House votes to repeal death penalty

- House roll call

Repealing Maryland's death penalty was long overdue

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The commission, composed of both death-penalty opponents and supporters, found geographic disparities, too: "The fact that similar capital offenses perpetrated by similar offenders are treated so differently depending on where the crimes are committed renders the administration of capital punishment irretrievably inconsistent, nonuniform and therefore unfair."

Baltimore County sent more men to death row than any other locality in the state, and that list included Kirk Bloodsworth, who spent nine years in prison — two on death row — before DNA evidence cleared him in the murder of a child. Baltimore County's insistence on the application of the death penalty prompted the studies that led to the conclusions of jurisdictional bias. And Bloodsworth became the face of the real possibility that the state could execute an innocent man.

Last, the Civiletti commission declared the death penalty a waste of money. By 2008, 62 of 77 death sentences had been reversed in costly post-conviction appeals while many inmates were kept on death row, at $68,000 for each inmate a year. "There are other areas in the Maryland criminal justice system where such resources could be applied and significant results could be expected," the commission said in its final report.

Five years later — and many years after other studies reached similar conclusions — we have repeal of the death penalty. And if it feels a bit anticlimactic, it's because the writing has been on the wall for so long.

Seventeen other states took this step before Maryland did. Thirteen years ago, **George Ryan**, the Republican governor of Illinois, declared a moratorium on executions because of what he called his state's "shameful record of convicting innocent people and putting them on death row."

According to the Death Penalty Information Center, 142 death row inmates across the country have been exonerated since 1973. That's 142 innocent people not only convicted but sentenced to die.

Perhaps you know all this.

Perhaps you know this, but still believe the state should have the right to decree a human being unfit to live, and that we should be allowed to strap him to a table and inject him with poison.

There are a lot of Marylanders who still feel that way, according to a poll released last week by the Sarah T. Hughes Field Politics Center at Goucher College.

But the Goucher Poll, conducted earlier this month, shows how misinformed Marylanders are about the death penalty and how conflicted many of them are.

When asked to say how many executions Maryland had carried out in the last 10 years, only 15 percent got it right. While just two men have been put to death in the last decade, 30 percent of Marylanders in the Goucher Poll estimated state-sanctioned deaths at between 4 and 10; another 30 percent believe we had killed anywhere from 11 to 100 inmates. Four percent believe we'd killed more than 100.

Majorities said they doubt the death penalty serves as a deterrent to murder and expressed a preference for life in prison over a death sentence. And yet, 51 percent of Marylanders said they believe the state should retain the right to kill. That doesn't make sense.

In the end, it takes informed leadership and the courage of conscience to sort out feelings from facts and to hold rational law and reason above the populist instinct for revenge and the political instinct for self-preservation. We got that from the **Maryland General Assembly**, at long last.

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George R1 at 9:17 AM March 20, 2013
So I guess the Ted Bundy's of the world should die in prison vs. being executed?
Ironic as a country being founded we hung cattle thieves. Now that's a misdemeanor and a slap on the wrist. However, if you are a Michale Vick type you get 3 years for dog fighting. Really!!
If you get a DUI in Harford County you got to jail.
So now MD in its very finite wisdom repeals the death sentence. Public officials were told 10ish years ago that the system was broken. So instead of fixing it way bach when, they now simply repeal it. To add insult to injury the State has now made it more difficult to obtain certain guns.
With DNA and camera's everywhere I would think there is more of an incentive to use the death sentence. OK you want some compromise. Of those on death row who were not caught on tape, or DNA or some other overwhelming evidence you are spared (if you want to call life in jail as spared). However, where DNA or camera catches you doing the dirty deen you get your speedy and if found guilty your executed. If you have a slam dunk take out the middle man of 15-20 years of the appeals process. If you dont like the above, then if you are conviceted of murder of gang members or drug dealers you get no prision term. You are released and the underworld will take care of you via. handgun to your temple. That will save us 65k a year for these thugs.

The Mad Hatter at 9:29 PM March 19, 2013
Hey, gtowanderer, I'm a Liberal, and I'm very much pro-death penalty and pro-a woman's right to choose. Ah, generalities- how they can bite the dim-witted in the butt sometimes! P.S. The Death Penalty may be gone, but in Maryland, abortion will ALWAYS be legal! Ta-tah!

gtowanderer at 12:02 PM March 19, 2013
Once again the left,s hypocrasy is showing,but then again that,s nothing new.
It is puzzling to me,how a group of so called progressives can rail about the death penalty and the so called cruel and unjust nature of it.A lot of them claim that no one has the right to take someone elses life, yet a large amount of them will stand on the corner protesting in the favor of abortion rights. What this tells me is that if one commits a crime in Maryland,no matter how ,heinous or gruesome the act may be he or she is entitled to 3 hots and a cot for the rest of their worthless lives,while the life of the unborn is at the whim of the mother. Boy! that,s what I call justice!!!

EXHIBIT 20

SENATE BILL 276

E2 3lr0146
CF 3lr0147

By: **The President (By Request – Administration) and Senators Gladden, Raskin, Benson, Conway, Currie, Ferguson, Forehand, Frosh, Jones–Rodwell, Kelley, King, Madaleno, Manno, McFadden, Montgomery, Muse, Peters, Pinsky, Pugh, Ramirez, and Rosapepe**
Introduced and read first time: January 18, 2013
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Death Penalty Repeal and Appropriation from Savings to Aid Survivors of Homicide Victims

FOR the purpose of repealing the death penalty; repealing procedures and requirements related to the death penalty; providing that in certain cases in which the State has filed a notice to seek a sentence of death, the notice shall be considered withdrawn and it shall be considered a notice to seek a sentence of life imprisonment without the possibility of parole under certain circumstances; providing that certain persons serving life sentences are not eligible for Patuxent Institution under certain circumstances; altering the circumstance concerning parole for persons serving life sentences when the State sought a certain penalty; requiring the Governor to include in the annual budget submission for certain fiscal years a certain amount for the State Victims of Crime Fund; making conforming and clarifying changes; and generally relating to the repeal of the death penalty.

BY repealing
Article – Correctional Services
Section 3–901 through 3–909 and the subtitle "Subtitle 9. Death Penalty Procedures"
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing
Article – Criminal Procedure
Section 7–201 through 7–204 and the subtitle "Subtitle 2. Proceedings After Death Sentences"; 8–108 and 11–404
Annotated Code of Maryland

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets] indicate matter deleted from existing law.

(2008 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Correctional Services
Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–03(d)(1), 3–8A–06(a), 8–404, 8–420, 9–204, and 12–307
Annotated Code of Maryland
(2006 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 3–105(b), 3–106(a), 3–107(a), 4–204(b), 5–101(c), 7–101, 7–103(b), 7–107(b), and 11–916
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing
Article – Criminal Law
Section 2–103(h), 2–202, 2–301, 2–303; and 2–401 and the subtitle "Subtitle 4. Review by Court of Appeals"
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 2–201(b), 2–304(a), 2–305, and 14–101
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 8–505(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 16–812(a)
Annotated Code of Maryland
(2012 Replacement Volume)

Preamble

WHEREAS, The Maryland Commission on Capital Punishment was created by Chapter 431 of the Acts of the General Assembly of 2008 for the purpose of studying all aspects of capital punishment as currently and historically administered in the State; and

WHEREAS, The Commission comprised 23 appointees representing a broad diversity of views on capital punishment, as well as the racial, ethnic, gender, and geographic diversity of the State; and

WHEREAS, The Commission held five public hearings at which testimony from experts and members of the public was presented and discussed, as well as five additional meetings to discuss the evidence presented at the hearings and in the written submissions; and

WHEREAS, The Commission issued its final report to the General Assembly on December 12, 2008, which included the Commission's strong recommendation that, to eliminate racial and jurisdictional bias, reduce unnecessary costs, lessen the misery that capital cases force family members of victims to endure, and eliminate the risk that an innocent person can be convicted, capital punishment be abolished in Maryland; and

WHEREAS, The Commission, in its final report to the General Assembly, recommended that the savings from repealing the death penalty be used to "increase the services and resources already provided to families of victims"; and

WHEREAS, In 1988, the Maryland General Assembly created the State Board of Victim Services in recognition of the unique and distinctive needs of crime victims, and endeavored to ensure that all crime victims in Maryland are treated with dignity, respect, and compassion during all phases of the criminal justice process; and

WHEREAS, In 1991, under the authority of the Governor's Office of Crime Control and Prevention, the Maryland General Assembly created the Maryland Victims of Crime Fund to provide funding support for victim services whose mission is to ensure that all crime victims in Maryland receive justice and are treated with dignity and compassion through comprehensive victim services; and

WHEREAS, Repeal of the death penalty in Maryland will result in savings to the General Fund; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 3–901 through 3–909 and the subtitle "Subtitle 9. Death Penalty Procedures" of Article – Correctional Services of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7–201 through 7–204 and the subtitle "Subtitle 2. Proceedings After Death Sentences"; 8–108 and

11–404 of Article – Criminal Procedure of the Annotated Code of Maryland be repealed.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Correctional Services

4–101.

(e) (2) "Eligible person" does not include an individual who:

(i) is serving two or more sentences of imprisonment for life under § 2–201, **FORMER** § 2–303, or § 2–304 of the Criminal Law Article;

(ii) is serving one or more sentences of imprisonment for life when a court or jury has found under **FORMER** § 2–303 of the Criminal Law Article, beyond a reasonable doubt, that one or more aggravating circumstances existed; or

(iii) has been convicted of murder in the first degree, rape in the first degree, or a sexual offense in the first degree, unless the sentencing judge, at the time of sentencing or in the exercise of the judge's revisory power under the Maryland Rules, recommends that the individual be referred to the Institution for evaluation.

4–305.

(b) (2) An inmate sentenced to life imprisonment as a result of a proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not eligible for parole consideration until the inmate has served 25 years or the equivalent of 25 years when considering allowances for diminution of the inmate's period of confinement as provided under Title 3, Subtitle 7 of this article and § 6–218 of the Criminal Procedure Article.

6–112.

(c) (1) The Division shall complete a presentence investigation report in each case in which **[**the death penalty or**]** imprisonment for life without the possibility of parole is requested under **[**§ 2–202 or**]** § 2–203 of the Criminal Law Article.

(2) The report shall include a victim impact statement as provided under § 11–402 of the Criminal Procedure Article.

(3) The court or jury before which the separate sentencing proceeding is conducted under **[**§ 2–303 or**]** § 2–304 of the Criminal Law Article shall consider the report.

7–301.

(d) (2) An inmate who has been sentenced to life imprisonment as a result of a proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not eligible for parole consideration until the inmate has served 25 years or the equivalent of 25 years considering the allowances for diminution of the inmate's term of confinement under § 6–218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

7–601.

(a) On giving the notice required by the Maryland Constitution, the Governor may:

(1) **[**commute or change a sentence of death into a period of confinement that the Governor considers expedient;

(2)**]** pardon an individual convicted of a crime subject to any conditions the Governor requires; or

[(3)**] (2)** remit any part of a sentence of imprisonment subject to any conditions the Governor requires, without the remission operating as a full pardon.

Article – Courts and Judicial Proceedings

3–8A–03.

(d) The court does not have jurisdiction over:

(1) A child at least 14 years old alleged to have done an act which, if committed by an adult, would be a crime punishable by **[**death or**]** life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4–202 of the Criminal Procedure Article;

3–8A–06.

(a) The court may waive the exclusive jurisdiction conferred by § 3–8A–03 of this subtitle with respect to a petition alleging delinquency by:

(1) A child who is 15 years old or older; or

(2) A child who has not reached his 15th birthday, but who is charged with committing an act which if committed by an adult, would be punishable by **[**death or**]** life imprisonment.

8–404.

(a) Notwithstanding § 8–103(a) of this title, a trial judge may strike an individual who is party in a civil case while the individual is entitled to a jury trial in the county.

(b) (1) Whenever more individuals than are needed to impanel a jury have been summoned, an individual may be excused but only in accordance with rule or other law.

(2) An individual who is summoned for jury service may be struck from a particular jury only:

(i) In accordance with rule or other law, by a party on peremptory challenge;

(ii) For good cause shown, by a trial judge on a challenge by a party; or

(iii) Subject to paragraph (3) of this subsection, by a trial judge who finds that:

1. The individual may be unable to render impartial jury service;

2. The individual's service likely would disrupt the proceeding; or

3. The individual's service may threaten the secrecy of a proceeding or otherwise affect the integrity of the jury deliberations adversely.

(3) A trial judge may not strike an individual under paragraph (2)(iii)3 of this subsection, unless the judge states on the record:

(i) Each reason for the strike; and

(ii) A finding that the strike is warranted and not inconsistent with §§ 8–102(a) and (b) and 8–104 of this title.

(4) An individual struck under this subsection may serve on another jury for which the basis for the strike is irrelevant.

[(c) (1) A trial judge may strike an individual on the basis of the individual's belief for or against capital punishment only if the judge finds that the belief would prevent or substantially impair the individual from returning an impartial verdict according to law.

(2) An individual struck under this subsection may serve on another jury for which the basis for the strike is irrelevant.]

8–420.

(a) (1) This subsection applies only in a criminal trial in which a defendant is subject, on any single count, to[:

(i) A death sentence because the State has given notice of intention to seek a death sentence in accordance with § 2–202 of the Criminal Law Article; or

(ii) A] **A** sentence of life imprisonment, [including a case in which the State has not given notice of intention to seek a death sentence in accordance with § 2–202 of the Criminal Law Article but] excluding a common law offense for which no specific statutory penalty is provided.

(2) Each defendant is allowed 20 peremptory challenges.

(3) The State is allowed 10 peremptory challenges for each defendant.

(b) (1) This subsection applies only in a criminal trial in which a defendant is subject, on any single count, to a sentence of at least 20 years, excluding a case subject to subsection (a) of this section or a common law offense for which no specific statutory penalty is provided.

(2) Each defendant is allowed 10 peremptory challenges.

(3) The State is allowed five peremptory challenges for each defendant.

(c) In every other criminal trial, each party is allowed four peremptory challenges.

9–204.

[(a)] The court [which] **THAT** issued an execution on a forfeited recognizance for a witness who failed to appear may discharge the witness from execution upon motion showing good and sufficient cause for the failure.

[(b) This section does not apply in a case if capital punishment may be involved.]

12–307.

The Court of Appeals has:

(1) Jurisdiction to review a case or proceeding pending in or decided by the Court of Special Appeals in accordance with Subtitle 2 of this title;

(2) Jurisdiction to review a case or proceeding decided by a circuit court, in accordance with § 12–305 of this subtitle; **AND**

(3) Exclusive appellate jurisdiction with respect to a question of law certified to it under the Uniform Certification of Questions of Law Act**[**; and

(4) Exclusive appellate jurisdiction over a criminal case in which the death penalty is imposed and any appellate proceeding under § 3–904 of the Correctional Services Article**]**.

Article – Criminal Procedure

3–105.

(b) **[**Except in a capital case, on**]** **ON** consideration of the nature of the charge, the court:

(1) may require or allow the examination to be done on an outpatient basis; and

(2) if an outpatient examination is authorized, shall set bail for the defendant or authorize release of the defendant on recognizance.

3–106.

(a) **[**Except in a capital case, if**]** **IF**, after a hearing, the court finds that the defendant is incompetent to stand trial but is not dangerous, as a result of a mental disorder or mental retardation, to self or the person or property of others, the court may set bail for the defendant or authorize release of the defendant on recognizance.

3–107.

(a) Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court shall dismiss the charge against a defendant found incompetent to stand trial under this subtitle:

(1) **[**when charged with a capital offense, after the expiration of 10 years;

(2)**]** when charged with a felony or a crime of violence as defined under § 14–101 of the Criminal Law Article, after the lesser of the expiration of 5 years or the maximum sentence for the most serious offense charged; or

[(3)**] (2)** when charged with an offense not covered under paragraph (1) **[**or (2)**]** of this subsection, after the lesser of the expiration of 3 years or the maximum sentence for the most serious offense charged.

4–204.

(b) Except for a sentencing proceeding under **[**§ 2–303 or**]** § 2–304 of the Criminal Law Article:

(1) the distinction between an accessory before the fact and a principal is abrogated; and

(2) an accessory before the fact may be charged, tried, convicted, and sentenced as a principal.

5–101.

(c) A defendant may not be released on personal recognizance if the defendant is charged with:

(1) a crime listed in § 5–202(d) of this title after having been convicted of a crime listed in § 5–202(d) of this title; or

(2) a crime punishable by **[**death or**]** life imprisonment without parole.

7–101.

This title applies to a person convicted in any court in the State who is:

(1) confined under sentence of **[**death or**]** imprisonment; or

(2) on parole or probation.

7–103.

(b) **[**(1)**]** Unless extraordinary cause is shown, **[**in a case in which a sentence of death has not been imposed,**]** a petition under this subtitle may not be filed more than 10 years after the sentence was imposed.

[(2) In a case in which a sentence of death has been imposed, Subtitle 2 of this title governs the time of filing a petition.**]**

7–107.

(b) (1) In a case in which a person challenges the validity of confinement under a sentence of **[**death or**]** imprisonment by seeking the writ of habeas corpus or the writ of coram nobis or by invoking a common law or statutory remedy other than this title, a person may not appeal to the Court of Appeals or the Court of Special Appeals.

(2) This subtitle does not bar an appeal to the Court of Special Appeals:

(i) in a habeas corpus proceeding begun under § 9–110 of this article; or

(ii) in any other proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of **[**death or**]** imprisonment for the conviction of the crime, including confinement as a result of a proceeding under Title 4 of the Correctional Services Article.

11–916.

(a) There is a State Victims of Crime Fund.

(b) (1) The Fund shall be used to pay for:

(i) carrying out Article 47 of the Maryland Declaration of Rights;

(ii) carrying out the guidelines for the treatment and assistance for victims and witnesses of crimes and delinquent acts provided in §§ 11–1002 and 11–1003 of this title;

(iii) carrying out any laws enacted to benefit victims and witnesses of crimes and delinquent acts; and

(iv) supporting child advocacy centers established under § 11–923(h) of this subtitle.

(2) The Fund may pay for the administrative costs of the Fund.

(c) The Board shall administer the Fund.

(d) Grants awarded by the Board shall be equitably distributed among all purposes of the Fund described in subsection (b) of this section.

(E) FOR FISCAL YEAR 2015 AND EACH FISCAL YEAR THEREAFTER, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET SUBMISSION $500,000

FOR THE FUND, REDIRECTED FROM GENERAL FUND SAVINGS RESULTING FROM THE REPEAL OF THE DEATH PENALTY.

Article – Criminal Law

2–103.

[(h) The commission of first degree murder of a viable fetus under this section, in conjunction with the commission of another first degree murder arising out of the same incident, does not constitute an aggravating circumstance subjecting a defendant to the death penalty under § 2–303(g)(ix) of this title.**]**

2–201.

(b) (1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:

(i) **[**death;

(ii)**]** imprisonment for life without the possibility of parole; or

[(iii)**] (II)** imprisonment for life.

(2) Unless a **[**sentence of death is imposed in compliance with § 2–202 of this subtitle and Subtitle 3 of this title, or a**]** sentence of imprisonment for life without the possibility of parole is imposed in compliance with § 2–203 of this subtitle and § 2–304 of this title, the sentence shall be imprisonment for life.

[2–202.

(a) A defendant found guilty of murder in the first degree may be sentenced to death only if:

(1) at least 30 days before trial, the State gave written notice to the defendant of:

(i) the State's intention to seek a sentence of death; and

(ii) each aggravating circumstance on which the State intends to rely;

(2) (i) with respect to § 2–303(g) of this title, except for § 2–303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

(ii) with respect to § 2–303(g)(1)(i) of this title, a law enforcement officer, as defined in § 2–303(a) of this title, was murdered and the defendant was:

1. a principal in the first degree; or

2. a principal in the second degree who:

A. willfully, deliberately, and with premeditation intended the death of the law enforcement officer;

B. was a major participant in the murder; and

C. was actually present at the time and place of the murder;

(3) the State presents the court or jury with:

(i) biological evidence or DNA evidence that links the defendant to the act of murder;

(ii) a video taped, voluntary interrogation and confession of the defendant to the murder; or

(iii) a video recording that conclusively links the defendant to the murder; and

(4) the sentence of death is imposed in accordance with § 2–303 of this title.

(b) (1) In this subsection, a defendant is "mentally retarded" if:

(i) the defendant had significantly below average intellectual functioning, as shown by an intelligence quotient of 70 or below on an individually administered intelligence quotient test and an impairment in adaptive behavior; and

(ii) the mental retardation was manifested before the age of 22 years.

(2) A defendant may not be sentenced to death, but shall be sentenced to imprisonment for life without the possibility of parole subject to the requirements of § 2–203(1) of this subtitle or imprisonment for life, if the defendant:

(i) was under the age of 18 years at the time of the murder; or

(ii) proves by a preponderance of the evidence that at the time of the murder the defendant was mentally retarded.

(c) A defendant may not be sentenced to death, but shall be sentenced to imprisonment for life without the possibility of parole subject to the requirements of § 2–203(1) of this subtitle or imprisonment for life, if the State relies solely on evidence provided by eyewitnesses.**]**

[2–301.

(a) The State's Attorney shall file with the Clerk of the Court of Appeals a copy of each:

(1) notice of intent to seek a sentence of death; and

(2) withdrawal of notice of intent to seek a sentence of death.

(b) The failure of a State's Attorney to give timely notice to the Clerk of the Court of Appeals under subsection (a)(1) of this section does not affect the validity of a notice of intent to seek a sentence of death that is served on the defendant in a timely manner.**]**

[2–303.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Correctional facility" has the meaning stated in § 1–101 of this article.

(ii) "Correctional facility" includes:

1. an institution for the confinement or detention of juveniles charged with or adjudicated as being delinquent; and

2. a hospital in which a person is confined under an order of a court exercising criminal jurisdiction.

(3) (i) "Law enforcement officer" means a law enforcement officer as defined under the Law Enforcement Officers' Bill of Rights, § 3–101 of the Public Safety Article.

(ii) "Law enforcement officer" includes:

1. a law enforcement officer of a jurisdiction outside of the State;

2. an officer serving in a probationary status;

3. a parole and probation officer; and

4. a law enforcement officer while privately employed as a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety Article if the law enforcement officer is wearing the uniform worn while acting in an official capacity or is displaying prominently the officer's official badge or other insignia of office.

(b) If the State gave notice under § 2–202(a)(1) of this title, a separate sentencing proceeding shall be held as soon as practicable after a defendant is found guilty of murder in the first degree to determine whether the defendant shall be sentenced to death.

(c) The sentencing proceeding under subsection (b) of this section shall be conducted:

(1) before the jury that determined the defendant's guilt;

(2) before a jury impaneled for purposes of the proceeding if:

(i) the defendant was convicted based on a guilty plea;

(ii) the defendant was convicted after a trial by a court sitting without a jury;

(iii) the court, for good cause, discharged the jury that convicted the defendant; or

(iv) a court of competent jurisdiction remanded the case for resentencing following a review of the original sentence of death; or

(3) before the court, if the defendant waives a jury sentencing proceeding.

(d) (1) A judge shall appoint at least two alternate jurors when impaneling a jury for any proceeding:

(i) in which the defendant is being tried for a crime for which the death penalty may be imposed; or

(ii) that is held under this section.

(2) The alternate jurors shall be retained throughout the proceedings under any restrictions that the judge imposes.

(3) Subject to paragraph (4) of this subsection, if a juror dies, is disqualified, becomes incapacitated, or is discharged for any other reason before the

jury begins its deliberations on sentencing, an alternate juror becomes a juror in the order selected, and serves in all respects as a juror selected on the regular trial panel.

(4) An alternate juror may not replace a juror who is discharged during the actual deliberations of the jury on the guilt or innocence of the defendant or on sentencing.

(e) (1) The following type of evidence is admissible in a sentencing proceeding:

(i) evidence relating to a mitigating circumstance that is listed under subsection (h) of this section;

(ii) evidence relating to an aggravating circumstance:

1. that is listed under subsection (g) of this section; and

2. of which the State provided notice under § 2–202(a)(1)(ii) of this title;

(iii) evidence of a prior criminal conviction, guilty plea, plea of nolo contendere, or the absence of any prior convictions or pleas, to the same extent that the evidence would be admissible in other sentencing procedures;

(iv) subject to paragraph (2) of this subsection, any presentence investigation report; and

(v) any other evidence the court finds to have probative value and relevance to sentencing, if the defendant has a fair opportunity to rebut any statement.

(2) A recommendation in a presentence investigation report as to a sentence is not admissible in a sentencing proceeding.

(3) The State and the defendant or counsel for the defendant may present argument for or against the sentence of death.

(f) (1) After the evidence is presented to the jury in the sentencing proceeding, the court shall:

(i) give any appropriate instructions allowed by law; and

(ii) instruct the jury as to:

1. the findings that the jury must make to determine whether the defendant shall be sentenced to death, imprisonment for life without the possibility of parole, or imprisonment for life; and

2. the burden of proof applicable to the findings under subsection (g)(2) or (i)(1) and (2) of this section.

(2) The court may not instruct the jury that the jury is to assume that a sentence of life imprisonment is for the natural life of the defendant.

(g) (1) In determining a sentence under subsection (b) of this section, the court or jury first shall consider whether any of the following aggravating circumstances exists beyond a reasonable doubt:

(i) one or more persons committed the murder of a law enforcement officer while the officer was performing the officer's duties;

(ii) the defendant committed the murder while confined in a correctional facility;

(iii) the defendant committed the murder in furtherance of an escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody, or detention by:

1. a guard or officer of a correctional facility; or

2. a law enforcement officer;

(iv) the victim was taken or attempted to be taken in the course of an abduction, kidnapping, or an attempt to abduct or kidnap;

(v) the victim was a child abducted in violation of § 3–503(a)(1) of this article;

(vi) the defendant committed the murder under an agreement or contract for remuneration or promise of remuneration to commit the murder;

(vii) the defendant employed or engaged another to commit the murder and the murder was committed under an agreement or contract for remuneration or promise of remuneration;

(viii) the defendant committed the murder while under a sentence of death or imprisonment for life;

(ix) the defendant committed more than one murder in the first degree arising out of the same incident; or

(x) the defendant committed the murder while committing, or attempting to commit:

1. arson in the first degree;

2. carjacking or armed carjacking;

3. rape in the first degree;

4. robbery under § 3–402 or § 3–403 of this article; or

5. sexual offense in the first degree.

(2) If the court or jury does not find that one or more of the aggravating circumstances exist beyond a reasonable doubt:

(i) it shall state that conclusion in writing; and

(ii) a death sentence may not be imposed.

(h) (1) In this subsection, "crime of violence" means:

(i) abduction;

(ii) arson in the first degree;

(iii) carjacking or armed carjacking;

(iv) escape in the first degree;

(v) kidnapping;

(vi) mayhem;

(vii) murder;

(viii) rape in the first or second degree;

(ix) robbery under § 3–402 or § 3–403 of this article;

(x) sexual offense in the first or second degree;

(xi) manslaughter other than involuntary manslaughter;

(xii) an attempt to commit any crime listed in items (i) through (xi) of this paragraph; or

(xiii) the use of a handgun in the commission of a felony or other crime of violence.

(2) If the court or jury finds beyond a reasonable doubt that one or more of the aggravating circumstances under subsection (g) of this section exists, it then shall consider whether any of the following mitigating circumstances exists based on a preponderance of the evidence:

(i) the defendant previously has not:

1. been found guilty of a crime of violence;

2. entered a guilty plea or a plea of nolo contendere to a charge of a crime of violence; or

3. received probation before judgment for a crime of violence;

(ii) the victim was a participant in the conduct of the defendant or consented to the act that caused the victim's death;

(iii) the defendant acted under substantial duress, domination, or provocation of another, but not so substantial as to constitute a complete defense to the prosecution;

(iv) the murder was committed while the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired due to emotional disturbance, mental disorder, or mental incapacity;

(v) the defendant was of a youthful age at the time of the murder;

(vi) the act of the defendant was not the sole proximate cause of the victim's death;

(vii) it is unlikely that the defendant will engage in further criminal activity that would be a continuing threat to society; or

(viii) any other fact that the court or jury specifically sets forth in writing as a mitigating circumstance in the case.

(i) (1) If the court or jury finds that one or more of the mitigating circumstances under subsection (h) of this section exists, it shall determine by a preponderance of the evidence whether the aggravating circumstances under subsection (g) of this section outweigh the mitigating circumstances.

(2) If the court or jury finds that the aggravating circumstances:

(i) outweigh the mitigating circumstances, a death sentence shall be imposed; or

(ii) do not outweigh the mitigating circumstances, a death sentence may not be imposed.

(3) If the determination is by a jury, a decision to impose a death sentence must be unanimous and shall be signed by the jury foreperson.

(4) A court or jury shall put its determination in writing and shall state specifically:

(i) each aggravating circumstance found;

(ii) each mitigating circumstance found;

(iii) whether any aggravating circumstances found under subsection (g) of this section outweigh the mitigating circumstances found under subsection (h) of this section;

(iv) whether the aggravating circumstances found under subsection (g) of this section do not outweigh the mitigating circumstances found under subsection (h) of this section; and

(v) the sentence determined under subsection (g)(2) of this section or paragraphs (1) and (2) of this subsection.

(j) (1) If a jury determines that a death sentence shall be imposed under the provisions of this section, the court shall impose a death sentence.

(2) If, within a reasonable time, the jury is unable to agree as to whether a death sentence shall be imposed, the court may not impose a death sentence.

(3) If the sentencing proceeding is conducted before a court without a jury, the court shall determine whether a death sentence shall be imposed under the provisions of this section.

(4) If the court or jury determines that a death sentence may not be imposed and the State gave notice under § 2–203(1) of this title, a determination shall be made concerning imprisonment for life without the possibility of parole under § 2–304 of this subtitle.

(5) If the court or jury determines that a death sentence may not be imposed and if the State did not give notice under § 2–203(1) of this title, the court shall impose a sentence of imprisonment for life.

(k) (1) Immediately after the imposition of a death sentence:

(i) the clerk of the court in which sentence is imposed, if different from the court where the indictment or information was filed, shall certify the proceedings to the clerk of the court where the indictment or information was filed; and

(ii) the clerk of the court where the indictment or information was filed shall copy the docket entries in the inmate's case, sign the copies, and deliver them to the Governor.

(2) The docket entries shall show fully the sentence of the court and the date that the sentence was entered.

(l) If the defendant is sentenced to death, the court before which the defendant is tried and convicted shall sentence the defendant to death by intravenous administration of a lethal quantity of an ultrashort–acting barbiturate or other similar drug in combination with a chemical paralytic agent.**]**

2–304.

(a) **[**(1)**]** If the State gave notice under § 2–203(1) of this title, **[**but did not give notice of intent to seek the death penalty under § 2–202(a)(1) of this title,**]** the court shall conduct a separate sentencing proceeding as soon as practicable after the defendant is found guilty of murder in the first degree to determine whether the defendant shall be sentenced to imprisonment for life without the possibility of parole or to imprisonment for life.

[(2) If the State gave notice under both §§ 2–202(a)(1) and 2–203(1) of this title, but the court or jury determines that the death sentence may not be imposed, that court or jury shall determine whether the defendant shall be sentenced to imprisonment for life without the possibility of parole or to imprisonment for life.**]**

2–305.

The Court of Appeals may adopt:

(1) rules of procedure to govern the conduct of sentencing proceedings under **[**§§ 2–303 and 2–304**]** **§ 2–304** of this subtitle; and

(2) forms for a court or jury to use in making written findings and sentence determinations.

[Subtitle 4. Review by Court of Appeals.**]**

[2–401.

(a) (1) After a death sentence is imposed and the judgment becomes final, the Court of Appeals shall review the sentence on the record.

(2) The Court of Appeals shall consolidate an appeal from the verdict with the sentence review.

(b) The clerk of the trial court shall send to the Clerk of the Court of Appeals:

(1) the entire record and the transcript of the sentencing proceeding within 10 days after receiving the transcript;

(2) the determination and written findings of the court or jury; and

(3) a report of the trial court that:

(i) is in the form of a standard questionnaire supplied by the Court of Appeals; and

(ii) includes a recommendation by the trial court as to whether the death sentence is justified.

(c) The defendant and the State may submit briefs and present oral arguments to the Court of Appeals within the time allowed by the Court.

(d) (1) In addition to any error properly before the Court on appeal, the Court of Appeals shall consider the imposition of the death sentence.

(2) With regard to the death sentence, the Court of Appeals shall determine whether:

(i) the imposition of the death sentence was influenced by passion, prejudice, or any other arbitrary factor;

(ii) the evidence supports the finding by the court or jury of a statutory aggravating circumstance under § 2–303(g) of this title; and

(iii) the evidence supports a finding by the court or jury that the aggravating circumstances outweigh the mitigating circumstances under § 2–303(h) and (i)(1) of this title.

(3) In addition to its review under any direct appeal, with regard to the death sentence, the Court of Appeals shall:

(i) affirm the death sentence;

(ii) set the death sentence aside and remand the case for a new sentencing proceeding under § 2–303 of this title; or

(iii) set the death sentence aside and remand the case for modification of the sentence to imprisonment for life.

(e) The Court of Appeals may adopt rules of procedure for the expedited review of death sentences under this section.]

14–101.

(a) In this section, "crime of violence" means:

(1) abduction;

(2) arson in the first degree;

(3) kidnapping;

(4) manslaughter, except involuntary manslaughter;

(5) mayhem;

(6) maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code;

(7) murder;

(8) rape;

(9) robbery under § 3–402 or § 3–403 of this article;

(10) carjacking;

(11) armed carjacking;

(12) sexual offense in the first degree;

(13) sexual offense in the second degree;

(14) use of a handgun in the commission of a felony or other crime of violence;

(15) child abuse in the first degree under § 3–601 of this article;

(16) sexual abuse of a minor under § 3–602 of this article if:

(i) the victim is under the age of 13 years and the offender is an adult at the time of the offense; and

(ii) the offense involved:

1. vaginal intercourse, as defined in § 3–301 of this article;

2. a sexual act, as defined in § 3–301 of this article;

3. an act in which a part of the offender's body penetrates, however slightly, into the victim's genital opening or anus; or

4. the intentional touching, not through the clothing, of the victim's or the offender's genital, anal, or other intimate area for sexual arousal, gratification, or abuse;

(17) an attempt to commit any of the crimes described in items (1) through (16) of this subsection;

(18) continuing course of conduct with a child under § 3–315 of this article;

(19) assault in the first degree;

(20) assault with intent to murder;

(21) assault with intent to rape;

(22) assault with intent to rob;

(23) assault with intent to commit a sexual offense in the first degree; and

(24) assault with intent to commit a sexual offense in the second degree.

(b) **[**This section does not apply if a person is sentenced to death.

(c)**]** (1) Except as provided in subsection **[**(g)**]** **(F)** of this section, on conviction for a fourth time of a crime of violence, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence shall be sentenced to life imprisonment without the possibility of parole.

(2) Notwithstanding any other law, the provisions of this subsection are mandatory.

[(d)**]** **(C)** (1) Except as provided in subsection **[**(g)**]** **(F)** of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person:

(i) has been convicted of a crime of violence on two prior separate occasions:

1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and

2. for which the convictions do not arise from a single incident; and

(ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

(2) The court may not suspend all or part of the mandatory 25–year sentence required under this subsection.

(3) A person sentenced under this subsection is not eligible for parole except in accordance with the provisions of § 4–305 of the Correctional Services Article.

[(e)**]** **(D)** (1) On conviction for a second time of a crime of violence committed on or after October 1, 1994, a person shall be sentenced to imprisonment for the term allowed by law, but not less than 10 years, if the person:

(i) has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994; and

(ii) served a term of confinement in a correctional facility for that conviction.

(2) The court may not suspend all or part of the mandatory 10–year sentence required under this subsection.

[(f)**]** **(E)** If the State intends to proceed against a person as a subsequent offender under this section, it shall comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

[(g)**]** **(F)** (1) A person sentenced under this section may petition for and be granted parole if the person:

(i) is at least 65 years old; and

(ii) has served at least 15 years of the sentence imposed under this section.

(2) The Maryland Parole Commission shall adopt regulations to implement this subsection.

Article – Health – General

8–505.

(b) **[**Except in a capital case, on**]** **ON** consideration of the nature of the charge, the court:

(1) May require or permit an examination to be conducted on an outpatient basis; and

(2) If an outpatient examination is authorized, shall set bail for the defendant or authorize the release of the defendant on personal recognizance.

Article – Transportation

16–812.

(a) The Administration shall disqualify any individual from driving a commercial motor vehicle for a period of 1 year if:

(1) The individual is convicted of committing any of the following offenses while driving a commercial motor vehicle:

(i) A violation of § 21–902 of this article;

(ii) A violation of a federal law or any other state's law which is substantially similar in nature to the provisions in § 21–902 of this article;

(iii) Leaving the scene of an accident which requires disqualification as provided by the United States Secretary of Transportation;

(iv) A crime, other than a crime described in subsection (e) of this section, that is punishable by **[**death or**]** imprisonment for a term exceeding 1 year;

(v) A violation of § 25–112 of this article; or

(vi) A violation of § 2–209, § 2–503, § 2–504, § 2–505, or § 2–506 of the Criminal Law Article**[**.**];**

(2) The individual holds a commercial driver's license and is convicted of committing any of the following offenses while driving a noncommercial motor vehicle:

(i) A violation of § 21–902(a), (c), or (d) of this article;

(ii) A violation of a federal law or any other state's law which is substantially similar in nature to the provisions in § 21–902(a), (c), or (d) of this article;

(iii) Leaving the scene of an accident which requires disqualification as provided by the United States Secretary of Transportation; or

(iv) A crime, other than a crime described in subsection (e) of this section, that is punishable by **[**death or**]** imprisonment for a term exceeding 1 year;

(3) The individual, while driving a commercial motor vehicle or while holding a commercial driver's license, refuses to undergo testing as provided in § 16–205.1 of this title or as is required by any other state's law or by federal law in the enforcement of 49 C.F.R. § 383.51 Table 1, or 49 C.F.R. § 392.5(a)(2);

(4) The individual drives or attempts to drive a commercial motor vehicle while the alcohol concentration of the person's blood or breath is 0.04 or greater; or

(5) The individual drives a commercial motor vehicle when, as a result of prior violations committed while driving a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled or the driver is disqualified from driving a commercial motor vehicle.

SECTION 4. AND BE IT FURTHER ENACTED, That in any case in which the State has properly filed notice that it intended to seek a sentence of death under § 2–202 of the Criminal Law Article in which a sentence has not been imposed, the notice of intention to seek a sentence of death shall be considered to have been withdrawn and it shall be deemed that the State properly filed notice under § 2–203 of the Criminal Law Article to seek a sentence of life imprisonment without the possibility of parole.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

EXHIBIT 21

RESEARCH REPORT

The Cost of the Death Penalty in Maryland

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research for safer communities

URBAN INSTITUTE
Justice Policy Center

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ABSTRACT

Maryland reinstated the death penalty in 1978 as a sentencing option for individuals convicted of felony homicide. Since then, five inmates have been executed and five others are on death row awaiting execution. Much has been written about the morality of the death penalty, and many empirical studies have investigated whether the presence of such a statute deters homicides. However there is limited rigorous empirical research on whether the death penalty increases or decreases the cost of prosecution and incarceration. To address this issue, we initiated a study to assess the death penalty's costs to Maryland taxpayers. We study the lifetime costs of all homicides eligible to receive the death penalty where the homicide occurred between 1978 and 1999.

We found that an average capital-eligible case in which prosecutors did not seek the death penalty will cost Maryland taxpayers more than $1.1 million, including $870,000 in prison costs and $250,000 in costs of adjudication.

A capital-eligible case in which prosecutors unsuccessfully sought the death penalty will cost $1.8 million, $700,000 more than a comparable case in which the death penalty was not sought. Prison costs are about $950,000, and the cost of adjudication is $850,000, more than three times higher than in cases which were not capitally prosecuted.

An average capital-eligible case resulting in a death sentence will cost approximately $3 million, $1.9 million more than a case where the death penalty was not sought. In these cases, prison costs total about $1.3 million while the remaining $1.7 million are associated with adjudication.

Between 1978 and 1999 there were 56 cases resulting in a death sentence, and these cases will cost Maryland citizens $107.3 million over the lifetime of these cases. In addition, the 106 that did not result in a death sentence are projected to cost Maryland taxpayers an additional $71 million. In addition, the Maryland Capital Defender's Division cost $7.2 million. Thus, we forecast that the lifetime costs of capitally-prosecuted cases will cost Maryland taxpayers $186 million.

This study evaluates 1,136 cases were a murder was committed between 1978 and 1999 and the defendant was eligible for the death sentence. Estimates of attorney time spent processing these cases were developed from semi-structured interviews with prosecutors, defense counsel and judges with capital experience. Case events were calculated from data in the Maryland Judiciary Case Search database and the federal PACER database. Costs borne by Maryland taxpayers were estimated for each stage of case processing.

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EXECUTIVE SUMMARY

In 1978, the death penalty was reinstated in Maryland as a sentencing option for a defendant convicted of felony homicide. Between 1978 and September 1999, there were 1,227 homicides where the death penalty was a sentencing option. Of those, 1,136 cases resulted in a guilty verdict in the initial trial or through a plea agreement. In 162 cases, prosecutors filed a "death notice" seeking the death penalty. Fifty-six resulted in a death sentence, although the vast majority of those sentences were ultimately overturned. Since 1978, five people in Maryland have been executed. Five others remain on death row and are awaiting execution. In this study, we estimate the lifetime costs of processing these death eligible cases.

RESEARCH BACKGROUND

Prior research on the costs of capital punishment in other states unambiguously finds that capital cases are more expensive to prosecute than non-capital cases. However, much of the past research relied on limited data and generally studied only a small number of cases. This study tests whether the death penalty resulted in additional costs to Maryland taxpayers and fills a gap in the extant literature by accounting for potentially confounding factors not addressed in prior studies.

A retrospective observational design was used to evaluate this question. Data used in this analysis were developed from several sources. The foundation for the analysis is case data collected by University of Maryland researchers for a 2004 study of disparities in the application of the death penalty in Maryland (Paternoster, Brame, Bacon and Ditchfield 2004). Paternoster and colleagues identified homicides that were eligible to be prosecuted as capital cases in Maryland. His sample includes all cases where the murder occurred between August 1978 and September 1999. From these data, we identified a census of death-eligible, guilty-verdict cases with 1,136 observations, including 162 cases in which a death notice was filed, and 56 death sentences. We estimate the total cost of processing these cases.

In order to estimate the costs of each stage of case processing, we turned to two additional sources. First, we searched administrative databases containing official records on individual case processing, using the Maryland Judiciary Case Search (MDJCS) database and the federal PACER database. All records that matched our sample were coded into our research database. Second, estimates of the time attorneys, judges and support staff spent processing these cases were developed from semi-structured interviews and survey data.

Complete administrative data on case processing were available for 509 of the 1,136 cases. This sample of 509 cases was weighted to resemble the population of 1,136. In addition, a propensity score analysis was conducted to adjust estimates to account for the possibility that capitally

prosecuted cases may have been more egregious, on average, than the typical case that did not receive a death notice. If true, these cases would have been more expensive to prosecute even if no death statute had been in place. Finally, we estimate the cost to Maryland taxpayers associated with each stage of case processing.

We estimated two key costs: 1) those associated with the filing of a death notice; and, 2) those associated with the imposition of a death sentence. We compared the costs for these cases with the cost of processing a capital-eligible case in which no death notice was filed. In this study, the no-death-notice cases represent the cost of processing a felony homicide case in Maryland as if there was no death penalty.

KEY FINDINGS

We find that both the filing of a death notice and the imposition of a death sentence added significantly to the cost of a case. For the average case, a death notice adds $670,000 in costs over the duration of a case. A death sentence adds an additional $1.2 million in processing costs. Thus the average total cost for a single death sentence is about $1.9 million over and above the cost of a similar case with no death penalty sought.

About 70% of the added cost of a death notice case occurs during the trial phase. These additional costs are due to a longer pre-trial period, a longer and more intensive voir dire process, longer trials, more time spent by more attorneys preparing cases, and an expensive penalty phase trial that does not occur at all in non-death penalty cases. In addition, death notice cases are more likely to incur costs during the appellate phase even if there is no death sentence.

TOTAL COSTS PER CASE

- An average capital-eligible case in which the death sentence was not sought costs Maryland taxpayers more than $1.1 million over the life of the case - $870,000 in prison costs and $250,000 in adjudication costs.
- An average capital-eligible case with a death notice costs the taxpayers of Maryland about $1.8 million. In other words, each case with a death notice filing costs $670,000 more than a no-death-notice case. Current and forecasted prison costs are about the same ($950,000 per case), but adjudication costs are more than three times greater ($850,000 per case) than in no-death-notice cases.
- A capital-eligible case that results in a death sentence adds another $1.2 million in costs. The total cost to the taxpayers of Maryland approximately $3 million, more than $1.9 million more per case than a no-death-notice case. Current and forecasted prison costs are higher for death sentence cases ($1.3 million) than no-death-notice cases, and adjudication costs total $1.7 million.

SUMMARY OF TOTAL COSTS TO THE STATE

We find there are substantial costs to the citizens of Maryland associated with the death penalty.

- 56 individuals received a death sentence – at an additional cost to Maryland citizens of $108 million.
- There were an additional 106 cases where a death sentence was sought but not handed down – at an additional cost of $71 million.
- The availability of the death penalty has required the state to operate the Capital Defense Division, with costs more than $7 million for activities not included elsewhere in this study during the period 1978 to 2008.

In sum, we estimate the total cost of the death penalty to Maryland taxpayers for cases that began between 1978 and 1999 to be at least $186 million.

A conservative approach was used to develop these estimates. Thus, this estimate does not include some costs of the death penalty that could not be empirically tested. These include additional pre-trial costs of cases in which a death notice is filed but subsequently waived, the costs of cases tried under a death notice that resulted in a not guilty verdict, and costs of appeals to the United States Supreme Court. If these expenditures could be estimated, they would likely increase the total cost to Maryland taxpayers.

THE COST OF THE DEATH PENALTY IN MARYLAND

STUDY OVERVIEW

This research utilized a retrospective quasi-experimental design to measure the average cost of the death penalty in Maryland. The study makes two comparisons:

(1) the average difference in cost of a capital eligible case in which a *death sentence was sought* by a Maryland state's attorney as compared to the cost of a capital eligible case in which the state's attorney did *not* seek a death sentence; and

(2) the average difference in cost between cases in which *a death sentence was returned* compared to capital eligible cases in which a death sentence was not sought.

The first comparison yields the differential cost of a death notice; the second comparison yields the differential cost of a death sentence. Conceptually, both outcomes are relevant to assessing the costs of capital punishment in Maryland. The presence of a death statute in Maryland means that differential processing of cases begins at the time a decision is made whether or not to pursue a death sentence. Once that decision is made, the processing of cases with a death notice fundamentally changes, and any difference in costs between the two types of cases is a cost associated with the Maryland's capital punishment statute. Once a death sentence is handed down by a Maryland judge or jury, case processing fundamentally changes once again, and cases receiving a death sentence are processed differently than cases not receiving a death sentence. The goal of the study is to determine whether this difference in case processing yields additional costs.

