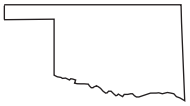


Appendix IB[1]

An Analysis of the Economic Costs of Capital Punishment in Oklahoma[2]

EXECUTIVE SUMMARY

I. Introduction

The purpose of this study is to provide empirical evidence to the Oklahoma Death Penalty Review Commission (Commission) regarding the economic costs of seeking and imposing the death penalty in Oklahoma. The main objective of the study is to measure the difference in enumerated costs between first degree murder cases where the prosecutor seeks the death penalty and similar first degree murder cases in which the death penalty is not sought.

The estimation of economic costs associated with seeking and imposing the death penalty and the extrapolation of those trends is complex and described in more detail, *infra*. Despite using the most conservative estimates—in other words, likely underestimating costs[3]—this study finds that seeking the death penalty in Oklahoma incurs

[1] This report is an independent study submitted to the Oklahoma Death Penalty Review Commission for its review of Oklahoma's capital punishment system. It is current as of February 1, 2017. The Constitution Project provided support to the researchers through data collection and the study was funded by the Wallace Global Fund, which has in no way influenced the outcome of this report. The Commission is grateful to the authors for providing this study during its review of Oklahoma's death penalty. **Please note: the Commission did not edit this draft report and any errors are the responsibility of the authors. The findings and opinions reported here are those of the authors and do not necessarily reflect the positions of Wallace Global Fund, The Constitution Project, The Oklahoma Death Penalty Review Commission, or Seattle University.** This study is included in the Commission's report as a reference for Appendix I.

[2] The report was authored by Peter A. Collins, Matthew J. Hickman, and Robert C. Boruchowitz, with research support by Alexa D. O'Brien. [Peter A. Collins, Ph.D, Assistant Professor, Criminal Justice Department, Seattle University, 901 12th Avenue Post Office Box 222000, Seattle, Washington 98122-1090, Phone: 206-296-5474, Email: collinsp@seattleu.edu; Matthew J. Hickman, Ph.D., Associate Professor, Criminal Justice Department, Seattle University, 901 12th Avenue Post Office Box 222000, Seattle, Washington 98122-1090, Phone: 206-296-2484, Email: hickmanm@seattleu.edu; Robert C. Boruchowitz, J.D., Professor from Practice and Director, The Defender Initiative, Seattle University School of Law, 901 12th Avenue Post Office Box 222000, Seattle, Washington 98122-1090, Phone: 206-398-4151, Email: boruchor@seattleu.edu]. The authors would like to thank the following people and agencies—in no particular order—for their help with this study (the vast majority of which was conducted on a volunteer basis): The Oklahoma Death Penalty Review Commission, which provided considerable support during the data collection process; The Constitution Project ; Oklahoma Department of Corrections Director Joe Allbaugh; Oklahoma County and Tulsa County Court Clerks; Oklahoma County Chief Public Defender Robert Ravitz and District Attorney David Prater; Tulsa County Chief Public Defender Robert Nigh and District Attorney Steve Kunzweiler; Oklahoma Indigent Defense System; Oklahoma State Bureau of Investigation; Tulsa County Sheriff's Office; Oklahoma City Police Department; Tulsa City Police Department; Broken Arrow Police Department; Edmond Police Department; Midwest City Police Department; Mustang Police Department; Nichols Hills Police Department; Sand Springs Police Department; Hon. Clancy Smith (Presiding Judge, Oklahoma Court of Criminal Appeals); Hon. Charles Chapel (Former Judge, Oklahoma Court of Criminal Appeals); Steve Ingraham, Business Analyst, Oklahoma Administrative Office of the Courts; Brandy Manek, Director of Budget and Policy, Oklahoma Office of Management and Enterprise Services; Oklahoma Department of Mental Health and Substance Abuse Services; Patti Palmer Ghezzi, Assistant Federal Defender, Capital Habeas Unit, Federal Public Defender, Western District of Oklahoma; and Melissa Vincent and staff, 9Tribe, LLC. We appreciate your help and please forgive us if we have inadvertently left anyone out.

[3] As we explain in detail within the methods section below, we always underestimated costs for the purpose of presenting the most conservative estimates so as to err on the side of caution.

significantly more time, effort, and costs on average, as compared to when the death penalty is not sought in first degree murder cases. These findings are consistent with all previous research on death penalty costs,[4] which have found that in comparing similar cases, seeking and imposing the death penalty is more expensive than not seeking it.

II. Methodology

A. Case-Level Approach

We studied the period from 2004 through 2010 and began with a case-level approach, where case-specific costs are gathered through matching first degree murder[5] designated cases to corresponding administrative data. The case-level approach centers on the conversion of cost measures or outcomes into one common unit of measurement (United States Dollars or USD), which enables comparisons between sentences sought. Unless otherwise noted, all cost figures are presented in real 2017 USD.

We first collected all first degree murder cases that occurred from 2004 through 2010 in Oklahoma and Tulsa counties. We then constructed a sample of these cases to use for the cost study, including all cases in which a formal bill of particulars[6] (BOP) was filed, which indicates that the prosecutor was seeking the death penalty. We then randomly selected a sample of first degree murder cases in which the death penalty was not sought. This resulted in the analysis of 193 defendants and a total of 184 cases.[7] This list of cases was then shared with criminal justice agencies within Oklahoma and Tulsa counties as well as with some state agencies. We were able to collect data that captured costs incurred at the pre-trial, trial, sentencing, and post-sentencing (appeals and incarceration) stages. These data were collapsed into four main categories, which are jail costs (pre-trial to sentencing incarceration costs), defense costs (costs associated with pre-trial, trial), prosecution costs (costs associated with trial), and some appeals costs (defense only). Post-sentencing costs were also captured, although unlike costs associated with the other stages that are retrospective—or costs that have already occurred—sentencing costs are forecasted.

B. State-Level Approach

In order to provide readers with some additional context regarding the economic costs of seeking the death penalty, we include a systematic review of all death penalty cost studies that were conducted from 2000 through 2016. We also include a national and multi-level econometric analysis of state justice spending over time.

III. Study Highlights

A. Case-Level Findings Summary

As indicated in Table I below, for those cases in which the death penalty is sought (BOP cases), the average total cost per case—using only the data that we were able to collect—is approximately $161,000, while the average total for non-death penalty sought (non-BOP) cases is nearly $51,000 per case. Thus, the estimated average

[4] We detail previous studied under the Literature Review section starting on page 2, below.

[5] First degree murder is the charge that carries the death penalty in Oklahoma. We use "murder in the first degree" throughout to refer to death penalty eligible cases. *See* Okla. Stat. tit. 21, § 701.7 (2017).

[6] A bill of particulars is a formal notice, filed by the state, which serves to notify the defense that the state will be seeking the death penalty. Only first-degree murder cases are eligible for the death penalty.

[7] We controlled for co-offenders. There are a total of 184 cases and 193 unique defendants. There were a total of 572 individuals involved in the 439 first degree murder cases over the study period. There were a total of 1,435 murders from 2004-2010 in the state of Oklahoma and 866 in Oklahoma and Tulsa counties. *See*: https://www.ok.gov/osbi/Publications/Crime_Statistics.html

per-case difference in total costs when the death penalty is sought is approximately $110,000.[8] The Oklahoma Department of Corrections (ODOC) costs for post-conviction incarceration costs are also provided and findings indicate that it costs about twice as much to maintain offenders on death row than off of death row.

In cases in which the death penalty was sought, defendants spent an average of 880 days—the time elapsed between arrest and sentencing (i.e., pretrial incarceration through the end of trial)—in jail. In first degree murder cases in which the death penalty was not sought, defendants spent an average of 356 days in jail. Thus, when a death sentence was sought in a first degree murder case, the defendant spent over one and a half times as many days in jail as cases in which a death sentence was not sought. The average jail costs for BOP defendants was approximately $44,800 total, while non-BOP cases averaged just over $28,300 total, for an average difference of approximately $16,500.

Defense costs during the pre-trial through trial stages show an average difference of just over $32,700 more in a capital case—in other words, nearly ten times more than when a BOP is not filed.[9] Prosecution costs during the pre-trial through trial stages show an average difference of about $17,700 more in a capital case, or about three times more than when a BOP is not filed.

The state capital appeals—the direct and post-conviction appeals—costs incurred by OIDS ran at an average of about $53,000 per case, or over five times more than the non-capital appeals did. Overall, the average cost for defense in direct and post-conviction appeals in death penalty cases is between five and six times more than in non-death penalty cases.

Although we did not receive enough information from the courts system regarding time and effort expended on a per-case basis to estimate costs at this time, we were able to calculate the average number of significant activities per case, as recorded in the docket. The average number of activities (such as motions and hearings) in each docket category combined were almost three times more depending on whether there was a BOP filed in the case.

Table I. Average Costs Per Case: Main Cost Estimate Categories (2017 USD).

	Jail	Defense	Prosecutors	OIDS	Total All
Non-BOP	$28,320	$3,730	$8,848	$9,770	$50,668
BOP	$44,861	$36,467	$26,577	$53,020	$160,925
Diff (ratio)	$16,541 (1.58)	$32,737 (9.78)	$17,729 (3.00)	$43,250 (5.43)	$110,257 (3.18)

Notes: OIDS= Oklahoma Indigent Defense System (direct and post-conviction appeals). Diff= Difference BOP minus non-BOP. Ratio= BOP/non-BOP. Conflict defense[1] average cost per BOP case = $49,323.

