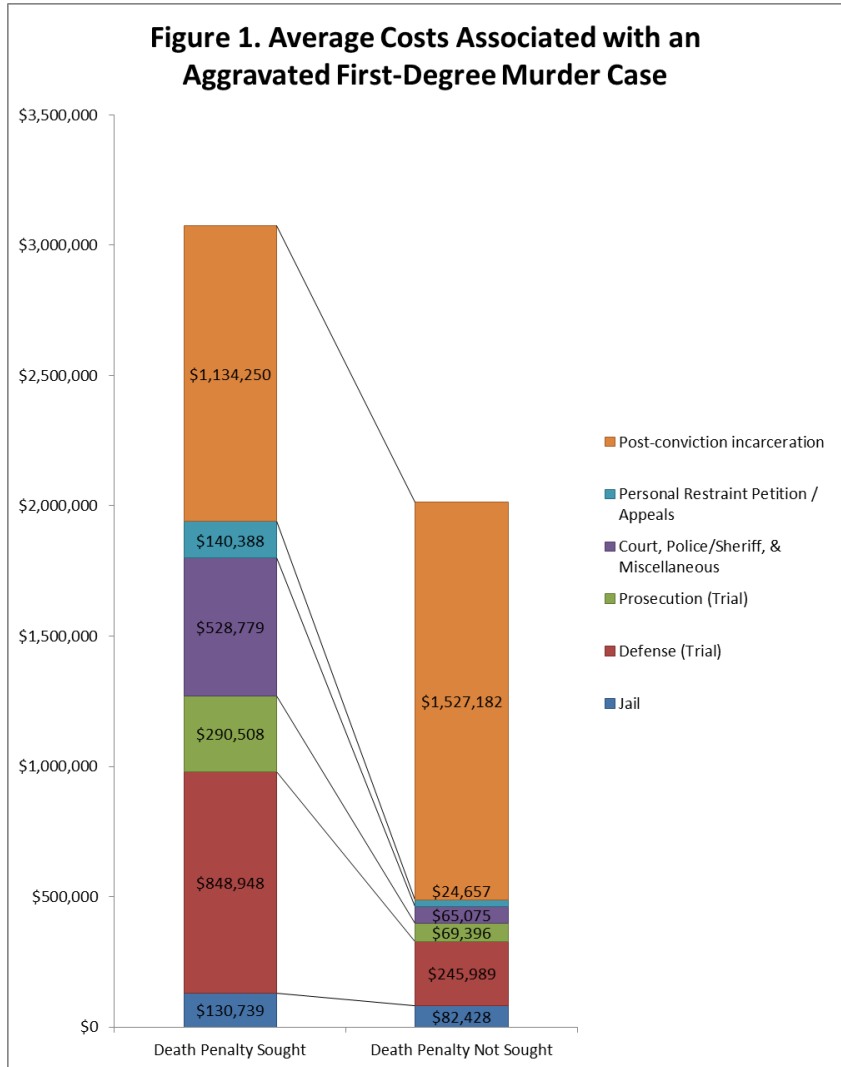
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[†]This study was funded through a grant awarded by the American Civil Liberties Union of Washington Foundation. The findings and opinions reported here are those of the authors and do not necessarily reflect the positions of the ACLU-WF or Seattle University. The ACLU-WF had no role in conducting this research and did not influence the analysis and formulation of conclusions.

EXECUTIVE SUMMARY

The purpose of this study was to estimate the costs associated with pursuit of the death penalty, as compared to cases where the death penalty was not sought, for aggravated first-degree murder cases in Washington State. The study was limited to economic cost estimation only and does not draw any normative conclusions regarding the death penalty. The study was designed to provide accurate estimates to inform debate and decision-making by policy makers and the public. Prior studies in Washington have been limited in both rigor and comprehensiveness. The current study adds significantly to research on the death penalty in Washington and beyond, as we utilize quasi-experimental methods to estimate cost differences using a wide variety of data sources.

Cases of aggravated first-degree murder were identified from a database of trial reports obtained through open records requests.² In addition to the information within the trial reports, major data sources included Extraordinary Criminal Justice Act (ECJA) petitions, and data provided by the Washington Office of Public Defense, the Department of Corrections, and the State Attorney General’s office. Additional data sources are detailed within the full report.