Data were gathered on the 1,227 capital-eligible cases that where a crime that was eligible to receive the death penalty occurred between 1978 and September 1999. We study the lifetime costs associated with these cases, including all costs that had occurred before 2008, and a forecast for all future costs of these cases. Of these cases, an additional 91 cases that resulted in not guilty verdicts were removed, yielding a sample of 1,136 cases[1]. Of these cases, complete administrative data on case processing were available for 509 cases, approximately 45% of all capital-eligible cases yielding guilty verdicts from 1978-1999 and three quarters of all cases with a court event after 1989. All subsequent analyses were conducted on this sub-sample of 509 cases and statistical methods were utilized to ensure that this sub-sample was broadly representative of the original sample of 1,136 cases. Next, costs borne by Maryland taxpayers were estimated for each stage of case processing. Estimates of the time attorneys, judges and support staff spent adjudicating these cases were

[1] A discussion of the decision to delete nolle prosse and not guilty (in the initial trial) cases can be found in the Data section. In sum, we delete those because it would not be appropriate to compare death sentence cases which can not include not guilty or nolle prose to a set of cases that do.

developed from semi-structured interviews and wage data were gathered from administrative data. The cost of prison was estimated by generating a counterfactual year of exit from prison for each offender in our sample from offender and case attributes and adding forecasted prison costs over the remainder of their expected lives to costs already incurred. Finally, all elements of case processing were aggregated, yielding a total lifetime cost for each case.

Multivariate models were utilized to estimate the differential cost of a capital case after holding constant a host of other factors theoretically related to costs. By artificially holding other things equal, this research is able to isolate the impact of a death sentence sought or returned on cost, and rule out the possibility that differences in characteristics of the victim, the defendant and the case and the year and county in which the case was prosecuted contribute to observed cost differentials. Finally, observed cost differentials were multiplied by the number of cases in each condition from 1978-1999 to estimate past, current and future costs to Maryland taxpayers resulting from cases with a crime occurring during this time period. This aggregate total does not include any cases in which the offense occurred after 1999.

PRIOR RESEARCH

There have been at least thirteen prior studies that estimate the costs associated with the death penalty: one federal study, eleven state-level studies and a study of capital punishment in Los Angeles County (Table 1). The studies vary widely in their scope. None of the studies estimate costs for 1) all stages of case processing, 2) the additional costs of a death notice, *and* 3) the additional costs of the death sentence. Despite these limitations, there is a consensus that the presence of capital punishment results in additional costs. Each of the ten studies finds additional costs associated with capital punishment. However, there is substantial variation in these estimates. For instance, five studies estimate the cost of a death sentence compared to a capital eligible case where no death notice is filed. The average additional cost per case among these prior studies is $650,000, but the estimates range from about $100,000 to more than $1.7 million.

Only three studies apply the most rigorous cost estimation approach, 'bottom-up' accounting, which estimates costs at the case level, allowing for the observation of variation in costs within and across cases. That variation can be accounted for in generating average cost estimates. The remaining studies employ an alternative approach, 'top-down' accounting, where all cases are assumed to have identical costs. In addition, many of the studies do not employ a formal sampling strategy where a random (or approximately random) sample of cases is studied and variation across cases is observed. Instead, these studies analyze the costs to justice agencies involved in the death penalty, and divide by the number of death cases processed. Thus they create a 'typical' case and assume that all capital cases are similar. A brief review of these studies follows.[2]

[2] All dollar amounts have been converted into 2007 dollars.

Table 1.

Results of published studies reporting the costs associated with processing capital cases.

	Study Attributes		Cost of Capital-Eligible Cases			Added Cost - Capital Case	
	Type of Study	Stages	Annual	Capital Case	Death Sentence	Death Notice	Death Sentence
New Jersey (2007)	Cost to State	OPD DOC	$1.59 M	--	--	--	--
Washington (2006)	Mixed	T, A, FH	--	--	$198,263 (A, FH)	$480,204 (T)	$103,679
Forsberg, New Jersey (2005)	Top Down	T,PC,A DOC	--	--	$4,460,000	--	--
Tennessee (2004)	Mixed	T, PC, A	--	$74,072 (T, A)	$25,857 (PC only)	--	--
Baicker, 2004 (NH)	Econometric	--			$2,200,000		
Connecticut (2003)	Top Down	T, P	--	--	$428,206	--	$200,170
Kansas (2003)	Bottom Up	T, A	--	--	$1,352,230	--	$946,561
Federal (1998)	Top Down	T	--	$277,446	--	$206,502	--
Erickson, Los Angeles County (1993)	Bottom Up	T	--	--	--	--	$1,721,871
Cook, North Carolina (1993)	Bottom Up	T, PC, A, DOC	$5.74M	--	--	--	$309,937
Maryland (1985)	Top Down	T, P	--	$96,187	--	$67,650*	--
Garey, California, (1985)	Bottom Up, Single Case	T, P, A, PC, SC	--	--	$1,156,182	--	$388,286
NY State Defender's Association (1985)	Mixed	T, P, A, CPR	--	$3,927,895	--	$2.6 M**	--

Source: Urban Institute review of extant studies of the costs of the death penalty. All costs are in 2007 dollars. T= Trial. P=Penalty phase. A= Appellate. PC=Post-Conviction. FH=Federal Habeus. CP= Certiorari Petition Review SC=Supreme Court. OPD=Office of the Public Defender. DOC=Department of Correction. * As compared with guilty pleas. ** Only compared trial cost of capital case to DOC cost for life-sentenced inmate for 40 years.

The first state-level report of the costs of the death penalty was published by the New York State Defenders Association (Capital Losses 1982). Using survey data to estimate costs across the various stages of case processing – the guilt trial, penalty trial, appeals, and Supreme Court review stages – a typical capital case was estimated to cost approximately $3.9 million in 2007 constant dollars. By comparison, NYSDA estimated that the expected alternative - the incarceration of an inmate for forty years – would cost $1.5 million.

Two studies were completed shortly thereafter that estimated the difference in trial costs between a capital and non-capital case. Garey (1985) estimated that a capital trial in California that proceeds through execution cost $1.15 million, almost $400,000 more than a non-capital trial. That same year, the Maryland House Appropriations Committee commissioned a paper that analyzed 32 capitally prosecuted cases. Capital trials were compared with the cost of a guilty plea, and the study reported almost $100,000 in costs of a capital trial, $67,650 more than a guilty pleas. Notably, this was the first study that measured cost for each case in a sample.

Two of the most rigorous studies were published in 1993. Erickson (1993) studied 16 death-eligible cases in Los Angeles County, seven of which had a death notice and nine which did not. The study compared the number of motions filed, court time, and attorney fees. A death sentence was estimated to accrue $1.7 million in additional costs when compared to a homicide case in which no death notice was filed. Duke University economist Philip Cook (Cook et al. 1993) estimated direct costs of the death penalty from cases in six prosecutorial districts in North Carolina. Cook estimated the additional cost of a death sentence at over $300,000, with the annual cost of capital punishment to the state of $5.74 million. Trial costs were highly variable, with the least expensive capital trial costing less than the median non-capital trial. Cook estimated costs of retrials indirectly (from the probability of retrials) and costs associated with the post conviction stage were limited from a sample of two cases alone. However, unlike previous studies, the Cook study accounts for the confounding effects of two key case characteristics, controlling for the defendant's number of prior felonies as well as the indigence of the defendant.

The Judicial Conference of the United States (1998) conducted a budget analysis which was able to identify hours billed into hearing time, trial time, client time, and research time for both the defense and prosecution. They found capital cases billed more than ten times the hours of non-capital cases and that, contrary to other widely cited studies, prosecution costs (including law enforcement) were greater than defense costs. For the trial phase alone, they estimated costs of $277,000 for a death notice, $71,000 for no death notice cases, and $185,460 for cases in which the death notice was filed and then retracted.

A number of studies have estimated the costs of the death penalty by analyzing the costs to justice agencies involved in death penalty cases and then dividing by the number of death cases processed. The State of Connecticut Commission on the Death Penalty (2003) estimated the excess cost of a death sentence versus life in prison at about $430,000 or $200,000 more than life imprisonment. Similarly, New Jersey Policy Perspective (2005) estimated a total cost per death

sentence at $4.46 million (not including execution costs) by aggregating the annual costs of relevant justice system departments. A more recent New Jersey study from the New Jersey Death Penalty Study Commission (2007) estimated that eliminating the death penalty would save the office of the public defender alone $1.59 million. In a similar study, the Washington State Bar Association (2007) analyzed the differential cost of capital and non-capital cases, relying on prosecutors and public defenders' estimates on the extra cost to their organizations of trying a capital case. They estimate an additional cost of $480,300 per trial, and there is substantial variation, with prosecutor estimates ranging from $25,000-$1,000,000.

In 2003 a Kansas report by the Legislative Division of Post Audit estimated costs for a sample of 22 cases and estimated a median cost of a death sentence of $1.32 million, 70% higher than the $750,000 estimated costs for a non-death penalty case. Costs were obtained based on time estimates from judges and attorneys who had participated in each individual case. The study estimated the cost of appeals from prior studies. Unique features of the Kansas death penalty regime affect the generalizability of these estimates, since Kansas does not have a death row, did not give an option of life without possibility of parole at the time of the study, and does not conduct proportionality reviews.

In one of the few studies to sample a large number of cases, the State of Tennessee (2004) sampled 240 capital eligible cases and surveyed attorneys and judges to estimate the differential cost of a capital trial. The study estimated $16,000 in additional costs in the trial phase. The sample was large (53 capital cases, 39 LWOP cases, and 159 life cases), but significant portions of case processing were not included, such as defense attorney costs for life without parole cases, voir dire, and some appellate processing.

Finally, Baicker (2004) conducted an econometric study of the cost of capital cases by examining changes in county budgeting across time and place. Baicker estimated that each death penalty conviction is associated with an increase in county-level judicial and corrections expenditures of more than $2.2 million, and may lead to a shifting of resources away from policing.

Given the limitations of prior research and the substantial state variation in capital case processing, it is difficult to draw firm conclusions about the exact costs of the death penalty from the extant literature. That said, the extant literature consistently finds that capital punishment adds costs to case processing when compared to capital eligible cases where the death penalty is not sought.

Deterrence

None of the studies discussed above directly examined the effect of the death penalty on deterrence, that is, the extent to which the presence of the death penalty causes potential murderers to choose not to kill. Several studies have examined the issue of deterrence with differing results. Perhaps the most conclusive study on the deterrent effect of the death penalty is a recent review of the literature by University of Pennsylvania economists Donohue and Wolfers (2006). They conclude that

variation in homicide rates and small sample sizes make it impossible to detect a deterrent effect, much less to estimate the magnitude of the effect.

Early empirical research on deterrence began with economist Isaac Ehrlich (1975, 414), who concluded that each execution that took place between 1933 and 1969 "may have resulted, on the average, in seven or eight fewer murders." This conclusion has been the subject of intense debate. Passell (1976) conducted a cross-sectional analysis of 40 states for the same time period as Ehrlich, using similar source data (FBI records) and methods (unweighted regressions and cross-sections of similar samples of states for the same time period) and found no evidence of the deterrence effect (Forst 1983).

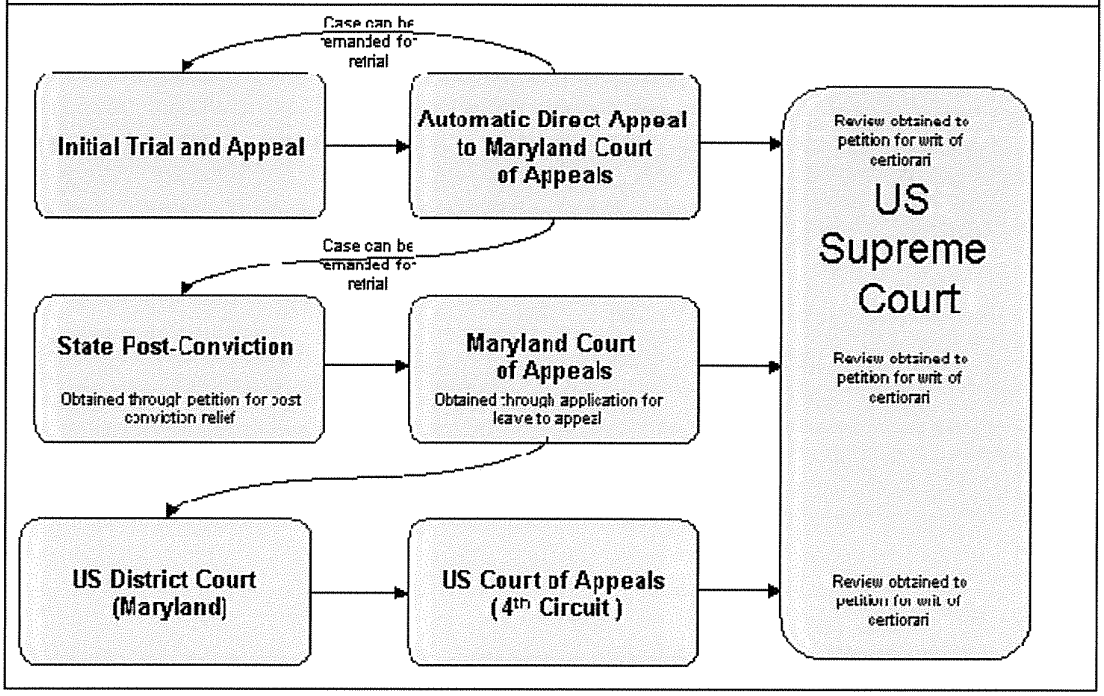
More recently, a number of deterrence studies have employed econometric models to test for a deterrent effects (Mocan and Gittings, 2003; Dezhbakhsh and Shepherd, 2006). Shepherd, an author of many death penalty studies, testified before the United States Congress that "all modern economic studies" had found an effect (Donohue and Wolfers 2006). Recently, Mocan and Gittings (2003) estimated five murders were deterred a year due to the death penalty, but also estimated that each commuted death sentence caused five additional homicides. And Dezhbakhsh and Shepherd (2006) used the Supreme Court's moratorium on executions to test for changes in the homicide rate before and after the moratorium. They found a 16% increase in homicide the year after the moratorium was imposed and an eight percent decrease two years later. A study in the same period by noted economists Katz, Levitt, and Shustorovich found no evidence of a deterrent effect (2003).

Thus, the literature gives no consensus on the effect of the death penalty on deterrence. Given the Donohue and Wolfers finding that research studies are unlikely to correctly estimate a deterrent effect of the death penalty, we do not estimate the effects of deterrence in this study.

PROCESSING OF CAPITAL CASES IN MARYLAND

The adjudication of both death notice and no death notice cases is a complex process. The State's decision to seek a penalty of death introduces additional requirements intended to provide 'super-due process' to a defendant facing a possible death sentence. In general, case processing can be divided into six phases: 1) pre-trial, 2) trial, 3) sentencing, 4) post-conviction, 5) state appeals and 6) federal appeals. The process is shown in **Figure 1**.

Figure 1. Death Penalty Case Processing in Maryland.



Pre-trial

The pre-trial phase includes several initial steps which occur regardless of whether or not a notice of intent to seek a penalty of death is eventually filed. These include arrest, arraignment, preliminary hearing, and selection of a trial date (Bair et al. 1993). The trial date is set within 180 days of the first appearance of the defendant before the circuit court and can be changed only by the county administrative judge with good cause. The notice of intent to seek the death penalty (the death notice) and voir dire (the selection of jurors) also occur during this phase.

Filing a Death Notice

During the pre-trial phase, the State's Attorney in the charging county has full discretion to file a notice of intention to seek a penalty of death as long as the following four conditions are met.

- The State's Attorney must file the notice and all aggravating circumstances on which the State intends to rely at least thirty days prior to the trial;
- The defendant must have been at least 18 years old at the time of the offense;
- The defendant cannot be mentally retarded; and,
- The defendant must be accused of principalship (e.g. the actually killer) in the first degree or of principalship in the second degree. For murder in the second degree, the defendant must also meet the conditions that he or she: 1) intended the premeditated murder of a law enforcement officer, 2)

was a major participant in the murder and 3) was actually present at the time and place of the murder.

Although a case may meet the above conditions, the decision to file a death notice is ultimately at the discretion of the State's Attorney. Furthermore, the State's Attorney has the discretion to unilaterally withdraw the death notice at any point during the trial. The notice to seek a sentence of life without parole (LWOP) must also be filed at least 30 days prior to trial.

Voir Dire

Unless the defendant waives the right to trial by jury, the trial judge decides the size of the initial pool of prospective jurors (the array) and the required number of sworn jurors, including any alternates. Prior to jury selection, each party is provided with biographical briefs of each juror from the initial pool. Jury selection then commences through a process of questioning of prospective jurors by the defense and prosecution known as voir dire. In cases where the prosecution has filed a death notice, or where life without parole is a sentencing option, the defense is permitted twenty strikes against prospective jurors and the prosecution is permitted ten. The judge may also dismiss an unlimited number of jurors. In death noticed cases, voir dire includes a process of "death qualification" – no juror may serve on a death penalty trial unless he or she is willing to impose the death penalty. [3] Through the process of voir dire, a twelve-person jury is impaneled in capital cases with at least two alternate jurors (Bair et al. 1993).

Guilt/Innocence Trial

The guilt/innocence phase is identical in structure for both death notice and no death notice cases (although the resources dedicated to the process may differ). Extant research suggests that death notice cases are more complex. Hypotheses about the extra processing of death notice cases include longer trials, more expert witnesses, more motions, hearings and deliberations. In short, they consume greater resources (Bair et al. 1993). American Bar Association (ABA) guidelines require the use of greater resources in several ways, including representation of indigent defendants by two attorneys in capital trials, as compared to a single defense attorney in no death notice trials (American Bar Association 2003, 28).

Penalty Trial and Sentencing

If a guilty verdict is issued for a death notice case, a second trial commences to determine whether or not a death sentence will be handed down. Typically, the same judge and jury adjudicate both trials in capital cases. In the bifurcated model of capital cases, this second trial is termed the penalty phase – there is no analogous phase of processing in no death notice cases. Instead, the presiding judge sentences the defendant during a separate sentencing hearing following a verdict.

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[3] Thus, those who would always vote for a death sentence and those who would never vote for a death sentence are not eligible for a capital jury. This extra step in determining eligibility adds additional time and complexity to voir dire in death penalty cases.

During the penalty trial for a capital case, in order to impose a death sentence, the judge or jury must unanimously determine whether the case's aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. Maryland law provides for the following ten aggravating circumstances:

1) one or more persons committed the murder of a law enforcement officer while the officer was performing the officer's duties;
2) the defendant committed the murder while confined in a correctional facility;
3) the defendant committed the murder in furtherance of an escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody or detention by:
   a. a guard or office of a correctional facility; or
   b. a law enforcement officer
4) the victim was taken or attempted to be taken in the course of an abduction, kidnapping, or an attempt to abduct or kidnap;
5) the victim was a child abducted in violation of § 3-503(a)(1);
6) the defendant committed the murder under an agreement or contract for remuneration or promise of remuneration to commit the murder;
7) the defendant employed or engaged another to commit the murder and the murder was committed under an agreement or contract for remuneration or promise of remuneration;
8) the defendant committed murder while under a sentence of death or imprisonment for life;
9) the defendant committed more than one murder in the first degree arising out of the same incident; or
10) the defendant committed the murder while committing, or attempting to œmmit:
    a. arson in the first degree;
    b. carjacking or armed carjacking;
    c. rape in the first degree;
    d. robbery; or
    e. sexual offense in the first degree.

Similarly, the Maryland law provides for the following eight mitigating circumstances:

1) the defendant previously has not:
   a. been found guilty of a crime of violence;
   b. entered a guilty plea or a plea of *nolo contendere* to a charge of a crime of violence; or
   c. received probation before judgment
2) the victim was a participant in the conduct of the defendant or consented to the act that caused the victim's death;
3) the defendant acted under substantial duress, domination, or provocation of another, but not so substantial as to constitute a complete defense to the prosecution;
4) the murder was committed while the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired due to emotional disturbance, mental disorder, or mental incapacity;
5) the defendant was of a youthful age at the time of the murder;
6) the act of the defendant was not the sole proximate cause of the victim's death;

7) it is unlikely that the defendant will engage in further criminal activity that would be a continuing threat to society; or

8) any other fact that the court or jury specifically sets forth in writing as a mitigating circumstance in the case.

The decision as to whether the aggravators outweigh the mitigators belongs to the jury. The jury may, for example, find that a single aggravating circumstance—the allegation that the murder took place while the defendant was attempting to commit another crime— outweighs the mitigating circumstances—youthful age at the time of the murder and an absence of violent criminal history—and, accordingly, impose the death penalty.

State Post-Conviction Review in Trial Court

The post-conviction review procedure allows a defendant to raise specific challenges in court that may not have been heard on appeal.[4] Most often, those challenges involve issues which fall outside the trial record, including the ineffectiveness of counsel or withholding of evidence by the state. The defendant may also raise claims based on new case law or on claims that the defendant unknowingly waived fundamental rights. Because the nature of these claims often involves re-opening parts of the case, the defendant may seek to prove prior counsel failed to present exculpatory evidence. Thus, preparation for post-conviction review may result in significant costs, particularly to the new defense.

All defendants have a statutory right to counsel on their first petition.[5] In subsequent post-conviction reviews for death sentence cases counsel is also provided. Counsel is rarely provided for additional post-conviction reviews for cases with other sentences. In Maryland, a capital defendant is typically represented by a private attorney who is reimbursed by the state. The prosecuting attorney and the attorney general represent the State at this stage. Prior to 1994, the deadline for filing a petition for post-conviction relief was 340 days prior to 1994 and the deadline was reduced to 210 days thereafter. Once a decision is rendered, a defendant seeking to appeal must file for a leave to appeal with the Court of Appeals.

Before 1995, a capital or non-capital defendant had the right to file a second post conviction petition. Under current law, however, a second post conviction petition can be only be filed if reopening the case is in the 'interest of justice.' The right to a hearing is only guaranteed for the first post-conviction review. In practice, defendants in death sentence cases often proceed through multiple post-sentencing reviews.

Direct Review in Maryland Court of Appeals

After a guilty verdict and sentencing, the defendant progresses through multiple stages of post-sentencing case review. Defendants in cases with a sentence other than death first appeal to the

[4] Maryland Uniform Post Conviction Procedure Act.

[5] Section 645A (A) of Article 27.

Maryland Court of Special Appeals. If the conviction is upheld by the Court of Special Appeals, the defendant may then appeal to the Maryland Court of Appeals. Cases with a death sentence are appealed directly to the Court of Appeals[6]. Thus, non-death cases may proceed through an additional stage of processing and occur additional costs. In addition to appeals by a defendant, the State may appeal court rulings, for instance, to contest a ruling over-turning the defendant's death sentence.

In Maryland, a defendant sentenced to death is granted an automatic appeal regardless of whether a notice of appeal is filed. This notice is typically filed within ten days of sentencing. Once the transcript of the trial is received by the Court, the defendant must file a brief within 40 days and the state must do so within 30 days. The hearing must be scheduled within 150 days of the transmittal of the transcript[7], though either side may request a continuance. Oral arguments typically take 30 minutes per side, and the decision is handed down via a written opinion.

On first review, the Court of Appeals will only rule upon issues that have been raised in or decided by the trial court. However, the Court has the discretion to expand its jurisdiction of review if the Court believes doing so will avoid additional appeals. In subsequent appeals, the Court reviews prior appellate decisions and considers only issues that have been raised in the petition for certiorari. If an issue of error in the trial court is raised, the court will consider whether or not the error was harmless (even if this issue was not previously raised). Rulings may be challenged through a motion for reconsideration within thirty days of the decision's filing.[8] It should be noted that after 1995, a defendant has the right to waive the automatic stay of a warrant of execution that occurs in the process of direct review following *Thanos v Maryland.*

Federal Habeas Corpus Review in US District Court

Once an appeal for post conviction relief is denied, the defendant is allowed to file for a writ of habeas corpus in the United States District Court for the District of Maryland. The review is available only after it is shown that the defendant has exhausted all possible processes of appeal within the State Court. However, the scope of habeas review is limited: habeas may only be raised on claims that are federal or constitutional in nature. Thus, Federal Habeas Corpus Review rarely addresses the state's factual determinations and as such, evidentiary hearings rarely occur. Defendants who have received a death sentence have a right to counsel. The US District Court has the authority to stay death sentences.

Federal Habeas Corpus Review in US Court of Appeals

If a defendant is denied relief in the United States District Court, he or she may appeal to the United States Court of Appeals for the Fourth Circuit. In order to appeal, the defendant must have

[6] Maryland Rules 8-301.

[7] Maryland Rules 8-306 (f)

[8] Maryland Rules 8-605(a).

a certificate of probable cause, the issuing of which occurs routinely in capital habeas corpus cases.[9] The case is argued as a regular appeal. If relief is denied in the U.S. Court of Appeals, the defendant has ninety days to seek review in the Supreme Court on a writ of certiorari. Since these costs are not borne directly by Maryland taxpayers, data were not collected from our sample on this stage.

Other Petitions for Relief

Once these stages of review have been exhausted, the defendant may also challenge their competency to be executed or seek commutation of the death sentence from the governor. Our sample does not contain any cost data associated with this process.

Within our sample, we observed case processing through federal appeals. Most cases in the sample do not proceed through all levels of the review process. For many cases, the process through review was not a linear one—we observed many instances in which petitions for post-conviction relief or appeals for leave to appeal were denied multiple times for the same defendant.

DATA COLLECTION

Data used in this analysis are developed from several sources. The foundation for the analysis is the data collected by University of Maryland researchers for their study of disparities in the application of the death penalty (Paternoster, Brame, Bacon and Ditchfield 2004). Paternoster identified 6,000 first and second degree murders committed in the state of Maryland from August 1978 until September 1999. From this sample, 1,311 cases were identified that were eligible to be prosecuted as capital cases. In these cases, either the state's attorney filed a notice of intention to seek the death penalty or the facts of the case clearly met death penalty eligibility criteria. The data include substantial information about cases attributes for each of the 1,311 cases. Eighty-four observations were multiple records of the same event (usually retrials for the same homicide). These trials were re-coded into a single defendant-level file, yielding a final sample of 1,227 observations. Of these 1,227 cases there were 173 cases with a death notice filed, and 56 death sentences.

While the Paternoster data provided a wealth of data about case attributes, data collected for that study do not record case events in each stage of case processing. Thus, while the Paternoster data were used to identify the samples in our study, and to observe case characteristics, they could not be used to estimate the costs of the case. In order to estimate the costs of each stage of case processing, we turned to two additional sources of data, an official records administrative database -- the Maryland Judiciary Case Search (MDJCS) Database -- containing data on individual case processing, and semi-structured interviews with prosecutors, defense counsel and judges to estimate the time spent in each phase of case processing. A brief description of each data source follows—a complete description of the data collection process can be found in **Appendix A**.

[9] Report of the Governor's Commission on the Death Penalty.

The Maryland Judiciary Case Search (MDJCS) Database

Traditionally, Maryland counties maintained hard copy records of each criminal case file either on location with the criminal clerk's office or at the Maryland Hall of Records in Annapolis, Maryland. Though some counties automated recordkeeping in the 1990s, recordkeeping in Maryland remains decentralized and at the county's discretion. In early 2006, the Maryland Judiciary initiated an online database, the Maryland Judiciary Case Search (MDJCS), in an effort to provide public access to a centralized source of electronic case records from all counties. The database is limited to cases that had some activity after the year (usually in the early 1990s) when the county where that case was adjudicated implemented its automated case management system.[10]

From the Paternoster dataset of 1,227 observations, key identifiers—case number, name, date of birth, year of case and trying county—were used as search criteria to locate electronic case dockets in the MDJCS database. We observed additional variables in MDJCS that were not available in Paternoster including key dates such as arraignment, trial days, hearings, motions, petitions and appeals. For each observation in Paternoster, we searched for an electronic record in MDJCS. To verify the accuracy of the MDJCS database, we conducted site visits to courthouses in Baltimore County, Baltimore City, Prince George's County and Anne Arundel County and compared data from MDJCS to data observed in the in-house databases. In all instances, the availability and the scope of records from both sources were found to be identical. Thus, we searched MDJCS for all 1,227 records in the Paternoster data. Many records, especially for cases with no activity after 1990, were missing in the MDJCS database. We could identify no other means of efficiently collecting these records.

Of the 1,227 observations in the analytic dataset, 538 dockets were classified as complete, 93 as incomplete and 596 as missing.[11] A case record was judged to be complete if it contained observable events appropriate to the full length of a case from arraignment to conclusion (typically marked by sentencing or an affirmed appeal). A docket was deemed incomplete if any phases or crucial events, such as a sentencing date, were unobservable. Dockets were labeled as missing if no data were available in the MDJCS database.

Each docket was coded into the Urban Institute database. The data that were coded described each stage of case processing, including dates of key events and durations (in days) of arraignments, hearings, trials, sentencing, appeals and petitions. These data on event-based case information were matched with the relevant observation in the Paternoster dataset.

Survey Data Collection

Not all required data were contained in either the Paternoster data or in the official records. Most importantly, neither data source contained any information about the amount of time

[10] According to the MDJCS website and numerous discussions with staff in several counties at the Criminal Division of the Clerk of the Circuit Court.

[11] These statistics refer to the sample of dockets that we searched for, and, subsequently we drop additional cases that had a not guilty verdict or a nolle prosse, to arrive at the final sample of 1,136 cases and the 509 cases that were fully coded and analyzed.

attorneys spent out of court working on these cases. To estimate these costs, we collaborated with a panel of defense and prosecution counsel who had experience trying capital cases to develop initial estimates of preparation time for a 'typical' no death notice case and a 'typical' death notice case at each stage of processing.

Following an initial introduction by telephone, the prosecution and defense estimates were faxed to one or more counsel in the State's Attorney's Offices and the Offices of the Public Defender, respectively, across Maryland's 24 counties. Counsel were then asked to review the initial time-based estimates and provide feedback and comments as to the accuracy of the estimates. In all, 16 defense estimates were sent to 15 counties and 37 prosecution estimates were sent to 23 counties. In addition, we employed a snowball sampling technique, and solicited names of additional respondents, who we also contacted. [12] Across all survey respondents, the only significant departure from the initial estimates was in regards to the estimated number of days of voir dire. We had initially used an estimate drawn from the Indiana death penalty study, which proved to be too high for the Maryland population. The final estimates cover the stages of pre-trial, guilt/innocence, penalty, appellate, post-conviction and other post-sentencing.

Federal Data

The automated Maryland data did not include any information about case processing at the federal level. To collect these data, we accessed federal data through the Public Access to Court Electronic Records (PACER) database. PACER contained information about case processing during federal habeas corpus review in US District Court and federal habeas corpus review in the US Court of Appeals. We collected data on the dates of habeas corpus petitions, the dates of court decisions, and the length of the phase overall. We again matched records and coded the data in the UI research database.

Removing Not Guilty and Nolle Prose Cases

In order to ensure a valid comparison between cases resulting in a death sentence and no death notice cases, all cases in which the prosecutor declined to prosecute or which resulted in an initial not guilty verdict were dropped from the initial sample of 1,227. These cases represent just 7% of our sample and yield a final analytical sample of 1,136. Cases resulting in a death sentence cannot, by definition, have resulted in a verdict other than guilty. A comparison of death sentence cases to a cohort of cases that resulted in some disposition other than "guilty" (and therefore cannot, by definition, have gone through the appellate process), risks overestimating the death sentence parameter by making a biased comparison.

However, we will fail to capture the impact of a death notice filed on the probability of innocence, which, in turn, could influence the differential costs associated with a the filing of a death

[12] Respondents generally requested anonymity. We received responses from attorneys who have participated in a substantial number of death penalty cases in Maryland. Given how few attorneys in absolute numbers have been involved in death penalty cases, especially among prosecutors, we can not also report response rates without violating that anonymity.

notice. However, given that a death notice and innocence are theoretically unrelated and empirically uncorrelated, we believe that the cost of removing cases not resulting in a guilty verdict are outweighed by the much more potent risk that our estimate of the cost of the death sentence will be biased upward (perhaps significantly so).

Constructing an Estimate of the Cost of Case Processing

Once all of the data were collected, they were combined to estimate the costs for each stage of case processing for each case in the sample. In this study, we count the opportunity cost of the death penalty, which is the value of resources in their next best use. Resources take the form of capital (such as the value of court space) and labor costs (salary and wages). We estimate the value of each resource (the price) in terms of the price per unit (such as one hour of attorney time). We estimate the value of all resources paid for by Maryland taxpayers in the processing of a death eligible case. We estimate costs for each defendant, and for each stage of case processing.[13]

Costs are calculated as the product of a price of a unit of input (such as hours) and the quantity of inputs used. Thus, our basic cost equation is:

$$Cost_i = \text{Price of unit of input}_i \text{ X Quantity of inputs}_i \qquad (1)$$

Following (1), we estimated the two components of cost, price and quantity, separately. For instance, we observed the price of an hour of an attorney's time, then multiplied that by the number of hours spent by each attorney in each stage of case processing. As is described in substantial detail in **Appendix C**, in general we estimate the price of each input from published sources, such as budgets. We estimate the quantity of each input consumed either from survey data or from the electronic dockets that report case processing details.

Thus, the quantity of inputs is a function of two separate quantities. Quantity data derived from the electronic court dockets on the number of each type of adjudication event vary by defendant. Quantity data derived from the attorney surveys is assumed to be the same for each case. For instance, when we calculate the costs of appeals for a defendant, we observe the number of appeals in that defendant's case from court dockets. We then assume a fixed quantity of hours to process that case for each of the attorneys involved, using the results of the survey to calculate those fixed quantities. In the analysis, a single record was created for each individual in the dataset. If a defendant had a retrial, as was the case for 64 defendants in our sample, all of those retrials were aggregated into a single event record.

All of the cost estimates in this section describe retrospective costs. That is, they describe events that have already transpired. However, some costs of the death penalty in Maryland for our

[13] Because we are comparing trial costs of capital cases and non-capital cases, we dropped from our comparison group cases which were acquitted. Given that these cases could not possibly receive the same cost inputs as the treatment group, including them would have deflated the cost of the comparison group and artificially raised the differential cost of death penalty as compared to cases which did not receive the death penalty.

sample are predictable, but have not yet occurred. These costs are costs associated with incarceration, and are described in the next section.

Cost of Prison

Many individuals in the sample were in prison at the time data were collected for this study. Thus, individual prison costs include a retrospective component – how much time has already been spent in prison (and how much of that time has been spent on death row) – and a forecasted component – an estimate of how much time any individual will spend in prison until they either complete their sentence or die. Because we cannot observe when inmates died, when they will die, or when they will be released from prison, we estimate an expected date of exit from prison for each inmate predicted by individual attributes (including sentence length). Past prison costs were estimated in constant 2007 dollars. Future costs were estimated using forecasted rates of increases in spending and were discounted at a rate of 5% per year. The prison cost estimates are based on observed costs of prison in Maryland for both general prison populations and death row inmates. Prison cost estimates are adjusted to account for prison and health care inflation. Methods used to estimate lifetime prison costs for each individual in our sample can be found in **Appendix A.**

METHODS

Multivariate models were used to estimate the lifetime costs of cases as a function of capital punishment as well as case characteristics. The analysis proceeded in three stages.

- In the first stage, we account for the fact that we were unable to observe data in our sample for every case in our population of interest. In order for the cases with data to be comparable to the cases where data are missing, we generated weights so the sample data resemble the population of all death penalty cases between 1978 and 1999. A logistic regression was specified in order to generate sampling weights. These weights are used in all analyses. The explanatory power of the model ($R^2 = 0.44$) was high, indicating that the econometric model is able to accurately predict whether or not cases were complete. We found no difference in the probability that cases with a death notice had complete data. These weights were used in all subsequent analyses.
- In the second stage, we accounted for potential differences between cases where a death notice was filed and cases where no death notice was filed. By modeling the prosecutor's decision to file a death notice, we account for the possibility that cases that received a death notice might have been more costly even if there had been no death statute. A second logistic regression model was utilized to model the prosecutor's decision to file a death notice. These models yielded a propensity score – the probability that a case received a death notice conditional on that case's attributes – for each case in our sample. The propensity scores were then used in outcome models to reduce any potential bias resulting from differences in death notice and no death notice cases. Variables included in the

models to generate the propensity scores were chosen using standard theoretical and econometric reasoning and include: age of defendant; race of victim; whether the victim was executed, killed in their own home, was elderly or frail and/or was unable to defend themselves; whether the evidence against the defendant was circumstantial; whether the same incident produced multiple murder victims; the county where the trial took place; and the year.

- The final stage of the analysis uses sampling weights generated in the first stage of the analysis and propensity scores generated in the second stage of the analysis to model the cost of capital eligible cases in Maryland using ordinary least squares (OLS) regression. These models regress total costs of each capital eligible case in Maryland on whether a death notice was filed, whether there was a death sentence and other variables that might explain the costs of the case including the attributes of the defendant, victim and offender; the nature of the homicide; and the strength of the prosecution's case.

A detailed description of the methods used in this study can be found in **Appendix B**.

RESULTS

Descriptive Statistics

Table 3 presents descriptive statistics for all variables used in the analysis. The table describes the attributes of victims and defendants, and the facts of the homicide. These descriptive statistics serve two purposes – they describe the attributes of the cases included in the study and provide context to the analysis, and they are a diagnostic to identify differences between the samples. Overall, the average age of offenders in the sample is 26 and more than three quarters of defendants were black. Almost all (93%) of defendants had a prior felony charge. Sixty percent of defendants report prior alcohol abuse and 40% report job problems. There are few differences in defendant attributes across the groups. Those who receive a death sentence are older than average (29 years) although the cohort of all defendants in a death case are younger (23.7 years) than the full sample.

The majority of victims across the sample (60%) were non-white. Only a few, 3%, were identified as either elderly or frail and 12% were identified by investigators as unable to defend themselves. Twenty-one percent involved homicides with multiple victims and 41% of cases involved a defendant who was unknown to at least one of the victims. Victims were sexually assaulted in 9% of cases, murdered 'execution-style' in 12% of cases and, in 26% of cases, victims were murdered in their own homes.

Just 3% of cases were identified by a detective as being based primarily on circumstantial evidence and the defendant confessed to the homicide in 16% of cases. Overall, the average case met the criteria for 1.3 statutory aggravators with 5% of cases containing no aggravating factors and

23% of cases containing more than one factor. Nearly 80% of capital eligible cases stemmed from offenses taking place in three Maryland counties – Baltimore City, Baltimore County and Prince Georges County. The median case was filed in 1992, with case filings ranging from 1979 to 1999.

Differences between groups are tested through two comparisons. Cases with a death notice are compared to cases with no death notice, and cases with a death sentence are compared to cases with no death notice. Significance levels, indicated by asterisks in the table, were calculated using mean comparison t-tests. A few differences between the samples emerge from this analysis. Cases in which the defendant was under the age of 18 were less likely to receive a death notice or a death sentence (such defendants were excluded from death eligibility under Maryland law beginning in 1987). Death notices and death sentences were more likely to be filed in cases where at least one of the victims was white and where at least one of the victims was unable to defend himself. Cases in which the defendant was a stranger to at least one of the victims and where the murder was committed during the commission of another felony were more likely to receive a death notice and a death sentence.

Table 3. Descriptive Statistics

	Death notice not filed (n = 425)		Death notice filed (n = 55)		Death sentence returned (n = 29)		Entire Sample (n = 509)	
	Mean	S.D.	Mean	S.D.	Mean	S.D.	Mean	S.D.
Defendant Characteristics								
Age	26.42	15.71	23.72	11.95	29.08	15.96	26.28	15.37
D race is white	0.20	0.50	0.30	0.50	0.23	0.39	0.22	0.50
D has a prior felony charge	0.93	0.55	0.83*	0.44	1.02	0.48	0.93	0.54
D has a history of alcohol abuse	0.58	0.66	0.63	0.53	0.76	0.68	0.60	0.65
D has a troubled job history	0.38	0.55	0.46	0.56	0.65*	0.70	0.40	0.56
Victim characteristics								
V race is white	0.36	0.62	0.56**	0.59	0.71**	0.68	0.40	0.63
V is unable to defend oneself	0.10	0.34	0.20**	0.36	0.26*	0.46	0.12	0.35
V is elderly or frail	0.03	0.2	0.05	0.18	0.12	0.30	0.03	0.21
Offense characteristics								
Multiple victims	0.20	0.47	0.13	0.32	0.53***	0.65	0.21	0.48
D was a stranger to any V	0.39	0.58	0.52	0.59	0.60*	0.66	0.41	0.58
V was sex assaulted	0.08	0.33	0.16*	0.34	0.20	0.50	0.09	0.34
V was executed	0.1	0.33	0.10	0.28	0.27*	0.44	0.11	0.33
V made made to beg for life	0.07	0.31	0.12	0.32	0.11	0.31	0.08	0.31
V took a long time to die	0.08	0.34	0.12	0.30	0.05	0.19	0.09	0.33
V was killed in own home	0.24	0.50	0.23	0.38	0.61***	0.63	0.26	0.51
D persisted even when V's death was certain	0.14	0.41	0.19	0.35	0.25	0.62	0.15	0.42
D attempted to evade capture	0.11	0.34	0.14	0.30	0.22	0.43	0.12	0.34
D confessed to the crime	0.15	0.40	0.19	0.38	0.19	0.39	0.16	0.40
Evdience against D was circumstantial	0.02	0.12	0.02	0.13	0.08	0.25	0.03	0.13
Statutory Aggravators								
A1 - V was a law enforecement officer	0.00	0.06	0.04	0.17	0.10*	0.30	0.01	0.11
A2 - D committed murder in a correctional institution	0.03	0.19	0.00***	0.00	0.00***	0.00	0.03	0.17
A3 - D committed murder trying to escape custody	0.01	0.14	0.03	0.15	0.06	0.21	0.02	0.14
A4 - V was murdered in the course of an abduction	0.10	0.33	0.20*	0.38	0.08	0.23	0.11	0.34
A5 - V was a child abductee	0.04	0.22	0.05	0.20	0.00***	0.00	0.04	0.21
A6 - D murdered in money for hire case	0.04	0.26	0.05	0.17	0.04	0.17	0.04	0.24
A7 - D employed another who killed for renumeration	0.03	0.24	0.03	0.15	0.06	0.23	0.04	0.23
A8 - D committed murder while under life sentence	0.00	0.04	0.00	0.00	0.00	0.00	0.00	0.04
A9 - Same incident produced multiple murder victims	0.18	0.44	0.13	0.32	0.53***	0.65	0.19	0.45
A10 - D committed murder during another offense	0.69	0.65	0.76	0.50	0.90*	0.59	0.71	0.64
County Dummies								
County = Anne Arundel	0.08	0.36	0.07	0.29	0.03	0.17	0.08	0.34
County = Baltimore City	0.44	0.66	0.07***	0.37	0.13***	0.43	0.38	0.64
County = Baltimore County	0.09	0.29	0.34***	0.43	0.55***	0.68	0.14	0.36
County = Harford	0.01	0.15	0.04	0.2	0.00*	0.00	0.01	0.15
County = Montgomery	0.07	0.26	0.05	0.2	0.05	0.21	0.07	0.25
County = Prince Georges	0.28	0.42	0.24	0.35	0.15**	0.32	0.27	0.41
County = Other	0.06	0.38	0.07	0.37	0.09	0.35	0.06	0.37
Year of Case	1992	5.14	1989***	5.71	1988***	5.34	1991	5.32

Significance-levels are based on group mean comparison tests detailing two comparisons: (1) cases in which a death notice was filed versus cases in wich a death notice was not filed and (2) cases in which a death sentence is returned versus cases in which a death notice is not filed. All analyses are conducted using sampling weights.
Significance testing: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Overall, cases in Baltimore City were substantially underrepresented in the death notice and death sentence groups (suggesting that death notices and death sentences were less common in that jurisdiction) whereas cases in Baltimore County were substantially overrepresented among death notice filings and death sentences returned. Finally, death notices and death sentences were more likely to occur in older cases.

Within our data, we observed events up until the level of federal appeals. However, a majority of cases did not go through all levels of the review process, and we observed many instances in which petitions for post-conviction relief or appeals for leave to appeal were denied multiple times for the same defendant.

Sample Size By Phase

For our sample of 509 cases, we observed 336 cases that made it to a trial (the remainder were pleas), 84 cases that had a penalty phase, and 283 cases that filed at least one appeal.

At the post-conviction stage, the majority of cases (326) did not receive a hearing. Of the rest, 149 had an initial post-conviction review (15 of which had received a death sentence), and 34 had multiple post conviction reviews (three of which had received a death sentence). Past this stage, only one non-capital case was assumed to have had a Federal Habeas review while 14 death sentence cases filed a petition of habeas corpus. At the federal appellate level, we observed 10 defendants who appealed their death sentence.

Table 4. Sample of Cases at Each Stage of Processing

Stage	Total Cases	Death Notice*	Death Sentence
Plea	173	4	1
Trial	336	84	29
Penalty phase	84	84	29
Appeals (state)	309	70	27
- Multiple appeals	70	22	15
Post-Conviction Hearing	160	32	15
- Multiple post-conviction hearings	34	4	3
US District Court	15**	14	14
- Multiple petitions of habeas corpus	2	2	2
Federal Court of Appeals	10	10	10
- Multiple appeals	1	1	1

Source: Urban Institute
Notes: * These numbers include death sentence; * *This cost was distributed amongst non-death sentence cases

Event Data By Phase

Table 5 presents event data for each state-level stage of a capital eligible case, on an individual defendant level. Days refer to working days (Mon-Fri) and the length of phase does not include trial days. Death sentence cases have a higher average number of trial days, hearing days, and overall

length of phase at every stage of the trial except for post-conviction. The length of phase for the penalty trial includes retrials of the penalty phase, which can be longer than a year from when the retrial is remanded until the actual onset of the trial.

Table 5. Time Elapsed for Key Events in Working Days

Variable	No Death (n=425)	Death Notice (n=55)	Death Sentence (n=29)
Guilt Phase			
Length of Phase	237.2	262.0	312.7
Hearing Days	1.6	3.8	4.3
Trial Days	3.1	7.0	7.4
Penalty Phase			
Length of Phase	--	100.2	152.4
Number of trial days	--	3.2	5.8
Number of hearing days	--	0.8	1.5
Post Conviction Phase			
Length of Phase	382.6	333.9	302.9
Number of hearing days	1.4	1.9	2.9
Appellate Phase			
Number of Appeals	0.7	1.3	1.9

Source: Urban Institute.

Bivariate Estimates of the Cost of the Death Penalty

Table 6 presents bivariate cost estimates for each of the stages of a capital eligible case. Death notice cases are significantly more expensive than cases in which a death notice was not filed in three stages of case processing: (1) the guilt trial ($601,000), (2) the penalty trial ($71,000) and (3) the state-level appellate phase ($134,000). No statistically significant differences in cost were observed during the post-conviction, federal appellate or federal habeus phases. Though prison sentences were, on average, slightly longer among individuals against whom a death notice was sought, there were no significant differences in lifetime prison costs between the two groups.