[8] This includes some costs for incarceration (jail), defense, and prosecution during pre-trial and trial, some appeals costs from the defense side (Oklahoma Indigent Defense System, OIDS). Many other costs, such as those incurred by the courts and costs associated with prosecution during appeals phases, federal habeas, and execution costs, to name a few, were not included because of a lack of data. Because of the noted lack of data regarding effort and costs, the figures in this report should be interpreted with some caution. Although data from the courts, prosecution, and other categories were not available, we were able to track case-level activities and calculate averages per case; ratios were also calculated and are presented below.

[9] As outlined below, the costs of defense are distorted because the defense often does not have the resources needed to provide effective representation. This lack of resources has contributed to the high reversal rate in death penalty cases and to wrongful convictions resulting in later exonerations.

Several factors distinguish the ODOC costs from the costs listed above, and so we present those findings separately, in Table II below. First, unlike the other data we obtained, which simply reflects past expenditures (i.e., retrospective data), the ODOC data is based on projections of future costs (i.e., prospective analysis). As a result, the actual costs incurred by the ODOC could vary from the estimates below due to unpredictable factors that may lead to a change in sentence. Such factors may include exonerations, commutations, or reversals by appellate courts. Moreover, we do not know the costs incurred by ODOC related to carrying out an execution.

Second, ODOC costs are largely fixed—if the state had one fewer inmate on death row, it would still need to maintain the infrastructure of death row, so the ODOC would not necessarily realize opportunity cost savings from minor death row population fluctuations.

Therefore, the ODOC data and analysis in Table II should be considered with care because there are costs that simply could not be captured as part of this study. For instance, the ODOC analysis is prospective, we do not know which death sentenced offenders will actually be executed and, for those who are executed, how long they will be on death row before their date of execution. We do know that historically, about half of those sentenced to death have their sentences reduced to life without parole, or, less frequently, are acquitted. With these caveats in mind we provide the following findings.

Table II. Projected ODOC Costs to House a Defendant Sentenced to LWOP or Death.

Years in ODOC	Cost to House Defendant Sentenced to Life	Cost to House Defendant Sentenced to Death	Difference in Costs	*Total Costs for Life Compared to Death at 5-year Increments
15	$373,551	$755,957	$382,406	-$240,179
20	$498,068	$928,633	$430,565	-$67,503
25	$622,585	$1,101,310	$478,725	$105,174
30	$747,102	$1,273,987	$526,885	$277,851
35	$871,619	$1,446,663	$575,044	$450,527
40	$996,136	$1,626,097	$629,962	$629,961

Note: These costs do not include any future movements between, in, or out of facilities, or execution. *A total estimated life sentence is 40 years. The final column compares that cost ($996,136) to the costs for death sentenced offenders at each five-year increment.

On average, it costs almost twice as much per inmate per day to maintain death row compared to the other inmates in this sample of cases. These cost differentials are immediate and will continue while there is a death row in Oklahoma. Simply, the costs to incarcerate both death row inmates and life sentences offenders do not vary with the presence or absence of one offender. Because ODOC costs are considered marginal costs, the only way to realize savings and shift opportunity costs would be to close or downsize facilities and reduce staffing, which currently represents the greatest portion of expense for the ODOC.

B. State-Level Findings Summary

1. Previous Studies

There have been many state-level studies completed over the years. We systematically reviewed 15 state-level studies that were conducted between 2000 and 2016, some of which are described in more detail, *infra*. These studies have been conducted by academic researchers and practitioners, many on a volunteer basis, some

sponsored or commissioned by state legislatures or legislative sub-committees, and some by partisan and non-partisan organizations. What all of these studies have found, each to a varying degree, is that seeking and imposing the death penalty is more expensive than not seeking it. It is a simple fact that seeking the death penalty is more expensive. *There is not one credible study, to our knowledge, that presents evidence to the contrary.* On average, it costs approximately $700,000 more in case-level costs to seek the death penalty than to not.

2. Multi-Level Model

The multi-level analysis was conducted in order to provide additional context to the economic costs surrounding the death penalty and to justice-related spending patterns throughout the criminal justice system in Oklahoma. It is important to note that the results of this assessment do not impact the case-level results. Rather, this analysis simply assists the public in understanding how state-level factors, such as population size, demographics, rates of imprisonment, economic inequality, and the death penalty, among others, affect state-level justice spending over time. This assessment lends insight into what factors drive justice spending over time and where economic resource expenditures or shortages may arise in the system. For example, this model helps us understand how the state prison rate affects overall spending. It is important to note that while any state, including Oklahoma, may spend less on the criminal justice system as a proportion of total state gross domestic product (GDP), they may still spend more on capital punishment at the case level on average. Again, all case-level studies, including the present study, have shown that pursuing the death penalty costs more on average than when it is not pursued in similar cases. What this multi-level analysis provides us then, is context to further understand what factors might affect justice-related spending throughout the selected state system, why overlap or gaps in economic spending might appear, and how each state compares to the other and to national averages.

3. Justice Spending[10]

Justice spending as a proportion of state GDP should be understood here as a measure of the levels of socio-legal support and due process. Another way to understand this analysis is the larger the proportion of state-level justice spending, the more invested a state is to social support, the rule of law, and to due process. To be clear, we are suggesting smarter spending, not more, as large increases in spending may prove impossible given state budget shortfalls. The patterns and relationships revealed by the multi-level analysis support concerns voiced by many of the policy makers and practitioners to whom we spoke: that there are major gaps in support, especially for public defense, and that these gaps are even more prevalent in regard to capital cases, where people and budgets are stretched thin.

Here, annual state GDP is used to convert spending into a common metric so that states can be compared on the same scale. This technique and research question is much different than the case-level approach, where administrative data are collected as they relate to unique cases and average costs per case are calculated. To compare findings from the case-level approach to the multilevel approach here is not methodologically appropriate. They should be seen as separate analytical frameworks. Rather than searching for a ratio or percentage of spending per case, this technique allows us to develop an understanding of what factors significantly contribute to differences in justice spending at the state level and over time. We provide rankings for all states in the full report, but only provide a comparison between Oklahoma's averages and national averages in this executive summary.

4. Findings

In Table III below, we present seven year averages (2007-2013) in average score and rank on several key state-

[10] Justice spending is defined as annual spending for corrections (including capital outlay), and judicial and legal costs (state and local government totals), United States Census: http://www2.census.gov/govs/pubs/classification/2006_classification_manual.pdf

level variables. The variables included are average justice spending per $1,000 GDP, the proportion of non-White residents, the average Gini[11] score, the average imprisonment rate (per 1,000 population), and the average policy liberalism score.[12] In comparing categories from left to right, Oklahoma spends less on justice than the national average per GDP and is ranked 32nd nationally for this time period. This means that 18 states spent less and 31 states spent more on justice per $1,000 GDP. Oklahoma ranked 19th in proportion of non-White residents, 18 states had higher proportions of people of color, while 32 states had less. In comparing income inequality, Oklahoma ranked 19th nationally (Gini coefficient: where a higher score [between 0 and 1] indicates higher levels of income inequality). Oklahoma's imprisonment rate was ranked 5th in the nation, with a rate of about seven people per 1,000 incarcerated, on average, during this time period. Last, Oklahoma ranked 40th in policy liberalism, indicating much more conservative policy-making at the state level.

Table III. Seven-Year Average Score & Rank, Selected Variables: (2007-2013).

	Justice Exp. per $1,000 GDP		Proportion non-White		Gini Coefficient		Imprisonment Rate		Policy Liberalism	
	Avg.	Rank	Avg.	Rank	Avg.	Rank	Avg.	Rank	Avg.	Rank
All states	$7.16	--	0.218	--	0.608	--	4.36	--	0.06	--
Oklahoma	$6.45	32	0.257	19	0.616	19	7	5	-1.1	40

Notes: Exp. = Expenditure. See Multilevel section for in-depth explanation of measures.

IV. Conclusions

At the case-level, we found a significant difference in spending patterns when comparing first degree murder cases in which the state sought the death penalty compared to similar cases in which the death penalty was not sought. The estimated average per case difference when the death penalty is sought is about $110,000. This is an extremely conservative figure, as we purposely underestimated costs where appropriate and this figure lacks many costs incurred by the system, especially by the courts and appeals costs linked to the prosecution.

We systematically reviewed 15 state-level studies that were conducted between 2000 and 2016. On average it cost about $700,000 more in case-level costs to seek the death penalty than to not. While the Oklahoma estimate fell below this average, we believe the cost patterns and findings reported here are consistent with the findings from other research studies.

We created a national model that focuses on justice spending as a proportion of state GDP, controlling for several state-level variables. This analysis was conducted in an effort to better understand how justice spending in Oklahoma compares nationally as well as how justice spending is shaped by other factors such as race, economic inequality, state prison rates, and the death penalty. Overall, Oklahoma invests less in their justice system compared to the national average and much of that spending is due to higher rates of incarceration.