This study examined 147 aggravated first-degree murder cases since 1997. A case was identified as Death Penalty Sought (DPS; synonymous with “capital case” used interchangeably throughout

² The trial reports are required by statute. RCW 10.95.120 provides in part:
 In all cases in which a person is convicted of aggravated first degree murder, the trial court shall, within thirty days after the entry of the judgment and sentence, submit a report to the clerk of the supreme court of Washington, to the defendant or his or her attorney, and to the prosecuting attorney which provides the information specified under subsections (1) through (8) of this section. The report shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Washington....

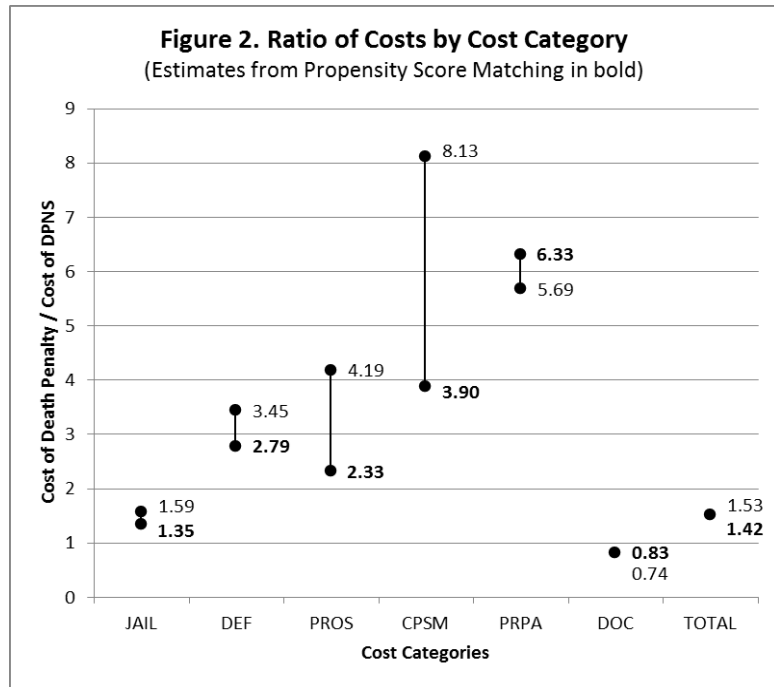
*A copy of the form supplied by the Supreme Court is in the Appendix to this Report.

this report) if a death notice was filed by the prosecutor; otherwise it was identified as Death Penalty Not Sought (DPNS). It should be noted that some DPS cases ended without trial (with pleas to life without possibility of parole or otherwise), and in some DPNS cases the decision not to seek death was not made until several months or longer after arraignment.

Two methods were used to estimate costs: an all-inclusive method that used all of the eligible cases, and a more conservative approach that used a smaller sample of comparable cases selected using a technique known as Propensity Score Matching (see the full report at page 33 for a description).

Figure 1 presents the average costs for DPS versus DPNS cases, using all of the eligible cases. The total average cost for DPS cases is \$3.07 million, versus \$2.01 million for DPNS cases, a difference of \$1.06 million (in 2010 dollars). Adjusted to 2014 dollars, the difference is \$1.15 million.³

The differences in costs might also be understood in terms of ratios. Figure 2 presents the ratio of costs (where the ratio is the average cost for DPS cases, divided by the average cost for DPNS cases) by major cost categories, including the overall total. As previously mentioned, a more conservative estimation technique was also used; the ratios resulting from the more conservative technique are listed in boldface.



Average jail costs (JAIL) related to pursuit of the death penalty are 1.4 to 1.6 times more expensive than DPNS cases. Average trial level defense costs (DEF) related to pursuit of the death penalty are 2.8 to 3.5 times more expensive than DPNS cases. Average trial level prosecution costs (PROS) related to pursuit of the death penalty are 2.3 to 4.2 times more expensive than DPNS cases. Court, Police/Sheriff, and Miscellaneous (CPSM) costs related to pursuit of the death penalty are 3.9 to 8.1 times as much for DPNS cases. Personal restraint petition/appeals (PRPA) costs related to pursuit of the death penalty are 5.7 to 6.3 times more expensive than DPNS cases.