Table 6.

Bivariate Outcomes

	Death notice not filed (n = 425)		Death notice filed (n = 55)		Death sentence returned (n = 29)	
	Mean	S.D.	Mean	S.D.	Mean	S.D.
Phase						
Guilt trial	$158	$94	$601***	$289	$775***	$381
Penalty trial	$0	$0	$71***	$74	$263***	$289
Post-conviction	$40	$73	$39	$64	$82**	$101
Appellate	$42	$45	$134***	$96	$474***	$300
Other (state-level)	$1	$3	$2*	$40	$9***	$11
Federal habeas	$0	$0	$0	$0	$82***	$137
Federal appellate	$0	$0	$0	$0	$14	$78
Prison	$862	$549	$946	$540	$1,318***	$704

Significance-levels are based on group mean comparison tests detailing two comparisons: (1) cases in which a death notice was filed versus cases in which a death notice was not filed and (2) cases in which a death sentence s returned versus cases in which a death notice is not filed. All analyses are conducted using sampling weights.
Significance testing: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Cases resulting in a death sentence were significantly more expensive than cases in which a death notice was not filed in all but one phase of case processing. Four phases – the guilt trial ($775,000), the penalty trial ($263,000), the appellate process at the state level ($483,000), and the lifetime cost of prison ($1.3 million) – explain the majority of the differences in cost.

The results in **Table 6** do not account for potentially confounding explanations of the differences in cost. That is, it is possible that some of the differences between groups described in Table 3 are responsible for the differences. For example, it is possible that cases in Baltimore County (where there are significantly more death notices filed than average) are routinely more expensive to process than are cases in other counties, and thus the differences in Table 4 are due to differences in county costs and not the costs of the death penalty. Or, it might be that particularly horrifying or complicated cases may have cost more to prosecute regardless of whether they were processed under a death statute. To account for these possibilities we specify eight regression models that control for competing explanations of the differences in cost.

Table 7 displays regression coefficients from eight OLS models in which the dependent variable is the total cost of case processing. In each of the models, we report two coefficients: the additional cost associated with the filing of a death notice, and the additional cost associated with the receipt of a death sentence. We first specify a model (1) that contains only the two main effects – dummy variables for the filing of a death notice and the returning of a death sentence. In model (2)

we add the propensity score estimates generated in Stage 2 of the analysis. In effect, these propensity scores account for the underlying differences in the propensity of cases to have a death notice. Models (3)-(8) progressively add selected sets of covariates to prior models. We first add in the year of case, and then sequentially add a set of county dummy variables, dummy variables describing attributes of the defendant, attributes of the victims, case characteristics and the presence of statutory aggravators. Model (8) includes all covariates. All parameter estimates in Table 5 are reported in thousands of dollars.

Table 7.

Total Cost of Case Processing

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Death notice filed = 1	$699***	$621***	$624***	$649***	$630***	$627***	$669***	$659***
	($110)	($121)	($121)	($112)	($105)	($105)	($104)	($106)
Death sentence returned = 1	$1,318***	$1,222***	$1,217***	$1,155***	$1,256***	$1,267***	$1,248***	$1,252***
	($387)	($382)	($389)	($403)	($362)	($363)	($351)	($365)
Propensity Score Included?	NO	YES	YES	YES	YES	YES	YES	YES
Year of Case Included?	NO	NO	YES	YES	YES	YES	YES	YES
County Dummies?	NO	NO	NO	YES	YES	YES	YES	YES
Defendant Characteristics?	NO	NO	NO	NO	YES	YES	YES	YES
Victim Characteristics?	NO	NO	NO	NO	NO	YES	YES	YES
Case Characteristics?	NO	NO	NO	NO	NO	NO	YES	YES
Statutory Aggravators?	NO	NO	NO	NO	NO	NO	NO	YES
R^2	0.357	0.365	0.366	0.397	0.457	0.458	0.486	0.489
N	509	509	509	509	509	509	509	509

Each column reports selected coefficients from an OLS regression of the total cost of case processing. The coefficient on a death notice filed is the cost associated with a death notice cases, above the cost of a capital-eligible case in which a death notice is not filed. The coefficient on a death sentence returned is the cost associated with a death sentence, above the cost of a case in which a death notice is filed. The intercept parameter is the cost of a capital-eligible case in which a death notice is not filed. Coefficients are reported in thousands of dollars. All models are run using sampling weights winsorized at a value of four and, in all models, robust standard errors are reported.
Significance testing: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

In Model (1), the coefficient on the intercept parameter is $1.1 million (not reported in the table). This coefficient can be interpreted as the cost of an average case which did not receive a death notice. Thus, the average death eligible case in Maryland has total costs (including prison) of $1.1 million. The death notice parameter is $699,000 indicating that a death notice case is approximately $700,000 more expensive than a case in which a death notice is not filed. The death sentence parameter of $1.3 million is the additional cost of a case in which a death sentence is returned relative to a case in which a death notice is filed but where a death sentence is not returned. All parameter estimates were statistically significant at $p < 0.01$ and the base model explained approximately 36% of the variation in the cost. Overall, without controlling for other factors theoretically related to the cost of case processing, an average death notice case costs approximately $1.8 million and an average death sentence case costs approximately $3.1 million.

Model (2) adds the propensity score to Model (1). The propensity score parameter is significant at $p<0.05$ and since the propensity score captures each case's probability of receiving a death notice

conditional upon the fifteen predictors in Table 2, the effect of adding the propensity score to the outcome model is to reduce the estimated treatment effects by 9% and 5%, respectively. As each successive set of covariates is added to the model, though the predictive power of the models rise, the estimated treatment effects remain remarkably stable, with the death notice parameter falling between $638,000 and $698,000 and the death sentence parameter falling between $1.13 million and $1.26 million in Models (2)-(8).[14]

We report the costs of the death penalty from the results of Model (7). This model achieves the optimal balance between explanatory power and parsimony.[15] Thus, the costs of the death penalty to the taxpayers of Maryland are as follows. A capital eligible case in Maryland costs about $1.1 million to process including all judicial and correctional expenses. If a case has a death notice, $669,000 in additional costs are added, for a total cost of about $1.8 million. If a case results in a death sentence, $1.25 million in additional costs are added, for a total of $1.9 million in additional costs, and a total cost of processing of about $3 million per case.

The costs describe above can be parsed to show the additional cost at each stage of case processing. **Table 8** divides the costs into stages, and reports the results of regression models on each of the eight stages of case processing. The set of controls included in Model (7) in **Table 7** are included in all models.[16]

Table 8.

Cost of Case Processing by Stage

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Guilt Trial	Penalty Trial	Post-Conviction	Appellate	Other (State-Level)	Federal Habeas	Federal Appellate	Prisons
Death notice filed = 1	$474***	$64***	-$9	$86***	$1	-$1	-$1	$55
	($48)	($16)	($11)	($19)	($1)	($4)	($1)	($92)
Death sentence returned = 1	$142*	$262**	$42**	$381***	$6***	$88***	$11	$316*
	($84)	($103)	($18)	($84)	($2)	($28)	($11)	($165)
R^2	0.636	0.441	0.122	0.572	0.252	0.342	0.077	0.223
N	509	509	509	509	509	509	509	509

Each column reports selected coefficients from an OLS regression of the total cost of case processing. All models contain the same control variables as model (7) in Table 3. The coefficient on a death notice filed is the cost associated with a death notice cases, above the cost of a capital-eligible case in which a death notice is not filed. The coefficient on a death sentence returned is the cost associated with a death sentence, above the cost of a case in which a death notice is filed. The intercept parameter is the cost of a capital-eligible case in which a death notice is not filed. Coefficients are reported in thousands of dollars. In all models, robust standard errors are reported.
Significance testing: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

[14] Notably, costs associated with the death notice and the death sentence increase as additional covariates are added to the model. Thus, we can conclude that, if anything, variables that are positively related to the cost of case processing tend to be negatively related to the presence of a death notice or a death sentence, having controlled for the probability that a case receives a death notice.

[15] Technically, Model (7) had the lowest value of the Akaike Information Criterion (AIC) indicating that the model has the maximum explanatory power conditional on the number of predictors entered into the model.

[16] The coefficients in **Table 6** sum to the values of the parameters in **Table 5** on death notice and death sentence respectively..

Cases receiving a death notices are approximately $470,000 more costly during the trial phase, $64,000 more costly during the penalty phase and $86,000 more costly during the appellate phase than a capital eligible case where no death notice was filed.[17] These differences are significant at $p<0.05$. Cases resulting in a death sentence were significantly more costly during every stage of case processing ($p<0.1$) with the exception of the federal appeals stage.

Costs of the Office of the Public Defender, Capital Defense Division

A statewide office established in 1988, the Capital Defense Division coordinates the delivery of legal defense services, arranges for experts and advises counsel in capital cases. In addition, the Division focuses on "convincing the State pretrial that a notice to seek a sentence of death should not be filed because it did not satisfy legal criteria or because it was not warranted despite technical eligibility" (Office of the Public Defender 2006, 124). As a result, the total number of death notice cases "does not appear to accurately represent the potential workload involved in handling these complex matters" (Ostrom, Kleiman and Ryan 2005:112). Since the Division "is generally administrative in nature and rarely litigates death penalty cases" (Department of Legislative Services 2004:4), the office's costs are not included within expenditures captured elsewhere in the study.

Accordingly, we consider the cost of the Division as an additional cost of capital punishment above the per case costs, that is applied to all capital eligible cases whether or not the prosecution eventually files a death notice. Employing State of Maryland Operating Budget Details, we record total expenditures (in 2007 dollars) over a period of five years and subtract out technical and special fees to avoid double-counting the cost of specialists and expert witnesses. We take the inflation-adjusted, five-year annual average of Division expenditures, $563,575.46, and apply it to the years in the sample for which the Division operated (1988-1999). This estimate adds an additional $6.2 million to cases in our sample occurring 1988-1999. However, due to the protracted nature of capital litigation, cases in our sample will have activity beyond 1999. We calculate these costs as follows. In 2000 and 2001 the average caseload of transferred (old) cases is 41%, and all of these cases are in our sample. We calculate additional costs from cases in our sample as $(0.41)^n$ where n is the number of years beyond 1999. We then sum each year. We estimate another $0.95 million in Capital Defense Division costs accruing to the cases in our sample beyond 1999. The total estimated cost of the Capital Defense Division accrued to cases in our sample is $7.2 million.

Summary

The results can be summed across all cases. That is, because cases in the sample were weighted in these analyses to reflect the full sample of 1,136. In total, the 162 cases with a death notice cost Maryland taxpayers an additional $1 86 million or more than $1 million per death notice over and above the costs where there was no death notice. Of this total, cases were the death penalty was sought, but that did not result in a death sentence cost Maryland taxpayers an additional $70.9

[17] The estimates are for all death notice cases and includes cases that did not progress to that stage of case processing. Thus, the average cost of only those cases that made it to the penalty phase and the appellate would be higher.

million dollars. Cases resulting in a death sentence cost Maryland taxpayers an additional $107.4 million. Additionally, the Capital Defense Division cost $7.2 million.

Sensitivity Analysis

Some assumptions were built into the analysis. For the most part, where an assumption had to be made, we took a conservative approach. That is, we made an assumption that would make it more difficult to find an additional cost of the death penalty. An example of this is the most important assumption in the analysis which centers on the issue of a death notice 'sticking'. In more than 100 cases, a death notice was filed but by the time the case reached trial the death penalty was no longer being sought. Unfortunately, no data were available to determine when the decision not to proceed with the death notice occurred. If these cases followed the usual pattern of death notice cases, then substantial additional resources were applied to these resources, perhaps hundreds of thousands of dollars given that the average death notice cases cost $474,000 more than no death notice cases just through the trial stage. However, since we could not empirically observe those additional expenses, we assumed the additional costs were zero, which almost certainly leads to an underestimate of the costs of the death penalty.

An additional assumption that is often contentious in any study that seeks to predict future spending is the choice of a discount rate. Research estimating future costs generally controls for the time value of money - the concept that an expenditure in the future is less costly than an expenditure of the same magnitude today. In general, higher discount rates produce smaller estimates of future costs. In this case, we were able to test our use of a 5% discount rate. The models in Table 5 and 6 were re-run twice, once using a discount rate equal to the rate of prison inflation (2.1%), and a second time with a discount rate set to zero. In each case, the parameter estimate on death notice decreased by approximately 3% and the parameter estimate on death sentence increased by approximately 3% indicating that results are highly robust to the choice of discount rate.

DISCUSSION

Extant literature on the costs of capital punishment unambiguously finds that capital cases are more expensive to prosecute from beginning to end than non-capital cases. However, past research has generally only studied a subset of cases in a given jurisdiction. Moreover, to date, no study has accounted for the possibility that many other variables related to the cost of case processing or the process of selecting cases for death penalty prosecution explain the cost differential. This research examines 509 capital-eligible cases that resulted in a guilty verdict in Maryland between 1978-1999, nearly half of the cases prosecuted during this time period, and more than 75% of cases prosecuted after 1989. Costs are modeled using multivariate models controlling for more than twenty covariates theoretically related to seeking the death penalty and/or the expected costs of the case.

We find a strong, positive association between both the filing of a death notice and a death sentence and the cost of processing the case. On average, a death notice adds about $670,000 in

costs over the duration of a case. A death sentence adds an additional $1.2 million in processing costs, for a total additional cost of about $1.9 million over and above the costs of a case where no death notice is filed. All models have a high degree of explanatory power and results are robust to specification and to changes in the discount rate applied to costs incurred in the future. These results are generally consistent with the extant literature documenting the costs of capital punishment in other states. In addition, Maryland spent more than $7 million on the Capital Defense Division above the per case costs calculated above for cases in this study.

Selection into capital prosecution – that is, the choice by the prosecutor to seek the death penalty -- is found to have a statistically significant and empirically relevant impact on findings. Put another way, we find that the cases for which the prosecutor seeks a death sentence have characteristics that would have made it more expensive to prosecute even had there been no death statute. Including a selection variable in the model reduces the estimate of the differential cost of a death notice and a death sentence by 11% and 7% respectively. However, when other variables theoretically related to costs are added to the model with the selection variable, the reduction in costs associated with selection is about 5%.

The majority (70%) of the cost differential between a death notice and a non-death notice case occurs during the trial phase. This difference is due to a greater number of pre-trial motions, longer and more intensive voir dire, longer trials and a greater amount of general preparation time. In addition, a typical capital case involves two attorneys on each side of the aisle while a case in which a death notice is not filed usually involves a single attorney. Another systematic cost difference between capital and non-capital cases is the penalty trial. For cases in which a death notice is not filed, sentencing will be held before a judge and there is no penalty trial. In cases in which a death notice is filed and the defendant does not subsequently enter into a plea agreement, the defendant is entitled to a penalty trial in which witnesses and experts testify and a sentence is determined by a jury. For an average case in which a death notice is filed (some of which reach a plea agreement prior to the penalty trial) the costs of the penalty phase are about $64,000.

Death notice cases are also more likely to incur costs during the appellate phase even where a death sentence is not handed down. Though some of these additional costs are likely due to the egregious nature of the offense, even after accounting for characteristics of the victim, the defendant and the case, these differences persist indicating that these cases are nevertheless prosecuted more intensively at the appellate level. Prison costs between death notice and non-death notice cases and sentence lengths do not systematically vary between the two groups.

When considering the costs of death sentence cases versus cases in which a death notice was not sought, differences occur at nearly every phase of the case. Trial costs are higher by $616,000 and cases in the penalty phase (which always occurs in cases that eventually reached a death sentence) were $326,000. The post-conviction stage in which additional motions are filed are higher by approximately $50,000 and the appellate phase which contains a greater number of appeals and hearings results in an additional $467,000 in cost. An additional $88,000 in costs are borne during

the federal habeas stage in which motions are heard by a federal appeals court. Finally, defendants sentenced to death actually have significantly more prison costs ($316,000). This is partly because the type of confinement for death sentenced inmates is more expensive, but also due to the reality that few of those sentenced to death are actually executed.

Limitations

The current study is not without limitations. First, the study relies heavily on the accuracy of information on the amount of time spent on an average case reported to us by prosecutors, judges, and public defenders. Data were collected post-hoc and respondents were asked to provide information on an "average" or "typical" case potentially introducing recall bias.

Second, although multivariate models explained a high proportion of variation in the cost of case processing, we cannot rule out the possibility that the coefficients on treatment dummies are biased due to the presence of one or more omitted variables. Of particular concern is the fact that due to both information and statistical constraints, we were unable to account for case clustering among prosecutors, defense attorneys and judges, all of which might reasonably be related to the cost of a case. However, it should be noted that the explained variance in this study was exceptionally high for a social science study of this type.

Third, prison costs estimated for each individual in the study sample rely on estimated counterfactual ages of death that are not sensitive to whether or not a defendant was under sentence of death. If living under sentence of death itself impacts life expectancy then prison costs may be subject to either upward or downward bias, depending on whether those on death row live longer or shorter lives.

Finally, though this study captures the costs associated with a large number of case events, there are additional costs associated with capital cases that can not be estimated. As inclusion of any omitted costs would likely increase the estimated cost of capital punishment to an even greater degree, the estimated costs found in this study are perhaps best interpreted as a conservative estimate of the differential cost of capital punishment. As noted, we do not include the costs of cases where the death notice did not 'stick' and was not prosecuted as a death notice case at trial. We exclude cases with a not guilty verdict or a nolle prose. In 7% of death noticed cases, or 11 cases total, the final result was not guilty. Because this study sought to compare the costs of death penalty and non-death penalty cases, those cases were excluded to ensure that only similar cases were compared. Any stage of processing beyond federal appeals, such as costs associated with the commutation process or litigation around competency to be executed could not be observed and were not included here. Finally, it is possible that there were additional costs associated with no death notice cases where defense counsel fought a death notice filing and the prosecution did not prepare a death notice filing.

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APPENDIX A – DATA COLLECTION

The initial data about the cases included for this study are drawn from a University of Maryland study on death penalty disparities in Maryland (Paternoster, Brame, Bacon & Ditchfield 2004). The study examined about 6,000 first and second degree murders committed in the state of Maryland from August 1978 until September 1999. The initial pool of 6,000 homicides produced a universe of 1,311 death sentence eligible cases. These 1,311 cases met two criteria: 1) the state's attorney filed a notice of intention to seek the death penalty and 2) the facts of the case clearly complied with the death penalty eligible criteria. Ambiguous cases were reviewed and the recommendations of by a panel of attorneys. The initial list of homicides and the corresponding case records were collected from the Maryland Division of Corrections. Additional data on case files were provided by the Clerk of the Maryland Court of Appeals, State's Attorney offices and the Maryland Office of Public Health. However, since the study was focused on the effect of race and jurisdiction on the imposition of the death penalty, time- and cost-related variables that were crucial to our study were not included in the Paternoster data.

We identified 84 observations in the data which were retrials of the same homicide. Each initial trial and its subsequent retrial(s) were later condensed into a single observation, yielding an analytical database of 1,227 observations. After removing cases which did not result in a guilty verdict, this adapted dataset of 1,136 death eligible cases formed the initial dataset used by the UI research team.

COLLECTING DATA FROM THE MARYLAND JUDICIARY CASE SEARCH (MDJCS) DATABASE

Traditionally, Maryland counties maintained hard copy records of each criminal case file either on location with the criminal clerk's office or at the Maryland Hall of Records in Annapolis, Maryland. In the 1990s, counties began deploying automated case management systems to electronically manage newly active cases in their counties. Maintained on private computer networks, the public could access these local databases only by visiting the county clerk's office. Each of the 24 counties developed their database autonomously and the databases evolved differentially with differences in operating systems, data availability and data format. In short, case records—hardcopy and electronic—were decentralized by county and data vary across counties.

In March 2006, the Maryland Judiciary initiated an online database, the Maryland Judiciary Case Search (MDJCS), in an effort to provide public access to a centralized source of electronic case records. However, the constraints of the centralized database are identical to those of the decentralized, county-level databases. Primarily, the MDJCS is limited to cases that had some activity after the year when the county where that case was adjudicated implemented its' automated

case management system. In many cases records for cases where all activity was prior to the development of the database were either maintained in hard copy or have since been destroyed.

From the Paternoster dataset, key identifiers—case number, name, date of birth, year of case and trying county—were used as search criteria to locate electronic case dockets in the Maryland Judiciary Case Search (MDJCS) database. We observed additional variables in MDJCS that were not available in Paternoster including key dates such as arraignment, trial days, hearings, motions, petitions and requests. For each observation in Paternoster, we searched for an electronic record in MDJCS.

There was no way to determine *ex ante* whether the data contained in the MDJCS database were complete. To verify the data's accuracy, we conducted site visits to Baltimore County, Baltimore City, Prince George's County and Anne Arundel County. We compared data we had printed from the MDJCS data to data we observed in the in-house databases maintained by each county's Clerk's Office in all four of these jurisdictions. In all instances, the availability and the scope of records from both sources were found to be identical.

Many records were missing in the MDJCS database. We determined there were four explanations for the missing data: 1) only the Hall of Record in Annapolis maintained a hardcopy case file, 2) the Circuit Court Clerk's Office maintained a hardcopy file, 3) the Circuit Court Clerk's Office maintained only a docket brief of the case file, and 4) the hardcopy record had been destroyed. In the first two instances, budgetary and time constraints prevented the acquisition and inclusion of records. In the third instance, the docket brief included no usable data and, in the fourth instance, records were unattainable.

Of the 1,227 observations in the analytic dataset, 538 dockets were classified as complete, 93 as incomplete and 596 as missing. A docket was judged to be complete if it contained observable events appropriate to the full length of a case from arraignment to conclusion (typically marked by sentencing or an affirmed appeal). A docket was deemed incomplete if any phases or crucial events, such as a sentencing date, were unobservable. Dockets were concluded to be missing if the identifiers in Paternoster dataset did not produce search results or if the docket was unavailable due to the limited historical scope of the MDJCS database.

Coding Dockets

Each docket was assigned a unique identifier. Multiple dockets for the same defendant for the same case were assigned a lettered sub-identifier, e.g. 445A and 445B. In the event of overlap among dockets for the same individual – e.g. multiple dockets reporting on the same case events – the most complete docket was used or, alternatively, fragments of dockets were used to form a complete docket. Consequently, we minimized double-counting. The data coded from the dockets into the data collection instrument fell into two general categories: 1) judicial phases and 2) case identifiers. As will be further discussed in later sections, data coded into the judicial phases encompassed various binary variables and the dates and durations (in days) of arraignments,

hearings, trials, sentencing hearings, appeals and petitions further broken down into the following phases:

- Trial (guilt/innocence phase);
- Trial (penalty phase);
- Other (hearings occurring between the penalty phase and the appeals phase);
- Appeals phase;
- Post-conviction phase;

These data on event-based case information were matched, where possible, with the relevant observation in the Paternoster dataset. Differences between the two data were minimal. In cases where differences were observed, we chose the official record if it was available, and the Paternoster data if official data were not available.

PACER

Data on costs associated with the federal stages were obtained from electronic dockets located on PACER, the federal judiciary's central location for court records for the US. District Court and US Court of Appeals. Docket information was only obtained for cases which had received a death sentence. At the US District Court level, we observed the date of filing for petitions for habeas corpus, hearings, and the date decisions were handed down. At the Federal Appellate level, we observed the number of appeals filed and decided upon. Appeals which were withdrawn or dismissed did not factor into our cost analysis.

DEVELOPING TIME-BASED ESTIMATES FROM DEFENSE AND PROSECUTION SURVEY RESPONDENTS

Not all required data were contained in either the Paternoster data or in the official records. Most importantly, we sought to estimate of the differential use of resources in processing capital versus non-capital (but capital eligible) cases by including out-of-court preparation time. We collaborated with a panel of defense and prosecution counsel with experience trying capital cases to develop initial estimates of preparation time for a 'typical' no death notice case and a 'typical' death notice case at each stage of processing.

Following an initial introduction by telephone, the prosecution and defense estimates were faxed to one or more counsel in the State's Attorney's Offices and the Offices of the Public Defender, respectively, across Maryland's 24 counties. Counsel were asked to review the initial time-based estimates and provide feedback and comments as to the accuracy of the estimates. In all, 16 defense estimates were sent to 15 counties and 37 prosecution estimates were sent to 23 counties. In addition, we employed a snowball sampling technique, and solicited names of additional

respondents, who we also contacted. [18] Across all survey respondents, the only significant change from the initial estimates was the estimated number of days of voir dire, as an initial estimate drawn from the Indiana death penalty study proved to be too high for a Maryland population.

Table A1.1

Prosecution and Defense Time-based Estimates for Processing Cases

Item	Death Notice	No Death Notice
Pretrial Phase		
% of time on a case (before death notice is filed)	50%	15%
% of time on a case (after death-notice is filed)	30%	15%
% of time on a case (90 days prior to trial)	50%	25%
% of time on a case (45 days prior to trial)	75%	50%
% of time on a case (30 days prior to trial)	100%	100%
Number of attorneys assigned	2	1
Attorney time to prepare for each hearing day (hours)	12	6
Paralegal time to prepare for each hearing day (hours)	2	1
Guilt/Innocence Phase		
Attorney time to prepare for each day of voir dire (days)	3	3
Average number of days of voir dire in a "typical" case	5	2
Attorney time to prepare for each trial day (hours)	60	60
Paralegal time to prepare for each trial day (hours)	5	5
Attorney time to prepare for each hearing day (hours)	12	6
Paralegal time to prepare for each hearing day (hours)	2	1
Penalty Phase		
Attorney time to prepare for each trial day (hours)	60	
Paralegal time to prepare for each trial day (hours)	5	
Attorney time to prepare for each hearing day (hours)	12	
Paralegal time to prepare for each hearing day (hours)	2	
% of time on a case (during phase)	100%	
Post-conviction Phase		
Hours/week	40	40
% of time on a case	15%	10%
% of time on a case (two weeks prior)	40%	40%
% of time on a case (during the hearing)	100%	100%
Attorney time to prepare for each hearing day (hours)	8	8
Paralegal time to prepare for each hearing day (hours)	1	1
Appellate Phase		
Attorney time to prepare an appeal (hours)	600 (200)*	300 (100)*

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office. The only difference between prosecution and defense estimates is that the defense spends about three times as much time preparing an appeal then does the prosecution. This is justified as the defense must develop grounds for an appeal, and the prosecution only has to respond to the issues in the appeal.

[18] Respondents generally requested anonymity. We received responses from attorneys who have participated in a substantial number of death penalty cases in Maryland. Given how few attorneys in absolute numbers have been involved in death penalty cases, especially among prosecutors, we can not also report response rates without violating that anonymity.

These estimates include pre-trial, guilt/innocence, penalty, appellate, post-conviction and other post-sentencing phases. During the pre-trial and trial phases, attorney preparation time for capital and non-capital cases outside the courtroom increases as the trial date approaches. We estimate preparation for an appeal in a non-capital case consumes about one-half the time of a capital appeal. In terms of post-conviction, we again estimate out-of-court preparation time increases as the post-conviction hearing date approaches. Time consumption for other post-sentencing proceedings is assumed equivalent to preparation for hearings in the pre-trial phase.

Estimates for the prosecution are identical to that of the defense except for appeals. The justification is that the prosecution spends less time responding to an appeal than the defense does because the defense must identify grounds for the appeal, while the prosecution need only respond to the particular issues raised by the defense. Days in which there was a hearing or a trial day were assumed to have taken 100% of an attorney's time. Thus, we account for, on the average, the amount of time an attorney spends each day working on a case as well as the extra time associated with observed trial events.

APPENDIX B – CONSTRUCTION OF CASE-LEVEL COST ESTIMATES

This Appendix describes how case-level estimates were constructed. A description of how Maryland cases proceed through a capital eligible case can be found in the main body of the report.

OVERVIEW

In this study, we count the opportunity cost of the death penalty, which is defined as the value of resources in their next best use. Resources take the form of capital (such as the value of court space) and labor costs (salary and wages). We estimate the value of each resource (the price) in terms of the price per unit (such as one hour of attorney time). We estimate the value of all resources paid for by Maryland taxpayers in the processing of a death eligible case. We estimate costs for each defendant, and for each stage of case processing.[19]

Costs are calculated as the product of a price of a unit of input (such as hours) and the quantity of inputs used. Thus, our basic cost equation is:

$$\text{Cost} = \text{Price of unit of input X Quantity of inputs} \qquad \text{(A2.1)}$$

Following (A2.1), we estimate the two components of cost, price and quantity, separately. For instance, we observe the price of an hour of an attorney's time, then multiply that by the number of hours spent by that attorney in each stage of case processing. The remainder of this Appendix describes the sources of the price and quantity estimates.

Each of the sections in this Appendix follows the same order of presentation.

PRE-TRIAL/ TRIAL/ PENALTY PHASE

Defense Cost

The Office of the Public Defender's (OPD) primary mission is to provide legal representation to indigent defendants in the State of Maryland. The responsibility of establishing and funding county-level Offices of the Public Defender rests, not on the individual counties, but under the Executive branch of the Government of the State of Maryland.

[19] Because we are comparing trial costs of capital cases and non-capital cases, we dropped from our comparison group cases which were acquitted. Given that these cases could not possibly receive the same cost inputs as the treatment group, including them would have deflated the cost of the comparison group and artificially raised the differential cost of death penalty as compared to cases which did not receive the death penalty.

Wages

Position salaries are determined at the state level. In assigning value to time, we estimate the hourly wage of OPD staff, taking into account salaries, fringe benefits and days of leave. Staff salaries for county-level OPD offices were determined from the Maryland Department of Budget and Management's (DBM) State Salary Plan. The State Salary Plan lists title, class code and salary information in 2007 dollars for all state job classes. The annual salary for OPD staff was computed as the mean of the minimum and maximum salary for each position. These computed salaries correspond almost identically to salaries at the midpoint of the corresponding pay grades for each position listed in the State of Maryland Standard Salary Structure. The District Public Defender's salary is approximately $93,672.00, $72,157.50 for the Assistant Public Defender and $40,516.00 for the Paralegal.

Table A2.1

Estimated Salaries of Office of the Public Defender Staff

Position	Estimated Annual Salary
Dist. Public Defender	$93,672
Asst. Public Defender II	$72,157
Paralegal II	$40,516

Source: Maryland Department of Budget and Management (DBM) State Salary Plan

Following convention, fringe benefits are assumed equivalent to 30% of annual salary for all positions.[20] Fringe benefits represent a direct cost to the employer (in this case the State of Maryland) and include Social Security, Health Insurance, Pension Retirement, Deferred Compensation Match, Workers Compensation and Unemployment Insurance. Total estimates are $121,773.60 for the District Public Defender, $93,804.75 for the Assistant Public Defender and $52,670.80 for the Paralegal.

Table A2.2

Total Estimated Salaries and Fringe Benefits of Office of the Public Defender Staff

Position	Estimated Annual Salary and Benefits
Dist. Public Defender	$121,774
Asst. Public Defender II	$93,805
Paralegal II	$52,671

Source: Maryland Department of Budget and Management (DBM) State Salary Plan

[20] This estimate of 30% is close to the Department of Budget and Management's (DBM) FY 2007 estimate of a fringe rate of 33% for the typical state employee in the state personnel management system.

To estimate the hourly wage rate to be used in the final analysis, an estimate of the average number of workdays in a given year must be generated. Estimates of additional annual days of leave were developed from the annual leave policies outlined by the Maryland DBM. Leave time for state employees is comprised of annual leave, personal leave, holiday leave and sick leave. Annual leave can be used for any purpose and up to 50 days of annual leave can be carried over from one year to the next. Since annual leave varies directly with seniority, we used the mean allotment, 17.5 days. Personal leave cannot be carried over into a new calendar year and was excluded from out estimate. There is no limit to the number of sick days an employee can carry over into a new calendar year, so we included the full allowance of 15 days per year. A minimum of 11 days of holiday leave also figure into the total estimate. Our estimate of total leave, then, is 43.5 days. Given the seniority of staff in the study, this estimate of 43.5 days comports reasonably well with the DBM's estimate of 38 days of total leave for the typical state employee.

Table A2.3

Estimated Annually Allotted Days of Leave for Maryland State Employees

Leave Type	Allotted Days
Annual	17.5
Holiday	11
Sick	15
Personal	-

Source: Maryland Department of Budget and Management (DBM) Annual Leave Policy

Even if OPD staff do not take their full allotment of leave days, these days remain an indirect cost to the employer ($6,716 for the typical Maryland state employee in 2007), as outlined in the DBM 2007 Annual Personnel Report. Cook justifies an identical approach on the basis that employees will eventually use their leave at retirement if not sooner (1993: 41).

Accounting for 43.5 days of leave and 104 weekend days, we estimate 217.5 work days in an average year. Put differently, this estimate is equivalent to a 43.5-week year or a 1,740-hour year, assuming an eight-hour work day.

Table A2.4

Estimated Annual Work Time for Maryland State Employees

Unit	Amount
Days	217.5
Weeks	43.5
Hours	1,740

Source: Maryland Department of Budget and Management (DBM) Annual Leave Policy

Though interviews with attorneys involved in death cases suggest that their work often spans more than 40 hours per week especially around trials, attorneys are not eligible for overtime pay and, as such, a 40-hour work week is assumed in all cost analyses. Attorneys note that even in weeks where they are working 40 hours or more on death case, they still attend to other cases. Thus, when we interview attorney and ask them to assign percentages of time worked to cases, we ask them what proportion of 40 hours per week is spent on death cases at each stage of processing. Calculation of the hourly rate is straightforward:

Hourly wage rate = (annual salary + benefits) / 1740 hours

For staff in the county-level Offices of the Public Defender we estimate hourly wage rates at $69.98 for a Public Defender, $53.91 for an Assistant Public Defender and $30.27 for a Paralegal.

Table A2.5

Estimated Hourly Wage Rates for Office of the Public Defender Staff

Position	Hourly Wage Rate
Dist. Public Defender	$70
Asst. Public Defender II	$54
Paralegal II	$30

Source: Maryland Department of Budget and Management (DBM) State Salary Plan

Estimating Defense Quantities (Time Spent on Capital Eligible Cases)

Attorney time associated with an individual case proved the most difficult item to quantify. There are no time logs for either the prosecution or defense that are publicly available. Other studies have dealt with this problem by using survey data or interviews with attorneys to estimate, on average, the amount of time dedicated to a case (Cook 1993; Washington 2007). We developed a survey for attorneys to estimate time spent on these cases that could be linked to observable administrative data. In the electronic dockets, we observe both event data (number of hearings, number of trial days) and duration data (length of a phase). The survey queried attorneys with death penalty case experience about time spent on a case in each of these stages of processing. These estimates account for, on average, the amount of time an attorney spends each day working on a capital eligible case, as well as additional time associated with observable court events. A complete description of the survey can be found in **Appendix A**.

We estimate that attorneys involved in death penalty cases spend more time on those cases in all phases of pre-trial and the trial phase than would have been the case for a no death notice case. Importantly, survey respondents estimated that the number of attorneys dedicated to cases where a death sentence is being sought is twice (two) the number assigned to a no death notice case (one). For many court events, about twice as much time is spent in preparation. Respondents, however,

report that the amount of time preparing for voir dire preparation and a day of trial is identical in death notice and no death notice cases.

Table A2.6

Prosecution and Defense Time-based Estimates for Processing Cases in the Pre-trial and Trial Phases

Item	Death Notice	No Death Notice
Pretrial Phase		
% of time on a case (before death notice is filed)	50%	15%
% of time on a case (after death-notice is filed)	30%	15%
% of time on a case (90 days prior to trial)	50%	25%
% of time on a case (45 days prior to trial)	75%	50%
% of time on a case (30 days prior to trial)	100%	100%
Number of attorneys assigned	2	1
Attorney time to prepare for each hearing day (hours)	12	6
Paralegal time to prepare for each hearing day (hours)	2	1
Guilt/Innocence Phase		
Attorney time to prepare for each day of voir dire (days)	3	3
Average number of days of voir dire in a "typical" case	20	2
Attorney time to prepare for each trial day (hours)	60	60
Paralegal time to prepare for each trial day (hours)	5	5
Attorney time to prepare for each hearing day (hours)	12	6
Paralegal time to prepare for each hearing day (hours)	2	1

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office

One critical difference between cases that receive a death notice and cases that do not receive a death notice occurs in the period before a death notice is filed[21]. Survey respondents report that the prosecution must spend additional time with these cases to determine whether a death sentence will be sought, and the defense works intensely to prevent the death notice filing. In death eligible cases where the death notice is not sought, we are unable to observe the amount of additional time spent by defense counsel to fight a death notice filing and the prosecution to prepare a death notice filing . Thus, in this area we likely underestimate the costs of the death penalty.

Prosecution Cost

The State's Attorney's Office (SAO) is responsible for prosecuting violations of Maryland State law within the geographical boundaries of its respective county. Unlike the Office of the Public Defender, policies dictating SAO salaries differ slightly for each county. County Councils define and approve SAO salaries, setting them directly as a specified amount or indirectly as a percentage of a District Court judge's salary.

We estimate the hourly wage of SAO staff by taking into account salaries, fringe benefits and days of leave using a process that is identical to the estimation strategy for OPD staff. However, because these salaries do not fall under the State Salary Plan, SAO wages were estimated from the Anne Arundel County Class and Compensation Plan. Again, we compute salaries as the mean of the minimum and maximum salary for each position and assume fringe benefits equivalent to 30% of annual salary. Total estimates designate $177,620.30 for a State's Attorney, $101,348.00 for an Assistant State's Attorney and $54,400.45 for a Paralegal.

Table A2.7

Total Estimated Annual Salaries and Fringe Benefits of State's Attorney's Office Staff

Position	Estimated Annual Salary and Benefits
State's Attorney	$177,620
Asst. State's Attorney	$101,348
S/A Paralegal	$54,400

Source: Anne Arundel County Class and Compensation Plan

Using the same estimates of 43.5 days of leave and 1,740 work hours per year, we estimate SAO hourly wage rates at $102.08 for a State's Attorney, $58.25 for an Assistant State's Attorney and $31.26 for a Paralegal.

[21] It should be noted that we were unable to observe the date of a death notice filling in all of our sample. In the event that we were able to observe a capital trial and the data in Paternoster dataset indicated a death notice, we used the average length of time from arraignment to the filing of a death notice to estimate the approximate date of a death notice filing. These estimates were made in 37 cases.

Table A2.8

Estimated Hourly Wage Rates of State's Attorney's Office Staff

Position	Hourly Wage Rate
State's Attorney	$102
Asst. State's Attorney	$58
S/A Paralegal	$31

Source: Anne Arundel County Class and Compensation Plan

As noted above, with the exception of differences in the appeals process, survey respondents report, on average, that there were no substantial differences between the defense and prosecution in the amount of time dedicated to a death notice case in the pre-trial and trial phases. Thus, the same estimates are used for prosecutors as for the defense. Within each type of case – death notice and no death notice -- differences in cost between the prosecution and defense are due to differences in wage rather than intensity of preparation.

One omission from our hourly estimates is the time contribution of investigators and local law enforcement. A federal study suggests that a large amount of time is spent by law enforcement investigators aiding the prosecution in developing capital cases. This cost may be the main driver for their findings that prosecution costs drive attorney costs in the trial phase of death penalty cases (Subcommittee on Federal Death Penalty Cases 1998). We were unable to directly observe these costs.

Expert Witnesses, Specialists

Most studies conclude that the cost of expert testimony is a significant part of the overall cost to the death penalty. Because we were unable to observe the cost of expert witnesses, we estimate this cost based upon a federal study of the death penalty (1998). This study estimates the percentage of overall cost which can be attributed to reimbursements to experts, which includes forensic science experts, experts in interpretation or authentication, mitigation specialists, jury consultants, psychologists, and psychiatrists. Overall, 19% of payments for representation went to services for experts and investigators for capital cases. In non-capital cases death eligible case, 16.2% of total costs were spent on experts. We apply our estimates to the cost of attorney fees for the guilt and penalty phase.

We note that it is possible that in the post-conviction stage of a case, these same specialists will again be called upon for expert guidance, this time by a different set of defense attorneys. However, interviews with attorneys in the field suggest that a common grounds for a post-conviction petition for relief is inadequate counsel, the proof being that experts were under-invested in the original trial and that mitigating circumstances were not presented. Thus, we assume that the total expenditure on experts can be estimated by assuming that all expenditures will occur during the original trial.

We note that it is possible that a re-trial will occur in a case, and that these experts will again be called upon for expert guidance. In the event of a retrial, we did add the additional costs.

Courtroom Costs

In addition to labor costs, we also estimate the value of the courtroom. The opportunity cost of the court room is the value of the space in its next best use, e.g. the rental of that space for another purpose. The rental value of one day of a courtroom is estimated by the prevailing market rental rates for an average square footage of Circuit Court space appropriate for trying a murder case.

To calculate the square footage of relevant courthouse facilities we solicited estimates of the size of court space from the Administrative Office of the Courts, the Department of Public Works and/or the Department of General Services in five counties in our sample. Specifically, we requested the square footage of a typical courtroom, jury room, judge's chamber and jury pool room. Of the five counties surveyed, only Baltimore City and Prince George's County did not process our request. Taking the average square footage of each facility, we estimated 1,534.3 square feet for a typical courtroom, 341.3 for a jury room, 541.7 for a judge's chamber and 4,458.7 for a jury pool room.

Table A2.9

Estimates of Circuit Court Facilities (sq ft)

Facility	Square Feet
Courtroom	1,534
Jury Room	341
Judge's Chamber	548
Jury Pool Room	4,459

Source: Administrative Office of the Courts, Department of Public Works, Department of General Services

To assign value to courthouse facilities, we used a seven year average (in 2007 dollars) of market rates for class B office rental space in suburban Maryland.[22] Applying the rental rate of $27.09 per square foot to the average area of the four relevant Circuit Court facilities, we calculate the annual rental value for each facility. Assuming court is in session 240 days a year, we estimate the following daily rental values for each facility: $173.19 for a courtroom, $38.53 for a jury room, $61.14 for a judge's chamber and $503.27 for a jury pool room.

[22] These market rates were drawn from several fourth quarter reports published by Grubb & Ellis, a commercial real estate firm specializing in the metro area.

Table A2.10

Rental Value of Circuit Court Facilities (sq ft)	
Facility	Daily Rental Value
Courtroom	$173
Jury Room	$39
Judge's Chamber[23]	$61
Jury Pool Room	$503

Source: Grubb & Ellis Research. *Office Market Trends Washington, DC Metro, 4th Quarter (2002-2007)*

To calculate courtroom usage, we assume one day of court usage per trial day, one day of court usage per hearing day, and one day of court usage per full day of voir dire. For trial days, we assumed that the jury room and the court room were used. For hearing days, we assumed the courtroom was used. For days of voir dire we assumed that the jury pool room and courtroom were used.

Judge Costs

To calculate per day costs of the judge and Circuit Court judicial staff, we follow the same general approach as was used to estimate fully loaded attorney wages. We assume fringe benefits are 30% of annual salary, judges receive 43.5 days of annual leave and judges work a 1,740-hour year. We use the annual salary of $134,352 for a Circuit Court Judge listed by the Maryland Judiciary to compute the salary-benefits total for that position. Salary estimates for other Circuit Court staff—court clerk, law clerk, court reporter and bailiff (deputy sheriff)--are again computed from the Anne Arundel County Class and Compensation Plan. We estimated hourly wage rates for Circuit Court staff at $100.38 for a Circuit Court Judge, $22.75 for a Court Clerk, $32.15 for a Court Law Clerk, $39.17 for a Court Reporter and $34.78 for a Deputy Sheriff serving as Court Bailiff.

Table A2.11

Estimated Hourly Wage Rates of Circuit Court Staff	
Position	Hourly Wage Rate
Circuit Court Judge	$100
Court Clerk	$28
Court Law Clerk	$32
Court Reporter	$35
Court Bailiff	$35

Source: Maryland Judiciary; Anne Arundel County Class and Compensation Plan

[23] Because we were unable to observe the square footage of the judge's chamber in the Court of Appeals, we left this cost out of our calculation of courtroom rental costs for all stages of a case. On the average, one room is 341 square feet and would have amounted to an additional $39/day.

We calculate cost of judges for trial days as well as hearing days in the guilt and penalty phase and assumed 8 hour workdays. Each trial day and hearing day was given one full day of judge time.

Jury Costs

Jury costs were estimated as the opportunity cost of one hour of an average juror's time. In other words, the opportunity cost is the foregone income of a juror. In economic analyses, the value of one hour of an adult's time is generally assumed to be equal to an hour of wages. Using state-level data from the Bureau of Labor Statistics, we calculated the average hourly earnings of a Maryland citizen 18 years or older. This rate reflects employed as well as unemployed persons and averages to approximately $12.59/hr.

This hourly rate was then applied to the process of jury selection. Using data from our interviews and surveys, we concluded that the average length of voir dire for a capital case is five days and two days for a non-capital case. For capital cases, semi-structured interviews with judges and attorneys report that 800 individuals fill out the juror-selection survey and estimate an hour of time per individual. We estimate that 175 potential jurors appear for jury selection and each spends, on average, 2.5 days in the juror pooling process (we assume that each juror is not present for all the days of voir dire). Twelve jurors and at least two alternate jurors are selected from the pool of 175 prospective jurors. We assume an opportunity cost of eight hours per trial day.

For non-capital cases, we assume that 120 individuals complete the juror-selection survey (one hour of time). We estimate sixty jurors appear for one day of jury pooling (we assume not all prospective jurors are present for all two days of voir dire) and the selected fourteen are present for all trial days, assuming eight-hour trial days.

Retrials and Pleas

In the event of a retrial of either the entire guilt phase or the sentencing (penalty) phase, we apply the same methods used for calculating the original trial costs.

In the event of a plea, we also apply the same estimates used for calculating original trial costs. That is, we increase the amount of time an attorney spends on a case the same way we would as a case approaches trial. We assume that an attorney treats a case as though it will go to trial until the moment of a plea. For trials in which the actual timeline did not allow for our estimation timeline (i.e. the phase was less than 90 days or the death notice filing date occurred within 90 days of the trial), we used only the applicable time percentages to the actual number of days. For example, if a case had a pretrial phase of 50 days, we used the attorney time percentage 90 days out (50%) for 5 days, 45 days out (75%) for 15 days, and 30 days out (100%) for 30 days.

PENALTY PHASE COSTS

The penalty phase is unique to cases where the death penalty is sought. In this phase, mitigating circumstances are often presented, and a defendant may elect to be either sentenced by a jury or by a judge. Costs were calculated as follows:

Attorney Costs

Wage rates for defense and prosecution attorneys for the penalty phase are identical to the hourly wage rates employed in the guilt/innocence phase. Again, survey responses were used to estimate the time attorneys spend preparing for a day of trial or a hearing day in the penalty phase. Typically, these estimates are the same as for the trial phase.