V. Recommendations

We understand that a focus on the economic costs incurred by the justice system, and ultimately tax-payers, addresses only one facet of discussions about the death penalty. Our focus within this study rests on economic

[11] Posey, K. G. (2016). Household Income: 2015. American Community Survey Briefs. United States Census Bureau. Posey, K. (2016, p. 1) explains the Gini coefficient as a: "Summary measure of income inequality. The Gini index varies from 0 to 1, with a 0 indicating perfect equality, where there is a proportional distribution of income. A Gini index of 1 indicates perfect inequality, where one household has all the income and all others have no income."
See also: U.S. State-Level Income Inequality Data, by Mark W. Frank at: http://www.shsu.edu/eco_mwf/inequality.html; and Frank, M. E. Sommeiller, M. Price, & E Saez. (2015). Frank-Sommeiller-Price Series for Top Income Shares by US States since 1917 http://www.shsu.edu/eco_mwf/usstatesWTID.pdf;

[12] An index relating to the annual policy outputs of state legislatures, higher values indicate more liberal policy outputs: https://www.ippsr.msu.edu/public-policy/correlates-state-policy

impacts within an economic and systems context. Additional and extremely important questions related to the purpose, role, and impact of the death penalty (such as Eighth Amendment concerns, proportionality and racial disparity, those surrounding deterrence, the philosophical goals of punishment, and differences in prosecutorial/defense approaches) should also be considered when weighing any significant policy changes and impacts.

It is unclear whether Oklahoma stakeholders are able to implement the recommendations in this study, particularly given the state's budget constraints and the overall economic climate regarding its criminal justice system. We have documented the differential in costs between capital and non-capital first degree murder cases in the state. To calculate these costs, we attempted to capture costs for as many components of our sample cases as possible (e.g. incarceration costs, defense costs, prosecution costs, etc.).

However, it is quite clear that a great deal of unaccounted effort is occurring regularly in every agency included in our analysis. As researchers who have conducted similar cost studies in other states, we know and understand that, for example, prosecutors do not bill their time in a way that makes it easy to track exactly how much time—and therefore, attributable costs—is spent on any particular case. However, it is also clear that just about every agency or organization is far behind in the employment of a modern information management system that may easily allow for critical information to be collected, stored, and tracked. Such information management provides for increased overall efficiency within the system, as well as more public awareness of how the justice system operates. Indeed, these are just some of the many important issues that arose during our efforts to collect information. We believe, however, that tenable solutions currently exist for these issues and that because they are interconnected, progress in one area should also have a positive collateral impact in another. To that end, we provide the following recommendations:[15]

Increase accountability, transparency, consistency, and decrease risk through the following efforts:

1) Conduct a systematic review of justice system information gathering, sharing, and managing capabilities;

2) Leverage partnerships with local and state researchers and practitioners for the distinct purpose of developing and/or adopting best practices;

3) Openly share results with stakeholders and the community and form a short and long-term action plan for the improvement of data management, information and data dissemination, and data sharing practices;

4) State agencies and officials should work to install systems of accountability and transparency surrounding the death penalty specifically, as there are some very serious gaps. Addressing these gaps will only increase the likelihood of just outcomes for both victims and offenders and will decrease liability to the system; and,

5) Provide adequate support and training to counsel that reflects the current standards of the American Bar Association, the National District Attorneys Association, the National Legal Aid and Defender Association, and other professionally recognized resources.

We recognize that these are very broad and far-reaching recommendations. We believe, however, that these general recommendations must be met first, in order to boost the capacity for agencies to focus on any fine-tuned recommendations. For example, how would a defender's or prosecutor's office properly measure expended effort if neither collects any case-level data? Presently, broad strokes are needed to produce a foundation upon which finer details may be applied with confidence.

[15] These recommendations do not necessarily reflect the views of the Oklahoma Death Penalty Review Commission, but are simply provided to supplement the results of this independent cost study.

INTRODUCTION

The purpose of this study is to provide empirical evidence to the Oklahoma Death Penalty Review Commission (Commission) regarding the economic costs of seeking and imposing the death penalty in Oklahoma. The main objective is to create an economic benefits ratio that reflects the difference in enumerated costs between cases where the prosecutor seeks the death penalty and similar first degree murder cases in which the prosecutor does not seek the death penalty. Our primary method for answering this question is what is referred to as a case-level approach, where case-specific costs are gathered through matching first degree murder[14] designated cases to corresponding administrative data. The case-level approach centers on the conversion of cost measures or outcomes into one common unit of measurement (United States Dollars or USD), which enables comparisons between types of sentences sought.

As we describe further below, the case-level process was hindered by a general lack of data and/or resources to produce financial data, and in some cases, unwillingness by agency personnel to record, produce, or share financial data. We did, however, obtain case-level financial data from several sources and we are able to present a case-level analysis, although it is very likely that the figures presented below do not capture all of the costs associated with seeking the death penalty. As with research conducted in other states, this report lacks information pertaining to court costs and a great deal of information regarding costs associated with direct and post-conviction appeals for prosecution, for example. In order to provide some context to the case-level findings, we also include state-level analyses. The state-level approach includes a systematic review of multiple state-level death penalty cost studies that were conducted in a variety of states from 2000 to 2016 and a national and multi-level econometric analysis of state justice spending over time. The review of the past studies appears in the literature review presented below and the multi-level model is described in the methods and analysis sections.

As detailed in previous studies, the estimation of costs associated with seeking and imposing the death penalty and the extrapolation of those trends within an evidence-based framework is complex. Moreover, we recognize that a focus on the economic costs incurred by the justice system and ultimately tax-payers addresses only one facet of discussions about the death penalty. To be clear, our focus within this study rests on economic impacts within an economic and systems context. Additional and extremely important questions related to the purpose, role, and impact of the death penalty (such as the Eighth Amendment, proportionality and racial disparity, deterrence, the philosophical goals of punishment, and differences in prosecutorial/defense approaches) must also be considered when weighing any significant policy changes and impacts. Given this important caveat, we begin with a synthesis of the literature on the economic costs of the death penalty; we then present our methodology for the case-level approach, followed by analyses. We then provide an overview of the state-level approach, followed by a summary, discussion, and some policy recommendations.

In addition to the knowledge that is generated through the case- and state-level analyses, a great deal of insight is gained as a result of asking over 40 state and local agencies to produce financial records and case-level data. Initiated and carried out primarily by The Constitution Project (TCP) staff and researchers, this process began with sending personal emails and form letters requesting data, followed by dozens of in-person and telephone interviews. Through both the data collection and interview processes, we were able to generate information regarding the "state of information management" with respect to the involved agencies. We provide this as a supplemental analysis below.

[14] First degree murder is the charge that carries the death penalty in Oklahoma. We use "murder in the first degree" throughout to refer to death penalty eligible cases. *See* OKLA. STAT. tit. 21, § 701.7 (2017).

REVIEW OF THE LITERATURE

I. Introduction

Over the past few decades, empirical studies on capital punishment have focused a great deal of attention on Eighth Amendment doctrine, proportionality and racial disparity, evolving standards, innocence and exoneration, public opinion, victimology, and the penological goals of retribution and deterrence. For good reason, these established areas of discourse continue to garner a great deal of interest by the public and by policy makers and researchers. More recently, an additional area of review has increased in popularity: the examination of the increased economic costs that arise as a result of seeking and imposing the death penalty. Although the first noteworthy study on the economic costs associated with the death penalty was conducted in New York in 1982, much of the academic and public discourse surrounding economic costs has occurred in the last fifteen years. The attention to the economic costs of seeking the death penalty has surfaced for several reasons, but the most oft-cited rationale arose during the context of economic crisis in the criminal justice system, and for the nation as a whole, prior to and during the "great recession," respectively. For many, economic cost analysis became an integral part of criminal justice reform movements, as practice shifted from wasteful business-as-usual policies to an opportunity costs driven evidence-based practice that addressed where and how government can best spend economic resources in order to get the biggest return on investment.[15]

Although we do not provide a review on each and every study here, we do cite all of the reports or articles that we have collected as part of this study in the reference section of this study. For the purpose of this report, we present summaries of more recent studies that also satisfy higher levels of empirical rigor.

II. Past Studies

In an effort to expand or build on the limitations noted in previous studies, Roman, Chalfin, and Knight (2009) produced one of the more rigorous death penalty cost studies to date. Using quasi-experimental methods, Roman et al. (2009) studied 457 capital-eligible cases over a period of 22 years in Maryland. They found "a strong, positive association between the filing of a death notice and the cost of processing the case. On average, a death notice adds about $1,000,000 in costs over the duration of a case" (Roman et al., 2009, p. 570). Their policy recommendations focused on the argument that resources expended in the pursuit of the death penalty have opportunity costs, many of which are expenditures that would be "relatively easy to reallocate," such as attorney wages. Furthermore, they argue, as the data clearly show, that any fiscal benefits from actual execution – meaning any savings that would be realized through no longer needing to pay for housing and caring for a person serving a life sentence – are absorbed through the case process.

One important limitation that Roman et al. (2009, p. 531) note has to do with case selection bias, where "cases are included in samples based on ex post case outcomes rather than ex ante attributes." This occurs when sample cases are collected based on case outcome, rather than case attributes, resulting in a biased comparison of death penalty cases to life without parole (LWOP) cases. Other researchers have noted this limitation of prior research as well and have adopted several strategies to ensure the best research design given the context and constraints of the study (Collins, Boruchowitz, Hickman, & Larrañaga, 2016). As we describe in the methods section below regarding the sample of cases used for the current study, we follow a similar strategy as Roman et al. (2009) and Collins et al. (2016) where a random sample of cases is selected from all capital-eligible cases that occurred within a certain timeframe. The cases all begin as capital-eligible, and the selection point enters when the prosecutor files a formal notice that they will seek the death penalty; for Oklahoma, this is called a "bill of particulars" (BOP).

[15] See Washington State Institute for Public Policy: http://www.wsipp.wa.gov/ as an example of a legislatively directed non-partisan research organization and for leads on evidence-based practices across the criminal justice system.