Post-conviction lifetime incarceration costs (DOC) are lower for DPS cases (.7 to .8 times DPNS cases). However, it should be noted that these figures are based on a very conservative cost

³ For all adjustments, the Organization for Economic Co-operation and Development (OECD) Main Economic Indicators (complete database, base year 2010, Consumer Price Index – Total All Items for the United States) were used to adjust nominal values into real 2010 dollars.

estimation method. The full report discusses alternative estimation methods, as well as case demographics that may account for cost differentials in DOC costs. There have been several empirical studies that have shown that death row inmate management costs more, on average, than the management of non-death row inmates.⁴ The reasons for these cost differences can be attributed to inmate-to-staff ratios, generally higher security levels, as well as differences in the physical space, as many high-risk violent offenders are placed in cells of their own, among other cost-generators. The Department of Corrections was not able to provide a daily or annual cost for the maximum-custody unit where death-sentenced prisoners are held at the Washington State Penitentiary. Because we cannot assess where exactly each inmate was located (or will be located in the future) in the system as well as calculate the average daily costs specific to death row, we were forced to estimate costs associated with an average life sentence and at baseline, use the same average daily cost post-2013 for both the DPS and DPNS groups. This resulted in an underestimation of DPS/DPI DOC costs, as viewed in Figure 2. Additionally, the defendants in the death penalty sought and imposed groups were slightly older, on average, than those in the not-sought group, which also artificially decreased the overall incarceration cost estimations associated with the DPS/DPI groups.

The estimated average difference in total costs when the death penalty is sought is \$1,058,885

Combining all cost categories, the average total costs to the justice system related to pursuit of the death penalty are about 1.4 to 1.5 times more expensive than DPNS cases. The total average difference in costs when the death penalty is sought is \$1,058,885 in 2010 dollars, or \$1,152,808 in 2014 dollars.

As outlined below, recent capital cases have become even more expensive. This report documents the costs in the different parts of the criminal justice system and explains the complexity of capital cases that leads to increased costs.

The Washington Supreme Court has emphasized the need for defense counsel to be specially trained and certified, to be “learned in the law of capital punishment,”⁵ and in the process of reversing a number of cases has made clear the comprehensive work that defense counsel must do to provide effective representation. The Court requires that when the death penalty is possible “At least two lawyers shall be appointed for the trial and also for the direct appeal.”⁶ Developments in the case law have led to additional time and resources being required for capital cases. The Court also has stated that “[b]ecause the death penalty qualitatively differs from all

⁴Criminal Justice Planning Services, 2012:

(http://ofm.wa.gov/reports/costeffective_incarceration_adult_offenders.pdf); California Commission on the Fair Administration of Justice, 2008:

<http://ccfaj.org/documents/reports/dp/official/FINAL%20REPORT%20DEATH%20PENALTY.pdf>. According to The Marshall Project, “A 2014 study out of Kansas reported that a death row prisoner costs \$49,380 to house per year, whereas a general population prisoner costs \$24,690.” Maurice Chammah, Six Reasons the Death Penalty is Becoming More Expensive,” December 17, 2014, available at: <https://www.themarshallproject.org/2014/12/17/six-reasons-the-death-penalty-is-becoming-more-expensive>.

⁵ The Court has implemented Superior Court Special Proceedings Rules – Criminal that provide in part:

All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case.

⁶ SPRC 2, available at:

https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=SPRC&ruleid=supsprc2.

other punishments, there must be reliability in the determination that death is the appropriate punishment.”⁷

Death sentences were imposed in 33 cases,⁸ which are either pending appeal or in which the appellate review has been completed. There are nine cases (9) currently on appeal in either state or federal courts, and 24 cases that have completed their appellate review.⁹ There have been five (5) executions. Eighteen (18) cases resulted in either the conviction and/or death sentence being reversed, and one (1) ended when the defendant committed suicide while the matter was on appeal.

This report provides data to assist citizens and policy makers in assessing the impact of the increased costs of pursuing the death penalty.

⁷ *State v. Woods*, 143 Wn.2d 561 (2001) (quoting *State v. Lord*, 117 Wn.2d 829, 888 (1991)).

⁸ We provide information on these 33 cases in the Chronology of a Capital Case section of this report.

⁹ The Office of the Washington State Attorney General, Corrections Division, publishes “The Capital Punishment Case Status Report”, a monthly report that sets out the legal status of each case where an individual is currently under sentence of death. This report details motions and orders entered by the courts at different stages of the appeals and post-conviction proceedings, available at: <http://atg.wa.gov/page.aspx?id=31729#.VJ2aJ4BA>.