Table A2.12

Prosecution and Defense Time-based Estimates for Processing Cases in the Penalty Phase

Item	Death-Notice	No Death-Notice
Attorney time to prepare for each trial day (hours)	60	
Paralegal time to prepare for each trial day (hours)	5	
Attorney time to prepare for each hearing day (hours)	12	
Paralegal time to prepare for each hearing day (hours)	2	
% of time on a case (during phase)	100%	

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office

One difference between the trial and penalty phase is that we assume that attorneys spend 100% of their time working on the case during this phase (which we estimate to last an average of 13.8 working days). Thus, in order to avoid double counting, time associated with the penalty phase was calculated as the total number of hours in the phase minus trial and hearing day hours and preparation hours for trial days and hearing days. Any remaining hours were then assumed to also have been spent working on the case.

Experts, witnesses, specialists

Our method of calculating specialists was based upon the total expenditure of the trial and penalty phase combined. For a full explanation of how costs were calculated, see the section on experts and witnesses in the trial phase chapter. As a note, in tables where costs are broken down by phase, since there was no way to differentiate costs associated with trial versus penalty phase, we added the total cost of experts to the trial phase cost.

Courtroom Costs

Courtroom costs were calculated using the same method as the trial phase.

Judge Costs

Here, we employ the identical Circuit Court staff wages used in the guilt/innocence phase. In the penalty phase, the defendant has the right to elect between sentencing by a jury or sentencing by a judge, and we were able to observe these events in our data. Where sentencing was done by a judge, we calculated cost the same as the cost of the judges' time during the trial days. For the penalty phase, we were able to observe instances in which sentencing was conducted by a judge instead of a jury and accounted for this cost as well. We calculated judge costs the same whether or not the defendant elected to be sentenced by a judge (we assume no extra time on the judge's part if he is doing the sentencing rather than a jury). Since the number of trial days were similar regardless of whether one was sentenced by a judge or by a jury, cases in which a defendant elected to be sentenced by a jury were more expensive.

Table A2.13

Sentences in Capital Cases

Sentenced by:	Count	Trial days
Judge	15	2.93
Jury	76	3

Source: Compiled from case dockets collected from the Maryland Judiciary Case Search (MDJCS) database

Jury Costs

Jury costs were calculated using the same method as was used for the trial phase, although, in the penalty phase the cost of voir dire was not included. This is because, generally, the same jury that sat in the guilt phase will sit in the penalty phase. However, in the event of a retrial, jury costs of voir dire were calculated, using the same assumptions as in the trial phase.

Handling Retrials, Pleas

There were 13 instances in which an offender was remanded for a retrial of the penalty phase only. For these events, the average length of a phase was much longer, an average of 292 working days. In these cases, we calculated time devoted to a case using the same percentages as the trial phase, 30 % in the beginning, 50% 90 days out, 75% 45 days out, and 100% 30 days out. There were only two cases in which a death notice was filed, a plea was made, and a penalty trial was still held. These were calculated the same as the typical penalty phase cases, using the plea as the start date of the phase.

COST OF CASE REVIEW

We differentiate costs associated with state-level post-sentencing proceedings into costs associated with appeals (both to the Court of Appeals and the Court of Special Appeals in non-capital cases) and costs associated with petitions for post conviction relief.

Post Conviction Costs

Costs associated with adjudicating the post-conviction phase are similar to costs associated with other phases. The prosecuting attorney represents the State. However, because post-conviction petitions are often based on the claim of inadequate counsel, the state hires private attorneys to represent the defendant. These attorneys then file for reimbursement. We assume that all defense attorneys in this stage are private.

Attorney time

Survey data indicated that attorney time on a case during the post conviction phase differs from time during the trial or sentencing phase. Since this phase often spans many years, from the day that a petition is filed to the day a decision is handed down, attorneys estimate they spent, on the average, 15% of their time on a case during this process. However, in the weeks before a hearing on the petition, time increases to 40%. While we did inquire as to the difference in time commitment in adjudicating a capital versus a non-capital case, estimates of time exhibit no major differences. One should note that at this stage a sentence has already been handed down. Thus, our treatment group has now become those sentenced to death (rather than those who received a death notice). Thus, death notice cases which did not receive a death penalty now use the same attorney time estimates as do no-death notice cases.

Table A2.14

Prosecution and Defense Time-based Estimates for Post-conviction Phase

Item	Death Penalty	No Death Penalty
Hours/week	40	40
% of time on a case	15%	10%
% of time on a case (two weeks prior)	40%	40%
% of time on a case (during the hearing)	100%	100%
Attorney time to prepare for each hearing day (hours)	8	8
Paralegal time to prepare for each hearing day (hours)	1	1

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office

Many petitions for post conviction relief are not filed by attorneys but by the defendants themselves. Consequently, many are withdrawn or dismissed and the costs associated with such petitions are the opportunity costs of the defendant. However, because defendants are incarcerated,

we assume their opportunity costs are zero. Because we were unable to observe when a petition was filed by an attorney and when it was not, we made the following assumptions based on interviews with attorneys with experience in death penalty cases:

- All death penalty cases are represented by an attorney;
- Cases in which a death sentence was handed down and subsequently revoked will continue to be represented by an attorney during the post conviction process
- Costs associated with petitions which do not make it to a hearing will be assumed at zero.
- All petitioners which are heard have representation.

Specialists

Petitions for post conviction relief can generate large costs in capital cases. Since one of the main claims is inadequate counsel, new counsel typically has to recreate the entire case, including hiring mitigation specialists, in order to prove that an unsatisfactory job by former counsel neglected important mitigating factors which may have affected sentencing. While it was impossible to directly observe costs associated each individual case at this phase, one must still account for these costs. A difficulty we encounter in our technique of estimating costs of experts, however, is that of double counting costs- that is counting high costs of specialists in both the guilt and penalty phase. It is a logical assumption that claims of inadequate counsel which are granted a hearing most likely did not have the specialist expenditures associated with an adequately represented case. Based on this assumption, we believe that the estimated mitigation expenditure (19% of total attorney cost for capital cases) denotes the expenditure of a typical, well-represented case. Thus, if that amount is $50,000 for a case, if only $20,000 is spent in the trial and penalty phase, then $30,000 will be spent in post-conviction phase. Thus, the expenditure calculated in the trial phase is seen as the total expenditure of specialists, across all phases. This is admittedly a conservative assumption that we test in our sensitivity analysis.

Courtroom costs

Courtroom Costs were only calculated for the time spent in hearings. Each hearing day was estimated as one full day of use of the courtroom using the same methods and estimates outlined above.

Judge Costs

In our interviews with judges with experience in capital cases, the consensus was that during the trial and penalty phases, judges spend little, if any, time on a case outside of the courtroom. Thus, we estimate only judge costs for hearing days. One full day of judge time was assumed for each hearing day.

For post-conviction, we employ the same hourly wage rates for judicial staff: $100.38 for a Circuit Court Judge, $22.75 for a Court Clerk, $32.15 for a Court Law Clerk, $39.17 for a Court

Reporter and $34.78 for a Deputy Sheriff serving as court bailiff. The total judicial labor cost for a full-day hearing is $1,833.88.

Appellate Costs

Attorney time

Attorney time associated with appeals was calculated as the average number of hours necessary to draft an appeal, rather than a percentage of attorney time dedicated to a case throughout a phase. This assumption was made after interviews with public defenders and prosecutors indicated that the majority of work was done filing the appeal, rather than in the time between when the appeal was filed and when a decision was handed down. Attorney hours associated with appeals was one of the few areas in which we were told that there is, on the average, a difference in preparation time between the defense and prosecution. Because the defense has the burden of drafting the appeal and the prosecution responds, we were told that the prosecution devotes less time to this particular stage. Consequently we have estimated attorney time in the appeals phase as follows:

Table A2.15

Prosecution and Defense Time-based Estimates for Appellate Phase

Item	Death Penalty	No Death Penalty
Attorney time to prepare an appeal (hours)	600	300

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office

Courtroom Costs

In estimating the value of an appellate-level courtroom, we used an approach similar to that of estimating value at the Circuit Court level. The Maryland Administrative Office of the Courts provided an estimate of 2,000 square feet for a courtroom at the appellate level, resulting in an estimate of $225.75 in rental costs per day.

Judge Cost

We continued our assumptions of fringe benefits at 30% of annual salary, 43.5 days of total leave and a 1,740-hour year to estimate hourly wage rates to calculate wage rates for judicial staff of the Special Court of Appeals and the Court of Appeals. We adopt Appellate Judges' salaries listed by the Maryland Judiciary and the previous wage estimate of a Circuit Court Law Clerk for the Appeals and Special Appeals Clerks. Accordingly, we estimated hourly wage rates as follows: $106.13 for a Special Appeals Associate Judge, $108.37 for a Special Appeals Chief Judge, $27.52 for an Appeals courtroom clerk, $128.77 for a Court of Appeals Chief Judge and $114.57 for a Court of Appeals Associate Judge.

Table A2.16

Estimated Hourly Wage Rates of Appellate and Special Appellate Staff	
Position	Hourly Wage Rate
Special Appeals Assoc. Judge	$106
Special Appeals Chief Judge	$108
Appellate Law Clerk	$28
Appeals Chief Judge	$129
Appeals Assoc. Judge	$115

Source: Maryland Judiciary; Anne Arundel County Class and Compensation Plan

For the Court of Special Appeals, we assumed a three judge panel composed of the chief judge and two associate judges. For the Court of Appeals, we assumed all seven judges are involved in handing down a decision. In both instances, we accounted for the hourly time of one courtroom clerk. Assuming an eight-hour day, the labor cost of judicial staff of a day in the Court of Special Appeals is $2,785.25 and $6,749.85 for a day in the Court of Appeals.

For appeals, we assumed that all first appeals in non-capital cases go to the Court of Special Appeals and attribute one full day of judge time per appeal filed. While this amount of time fluctuates greatly with the strength of the appeal and severity of the case, we believe that on the average, our assumption holds. For the second and subsequent appeals for non-capital cases as well as all state-level appeals for capital cases, we used the hourly rate of judges at the Maryland Court of Appeals level. Similarly, we assume one full day of judge time per decision handed down.

Federal Costs

Once an appeal for post conviction is denied, the defendant may file for habeas relief in the federal court. Costs associated with the federal level can be broken down into Federal Habeas Petitions and Federal Appeals.

Judge Cost

Hourly wages for the Judges in the US District Court- 4th circuit and US Court of Appeals were calculated using the same estimates as above. It was assumed for the US District Court, 1 judge was involved in handing down a decision and for the US Court of Appeals, it involved a panel of 3.

Information on costs associated with the federal stages was obtained from electronic dockets located on PACER, the federal judiciary's central location for court records for the US. District Court and US Court of Appeals. Docket information was only obtained for cases which had received a death sentence. At the US District Court level, we observed the date of filing for petitions for habeas corpus, hearings, and the date decisions were handed down. At the Federal Appellate

level, we observed the number of appeals filed and decided upon. Appeals which were withdrawn or dismissed did not factor into our cost analysis.

While we were unable to collect docket data at the federal level for our control group (those with no death sentence), we estimated the probability of a case proceeding to each federal stage. In addition, we estimated the cost of adjudication of a non-capital case at the federal habeas and federal appeal level. We then distributed this expected cost amongst our no death sentence group. The data we used to create these estimates are those reported by the Bureau of Justice Statistics in their report on petitions to the federal court (Scalia 1997), which reports data on the rate of capital and non-capital petition filing on a state by state basis. Scalia also estimates the average length of time between a filed petition and a decision, differentiated by capital and non capital cases; the percentage of petitioners who have representation rather than represent themselves; and, the rate petitions are dismissed. This study was done over the years 1980-1996. All these data were used to determine the expected cost of a petition for federal habeas or a federal appeal for non-capital cases.

Federal Habeas

According to the Bureau of Justice Statistics, 928 petitions were filed in 1995, an average of 43/1000 inmates. Once we accounted for the percentage that were adjudicated by the US District Court (43%) and the percentage that were represented by counsel (12%), only 2/1000 inmates were represented by counsel and had their petitions adjusted by the US District Court. Given our sample of 509, this resulted in one case likely to reach the level of federal habeas.

The average length of time for cases where inmates were represented by counsel was 825 days, 659 working days. Based on interviews, we assumed attorneys spent on the average 15% of their time working on the case. Thus, we calculated the expected cost of a case as the expected attorney cost as well as the expected cost of judges' time in adjudication. The attorneys' cost was applicable to the one likely adjudicated case with counsel, the judge costs were applicable to 9 likely adjudicated cases, with or without counsel. We estimated one day of judge time per decision.

Because we were unable to associate the cost of the federal habeas stage to a particular non-capital case, the total expected cost was dispersed evenly across all cases. While this does not allow for variation, we do not believe that this low cost per case will have any real impact on results.

Federal Appeals

Only about a quarter (23.7%) of cases filed in US district courts are ever appealed to the US Court of Appeals. Given this low percentage and our sample size, the costs associated with this phase for our control group were negligible and left out of the sample.

Additional Costs

There were some hearings we were unable to allocate to any specific phase. To account for these, we tallied the number of "unknown" hearings and calculated their costs using the same estimates as a trial hearing.

Cost of Prison

Prison costs were calculated using information from the Maryland Department of Public Safety and Correctional Services. Budget books available for 2002-2006 years provide information on cost for every correctional facility in the state. Annual costs for Maryland House of Correction - Jessup Region were used as an estimate of incarceration costs for those not sentenced to death row (around $30,000 in 2006). Costs for Maryland's death row were taken from the same data source. All costs for the given period were converted into 2007 constant dollars and the change in cost over this time period was used to estimate the real prison-specific inflation rate (2.1%) above and beyond the rate of inflation. According to the Bureau of Justice Statistics, inmate medical care totaled approximately 12% of operating expenditures . To account for the fact that health care costs rise at different, presumably higher rates, 12% of the incarceration costs were inflated at different rate. Past prison costs beginning from 2007 were deflated at a rate of 2.1%. Future cost costs were inflated at a rate of 2.1% to account for real prison-specific inflation and were subsequently discounted at a rate of 5% to account for time value of money, the assumption being that states can reserve money today that will be needed in the future and receive a reasonable rate of return on that investment, a rate we assume, for now, to be 5%.

In order to determine the amount of time that prison costs accrue for each inmate in our sample, it was necessary to estimate two pieces of data – the expected length of each inmate's natural life and the expected length of an inmate's sentence if that sentence was not death or life without the possibility of parole. Since data on the ages of death for those prisoners who died in custody were not available and because the majority of individuals in our sample are currently living, it was necessary to estimate a counterfactual age of death for each inmate. While the Bureau of Justice Statistics' Death in Custody Reporting program records the ages and manners of death in custody for all deaths occurring in the nation's prisons, these data were insufficient to estimate counterfactual ages of death for our sample for two reasons. First, as the majority of prisoners in state and federal prisons do not die in custody and, instead are released prior to death. As a result, mean ages of death in custody do not reflect an unbiased sample of ages of death among the prison population. Second, as individuals in our sample – all convicted murderers – serve longer sentences than the average prisoner, compounding the likelihood that their death will occur while in custody.

Unfortunately, while extant research does not explicitly estimate life expectancy for the prison population, data on age-specific mortality rates and life expectancy are available for the general population. The National Center for Health Statistics provides estimates of life expectancy as well as age-specific mortality rates for the general population groups, estimated separately by race and gender. Life expectancy in prison was modeled in three stages. First, life expectancy was linked to mortality rates for the general population via a simple OLS regression of life expectancy on mortality rates. Next, using linear transformations of in-prison race, gender and age-specific mortality rates to mortality rates in the general population calculated by cite, we calculated in-prison mortality rates for each age, by race and gender groups. Finally, in-prison life expectancy was estimated by regressing life expectancy for the general population on in-prison mortality rates. The model was specified as a

log-log relationship between prison life expectancy and national life expectancy and was estimated separately for each gender and race for age group, for ages 17-65. Finally, the fitted values from this regression model were estimated for each member of our sample, yielding an expected age of death.

Death is only one means of ending one's tenure in prison. The other means of doing so is by serving out the entirety of one's sentence or via parole or early release. In order to estimate an expected length of time served in prison, it was first necessary to generate an expected length of sentence served. Sentence (in years) available in the dataset used by Paternoster et al (1999) was multiplied by 54%, the average length of sentence served for a violent crime in Maryland (cite) and an estimated year of release was created. Next, the expected year of release was compared to the expected year of death and, for each inmate in the dataset, the minimum of these two numbers – the expected year of exit from prison – was taken. Finally, the year of entry into prison was subtracted from the expected year of exit from prison, yielding the amount of time over which prison costs accrued or are expected to accrue for each offender. The one exception to this calculation concerns individuals who, at one time or another, were on Maryland's death row. For executed inmates, actual ages of death were substituted for expected ages of death in order to account for savings in lifetime prison costs associated with execution. Likewise, for inmates currently on death row, an expected age of exit from death row was calculated by taking a weighted average of the mean time until execution multiplied by the probability of execution and the mean time until leaving death row multiplied by the probability of leaving death row. Upon leaving death row, inmates were assumed to accrue business-as-usual prison costs until their forecasted date of death or release.

Cost of Healthcare

The extant literature suggests that the increasing cost of health care for aging offenders is a significant cost associated with life without parole (Goodpaster 2002). Increases in the cost of healthcare are driven by two factors: real growth in healthcare costs over time and individual-level increases in costs associated with aging. Because data on per capita healthcare expenditure by age-group was not readily available for Maryland, age-specific prison healthcare costs calculated by an Indiana study of the death penalty were used (Goodpaster 2002). A comparison between the national average used by Indiana and Maryland suggests similar per capita annual healthcare costs that may slightly overestimate Maryland-specific healthcare costs (Stephan 2001; Stephan 1996). Since Indiana's estimates only included costs for ages 30-75, costs for younger inmates were estimated as the same as that of the 30-year-old cohort, and costs of older inmates were estimated using the average rate of increase in healthcare costs for 70-75 year olds. Healthcare costs estimated in Goodpaster (2002) were transformed into 2007 constant dollars, and past expenditures were calculated by deflating these costs by the estimated real rate of increase in healthcare costs . This rate (2.3%) was calculated as the average of the historical average excess cost growth for Medicare and Medicaid as given by the Congressional Budget Office (Orszag 2008). Future costs were projected by first inflating costs for the real rate of increase in healthcare costs and then by deflating

this cost by a 5% discount rate to account for the time value of money. In order to avoid double counting healthcare costs and prison costs, the estimated percentage of prison costs attributable to healthcare costs were subtracted from the total prison costs. This percentage was estimated at 12% based on the national average (Stephan 2001). Finally, lifetime healthcare costs were estimated for each inmate based on their age of entry into prison and their expected age upon exit.

Costs of the Office of the Public Defender, Capital Defense Division

As a statewide office established in 1988, the Capital Defense Division coordinates the delivery of legal defense services, arranges for experts and advises counsel in capital cases. However, the Division's work is not restricted solely to cases in which the prosecution files a death notice. The Division expends much of its efforts in "convincing the State pretrial that a notice to seek a sentence of death should not be filed because it did not satisfy legal criteria or because it was not warranted despite technical eligibility" (Office of the Public Defender 2006, 124). As a result, the total number of death notice cases "does not appear to accurately represent the potential workload involved in handling these complex matters" (Ostrom, Kleiman and Ryan 2005, 112).

Accordingly, we consider the cost of the Division as a cost of capital punishment for all capital eligible cases, whether or not the prosecution eventually files a death notice. Employing State of Maryland Operating Budget Details, we record total expenditures (in 2007 dollars) over a period of five years and subtract out technical and special fees to avoid double-counting the cost of specialists and expert witnesses. We take the inflation-adjusted, five-year annual average of Division expenditures, $563,575.46, and apply it to the years in the sample for which the Division operated (1988-1999). This estimate adds an additional $6.2 million to cases in our sample occurring 1988-1999. However, due to the protracted nature of capital litigation, we must also account for the cost of cases originating within our sample timeframe but with activity beyond 1999. The combined 2000-2001 percentage of transferred (old) cases is 41%. Discounting by .41 for each subsequent year beyond 1999, we estimate another $.95 million in Capital Defense Division costs accruing to the cases in our sample beyond 1999. The total estimated cost of the Capital Defense Division accrued to cases in our sample is $7.15 million.

We are confident the cost model does not account for this additional figure of nearly $7.15 million in costs because the Division "is generally administrative in nature and rarely litigates death penalty cases" (Department of Legislative Services 2004, 4). Moreover, the estimate is likely a conservative one given that some technical and special fees are inevitably unaccounted for.

APPENDIX C – ECONOMETRIC MODELS

Stage 1 – Accounting for Missing Cases

Our population of interest includes all 1,136 capital eligible cases in Maryland prosecuted between 1978 and 1999 that resulted in a guilty verdict. Case records were either missing or incomplete for 627 of these cases, yielding a final analytical sample of n = 509. An analysis of the missing cases revealed that cases are not missing at random, and, as such, failure to account for the influence of missing cases may bias estimates of the cost of the death penalty.[24] We followed the literature on non-responses in surveys and use sampling weights to adjust for potential bias due to missing data. Weights were generated using the following logistic regression model which regresses whether or not a case had complete data on attributes of the case that may be related to why the case was missing.

$$p_i = \exp(X\lambda) / (1 + \exp(X\lambda)) \qquad \text{(A3.1)}$$

In (A3.1), p_i is an indicator variable for whether or not case *i* had complete case data and X is a vector of covariates theoretically linked to the probability the data are missing. In order to generate sampling weights for each case, model (A3.1) was run separately for treatment cases and comparison cases generating a predicted p_i-hat value, the probability that the case contained complete records. For each of the 509 complete cases, we generated a base weight, w_i which is given by:

$$w_i = 1/p_i \qquad \text{(A3.2)}$$

In (A3.2), p_i is the probability that case *i* is complete (non-missing) in the dataset. Thus, cases that have a high probability of having missing data – and are therefore the cases that most closely resemble the cases where data were missing -- but are not missing data receive a higher weight in the analysis. In order to ensure that no single case contributed undue influence to subsequent models weights are winsorized at a value of four. The weights were then normalized so the sum of the weights were equal to the sample size of the complete cases (n = 509). The normalized weights did not differ significantly by treatment condition, indicating no bias in case missingness along treatment status. **Table A3.1** contains a list of predictor variables used to generate sampling weights.

[24] In order to investigate whether missingness was related to observable covariates, a logistic regression analysis was run on a binary measure of missingness.

Table A3.1.

Independent variables used in the regression models to generate weights to account for missing values.

Defendant Characteristics:

Age of defendant, defendant race is white, defendant has a prior felony charge, defendant has a history of alcohol abuse, defendant has a troubled job history

Victim characteristics:

Victim race is white, victim is unable to defend oneself, victim is elderly or frail

Offense characteristics:

Multiple victims, defendant was a stranger to any victim, victim was executed, victim made to beg for life, victim took a long time to die, victim was killed in own home, defendant persisted even when victim 's death was certain, defendant attempted to evade capture, defendant confessed to the crime, evidence against Defendant was circumstantial

Statutory Aggravators

A1 - Victim was a law enforcement officer

A2 - Defendant committed murder while in a correctional institution

A3 - Defendant committed murder while trying to escape custody

A4 - V Victim was murdered in the course of an abduction

A5 - Victim was a child abductee

A6 - Defendant murdered pursuant to agreement for remuneration

A7 - Defendant employed another who killed for remuneration

A8 - Defendant committed murder while under life sentence

A9 - Same incident produced multiple murder victims

A10 - Defendant committed murder in the commission of another offense

County Dummies (reference category = all other counties)

Anne Arundel, Baltimore City, Baltimore County, Harford, Montgomery, Prince Georges, Other

Year of Case

Source: Urban Institute analysis.

As the generation of sampling weights is largely atheoretic, all variables that were either empirically or theoretically related to case missingness were included in the model. The explanatory power of the model ($R^2 = 0.44$) was high, indicating that the model is able to accurately predict whether or not cases were complete. In order to verify that the selection weights successfully re-weighted the sample, independent samples t-tests were run to compare the unweighted and weighted means for each predictor in the model. This analysis returned no significant differences across all

twenty-four variables, indicating that bias caused by incomplete case records is successfully removed by model (1), conditional upon no omitted variable bias.

Stage 2 – The Decision to Seek a Death Notice

In quasi-experimental designs, factors not included in models that are related to both selection into treatment (the filing of a death notice) and outcomes (cost) have the potential to bias resulting point estimates on the treatment parameter in final outcome models (Heckman 1977; Greene 1981; Berk 1983; Heckman 1990). Propensity score models have been proposed as a viable solution to modeling selection bias arising under this scenario (Rosenbaum and Rubin 1983; Heckman Ichimura and Todd 1997; Dehejia and Wahba 1999; Caliendo and Kopeinig 2006). Using fitted values generated from multivariate model on a binary measure of selection, researchers can control for the impact of observables on the selection process.[25]

We use propensity scores to address the possibility that there are cases that would have been processed more intensively (at higher cost) even in the absence of the death penalty. Such a scenario might occur, for example, in cases where the victim is elderly or was unable to defend himself or if the certain counties that are more likely to file a death notice also tend to adjudicate cases more intensively than other counties. If this is the case, explicitly modeling the process by which selection occurs reduces threats to internal validity in the outcome model and, under certain conditions, propensity score analysis has the potential to mimic a randomized controlled trial and generate unbiased estimates of the treatment effect (Caliendo and Kopeinig 2006).

Little advice is available on the ideal functional form that a propensity score model should take (Smith 1997). As logit and probit models yield similar results for binary measures of treatment, we follow Caliendo and Kopeinig (2006) and use a logit specification as the logistic distribution has more density mass in the bounds. Predicted propensity scores can be sensitive to variable selection criteria utilized by researchers. Omission of important variables in propensity score models can seriously bias resulting estimates (Heckman Ichimura and Todd 1997; Dehejia and Wahba 1999). However, overparameterization of propensity score models can decrease the sample space on the propensity scores across treatment and comparison conditions and can increase the variance of the propensity scores and the standard errors around the resulting treatment effect (Augurky and Schmidt 2001; Bryson Dorsett and Purdon 2002). Rubin and Thomas (1996) recommend against trimming models in the name of parsimony arguing that variables should be excluded from the model only if it is unrelated to outcomes or if it violates the assumption that predictors are exogenous with the selection variable.

In selecting variables for inclusion of our propensity score model, we follow Rubin and Thomas (1996) and exclude all variable that are unrelated to outcomes but retain all other available predictors, so as to minimize the probability of omitted variable bias. We follow Heckman,

[25] The use of selection models is not without statistical cost. Propensity scores - whether used in matching, stratification or weighting - result in increased standard errors and, as such, are relatively inefficient estimators.

Ichimura, Smith and Todd (1997) and began with a parsimonious model containing several theoretically important predictors of selection (the filing of a death notice) and add predictors one by one, retaining all predictors that are significant at $p < 0.5$. This process yields a propensity score model with fifteen predictors, and a Pseudo R^2 of 0.25.

Table 2 lists the predictors that were retained in the analysis. In order to assess the quality of our propensity score model, we compare follow Sianesi (2004) and compare the Pseudo R^2 of the propensity score prior to and after using inverse probability of treatment weights. After weighting, the Pseudo R^2 of the propensity score model is just 0.04 and a likelihood ratio test fails to reject that coefficients in the propensity score model are jointly equal to zero. In addition, independent samples t-tests confirm that no differences remain among variables in the weighted versus unweighted sample, indicating that our model is sound.

Table 2 – List of Predictors in Propensity Score Analysis (Stage 2)

Age of defendant
Race of victim (1 if white, 0 if not)
Victim was executed
Victim was killed in own home
Victim was elderly or frail
Victim was unable to defend himself
Evidence against the defendant was circumstantial
A9 – The same incident produced multiple murder victims

County dummy variables (reference category = all other counties)

- Anne Arundel
- Baltimore City
- Baltimore County
- Harford
- Montgomery
- Prince Georges

Year of Case

Stage 3 – Outcome Models

In the third stage of the analysis, outcome models are specified using the sampling weights generated in (A3.2). Next, outcome models are of the form specified in (A3.3):

$$COST_i = \beta 0 + \beta 1 * DN_i + \beta 2 * DS_i + \pi PS_i + Z\varphi + \varepsilon_i \qquad \text{(A3.3)}$$

In (A3.3), $COST_i$ is the total cost of processing case *i* to all stakeholders, DN_i is an indicator variable equal to 1 if the case had a death notice filed and 0 if not and DS_i is an indicator variable equal to 1 if a death sentence was handed down and 0 if not. PS_i is the propensity score estimated

in Stage 2 and represents the probability that case *i* receives a death notice. Z is a vector of covariates theoretically related to the cost of processing a case. In models without any additional covariates, the intercept parameter, $\beta 0$, is the average cost of a capital-eligible case in which the death penalty was not sought. It is possible to obtain estimates of the total cost of each category of capital-eligible case by adding each successive coefficient. For example, $\beta 0 + \beta 1$ yields the average total cost of a case in which a death notice was filed and $\beta 0 + \beta 1 + \beta 2$ yields the average total cost of a case in which a death sentence is handed down. All outcome models are run using the sampling weights estimated in Stage 1 of the analysis.

EXHIBIT 22

RJ reviewjournal.com
http://www.reviewjournal.com/news/nevada-legislature/panel-rejects-construction-new-nevada-execution-chamber

Panel rejects construction of a new Nevada execution chamber

By SEAN WHALEY LAS VEGAS REVIEW-JOURNAL CAPITAL BUREAU

May 22, 2013 - 10:07am

CARSON CITY — A panel of lawmakers decided Wednesday not to fund construction of a new $700,000 execution chamber at Ely State Prison.

The decision was made by a joint Assembly Ways and Means and Senate Finance subcommittee when it voted to approve a $104 million capital improvement program for the upcoming two-year budget that begins July 1.

The vote was unanimous, and lawmakers did not comment.

In reviewing the project in past meetings, several lawmakers questioned the need for the new execution chamber. They asked why the current facility at the now shuttered Nevada State Prison in the capital could not be used instead if an execution is scheduled in the next two years.

Corrections Department Director Greg Cox said the current chamber, an old gas chamber that has been used for lethal injections, is not compliant with the Americans With Disabilities Act.

Cox said in previous testimony that he would expect litigation to be filed challenging the use of the chamber if an execution was to go forward.

There is no elevator access, so a disabled inmate facing execution would have to be carried to the "last night" cell across from the chamber.

The viewing area is cramped and provides little room for official witnesses, media representatives, a religious leader, the victims' family members, attorneys and others who choose to or are required to attend executions.

Cox said any new execution chamber probably would face litigation too but not to the degree the existing facility would see from the federal public defender's office.

But he acknowledged the old chamber could be used if necessary.

Nevada's 83-inmate death-row population is housed at Ely, 302 miles east of the capital.

Cox said the project is needed to follow state law.

Ely is an appropriate location because that is where the death row population is housed.

The last execution, by lethal injection, occurred at the Nevada State Prison on April 26, 2006, when Daryl Mack was put to death.

Mack was executed for the rape and murder of a Reno woman, Betty Jane May, in 1988.

Contact Capital Bureau reporter Sean Whaley at swhaley@reviewjournal.com or 775-687-3900.

EXHIBIT 23

Decreasing values (%)

Sold in past year (%)

$152,900
23.2%Y-o-Y (Year over Year)

Calculated 06/15/2013 (2013-06-15)*

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Chart data (/market-report/time-series/42/NV.xls)

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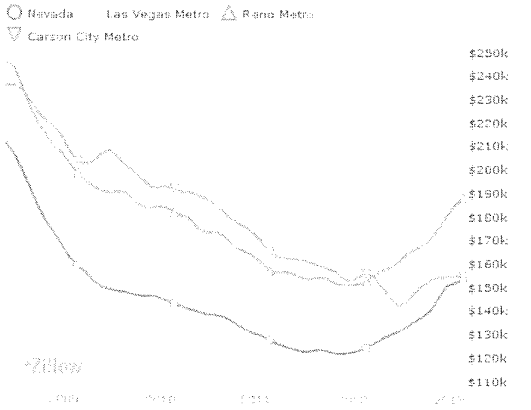
FAQs (http://www.zillow.com/wikipages/Real-Estate-Market-Reports-FAQ/)



National Avg Rate Current Last Week

30yr fixed	4.20%	4.41%
15yr fixed	3.29%	3.41%
5/1 ARM	3.21%	3.36%

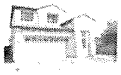
Live Rates

Mortgage Shopper Lowest Lender

Location	Rate	Rating

- Juneau, AK4.00%4.5/5.0
- Tulsa, OK4.00%4.5/5.0
- West Fargo, ND4.00%4.6/5.0
- Johns Creek, GA4.12%4.6/5.0
- South Kingstown, RI4.00%4.6/5.0
- Parma Heights, OH4.00%4.6/5.0
- Phoenix, AZ3.95%4.8/5.0
- Kenosha, WI4.00%4.6/5.0

Homes for Sale


(/homedetails/6604-Lavender-Lion-St-Las-Vegas-NV-89086/2111785877_zpid/)
6604 Lavender Lion St, Las Vegas, NV 89086
(/homedetails/6604-Lavender-Lion-St-Las-Vegas-NV-89086/2111785877_zpid/)
For Sale: $179,990

Beds: 4
Sqft: 2442
Baths: 3.0
Lot: 5227


(/homedetails/3789-Lily-Haven-Ave-Las-Vegas-NV-89120/66857536_zpid/)
3789 Lily Haven Ave, Las Vegas, NV 89120
(/homedetails/3789-Lily-Haven-Ave-Las-Vegas-NV-89120/66857536_zpid/)
For Sale: $258,000

Beds: 4
Sqft: 2561
Baths: 3.0
Lot: 5227

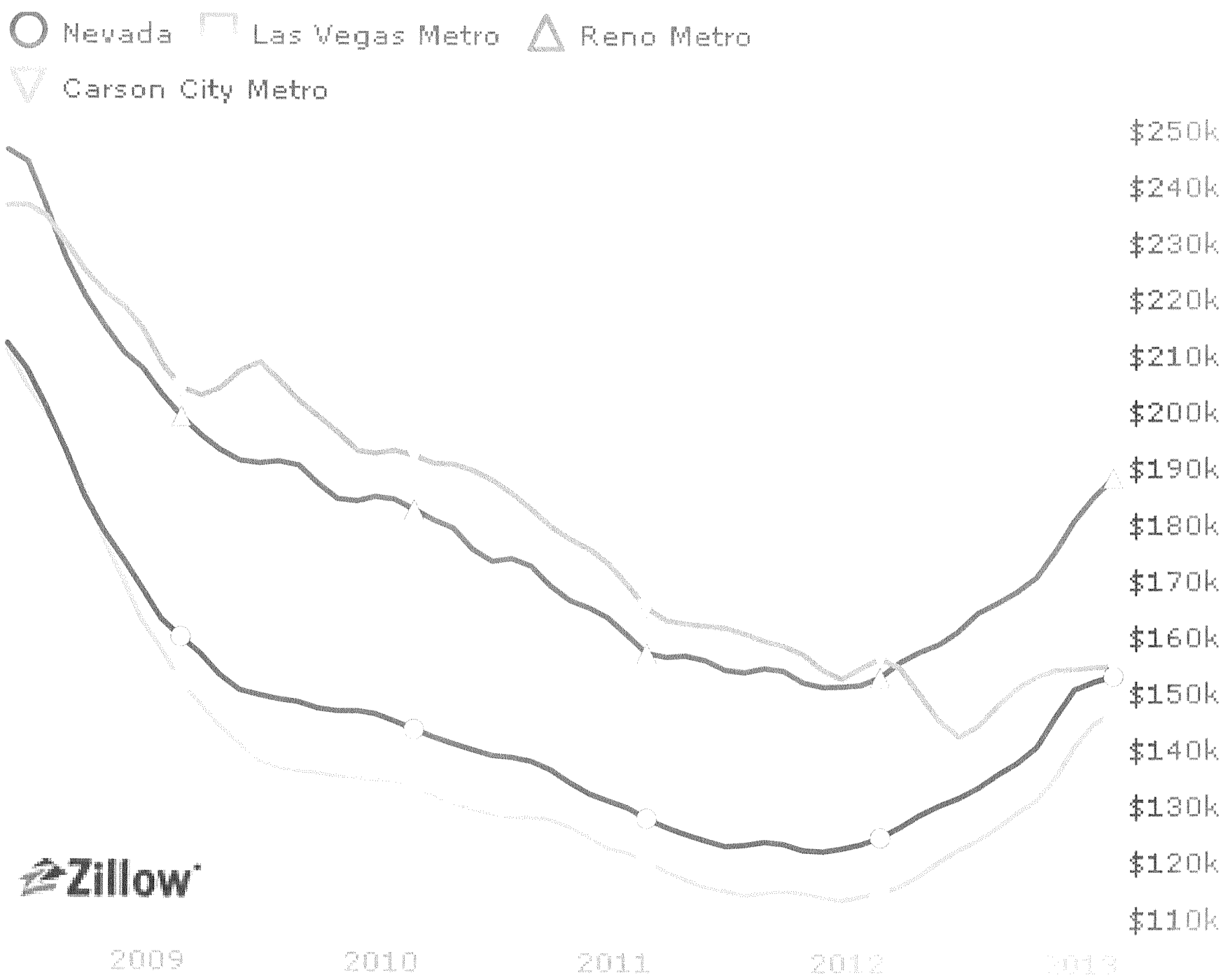

(/homedetails/10841-Pearl-River-Ave-Las-Vegas-NV-89166/94714353_zpid/)
10841 Pearl River Ave, Las Vegas, NV 89166
(/homedetails/10841-Pearl-River-Ave-Las-Vegas-NV-89166/94714353_zpid/)
For Sale: $182,000

Beds: 4
Sqft: 2139
Baths: 3.0
Lot: 6969

See listings near NV (/nv/)

(yui-dt1000000-href-id)	Region (yui-dt1000000-href-link)	M-o-M (yui-dt1000000-href-mom)	Q-o-Q (yui-dt1000000-href-qoq)	Y-o-
☑	Nevada (http://www.zillow.com/local-info/NV-home-value/r_42/)	0.7%	4.8%	23.2
☑	Carson City Metro (http://www.zillow.com/local-info/NV-Carson-City-Metro-home-value/r_394444/)	0.1%	0.5%	-0.8
☐	Elko Metro (http://www.zillow.com/local-info/NV-Elko-Metro-home-value/r_394566/)	—	—	—
☐	Fallon Metro (http://www.zillow.com/local-info/NV-Fallon-Metro-home-value/r_394584/)	—	—	—
☐	Fernley Metro (http://www.zillow.com/local-info/NV-Fernley-Metro-home-value/r_394592/)	-0.3%	3.3%	6.5%

*Includes data and transactions through 05/31/2013 (2013-05-31)


Nevada
Las Vegas Metro
Reno Metro
Carson City Metro
$250k
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$170k
$160k
$150k
$140k
$130k
$120k
$110k
Zillow
2009
2010
2011
2012
2013

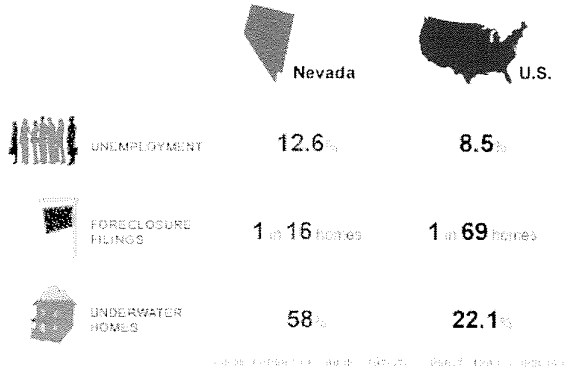
EXHIBIT 24

AMERICA'S CHOICE 2012

Nevada's triple economic whammy

By Tami Luhby @CNNMoney February 4, 2012: 12:36 PM ET

NEVADA VS. THE NATION



Nevada has the dubious distinction of leading the nation in unemployment, foreclosure filings and number of underwater homes. That's not good for the state's economy.

NEW YORK (CNNMoney) -- The Great Recession has dealt Nevada a losing hand.

The Silver State, which will hold the Republican caucus on Saturday, has the dubious distinction of leading the nation in unemployment, foreclosure filings and share of homes worth less than the mortgages on them.

The collapse of the housing market wreaked havoc on homeowners, but also caused the once-prospering construction industry to fold, sending the unemployment rate skyrocketing.

Adding to the state's woes, the national economic downturn hurt Nevada's lifeblood of tourism and gambling, costing even more jobs.

Nevada's unemployment rate soared to an all-time high of 14.9% in December 2010. While it's since fallen to 12.6%, that's still more than four percentage points higher than the national rate. And more than half of those out of work have been jobless for at least six months.

A staggering 1 in 16 homes have been hit with a foreclosure filing, versus the national rate of 1 in 69 homes. And more than half of borrowers owe more on their mortgages than their homes are worth, compared to just over a fifth nationwide.

Meanwhile, home prices continue to plummet. S&P/Case Shiller recently reported that Las Vegas **home prices** fell by 9.1% over the 12 months ending in November, the second-worst performance among the 20 cities surveyed. The reason: a high number of foreclosure sales.

The myriad **foreclosure prevention programs** rolled out by the Obama administration have done little to stabilize housing and the economy in this hard-hit state, housing counselors say.

"While they've been helpful, they haven't addressed the heart of the problem," said Gail Burks, chief executive of the Nevada Fair Housing Center, noting the unending drop in home values. "Nothing in Nevada has stemmed the tide and gotten the market back on track."

Top 10 turnaround towns

Maria Plumeri is one of those delinquent homeowners fighting to get a loan modification. She and her husband, Paul, stopped paying their mortgage in September after the $1,200 monthly tab became too much for them on his Social Security and pension and her disability checks.

Plumeri, who owes $189,000 on a home worth $32,000, is hardly alone in her Sandy Valley community. Neighbors on either side of her are also delinquent.

"If you drove around Sandy Valley, you'd see a lot of stickers from the bank. There has to be 20 houses with no one living in the them," said Plumeri, 64. "The government hasn't helped anyone here in Sandy Valley."

Experts cite several stumbling blocks, including an unwillingness of the banks to participate and the need to reduce the mortgage principal for so-called underwater borrowers.

Even if home prices rise 2% to 3% a year, it will take an average of 10 years for homeowners' debts to come in line with property values, said Nasser Daneshvary, director of Lied Institute for Real Estate Studies at the University of Nevada, Las Vegas. Many people aren't willing to wait that long, instead choosing to simply walk away.

Others say increasing employment is the key to saving the state's housing market. Not only is joblessness prompting people to default on their mortgages, but it's preventing them from buying properties.

"No matter what we do for them, no matter how much principal reduction we give them, if they don't have a job, they will default," said Leonard Chide, executive director of Neighborhood Housing Services of Southern Nevada. "If people had jobs, they'd pay their bills."

The good news is that a sliver of silver lining has appeared. The state's economy has begun to recover, though improvement is slow, said Stephen Brown, director of the Center for Business and Economic Research at the University of Nevada, Las Vegas. Tourism is picking up, as is gambling. But the housing and construction industries are expected to remain in the doldrums for the time being.

"Nevada cannot look to real estate for its economic growth right now," Brown wrote recently in his 2012 outlook for the state. "Diversification will pay dividends in the future."

First Published: February 3, 2012: 5:31 AM ET

EXHIBIT 25

PRINTTHIS

Nevada leads in underwater homes as market improves

CREATED MAR. 20, 2013

LAS VEGAS (AP) -- Analysts say Nevada still leads the nation in underwater mortgages, although rising home prices have improved the overall equity situation in the U.S.

A report released Tuesday by analytic firm Corelogic reports 52.4 percent of mortgaged properties in Nevada have negative equity. That's more than Florida, which ranks second with 40.2 percent of properties underwater, and third-place Arizona, with nearly 35 percent of properties underwater.

Underwater is also called negative equity and means a borrower owes more on their mortgage than their home is worth.

Negative equity in the U.S. totaled $628 billion at the end of the fourth quarter of 2012, down by $42 billion from the previous quarter.

Find this article at:
http://www.ktnv.com/news/local/199195901.html

☐ Check the box to include the list of links referenced in the article.

EXHIBIT 26

'Underwater' homes decline nationwide, report says

March 19, 2013 | By Andrew Khouri

Fewer borrowers nationwide owe more on their mortgages than their homes are worth, providing a boost to the housing recovery, according to a new report.

Roughly 200,000 borrowers escaped their "negative equity" positions during the final three months of last year, said real estate data provider CoreLogic. During all of last year, 1.7 million residential properties moved from negative to positive equity.

Overall, the nation's negative equity fell from $670 billion in the third quarter to $628 billion at the end of last year, CoreLogic of Irvine said Tuesday.

Southern California's housing recovery: An interactive map

A shortage of houses on the market has pushed up home prices in many markets, including California. But the supply could increase, cooling price increases, if more homeowners escape negative equity positions and regain the option of selling.

"The scourge of negative equity continues to recede across the country," CoreLogic Chief Executive Anand Nallathambi said in a statement. "With fewer borrowers underwater, the fundamentals underpinning the housing market will continue to strengthen."

The inability of homeowners to sell and move -- say, for a better job -- also places a drag on the overall economy.

In California, an estimated 1.7 million homes were underwater at year's end, or about a quarter of all homes with a mortgage. The Riverside-San Bernardino-Ontario metropolitan area had 35.7% of its

FROM THE ARCHIVES

More homeowners rise above water as prices gain

January 17, 2013

Home price gains drive drop in underwater mortgages
September 12, 2012

Shortage of homes for sale creates fierce competition
June 10, 2012

Negative equity remains a drag on housing market
May 24, 2012

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homes with a mortgage in negative equity — the fifth-highest percentage among the country's largest metropolitan areas.

Nationwide, 10.4 million homes, or 21.5% of all homes with a mortgage, remain in negative equity, a decline from 10.6 million homes in the third quarter.

ALSO:

Bay Area home prices up in February, sales down

Job growth accelerates as housing market strengthens

Rising housing prices are driving down affordability in California

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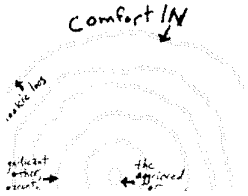

How not to say the wrong thing

Los Angeles Times

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EXHIBIT 27

Local Area Unemployment Statistics

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Unemployment Rates for States

Unemployment Rates for States
Monthly Rankings
Seasonally Adjusted
June 2013[P]

Rank	State	Rate
1	NORTH DAKOTA	3.1
2	SOUTH DAKOTA	3.9
3	NEBRASKA	4.0
4	VERMONT	4.4
5	HAWAII	4.6
5	IOWA	4.6
5	WYOMING	4.6
8	UTAH	4.7
9	MINNESOTA	5.2
9	NEW HAMPSHIRE	5.2
9	OKLAHOMA	5.2
12	MONTANA	5.4
13	VIRGINIA	5.5
14	KANSAS	5.8
15	ALASKA	6.1
15	WEST VIRGINIA	6.1
17	IDAHO	6.4
18	ALABAMA	6.5
18	TEXAS	6.5
20	MAINE	6.8
20	NEW MEXICO	6.8
20	WASHINGTON	6.8
20	WISCONSIN	6.8
24	MISSOURI	6.9
25	COLORADO	7.0
25	LOUISIANA	7.0
25	MARYLAND	7.0
25	MASSACHUSETTS	7.0
29	FLORIDA	7.1
30	OHIO	7.2
31	ARKANSAS	7.3
31	DELAWARE	7.3
33	NEW YORK	7.5

33	PENNSYLVANIA	7.5
35	OREGON	7.9
36	ARIZONA	8.0
37	CONNECTICUT	8.1
37	SOUTH CAROLINA	8.1
39	INDIANA	8.4
39	KENTUCKY	8.4
41	CALIFORNIA	8.5
41	DISTRICT OF COLUMBIA	8.5
41	TENNESSEE	8.5
44	GEORGIA	8.6
45	MICHIGAN	8.7
45	NEW JERSEY	8.7
47	NORTH CAROLINA	8.8
48	RHODE ISLAND	8.9
49	MISSISSIPPI	9.0
50	ILLINOIS	9.2
51	NEVADA	9.6

[p] = preliminary.
NOTE: Rates shown are a percentage of the labor force. Data refer to place of residence. Estimates for the current month are subject to revision the following month.