In the same issue of *American Law and Economics Review*, Cook (2009) conducted an analysis of the estimated costs of seeking the death penalty in North Carolina. Although his methods of estimation differ somewhat from those utilized by other researchers, his results indicated that the potential savings from death penalty abolition would reach $10.8 million per year (in 2004 dollars) and that this figure did not include other potential savings in reallocation of effort and resources. Cook (2009, p. 31) concludes by stating that "the death penalty is a financial burden on the state and a resource-absorbing burden on the trial courts."

An economic cost study conducted by Collins et al. (2015, 2016)[16] in the state of Washington was the first to combine the expertise of social scientists and death-penalty qualified legal counsel while also utilizing a highly rigorous quasi-experimental research design. The study provided two sets of cost estimates, one utilizing the total population of eligible aggravated murder cases, while the other uses propensity score matching to control for any extraneous factors or selection bias. Both outcomes showed significant cost differences when the death penalty was sought, with the more conservative estimate showing a difference of $800,000 and the unmatched figure reaching well over one million dollars more per case. Moreover, in this report, the authors noted another important finding, that of the high post-conviction reversal rate: "in 75 percent of cases involving death sentences, either the conviction and/or the death sentence have been reversed" (Collins et. al., 2016, p. 778).

Last year, Goss, Strain, and Blalock (2016) completed an economic study for the state of Nebraska, and found that seeking the death penalty costs approximately $1.5 million more per case than when it is not sought. The authors of the Nebraska study estimated costs using a couple of different approaches. They examined U.S. Census data on annual justice spending, including several control variables, which allowed them to estimate the annual estimated expense attributed to having the death penalty, which they figured to be $14.6 million (2015 US dollars) more than if they did not have the death penalty. In the second, the authors conducted a meta-analysis, a common and well-regarded methodological practice in both the medical and educational fields, as well as social scientific fields. Meta-analysis uses previous studies as the units of analysis, rather than single death penalty cases, and uses regression and effect sizes to estimate, in this example, costs. They found that the estimated cost per death penalty prosecution to be $1,493,500 more than the average for a life sentence (Goss et al., 2016, pp. 27-28).

In the most recent study to date, Kaplan, Collins, and Mayhew (2016)[17] estimated the average per case cost for seeking the death penalty in the state of Oregon. The authors of this study found that the costs associated with death sentences versus life sentences ranged from $800,000 to one million more dollars per case. Importantly, the authors found that of the 28 death-sentenced cases that had been legally completed (meaning no more appeals or remedies were available), 79 percent of the sentences were reduced from death to life. Additionally, the authors found evidence of a significant increase in case costs over the last four decades, an interesting finding considering that the state has not executed anyone in over 20 years.

16 Three (Collins, Boruchowitz, and Hickman) of the four authors on the Washington study are also authors on this study.

17 Collins was one of the authors and lead researcher for this study.

Table 1. Past Economic Studies Summary of Main Findings (N= 15).

Year	Author/Organization	State	2017 Dollars
2001	Williams Inst.	Arizona	$136,003
2003	State of CT Commission	Connecticut	$346,540
2004	State of Tenn.	Tennessee	$926,239
2008	ACLU	California	$1,277,452
2008	Roman et al.	Maryland	$1,972,680
2009	Cook	North Carolina	$359,936
2010	Sen. Boots	Indiana	$380,904
2012	Miethe	Nevada	$246,013
2013	Marceau & Whitson	Colorado	$135,778
2014	State of Nevada	Nevada	$579,365
2014	Death Penalty Ad Comm.	Kansas	$439,916
2014	OPE; Idaho Leg.	Idaho	$159,710
2015	Collins et al.	Washington	$1,214,127
2016	Goss et al.	Nebraska	$1,520,644
2016	Kaplan et al.	Oregon	$935,597
		avg. per case:	$708,727

Both the Roman et al. (2009, p. 534) study, as well as the more recent study conducted by Goss et al. (2016, p. 27), provide examinations or deeper syntheses of the death penalty costs literature. They both note that all of the studies showed that seeking the death penalty resulted in more costs, although the findings from each study vary. We too examined the studies that they listed, as well as any additional economic studies that we could find, resulting in a list of 28 total. We systematically reviewed each study, first, for scientific rigor. We further classified reports by year completed (post-2000), geographic scope (county, state, federal), focus (death penalty costs), whether the authors provide a cost ratio figure (implied comparison group), level of analysis – average costs per case or average overall costs, and general study design quality (rigor). After reviewing each study, the studies listed in Table 1 made our initial cut and we therefore included their overall findings in our analysis.

In every case, if the authors provided a range of costs, or for their own reviews, increased calculated costs from those found in the original studies, the smaller of the figures was adopted for our review. For example, the Kaplan et al. (2016) study provided a range of costs so we adopted and adjusted the lower end of their estimates, just to provide the most conservative figure, or in other reports, what we felt was the most accurate figure possible. Other studies, such as one completed by Erickson (1993) and included in both the Roman et al. (2009) and Goss et al. (2016) reviews were not included because they were completed prior to our cut-off year of 2000 and because we felt that their estimates would exert too much upward skew on our overall average estimate in the table. Also note that we included the results from studies from Idaho, Colorado, and Arizona, all of which provide arguably poor and likely significantly under-estimated costs. Again, we include these here to err on the side of caution and present the most conservative estimates possible. As is clearly the case above, even when taking a conservative approach with all of the available findings, the average difference in case-level costs for seeking the death penalty amongst all studies was just over $700,000.

III. Summary

There have been many state-level studies completed over the years. These studies have been conducted by academic researchers and practitioners, many on a volunteer basis, some sponsored or commissioned by state legislatures or legislative sub-committees, and some by partisan and non-partisan organizations. What all of these studies have found, each to a varying degree, is that seeking and imposing the death penalty is more expensive than life in prison (Roman et al., 2009; Collins et al., 2015). It is a simple fact that seeking the death penalty is more expensive. There is not one credible study, to our knowledge, that presents evidence to the contrary.

Although the economic outcomes differ from study to study and from state to state, the cited reasons for the increase in costs associated with seeking the death penalty have been consistent across all of the studies: the death is different doctrine and the super due process[18] that are in place for death penalty cases are what drive the differences in the costs. To be absolutely clear: these legal guarantees are protected by the United States Constitution, so they cannot, nor should they be diminished.

Our goal here is to provide evidence and an explanation of the costs that are specific to Oklahoma. We therefore turn our attention to the state of Oklahoma, and in particular, cases arising from the two most populous jurisdictions of Tulsa and Oklahoma counties.

METHODS

The methods and analysis sections below are each divided into two basic sections; the first provides information pertaining to the case-level approach and the second integrates the information regarding the state-level approach. As a function of the data collection process for the case-level approach, we also provide agency-by-agency descriptions of what data were requested and delivered, the status of those requests at the time this report was completed, and additional findings related to information management, resources, accountability, and agency needs. We begin with the case-level approach, data descriptions, and case sample descriptives.

IV. Case-Level Approach: Sample

For the case-level approach, case-specific costs are gathered through matching first degree murder-designated cases, which include both death penalty sought and not sought cases, to administrative data. This approach centers on the conversion of cost measures or outcomes into one common unit of measurement (United States Dollars or USD), which enables comparisons between case and sentence types. Again, the main objective here is to create an economic benefits ratio that reflects the difference in enumerated costs between cases where the prosecutor seeks the death penalty compared to similar first degree murder cases in which the prosecutor does not seek the death penalty.

Due to limited resources and time to produce records at the agency level, as well as some methodological issues surrounding case selection (e.g. only past cases and those that have moved through trials and at least some appeals have the full spectrum of costs across the typical life of a case), we made the decision to conduct this analysis using a random sample of cases that occurred in the two largest Oklahoma Counties (Oklahoma and Tulsa Counties) during a seven-year period. First, we collected a list of all first degree murder cases that

[18] See Gardner v. Florida, 430 U.S. 349 (1977): "First, five Members of the Court have now expressly recognized that death is a different kind of punishment from any other which may be imposed in this country. Gregg v. Georgia, 428 U.S. 153 (1976), 181 188 (opinion of STEWART, POWELL, and STEVENS, JJ.); see id., at 231241(MARSHALL, J., dissenting); Furman v. Georgia, 408 U.S. (1972) at 286291 (BRENNAN, J., concurring), 306310 (STEWART, J., concurring); see id., at 314371 (MARSHALL, J., concurring). From the point of view of the defendant, it is different in both its severity and its finality. From the point of view of society, the action of the [430 U.S. 349, 358] sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion."

occurred between the beginning of 2004 and end of 2010 from the Oklahoma Administrative Office of the Courts (439 1st degree murder cases; 572 defendants). We then removed all cases where a bill of particulars (BOP) was filed (because all were included) and worked with just those cases where a bill of particulars was not filed (non-BOP). Using just the non-BOP cases, we did our best to filter out duplicate individuals so that each individual is listed only once. We then filtered out duplicate case numbers so that only one unique case number could be represented in the sample frame.[19] This process resulted in a total unique case/individual count of: N= 395 (TULS= 135; OK= 260). Next, we conducted a stratified random sample; (RNG= mersenne twister; random start point) quota was set by county. The quotas were set at 3-times the number of BOP cases per county (OK: 36*3= 108 (41.5%); TULS: 13*3= 39 (28.8%)) for a total non-BOP N= 147 (37.2%). This resulted in a final sample of 147 non-BOP cases and 49 BOP cases, for a total of N= 196 cases. We later discovered that three cases were incorrect (no data or no record) so they were removed, that there were a handful of codefendants that were selected, and that there were a few incorrectly non-BOP designated cases included in the BOP group resulting in a final sample of 193 (44 BOP/149 non-BOP) individuals selected over 184 cases. We refer to N= 193 as the study sample of individual—each with their own "case" even if they are identified in the system under the same "case number."