Last Modified Date: July 18, 2013

U.S. Bureau of Labor Statistics | Local Area Unemployment Statistics Information and Analysis, PSB Suite 4675, 2 Massachusetts Avenue, NE
Washington, DC 20212-0001
www.bls.gov/LAU | Telephone: 1-202-691-6392 | Contact LAUS

Databases, Tables & Calculators by Subject

Change Output Options: From: 2003 To: 2013 GO

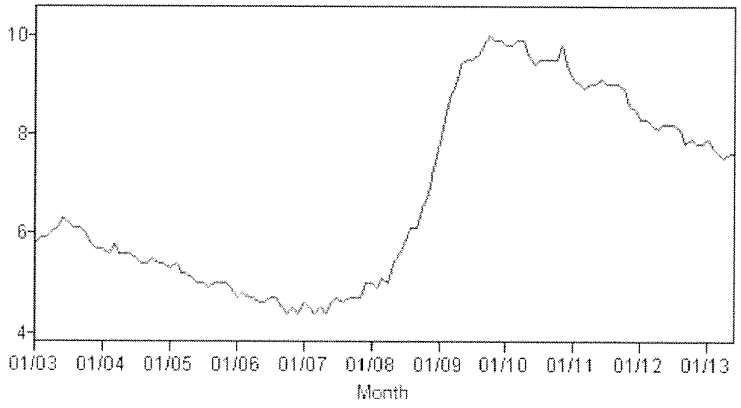
include graphs

More Formatting Options

Data extracted on: July 19, 2013 (5:25:13 PM)

Labor Force Statistics from the Current Population Survey

Series Id: LNS14000000
Seasonally Adjusted
Series title: (Seas) Unemployment Rate
Labor force status: Unemployment rate
Type of data: Percent or rate
Age: 16 years and over



Download: .xls

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2003	5.8	5.9	5.9	6.0	6.1	6.3	6.2	6.1	6.1	6.0	5.8	5.7	
2004	5.7	5.6	5.8	5.6	5.6	5.6	5.5	5.4	5.4	5.5	5.4	5.4	
2005	5.3	5.4	5.2	5.2	5.1	5.0	5.0	4.9	5.0	5.0	5.0	4.9	
2006	4.7	4.8	4.7	4.7	4.6	4.6	4.7	4.7	4.5	4.4	4.5	4.4	
2007	4.6	4.5	4.4	4.5	4.4	4.6	4.7	4.6	4.7	4.7	4.7	5.0	
2008	5.0	4.9	5.1	5.0	5.4	5.6	5.8	6.1	6.1	6.5	6.8	7.3	
2009	7.8	8.3	8.7	9.0	9.4	9.5	9.5	9.6	9.8	10.0	9.9	9.9	
2010	9.8	9.8	9.9	9.9	9.6	9.4	9.5	9.5	9.5	9.5	9.8	9.3	
2011	9.1	9.0	8.9	9.0	9.0	9.1	9.0	9.0	9.0	8.9	8.6	8.5	
2012	8.3	8.3	8.2	8.1	8.2	8.2	8.2	8.1	7.8	7.9	7.8	7.8	
2013	7.9	7.7	7.6	7.5	7.6	7.6							

Industries at a Glance	Location Quotient	FAQs	Careers @ BLS	Budget and Performance
Economic Releases	Injury And Illness	Glossary	Find It! DOL	No Fear Act
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EXHIBIT 28

Amendment No. 604

Assembly Amendment to Assembly Bill No. 444 (BDR S-817)
Proposed by: Assembly Committee on Legislative Operations and Elections
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted ☐	Lost ☐	_____	Adopted ☐	Lost ☐	_____
Concurred In ☐	Not ☐	_____	Concurred In ☐	Not ☐	_____
Receded ☐	Not ☐	_____	Receded ☐	Not ☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold underlining** is newly added transitory language.

NCA/BAW Date: 5/14/2013

A.B. No. 444—Provides for an audit of the fiscal costs of the death penalty.
(BDR S-817)

ASSEMBLY BILL NO. 444–COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

MARCH 25, 2013

Referred to Committee on Legislative Operations and Elections

SUMMARY—Provides for an audit of the fiscal costs of the death penalty. (BDR S-817)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to the death penalty; providing for an audit of the fiscal costs of the death penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill requires the Legislative Auditor to conduct an audit of the fiscal costs of the death penalty in Nevada. The audit must include, without limitation, an examination and analysis of the costs of prosecuting and adjudicating capital cases compared to noncapital cases. The Legislative Auditor is required to present a final written report of the audit to the Audit Subcommittee of the Legislative Commission on or before January 31, 2015.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 1. The Legislative Auditor shall conduct an audit of the fiscal costs associated with the death penalty in this State.

2. The audit conducted pursuant to this section must include an examination and analysis concerning the costs of prosecuting and adjudicating capital murder cases as compared to noncapital murder cases, including, without limitation, the costs relating to the death penalty borne by the State of Nevada and by the local governments in this State at each stage of the proceedings in capital murder cases, including, without limitation, pretrial costs, trial costs, appellate and postconviction costs and costs of incarceration such as:

(a) The costs of legal counsel involved in the prosecution and defense of a capital murder case for all pretrial, trial and postconviction proceedings; and

(b) Additional procedural costs involved in capital murder cases as compared to noncapital murder cases, including, without limitation, costs relating to:

(1) The processing of bonds, including costs for investigation by prosecutors, police and other staff;

(2) The investigation of a case before a person is charged with a crime, including costs for investigation by the prosecution and the defense;

(3) Pretrial motions;

(4) Extradition;

(5) Psychiatric and medical evaluations;

(6) Expert witnesses;

(7) Juries;

(8) Sentencing proceedings;

(9) Appellate and postconviction proceedings, including motions, writs of certiorari and state and federal petitions for postconviction relief;

(10) Requests for clemency;

(11) The incarceration of persons awaiting trial in capital murder cases and persons sentenced to death; and

(12) The execution of a sentence of death, including costs of facilities and staff.

3. The audit must also examine the fiscal costs, including any potential cost savings, of the death penalty on:

(a) The use of plea bargaining in death eligible cases;

(b) Strategic litigation choices by the prosecution and the defense; and

(c) Sentencing.

4. The audit must be conducted:

(a) In the manner set forth in NRS 218G.010 to 218G.450, inclusive, and for the purposes of the audit conducted pursuant to this section, the provisions of those sections are applicable to a local government in the same manner as to an agency of the State.

(b) In accordance with applicable ~~[accounting]~~ **auditing** standards set forth by the United States Government Accountability Office, including standards relating to the professional qualifications of the auditors, the quality of the audit work and the characteristics of professional and meaningful reports.

5. In determining the methodologies to be used, the Legislative Auditor shall review and consider audits, reports and data relating to the costs of the death penalty conducted or published by other states and the United States Department of Justice and the Administrative Office of the United States Courts. Methodologies and data to be considered must include, at a minimum, the cost estimation approach, top-down accounting method, retrospective observational design, independent statistical analyses, administrative databases and self-reported data.

6. On or before January 31, 2015, the Legislative Auditor shall present a final written report of the audit to the Audit Subcommittee of the Legislative Commission created by NRS 218E.240.

Sec. 2. This act becomes effective upon passage and approval.

NEVADA LEGISLATURE
The People's Branch of Government

77th (2013) Session
Vote on AB444 (1st Reprint) on Assembly Final Passage
May 17, 2013 at 8:04 PM

| 38 Yea | 1 Nay | 3 Excused | 0 Not Voting | 0 Absent |

Paul Aizley	Yea
Paul Anderson	Yea
Elliot Anderson	Yea
Teresa Benitez-Thompson	Yea
David Bobzien	Yea
Irene Bustamante Adams	Yea
Maggie Carlton	Yea
Richard Carrillo	Yea
Lesley Cohen	Yea
Skip Daly	Yea
Olivia Diaz	Excused
Marilyn Dondero Loop	Yea
Wesley Duncan	Yea
Andy Eisen	Yea
John Ellison	Yea
Michele Fiore	Yea
Lucy Flores	Yea
Jason Frierson	Yea
Tom Grady	Yea
John Hambrick	Nay
Ira Hansen	Yea
Cresent Hardy	Yea
James Healey	Yea
Pat Hickey	Yea
Joseph Hogan	Excused
William Horne	Yea
Marilyn Kirkpatrick	Yea
Randy Kirner	Yea

Peter Livermore	Yea
Andrew Martin	Yea
Harvey Munford	Yea
Dina Neal	Yea
James Ohrenschall	Yea
James Oscarson	Yea
Peggy Pierce	Excused
Ellen Spiegel	Yea
Michael Sprinkle	Yea
Lynn Stewart	Yea
Heidi Swank	Yea
Tyrone Thompson	Yea
Jim Wheeler	Yea
Melissa Woodbury	Yea

MINUTES OF THE FLOOR MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-Seventh Session
March 25, 2013

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 11:47 a.m. on Monday, March 25, 2013, behind the bar of the Assembly.

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Wesley Duncan
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Andrew Martin
Assemblyman Harvey J. Munford
Assemblyman James Oscarson

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Pat Hutson, Committee Manager
Karen Pugh, Committee Secretary

Chair Ohrenschall:
We have before us seven bill draft requests (BDRs) for introduction. They are as follows:

BDR 23-815—Requires a cooling off period before former public officers who served on certain public bodies may serve as paid lobbyists on matters under consideration by those public bodies. (Later introduced as Assembly Bill 438.)

BDR 24-985—Revises provisions governing the dates for certain elections. (Later introduced as Assembly Bill 439.)

BDR 24-814—Makes various changes related to elections. (Later introduced as Assembly Bill 441.)

BDR 24-816—Revises provisions relating to campaign practices. (Later introduced as Assembly Bill 442.)

BDR 23-988—Revises provisions governing ethics in government. (Later introduced as Assembly Bill 443.)

BDR S-817—Provides or an audit of the fiscal costs of the death penalty. (Later introduced as Assembly Bill 444.)

BDR 17-984—Revises provisions governing requests for the drafting of legislative measures. (Later introduced as Assembly Bill 446.)

I will take a motion from the Committee to introduce these BDRs.

ASSEMBLYMAN HICKEY MOVED TO INTRODUCE BDR 23-815, BDR 24-985, BDR 24-814, BDR 24-816, BDR 23-988, BDR S-817, BDR 17-984.

ASSEMBLYWOMAN FLORES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We also have a work session document (Exhibit C) for Assembly Joint Resolution 6, which was presented before this Committee on March 21, 2013.

Assembly Joint Resolution 6: **Recognizes Nevada's partnership and friendship with, and expresses support for, the State of Israel. (BDR R-458)**

There are no amendments proposed for this resolution. April 4, 2013, is Jewish Federation of Las Vegas Day at the Legislature, and there will be a Holocaust remembrance event at the Governor's Mansion that evening.

I will accept a motion from the Committee to do pass this resolution as originally drafted.

ASSEMBLYWOMAN FLORES MOTIONED TO DO PASS ASSEMBLY JOINT RESOLUTION 6.

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Having no further business, I will close this meeting of the Assembly Committee on Legislative Operations and Elections. The meeting is adjourned [at 11:50 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karen Pugh
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: March 25, 2013 **Time of Meeting:** 11:47 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda (none)
	B		Attendance Roster (none)
A.J.R. 6	C	Susan Scholley	Work session document

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 77424

RESPONDENT'S APPENDIX
Volume 2

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Counsel for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
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Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar # 012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

INDEX

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 1st day of April, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

JAMIE J. RESCH, ESQ.
Counsel for Appellant

CHARLES W. THOMAN
Chief Deputy District Attorney

BY */s/ J. Garcia*
Employee,
Clark County District Attorney's Office

CWT/Andrea Orwoll/jg

E-MAIL TO THE COMMISSION:

Robert Black. July 30, 2006.

Celeste Fitzgerald. November 3, 2006.

September 5, 2006.

Dr. Laura Schafer. November 27, 2006.

LETTERS TO THE COMMISSION SUPPLEMENTING PREVIOUS TESTIMONY:

Robert Blecker, Professor of Law, New York Law School. October 24, 2006.

John P. (Jack) Callahan, Private Citizen. October 2006.

Celeste Fitzgerald, Program Director, New Jerseyans for Alternatives to the Death Penalty. November 1, 2006.

Wanda D. Foglia, J.D., Ph.D., Professor of Law and Justice Studies, Rowan University. October 17, 2006.

Michele Warner Hammel, Director, Office of External Affairs, on behalf of Acting Commissioner George Hayman, Department of Corrections. October 26, 2006.

Barry C. Scheck, Esq., Co-Director, Innocence Project. October 18, 2006.

POSITION PAPER:

The Association of Criminal Defense Lawyers of New Jersey. July 13, 2006.

BRIEFS:

The Association of Criminal Defense Lawyers of New Jersey, The American Civil Liberties Union of New Jersey, and New Jerseyans for a Death Penalty Moratorium.

Amended Brief of Amici Curiae Brief, State v. Daron Josephs, Supreme Court of New Jersey, Docket No. 49, 559. July 26, 2001.

Roy G. Greenman, Esq., Of Counsel and on the Brief. Amended Brief and Appendix on Behalf of Amicus Curiae, Association of Criminal Defense Lawyers of New Jersey, State v. Brian Wakefield, Supreme Court of New Jersey, Docket Number 56,049. September 21, 2005.

PUBLIC HEARING WRITTEN TESTIMONY:

July 19, 2006

Statement by Most Reverend John M. Smith, Bishop of the Catholic Diocese of Trenton.

Statement by Catholic Bishops of New Jersey: Most Reverend John J. Myers, Archbishop of Newark; Most Reverend Joseph A. Galante, Bishop of Camden; Most Reverend Andrew Pataki, Bishop of the Byzantine Catholic Eparchy of Passaic; Most Reverend Joseph Younan, Bishop of Our Lady of Deliverance Diocese; Most Reverend Paul G. Bootkoski, Bishop of Metuchen; Most Reverend Arthur J. Serratelli, Bishop of Paterson; Most Reverend Edgar M. da Cunha, Auxillary Bishop of Newark; Most Reverend Thomas A. Donato, Auxillary Bishop of Newark; Most Reverend John W. Flesey, Auxillary Bishop of Newark.

Statement by Sharon Hazard-Johnson including the following attachment: Sharp, Dudley. "The Death Penalty as a Deterrent-Confirmed-Seven Recent Studies." Justice Matters, Updated: November 12, 2004.

Statement by Barry Scheck including the following CD-ROM materials and resources: **Articles:** "Follow the DNA to find the truth." The Roanoke Times 16 December 2005; "Wrong on Wrongful Executions." Theodore M. Shaw, Washington Post 4 July 2006;

"The Cantu Case: Death and Doubt." Lise Olsen, Houston Chronicle 21 November 2005; " I didn't do it. But I know who did: New evidence suggests a 1989 execution in Texas was a case of mistaken identity." Marice Possley and Steve Mills, Chicago Tribune, 25 June 2006; "Case Dropped Against New Jersey Man After 18 Years." Laura Mansnerus, New York Times 27 May 2006; **Case Law:** New Jersey v. Peterson, 836A.2d 821, 364 NJ Super 387 (App. Div. 2003); **Web Resources:** Case study profiles of David Vasquez, Christopher Ochoa and Jerry Frank Townsend: www.innocenceproject.org; "Report on the Peer Review o f the Expert Testimony in the Cases of State of Texas v. Cameron Todd Willingham and State of Texas v. Ernest Ray Willis.": www.innocenceproject.org .

Statement by Gerald L. Zelizer, Rabbi, Congregation Neve Shalom, Metuchen, New Jersey and Resolution adopted by the Rabbinical Assembly Proceedings 1996.

Statement by Lorry W. Post and the following report: "Not In Our Name – Murder Victims' Families Speak Out Against the Death Penalty." 2003.

Statement by Reverend Jack Johnson, The New Jersey Council of Churches.

Statement by Richard C. Dieter, Executive Director, Death Penalty Information Center, Washington, D.C.

Statement by Mathew B. Johnson, Ph.D., Associate Professor of Psychology, John Jay College of Criminal Justice, Peoples' Organization for Progress and the following article: Gil, Johnson, and Johnson. "Secondary trauma associated with state executions: testimony regarding execution procedures." 34 J. Psych & Law 25, Spring 2006.

Statement by Sandra K. Manning, Esq. and the following reports: "Innocence Lost in New Jersey." Update: July 2006 and "New Jerseyans' Opinions on the Death Penalty." Conducted for New Jerseyans for Alternatives to the Death Penalty and conducted by Rutgers – Bloustein Center for Survey Research, Patrick Murray, Director. April 2005.

Statement by Edith Frank, Director, League of Women Voters of New Jersey and message from Mary G. Wilson, President, League of Women Voters of New Jersey.

Statement by Marilyn Zdobinski, Esq. and statement by Marilyn Flax.

Statement by Dr. Robert Johnson, Professor, Department of Justice, Law and Society at American University, Washington, D.C.

Statement by Alisa Mariani, Vice President, Somerset County Chapter, American Civil Liberties Union of New Jersey.

September 13, 2006

Statement by Senator Raymond J. Lesniak.

Statement by Sandra Place.

Statement by Patricia Harrison.

Statement by Jo Anne Barlieb.

Statement by Richard Pompelio, New Jersey Crime Victims' Law Center.

Statement by Robert J. Del Tufo.

Statement by Patrick Murray and the following report: "Public Opinion on the Death Penalty in New Jersey." 15 August 2006, prepared for New Jerseyans for Alternatives to the Death Penalty.

Statement by Vicki Schieber.

Statement by Juan Roberto Melendez-Colon.

Statement by Daniel J. Carluccio, Esq.

Statement by Marilyn Zdobinski and statement by Marilyn Flax.

Statement by Jonathan E. Gradess, Executive Director, New York State Defenders Association.

Statement and article by Sharon Hazard-Johnson, "Murder Victim's Daughter Speaks Out." The Press of Atlantic City 27 June 2004.

Statement by Brian Kincade, Esq.

Statement by Anna "Cuqui" Rivera, Latino Leadership Alliance of New Jersey.

Statement by Joyce Marsh.

September 27, 2006

Statement by Bill Babbitt, Member, Board of Directors Murder Victims' Families for Human Rights.

Statement by Kirk Bloodsworth.

Statement by Wanda Foglia, Ph.D., Professor Coordinator of the Master of Arts in Criminal Justice Program, Rowan University and the following articles: Bowers, William J. and Foglia, Wanda D. "Still Singularly Agonizing: Law's Failure to Purge Arbitrariness from Capital Sentencing." Criminal Bulletin and Antonio, Michael E., Ph.D. " Jurors' Emotional Reactions to Serving on a Capital Trial." Judicature, March-April 2006.

Statement by James E. Harris, President, New Jersey State Conference of the National Association for the Advancement of Colored People.

Statement by Ken Wolski.

Statement by Marilyn Zdobinski, Esq.

October 11, 2006

Statement by Honorable David S. Baime, J.A.D., Retired, Special Master for Proportionality Review.

Statement by Robert Blecker, Professor of Law, New York Law School and the following articles: Blecker and Liebman, "Let's Break the Impasse on Death Penalty." Houston Chronicle 23 May 2003; Blecker, Robert "Who Deserves to Die? A Time to Reconsider." New York Law Journal; Blecker, Robert "The Death Penalty is Delineated by the Old Testament." USA Today November 2004; Blecker, Robert "Ancient Greece's Death Penalty Dilemma and its Influence on Modern Society." USA Today July 2006; Blecker, Robert "Among Killers, Searching for the Worst of the Worst." The Washington Post 3 December 2000.

Statement by Jeffrey Fagan, Professor of Law & Public Health, Co-Director, Center for Crime, Community and Law, Columbia University and the following article: Leibman, Fagan, West and Lloyd "Capital Attrition: Error Rates in Capital Cases, 1973-1995." 78 Texas Law Review 1839, 2000.

Statement by Claudia Van Wyk, Esq., Attorney, Gibbons, Del Deo, Dolan, Griffinger & Vecchione; Formerly an attorney in the Office of the Public Defender, Appellate Section and letter brief submitted on behalf of New Jerseyans for Alternatives to the Death Penalty to the New Jersey Supreme Court commenting on the December 15, 2005 Special Master Report dated June 14, 2006.

Glenn, Robin Esq. "A Review of the New Jersey AOC Narrative Case Summaries."

October 25, 2006

Statement by Kent Scheidegger, Legal Director, Criminal Justice Legal Foundation.

Statement by Sam Millsap, Former Prosecutor from San Antonio, Texas.

Statement by Charles J. Ogletree, Jr., Jesse Climenko Professor of Law, Executive Director, Charles Hamilton Houston Institute for Race and Justice, Harvard Law School.

Statement by Gary J. Hilton, Sr., Former Acting Commissioner of the New Jersey Department of Corrections.

Statement by Robert Johnson, Professor of Justice, Law and Society, American University.

Statement by Molly Weigel.

Statement by Kathleen M. Hiltner, Executive Director, Center for "Traumatic Grief and Victim Services".

Statement by Janet Poinsett.

Statement by David Shepard.

Statement by Bryan Miller.

Statement by Kathryn Schwartz.

Statement by Bishop E. Roy Riley, New Jersey Synod, Evangelical Lutheran Church in America.

Statement by David A. Ruhnke, Esq.

Statement by Clare Laura Hogenauer.

Statement by Honorable Joseph Azzolina.

Statement by Marilyn G. Zdobinski.

Statement by Sharon Hazard-Johnson.

WORKING SESSION

August 16, 2006

Power Point presentation by R. Erik Lillquist, Professor, Seton Hall University School of Law, "Death Penalty Justifications and Procedural Improvements".

Statement by Honorable John J. Gibbons, Former Chief Judge, United States Court of Appeals, Third Circuit.

Statement by Joseph K. Krakora, Esq., Director, Capital Litigation, New Jersey Office of the Public Defender.

APPENDIX

ABOUT THE MEMBERS OF THE COMMISSION

REVEREND M. WILLIAM HOWARD, JR., CHAIRMAN

Dr. Howard has served as pastor of Bethany Baptist Church in Newark, New Jersey since May, 2000. From 1992 to 2000, Dr. Howard was President of New York Theological Seminary. Prior to that Dr. Howard was a member of the national staff of The Reformed Church in America; Moderator of the Programme to Combat Racism of the World Council of Churches; President of the National Council of Churches; and President of the American Committee on Africa.

Dr. Howard is a graduate of Morehouse College and Princeton Theological Seminary. He is a member of the Board of Governors of Rutgers University and a member of the Council on Foreign Relations. His prior voluntary board service includes the National Urban League and the Children's Defense Fund, among others.

JAMES P. ABBOTT

James P. Abbott is the Chief of Police in West Orange, New Jersey. He received his Bachelor of Arts from Kean College in 1982 and Master of Arts from Seton Hall University in 1990. He is a graduate of Northwestern University's Executive Management Program, West Point Command and Leadership Program, the FBI Law Enforcement Executive Development Seminar at Quantico, Virginia and the New Jersey Executive Police Institute at Fairleigh Dickenson University. He is an active member of the Police Executive Research Forum, the International Association of Chiefs of Police, the National Association of Chiefs of Police, the New Jersey State Association of Chiefs of Police and the Immediate Past President of the Essex County Chiefs of Police Association.

HONORABLE JAMES H. COLEMAN, JR.

Honorable James H. Coleman, Jr. served on the New Jersey Supreme Court from 1994-2003. He has served as Presiding Judge of the New Jersey Superior Court, Appellate Division (1987-1994), Judge of the Appellate Division (1981-1987), Judge of the Superior Court, Law Division (1978-1980), Judge of the Union County Court (1973-1978) and Judge in the New Jersey Workers' Compensation Court (1964-1973). He received his B.A. from Virginia State University in 1956 and J.D. from Howard University School of Law in 1959. Justice Coleman holds Honorary Doctor of Laws from Virginia State University, Widener University and Essex County College.

Justice Coleman is currently Of Counsel to Porzio, Bromberg & Newman, P.C. in Morristown, New Jersey.

EDWARD J. DE FAZIO

Edward J. De Fazio is the Hudson County Prosecutor. He is a lifelong resident of Hudson County. He graduated from Fordham University, Bronx, New York in 1974 and received his Juris Doctorate

degree from Seton Hall Law School in 1978. Prosecutor De Fazio is admitted to practice law in New Jersey, New York and before the United States Supreme Court. His legal career began as an Assistant Hudson County Prosecutor in 1978 until his appointment as the Chief Judge of the Jersey City Municipal Court in 1989. He returned to the Hudson County Prosecutor's Office in 1991 as the First Assistant where he was in charge of the day-to-day operations of the legal staff. From 2001 to 2002 Prosecutor De Fazio served as a Superior Court Judge for the State of New Jersey. He left the bench on July 29, 2002 to assume the position of Hudson County Prosecutor.

Prosecutor De Fazio manages an office of approximately 285 legal, investigative and support personnel responsible for the prosecution of all criminal and juvenile delinquency matters initiated in Hudson County. Prosecutor De Fazio is a member of the New Jersey and the Hudson County Bar Associations. He is a member and past president of the North Hudson Lawyers' Club. Prosecutor De Fazio has also been selected to receive the 2006 Professional Lawyer of the Year Award for Hudson County. Prosecutor De Fazio is a member of the New Jersey Parole Board Advisory Commission. He has served as the State Director to the Board of the National District Attorneys' Association since 2004.

KATHLEEN GARCIA

Kathy Garcia has extensive experience working with co-victims of homicide. She has been involved in the victims' rights and services field since the 1984 murder of her nephew. She is a Trustee for the New Jersey Crime Victim's Law Center, located in Sparta. She is also the Founder and Program Director of the Center For Traumatic Grief And Victim Services, based in Moorestown, a non-profit organization providing comprehensive services to those impacted by sudden death and violent crime.

Ms. Garcia served on the Board of Directors of the New Jersey Coalition For Crime Victims' Rights, which successfully lobbied to amend the State Constitution in 1991 to add a provision concerning the rights of crime victims. She also served on the Citizens' Advisory Council to the Chairman of the New Jersey Victims of Crime Compensation Board and has been an instructor for the Burlington County Police Academy since 1999.

KEVIN HAVERTY

Kevin Haverty is an attorney in private practice with the law firm of Williams Cuker Berezofsky in Cherry Hill. He is a 1981 graduate of Rutgers University with a B.A. in Political Science and graduated with high honors from Rutgers Law School in Camden in 1992 where he was a staff and articles editor on the Rutgers Law Journal. In addition to his private practice, from 1994 to 1997 he taught Legal Research and Writing at Rutgers-Camden as a part-time adjunct professor and has been involved in several precedent-setting cases before the appeals courts of this state and federal district court. He has also been a lecturer on numerous occasions on various aspects of substantive and procedural law in New Jersey.

EDDIE HICKS

Eddie Hicks resides in Galloway Township NJ. He lost his oldest daughter to murder in 2000. He retired from the Atlantic City Fire department after 25 years of service. He is a Marine Corps veteran.

He is a member of Murder Victims Families for Reconciliation (MVFR). He is a volunteer for the Department of Correction's Focus on the Victim program. He is a past Volunteer for the Superior Court of New Jersey on the Juvenile Conference Committee, Atlantic County. He is a Past President of the Atlantic City Chapter of the International Association of Black Professional Firefighters.

THOMAS F. KELAHER

Thomas F. Kelaher is currently Ocean County Prosecutor, confirmed by the N.J. Senate in 2002. He was a senior partner in the law firm of Kelaher, Garvey, Ballou and Van Dyke in Toms River. He graduated with a B.A. in Business Administration in 1954 from St. Peter's College and received his J.D. from Seton Hall University School of Law in 1960. He is a certified Civil Trial Attorney.

In 1963, New Jersey Governor Richard J. Hughes appointed him as Deputy Attorney General, served as an Assistant Ocean County Prosecutor from 1969 to 1974 and later served as an Ocean County municipal prosecutor for numerous municipalities. He has served as President of the Ocean County Bar Association, Chairman of its Ethics Committee, criminal law instructor for the Ocean County Police Academy from 1969 to 1996, member of the Electronic Recording of Confessions committee appointed by the Chief Justice of the N.J. Supreme Court, and Chairman of the Ocean County Jail Study Commission. He is admitted to practice before the N.J. Supreme Court, U.S. Supreme Court and U.S. Court of Military Appeals. In 2004-2005 served as President of the Prosecutors Association of N.J. and member of its Ethics Committee.

Prosecutor Kelaher is a retired Lt. Colonel from the United State Marine Corps Reserve (1979).

HONORABLE STUART RABNER

As the chief law enforcement officer in the State, Stuart Rabner oversees the Division of Criminal Justice, the New Jersey State Police, the Division of Consumer Affairs and the Division of Civil Rights, in addition to overseeing seven other agencies that are part of the department. He is also the chief legal representative to all other departments in State government through the Division of Law.

Mr. Rabner served in the U.S. Attorney's Office in Newark from September 1986 to December 2005. He was chief of the criminal division when he left to join the Corzine administration. Previously, he was first assistant U.S. attorney, executive assistant U.S. attorney, chief of the terrorism unit, and deputy chief of the special prosecutions division.

Mr. Rabner graduated summa cum laude in 1982 from the Woodrow Wilson School of Public and International Affairs at Princeton University. He graduated cum laude from Harvard Law School in 1985.

HONORABLE JOHN F. RUSSO

Honorable John F. Russo, Sr., served as New Jersey Senate President from 1986 to 1989 and as Acting Governor on many occasions. He represented Ocean County's 10th District in the Senate from 1974 to 1992. Senator Russo served as Majority Leader in 1978 and again in 1984 and 1985 and was the primary

sponsor of New Jersey's death penalty law, which was enacted in 1982. Senator Russo was a prosecutor in Ocean County for ten years. He is a 1955 graduate of Notre Dame University with honors and received his Juris Doctor from Columbia University in 1958.

Senator Russo is a member of the Board of Governors of Rutgers University. He is a partner in the Princeton Public Affairs Group, Inc.

RABBI ROBERT SCHEINBERG

Rabbi Robert Scheinberg is the rabbi of the United Synagogue of Hoboken. He is an adjunct instructor of Liturgy at the Jewish Theological Seminary and the Academy for Jewish Religion. Rabbi Scheinberg was a Wexner Graduate Fellow at the Jewish Theological Seminary, where he was ordained and where he is a doctoral candidate in Jewish liturgy. He is active in civic affairs in Hoboken and throughout Hudson County.

YVONNE SMITH SEGARS

As New Jersey's Public Defender, Yvonne Smith Segars oversees an agency of 1,300 employees, including over 500 staff attorneys and the services of over 500 outside counsel. The Office of the Public Defender provides a multitude of services to indigent adults and juveniles, particularly in the area of criminal defense.

Prior to her appointment, Public Defender Segars served as the First Assistant Deputy Public Defender for the Office of the Public Defender in the Essex Region. Ms. Segars serves as Vice-Chair of the New Jersey Commission to Review Criminal Sentencing. She is also a member of the Chief Defender Policy Group of the National Legal Aid and Defenders Association, Member of the Board for the Office of Child Advocate, a member of the Governor's Cabinet for Children and a member of the Criminal Disposition Committee. In addition she serves as a core faculty member for the Justice Management Institute, the National Association of Drug Court Professionals and the National Drug Court Institute.

Ms. Segars received her J.D. from Rutgers School of Law, Newark, and her B.A. in psychology from Kean University.

MILES S. WINDER, III

Miles S. Winder III is an attorney in private practice in Bernardsville, New Jersey. He graduated from Oberlin College in 1969 and received his Juris Doctor degree from University of Denver College of Law in 1972. He currently serves on the New Jersey State Bar Association Board of Trustees. He has previously served as President of the Somerset County Bar Association, Chair of the Real Property Probate and Trust Law Section of the New Jersey State Bar Association, and Chair of the District XIII Ethics Committee.

ACKNOWLEDGEMENTS

COMMISSION STAFF

Office of Legislative Services
Judiciary Section

The Commission also wishes to acknowledge and thank the following offices, units and persons from the New Jersey Office of Legislative Services for their assistance to the Commission in its work.

OFFICE OF PUBLIC INFORMATION

ADMINISTRATIVE UNIT

CENTRAL MANAGEMENT UNIT

DATA MANAGEMENT UNIT

Recognition to the Hearing Reporter Unit; Susan Swords, Acting Coordinator. Special appreciation to Ms. Brokaw, Ms. Sapp and Ms. Robbins for expeditious production of transcripts. Thanks to the OLS Library; Peter J. Mazzei, Manager, Library Services.

Special appreciation to Judiciary Section members for assistance rendered at hearings and meetings with particular appreciation to Nina Riccardi for managing the production of this report.

ENABLING LEGISLATION OF THE COMMISSION

P.L. 2005, CHAPTER 321

AN ACT creating a study commission on the death penalty and imposing a moratorium on executions and amending P.L.1983, c.245.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that:

a. Life is the most valuable possession of a human being; the State should exercise utmost care to protect its residents' lives from homicide, accident, or arbitrary or wrongful taking by the State;

b. The experience of this State with the death penalty has been characterized by significant expenditures of money and time;

c. The financial costs of attempting to implement the death penalty statutes may not be justifiable in light of the other needs of this State;

d. There is a lack of any meaningful procedure to ensure uniform application of the death penalty in each county throughout the State;

e. There is public concern that racial and socio-economic factors influence the decisions to seek or impose the death penalty;

f. There has been increasing public awareness of cases of individuals wrongfully convicted of murder, in New Jersey and elsewhere in the nation;

g. The Legislature is troubled that the possibility of mistake in the death penalty process may undermine public confidence in our criminal justice system;

h. The execution of an innocent person by the State of New Jersey would be a grave and irreversible injustice;

i. Many citizens may favor life in prison without parole or life in prison without parole with restitution to the victims as alternatives to the death penalty; and

j. In order for the State to protect its moral and ethical integrity, the State must ensure a justice system which is impartial, uncorrupted, equitable, competent, and in line with evolving standards of decency.

2. a. There is established the New Jersey Death Penalty Study Commission.

b. The commission shall study all aspects of the death penalty as currently administered in the State of New Jersey, including but not limited to the following issues:

(1) whether the death penalty rationally serves a legitimate penological intent such as deterrence;

(2) whether there is a significant difference between the cost of the death penalty from indictment to execution and the cost of life in prison without parole; in considering the overall cost of the death penalty in New Jersey, the cost of all the capital trials that result in life sentences as well as the death sentences that are reversed on appeal must be factored into the equation;

(3) whether the death penalty is consistent with evolving standards of decency;

(4) whether the selection of defendants in New Jersey for capital trials is arbitrary, unfair, or discriminatory in any way and there is unfair, arbitrary, or discriminatory variability in the sentencing phase or at any stage of the process;

(5) whether there is a significant difference in the crimes of those selected for the punishment of death as opposed to those who receive life in prison;

(6) whether the penological interest in executing some of those guilty of murder is sufficiently compelling that the risk of an irreversible mistake is acceptable; and

(7) whether alternatives to the death penalty exist that would sufficiently ensure public safety and address other legitimate social and penological interests, including the interests of families of victims.

c. The commission will propose new legislation, if appropriate.

d. The commission shall be composed of 13 members. Appointments should reflect the diversity of the population of New Jersey. Members will be appointed as follows:

(1) five members appointed by the Governor, at least one of whom shall be appointed from each of the following groups: Murder Victims Families for Reconciliation and the New Jersey Crime Victims' Law Center; and at least two of whom shall be appointed from the religious/ethical community in New Jersey;

(2) two members appointed by the President of the Senate, one of whom shall be a Republican, and one of whom shall be a Democrat;

(3) two members appointed by the Speaker of the General Assembly, one of whom shall be a Republican, and one of whom shall be a Democrat;

(4) the Public Defender or his designee;

(5) the Attorney General or his designee;

(6) the President of the New Jersey State Bar Association or his designee; and

(7) a representative of the County Prosecutors Association of New Jersey.

e. Members shall be appointed within 45 days of enactment.

f. The Office of Legislative Services shall provide staffing for the work of the commission.

g. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to the commission for its purposes.

h. The commission shall choose a chairperson from among its members.

i. Any vacancy in the membership shall be filled in the same manner as the original appointment.

j. The commission is entitled to the assistance and service of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ stenographic and clerical assistance and to incur traveling or other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

k. The commission may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Governor and the Legislature, along with any legislation it desires to recommend for adoption by the Legislature, no later than November 15, 2006.

3. Beginning on the effective date of this act, if a defendant has been sentenced to death pursuant to subsection c. of N.J.S.2C:11-3, the sentence of death will not be executed prior to 60 days after the issuance of the commission's report and recommendations.

4. Section 5 of P.L.1983, c.245 (C.2C:49-5) is amended to read as follows:

C.2C:49-5 Warrant of execution; date.

5. a. When a person is sentenced to the punishment of death, the judge who presided at the sentencing proceeding or if that judge is unavailable for any reason, then the assignment judge of the vicinage and, if not available, then any Superior Court judge of the vicinage, shall make out, sign and deliver to the sheriff of the county, a warrant directed to the commissioner, stating the conviction and sentence, appointing a date on which the sentence shall be executed, and commanding the commissioner to execute the sentence on that date except as provided in section 3 of P.L.2005, c.321.

b. If the execution of the sentence on the date appointed shall be delayed while the conviction or sentence is being appealed, the judge authorized to act pursuant to subsection a. of this section, at the conclusion of the appellate process, if the conviction or sentence is not set aside, shall make out, sign and deliver another warrant as provided in subsection a. of this section. If the execution of the sentence on the date appointed is delayed by any other cause, the judge shall, as soon as such cause ceases to exist, make out, sign and deliver another warrant as provided in subsection a. of this section.

c. The date appointed in the warrant shall be not less than 30 days and not more than 60 days after the issuance of the warrant. The commissioner may fix the time of execution on that date.

5. This act shall take effect immediately.

Approved January 12, 2006.

CURRENT MURDER STATUTE
N.J.S.A. 2C:11-3

2C:11-3. Murder.

a. Except as provided in N.J.S.2C:11-4, criminal homicide constitutes murder when:

(1) The actor purposely causes death or serious bodily injury resulting in death; or

(2) The actor knowingly causes death or serious bodily injury resulting in death; or

(3) It is committed when the actor, acting either alone or with one or more other persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual assault, arson, burglary, kidnapping, carjacking, criminal escape or terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of immediate flight therefrom, any person causes the death of a person other than one of the participants; except that in any prosecution under this subsection, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

b. (1) Murder is a crime of the first degree but a person convicted of murder shall be sentenced, except as provided in subsection c. of this section, by the court to a term of 30 years, during which the person shall not be eligible for parole, or be sentenced to a specific term of years which shall be between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole.

(2) If the victim was a law enforcement officer and was murdered while performing his official duties or was murdered because of his status as a law enforcement officer, the person convicted of that murder shall be sentenced, except as otherwise provided in subsection c. of this section, by the court to a term of life imprisonment, during which the person shall not be eligible for parole.

(3) A person convicted of murder and who is not sentenced to death under this section shall be sentenced to a term of life imprisonment without eligibility for parole if the murder was committed under all of the following circumstances:

(a) The victim is less than 14 years old; and

(b) The act is committed in the course of the commission, whether alone or with one or more persons, of a violation of N.J.S.2C:14-2 or N.J.S.2C:14-3.

(4) If the defendant was subject to sentencing pursuant to subsection c. and the jury or court found the existence of one or more aggravating factors, but that such factors did not outweigh the mitigating factors found to exist by the jury or court or the jury was unable to reach a unanimous verdict as to the weight of the factors, the defendant shall be sentenced by

the court to a term of life imprisonment during which the defendant shall not be eligible for parole.

With respect to a sentence imposed pursuant to this subsection, the defendant shall not be entitled to a deduction of commutation and work credits from that sentence.

c. Any person convicted under subsection a.(1) or (2) who committed the homicidal act by his own conduct; or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value; or who, as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded or by threat or promise solicited the commission of the offense, or, if the murder occurred during the commission of the crime of terrorism, any person who committed the crime of terrorism, shall be sentenced as provided hereinafter:

(1) The court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or pursuant to the provisions of subsection b. of this section.

Where the defendant has been tried by a jury, the proceeding shall be conducted by the judge who presided at the trial and before the jury which determined the defendant's guilt, except that, for good cause, the court may discharge that jury and conduct the proceeding before a jury empaneled for the purpose of the proceeding. Where the defendant has entered a plea of guilty or has been tried without a jury, the proceeding shall be conducted by the judge who accepted the defendant's plea or who determined the defendant's guilt and before a jury empaneled for the purpose of the proceeding. On motion of the defendant and with consent of the prosecuting attorney the court may conduct a proceeding without a jury. Nothing in this subsection shall be construed to prevent the participation of an alternate juror in the sentencing proceeding if one of the jurors who rendered the guilty verdict becomes ill or is otherwise unable to proceed before or during the sentencing proceeding.

(2) (a) At the proceeding, the State shall have the burden of establishing beyond a reasonable doubt the existence of any aggravating factors set forth in paragraph (4) of this subsection. The defendant shall have the burden of producing evidence of the existence of any mitigating factors set forth in paragraph (5) of this subsection but shall not have a burden with regard to the establishment of a mitigating factor.

(b) The admissibility of evidence offered by the State to establish any of the aggravating factors shall be governed by the rules governing the admission of evidence at criminal trials. The defendant may offer, without regard to the rules governing the admission of evidence at criminal trials, reliable evidence relevant to any of the mitigating factors. If the defendant produces evidence in mitigation which would not be admissible under the rules governing the admission of evidence at criminal trials, the State may rebut that evidence without regard to the rules governing the admission of evidence at criminal trials.

(c) Evidence admitted at the trial, which is relevant to the aggravating and mitigating factors set forth in paragraphs (4) and (5) of this subsection, shall be considered without the necessity of reintroducing that evidence at the sentencing proceeding; provided that the fact finder at the sentencing proceeding was present as either the fact finder or the judge at the trial.

(d) The State and the defendant shall be permitted to rebut any evidence presented by the other party at the sentencing proceeding and to present argument as to the adequacy of the evidence to establish the existence of any aggravating or mitigating factor.

(e) Prior to the commencement of the sentencing proceeding, or at such time as he has knowledge of the existence of an aggravating factor, the prosecuting attorney shall give notice to the defendant of the aggravating factors which he intends to prove in the proceeding.

(f) Evidence offered by the State with regard to the establishment of a prior homicide conviction pursuant to paragraph (4)(a) of this subsection may include the identity and age of the victim, the manner of death and the relationship, if any, of the victim to the defendant.

(3) The jury or, if there is no jury, the court shall return a special verdict setting forth in writing the existence or nonexistence of each of the aggravating and mitigating factors set forth in paragraphs (4) and (5) of this subsection. If any aggravating factor is found to exist, the verdict shall also state whether it outweighs beyond a reasonable doubt any one or more mitigating factors.

(a) If the jury or the court finds that any aggravating factors exist and that all of the aggravating factors outweigh beyond a reasonable doubt all of the mitigating factors, the court shall sentence the defendant to death.

(b) If the jury or the court finds that no aggravating factors exist, or that all of the aggravating factors which exist do not outweigh all of the mitigating factors, the court shall sentence the defendant pursuant to subsection b.

(c) If the jury is unable to reach a unanimous verdict, the court shall sentence the defendant pursuant to subsection b.

(4) The aggravating factors which may be found by the jury or the court are:

(a) The defendant has been convicted, at any time, of another murder. For purposes of this section, a conviction shall be deemed final when sentence is imposed and may be used as an aggravating factor regardless of whether it is on appeal;

(b) In the commission of the murder, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim;

(c) The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated assault to the victim;

(d) The defendant committed the murder as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value;

(e) The defendant procured the commission of the murder by payment or promise of payment of anything of pecuniary value;

(f) The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by the defendant or another;

(g) The murder was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, robbery, sexual assault, arson, burglary, kidnapping, carjacking or the crime of contempt in violation of N.J.S.2C:29-9b.;

(h) The defendant murdered a public servant, as defined in N.J.S.2C:27-1, while the victim was engaged in the performance of his official duties, or because of the victim's status as a public servant;

(i) The defendant: (i) as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated in N.J.S.2C:35-3;

(j) The homicidal act that the defendant committed or procured was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-2).

(5) The mitigating factors which may be found by the jury or the court are:

(a) The defendant was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense to prosecution;

(b) The victim solicited, participated in or consented to the conduct which resulted in his death;

(c) The age of the defendant at the time of the murder;

(d) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired as the result of mental disease or defect or intoxication, but not to a degree sufficient to constitute a defense to prosecution;

(e) The defendant was under unusual and substantial duress insufficient to constitute a defense to prosecution;

(f) The defendant has no significant history of prior criminal activity;

(g) The defendant rendered substantial assistance to the State in the prosecution of another person for the crime of murder; or

(h) Any other factor which is relevant to the defendant's character or record or to the circumstances of the offense.

(6) When a defendant at a sentencing proceeding presents evidence of the defendant's character or record pursuant to subparagraph (h) of paragraph (5) of this subsection, the State may present evidence of the murder victim's character and background and of the impact of the murder on the victim's survivors. If the jury finds that the State has proven at least one aggravating factor beyond a reasonable doubt and the jury finds the existence of a mitigating factor pursuant to subparagraph (h) of paragraph (5) of this subsection, the jury may consider the victim and survivor evidence presented by the State pursuant to this paragraph in determining the appropriate weight to give mitigating evidence presented pursuant to subparagraph (h) of paragraph (5) of this subsection. As used in this paragraph "victim and survivor evidence" may include the display of a photograph of the victim taken before the homicide.

d. The sentencing proceeding set forth in subsection c. of this section shall not be waived by the prosecuting attorney.

e. Every judgment of conviction which results in a sentence of death under this section shall be appealed, pursuant to the Rules of Court, to the Supreme Court. Upon the request of the defendant, the Supreme Court shall also determine whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Proportionality review under this section shall be limited to a comparison of similar cases in which a sentence of death has been imposed under subsection c. of this section. In any instance in which the defendant fails, or refuses to appeal, the appeal shall be taken by the Office of the Public Defender or other counsel appointed by the Supreme Court for that purpose.

f. Prior to the jury's sentencing deliberations, the trial court shall inform the jury of the sentences which may be imposed pursuant to subsection b. of this section on the defendant if the defendant is not sentenced to death. The jury shall also be informed that a failure to reach a unanimous verdict shall result in sentencing by the court pursuant to subsection b.

g. A juvenile who has been tried as an adult and convicted of murder shall not be sentenced pursuant to the provisions of subsection c. but shall be sentenced pursuant to the provisions of subsection b. of this section.

h. In a sentencing proceeding conducted pursuant to this section, no evidence shall be admissible concerning the method or manner of execution which would be imposed on a defendant sentenced to death.

i. For purposes of this section the term "homicidal act" shall mean conduct that causes death or serious bodily injury resulting in death.

j. In a sentencing proceeding conducted pursuant to this section, the display of a photograph of the victim taken before the homicide shall be permitted.