V. Data Sources: Agency-Level Availability of Information

We then combined the sample of selected non-BOP and all BOP cases into a master Microsoft Excel spreadsheet. Each case included common descriptors, including full name, case number, Oklahoma State Courts Network (OSCN) docket case link, county, and information filing date, to name a few. These data were included along with a personalized letter describing our research project and a list of requested data and information, tailored to each agency, which we hoped that the agency could produce and share with us. As noted above, this was the first step in making contact with each agency. Some agency representatives simply ignored our email and request altogether, some informed us as to why they believed they could not produce the data or provided a reason as to why they would not, while other agency personnel either had data and were willing to share it or did not have data but were willing to work with us in order to provide some information. In Tables 2 and 3, below, we provide some basic descriptive information regarding the ease of access to administrative data as well as the current state of administrative data within the identified agencies.[20]

[19] There are a handful of co-defendants in the sample, we were sure not to double count costs for these cases. We discovered that three cases did not contain any records or were completely inaccurate and were therefore removed from the study. Future studies in Oklahoma should attempt to gather all cases in order to get an even more accurate picture of case development from charge to release/sentence and post-sentence. We controlled for co-offenders there are a total of 184 cases and 193 unique defendants. There were a total of 572 individuals involved in the 439 first degree murder cases over the study period. There were a total of 1,435 murders statewide from 2004-2010 and 866 total for Oklahoma and Tulsa counties; see: https://www.ok.gov/osbi/Publications/Crime_Statistics.html

[20] Note: u = unknown; y = yes; n = no; na = not applicable. The main column headers were created for the purpose of maintaining records regarding the vast numbers of requests that were made. They are defined as: 1) Maintain Records (yes/no): does the agency maintain any data regarding clients and effort (time and expense, salary, costs, other financial data) for employees, subcontractors, and/or clients?; 2) Digital Records (yes/no): are these records easily obtainable through a digital database query?; 3) Case-Level (yes/no): are these records processed or maintained at the case-level?; 4) All-Cases (yes/no): was the agency able to match all of the cases included in the main case sample spreadsheet?; 5) Case-Study Estimate (yes/no): if the agency lacked data, was it willing to produce a picture of a typical case or provide a case-study?; 6) Hard to Get (yes/no): were the records hard to get - through lack of ability, knowledge, cooperation, etc.?; and, 7) Interview (yes/no): did an agency representative agree to an interview regarding the data request?

Table 2. Data Status and Descriptive Outcomes by Agency (N= 46).

Agency	Maintain Records	Digital Records	case-level	all-cases	case-study est.	Hard to get	Interview
Dept. of Corrections	y	n	y	y	n	y	y
Pardon and Parole Board	n	n	n	n	n	y	n
State Attorney General	y	n	n	n	n	y	y
Office of Mgmt. & Enterprise Services	y	y	n	n	n	n	n
District Attorneys Council	y	n	n	n	n	y	y
Oklahoma Co. District Attorney	n	n	n	n	n	y	y
Tulsa County District Attorney	n	n	n	n	y	y	y
Oklahoma Co. Public Defender	y	n	y	n	y	n	y
Tulsa County Public Defender	n	n	n	n	y	y	y
Oklahoma Indigent Defense System	y	n	y	y	y	n	y
Dept. Mental Hlth. & Sub. Abuse Serv.	n	n	n	n	n	y	y
Oklahoma Co. District Court	y	y	y	y	n	y	y
Tulsa Co. District Court	y	n	y	y	n	y	n
Oklahoma Court of Criminal Appeals	y	y	y	y	n	y	y
Administrative Office of the Courts	y	y	y	y	n	y	y
Oklahoma County	y	y	n	n	n	y	y
Tulsa County	u	u	n	n	n	y	n
Canadian County	n	u	n	n	n	y	n
Bethany City/Town Executive	n	u	n	n	n	y	n
Broken Arrow City/Town Executive	n	u	n	n	n	y	n
Choctaw City/Town Executive	n	u	n	n	n	y	n
Del City City/Town Executive	u	u	n	n	n	y	n
Edmond City/Town Executive	n	n	n	n	n	n	n
Midwest City City/Town Executive	n	n	n	n	n	y	n
Mustang City/Town Executive	n	u	n	n	n	y	n
Nichols Hills City/Town Executive	u	u	n	n	n	y	n
Oklahoma City City/Town Executive	u	u	n	n	n	y	n
Owasso City/Town Executive	u	u	n	n	n	y	n
Sand Springs City/Town Executive	u	u	n	n	n	y	n
Tulsa City/Town Executive	u	u	n	n	n	y	n
Warr Acres City/Town Executive	u	u	n	n	n	y	n
Bethany Police Department	y	u	y	n	n	y	n
Broken Arrow Police Department	y	u	y	y	y	n	n
Choctaw Police Department	u	u	n	n	n	y	n
Del City Police Department	u	u	n	n	n	y	n
Edmond Police Department	y	u	y	y	y	n	n
Midwest City Police Department	y	u	y	y	y	n	n
Mustang Police Department	y	u	y	y	n	n	n
Nichols Hills Police Department	y	u	y	y	y	n	y

Agency	Maintain Records	Digital Records	case-level	all-cases	case-study est.	Hard to get	Interview
Oklahoma State Bureau of Investigation	y	y	y	y	n	n	y
Oklahoma City Police Department	y	n	y	y	y	n	y
Oklahoma County Sheriff's Office	u	u	n	n	n	y	n
Tulsa County Sheriff's Office	y	u	y	y	n	n	y
Tulsa Police Department	y	y	y	y	y	n	y
Warr Acres Police Department	u	u	n	n	n	y	n
Owasso Police Department	u	u	n	n	n	y	n
Sand Springs Police Department	y	u	y	y	n	y	y

Table 3. Agency Descriptives and Data Request Status Summary (N= 46).

		Frequency	%	Valid %	Cumulative %
Maintain Records	No	12	26.1	35.3	35.3
	Yes	22	47.8	64.7	100
	Total	34	73.9	100	
	Unknown	12	26.1		
Digital Records	No	14	30.4	66.7	66.7
	Yes	7	15.2	33.3	100
	Total	21	45.7	100	
	Unknown	25	54.3		
Case-level	No	28	60.9		
	Yes	18	39.1		
All-cases	No	30	65.2		
	Yes	16	34.8		
Case-study est.	No	36	78.3		
	Yes	10	21.7		
Hard to get	No	13	28.3		
	Yes	33	71.7		
Interview	No	27	58.7		
	Yes	19	41.3		

Note: Unknown category usually means that particular agency did not respond to our requests for data or information.

In Table 3, above, we provide a summary of the information contained in the Data Status and Descriptive Outcomes by Agency table. As one might assume, a few notable patterns emerged when simply looking at the inability of Oklahoma criminal justice agencies to produce valid and reliable data for both case management (case-level data) and human resources management (tracking effort across cases). Importantly, a full third of the reporting agencies claimed to not collect any information at all regarding either employee effort on a case-by-case basis, basic administrative data regarding case-level expenses and effort, or any data related to client or administrative management. A majority (66.7%) of the agencies that responded to our requests for information *do not currently maintain modern digital case files*. This does not mean that they do not file records in a "digital" format. Many do, but it does mean that they do not have a data management system in place in which

a set of case identifiers could be matched easily through a basic database query. Following this pattern, it is not surprising that a similar number of agencies could not easily produce case-level information and in many instances, not at all. This theme continues throughout the rest of the measures listed in Table 3 above.

Although the main purpose of this study was not to focus on information management systems, we cannot ignore the major shortcomings illustrated above. The identification of such a dearth of contemporary or digitally accessible information management systems should be of great concern to law and policy makers and citizens of Oklahoma. The adoption of these types of systems would improve collaboration, communication, and coordination among agencies, and improve transparency, efficiency, and ultimately accountability in a system that seems to be lacking in all of these areas. Therefore, a key recommendation for immediate consideration is to systematically measure data collection and maintenance practice amongst criminal justice agencies, and where significant gaps exist, provide support for the adoption of contemporary systems, programs, and applications.

VI. Data Collection & Adjustment Strategy

The main first degree murder (including death penalty cases) data sets were circulated within the corresponding criminal justice agencies, where representatives were asked to match names and case numbers to their databases and provide financial information on a case-by-case basis. Each separate dataset was converted into a new file using IBM SPSS 23 software and was cleaned (checked for accuracy, recoded, etc.) and merged with the main aggravated murder and non-aggravated murder "seed" files. We tied costs to each particular case within general stages of the case process, and where possible, we triangulated costs using several sources of data. Because the cases, and therefore their costs, occur at different times across many years (not to mention forecasted costs for ODOC), the cost figures all needed to be adjusted for inflation. For all adjustments, the Organization for Economic Co-operation and Development (OECD), Main Economic Indicators (complete database, base year 2010, Consumer Price Index – Total All Items for the United States), were used to adjust nominal values into 2010 dollars. CPI figures were rounded to the ten thousandths and the annual CPI value for 2017 was provided using Sahr's (2012) estimate.[21]

CASE-LEVEL FINDINGS

VII. Sample Descriptions

In Tables 4 through 7 below, we provide a basic descriptive analysis of the sample of cases selected for this study. We begin with presenting a crosstabulation of frequencies and percentages for race, sex, and whether there was a bill of particulars (BOP) filed in the case, by county. Next, we present a crosstabulation of race and sex by BOP. After that, we present selected crosstabulation of cases based on race, sex, and BOP by case categorization based on whether the case went to trial, pled, a combination of both trial and plea, or was dismissed. The average age of the defendants at offense by BOP was even at 29 years old, while at sentencing, transfer, or release the average age was about 31 years of age for non-BOP and about 32.5 for BOP cases (the BOP group was about 1.38 years older at sentencing than the non-BOP group).

[21] Robert Sahr, Inflation Conversion Factors, Coll. of Liberal Arts – Sch. of Pub. Policy, Or. State Univ. (September 10, 2016) http://liberalarts.oregonstate.edu/sites/liberalarts.oregonstate.edu/files/polisci/faculty-research/ sahr/inflation-conversion/pdf/cv2010.pdf ("Consumer Price Index (CPI) Conversion Factors 1774 to estimated 2024 to convert to dollars of 2010. Estimates for 2014-2024 are re-based on the average of OMB and CBO estimates as early 2014. . . . Conversion factors for years before 1913 are re-based from data from the Historical Statistics of the United States Millennial Edition (Cambridge University Press, 2006). Calculation starting 1913 uses the CPI-U as the base, from the US Bureau of Labor Statistics. Monthly and annual CPI data are available at the BLS web site: http://stats.bls.gov/cpi/home.htm#data (CPI-U = all urban consumers)").

Table 4. Sample Descriptives: Race, Sex, and BOP Filed by County (N= 193).

Category		Oklahoma Co.	Tulsa Co.	Total
		f (%R) (%C)	f (%R) (%C)	f (%R) (%C)
Race/Eth				
	White	45 (72.6) (31.7)	17 (27.4) (33.3)	62 (100) (32.1)
	Black	71 (70.3) (50.0)	30 (29.7) (58.8)	101 (100) (52.3)
	Hisp.	17 (85.0) (12.0)	3 (15.0) (5.9)	20 (100) (10.4)
	Nat.Am.	9 (90.0) (6.3)	1 (10.0) (2.0)	10 (100) (5.2)
	Total	142 (73.6) (100)	51 (26.4) (100)	193 (100)
Sex				
	Female	12 (80.0) (8.5)	3 (20.0) (5.9)	15 (100) (7.8)
	Male	130 (73.0) (91.5)	48 (27.0) (94.1)	178 (100) (92.2)
	Total	142 (73.60) (100)	51 (26.4) (100)	193 (100)
BOP				
	No	110 (73.8) (77.5)	39 (26.2) (76.5)	149 (100) (77.2)
	Yes	32 (72.7) (22.5)	12 (27.3) (23.5)	44 (100) (22.8)
	Total	142 (73.6) (100)	51 (26.4) (100)	193 (100)

Notes: BOP = Bill of Particulars Filed in the Case. Hisp.= Hispanic. Nat. Am.= Native American. f = frequency; (%R) = percentages represent within ROW category; (%C) = percentages represent within COLUMN category.

In Table 4, above, we present a descriptive crosstabulation based on race, sex, and BOP by county. The largest race category was Black, which represented 101 cases, or just over half of the total sample, followed by White at 62 cases (32.1%). There were roughly the same proportions of cases across the two counties when examining race. As one would expect, the majority of the cases included male defendants (92.2%). Last, there was similar proportions in cases within each county (column %), which makes sense, as this reflects our sampling technique.

In Table 5, below, we present a crosstabulation of race and sex and by whether there was a BOP filed. There was a BOP filed in about 24 percent of the Black defendant's cases (row %) and in 21 percent of the White cases, although Black defendants made up over half of the cases within the BOP filed category. Again and as expected, the vast majority of BOP filings were for male defendants.

Table 5. Sample Descriptives: Race and Sex by BOP (N= 193).

Category		No-BOP Filed	Bop Filed	Total
		f (%R) (%C)	f (%R) (%C)	f (%R) (%C)
Race/Eth				
	White	49 (79.0) (32.9)	13 (21.0) (29.5)	62 (100) (32.1)
	Black	77 (76.2) (51.7)	24 (23.8) (54.5)	101 (100) (52.3)
	Hisp.	17 (85.0) (11.4)	3 (15.0) (6.8)	20 (100) (10.4)
	Nat.Am.	6 (60.0) (4.0)	4 (40.0) (9.1)	10 (100) (5.2)
	Total	149 (77.2) (100)	44 (22.8) (100)	193 (100)
Sex				
	Female	14 (93.3) (9.4)	1 (6.7) (2.3)	15 (100) (7.8)
	Male	135 (75.8) (90.6)	43 (24.2) (97.7)	178 (100) (92.2)
	Total	149 (77.2) (100)	44 (22.8) (100)	193 (100)

Notes: BOP = Bill of Particulars Filed in the Case. Hisp.= Hispanic. Nat. Am.= Native American. f = frequency; (%R) = percentages represent within ROW category; (%C) = percentages represent within COLUMN category.

In Table 6, below, we present race, sex, and BOP by category regarding whether a case ended in a guilty plea, went to trial, ended in a combination of both trial time and a plea, and case dismissal (most likely resulting in release of the defendant from supervision). In regard to racial category, 51.6 percent of the white defendants entered into a plea agreement, while 28.7 percent of the Black defendants did. More White defendants pled to a lesser sentence, although there was roughly the same proportion (within racial category) of White and Black defendants at trial, 40.3 percent to 44.6 percent, respectively. A much larger proportion—about four times more—of the Black defendants' cases were dismissed. There was a 14 percent difference between females and males in the proportion of cases in which a plea agreement was reached. Finally, just under half of the cases where a BOP was filed resulted in a plea agreement.

Table 6. Sample Descriptives: Race, Sex, and BOP by Plea/Trial Indicator (N=193).

Category		Plea	Trial	Dismissed	Trial/Plea	Total
		f (%R) (%C)	f (%R) (%C)	f (%R) (%C)	f (%R) (%C)	f (%R) (%C)
Race						
	White	32 (51.6) (41.0)	25 (40.3) (31.6)	3 (4.8) (11.1)	2 (3.2) (22.2)	62 (100) (32.1)
	Black	29 (28.7) (37.2)	45 (44.6) (57.0)	22 (21.8) (81.5)	5 (5.0) (55.6)	101 (100) (52.3)
	Hisp	11 (55.0) (14.1)	5 (25.0) (6.3)	2 (10.0) (7.4)	2 (10.0) (22.2)	20 (100) (10.4)
	Nat.Am	6 (60.0) (7.7)	4 (40.0) (5.1)	-	-	10 (100) (5.2)
	Total	78 (40.4) (100)	79 (40.9) (100)	27 (14.0) (100)	9 (4.7) (100)	193 (100)
Sex						
	Female	8 (53.3) (10.3)	5 (33.3) (6.3)	2 (13.3) (7.4)	-	15 (100) (7.8)
	Male	70 (39.3) (89.7)	74 (41.6) (93.7)	25 (14.0) (92.6)	9 (5.1) (100)	178 (100) (92.2)
	Total	78 (40.4) (100)	79 (40.9) (100)	27 (14.0) (100)	9 (4.7) (100)	193 (100)
BOP						
	No	57 (38.3) (73.1)	60 (40.3) (75.9)	26 (17.4) (96.3)	6 (4.0) (66.7)	149 (100) (77.2)
	Yes	21 (47.7) (26.9)	19 (43.2) (24.1)	1 (2.3) (3.7)	3 (6.8) (33.3)	44 (100) (22.8)
	Total	78 (40.4) (100)	79 (40.9) (100)	27 (14.0) (100)	9 (4.7) (100)	193 (100)

Notes: BOP = Bill of Particulars Filed in the Case. Hisp.= Hispanic. Nat. Am.= Native American. f = frequency; (%R) = percentages represent within ROW category; (%C) = percentages represent within COLUMN category.

In Table 7, below, we present a flow chart of the cases selected for this study. The flow chart should be read from left to right; it begins with the total sample of first degree murder defendants, N= 193. The first division occurs at the bill of particulars (BOP) filed decision point, where 44 cases (22.8%) contain a BOP and 149 cases (77.2%) continue as non-death penalty sought first degree murder cases. We provide two sets of percentages. The first provides the percentage using the total sample or 193 defendants. The second includes the percentage using the category BOP or non-BOP as the denominator, or 44 and 149, respectively. Note that the final categories under sentence represent the probability corresponding to the previous category, so as can be seen, there were two categories that resulted in a death sentence, the BOP to Trial to Death Penalty (n= 8) and the BOP to Combo (which is an indicator that a plea was entered at some point but may have been withdrawn or there may have been a retrial) to Death Penalty. Using the total N (193) as the denominator, there were a total of nine cases (4.6%) that resulted in a death sentence. These nine cases are all currently in some stage of direct appeal, post conviction appeal or federal habeas review. Importantly, there were a total of 572 capital-eligible (murder in the first degree) defendants spread over 439 unique cases from 2004-2010. Depending on which denominator is used, the percent of cases that result in a death sentence is either about 1.5 or 2 percent.