L.1978, c.95; amended 1979, c.178, s.21; 1981, c.290, s.12; 1982, c.111, s.1; 1985, c.178, s.2; 1985, c.478; 1992, c.5; 1992, c.76; 1993, c.27; 1993, c.111; 1993, c.206; 1994, c.132; 1995, c.123; 1996, c.115, s.1; 1997, c.60, s.1; 1998, c.25; 1999, c.209; 1999, c.294, s.1; 2000, c.88; 2002, c.26, s.10.

COMMISSION WITNESSES

PUBLIC HEARING: JULY 19

Most Reverend John M. Smith: Bishop of the Roman Catholic Diocese of Trenton; page 4. **Sharon Hazard-Johnson:** Daughter of two murder victims; page 9. **Larry Peterson:** Former prisoner in New Jersey released on May 26, 2006, after Burlington County prosecutors dismissed the murder and sexual assault indictment against him; page 16. **Barry C. Scheck, Esq.:** Founder, Innocence Project in New York City; page 17. **Rabbi Gerald Zelizer:** Rabbi of Congregation Neve Shalom in Metuchen; Former President of the Rabbinical Assembly; page 24. **Lorry W. Post:** Father of a murder victim; Founder, New Jerseyans for Alternatives to the Death Penalty; page 27. **Kate Hill Germond:** Assistant Director, Centurion Ministries; page 30. **Reverend Jack Johnson:** Senior Pastor, First United Methodist Church of New Jersey; President, Coalition of Religious Leaders of New Jersey; Co-Chair, Board of Church and Society Greater New Jersey Conference United Methodist Church; page 35. **Richard C. Dieter:** Executive Director, Death Penalty Information Center in Washington, D.C.; page 35. **Dr. Matthew B. Johnson, Ph.D.:** Associate Professor, John Jay College of Criminal Justice in New York; page 40. **Sandra Manning, Esq.:** Chair, New Jerseyans for Alternatives to the Death Penalty; page 45. **Edith Frank:** Director, League of Women Voters of New Jersey; page 47. **Michael Murphy, Esq.:** Member, Advisory Committee New Jerseyans for Alternatives to the Death Penalty; page 50. **Marilyn Zdobinski, Esq.:** Former Assistant Prosecutor in Passaic County; page 50. **Dr. Robert Johnson, Ph.D.:** Professor; School of Public Affairs; Department of Justice, Law, and Society; American University; page 54. **Alisa Mariani:** Vice President, Somerset County American Civil Liberties Union (written testimony only).

WORKING SESSION: AUGUST 16

Hon. John J. Gibbons: Former Chief Judge of the United States Court of Appeals for the Third Circuit. **R. Erik Lillquist:** Professor of Law, Seton Hall University Law School. **Joseph Krakora, Esq.:** Director of Capital Litigation for the New Jersey State Office of the Public Defender.

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PUBLIC HEARING: SEPTEMBER 27

James Wells: President, New Jersey Chapter of the National Association of Black Law Enforcement Officers, Inc; page 1. **Nate Walker:** Private citizen who was wrongfully

imprisoned in New Jersey for 10 years; page 5. **Jennifer Thompson:** Rape victim who wrongfully identified person as attacker leading to the person's wrongful imprisonment in North Carolina; page 8. **David Kascynski:** Executive Director, New Yorkers Against the Death Penalty; page 13. **Jack Callahan:** Private citizen; page 24. **Bill Babbitt:** Member, Board of Directors, Murder Victims' Families for Human Rights; page 31. **Kirk Bloodsworth:** First person exonerated from death row in the United States based on DNA evidence; page 44. **Wanda Foglia, Ph.D.:** Professor and Coordinator of the Master of Arts in Criminal Justice Program at Rowan University; page 44. **James E. Harris:** President, New Jersey State Conference of the National Association for the Advancement of Colored People; page 68. **Lawrence Hamm:** Chairman, People's Organization for Progress; page 73. **Ken Wolski:** Private citizen. (written testimony only) **Marilyn Zdobinski, Esq.:** Former Assistant Prosecutor in Passaic County. (written testimony only)

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Hon. David Baime: Superior Court Judge (retired) and Special Master for Proportionality Review with regard to capital causes for the New Jersey Judiciary; page 3. **Robert Blecker:** Professor of Law at New York Law School; page 30. **Jeffrey Fagan:** Professor of Law & Public Health; Co-Director, Center for Crime, Community and Law at Columbia University; page 67. **Claudia Van Wyk, Esq.:** Attorney, Gibbons, Del Deo, Dolan, Griffinger & Vecchione; Formerly an attorney in the Office of the Public Defender, Appellate Section; page 89. **Robin Glenn, Esq.:** Legal Research Consultant; page 108.

PUBLIC HEARING: OCTOBER 25

Kent Scheidegger: Legal Director and General Counsel, Criminal Justice Legal Foundation (testified by videoconference); page 5. **Sam Millsap:** Prosecutor on the case of Ruben Cantu, a Texan who may have been wrongfully executed; page 15. **Charles Ogletree, Jr.:** Jesse Climenko Professor of Law at Harvard Law School; Director, Charles Hamilton Houston Institute for Race and Justice (testified by videoconference); page 28. **Jim Barbo:** Director of Operations, New Jersey Department of Corrections; page 55. **Gary J. Hilton:** Former Superintendent of Trenton State Prison; Former Assistant Commissioner of the New Jersey Department of Corrections; page 63. **William Carl Piper, II:** Son of murder victim; page 78. **Molly Weigel:** Daughter-in-law of a murder victim; page 78. **Celeste Fitzgerald:** Director, New Jerseyans for Alternatives to the Death Penalty; page 84. **Kathleen M. Hiltner:** Executive Director, Center for Traumatic Grief & Victim Services; page 92. **Janet Poinsett, L.C.S.W.:** Member, clinical staff, Center for Traumatic Grief & Victim Services; page 96. **David Shepard:** Former prisoner who served 11 years before becoming the first person in New Jersey exonerated based on DNA evidence; page 103. **Bryan Miller:** Brother of a murder victim; Executive Director, Ceasefire New Jersey; page 108. **Kathryn Schwartz:** Chaplain, Morris County Correctional Facility; page 112. **Roy Riley:** Bishop, New Jersey Synod, Evangelical Lutheran Church in America. (testimony read by Ms. Schwartz) **David Ruhnke, Esq.:** Attorney, Runke & Barrett; page 115. **Clare Laura Hogenauer:** Private citizen; page 122. **John P. Nickas:** Representing Saint Peter Claver Church; page 125. **Thomas F. Langan, Jr.:** Representing New Jersey Pax Christi; page 127. **Hon. Joseph Azzolina:** Former State Senator and Assemblyman from the 13th Legislative District; page 128. (testimony read into record) **Marilyn Zdobinski, Esq.:** Former Assistant Prosecutor in Passaic County. (written testimony only) **Sharon Hazard-Johnson:** Daughter of two murder victims. (written testimony only)

EXHIBIT 6

LEGISLATIVE FISCAL ESTIMATE

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 171 and 2471

STATE OF NEW JERSEY
212th LEGISLATURE

DATED: NOVEMBER 21, 2007

SUMMARY

Synopsis: Eliminates the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.

Type of Impact: Indeterminate - See comments below.

Agencies Affected: Judiciary, Office of the Public Defender, Department of Corrections, Department of Law and Public Safety, County Prosecutors, County Jails.

Office of Legislative Services Estimate

Fiscal Impact	Short Term	Long Term
Incarceration Costs	Savings of $32,481 per inmate per year	Indeterminate-See comments below
Proportionality Review Costs	Savings of $93,018 per review	Savings of $93,018 per review
Trial Costs	Indeterminate - See comments below	
County Costs	Indeterminate - See comments below	

- The committee substitute eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.

- The Office of Legislative Services (OLS) concludes that due to the number of variables inherent in the consideration of this bill's impact it cannot quantify with accuracy the costs or savings to be generated by this bill. Variables include the number of death penalty eligible cases to be considered in the future; the respective strategies adopted by the prosecuting and defense attorneys should the death penalty be continued or eliminated; whether the State would resume carrying out death sentences or continue to house prisoners in the Capital Sentence Unit should the death penalty remain in effect; and how the courts will react to current law or the proposed bill.

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-OLS-

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- The cost of incarceration would be affected by the enactment of this bill. In the short run, savings would result from the ability to move inmates in the Capital Sentence Unit to the general population at an annual savings of $32,481 per inmate. However, the bill's incarceration cost impact in the long term is uncertain. If the death penalty remains in effect and if the State were to begin to execute convicted offenders, the cost of housing an inmate in the Capital Sentence Unit for a limited time could ultimately be less than housing the inmate in the general population for the rest of his natural life. However, if the death penalty remains in effect and the State does not execute these offenders, the cost of housing them in the Capital Sentence Unit is substantially higher than the cost of housing them in the general population.

- The elimination of the death penalty would eliminate the necessity of conducting proportionality reviews, thus saving the State about $93,018 per review.

- The OLS concludes that impact of this bill on trial costs cannot be accurately estimated because it is not clear whether the bill would prompt more plea bargains, thus eliminating the need for trial, or what strategies would be adopted by both the prosecuting and defense attorneys that would directly affect the cost of each trial.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 171 and 2471 of 2007 eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.

Under the substitute, murder generally would continue to be punishable by a term of 30 years, during which the person shall not be eligible for parole, or a specific term of years between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole. This provision is unchanged from current law.

Current law also provides that the defendant must be sentenced to a term of life imprisonment without eligibility for parole if (1) the victim was a law enforcement officer and was murdered while performing his official duties or was murdered because of his status as a law enforcement officer, or (2) the victim was less than 14 years old and the murder was committed in the course of the commission of a violation of N.J.S.2C:14-2 (sexual assault) or N.J.S.2C:14-3 (criminal sexual contact). These provisions would also not be changed by the substitute.

The substitute amends paragraph (4) of subsection b. of N.J.S.A.2C:11-3 to provide that certain defendants convicted of murder would be sentenced to life imprisonment without eligibility for parole, to be served in a maximum security prison, if the jury finds beyond a reasonable doubt that any of the following aggravating factors exist:

(a) The defendant has been convicted, at any time, of another murder;

(b) In the commission of the murder, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim;

(c) The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated assault to the victim;

(d) The defendant committed the murder as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value;

(e) The defendant procured the commission of the murder by payment or promise of payment of anything of pecuniary value;

(f) The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense;

(g) The murder was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, robbery, sexual assault, arson, burglary, kidnapping, carjacking or the crime of contempt in violation of the Domestic Violence Act;

(h) The defendant murdered a public servant while the victim was engaged in the performance of his official duties, or because of the victim's status as a public servant;

(i) The defendant: (i) as a leader of a narcotics trafficking network and in furtherance of a conspiracy committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network in furtherance of a conspiracy;

(j) The homicidal act that the defendant committed or procured was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2 (causing widespread injury or damage);

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism.

These aggravating factors are identical to those set out in current law concerning the death penalty. Currently, if the jury or the court finds that any aggravating factors exist and that all of the aggravating factors outweigh beyond a reasonable doubt all of the mitigating factors, the court shall sentence the defendant to death.

The substitute provides that a juvenile who has been tried as an adult and convicted of murder would not be sentenced to life imprisonment without eligibility for parole under the provisions of the substitute concerning aggravating factors. Such a juvenile would remain subject to sentencing under the general sentencing provisions for murder (a term of 30 years to life with a term of parole ineligibility of 30 years). Current law provides that a juvenile tried as an adult and convicted of murder may not be sentenced to death.

Under the substitute, a juvenile tried as an adult and convicted of murder would remain subject to sentencing to life imprisonment without eligibility for parole if (1) the victim was a law enforcement officer and was murdered while performing official duties or murdered because of his status as a law enforcement officer, or (2) the victim was less than 14 years old and the murder was committed in the course of the commission of a sex crime. Both of these provisions are contained in current law.

An inmate sentenced to death prior to the date of enactment of this substitute, upon motion to the sentencing court and waiver of any further appeals related to sentencing, would be resentenced to a term of life imprisonment during which the defendant would not be eligible for parole. The sentence would be served in a maximum security prison. The substitute provides that any such motion to the sentencing court shall be made within 60 days of enactment of the act. If the motion is not made within 60 days the inmate would remain under the sentence of death previously imposed by the sentencing court.

The substitute provides that in addition to the provisions of any other law requiring restitution, a person convicted of murder would be required to pay restitution to the nearest surviving relative of the victim. The court would determine the amount and duration of the restitution.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Office of the Attorney General

No formal fiscal information has been received from the Office of the Attorney General concerning savings to be realized by the prosecution from the elimination of the death penalty. However, representatives from the office have noted that if the death penalty were abolished, these defendants would most likely be facing a very lengthy sentence, or life without parole. As a result, a trial to determine guilt or innocence would still be necessary, and both the prosecutor and public defender would be required to mount aggressive prosecution or defense efforts. Because of this, there would be little savings during the trial phase of prosecution.

Office of the Public Defender - Trial Costs

According to the Office of the Public Defender, as of August 2006 there was a caseload of 19 active death penalty cases being handled by this office. Of these cases, 4 had been added during the preceding 12 months. The Public Defender notes that the number of active death penalty cases is low because of the current environment against the death penalty. Prior to this decrease in death penalty prosecutions, the Public Defender's office had averaged between 40 and 50 cases per year.

In order to provide the best possible defense in capital cases, the Public Defender has traditionally assigned two attorneys to each death penalty case, one senior and one junior attorney. Elimination of the death penalty would allow the Public Defender to use one, rather than two attorneys in all criminal trials, generating savings.

All death penalty prosecutions consist of two phases, the actual trial to determine guilt or innocence and the sentencing phase to determine whether the death penalty or a term of imprisonment would be imposed. The abolition of the death penalty would generate savings through the elimination of the 2-week sentencing phase of a capital trial. This in turn would reduce the number of expert witnesses required and eliminate pool attorney costs for those cases in which a conflict among defendants exists.

The Office of the Public Defender states that based on an average number of 19 active death penalty cases per year, the abolition of the death penalty would save $1,360,000 annually, consisting primarily of savings in the pool attorney and expert witnesses categories. An additional $101,000 for appellate attorney salaries would also be saved for a total annual cost savings of $1.46 million as follows:

PUBLIC DEFENDER COSTS			
Professional Services	**Death Penalty**	**Non Death Penalty**	**Savings**
Defense Attorney Costs	$1,109,099	$386,328	$722,771
Expert witnesses	$ 731,066	$184,184	$546,882
Court Reporters	$ 41,902	$ 0	$ 41,902
Miscellaneous	$ 49,030	$ 0	$ 49,030
Appellate Attorney Costs	$ 101,000	$ 0	$101,000
TOTAL SAVINGS	$2,032,097	$ 570,512	**$1,461,585**
Savings per trial based on 19 cases per year			**$76,926**

Administrative Office of the Courts - Trial Costs, Proportionality Review Costs

The Administrative Office of the Courts (AOC) states that the elimination of the death penalty would generate savings for the Judiciary in two areas, trial court costs and the costs of conducting the proportionality review for each death penalty case.

Trial Costs

The following table provides the AOC's estimate of the cost of conducting a typical death penalty trial:

JUDICIARY TRIAL COSTS		
Salary Costs Position	**Time Spent**	**Salary & Fringe Benefits**
Superior Court Judge	48 days	$39,440
Judge's Secretary	50.5 days	$10,584
Court Clerk	45 days	$ 8,660
Superior Court Law Clerk	50.5 days	$ 9,431
Court Reporter	45 days	$13,998
Criminal Division Manager	2 days	$ 891
Probation Officer Report	2 days	$ 605
Court Investigator	0.5 days	$ 113
Total Salary Costs		**$83,722**
Non-Salary Costs		
Overhead		$48,240
Juror fees		$16,223
Total Non-Salary Costs		**$64,463**
TOTAL TRIAL COURT COSTS		**$148,185**

According to the AOC, because of the different variables in non death penalty murder trials which range from the possibility of plea bargaining, negating the need for a trial altogether, to aggressive prosecution efforts and lengthy jury selection, information is not available concerning the cost of conducting a "typical" non-death penalty, life sentence without parole trial.

Proportionality Review Costs

Once an offender has been convicted in a death penalty trial, the State is required to conduct a proportionality review to determine whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Should the death penalty be abolished, proportionality review would cease. The following table illustrates the AOC's estimate of the time and associated costs devoted to proportionality review during death penalty cases.

JUDICIARY PROPORTIONALITY REVIEW COSTS		
Salary Costs Position	**Time Spent**	**Salary & Fringe Benefits**
Court-Appointed Special Master	16 days	$ 4,900
Asst Director, Criminal Practice	5 days	$ 2,285
Asst Chief Sentencing Unit	156 days	$52,361
Legal Assistant	13 days	$ 3,120
Statistical Consultant	14.5 days	$14,527
Systems Coordinator	23 days	$ 8,058
Head Data Entry Mach Operator	15 days	$ 3,338
Sr. Data Entry Mach Operator	15 days	$ 2,620
Secretarial Assistant	5 days	$ 816
Judiciary Secretary	5 days	$ 993
Total Salary Costs		**$93,018**

Not included in this estimate is the cost of non salary items such as equipment, materials and supplies, fixed assets, maintenance, travel, training and capital improvements.

Department of Corrections - Incarceration Costs

According to the Department of Corrections, the cost of housing an inmate in the Capital Sentence Unit (death row) at the New Jersey State Prison totals about $72,602 per year, $32,481 more than the $40,121 cost of housing an inmate within New Jersey State Prison's general population. Because New Jersey State Prison is a maximum security prison, requiring higher security levels, its average daily housing cost is higher than the department's average annual housing cost of $32,000.

As of May, 2007, there were 9 inmates housed in the Capital Sentence Unit, for a total annual cost of $653,418. It would cost the State $361,089 to house these inmates in the general population of New Jersey State Prison, one of the State's two maximum security prisons, a savings of $292,329 per year.

According to the department, the average age that an inmate enters the Capital Sentence Unit is 32. Elimination of the death penalty would result in a savings of $32,481 for every year that each inmate is incarcerated. In light of the fact that no inmate has been put to death under the current death penalty statute, and assuming that upon conviction these inmates would serve 30 to 40 years within the Capital Sentence Unit, the elimination of the death penalty would save the State $974,430 to $1,299,240 per inmate over each inmate's lifetime.

However, elimination of the death penalty may increase the number individuals sentenced to life without parole.

County Jails - Incarceration Costs

Indicted offenders either receive bail and are allowed to go free until a trial or are incarcerated in a county jail facility until trial. Death penalty eligible offenders would most likely be denied bail and therefore would remain in the county jail until conviction or acquittal. Not included in the Department of Corrections housing cost is cost to the counties for housing these offenders until and during the trial. Often because of the time required for the defense and prosecuting attorneys to prepare for a death penalty trial, these offenders remain in the county jail facilities much longer than those tried in non-death penalty cases. Therefore, the elimination of the death penalty may reduce inmate housing costs at the county level.

SUMMARY

In sum, the potential and actual imposition of the death penalty affects many governmental agencies. While some of the costs can be identified, others such as the impact on the trial court schedule and backlog are not so easy to distinguish.

Some of the costs that have been identified by the various agencies involved with the prosecution, defense and housing of death penalty eligible offenders are summarized as follows:

SUMMARY GOVERNMENT AGENCY DEATH PENALTY COSTS	
AGENCY	**COST**
Attorney General's Office (Prosecutors)	Not available
Office of the Public Defender	$ 76,926 per trial
Judiciary:	
Trial	$ 148,185 per trial
Proportionality Review	$ 93,018 per review
Department of Corrections	$ 32,481 per inmate per year
County Jail Costs	Not available

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that due to the number of variables inherent in the consideration of this bill's impact, it cannot quantify with accuracy the exact cost or savings to be generated by this bill. Variables include the number of death penalty eligible cases to be considered in the future; the respective strategies adopted by the prosecuting and defense attorneys should the death penalty be continued or eliminated; whether the State would commence with putting inmates to death or continue to house them in the Capital Sentence Unit should the death penalty remain in effect; and how the court will react to current law or the proposed bill.

The OLS notes that while the cost of incarcerating an inmate in the Capital Sentence Unit is significantly higher than the cost of housing an inmate in a maximum security prison, the total cost of incarcerating an inmate in the Capital Sentence Unit would be reduced if the State were to begin executing those sentenced to death. Conversely, with the elimination of the death penalty, more inmates could be sentenced to life without parole, generating a cost to be borne for 30 years or more.

Trial costs vary greatly among criminal cases. Capital trial costs are traditionally higher than non-capital trial costs due to the extremely high stakes involved as well as the necessity to conduct the penalty phase to a capital trial. The OLS cannot estimate with any accuracy the potential short term or long term trial costs as a result of this bill's enactment.

Savings would also be generated from the elimination of the need to conduct proportionality reviews on all cases in which an offender is convicted and sentenced to capital punishment.

Section: *Judiciary*

Analyst: *Anne Raughley*
Principal Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).

§§2,3 - C.2C:11-3b & 2C:11-3c §7 - Repealer

P.L. 2007, CHAPTER 204, ***approved December 17, 2007***
Senate Committee Substitute for
Senate, Nos. 171 and 2471

AN ACT to eliminate the death penalty and allow for life imprisonment without eligibility for parole, revising various parts of the statutory law, repealing P.L.1983, c.245, and supplementing Title 2C of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.2C:11-3 is amended to read as follows:

2C:11-3 Murder.

a. Except as provided in N.J.S.2C:11-4, criminal homicide constitutes murder when:

(1) The actor purposely causes death or serious bodily injury resulting in death; or

(2) The actor knowingly causes death or serious bodily injury resulting in death; or

(3) It is committed when the actor, acting either alone or with one or more other persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual assault, arson, burglary, kidnapping, carjacking, criminal escape or terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of immediate flight therefrom, any person causes the death of a person other than one of the participants; except that in any prosecution under this subsection, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

b. (1) Murder is a crime of the first degree but a person convicted of murder shall be sentenced, except as provided in [subsection c.] paragraphs (2), (3) and (4) of this [section] subsection, by the court to a term of 30 years, during which the person shall not be eligible for parole, or be sentenced to a specific term of years which shall be between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole.

(2) If the victim was a law enforcement officer and was murdered while performing his official duties or was murdered because of his status as a law enforcement officer, the person convicted of that murder shall be sentenced[, except as otherwise provided in subsection c. of this section,] by the court to a term of life imprisonment, during which the person shall not be eligible for parole.

(3) A person convicted of murder [and who is not sentenced to death under this section] shall be sentenced to a term of life imprisonment without eligibility for parole if the murder was committed under all of the following circumstances:

(a) The victim is less than 14 years old; and

(b) The act is committed in the course of the commission, whether alone or with one or more persons, of a violation of N.J.S.2C:14-2 or N.J.S.2C:14-3.

(4) [If the defendant was subject to sentencing pursuant to subsection c. and the jury or court found the existence of one or more aggravating factors, but that such factors did not outweigh the mitigating factors found to exist by the jury or court or the jury was unable to reach a unanimous verdict as to the weight of the factors, the defendant shall be sentenced by the court to a term of life imprisonment during which the defendant shall not be eligible for parole.

With respect to a sentence imposed pursuant to this subsection, the defendant shall not be entitled to a deduction of commutation and work credits from that sentence.]

Any person convicted under subsection a.(1) or (2) who committed the homicidal act by his own conduct; or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value; or who, as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded or by threat or promise solicited the commission of the offense, or, if the murder occurred during the commission of the crime of terrorism, any person who committed the crime of terrorism, shall be sentenced by the court to life imprisonment without eligibility for parole, which sentence shall be served in a maximum security prison, if a jury finds beyond a reasonable doubt that any of the following aggravating factors exist:

(a) The defendant has been convicted, at any time, of another murder. For purposes of this section, a conviction shall be deemed final when sentence is imposed and may be used as an aggravating factor regardless of whether it is on appeal;

(b) In the commission of the murder, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim;

(c) The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated assault to the victim;

(d) The defendant committed the murder as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value;

(e) The defendant procured the commission of the murder by payment or promise of payment of anything of pecuniary value;

(f) The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by the defendant or another;

(g) The murder was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, robbery, sexual assault, arson, burglary, kidnapping, carjacking or the crime of contempt in violation of N.J.S.2C:29-9b.;

(h) The defendant murdered a public servant, as defined in N.J.S.2C:27-1, while the victim was engaged in the performance of his official duties, or because of the victim's status as a public servant;

(i) The defendant: (i) as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated in N.J.S.2C:35-3;

(j) The homicidal act that the defendant committed or procured was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-2).

(5) A juvenile who has been tried as an adult and convicted of murder shall be sentenced pursuant to paragraph (1), (2) or (3) of this subsection.

c. [Any person convicted under subsection a.(1) or (2) who committed the homicidal act by his own conduct; or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value; or who, as a

leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded or by threat or promise solicited the commission of the offense, or, if the murder occurred during the commission of the crime of terrorism, any person who committed the crime of terrorism, shall be sentenced as provided hereinafter:]

[(1) The court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or pursuant to the provisions of subsection b. of this section.

Where the defendant has been tried by a jury, the proceeding shall be conducted by the judge who presided at the trial and before the jury which determined the defendant's guilt, except that, for good cause, the court may discharge that jury and conduct the proceeding before a jury empaneled for the purpose of the proceeding. Where the defendant has entered a plea of guilty or has been tried without a jury, the proceeding shall be conducted by the judge who accepted the defendant's plea or who determined the defendant's guilt and before a jury empaneled for the purpose of the proceeding. On motion of the defendant and with consent of the prosecuting attorney the court may conduct a proceeding without a jury. Nothing in this subsection shall be construed to prevent the participation of an alternate juror in the sentencing proceeding if one of the jurors who rendered the guilty verdict becomes ill or is otherwise unable to proceed before or during the sentencing proceeding.]

[(2) (a) At the proceeding, the State shall have the burden of establishing beyond a reasonable doubt the existence of any aggravating factors set forth in paragraph (4) of this subsection. The defendant shall have the burden of producing evidence of the existence of any mitigating factors set forth in paragraph (5) of this subsection but shall not have a burden with regard to the establishment of a mitigating factor.

(b) The admissibility of evidence offered by the State to establish any of the aggravating factors shall be governed by the rules governing the admission of evidence at criminal trials. The defendant may offer, without regard to the rules governing the admission of evidence at criminal trials, reliable evidence relevant to any of the mitigating factors. If the defendant produces evidence in mitigation which would not be admissible under the rules governing the admission of evidence at criminal trials, the State may rebut that evidence without regard to the rules governing the admission of evidence at criminal trials.

(c) Evidence admitted at the trial, which is relevant to the aggravating and mitigating factors set forth in paragraphs (4) and (5) of this subsection, shall be considered without the necessity of reintroducing that evidence at the sentencing proceeding; provided that the fact finder at the sentencing proceeding was present as either the fact finder or the judge at the trial.

(d) The State and the defendant shall be permitted to rebut any evidence presented by the other party at the sentencing proceeding and to present argument as to the adequacy of the evidence to establish the existence of any aggravating or mitigating factor.

(e) Prior to the commencement of the sentencing proceeding, or at such time as he has knowledge of the existence of an aggravating factor, the prosecuting attorney shall give notice to the defendant of the aggravating factors which he intends to prove in the proceeding.

(f) Evidence offered by the State with regard to the establishment of a prior homicide conviction pursuant to paragraph (4)(a) of this subsection may include the identity and age of the victim, the manner of death and the relationship, if any, of the victim to the defendant.**]**

[(3) The jury or, if there is no jury, the court shall return a special verdict setting forth in writing the existence or nonexistence of each of the aggravating and mitigating factors set forth in paragraphs (4) and (5) of this subsection. If any aggravating factor is found to exist, the verdict shall also state whether it outweighs beyond a reasonable doubt any one or more mitigating factors.

(a) If the jury or the court finds that any aggravating factors exist and that all of the aggravating factors outweigh beyond a reasonable doubt all of the mitigating factors, the court shall sentence the defendant to death.

(b) If the jury or the court finds that no aggravating factors exist, or that all of the aggravating factors which exist do not outweigh all of the mitigating factors, the court shall sentence the defendant pursuant to subsection b.

(c) If the jury is unable to reach a unanimous verdict, the court shall sentence the defendant pursuant to subsection b.**]**

[(4) The aggravating factors which may be found by the jury or the court are:

(a) The defendant has been convicted, at any time, of another murder. For purposes of this section, a conviction shall be deemed final when sentence is imposed and may be used as an aggravating factor regardless of whether it is on appeal;

(b) In the commission of the murder, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim;

(c) The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated assault to the victim;

(d) The defendant committed the murder as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value;

(e) The defendant procured the commission of the murder by payment or promise of payment of anything of pecuniary value;

(f) The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another

offense committed by the defendant or another;

(g) The murder was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, robbery, sexual assault, arson, burglary, kidnapping, carjacking or the crime of contempt in violation of N.J.S.2C:29-9b.;

(h) The defendant murdered a public servant, as defined in N.J.S.2C:27-1, while the victim was engaged in the performance of his official duties, or because of the victim's status as a public servant;

(i) The defendant: (i) as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated in N.J.S.2C:35-3;

(j) The homicidal act that the defendant committed or procured was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-2).**]**

[(5) The mitigating factors which may be found by the jury or the court are:

(a) The defendant was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense to prosecution;

(b) The victim solicited, participated in or consented to the conduct which resulted in his death;

(c) The age of the defendant at the time of the murder;

(d) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired as the result of mental disease or defect or intoxication, but not to a degree sufficient to constitute a defense to prosecution;

(e) The defendant was under unusual and substantial duress insufficient to constitute a defense to prosecution;

(f) The defendant has no significant history of prior criminal activity;

(g) The defendant rendered substantial assistance to the State in the prosecution of another person for the crime of murder; or

(h) Any other factor which is relevant to the defendant's character or record or to the circumstances of the offense.**]**

[(6) When a defendant at a sentencing proceeding presents evidence of the defendant's character or record pursuant to

subparagraph (h) of paragraph (5) of this subsection, the State may present evidence of the murder victim's character and background and of the impact of the murder on the victim's survivors. If the jury finds that the State has proven at least one aggravating factor beyond a reasonable doubt and the jury finds the existence of a mitigating factor pursuant to subparagraph (h) of paragraph (5) of this subsection, the jury may consider the victim and survivor evidence presented by the State pursuant to this paragraph in determining the appropriate weight to give mitigating evidence presented pursuant to subparagraph (h) of paragraph (5) of this subsection. As used in this paragraph "victim and survivor evidence" may include the display of a photograph of the victim taken before the homicide.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

d. [The sentencing proceeding set forth in subsection c. of this section shall not be waived by the prosecuting attorney.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

e. [Every judgment of conviction which results in a sentence of death under this section shall be appealed, pursuant to the Rules of Court, to the Supreme Court. Upon the request of the defendant, the Supreme Court shall also determine whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Proportionality review under this section shall be limited to a comparison of similar cases in which a sentence of death has been imposed under subsection c. of this section. In any instance in which the defendant fails, or refuses to appeal, the appeal shall be taken by the Office of the Public Defender or other counsel appointed by the Supreme Court for that purpose.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

f. [Prior to the jury's sentencing deliberations, the trial court shall inform the jury of the sentences which may be imposed pursuant to subsection b. of this section on the defendant if the defendant is not sentenced to death. The jury shall also be informed that a failure to reach a unanimous verdict shall result in sentencing by the court pursuant to subsection b.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

g. [A juvenile who has been tried as an adult and convicted of murder shall not be sentenced pursuant to the provisions of subsection c. but shall be sentenced pursuant to the provisions of subsection b. of this section.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

h. [In a sentencing proceeding conducted pursuant to this section, no evidence shall be admissible concerning the method or manner of execution which would be imposed on a defendant sentenced to death.](Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

i. For purposes of this section the term "homicidal act" shall

mean conduct that causes death or serious bodily injury resulting in death.

j. In a sentencing proceeding conducted pursuant to this section, the display of a photograph of the victim taken before the homicide shall be permitted.

(cf: P.L.2002, c.26, s.10)

2. (New section) An inmate sentenced to death prior to the date of the enactment of this act, upon motion to the sentencing court and waiver of any further appeals related to sentencing, shall be resentenced to a term of life imprisonment during which the defendant shall not be eligible for parole. Such sentence shall be served in a maximum security prison.

Any such motion to the sentencing court shall be made within 60 days of the enactment of this act. If the motion is not made within 60 days the inmate shall remain under the sentence of death previously imposed by the sentencing court.

3. (New section) In addition to the provisions of any other law requiring restitution, a person convicted of murder pursuant to N.J.S.2C:11-3 shall be required to pay restitution to the nearest surviving relative of the victim. The court shall determine the amount and duration of the restitution pursuant to N.J.S.2C:43-3 and the provisions of chapter 46 of Title 2C of the New Jersey Statutes.

4. N.J.S.2B:23-10 is amended to read as follows:

2B:23-10. Examination of jurors. **[**a.**]** In the discretion of the court, parties to any trial may question any person summoned as a juror after the name is drawn and before the swearing, and without the interposition of any challenge, to determine whether or not to interpose a peremptory challenge or a challenge for cause. Such examination shall be permitted in order to disclose whether or not the juror is qualified, impartial and without interest in the result of the action. The questioning shall be conducted in open court under the trial judge's supervision.

b. **[**The examination of jurors shall be under oath only in cases in which a death penalty may be imposed.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

(cf: N.J.S.2B:23-10)

5. N.J.S.2B:23-13 is amended to read as follows:

2B:23-13. Peremptory challenges.

Upon the trial of any action in any court of this State, the parties shall be entitled to peremptory challenges as follows:

a. In any civil action, each party, 6.

b. Upon an indictment for kidnapping, murder, aggravated manslaughter, manslaughter, aggravated assault, aggravated sexual

assault, sexual assault, aggravated criminal sexual contact, aggravated arson, arson, burglary, robbery, forgery if it constitutes a crime of the third degree as defined by subsection b. of N.J.S.2C:21-1, or perjury, the defendant, 20 peremptory challenges if tried alone and 10 challenges if tried jointly and the State, 12 peremptory challenges if the defendant is tried alone and 6 peremptory challenges for each 10 afforded the defendants if tried jointly. **[**The trial court, in its discretion, may, however, increase proportionally the number of peremptory challenges available to the defendant and the State in any case in which the sentencing procedure set forth in subsection c. of N.J.S.2C:11-3 might be utilized.**]**

c. Upon any other indictment, defendants, 10 each; the State, 10 peremptory challenges for each 10 challenges allowed to the defendants. When the case is to be tried by a jury from another county, each defendant, 5 peremptory challenges, and the State, 5 peremptory challenges for each 5 peremptory challenges afforded the defendants.

(cf: N.J.S.2B:23-13)

6. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to read as follows:

7. a. Each adult inmate sentenced to a term of incarceration in a county penal institution, or to a specific term of years at the State Prison or the correctional institution for women shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term, or one-third of the sentence imposed where no mandatory minimum term has been imposed less commutation time for good behavior pursuant to N.J.S.2A:164-24 or R.S.30:4-140 and credits for diligent application to work and other institutional assignments pursuant to P.L.1972, c.115 (C.30:8-28.1 et seq.) or R.S.30:4-92. Consistent with the provisions of the New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work credits shall not in any way reduce any judicial or statutory mandatory minimum term and such credits accrued shall only be awarded subsequent to the expiration of the term.

b. Each adult inmate sentenced to a term of life imprisonment shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term, or 25 years where no mandatory minimum term has been imposed less commutation time for good behavior and credits for diligent application to work and other institutional assignments. If an inmate sentenced to a specific term or terms of years is eligible for parole on a date later than the date upon which he would be eligible if a life sentence had been imposed, then in such case the inmate shall be eligible for parole after having served 25 years, less commutation time for good behavior and credits for diligent application to work and other institutional

assignments. Consistent with the provisions of the New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work credits shall not in any way reduce any judicial or statutory mandatory minimum term and such credits accrued shall only be awarded subsequent to the expiration of the term.

c. Each inmate sentenced to a specific term of years pursuant to the "Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 through 45) shall become primarily eligible for parole after having served one-third of the sentence imposed less commutation time for good behavior and credits for diligent application to work and other institutional assignments.

d. Each adult inmate sentenced to an indeterminate term of years as a young adult offender pursuant to N.J.S.2C:43-5 shall become primarily eligible for parole consideration pursuant to a schedule of primary eligibility dates developed by the board, less adjustment for program participation. In no case shall the board schedule require that the primary parole eligibility date for a young adult offender be greater than the primary parole eligibility date required pursuant to this section for the presumptive term for the crime authorized pursuant to N.J.S.2C:44-1(f).

e. Each adult inmate sentenced for an offense specified in N.J.S.2C:47-1 shall become primarily eligible for parole as follows:

(1) If the court finds that the offender's conduct was not characterized by a pattern of repetitive, compulsive behavior or finds that the offender is not amenable to sex offender treatment, or if after sentencing the Department of Corrections in its most recent examination determines that the offender is not amenable to sex offender treatment, the offender shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term or one-third of the sentence imposed where no mandatory minimum term has been imposed. Neither such term shall be reduced by commutation time for good behavior pursuant to R.S.30:4-140 or credits for diligent application to work and other institutional assignments pursuant to R.S.30:4-92.

(2) All other offenders shall be eligible for parole pursuant to the provisions of N.J.S.2C:47-5, except no offender shall become primarily eligible for parole prior to the expiration of any judicial or statutory mandatory minimum term.

f. Each juvenile inmate committed to an indeterminate term shall be immediately eligible for parole.

g. Each adult inmate of a county jail, workhouse or penitentiary shall become primarily eligible for parole upon service of 60 days of his aggregate sentence or as provided for in subsection a. of this section, whichever is greater. Whenever any such inmate's parole eligibility is within six months of the date of such sentence, the judge shall state such eligibility on the record which shall satisfy all public

and inmate notice requirements. The chief executive officer of the institution in which county inmates are held shall generate all reports pursuant to subsection d. of section 10 of P.L.1979, c.441 (C.30:4-123.54). The parole board shall have the authority to promulgate time periods applicable to the parole processing of inmates of county penal institutions, except that no inmate may be released prior to the primary eligibility date established by this subsection, unless consented to by the sentencing judge. No inmate sentenced to a specific term of years at the State Prison or the correctional institution for women shall become primarily eligible for parole until service of a full nine months of his aggregate sentence.

h. When an inmate is sentenced to more than one term of imprisonment, the primary parole eligibility terms calculated pursuant to this section shall be aggregated by the board for the purpose of determining the primary parole eligibility date, except that no juvenile commitment shall be aggregated with any adult sentence. The board shall promulgate rules and regulations to govern aggregation under this subsection.

i. The primary eligibility date shall be computed by a designated representative of the board and made known to the inmate in writing not later than 90 days following the commencement of the sentence. In the case of an inmate sentenced to a county penal institution such notice shall be made pursuant to subsection g. of this section. Each inmate shall be given the opportunity to acknowledge in writing the receipt of such computation. Failure or refusal by the inmate to acknowledge the receipt of such computation shall be recorded by the board but shall not constitute a violation of this subsection.

j. Except as provided in this subsection, each inmate sentenced pursuant to N.J.S.2A:113-4 for a term of life imprisonment, N.J.S.2A:164-17 for a fixed minimum and maximum term or N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date computed pursuant to this section, but shall be primarily eligible on a date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.), which is continued in effect for this purpose. Inmates classified as second, third or fourth offenders pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12) shall become primarily eligible for parole after serving one-third, one-half or two-thirds of the maximum sentence imposed, respectively, less in each instance commutation time for good behavior and credits for diligent application to work and other institutional assignments; provided, however, that if the prosecuting attorney or the sentencing court advises the board that the punitive aspects of the sentence imposed on such inmates will not have been fulfilled by the time of parole eligibility calculated pursuant to this subsection, then the inmate shall not become primarily eligible for parole until serving an additional period which shall be one-half of the difference between the primary parole eligibility date calculated pursuant to this subsection and the parole eligibility date calculated

pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the prosecuting attorney or the sentencing court advises the board that the punitive aspects of the sentence have not been fulfilled, such advice need not be supported by reasons and will be deemed conclusive and final. Any such decision shall not be subject to judicial review except to the extent mandated by the New Jersey and United States Constitutions. The board shall, reasonably prior to considering any such case, advise the prosecuting attorney and the sentencing court of all information relevant to such inmate's parole eligibility.

k. Notwithstanding any provisions of this section to the contrary, a person sentenced to imprisonment pursuant to paragraph (2) **[**or**]**, (3) or (4) of subsection b. of N.J.S.2C:11-3 shall not be eligible for parole.

l. Notwithstanding the provisions of subsections a. through j. of this section, the appropriate board panel, as provided in section 1 of P.L.1997, c.214 (C.30:4-123.51c), may release an inmate serving a sentence of imprisonment on medical parole at any time.

(cf: P.L.1998, c.73, s.2)

7. P.L.1983, c.245 (C.2C:49-1 through 2C:49-12, inclusive) is repealed.

8. This act shall take effect immediately.

Eliminates the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.

EXHIBIT 7

CHAPTER 204

AN ACT to eliminate the death penalty and allow for life imprisonment without eligibility for parole, revising various parts of the statutory law, repealing P.L.1983, c.245, and supplementing Title 2C of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.2C:11-3 is amended to read as follows:

Murder.

2C:11-3. Murder.

a. Except as provided in N.J.S.2C:11-4, criminal homicide constitutes murder when:

(1) The actor purposely causes death or serious bodily injury resulting in death; or

(2) The actor knowingly causes death or serious bodily injury resulting in death; or

(3) It is committed when the actor, acting either alone or with one or more other persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual assault, arson, burglary, kidnapping, carjacking, criminal escape or terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of immediate flight therefrom, any person causes the death of a person other than one of the participants; except that in any prosecution under this subsection, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

b. (1) Murder is a crime of the first degree but a person convicted of murder shall be sentenced, except as provided in paragraphs (2), (3) and (4) of this subsection, by the court to a term of 30 years, during which the person shall not be eligible for parole, or be sentenced to a specific term of years which shall be between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole.

(2) If the victim was a law enforcement officer and was murdered while performing his official duties or was murdered because of his status as a law enforcement officer, the person convicted of that murder shall be sentenced by the court to a term of life imprisonment, during which the person shall not be eligible for parole.

(3) A person convicted of murder shall be sentenced to a term of life imprisonment without eligibility for parole if the murder was committed under all of the following circumstances:

(a) The victim is less than 14 years old; and

(b) The act is committed in the course of the commission, whether alone or with one or more persons, of a violation of N.J.S.2C:14-2 or N.J.S.2C:14-3.

(4) Any person convicted under subsection a.(1) or (2) who committed the homicidal act by his own conduct; or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value; or who, as a leader of a

narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded or by threat or promise solicited the commission of the offense, or, if the murder occurred during the commission of the crime of terrorism, any person who committed the crime of terrorism, shall be sentenced by the court to life imprisonment without eligibility for parole, which sentence shall be served in a maximum security prison, if a jury finds beyond a reasonable doubt that any of the following aggravating factors exist:

(a) The defendant has been convicted, at any time, of another murder. For purposes of this section, a conviction shall be deemed final when sentence is imposed and may be used as an aggravating factor regardless of whether it is on appeal;

(b) In the commission of the murder, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim;

(c) The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated assault to the victim;

(d) The defendant committed the murder as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value;

(e) The defendant procured the commission of the murder by payment or promise of payment of anything of pecuniary value;

(f) The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by the defendant or another;

(g) The murder was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, robbery, sexual assault, arson, burglary, kidnapping, carjacking or the crime of contempt in violation of subsection b. of N.J.S.2C:29-9;

(h) The defendant murdered a public servant, as defined in N.J.S.2C:27-1, while the victim was engaged in the performance of his official duties, or because of the victim's status as a public servant;

(i) The defendant: (i) as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated in N.J.S.2C:35-3;

(j) The homicidal act that the defendant committed or procured was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-2).

(5) A juvenile who has been tried as an adult and convicted of murder shall be sentenced pursuant to paragraph (1), (2) or (3) of this subsection.

c. (Deleted by amendment, P.L.2007, c.204).

d. (Deleted by amendment, P.L.2007, c.204).

e. (Deleted by amendment, P.L.2007, c.204).

f. (Deleted by amendment, P.L.2007, c.204).

g. (Deleted by amendment, P.L.2007, c.204).

h. (Deleted by amendment, P.L.2007, c.204).

i. For purposes of this section the term "homicidal act" shall mean conduct that causes

death or serious bodily injury resulting in death.

j. In a sentencing proceeding conducted pursuant to this section, the display of a photograph of the victim taken before the homicide shall be permitted.

C.2C:11-3b Resentencing to term of life imprisonment.

2. An inmate sentenced to death prior to the date of the enactment of this act, upon motion to the sentencing court and waiver of any further appeals related to sentencing, shall be resentenced to a term of life imprisonment during which the defendant shall not be eligible for parole. Such sentence shall be served in a maximum security prison.

Any such motion to the sentencing court shall be made within 60 days of the enactment of this act. If the motion is not made within 60 days the inmate shall remain under the sentence of death previously imposed by the sentencing court.

C.2C:11-3c Restitution.

3. In addition to the provisions of any other law requiring restitution, a person convicted of murder pursuant to N.J.S.2C:11-3 shall be required to pay restitution to the nearest surviving relative of the victim. The court shall determine the amount and duration of the restitution pursuant to N.J.S.2C:43-3 and the provisions of chapter 46 of Title 2C of the New Jersey Statutes.

4. N.J.S.2B:23-10 is amended to read as follows:

Examination of jurors.

2B:23-10. Examination of jurors. a. In the discretion of the court, parties to any trial may question any person summoned as a juror after the name is drawn and before the swearing, and without the interposition of any challenge, to determine whether or not to interpose a peremptory challenge or a challenge for cause. Such examination shall be permitted in order to disclose whether or not the juror is qualified, impartial and without interest in the result of the action. The questioning shall be conducted in open court under the trial judge's supervision.

b. (Deleted by amendment, P.L.2007, c.204).

5. N.J.S.2B:23-13 is amended to read as follows:

Peremptory challenges.

2B:23-13. Peremptory challenges.

Upon the trial of any action in any court of this State, the parties shall be entitled to peremptory challenges as follows:

a. In any civil action, each party, 6.

b. Upon an indictment for kidnapping, murder, aggravated manslaughter, manslaughter, aggravated assault, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, aggravated arson, arson, burglary, robbery, forgery if it constitutes a crime of the third degree as defined by subsection b. of N.J.S.2C:21-1, or perjury, the defendant, 20 peremptory challenges if tried alone and 10 challenges if tried jointly and the State, 12 peremptory challenges if the defendant is tried alone and 6 peremptory challenges for each 10 afforded the defendants if tried jointly.

c. Upon any other indictment, defendants, 10 each; the State, 10 peremptory challenges for each 10 challenges allowed to the defendants. When the case is to be tried by a jury from another county, each defendant, 5 peremptory challenges, and the State, 5 peremptory challenges for each 5 peremptory challenges afforded the defendants.

6. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to read as follows:

C.30:4-123.51 Eligibility for parole.

7. a. Each adult inmate sentenced to a term of incarceration in a county penal institution, or to a specific term of years at the State Prison or the correctional institution for women shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term, or one-third of the sentence imposed where no mandatory minimum term has been imposed less commutation time for good behavior pursuant to N.J.S.2A:164-24 or R.S.30:4-140 and credits for diligent application to work and other institutional assignments pursuant to P.L.1972, c.115 (C.30:8-28.1 et seq.) or R.S.30:4-92. Consistent with the provisions of the New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work credits shall not in any way reduce any judicial or statutory mandatory minimum term and such credits accrued shall only be awarded subsequent to the expiration of the term.

b. Each adult inmate sentenced to a term of life imprisonment shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term, or 25 years where no mandatory minimum term has been imposed less commutation time for good behavior and credits for diligent application to work and other institutional assignments. If an inmate sentenced to a specific term or terms of years is eligible for parole on a date later than the date upon which he would be eligible if a life sentence had been imposed, then in such case the inmate shall be eligible for parole after having served 25 years, less commutation time for good behavior and credits for diligent application to work and other institutional assignments. Consistent with the provisions of the New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work credits shall not in any way reduce any judicial or statutory mandatory minimum term and such credits accrued shall only be awarded subsequent to the expiration of the term.

c. Each inmate sentenced to a specific term of years pursuant to the "Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et al.) shall become primarily eligible for parole after having served one-third of the sentence imposed less commutation time for good behavior and credits for diligent application to work and other institutional assignments.

d. Each adult inmate sentenced to an indeterminate term of years as a young adult offender pursuant to N.J.S.2C:43-5 shall become primarily eligible for parole consideration pursuant to a schedule of primary eligibility dates developed by the board, less adjustment for program participation. In no case shall the board schedule require that the primary parole eligibility date for a young adult offender be greater than the primary parole eligibility date required pursuant to this section for the presumptive term for the crime authorized pursuant to subsection f. of N.J.S.2C:44-1.

e. Each adult inmate sentenced for an offense specified in N.J.S.2C:47-1 shall become primarily eligible for parole as follows:

(1) If the court finds that the offender's conduct was not characterized by a pattern of repetitive, compulsive behavior or finds that the offender is not amenable to sex offender

treatment, or if after sentencing the Department of Corrections in its most recent examination determines that the offender is not amenable to sex offender treatment, the offender shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term or one-third of the sentence imposed where no mandatory minimum term has been imposed. Neither such term shall be reduced by commutation time for good behavior pursuant to R.S.30:4-140 or credits for diligent application to work and other institutional assignments pursuant to R.S.30:4-92.

(2) All other offenders shall be eligible for parole pursuant to the provisions of N.J.S.2C:47-5, except no offender shall become primarily eligible for parole prior to the expiration of any judicial or statutory mandatory minimum term.

f. Each juvenile inmate committed to an indeterminate term shall be immediately eligible for parole.

g. Each adult inmate of a county jail, workhouse or penitentiary shall become primarily eligible for parole upon service of 60 days of his aggregate sentence or as provided for in subsection a. of this section, whichever is greater. Whenever any such inmate's parole eligibility is within six months of the date of such sentence, the judge shall state such eligibility on the record which shall satisfy all public and inmate notice requirements. The chief executive officer of the institution in which county inmates are held shall generate all reports pursuant to subsection d. of section 10 of P.L.1979, c.441 (C.30:4-123.54). The parole board shall have the authority to promulgate time periods applicable to the parole processing of inmates of county penal institutions, except that no inmate may be released prior to the primary eligibility date established by this subsection, unless consented to by the sentencing judge. No inmate sentenced to a specific term of years at the State Prison or the correctional institution for women shall become primarily eligible for parole until service of a full nine months of his aggregate sentence.

h. When an inmate is sentenced to more than one term of imprisonment, the primary parole eligibility terms calculated pursuant to this section shall be aggregated by the board for the purpose of determining the primary parole eligibility date, except that no juvenile commitment shall be aggregated with any adult sentence. The board shall promulgate rules and regulations to govern aggregation under this subsection.

i. The primary eligibility date shall be computed by a designated representative of the board and made known to the inmate in writing not later than 90 days following the commencement of the sentence. In the case of an inmate sentenced to a county penal institution such notice shall be made pursuant to subsection g. of this section. Each inmate shall be given the opportunity to acknowledge in writing the receipt of such computation. Failure or refusal by the inmate to acknowledge the receipt of such computation shall be recorded by the board but shall not constitute a violation of this subsection.

j. Except as provided in this subsection, each inmate sentenced pursuant to N.J.S.2A:113-4 for a term of life imprisonment, N.J.S.2A:164-17 for a fixed minimum and maximum term or subsection b. of N.J.S.2C:1-1 shall not be primarily eligible for parole on a date computed pursuant to this section, but shall be primarily eligible on a date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.), which is continued in effect for this purpose. Inmates classified as second, third or fourth offenders pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12) shall become primarily eligible for parole after serving one-third, one-half or two-thirds of the maximum sentence imposed, respectively, less in each instance commutation time for good behavior and credits for diligent application to work and other institutional assignments; provided, however, that if the prosecuting attorney or the

sentencing court advises the board that the punitive aspects of the sentence imposed on such inmates will not have been fulfilled by the time of parole eligibility calculated pursuant to this subsection, then the inmate shall not become primarily eligible for parole until serving an additional period which shall be one-half of the difference between the primary parole eligibility date calculated pursuant to this subsection and the parole eligibility date calculated pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the prosecuting attorney or the sentencing court advises the board that the punitive aspects of the sentence have not been fulfilled, such advice need not be supported by reasons and will be deemed conclusive and final. Any such decision shall not be subject to judicial review except to the extent mandated by the New Jersey and United States Constitutions. The board shall, reasonably prior to considering any such case, advise the prosecuting attorney and the sentencing court of all information relevant to such inmate's parole eligibility.

k. Notwithstanding any provisions of this section to the contrary, a person sentenced to imprisonment pursuant to paragraph (2), (3) or (4) of subsection b. of N.J.S.2C:11-3 shall not be eligible for parole.

l. Notwithstanding the provisions of subsections a. through j. of this section, the appropriate board panel, as provided in section 1 of P.L.1997, c.214 (C.30:4-123.51c), may release an inmate serving a sentence of imprisonment on medical parole at any time.

Repealer.

7. P.L.1983, c.245 (C.2C:49-1 through 2C:49-12, inclusive) is repealed.

8. This act shall take effect immediately.

Approved December 17, 2007.

EXHIBIT 8

Dec-17-07 Governor Corzine Signs Legislation Eliminating Death Penalty in New Jersey

Español

NEWS RELEASE
Governor Jon S. Corzine
December 17, 2007

FOR MORE INFORMATION:
Press Office
609-777-2600

GOVERNOR CORZINE SIGNS LEGISLATION ELIMINATING DEATH PENALTY IN NEW JERSEY

TRENTON - Governor Jon S. Corzine today signed legislation abolishing the death penalty in New Jersey and replacing it with life imprisonment without parole. New Jersey is the first state in the nation to enact a law to end use of the death penalty since it was reinstated by the United States Supreme Court in 1976. To ensure that the intent of the legislation was fully carried out as to the eight remaining inmates on death row, on Sunday evening Governor Corzine commuted the sentences of those inmates to life in prison without parole.

"Today New Jersey evolves. This is a day of progress for us and for the millions of people across our nation and around the globe who reject the death penalty as a moral or practical response to the grievous, even heinous, crime of murder," Corzine said. "I have been moved by the passionate views on both sides of this issue, and I firmly believe that replacing the death penalty with life in prison without parole best captures our State's highest values and reflects our best efforts to search for true justice."

"We can't logically argue the deterrent factor of the death penalty when, in fact, we never use it," said Senate President Richard J. Codey (D-Essex). "The best thing we can do for the residents of New Jersey is to enact a measure that will speak to the truth of what the real sentence is and help victim's families put this painful chapter in their life behind them more quickly,"

"New Jersey's death penalty has been nothing more than a paper deterrent, the epitome of false security," said Speaker Joe Roberts (D-Camden). "When Sister Helen Prejean visited the State House last month, she said that by abolishing the death penalty New Jersey would become 'a beacon on a hill.' At the least, we have set an example for other states to follow."

"I can't imagine how I would react if I had a loved one murdered. Hopefully, my faith would guide me as it has guided the families of murder victims who have supported repeal of the death penalty," said Senator Raymond J. Lesniak (D-Union). "It's not often we vote our conscience in the legislature. We should do it more often."

"Our death penalty has been cruel and unusual punishment both for the criminals on death row and the families of the victims," said Assemblyman Wilfredo Caraballo (D-Essex/Union). "We have seized the moment and now join the ranks of other states and countries that view the death penalty as discriminatory, immoral, and barbaric. We're a better state than one that puts people to death."

The legislation (S171/A3716) was sponsored in the Senate by Senator Raymond J. Lesniak (D-Union), Senator Robert J. Martin (R-Morris/Passaic), Senator Shirley K. Turner (D-Mercer) and Senator Nia H. Gill (D-Essex/Passaic). It was sponsored in the Assembly by Assemblyman Wilfredo Caraballo (D-Essex/Union), Assemblyman Christopher Bateman (R-Morris/Somerset), Assemblyman Gordon M. Johnson (D-Bergen), Assemblywoman Valerie Vainieri Huttle (D-Bergen) and Assemblywoman Nilsa Cruz-Perez (D-Camden/Gloucester).

EXHIBIT 9

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-14 NMSA 1978 (being Laws 1979, Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--When a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without possibility of release or parole."

Section 2. Section 31-18-23 NMSA 1978 (being Laws 1994, Chapter 24, Section 2, as amended) is amended to read:

"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a third violent felony, and each violent felony conviction is part of a separate transaction or occurrence, and at least the third violent felony conviction is in New Mexico, the defendant shall, in addition to the sentence imposed for the third violent conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

B. The sentence of life imprisonment shall be imposed after a sentencing hearing, separate from the trial or guilty plea proceeding resulting in the third violent felony conviction, pursuant to the provisions of Section 31-18-24 NMSA 1978.

C. For the purpose of this section, a violent felony conviction incurred by a defendant before the defendant reaches the age of eighteen shall not count as a violent felony conviction.

D. When a defendant has a felony conviction from another state, the felony conviction shall be considered a violent felony for the purposes of the Criminal Sentencing Act if that crime would be considered a violent felony in New Mexico.

E. As used in the Criminal Sentencing Act:

(1) "great bodily harm" means an injury to the person that creates a high probability of death or that causes serious disfigurement or that results in permanent loss or impairment of the function of any member or organ of the body; and

(2) "violent felony" means:

(a) murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978;

(b) shooting at or from a motor vehicle resulting in great bodily harm, as provided in Subsection B of

Section 30-3-8 NMSA 1978;

(c) kidnapping resulting in great bodily harm inflicted upon the victim by the victim's captor, as provided in Subsection B of Section 30-4-1 NMSA 1978;

(d) criminal sexual penetration, as provided in Subsection C or D or Paragraph (5) or (6) of Subsection E of Section 30-9-11 NMSA 1978; and

(e) robbery while armed with a deadly weapon resulting in great bodily harm as provided in Section 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA 1978."

Section 3. Section 31-20A-2 NMSA 1978 (being Laws 1979, Chapter 150, Section 3) is amended to read:

"31-20A-2. CAPITAL FELONY--DETERMINATION OF SENTENCE.--

If a jury finds, beyond a reasonable doubt, that one or more aggravating circumstances exist, as enumerated in Section 31-20A-5 NMSA 1978, the defendant shall be sentenced to life imprisonment without possibility of release or parole. If the jury does not make the finding that one or more aggravating circumstances exist, the defendant shall be sentenced to life imprisonment."

Section 4. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

A. An inmate of an institution who was sentenced

to life imprisonment becomes eligible for a parole hearing after the inmate has served thirty years of the sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

(1) interview the inmate at the institution where the inmate is committed;

(2) consider all pertinent information concerning the inmate, including:

(a) the circumstances of the offense;

(b) mitigating and aggravating circumstances;

(c) whether a deadly weapon was used in the commission of the offense;

(d) whether the inmate is a habitual offender;

(e) the reports filed under Section 31-21-9 NMSA 1978; and

(f) the reports of such physical and mental examinations as have been made while in an institution;

(3) make a finding that a parole is in the best interest of society and the inmate; and

(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

If parole is denied, the inmate sentenced to life

imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

B. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was sentenced to life imprisonment shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

C. An inmate of an institution who was sentenced to life imprisonment without possibility of release or parole is not eligible for parole and shall remain incarcerated for the entirety of the inmate's natural life.

D. Except for certain sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and

supervision of the board.

E. Every person while on parole shall remain in the legal custody of the institution from which the person was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole, until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the

period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and the inmate's duties relating thereto.

F. When a person on parole has performed the obligations of the person's release for the period of parole provided in this section, the board shall make a final order of discharge and issue the person a certificate of discharge.

G. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:

(1) to pay the actual costs of parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars ($1,800) annually to be paid in monthly installments of not less than twenty-five dollars ($25.00) and not more than one hundred fifty dollars ($150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the

board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to the inmate's arrest, prosecution or conviction.

H. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act."

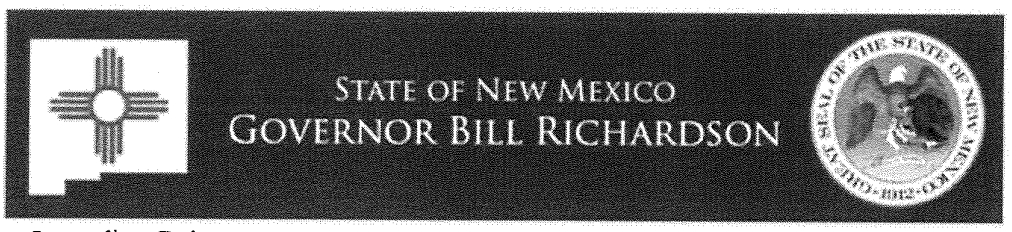
Section 5. REPEAL.--Sections 31-14-1 through 31-14-16, Section 31-18-14.1, Section 31-20A-1, Sections 31-20A-2.1 through 31-20A-4 and Section 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69, Sections 1 through 10, Laws 1955, Chapter 127, Section 1, Laws 1979, Chapter 150, Section 9, Laws 1955, Chapter 127, Sections 3 and 4, Laws 1929, Chapter 69, Sections 12 and 13, Laws 2001, Chapter 128, Section 1, Laws 1979, Chapter 150, Section 2, Laws 1991, Chapter 30, Section 1 and

Laws 1979, Chapter 150, Sections 4, 5 and 7, as amended) are repealed.

Section 6. APPLICABILITY.--The provisions of this act apply to crimes committed on or after July 1, 2009.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

EXHIBIT 10



For Immediate Release
March 18, 2009

Contact: Gilbert Gallegos
505.476.2217

Governor Bill Richardson Signs Repeal of the Death Penalty

SANTA FE – Governor Bill Richardson today signed House Bill 285, Repeal of the Death Penalty. The Governor's remarks follow:

Today marks the end of a long, personal journey for me and the issue of the death penalty.

Throughout my adult life, I have been a firm believer in the death penalty as a just punishment – in very rare instances, and only for the most heinous crimes. I still believe that.

But six years ago, when I took office as Governor of the State of New Mexico, I started to challenge my own thinking on the death penalty.

The issue became more real to me because I knew the day would come when one of two things might happen: I would either have to take action on legislation to repeal the death penalty, or more daunting, I might have to sign someone's death warrant.

I'll be honest. The prospect of either decision was extremely troubling. But I was elected by the people of New Mexico to make just this type of decision.

So, like many of the supporters who took the time to meet with me this week, I have believed the death penalty can serve as a deterrent to some who might consider murdering a law enforcement officer, a corrections officer, a witness to a crime or kidnapping and murdering a child. However, people continue to commit terrible crimes even in the face of the death penalty and responsible people on both sides of the debate disagree – strongly – on this issue.

But what we cannot disagree on is the finality of this ultimate punishment. Once a conclusive decision has been made and executed, it cannot be reversed. And it is in consideration of this, that I have made my decision.

I have decided to sign legislation that repeals the death penalty in the state of New Mexico.

Regardless of my personal opinion about the death penalty, I do not have confidence in the criminal justice system as it currently operates to be the final arbiter when it comes to who lives and who dies for their crime. If the State is going to undertake this awesome

responsibility, the system to impose this ultimate penalty must be perfect and can never be wrong.

But the reality is the system is not perfect – far from it. The system is inherently defective. DNA testing has proven that. Innocent people have been put on death row all across the country.

Even with advances in DNA and other forensic evidence technologies, we can't be 100-percent sure that only the truly guilty are convicted of capital crimes. Evidence, including DNA evidence, can be manipulated. Prosecutors can still abuse their powers. We cannot ensure competent defense counsel for all defendants. The sad truth is the wrong person can still be convicted in this day and age, and in cases where that conviction carries with it the ultimate sanction, we must have ultimate confidence – I would say certitude – that the system is without flaw or prejudice. Unfortunately, this is demonstrably not the case.

And it bothers me greatly that minorities are overrepresented in the prison population and on death row.

I have to say that all of the law enforcement officers, and especially the parents and spouses of murder victims, made compelling arguments to keep the death penalty. I respect their opinions and have taken their experiences to heart -- which is why I struggled – even today – before making my final decision.

Yes, the death penalty is a tool for law enforcement. But it's not the only tool. For some would-be criminals, the death penalty may be a deterrent. But it's not, and never will be, for many, many others.

While today's focus will be on the repeal of the death penalty, I want to make clear that this bill I'm signing actually makes New Mexico safer. With my signature, we now have the option of sentencing the worst criminals to life in prison without the possibility of parole. They will never get out of prison.

Faced with the reality that our system for imposing the death penalty can never be perfect, my conscience compels me to replace the death penalty with a solution that keeps society safe.

The bill I am signing today, which was courageously carried for so many years by Representative Gail Chasey, replaces the death penalty with true life without the possibility of parole – a sentence that ensures violent criminals are locked away from society forever, yet can be undone if an innocent person is wrongfully convicted. More than 130 death row inmates have been exonerated in the past 10 years in this country, including four New Mexicans – a fact I cannot ignore.

From an international human rights perspective, there is no reason the United States should be behind the rest of the world on this issue. Many of the countries that continue to support

and use the death penalty are also the most repressive nations in the world. That's not something to be proud of.

In a society which values individual life and liberty above all else, where justice and not vengeance is the singular guiding principle of our system of criminal law, the potential for wrongful conviction and, God forbid, execution of an innocent person stands as anathema to our very sensibilities as human beings. That is why I'm signing this bill into law.

#30#

EXHIBIT 11

New Mexico legislature votes to repeal the death penalty

New Mexico could be the 15th US state to outlaw capital punishment if the governor signs the bill into law

Associated Press
guardian.co.uk, Friday 13 March 2009 17.44 EDT

The state legislature voted today to repeal the death penalty, meaning New Mexico could become the 15th US state not to have capital punishment if the governor signs the bill into law.

Governor Bill Richardson has opposed a repeal in the past, but now says he would consider signing it. "I haven't made a final decision," the governor said this week.

The state senate voted 24-18 today in favour of the bill, which replaces capital punishment with a sentence of life without parole. The house approved it a month ago.

New Mexico, one of 36 states with capital punishment, has two men on death row whose sentences would not be affected by repeal.

The state has executed one man since 1960, convicted child killer Terry Clark in 2001.

New Jersey banned executions in 2007, the first state to do so since the US supreme court reinstated the death penalty in 1976.

Opponents of the death penalty said it does not deter murder and is administered unfairly, and that there's a risk of executing innocent people.

"As beautiful as our justice system is ... it is still a justice system of human beings, and human beings make mistakes," state senator Cisco McSorley, a Democrat from Albuquerque, said during nearly three hours of debate.

Death penalty supporters objected that murderers sentenced to life without parole could end up in the general prison population, and argued that locking up murderers for life could imperil corrections officers.

"There's no incentive for not killing a guard every time you get a chance," said state senator Rod Adair, a Republican.

He called capital punishment "a just penalty for the most heinous of crimes in our society".

Opponents of repeal also said the death penalty is an important tool for prosecutors, who had asked lawmakers not to pass the bill.

New Mexico was one of at least 11 states considering banning executions this year.

Repeal legislation has passed the state senate in Montana and awaits a house hearing. The state senate in Kansas is expected to debate a repeal bill on Monday.

EXHIBIT 12

F I S C A L I M P A C T R E P O R T

SPONSOR Chasey **ORIGINAL DATE** 1/27/09 **LAST UPDATED** 1/31/09 **HB** 285

SHORT TITLE Abolish Death Penalty **SB**

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	**FY10**		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NA	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Public Defender (PD)
Department of Corrections (DOC)

SUMMARY

Synopsis of Bill

House Bill 285 abolishes the death penalty by amending Section 31-18-14 NMSA 1978 and substituting either a sentence of life or life without possibility of release or parole for a death sentence.

HB 285 amends Section 31-20A-2 NMSA 1978 to remove the subsection concerning the jury's determination of a life or death sentence and providing that upon a finding by the jury, beyond a reasonable doubt, that one or more Section 31-20A-5 aggravating circumstances exist, the defendant shall be sentenced to life imprisonment without possibility of release or parole.

Additionally, Section 31-21-10 NMSA 1978 is amended to provide that an inmate sentenced to life imprisonment without possibility of release or parole is not eligible for parole and shall remain incarcerated for life. The bill repeals Sections 31-14-1 through 31-14-16, 31-18-14.1, 31-20A-2.1 through 31-20A-4, and 31-20A-6 NMSA 1978, the sections relating to capital felony sentencing, capital felony cases heard by jury, and the execution of the death sentence.

HB 285 provides that the Act applies to crimes committed on or after July 1, 2009.

The effective date of the Act is July 1, 2009.

FISCAL IMPLICATIONS

According to the Public Defender Department, abolishing the death penalty would save New Mexico millions of dollars. The State Bar Task Force on the Administration of the Death Penalty in New Mexico Final Report,[1] completed in 2004, outlines exactly why death penalty cases are so costly: These cases require heightened standards for defense counsel and at least two highly qualified defense attorneys at each stage of proceedings.[2] They require extensive trial level litigation as well as constitutionally and statutorily mandated appeal.[3] Unlike any other criminal trial, these cases demand that a certified court reporter transcribe all proceedings.[4] The survivors of the victim should be accorded particular respect.[5] Jury selection is a long, arduous process that potentially touches on the constitutional and religious rights of New Mexicans, and costs at least four times as much as a non-death first-degree murder case.[6] Due to changes in federal habeas corpus law, these cases must be long and thoroughly litigated in state court habeas proceedings as well.[7] The Task Force ultimately recognized and recommended substantial changes to the way death penalty cases are prosecuted and defended in New Mexico, which may further increase costs.

Although a study has ever been done in New Mexico on the total costs of a death penalty case to the state (including the prosecution, the public defender, and the extensive drain on court resources.), a recent Duke University study done on North Carolina's costs found that the death penalty costs North Carolina $2.16 million dollars per execution over a system that imposes life imprisonment.[8]

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[1] State Bar of New Mexico Task Force to Study the Administration of the Death Penalty in New Mexico Final Report, submitted to the Board of Bar Commissioners January 23, 2004 (The Honorable Rudy S. Apodaca and Jerry Todd Wertheim, co-chairs), *available online at* http://www.nmbar.org/Content/NavigationMenu/Publications_Media/Reports_Surveys/Report_on_the_Death_Penalty/TskfrcDthPnltyRprt.pdf .

[2] *Id.* at 7-10. *See also* American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (February 2003).

[3] *Id.* at 12-21.

[4] *Id.* at 22.

[5] *Id.*.

[6] State Bar of New Mexico Task Force to Study the Administration of the Death Penalty in New Mexico Final Report at 23; Telephone conversation with court administrator Fern Goodman, 2/1/05. Fern estimated that the costs to be $20-25,000 for a death jury and $7-8,000 for a non-death jury. This is her conservative estimate, and it does not include the costs of a change of venue or the cost of bringing witnesses or experts concerning juror exposure and venue.

[7] *Id.* at 24.

[8] P. Cook, "The Costs of Processing Murder Cases in North Carolina," Duke University, May 1993.

New Mexico does not receive much return on its death penalty investment. Fewer than half of the cases in which the prosecutor seeks the death penalty end in a death sentence. And, according to the National Bureau of Justice Statistics, 68% of all these convictions are overturned on appeal—the highest overturn rate in the United States.[9] Therefore, fewer than one-fourth of all death penalty prosecutions ultimately result in a defendant going to death row in New Mexico. Finally, New Mexico's actual execution rate is even lower than the 12% of all convicted and sentenced murderers ultimately executed, nationally.[10] Taking this data to its logical conclusion, there is only a 4.5% chance that any multi-million dollar death penalty prosecution will ever end in an execution in New Mexico.

According to the Administrative Office of the Courts, Moreover, to assemble a jury for a death penalty case, the district court will summon as many as one thousand (1,000) people. An estimate of what a death penalty case cost for the jury and witness fee fund is approximately$20,000-$25,000. In contrast, a non-death penalty murder case cost approximately $7,000-$8,000.

According to the Corrections Department the bill could result in a moderate placement burden on the Department. Because the Department currently operates all of its facilities at or near capacity, it would be difficult to continually absorb new offenders who have been sentenced to life without the possibility of release or parole. If large numbers of offenders are convicted and sentenced under the provisions of the bill, it may become necessary for the state to build new facilities or enlarge those already in existence.

SIGNIFICANT ISSUES

This bill would abolish the death penalty and amend existing criminal law regarding life sentences. Specifically, the bill provides that persons sentenced to life imprisonment as a result of the commission of a capital felony where the jury found beyond a reasonable doubt that one or more aggravating circumstances existed would not be eligible for parole and would be required to remain incarcerated for the entirety of their natural lives. Thus, the bill will effectively establish the penalty of a life sentence without the possibility of release or parole for any offenders convicted of a capital felony with one or more aggravating circumstances. If the jury does not make the required finding that one or more aggravating circumstances exist, the offender will be sentenced to life imprisonment (and eligible for but not guaranteed parole after 30 full years in prison).

ADMINISTRATIVE IMPLICATIONS

Death penalty cases take up a considerable amount of judicial time because the district courts have to conduct not only a trial but a sentencing phase as well.

TECHNICAL ISSUES

There may be concern that the provisions for carrying out the death penalty, Sections 31-14-1 through 31-14-16 NMSA 1978, are repealed in the Act, despite the fact that there are currently inmates on death row.

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[9] U.S. Dept. of Justice, Bureau of Justice Statistics, "Capital Punishment 2003," appendix Table 4, 2004.
[10] U.S. Dept. of Justice, Bureau of Justice Statistics, "Capital Punishment 2003," appendix Table 4, 2004.

OTHER SUBSTANTIVE ISSUES

As of April 1, 2008, the Death Penalty was authorized by 37 states, the Federal Government, and the U.S. Military. Those jurisdictions without the Death Penalty include 13 states and the District of Columbia. (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin).

Capital punishment was suspended in the United States from 1972 through 1976 primarily as a result of the Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972). In this case, the court found the imposition of the death penalty in a consolidated group of cases to be unconstitutional, on the grounds of cruel and unusual punishment in violation of the eighth amendment to the United States Constitution.

Capital punishment is often the subject of controversy. Opponents of the death penalty argue that it has led to the execution of innocent people, that life imprisonment is an effective and less expensive substitute, that it discriminates against minorities and the poor, and that it violates the criminal's right to life. Supporters believe that the penalty is justified for murderers by the principle of retribution, that life imprisonment is not an equally effective deterrent, and that the death penalty affirms the right to life by punishing those who violate it in the strictest form

The Public Defender Department reports that this bill would greatly streamline the litigation and appeal of what are now death penalty cases, because it will eliminate the death penalty specific pre-trial appeals, the greatly expanded jury selection, and the bifurcated trial procedures (a guilt phase and a penalty phase trial) that are now required under the Capital Felony Sentencing Act to comply with the United States Constitution Eighth Amendment's prohibition against cruel and unusual punishment. Abolishment of the death penalty would also negate the Capital Felony Sentencing Act's detailed appellate review in the New Mexico Supreme Court.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The death penalty will remain legal in New Mexico.

CS/mt:svb

EXHIBIT 13

Estimates of Time Spent in Capital and Non-Capital Murder Cases:
A Statistical Analysis of Survey Data from Clark County Defense Attorneys

Terance D. Miethe, PhD.
Department of Criminal Justice
University of Nevada, Las Vegas
February 21, 2012

I. Introduction

A survey was designed to provide average estimates of the time spent at various stages of criminal processing for the defense of capital and non-capital murder cases. Defense attorneys were asked to use their personal experiences over the past three years to estimate the number of hours they spent in pretrial, trial, penalty, and post-conviction activities in a "typical" capital and non-capital murder case. Separate questions were asked about their experiences as "lead attorney" and "second chair" in these typical cases.

A total of 22 defense attorneys completed the survey. The largest group of survey respondents were attorneys within the Public Defender's office (n=10), followed by the Special Public Defender's office (n=9) and the Office of Assigned Counsel (n=3). To provide some context for the time estimates provided by these defense attorneys, this survey data was also supplemented with general case processing information on a sample of 138 murder cases sentenced in District Court between 2009 and 2011. The Clark County Court's electronic record system was used to identify these murder cases and to construct summary statistics on case processing (e.g., average time between court filing and sentencing; number of total meetings with parties present, number of orders and motions filed). These court statistics were analyzed separately for each major type of sentence (i.e., yearly maximum sentences, life with possibility of parole, life without possibility of parole, and death sentences).

For the survey data included in this report, the median score (i.e., the middle score of a distribution) is used as the average estimate of time spent at each stage of criminal processing. The median is the most appropriate measure for these analyses because (1) it minimizes the impact of extreme ratings and (2) the distribution of time estimates across respondents is not normally distributed. Under these conditions, the median, rather than the mean, is the appropriate summary measure of central tendency.

II. Survey Questions

The survey items included questions about pretrial, trial, penalty, and post-conviction activities. Definitions of these stages and activities within them were provided to reduce ambiguity in the attorney's time estimates.

Survey respondents were told that **pretrial phase activities** include "time spent up to jury selection including but not limited to consultation time with the client, witnesses, experts, etc; court time, document review and investigations." Hourly estimates were then elicited for their time spent as lead attorney and second chair attorney in all pretrial phase activities related to guilty and penalty in a "typical" capital murder case. Similar hourly estimates were elicited for a "typical" non-capital murder case.

Trial phase activities were defined as "activities from jury selection to verdict including participation in *voir dire* and trial." Questions were included to estimate both the number of days and hours per day for trial phase activities as the lead attorney and as second chair attorney.

Penalty phase activities were defined as "activities after verdict through sentencing including preparation and participation in penalty/sentencing hearings." Questions were included to estimate both the number of days and hours per day for penalty phase activities as the lead attorney and as second chair attorney.

Post-conviction phase activities were defined as "time spent on any guilt-related and penalty-related activities after sentencing including appeals." Questions were included to estimate both the number of days and hours per day for post-conviction phase activities as the lead attorney and as second chair attorney.

III. Results of Time Estimates in Typical Cases

Median time estimates as lead attorney and second chair were computed for a "typical" capital and non-capital murder case for each stage of criminal processing. These comparisons of capital and non-capital cases were conducted for the entire sample and for specific groups (e.g., attorneys who have been lead attorney on 10 or more capital cases vs. attorneys with less experience in capital cases). The results of these comparisons are described below and summarized in Tables 1 and 2.

1. *Pretrial Phase Activities*:

- The median time estimate as lead attorney for pretrial phase activities was ***1,075 hours*** in a typical capital murder case and ***461 hours*** in a typical non-capital murder case. This time differential as lead attorney was ***614 hours*** longer for pretrial activities in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney for pretrial phase activities was ***685 hours*** in a typical capital murder case and ***351 hours*** in a typical non-capital murder case. This time differential as second chair attorney was ***334 hours*** longer for pretrial activities in capital than non-capital cases (see Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney for pretrial phase activities was ***1,760 hours*** in a typical capital murder case and ***812 hours*** in a typical non-capital murder case. This time differential as lead attorney and second chair attorney was ***948 hours*** longer for pretrial activities in capital than non-capital cases (see Panel C of Table 1).

- For both estimates as lead attorney and second chair attorney, penalty-related activities accounted for most of the time spent in the pretrial phase in capital cases. However, guilt-related activities were the primary source of time spent for both lead attorneys and second chair attorneys in the pretrial phase in non-capital cases.

2. ***Trial Phase Activities***:

- The median time estimate as lead attorney for trial phase activities was ***168 hours*** in a typical capital murder case and ***110 hours*** in a typical non-capital murder case. This time differential as lead attorney was ***58 hours*** longer for trial activities in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney for trial phase activities was ***180 hours*** in a typical capital murder case and ***110 hours*** in a typical non-capital murder case. This time differential as second chair attorney was ***70 hours*** longer for trial activities in capital than non-capital cases (Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney for trial phase activities was ***348 hours*** in a typical capital murder case and ***220 hours*** in a typical non-capital murder case. This time differential as lead attorney and second chair attorney was ***128 hours*** longer for trial activities in capital than non-capital cases (see Panel C of Table 1).

3. ***Penalty Phase Activities***:

- The median time estimate as lead attorney for penalty phase activities was ***56 hours*** in a typical capital murder case and ***12 hours*** in a non-capital murder case. This time differential as lead attorney was ***44 hours*** longer for penalty phase activities in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney for penalty phase activities was ***58 hours*** in a typical capital murder case and ***12 hours*** in a typical non-capital murder case. This time differential as second chair attorney was ***46 hours*** longer for penalty phase activities in capital than non-capital cases (see Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney for penalty phase activities was ***114 hours*** in a typical capital murder case and ***24 hours*** in a typical non-capital murder case. This time differential as lead attorney and second chair attorney was ***90 hours*** longer for penalty phase activities in capital than non-capital cases (see Panel C of Table 1).

Table 1: Median Time Estimates (in hours) as Lead Attorney and Second Chair Attorney by Type of Murder Case

A. Lead Attorney Estimates:

Stage	*Capital Cases*	*Non-Capital Cases*	*Difference*
Pretrial	1,075	461	+ 614
Trial	168	110	+ 58
Penalty	56	12	+ 44
Post-Conviction	48	18	+ 30
TOTAL:	***1,347 hours***	***601 hours***	***+ 746 hours***

B. Second Chair Attorney Estimates:

Stage	*Capital Cases*	*Non-Capital Cases*	*Difference*
Pretrial	685	351	+ 334
Trial	180	110	+ 70
Penalty	58	12	+ 46
Post-Conviction	28	13	+ 15
TOTAL:	***951 hours***	***486 hours***	***+ 465 hours***

C. Both Lead Attorney and Second Chair Attorney Estimates Combined:

Stage	*Capital Cases*	*Non-Capital Cases*	*Difference*
Pretrial	1,760	812	+ 948
Trial	348	220	+ 128
Penalty	114	24	+ 90
Post-Conviction	76	31	+ 45
TOTAL:	***2,298 hours***	***1,087 hours***	***+ 1,211 hours***

4. ***Post-Conviction Phase Activities***:

- The median time estimate as lead attorney for post-conviction phase activities was ***48 hours*** in a typical capital murder case and ***18 hours*** in a typical non-capital murder case. This time differential as lead attorney was ***30 hours*** longer for post-conviction phase activities in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney for post-conviction phase activities was ***28 hours*** in a typical capital murder case and ***13 hours*** in a typical non-capital murder case. This time differential as second chair attorney was ***15 hours*** longer for post-conviction phase activities in capital than non-capital cases (see Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney for post-conviction phase activities was ***76 hours*** in a typical capital murder case and ***31 hours*** in a typical non-capital murder case. This time differential as lead attorney and second chair attorney was ***45 hours*** longer for post-conviction activities in capital than non-capital cases (see Panel C of Table 1).

5. ***Overall Time Estimates Across All Stages***:

- The median time estimate as lead attorney across all stages of criminal processing was ***1,347 hours*** in a typical capital murder case and ***601 hours*** in a typical non-capital murder case. This overall time differential as lead attorney was ***746 hours*** longer in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney across all stages of criminal processing was ***951 hours*** in a typical capital murder case and ***486 hours*** in a typical non-capital murder case. This overall time differential as second chair attorney was ***465 hours*** longer in capital than non-capital cases (see Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney across all stages of criminal processing was ***2,298 hours*** in a typical capital murder case and ***1,087 hours*** in a typical non-capital murder case. This overall time differential as lead attorney and second chair attorney was ***1,211 hours*** longer in capital than non-capital cases (see Panel C of Table 1).

6. **Average Time Estimates by Attorney's Legal Experience in Capital Cases:**

- Capital murder cases were estimated to be more time intensive than non-capital murder cases at each stage of criminal processing for both attorneys who have been lead counsel in 10 or more capital cases and those attorneys with less experience in capital cases (see Table 2).

- For defense attorneys with the greater legal experience in capital cases, the average estimated time spent as lead attorney in pretrial activities was ***340 hours*** longer than the time estimate for lead attorneys in non-capital murder cases. For defense attorneys with less experience, this average time differential in pretrial activities by type of murder case was ***659 hours*** longer in capital murders. Regardless of their level of legal experience as lead attorney, the average time estimates for trial and penalty phase activities were between ***36 and 63 hours*** longer for capital cases (see Table 2).

Table 2: Median Time Estimates (in hours) as Lead Attorney by Legal Experience

Stage	*Capital Cases*	*Non-Capital Cases*	*Difference*
Pretrial:			
More Experience	650	310	+ 340
Less Experience	1,125	466	+ 659
Trial:			
More Experience	168	126	+ 42
Less Experience	138	96	+ 42
Penalty:			
More Experience	84	21	+ 63
Less Experience	48	12	+ 36

IV. Deriving Cost Projections from Time Estimates

It is possible to generate relative cost projections for defense activities in capital and non-capital murder cases by (1) assigning hourly wage estimates for defense attorneys' time estimates, (2) using the median time estimates from defense attorneys as our best estimate of hourly workload in these cases, and (3) multiplying the product of these two estimates by the number of capital cases currently pending in Clark County.

The following information is used to provide a preliminary estimate of the relative financial costs for the defense of capital cases beyond the costs incurred if they were prosecuted as non-capital cases:

1. Estimated average time spent as lead attorney across all stages of criminal processing in a typical capital murder case (***1,347 hours***) and a typical non-capital murder case (***601 hours***).

2. Estimated average time differentials as second chair attorney across all stages of criminal processing in a typical capital murder case (***951 hours***). Second chair attorneys are not required in non- capital murder case.

3. Estimated cost of $100 per hour for a public defender attorney and $125 per hour for a private defense attorney through the Office of Appointed Counsel.

4. The number of pending capital cases currently in Clark County (n=80). 45 of these 80 pending cases are represented by public defenders (through the Clark County Public Defender's Office and Special Public Defenders). 35 of these 80 pending cases are represented by defense attorneys assigned by the Clark County Office of Appointed Counsel.

Based on these specifications, the estimated cost differentials for defense counsel in capital and non-capital cases are summarized in Table 3.

These estimated cost differentials suggest that between ***$170,000 and $212,000 per case*** is spent for the defense of a capital murder case beyond the costs that would have incurred if the case were prosecuted as a non-capital murder (see Rows E and F of Table 3). When these estimates of the cost differential per case are applied to the 80 capital cases currently pending in Clark County, the overall cost saving differential for defense counsel would be about **$15 million** if these cases were prosecuted as non-capital murders (see last row of Table 3).

It is important to note that this statistical extrapolation does not cover the full array of time spent in capital cases by other court officials (e.g. judges, prosecutors, jurors), staff and administrative personnel, mitigation specialists, investigators, and expert witnesses. It also does not take into account the additional costs of capital litigation that are associated with state/federal appeals and the extra costs of imprisonment of death-eligible inmates pending trial and sentencing. The possible benefits of capital punishment are also not factored into this extrapolation (e.g., the retributive value of capital punishment, its potential deterrent effect on other murders, and the value of "notice of intent" filings for capital charges in reducing trial costs by encouraging guilty pleas for life sentences). Given these major omissions in the present analysis, a more comprehensive study is required for estimating the overall costs and benefits of capital litigation in this jurisdiction across all groups involved in the criminal processing and adjudication of these cases.

Table 3: Estimated Costs for Defense Attorneys in Capital and Non-Capital Murder Cases (per case and projected cost savings for pending cases)
1. Defense Attorney Costs Per Case:
A. Defense Attorney (Public Defender): **Capital Murder Case** [Formula = Hours as Lead + Hours as 2nd Chair) x $100 per hr] = (1,347 + 951) x $100 = ***$229,800 per capital case.***
B. Private Defense Attorney (Office of Assigned Counsel): **Capital Murder Case** [Formula = Hours as Lead + Hours as 2nd Chair) x $125 per hr] = (1,347 + 951) x $125 = ***$287,250 per capital case.***
C. Defense Attorney (Public Defender): **Non-Capital Murder Case** [Formula = Hours as Lead Attorney) x $100 per hr.] = (601) x $100 = ***$60,100 per non-capital case.***
D. Private Defense Attorney (Office of Assigned Counsel): **Non-Capital Murder Case** [Formula = Hours as Lead Attorney) x $125 per hr.] = (601) x $125 = ***$75,125 per non-capital case.***
2. Difference in Costs Per Capital and Non-Capital Case: [Formula = costs per capital case - costs per noncapital case]
E. Public Defenders as Defense Attorney: **Difference Per Case** [Row A - Row C] **=** $229,800 - $60,100 = **$169,700 per case.**
F. Private Assigned Counsel as Defense Attorney: **Difference Per Case** [Row B - Row D] **=** $287,250 - $75,125 = **$212,125 per case.**

3. Projected Cost Differential for Defense Counsel in All Pending Capital Cases
Cost Saving Differential for Defense Attorneys if all Pending Capital Cases in Clark County were Prosecuted as Non-Capital Cases: [Formula: ***Row E*** x (N cases pending) + ***Row F*** x (N cases pending)] = [$169,700 x 45] + [$212,125 x 35] = $7,636,500 + $7,424,375 ***= $15,060,875***

V. Profile of Court Processing in Murder Cases in Clark County (2009-2011)

To provide some context for understanding these estimates of time spent in capital and non-capital litigation, a supplemental analysis of court processing data was conducted. This supplemental involved 138 murder cases that lead to convictions and sentencing between 2009 and 2011. Average estimates of court processing time (from initial filing dates to sentencing) and the number of court hearings/meetings, order, and motions were recorded. These court processing outcomes were then compared for cases in which the pronounced sentence involved the following penalties: (1) a maximum years of imprisonment excluding life and death sentences (N=68 cases), (2) life sentences with the possibility of parole (n= 44 cases), (3) life without the possibility of parole (n= 21), and (4) death sentences (n= 5 cases). The results of these analyses are summarized in Table 4.

As shown in Table 4, murder cases that ultimately result in a death sentence involve far more court-related activities than murder cases that lead to a life sentence or a maximum sentence of less than life or death. In particular, all death penalty convictions occurred from trials (versus < 50% were trial convictions in non-death sentence cases). The average death penalty case took about 3 years (1,107 days) between the initial filing of these charges by the prosecution and sentencing, whereas this court processing time was substantially lower in all murder cases that did not result in a death sentence (see Table 4, Line 2). The average number of separate court appearances, orders filed, and motions was also considerably greater in murder cases resulting in a death sentence than other penalties.

Table 4: Average Court Processing Outcomes in 127 Murder Cases Resulting in Conviction by Type of Sentence (Clark County, 2009-2011)					
Case Outcome	***Years****	***Life With***	***Life W/O***	***Death***	***All Cases***
% Convicted by Trial versus Guilty Plea:	5.9 %	22.7 %	47.6 %	***100 %***	21.0 %
# of Days between Initial Filing and Sentencing:	387 days	732 days	887 days	***1,107 days***	599 days
# of Separate Court Appearances/Meetings:	9.3	20.9	27.9	***35.2***	16.8
# of Separate Orders Filed to the Court:	3.6	10.1	12.6	***20.0***	7.6
# of Separate Motion Filed to the Court:	5.4	16.6	24.4	***30.0***	12.8
Total # of Cases with this Sentence:	68	44	21	***5***	138
Note: * Years include any sentence in which a specific maximum number of years of imprisonment was pronounced (excluding life and death sentences).					

These average statistics from the Clark County Court's public record system provide some basis for gaining a preliminary understanding of the time and cost differentials between capital and non-capital cases that were found in the survey of defense attorneys. A more complete analysis of the reasons for these cost differentials, however, requires a more comprehensive study of capital and non-capital cases.

VI. Disposition of "Notice of Intent" Cases in Clark County (2009-2011)

A final summary of murder case processing derived from the Clark County Court's public record system involves the final disposition of cases in which a "Notice of Intent to Seek the Death Penalty" was filed by the prosecutor's office. In this sample of 138 murder cases, a "notice of intent" was filed in 35 cases. The final disposition of these 35 cases is summarized in Table 5.

Table 5: Final Disposition of Murder Cases in which a "Notice of Intent to Seek the Death Penalty" was Filed (Clark County, 2009-2011)		
Case Outcome	***Number of Cases***	***Percent Distribution***
Charges Dismissed	1	2.8 %
Specific Number of Years Given*	5	14.3 %
Life With Possibility of Parole	7	20.0 %
Life Without Possibility of Parole	17	48.6 %
Death Sentence	5	14.3 %
Total	**35**	**100.0 %**

Note: * Years include any sentence in which a specific number or range of years of imprisonment was pronounced (excluding life and death sentences).

As shown in Table 5, nearly half (49%) of the cases in which a "notice of intent" was filed ultimately resulted in a sentence of life without the possibility of parole. The next most common disposition was a sentence of life with the possibility of parole (20%). A death sentence was the final disposition in only 5 of the 35 cases (14%) in which a "notice of intent to seek a death sentence" was initially filed.

EXHIBIT 14

Fixing The Death Penalty

December 29, 2000

Nearly one year ago, Gov. George Ryan took a hard look at capital punishment in Illinois and was deeply unnerved by what he saw. His decision last January to declare an indefinite moratorium on the death penalty stands as one of the most courageous acts taken by an Illinois governor, in part because Ryan spent his political career ardently supporting capital punishment.

The moratorium followed a startling series of Death Row exonerations, most significantly the 1999 release of Anthony Porter, a man who had come within 48 hours of execution for a crime he did not commit. It followed the probings of a Northwestern University teacher, his students and a private investigator who won Porter his freedom. Tribune investigations of deep fissures in Illinois' criminal justice system, the governor acknowledges, helped crystallize his thinking. He formed a special commission to scrutinize the system and recommend reforms. A separate Illinois Supreme Court committee recently issued its own recommendations. It is up to the legislature, the courts and the police to see that they become law and common practice.