VIII. Agency-Specific Findings

A. Oklahoma Department of Corrections

The Oklahoma Department of Corrections (ODOC) worked hard to provide us with information regarding inmate transfers, past and current inmate location, and per inmate per day costs by facility. First and foremost, however, it is imperative to note that the information management system that the ODOC currently utilizes is extremely outdated. While resource needs for improving the working conditions for ODOC employees (salary and benefits) may outweigh costs for improving information management systems, both need to be addressed. It was clear from our conversations with the Director and through our research that the ODOC and ultimately the state of Oklahoma are putting ODOC employees, inmates, and citizens at risk of injury, inmate escape, and litigation by not addressing the vast shortcomings in the correctional system. In our interview with the Director, he stated that as a direct result of the Department's antiquated information management system, it runs the risk of releasing offenders either early or late and that tracking offenders through the system is difficult and time consuming. Moreover, there is a stated need for both capital repairs and improvements, which might also include technological upgrades. Recent reports also indicate that the prison population in Oklahoma continues to grow beyond the capacity of the system, putting even more strain on all employees and people incarcerated in the system.[22]

Even given these shortcomings and through a great deal of time and effort, the ODOC staff was still able to provide us with some data. For those cases included in the study, we received: 1) date of reception; 2) date the sentence ended; 3) which facility each inmate was located at and transfer date(s) (for example Oklahoma State Penitentiary, H Unit) for the listed defendants and their associated cases; 4) average daily cost per inmate for facility(s) and locations(s) where defendants associated with cases in the attached list have been or are being held; and, 5) the Oklahoma Board of Corrections approved operating cost per inmate for fiscal years 1996 through 2015. The averages include all costs associated with incarceration, including medical and mental health care for defendants associated with cases in the attached list that have been or are being held.[23]

Several factors distinguish the ODOC costs from the other costs categories, such as defense and prosecution, listed below. First, unlike the other data we obtained, which simply reflects past expenditures (i.e., retrospective data), the ODOC data is based on projections of future costs (i.e., prospective analysis). As a result, the actual costs incurred by the ODOC could vary from the estimates below due to unpredictable factors that may lead to a change in sentence. Such factors may include exonerations, commutations, or reversals by appellate courts. Second, we do not know the costs incurred by ODOC related to carrying out an execution. Last, ODOC costs are largely fixed—if the state had one fewer inmate on death row, it would still need to maintain the infrastructure of death row, so the ODOC would not necessarily realize opportunity cost savings from minor death row population fluctuations.

Therefore, the ODOC data and analysis in Table 8 below should be considered with care because there are costs that simply could not be captured as part of this study. For instance, the ODOC analysis is prospective, we do not know which death sentenced offenders will actually be executed and, for those who are executed, how long they will be on death row before their date of execution. We do know that historically, about half of those sentenced to death have their sentences reduced to life without parole, or, less frequently, are acquitted. With these caveats in mind we provide the following findings.

[22] See The Oklahoman Article "Oklahoma ODOC budget request highlights agency's challenges" by the Editorial Board http://newsok.com/article/5328129.

[23] The following are the per diem rates by inmate classification: Maximum: $87.20; Medium: $42.83; Minimum: $41.75; Community: $47.07; Private Maximum: $60.97; Private Medium: $45.23; Private Halfway: $44.46; County Jail: $41.20.

Table 8. Projected ODOC Costs to House a Defendant Sentenced to LWOP or Death.

Years in ODOC	Cost to House Defendant Sentenced to Life	Cost to House Defendant Sentenced to Death	Difference in Costs	*Total Costs for Life Compared to Death at 5-year Increments
15	$373,551	$755,957	$382,406	-$240,179
20	$498,068	$928,633	$430,565	-$67,503
25	$622,585	$1,101,310	$478,725	$105,174
30	$747,102	$1,273,987	$526,885	$277,851
35	$871,619	$1,446,663	$575,044	$450,527
40	$996,136	$1,626,097	$629,962	$629,961

Note: These costs do not include any future movements between, in, or out of facilities, or execution. *A total estimated life sentence is 40 years. The final column compares that cost ($996,136) to the costs for death sentenced offenders at each five-year increment.

Costs were calculated by location and per day costs per inmate for that location. All costs were adjusted for inflation and are presented in 2017 USD. As with past studies, we include costs for an assumed life sentence (Collins et al., 2015, 2016) in which no release or execution date is listed. A forecasted life sentence was assumed to be the greater of either 470 months or 65 years of age.[24] In Table 8, above, we provide the analysis on the ODOC data. On average, it costs almost twice as much per inmate per day to maintain death row compared to the other inmates in this sample of cases. These cost differentials are immediate and will continue while there is a death row in Oklahoma. Simply, the costs to incarcerate both death row inmates and life sentences offenders do not vary with the presence or absence of one offender. Because ODOC costs are considered marginal costs, the only way to realize savings and shift opportunity costs would be to close or downsize facilities and reduce staffing, which currently represents the greatest portion of expense for the ODOC.

B. Jails

Incarceration costs at the local jail level accrue from arrest to either release or shortly after sentencing, at which time the offender is transferred to a long-term prison facility. We collected dates from the Oklahoma State Courts Network (OSCN) for each case; dates include offense date, information date, other preliminary hearing date, as well as trial through either release (dismissal, acquittal, or NGRI transfer) or sentencing dates. We calculated jail costs by measuring days between the information date and either release or sentencing and then by multiplying the number of days by the average cost per day. We collected documents regarding the Oklahoma and Tulsa County Sheriff's Offices that detailed the average daily cost of incarceration in the jails, beginning with administrative orders[25] which detail the average daily cost on incarceration per inmate per calendar year, within our study date range for Oklahoma County. In correspondence with the Tulsa County Police Department, we received a document that detailed average daily costs based on actual expenditures. We also received a jail-related average daily rate from the Oklahoma Department of Corrections.

There were some issues with the reliability of the per-inmate per-day cost figures presented from Oklahoma County, and there was also variation from county to county and with the ODOC figures that were provided. Because of current and ongoing issues surrounding these cost estimates,[26] we used an adjusted average of all the

[24] For average life sentence, see: https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf; and, http://www.ussc.gov/amendment-process/public-hearings-and-meetings/appendix-0.

[25] Administrative Order AD7-2002-21 (Pursuant to decision in cases Ray Lamont Hubbard v. State of Oklahoma and Troy Don Cape v. State of Oklahoma, 2002 OK CR 8) by way of the OKC AOC and OKPD Ravitz.

[26] See: http://kfor.com/2016/10/18/investigative-audit-of-oklahoma-county-sheriffs-office-shows-financial-mismanagement/ (visited 1/24/2017); and, see: The Marshall Report article regarding deaths in custody: https://www.themarshallproject.org/2017/01/23/an-oklahoma-horror-story?ref=collections#.5kTepvdoY (visited 1/24/2017).

figures that were provided, resulting in an estimated average daily cost of $50.92 per inmate (in estimated 2017 USD). The findings are provided in Table 9, below. In cases that were designated death penalty or where a Bill of Particulars (BOP) was filed, defendants spent about 880 days in jail on average, while in non-capital sought first degree murder cases, defendants spent about 556 days in jail on average (ratio of 1.62). The average cost for BOP defendants was about $44,800 total (2017 USD), while non-BOP cases averages about $28,300 total, for an average difference of about $16,500 (2017 USD). These differences were statistically significant (p< .001, (190) t= 4.993).

Table 9. Jail Supervision Costs: Information to Sentencing/Release Dates (N= 193).

	N	Average	Ratio	Difference
Jail Days				
No BOP	148	556.13	1.58	324.82*
BOP	44	880.95		
Costs per Case				
No BOP	148	$28,320		
BOP	44	$44,861	1.58	$16,541**

Note: DP = Death Penalty Sought or Bill of Particulars.*(p< .001, (df 190) t= 4.993) **(p< .001, (df 190) t= 4.993).

C. Public Defenders

In recent times research on quality legal defense has established that public defenders should keep track of their hours, particularly in cases that are more complex and require more effort, such as murder cases.[27] We discovered that public defenders in Oklahoma do not track their hours on first degree murder cases. This limited our ability to have an exact measure of effort expended in each unique case. We were, however, able to obtain data regarding budgets and salary, and from each of the county district courts, were able to obtain ledgers that contained case-specific data on trial court attorney, witness, transcript, as well as other expenses related to many of the cases in our sample. We present those findings in Table 10, below. As discussed below, we also obtained narrative information about individual cases in which the defenders persuaded the district attorney not to seek the death penalty, after months of work by the defender mitigation specialist. As the offices do not keep track of the hours spent on their cases, it is difficult to compare with precision the costs of mitigation work in potential capital cases to the work required in cases deemed non-capital from the beginning.

[27] See, e.g., NAPD STATEMENT ON THE NECESSITY OF MEANINGFUL WORKLOAD STANDARDS FOR PUBLIC DEFENSE DELIVERY SYSTEMS, March 19, 2015: "NAPD believes that a lawyer's well-spent time is the single most important factor in a client receiving effective and meaningful representation, and as such, NAPD believes meaningful evidence-based standards for public defense workloads can best be derived and institutionalized through ongoing, contemporaneous timekeeping by public defense providers."
http://www.publicdefenders.us/files/NAPD_workload_statement.pdf.

Table 10. Oklahoma County Public Defense Costs (n= 71; 2017 Dollars).

	Category	n	Mean	Ratio (Diff)
OKC PD by Designation	No BOP	49	$3,730	
	BOP	22†	$36,467	9.78 ($32,737)*
OKC PD By Sentence	Death Penalty	5	$59,155	
	Life	41	$12,729	4.65 ($46,426)**

Notes: OKCDC ledger costs and OK Co. PD Budget details. *(p< .001, (df 21.164) t= 4.093); **(p< .001, (df 3,67)F= 7.548). † Note that two other categories are omitted here (n= 71) – cases that were dismissed (avg. cost = $4,426) and cases that resulted in less than life (avg. cost = $8,476).