Ryan's wake-up call blared far beyond Illinois' borders. Congress now is debating passage of its own safeguards. Public support for executions has tipped downward, the more that folks learn about inequities and errors plaguing a system whose mistakes can never be reversed. In the 37 other states that allow the death penalty, more than two dozen counties and cities have adopted resolutions that call on their states to halt executions. These are symbolic gestures, but still are indicative of shifting attitudes.

Five other states--Nebraska, Arizona, North Carolina, Maryland and Indiana--have initiated reviews; New Hampshire lawmakers voted earlier this year to abolish the state's death penalty before the move was blocked by gubernatorial veto. Even Texas, where lethal injections occur at assembly-line pace, is weighing proposed reforms.

And for good reason. If the state plans to take a life, it had better be absolutely certain of the convicted person's guilt. The problems that obstruct that clear a finding run deep, and lurk in every nook and cranny of the legal system. Six people are especially familiar with them: Murray Blue, Ronald Alvine, Darryl Simms, Hector Nieves, Cecil Sutherland, Willie Thompkins.

These are names of men whose death sentences were reversed or remanded during the last 12 months because of errors committed in sending them to Death Row. Their cases help mark a shameful watershed: More than half of the nearly 300 people sent to Death Row in Illinois since 1977 have had their cases reversed on appeal because of mistakes, misconduct, or because they were proven innocent.

Their ordeals showcase the range of problems running through our criminal justice system. Confessions wrought by police torture. Improper decisions by judges. Innocence proven by DNA testing. Prosecutors knowingly using perjured testimony. Inept defense attorneys. Convictions dependent on the notoriously unreliable testimony of jailhouse snitches.

Then there is this, by now familiar, statistic: Since reinstating the death penalty in 1977, Illinois has cleared 13 inmates from Death Row. It has executed 12.

Just when everybody thought the death penalty was yesterday's debate, Ryan's declaration slapped it back onto the national marquee. And suddenly a one-time pharmacist from Kankakee now finds himself the darling of a resuscitated anti-death penalty movement, speaking at Harvard Law School and accepting awards around the country.

Ryan has made a long philosophical journey since his spokesman Dave Urbanek declared two years ago that Porter's release showed "the system works." These days, Ryan suggests the system may be beyond fixing.

That is a question that will be answered in the coming months.

A number of reforms already have been put in place since the start of the moratorium. The state established a special fund to provide more money to both public defenders and prosecutors for hiring more attorneys and investigators, and to pay for more thorough investigations. It's still not enough for defenders to level the playing field. All potential death penalty prosecutions in Cook County now must be reviewed and approved by State's Atty. Richard Devine, a procedure top prosecutors in his office credit with reducing the number of death penalty prosecutions by roughly 25 percent.

Other potential fixes demand prompt action.

(Page 2 of 2)

Fixing The Death Penalty

December 29, 2000

A bipartisan committee led by Republican state Rep. Jim Durkin studied the problem for a year and has crafted reasonable, responsible trial reforms. They should be adopted in full during the spring legislative session. These measures include requiring pre-trial screening of all jailhouse informant testimony, automatic new trials in cases where prosecutors knowingly withhold evidence useful to the defense, and pre-trial depositions of certain witnesses. A permanent special committee should be established to study wrongful convictions to understand where the system fails and to help correct institutional errors.

Still other measures deserve special attention:

Limit eligibility for the death penalty. When the Illinois legislature voted in 1977 to reinstate the death penalty, it outlined a handful of specific circumstances-- called "aggravating factors"--that would make a defendant eligible for the ultimate punishment. Murdering a police officer, firefighter or prison guard. Murdering in the course of a hijacking or while committing another felony. Murdering two or more people. Murdering for hire. These were narrow, yes-no conditions that limited arbitrariness on the part of state's attorneys who decided when to ask for the death penalty.

Since then, though, state lawmakers have expanded the number of aggravating factors to 20--a ludicrously high number, more than any other state but Delaware and California, with 22 each--and enough to render meaningless the notion that executions in Illinois are reserved only for the most heinous criminals.

Thanks to politicians eager to burnish their tough-on-crime images, every sensational headline provides another qualifier for the death penalty. Example: Killing an alderman, a community policing volunteer or a disabled person now merits the death penalty. The point is not that these victims' lives would be less valuable than their killers'. It is, instead, that some of the added factors are so general--such as if the murder is "cold, calculated and premeditated"--as to throw the class of eligible cases wide open. And that, in turn, invites with a neon sign the kind of arbitrariness that the original list of aggravating factors was intended to surmount. Today, one prosecutor's death penalty case is another's life sentence. True reform would take Illinois back to the original, less ambiguous conditions.

Videotape interrogations and confessions. Kankakee County sheriff's deputies have been videotaping since 1994, and now can't imagine doing it any other way. Illinois has seen too many examples of false confessions resulting from brutal beatings. Videotaping felony suspects' entire interrogations and confessions helps prosecutors as much as defense counsel, cuts down on frivolous motions to suppress illegal confessions, compels faster pleas and protects police from brutality claims. The relatively minor investment in video equipment pays off significantly down the road.

Stop executing mentally retarded inmates. The great irony of Anthony Porter's exoneration is that had he not the perverse good luck of a low IQ, he may well have been dead today. Porter won a last-minute stay to undergo a mental competency hearing, which allowed time to hunt down witnesses and obtain a videotaped confession from the real killer. Mentally retarded individuals are especially susceptible to making false confessions, and are as incapable of exercising full adult responsibility as they are of helping with their legal defense.

Establish competency standards. Incompetence on the part of overburdened, under-resourced public defenders in capital cases is a pathetic, persistent refrain. Minimum standards and special training for defense lawyers who handle capital cases are desperately needed. Same goes for judges, who wield enormous power at all stages of death penalty cases; allowing a jurist who usually hears DUIs to preside over a capital case is like asking a foot doctor to perform brain surgery.

The death penalty, properly administered, should be reserved only for society's most heinous, most well-defended and most unambiguously selected criminals. But to get to the day when moral certainty can be assured, there is much work to be done.

In 1976, this page stated: "True, innocent people have been jailed--but neither judges nor juries are inclined to impose the death penalty unless there is far less than a reasonable doubt of their guilt."

It is time to make certain that is true.

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EXHIBIT 15

FOR IMMEDIATE RELEASE
January 31, 2000

Governor Ryan Declares Moratorium On Executions, Will Appoint Commission To Review Capital Punishment System

CHICAGO -- Governor George H. Ryan today declared a moratorium on executions of any more Illinois Death Row inmates until a Commission he will appoint to conduct a review of the administration of the death penalty in Illinois can make recommendations to him.

"I now favor a moratorium, because I have grave concerns about our state's shameful record of convicting innocent people and putting them on death row," Governor Ryan said. "And, I believe, many Illinois residents now feel that same deep reservation. I cannot support a system, which, in its administration, has proven to be so fraught with error and has come so close to the ultimate nightmare, the state's taking of innocent life. Thirteen people have been found to have been wrongfully convicted."

Governor Ryan noted that while he still believes the death penalty is a proper societal response for crimes that shock sensibility, he believes Illinois residents are troubled by the persistent problems in the administration of capital punishment in Illinois. Since the death penalty was reinstated in Illinois in 1977, 12 Death Row inmates have been executed while 13 have been exonerated.

"How do you prevent another Anthony Porter -- another innocent man or woman from paying the ultimate penalty for a crime he or she did not commit?" Governor Ryan said referring to the former inmate whose execution was stayed by the Illinois Supreme Court after new evidence emerged clearing him of the capital offense. "Today, I cannot answer that question."

Governor Ryan said he will not approve any more executions until this review of the administration of the death penalty is completed.

"Until I can be sure that everyone sentenced to death in Illinois is truly guilty, until I can be sure with moral certainty that no innocent man or woman is facing a lethal injection, no one will meet that fate," Governor Ryan said. "I am a strong proponent of tough criminal penalties, of supporting laws and programs to help police and prosecutors keep dangerous criminals off the streets. We must ensure the public safety of our citizens but, in doing so, we must ensure that the ends of justice are served."

While noting that the General Assembly, the Illinois Attorney General and the Illinois Supreme Court are all studying the death penalty issue and issuing reports and recommendations, Governor Ryan said more review and debate is critical.

"As Governor, I am ultimately responsible, and although I respect all that these leaders have done and I will consider all that they say, I believe that a public dialogue must begin on the question of the fairness of the application of the death penalty in Illinois," Governor Ryan said.

EXHIBIT 16

AN ACT concerning criminal law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The State Finance Act is amended by adding Section 5.786 as follows:

(30 ILCS 105/5.786 new)

Sec. 5.786. The Death Penalty Abolition Fund.

Section 10. The Code of Criminal Procedure of 1963 is amended by adding Section 119-1 as follows:

(725 ILCS 5/119-1 new)

Sec. 119-1. Death penalty abolished.

(a) Beginning on the effective date of this amendatory Act of the 96th General Assembly, notwithstanding any other law to the contrary, the death penalty is abolished and a sentence to death may not be imposed.

(b) All unobligated and unexpended moneys remaining in the Capital Litigation Trust Fund on the effective date of this amendatory Act of the 96th General Assembly shall be transferred into the Death Penalty Abolition Fund, a special fund in the State treasury, to be expended by the Illinois Criminal Justice Information Authority, for services for

families of victims of homicide or murder and for training of law enforcement personnel.

(725 ILCS 124/Act rep.)

Section 15. The Capital Crimes Litigation Act is repealed.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect July 1, 2011, except that Section 15 takes effect January 1, 2012.

EXHIBIT 17

Substitute Senate Bill No. 280

Public Act No. 12-5

AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 53a-54b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to crimes committed on or after said date*):

A person is guilty of **[**a capital felony**]** murder with special circumstances who is convicted of any of the following: (1) Murder of a member of the Division of State Police within the Department of Emergency Services and Public Protection or of any local police department, a chief inspector or inspector in the Division of Criminal Justice, a state marshal who is exercising authority granted under any provision of the general statutes, a judicial marshal in performance of the duties of a judicial marshal, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection under the provisions of section 26-5, an employee of the Department of Correction or a person providing services on behalf of said department when such employee or person is acting within the scope of such employee's or person's employment or duties in a correctional institution or facility and the actor is confined in such institution or facility, or any firefighter, while such victim was acting within the scope of such victim's duties; (2) murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; (3) murder committed by one who has previously been convicted of intentional murder or of murder committed in the course of commission of a felony; (4) murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety; (6) murder committed in the course of the commission of sexual assault in the first degree; (7) murder of two or more persons at the same time or in the course of a single transaction; or (8) murder of a person under sixteen years of age.

Sec. 2. Section 53a-35a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and, unless the section of the general statutes that defines the crime specifically provides otherwise, the term shall be fixed by the court as follows: (1) (A) For a capital felony committed prior to the effective date of this section under the provisions of section 53a-54b in effect prior to the effective date of this section, a term of life imprisonment without the possibility of release unless a sentence of death is imposed in accordance with section 53a-46a, as amended by this act, or (B) for the class A felony of murder with special circumstances committed on or after the effective date of this section under the provisions of section 53a-54b in effect on or after the effective date of this section, a term of life imprisonment without the possibility of release; (2) for the class A felony of murder, a term not less than twenty-five years nor more than life; (3) for the class A felony of aggravated sexual assault of a minor under section 53a-70c, a term not less than twenty-five years or more than fifty years; (4) for a class A felony other than an offense specified in subdivision (2) or (3) of this section, a term not less than ten years nor more than twenty-five years; (5) for the class B felony of manslaughter in the first degree with a firearm under section 53a-55a, a term not less than five years nor more than forty years; (6) for a class B felony other than manslaughter in the first degree with a firearm under section 53a-55a, a term not less than one year nor more than twenty years; (7) for a class C felony, a term not less than one year nor more than ten years; (8) for a class D felony, a term not less than one year nor more than five years; and (9) for an unclassified felony, a term in accordance with the sentence specified in the section of the general statutes that defines the crime.

Sec. 3. Section 53a-35b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

A sentence of [imprisonment for life shall mean] life imprisonment means a definite sentence of sixty years, unless the sentence is life imprisonment without the possibility of release, imposed pursuant to [subsection (g) of section 53a-46a] subparagraph (A) or (B) of subdivision (1) of section 53a-35a, as amended by this act, in which case the sentence shall be imprisonment for the remainder of the defendant's natural life.

Sec. 4. Subsection (a) of section 53a-45 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Murder is punishable as a class A felony in accordance with subdivision (2) of section 53a-35a, as amended by this act, unless it is a capital felony committed prior to the effective date of this section, punishable in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, as amended by this act, murder with special circumstances committed on or after the effective date of this section, punishable as a class A felony in accordance with subparagraph (B) of subdivision (1) of section 53a-35a, as amended by this act, or murder under section 53a-54d.

Sec. 5. Subsection (a) of section 53a-46a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A person shall be subjected to the penalty of death for a capital felony committed prior to the effective date of this section under the provisions of section 53a-54b in effect prior to the

effective date of this section only if a hearing is held in accordance with the provisions of this section.

Sec. 6. Subsection (a) of section 53a-46b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Any sentence of death imposed in accordance with the provisions of section 53a-46a, as amended by this act, shall be reviewed by the Supreme Court pursuant to its rules. In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate said sentence and remand for imposition of a sentence in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, as amended by this act.

Sec. 7. Subsection (c) of section 53a-54a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) Murder is punishable as a class A felony in accordance with subdivision (2) of section 53a -35a, as amended by this act, unless it is a capital felony committed prior to the effective date of this section, punishable in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, as amended by this act, murder with special circumstances committed on or after the effective date of this section, punishable as a class A felony in accordance with subparagraph (B) of subdivision (1) of section 53a-35a, as amended by this act, or murder under section 53a-54d.

Sec. 8. Subdivision (2) of subsection (j) of section 10-145b of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(2) When the Commissioner of Education is notified, pursuant to section 10-149a or 17a-101i, that a person holding a certificate, authorization or permit issued by the State Board of Education under the provisions of sections 10-144o to 10-149, inclusive, has been convicted of (A) a capital felony, [pursuant to] under the provisions of section 53a-54b in effect prior to the effective date of this section, (B) arson murder, pursuant to section 53a-54d, (C) a class A felony, (D) a class B felony, except a violation of section 53a-122, 53a-252 or 53a-291, (E) a crime involving an act of child abuse or neglect as described in section 46b-120, or (F) a violation of section 53-21, 53-37a, 53a-60b, 53a-60c, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-88, 53a-90a, 53a-99, 53a-103a, 53a-181c, 53a-191, 53a-196, 53a-196c, 53a-216, 53a-217b or 21a-278 or subsection (a) of section 21a-277, any certificate, permit or authorization issued by the State Board of Education and held by such person shall be deemed revoked and the commissioner shall notify such person of such revocation, provided such person may request reconsideration pursuant to regulations adopted by the State Board of Education, in accordance with the provisions of chapter 54. As part of such reconsideration process, the board shall make the initial determination as to whether to uphold or overturn the revocation. The commissioner shall make the final determination as to whether to uphold or overturn the revocation.

Sec. 9. Section 10-145i of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Notwithstanding the provisions of sections 10-144o to 10-146b, inclusive, and 10-149, the State Board of Education shall not issue or reissue any certificate, authorization or permit pursuant to said sections if (1) the applicant for such certificate, authorization or permit has been convicted of any of the following: (A) A capital felony, as defined [in] under the provisions of section 53a-54b in effect prior to the effective date of this section; (B) arson murder, as defined in section 53a-54d; (C) any class A felony; (D) any class B felony except a violation of section 53a-122, 53a-252 or 53a-291; (E) a crime involving an act of child abuse or neglect as described in section 46b-120; or (F) a violation of section 53-21, 53-37a, 53a-60b, 53a-60c, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-88, 53a-90a, 53a-99, 53a-103a, 53a-181c, 53a-191, 53a-196, 53a-196c, 53a-216, 53a-217b or 21a-278 or a violation of subsection (a) of section 21a-277, and (2) the applicant completed serving the sentence for such conviction within the five years immediately preceding the date of the application.

Sec. 10. Subsection (a) of section 46b-127 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The court shall automatically transfer from the docket for juvenile matters to the regular criminal docket of the Superior Court the case of any child charged with the commission of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A or B felony or a violation of section 53a-54d, provided such offense was committed after such child attained the age of fourteen years and counsel has been appointed for such child if such child is indigent. Such counsel may appear with the child but shall not be permitted to make any argument or file any motion in opposition to the transfer. The child shall be arraigned in the regular criminal docket of the Superior Court at the next court date following such transfer, provided any proceedings held prior to the finalization of such transfer shall be private and shall be conducted in such parts of the courthouse or the building wherein court is located as shall be separate and apart from the other parts of the court which are then being held for proceedings pertaining to adults charged with crimes. The file of any case so transferred shall remain sealed until the end of the tenth working day following such arraignment unless the state's attorney has filed a motion pursuant to this subsection, in which case such file shall remain sealed until the court makes a decision on the motion. A state's attorney may, not later than ten working days after such arraignment, file a motion to transfer the case of any child charged with the commission of a class B felony or a violation of subdivision (2) of subsection (a) of section 53a-70 to the docket for juvenile matters for proceedings in accordance with the provisions of this chapter. The court sitting for the regular criminal docket shall, after hearing and not later than ten working days after the filing of such motion, decide such motion.

Sec. 11. Subsection (a) of section 46b-133 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Nothing in this part shall be construed as preventing the arrest of a child, with or without a warrant, as may be provided by law, or as preventing the issuance of warrants by judges

in the manner provided by section 54-2a, as amended by this act, except that no child shall be taken into custody on such process except on apprehension in the act, or on speedy information, or in other cases when the use of such process appears imperative. Whenever a child is arrested and charged with a crime, such child may be required to submit to the taking of his photograph, physical description and fingerprints. Notwithstanding the provisions of section 46b-124, the name, photograph and custody status of any child arrested for the commission of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or class A felony may be disclosed to the public.

Sec. 12. Subsection (c) of section 51-36 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) (1) In any case in which a person has been convicted of a felony, other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, the official records of evidence or judicial proceedings in the court may be destroyed upon the expiration of twenty years from the date of imposition of the sentence in such case or upon the expiration of the sentence imposed upon such person, whichever is later.

(2) In any case in which a person has been convicted after trial of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, the official records of evidence or judicial proceedings in the court may be destroyed upon the expiration of seventy-five years from the date of imposition of the sentence in such case.

(3) In any case in which a person has been found not guilty, or in any case that has been dismissed or was not prosecuted, the court may order the destruction or disposal of all exhibits entered in such case upon the expiration of ninety days from the date of final disposition of such case, unless a prior disposition of such exhibits has been ordered pursuant to section 54-36a. In any case in which a nolle has been entered, the court may order the destruction or disposal of all exhibits entered in such case upon the expiration of thirteen months from the date of final disposition of such case. Not less than thirty days prior to the scheduled destruction or disposal of exhibits under this subdivision, the clerk of the court shall send notice to all parties and any party may request a hearing on the issue of such destruction or disposal before the court in which the matter is pending.

(4) In any case in which a person has been convicted of a misdemeanor or has been adjudicated a youthful offender, the court may order the destruction or disposal of all exhibits entered in such case upon the expiration of ten years from the date of imposition of the sentence in such case or upon the expiration of the sentence imposed on such person, whichever is later, unless a prior disposition of such exhibits has been ordered pursuant to section 54-36a. Not less than thirty days prior to the scheduled destruction or disposal of exhibits under this subdivision, the clerk of the court shall send notice to all parties and any

party may request a hearing on the issue of such destruction or disposal before the court in which the matter is pending.

(5) In any case in which a person is charged with multiple offenses, no destruction or disposal of exhibits may be ordered under this subsection until the longest applicable retention period under this subsection has expired. The provisions of this subdivision and subdivisions (3), (4) and (6) of this subsection shall apply to any criminal or motor vehicle case disposed of before, on or after October 1, 2006.

(6) The retention period for the official records of evidence and exhibits in any habeas corpus proceeding, petition for a new trial or other proceeding arising out of a criminal case in which a person has been convicted shall be the same as the applicable retention period under this subsection for the criminal case from which such proceeding or petition arose.

(7) For the purposes of this subsection, "sentence" includes any period of incarceration, parole, special parole or probation.

Sec. 13. Subsection (b) of section 51-199 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The following matters shall be taken directly to the Supreme Court: (1) Any matter brought pursuant to the original jurisdiction of the Supreme Court under section 2 of article sixteen of the amendments to the Constitution; (2) an appeal in any matter where the Superior Court declares invalid a state statute or a provision of the state Constitution; (3) an appeal in any criminal action involving a conviction for a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, class A felony **[**,**]** or any other felony, including any persistent offender status, for which the maximum sentence which may be imposed exceeds twenty years; (4) review of a sentence of death pursuant to section 53a-46b, as amended by this act; (5) any election or primary dispute brought to the Supreme Court pursuant to section 9-323 or 9-325; (6) an appeal of any reprimand or censure of a probate judge pursuant to section 45a-65; (7) any matter regarding judicial removal or suspension pursuant to section 51-51j; (8) an appeal of any decision of the Judicial Review Council pursuant to section 51-51r; (9) any matter brought to the Supreme Court pursuant to section 52-265a; (10) writs of error; and (11) any other matter as provided by law.

Sec. 14. Section 51-246 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

In the trial of any **[**capital case or any case involving imprisonment for life**]** case involving a crime punishable by death, life imprisonment without the possibility of release or life imprisonment, the court may, in its discretion, require the jury to remain together in the charge of judicial marshals during the trial and until the jury is discharged by the court from further consideration of the case.

Sec. 15. Section 51-286c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The state's attorney for any judicial district may employ one or more detectives to investigate for the purpose of discovering the perpetrators of any crime committed within this state, whenever the penalty for such crime is capital punishment, [or imprisonment in the Connecticut Correctional Institution, Somers] life imprisonment without the possibility of release or life imprisonment. The expenses incurred in the employment of such detectives shall be paid from the State Treasury on an order from the state's attorney employing them.

Sec. 16. Subdivision (1) of subsection (a) of section 52-434 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) Each judge of the Supreme Court, each judge of the Appellate Court, each judge of the Superior Court and each judge of the Court of Common Pleas who ceases or has ceased to hold office because of retirement other than under the provisions of section 51-49 and who is an elector and a resident of this state shall be a state referee for the remainder of such judge's term of office as a judge and shall be eligible for appointment as a state referee during the remainder of such judge's life in the manner prescribed by law for the appointment of a judge of the court of which such judge is a member. The Superior Court may refer any civil, nonjury case or with the written consent of the parties or their attorneys, any civil jury case pending before the court in which the issues have been closed to a judge trial referee who shall have and exercise the powers of the Superior Court in respect to trial, judgment and appeal in the case, and any proceeding resulting from a demand for a trial de novo pursuant to subsection (e) of section 52-549z may be referred without the consent of the parties to a judge trial referee who has been specifically designated to hear such proceedings pursuant to subsection (b) of this section. The Superior Court may, with the consent of the parties or their attorneys, refer any criminal case to a judge trial referee who shall have and exercise the powers of the Superior Court in respect to trial, judgment, sentencing and appeal in the case, except that the Superior Court may, without the consent of the parties or their attorneys, (A) refer any criminal case, other than a criminal jury trial, to a judge trial referee assigned to a geographical area criminal court session, and (B) refer any criminal case, other than a class A or B felony or capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, to a judge trial referee to preside over the jury selection process and any voir dire examination conducted in such case, unless good cause is shown not to refer.

Sec. 17. Subsection (b) of section 53a-25 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Felonies are classified for the purposes of sentence as follows: (1) Class A, (2) class B, (3) class C, (4) class D, (5) unclassified and (6) capital felonies under the provisions of section 53a-54b in effect prior to the effective date of this section.

Sec. 18. Subsection (a) of section 53a-30 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) When imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, order that the defendant: (1) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip

the defendant for suitable employment; (2) undergo medical or psychiatric treatment and remain in a specified institution, when required for that purpose; (3) support the defendant's dependents and meet other family obligations; (4) make restitution of the fruits of the defendant's offense or make restitution, in an amount the defendant can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance; (5) if a minor, (A) reside with the minor's parents or in a suitable foster home, (B) attend school, and (C) contribute to the minor's own support in any home or foster home; (6) post a bond or other security for the performance of any or all conditions imposed; (7) refrain from violating any criminal law of the United States, this state or any other state; (8) if convicted of a misdemeanor or a felony, other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony or a violation of section 21a-278, 21a-278a, 53a-55, 53a-56, 53a-56b, 53a-57, 53a-58 or 53a-70b or any offense for which there is a mandatory minimum sentence which may not be suspended or reduced by the court, and any sentence of imprisonment is suspended, participate in an alternate incarceration program; (9) reside in a residential community center or halfway house approved by the Commissioner of Correction, and contribute to the cost incident to such residence; (10) participate in a program of community service labor in accordance with section 53a-39c; (11) participate in a program of community service in accordance with section 51-181c; (12) if convicted of a violation of subdivision (2) of subsection (a) of section 53-21, section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b, undergo specialized sexual offender treatment; (13) if convicted of a criminal offense against a victim who is a minor, a nonviolent sexual offense or a sexually violent offense, as defined in section 54-250, or of a felony that the court finds was committed for a sexual purpose, as provided in section 54-254, register such person's identifying factors, as defined in section 54-250, with the Commissioner of Emergency Services and Public Protection when required pursuant to section 54-251, 54-252 or 54-253, as the case may be; (14) be subject to electronic monitoring, which may include the use of a global positioning system; (15) if convicted of a violation of section 46a-58, 53-37a, 53a-181j, 53a-181k or 53a-181*l*, participate in an anti-bias crime education program; (16) if convicted of a violation of section 53-247, undergo psychiatric or psychological counseling or participate in an animal cruelty prevention and education program provided such a program exists and is available to the defendant; or (17) satisfy any other conditions reasonably related to the defendant's rehabilitation. The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

Sec. 19. Subsection (a) of section 53a-39a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) In all cases where a defendant has been convicted of a misdemeanor or a felony, other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony or a violation of section 21a-278, 21a-278a, 53a-55, 53a-56, 53a-56b, 53a-57, 53a-58 or 53a-70b or any other offense for which there is a mandatory minimum sentence which may not be suspended or reduced by the court, after trial or by a plea of guilty without trial, and a term of imprisonment is part of a stated plea agreement or the statutory penalty provides for a term of imprisonment, the court may, in its discretion, order an assessment for placement in an alternate incarceration program under contract

with the Judicial Department. If the Court Support Services Division recommends placement in an alternate incarceration program, it shall also submit to the court a proposed alternate incarceration plan. Upon completion of the assessment, the court shall determine whether such defendant shall be ordered to participate in such program as an alternative to incarceration. If the court determines that the defendant shall participate in such program, the court shall suspend any sentence of imprisonment and shall make participation in the alternate incarceration program a condition of probation as provided in section 53a-30, as amended by this act.

Sec. 20. Subsection (a) of section 53a-40d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A persistent offender of crimes involving assault, stalking, trespass, threatening, harassment, criminal violation of a protective order or criminal violation of a restraining order is a person who (1) stands convicted of assault under section 53a-61, stalking under section 53a-181d, threatening under section 53a-62, harassment under section 53a-183, criminal violation of a protective order under section 53a-223, criminal violation of a restraining order under section 53a-223b or criminal trespass under section 53a-107 or 53a-108, and (2) has, (A) been convicted of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a-122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, assault under section 53a-61, stalking under section 53a-181d, threatening under section 53a-62, harassment under section 53a-183, criminal violation of a protective order under section 53a-223, criminal violation of a restraining order under section 53a-223b, or criminal trespass under section 53a-107 or 53a-108, (B) been convicted in any other state of any crime the essential elements of which are substantially the same as any of the crimes enumerated in subparagraph (A) of this subdivision, or (C) been released from incarceration with respect to such conviction.

Sec. 21. Section 53a-46d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

A victim impact statement prepared with the assistance of a victim advocate to be placed in court files in accordance with subdivision (2) of subsection (a) of section 54-220 may be read in court prior to imposition of sentence upon a defendant found guilty of a crime punishable by death or life imprisonment without the possibility of release.

Sec. 22. Subsection (a) of section 53a-182b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A person is guilty of harassment in the first degree when, with the intent to harass, annoy, alarm or terrorize another person, he threatens to kill or physically injure that person or any other person, and communicates such threat by telephone, or by telegraph, mail, computer network, as defined in section 53a-250, or any other form of written communication, in a manner likely to cause annoyance or alarm and has been convicted of a

capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a -122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For the purposes of this section, "convicted" means having a judgment of conviction entered by a court of competent jurisdiction.

Sec. 23. Subsection (a) of section 53a-217d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A person is guilty of criminal possession of body armor when he possesses body armor and has been (1) convicted of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony, except a conviction under section 53a-196a, a class B felony, except a conviction under section 53a-86, 53a-122 or 53a-196b, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153 or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, or (2) convicted as delinquent for the commission of a serious juvenile offense, as defined in section 46b-120.

Sec. 24. Subsection (b) of section 54-2a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The court, judge or judge trial referee issuing a bench warrant for the arrest of the person or persons complained against shall, in cases punishable by death, life imprisonment without the possibility of release or life imprisonment, set the conditions of release or indicate that the person or persons named in the warrant shall not be entitled to bail and may, in all other cases, set the conditions of release. The conditions of release, if included in the warrant, shall fix the first of the following conditions which the court, judge or judge trial referee finds necessary to assure such person's appearance in court: (1) Written promise to appear; (2) execution of a bond without surety in no greater amount than necessary; or (3) execution of a bond with surety in no greater amount than necessary.

Sec. 25. Subsection (a) of section 54-46a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No person charged by the state, who has not been indicted by a grand jury prior to May 26, 1983, shall be put to plea or held to trial for any crime punishable by death, life imprisonment without the possibility of release or life imprisonment unless the court at a preliminary hearing determines there is probable cause to believe that the offense charged has been committed and that the accused person has committed it. The accused person may knowingly and voluntarily waive such preliminary hearing to determine probable cause.

Sec. 26. Section 54-82 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) In any criminal case, prosecution or proceeding, the [party] accused may, if [he] the accused so elects when called upon to plead, be tried by the court instead of by the jury; and,

in such case, the court shall have jurisdiction to hear and try such case and render judgment and sentence thereon.

(b) If the accused is charged with a crime punishable by death, [or imprisonment for] life imprisonment without the possibility of release or life imprisonment and elects to be tried by the court, the court shall be composed of three judges to be designated by the Chief Court Administrator, or [his] the Chief Court Administrator's designee, who shall name one such judge to preside over the trial. Such judges, or a majority of them, shall have power to decide all questions of law and fact arising upon the trial and render judgment accordingly.

(c) If the [party] accused does not elect to be tried by the court, [he] the accused shall be tried by a jury of six except that no person [,] charged with an offense which is punishable by death, life imprisonment without the possibility of release or life imprisonment, shall be tried by a jury of less than twelve without [his] such person's consent.

Sec. 27. Section 54-82g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The accused may challenge peremptorily, in any criminal trial before the Superior Court for any offense punishable by death or life imprisonment without the possibility of release, twenty-five jurors; for any offense punishable by [imprisonment for] life imprisonment, fifteen jurors; for any offense the punishment for which may be imprisonment for more than one year and for less than life, six jurors; and for any other offense, three jurors. In any criminal trial in which the accused is charged with more than one count on the information or where there is more than one information, the number of challenges is determined by the count carrying the highest maximum punishment. The state, on the trial of any criminal prosecution, may challenge peremptorily the same number of jurors as the accused.

Sec. 28. Subsection (a) of section 54-82h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) In any criminal prosecution to be tried to the jury in the Superior Court if it appears to the court that the trial is likely to be protracted, the court may, in its discretion, direct that, after a jury has been selected, two or more additional jurors shall be added to the jury panel, to be known as "alternate jurors". Such alternate jurors shall have the same qualifications and be selected and subject to examination and challenge in the same manner and to the same extent as the jurors constituting the regular panel, provided, in any case when the court directs the selection of alternate jurors, the number of peremptory challenges allowed shall be as follows: In any criminal prosecution the state and the accused may each peremptorily challenge thirty jurors if the offense for which the accused is arraigned is punishable by death or life imprisonment without the possibility of release, eighteen jurors if the offense is punishable by life imprisonment, eight jurors if the offense is punishable by imprisonment for more than one year and for less than life, and four jurors in any other case.

Sec. 29. Section 54-83 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

No person may be convicted of any crime punishable by death or life imprisonment without the possibility of release without the testimony of at least two witnesses, or that which is equivalent thereto.

Sec. 30. Subsection (a) of section 54-91a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No defendant convicted of a crime, other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, the punishment for which may include imprisonment for more than one year, may be sentenced, or the defendant's case otherwise disposed of, until a written report of investigation by a probation officer has been presented to and considered by the court, if the defendant is so convicted for the first time in this state; but any court may, in its discretion, order a presentence investigation for a defendant convicted of any crime or offense other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section.

Sec. 31. Subsection (b) of section 54-102jj of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Upon the conviction of a person of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section or the conviction of a person of a crime after trial, or upon order of the court for good cause shown, the state police, all local police departments, any agent of the state police or a local police department and any other person to whom biological evidence has been transferred shall preserve all biological evidence acquired during the course of the investigation of such crime for the term of such person's incarceration.

Sec. 32. Subsection (b) of section 54-125a of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) (1) No person convicted of any of the following offenses, which was committed on or after July 1, 1981, shall be eligible for parole under subsection (a) of this section: (A) Capital felony, as provided [in] under the provisions of section 53a-54b in effect prior to the effective date of this section, (B) murder with special circumstances, as provided under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, (C) felony murder, as provided in section 53a-54c, (D) arson murder, as provided in section 53a-54d, (E) murder, as provided in section 53a-54a, as amended by this act, or (F) aggravated sexual assault in the first degree, as provided in section 53a-70a. (2) A person convicted of (A) a violation of section 53a-100aa or 53a-102, or (B) an offense, other than an offense specified in subdivision (1) of this subsection, where the underlying facts and circumstances of the offense involve the use, attempted use or threatened use of physical force against another person shall be ineligible for parole under subsection (a) of this section

until such person has served not less than eighty-five per cent of the definite sentence imposed less any risk reduction credit earned under the provisions of section 18-98e.

Sec. 33. Subsection (d) of section 54-125d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(d) Notwithstanding any provision of the general statutes, a sentencing court may refer any person convicted of an offense other than a capital felony under the provisions of section 53a -54b in effect prior to the effective date of this section or a class A felony who is an alien to the Board of Pardons and Paroles for deportation under this section.

Sec. 34. Section 54-131b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The Board of Pardons and Paroles may release on medical parole any inmate serving any sentence of imprisonment, except an inmate convicted of a capital felony [as defined in] under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, who has been diagnosed pursuant to section 54-131c as suffering from a terminal condition, disease or syndrome, and is so debilitated or incapacitated by such condition, disease or syndrome as to be physically incapable of presenting a danger to society. Notwithstanding any provision of the general statutes to the contrary, the Board of Pardons and Paroles may release such inmate at any time during the term of [his] such inmate's sentence.

Sec. 35. Subsection (a) of section 54-131k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Board of Pardons and Paroles may grant a compassionate parole release to any inmate serving any sentence of imprisonment, except an inmate convicted of a capital felony [, as defined in] under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, if it finds that such inmate (1) is so physically or mentally debilitated, incapacitated or infirm as a result of advanced age or as a result of a condition, disease or syndrome that is not terminal as to be physically incapable of presenting a danger to society, and (2) (A) has served not less than one-half of such inmate's definite or aggregate sentence, or (B) has served not less than one-half of such inmate's remaining definite or aggregate sentence after commutation of the original sentence by the Board of Pardons and Paroles.

Sec. 36. Subsection (a) of section 54-193 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There shall be no limitation of time within which a person may be prosecuted for (1) a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony or a violation of section 53a-54d or 53a-169, (2) a violation of section 53a-165aa or 53a-166 in which such person renders criminal assistance to another

person who has committed an offense set forth in subdivision (1) of this subsection, or (3) a violation of section 53a-156 committed during a proceeding that results in the conviction of another person subsequently determined to be actually innocent of the offense or offenses of which such other person was convicted.

Sec. 37. (NEW) (*Effective from passage*) (a) The Commissioner of Correction shall place an inmate on special circumstances high security status and house the inmate in administrative segregation until a reclassification process is completed under subsection (b) of this section, if (1) the inmate is convicted of the class A felony of murder with special circumstances committed on or after the effective date of this section under the provisions of section 53a-54b of the general statutes, as amended by this act, in effect on or after the effective date of this section, and sentenced to a term of life imprisonment without the possibility of release, or (2) the inmate is in the custody of the Commissioner of Correction for a capital felony committed prior to the effective date of this section under the provisions of section 53a-54b of the general statutes in effect prior to the effective date of this section for which a sentence of death is imposed in accordance with section 53a-46a of the general statutes, as amended by this act, and such inmate's sentence is (A) reduced to a sentence of life imprisonment without the possibility of release by a court of competent jurisdiction, or (B) commuted to a sentence of life imprisonment without the possibility of release.

(b) The commissioner shall establish a reclassification process for the purposes of this section. The reclassification process shall include an assessment of the risk an inmate described in subsection (a) of this section poses to staff and other inmates, and an assessment of whether such risk requires the inmate's placement in administrative segregation or protective custody. If the commissioner places such inmate in administrative segregation pursuant to such assessment, the commissioner shall require the inmate to complete the administrative segregation program operated by the commissioner.

(c) (1) The commissioner shall place such inmate in a housing unit for the maximum security population if, after completion of such reclassification process, the commissioner determines such placement is appropriate, provided the commissioner (A) maintains the inmate on special circumstances high security status, (B) houses the inmate separate from inmates who are not on special circumstances high security status, and (C) imposes conditions of confinement on such inmate which shall include, but not be limited to, conditions that require (i) that the inmate's movements be escorted or monitored, (ii) movement of the inmate to a new cell at least every ninety days, (iii) at least two searches of the inmate's cell each week, (iv) that no contact be permitted during the inmate's social visits, (v) that the inmate be assigned to work assignments that are within the assigned housing unit, and (vi) that the inmate be allowed no more than two hours of recreational activity per day.

(2) The commissioner shall conduct an annual review of such inmate's conditions of confinement within such housing unit and the commissioner may, for compelling correctional management or safety reasons, modify any condition of confinement, subject to the requirements of subparagraphs (A) to (C), inclusive, of subdivision (1) of this subsection.

(d) Not later than January 2, 2013, and annually thereafter, the commissioner shall submit a report to the General Assembly, in accordance with section 11-4a of the general statutes, regarding the number of inmates in such classification as of December first of the year prior to the year in which the report is due, the location of each such inmate, and the specific conditions of confinement imposed on each such inmate pursuant to this section.

Sec. 38. (NEW) (*Effective from passage*) The provisions of subsection (t) of section 1-1 of the general statutes and section 54-194 of the general statutes shall apply and be given full force and effect with respect to a capital felony committed prior to the effective date of this section under the provisions of section 53a-54b of the general statutes in effect prior to the effective date of this section.

Approved April 25, 2012

EXHIBIT 18

The New York Times

April 11, 2012

Death Penalty Repeal Goes to Connecticut Governor

By PETER APPLEBOME

HARTFORD — After more than nine hours of debate, the Connecticut House of Representatives voted on Wednesday to repeal the state's death penalty, following a similar vote in the State Senate last week. Gov. Dannel P. Malloy, a Democrat, has said he will sign the bill, which would make Connecticut the 17th state — the 5th in five years — to abolish capital punishment for future cases.

Mr. Malloy's signature will leave New Hampshire and Pennsylvania as the only states in the Northeast that still have the death penalty. New Jersey repealed it in 2007. New York's statute was ruled unconstitutional by the state's highest court in 2004, and lawmakers have not moved to fix the law.

The vote, after more than two decades of debate and the 2009 veto of a similar bill by the governor at the time, M. Jodi Rell, a Republican, came against the backdrop of one of the state's most horrific crimes: a 2007 home invasion in Cheshire in which Jennifer Hawke-Petit and her daughters, Hayley, 17, and Michaela, 11, were held hostage and murdered, two of the three raped, and their house set afire by two habitual criminals who are now on death row. Ms. Hawke-Petit's husband, Dr. William A. Petit Jr., who was badly beaten but escaped, has since been an ardent advocate for keeping the death penalty.

The bill exempts the 11 men currently on death row, including Joshua Komisarjevsky and Steven J. Hayes, the men convicted of the Petit murders.

The measure was approved by a vote of 86 to 62, largely along party lines.

The legislation will make life in prison without possibility of parole the state's harshest punishment. It mandates that those given life without parole be incarcerated separately from other inmates and be limited to two hours a day outside the prison cell.

In a statement released late Wednesday night, Governor Malloy said the repeal put Connecticut in the same position as nearly every other industrialized nation on the death penalty.

"For decades, we have not had a workable death penalty," he said, noting that only one

person has been executed in Connecticut in the last 52 years. "Going forward, we will have a system that allows us to put these people away for life, in living conditions none of us would want to experience. Let's throw away the key and have them spend the rest of their natural lives in jail."

Thirteen proposed amendments from supporters of capital punishment, most of which would have allowed the death penalty in certain cases, were defeated during the debate, in which many legislators told personal stories of the effects of violent crime. The lawmakers also invoked a wide variety of people, from mass murderers to Immanuel Kant to Sir Thomas More.

State Representative Patricia M. Widlitz, a Democrat from Branford and Guilford, said that like many members, she was torn over her vote. But she recalled a murder in her community and the difficulty residents went through in explaining it to local children. "I just couldn't reconcile telling them that it's O.K. for the government to kill after teaching them that killing is wrong, it's unacceptable, it's immoral," she said.

She added that the killer was sentenced to life without parole. "I think in many ways, that is a death sentence, with no chance of parole, no chance of doing anything with your life," she said.

Republican critics of the bill said the exemption for those currently awaiting execution cast a cloud over the vote, both because it undercut the moral argument of death penalty opponents and because future appeals or government action had the potential to spare the 11 men.

"Let's not mislead the public; let's not mislead ourselves" said the House minority leader, Lawrence Cafero Jr., of Norwalk. "If it is the will of this chamber that this state is no longer in the business of executing people, then let's say it and do it. You cannot have it both ways."

But Democratic legislators — swayed by at least 138 cases nationally in which people sentenced to death were later exonerated and by arguments that the death penalty is imposed in a capricious, discriminatory manner and is not a deterrent to crime — voted for repeal. They noted that a repeal in New Mexico in 2009 that also exempted those already on death row had thus far withstood challenges.

After Connecticut's repeal, 33 states will have capital punishment, along with the United States government when it prosecutes cases in the federal courts. Voters in California will be asked in November whether to abolish the death penalty in that state.

Capital punishment in Connecticut dates to colonial times. From 1639 to 2005, it performed

126 executions, first by hanging, then by the electric chair, and since 1973, by lethal injection. But since 1976, when the Supreme Court allowed the resumption of executions, there has been just one person executed in the state: Michael Bruce Ross, a serial killer who voluntarily gave up his right to further appeals and was put to death in 2005. The last person involuntarily put to death, in 1960, was Joseph (Mad Dog) Taborsky, who committed a string of robberies and killings.

Of the 1,289 executions since 1976 in the United States, 935 were in seven Southern and border states. Texas alone accounts for 481 executions.

In the Connecticut Senate, where passage seemed most in doubt, the bill was approved 20 to 16 on April 5, with 2 Democrats and all 14 Republicans opposed. Democrats have a majority in both chambers of the General Assembly.

Before that vote, Dr. Petit spoke at a news conference where he called for the Senate not to pass the bill. "We believe in the death penalty because we believe it is really the only true just punishment for certain heinous and depraved murders," he said.

The Petit murders were cited by several opponents of the repeal, most vividly by Representative Al Adinolfi, a Republican from Cheshire, Hamden and Wallingford, who said he witnessed the chaos at the Petits' smoldering house that day. He recounted gruesome details of the crime in arguing against the repeal.

"And we say here that Komisarjevsky and Hayes don't deserve the death penalty? Shame on us," he said. "They do deserve the penalty, and so do many others."

But Democrats in favor of the bill cited support from many families of murder victims and the fact that capital punishment has long been banned by nearly all of the world's democracies. In a review of 34 years of Connecticut death penalty cases, Prof. John Donohue of Stanford Law School concluded that "arbitrariness and discrimination are defining features of the state's capital punishment regime."

The political fight over the bill could persist long after the vote. Republicans are likely to put the issue in play in the fall when all 36 State Senate and 151 State House seats are up for election. A recent Quinnipiac University poll found that 62 percent of Connecticut residents thought abolishing the death penalty was "a bad idea," though polls over time have found respondents split relatively evenly if given the option of life without parole as an alternative to executions.

In the final remarks in the debate late Wednesday, the House majority leader, Brendan Sharkey, a Democrat from Hamden, said the death penalty offered a false promise that did

more harm than good.

"I believe that we, as human beings, should not create laws that reciprocate the evil perpetrated against society," Mr. Sharkey said. "Those laws don't protect us."

EXHIBIT 19

In death penalty repeal, reason over revenge at long last

General Assembly's vote to stop executions took informed leadership, courage of conscience

Left to right: Sylvester and Vicki Schieber, whose daughter Shannon was murdered; Kirk Bloodsworth, who spent several years on death row for a crime he did not commit, and NAACP President Ben Jealous celebrate the passage of SB276, which repeals the death penalty bill in Maryland. (Barbara Haddock Taylor, Baltimore Sun / March 15, 2013)

Dan Rodricks

3:56 p.m. EDT, March 16, 2013

Many of us believe that capital punishment, first used in the Province of Maryland in 1638, should have been relegated to the trash heap long ago. Politicians in **Annapolis** had overwhelming evidence of its costly and debilitating flaws for many years, but too many refused to attach their names to repeal.

Even in a state where they outnumbered Republicans 2-1, numerous Democrats feared being labeled soft on crime if they voted to end state executions. Indeed, the longtime president of the Senate, a Democrat, offered to personally inject poison into a convicted killer.

That kind of red-meat rhetoric provided the tough-on-crime credits that moderate and middling Democrats nationally were instructed to compile as the party recovered from the Reagan era and the "Willie Horton panic" in 1988. **Bill Clinton** approved executions while governor of Arkansas. As president, he pushed **Congress** to expand the federal death penalty to add dozens of categories of felonies, including some crimes that didn't even result in death.

And yet, despite Clinton's cynical political calculus, some Democrats always pushed to get Maryland on the growing list of states that have abolished this immoral and inefficient practice.

Five years ago, they received considerable help from a commission headed by former U.S. Attorney General Benjamin R. Civiletti. It concluded that the application of the death penalty in Maryland was "arbitrary and capricious," flawed beyond repair.

The commission looked at the use of the death penalty over three decades and found disturbing racial disparities; killers of white victims were 21/2 times more likely to face the death penalty than killers of African-Americans.

Dan Rodricks

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