The costs displayed in the table above and below were generated from two sources. The first, in Table 10, originated from the Oklahoma County District Court (OKCDC) and was in the form of a ledger document for billed work. The second source, resulting in the findings displayed in Table 11 below, also came from the OKCDC, but these were Oklahoma County Public Defender (OKCPD) budget documents. The defense costs listed in Table 10 (above), represent these cost categories: indigent witness expenses, trial court attorneys, transcripts (preliminary hearing, trial, and transcript appeals), and witness expenses (as well as miscellaneous expenses). These categories were aggregated and averages based on case designation (non-BOP/BOP) and sentence outcome (DP/Life) are presented below. Defense costs by case designation show an average and statistically significant difference of approximately $32,700 – nearly ten-times the average cost when a bill of particulars is not filed. The average difference at current sentence status compared to BOP designation is greater on average ($59,000 to $36,500), but the ratio shrinks from about ten times (1:9.78) the costs to just below five times (1:4.65) the costs.

Although the OKCPD budgets may not be exactly the same today (for example the OKCPD no longer budgets for an outside conflict investigator, as they now have someone designated to take on those responsibilities internally), the OKCPD fiscal year budgets include line-items that were specifically designated for capital cases (Table 11, below). These line items include budgets for conflict counsel and conflict investigators for capital cases. It is important to note that these costs did not cover fringe benefits, as those were expected to be paid by the conflict subcontractors. On average, the OKCPD spent almost six percent, or $357,590 of their total budget, on costs associated with conflict defense on capital cases. This averaged about $50,000 per capital case over the study period. Another pattern worth noting is that the gradual decrease in the percentage of the total budget over time is due to the increased overall budget, but is also no doubt affected by the decreasing number of capital cases being sought per year.[28]

[28] See Death Penalty Information Center 2016 Report: http://deathpenaltyinfo.org/documents/2016YrEnd.pdf.

Table 11. Oklahoma County DP Conflict Budget (2017 Dollars).

SFY	Total Conflict	Total Budget	% of Budget
2004	$407,788	$5,775,862	7.06
2005	$397,148	$6,169,498	6.44
2006	$384,111	$6,316,663	6.08
2007	$434,121	$6,453,873	6.73
2008	$361,773	$6,476,122	5.59
2009	$348,400	$6,300,503	5.53
2010	$349,639	$6,376,009	5.48
2011	$177,739	$5,873,471	3.03
Average	$357,590	$6,217,750	5.74
Avg./case	$49,323		

Notes: Total conflict includes costs for conflict counsel and investigation.

D. Oklahoma Indigent Defense System

The Oklahoma Indigent Defense System (OIDS) provided the research team with information regarding cases to which the courts appointed OIDS before the Oklahoma Court of Criminal Appeals and that matched one of our selected cases. These cases were handled either by private retained counsel or staff attorneys, and were assigned to either the general appeals division, homicide direct appeals division, or capital post conviction division. The information included the attorney and investigator name, hours spent on the case, hourly rate for each attorney, total attorney cost, and expert costs, if any.

Table 12. Oklahoma Indigent Defense System Appeals Costs (n= 34).

Sentence Category		n	Mean	Diff	Ratio
	Out/Dismissed	3	$11,744		
	Death Penalty	9	$73,568	$61,824*	6.26
	Life	20	$11,744		
	Years/Other	2	$4,625		
Bill of Particulars Filed					
	No BOP	20	$9,770		
	BOP	14	$53,020	$43,250*	5.43

Notes:*p< .001.

The average costs per case listed in Table 12 above do not include costs for OIDS staff and capital construction or maintenance. Also, as is the case with subcontracted defense attorneys, some of the costs do not include benefits and indirect costs. There is a statistically significant difference in the cases by to-date sentence ($F= 18.443$ (df 3,30), $p< .001$), as the death penalty appeals cost an average of about $62,000, or over six times more, than the non-death penalty appeals. When sorting the cases from the BOP decision, there is also a statistically significant difference ($t= 3.774$ (df 13.781), $p< .001$), as those cases seeking death cost about $43,000, or about five and a half times more than non-death sought cases. Overall, the average cost for defense in direct and post-conviction appeals in death penalty cases is between five and six times more than in non-death penalty cases.

E. Additional Notes on Public Defense

Defending persons facing a possible death penalty is complex, requires a sophisticated understanding of substantive and procedural law and significant trial and sentencing practice experience. A team of lawyers, an investigator, and a mitigation specialist are required. Cases can last more than a year and require comprehensive investigation into both the facts of the alleged crime and into the life history of the defendant, including importantly his or her mental health history. The courts recognize this complexity, and are guided by the *American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003) ("ABA Guidelines"), a 173-page document that emphasizes "that, because of the extraordinary complexity and demands of capital cases, a significantly greater degree of skill and experience on the part of defense counsel is required than in a non-capital case." Guidelines, 31 HOFSTRA LAW REVIEW 913, 921. The Guidelines state: "...death penalty cases have become so specialized that defense counsel have duties and functions definably different from those of counsel in ordinary criminal cases." *Id*., at 923.

The ABA Guidelines, quoting a law professor, noted the emotional and intellectual demands on capital defense counsel:

> The responsibilities thrust upon defense counsel in a capital case carry with them psychological and emotional pressures unknown elsewhere in the law. In addition, defending a capital case is an intellectually rigorous enterprise, requiring command of the rules unique to capital litigation and constant vigilance in keeping abreast of new developments in a volatile and highly nuanced area of the law.
>
> *Id*., at 923.

Because the cases can take a long time and clients face possible execution, it is important to maintain frequent and in-depth communication with the clients. One mitigation specialist told us that her goal is to meet with the client weekly and spend an hour to two hours with the client on each visit, but she is not always able to do that because of the pressure of her other work.

The complexity of the work has increased, as this quote from a prosecutor affirms. Tulsa County District Attorney Steve Kunzweiler told us, "I am confident in saying that I spend an even greater amount of time on similar cases today due to the complexity of the litigation which has spawned over the past decade on death penalty qualified prosecutions."

The true cost of representing people accused of capital crimes in Oklahoma is greater than the data we received indicates. State defenders often do not have the time and the resources to provide representation that complies with the standards outlined in the ABA Guidelines and expected by the appellate courts. Many issues are not adequately raised until they are represented by federal defenders in federal habeas review. Had the cases been fully prepared and litigated in the state courts, it is likely that fewer cases would go to federal habeas review. The inability of trial court defenders to provide fully effective representation in all their cases has contributed to a significant number of reversals and even exonerations of innocent people in Oklahoma.

The courts "apply a heightened concern for fairness..., where the state is prepared to take a man's life." *Douglas v. Workman*, 560 F.3d 1156,1194 (10th. Cir. 2009).

Appellate courts closely review the work of the defense attorney in preparing for and conducting the sentencing phase of a death penalty case. As the Tenth Circuit Court of Appeals emphasized, they apply "closer scrutiny when reviewing attorney performance during the sentencing phase of a capital case...." *Littlejohn v. Trammell,* 704 F.3d 817, 859 (10th Cir. 2013).

The Tenth Circuit Court has outlined "three important principles":

> First, the question is not whether counsel did *something;* counsel must conduct a full investigation and pursue reasonable leads when they become evident. Second, to determine what is reasonable investigation, courts must look first to the ABA guidelines, which serve as reference points for what is acceptable preparation for the mitigation phase of a capital case. Finally, because of the crucial mitigating role that evidence of a poor upbringing or *mental health problems* can have in the sentencing phase, defense counsel must pursue this avenue of investigation with due diligence.
>
> *Id.*, at 860, citation omitted.

The court has underscored the importance of evidence of organic brain injury, which courts "have found to have a powerful mitigating effect.... And for good reason—the involuntary physical alteration of brain structures, with its attendant effects on behavior, tends to diminish moral culpability, altering the causal relationship between impulse and action." *Id.*, at 860.

The *Littlejohn* court reversed the death sentence in that case and remanded for an evidentiary hearing to determine whether trial counsel "was constitutionally deficient in failing to investigate and put on mitigating evidence concerning Mr. Littlejohn's claimed physical brain injury." *Id.*, at 867.

The case of *Fitzgerald v. Trammell,* 03-CV-531-GKF-TLW, 2013 WL 5537387, *Id.* at, 14 (N.D. Okla. Oct. 7, 2013), is an example of the complexity of death penalty litigation, the length of time required to adjudicate capital cases, and the challenges presented by the mental health and brain injury issues that are common among death penalty defendants.[29] The case began in 1994 and had various appeals. In 2013, the Court reversed the death sentence, finding, in part, that the defendant had "a disorganized defense team that was unable to cohere and formulate a plan for mitigation." *Id.* at, 36. The Court found that trial counsel was ineffective for not calling an expert witness who could have explained:

> ... that the combination of Petitioner's alcohol consumption, uncontrolled diabetes, and frontal lobe injury exacerbated Petitioner's already diminished capacity and that each added factor had a negative multiplicative impact on Petitioner's ability to control his behavior and anticipate consequences.
>
> *Id.*, at 42.

Another example of the complexity of death penalty law is the case of *Miller v. State*, 313 P.3d 934 (Okla. Crim. App. 2013). The appellate court reversed the death penalty on two counts of murder, one because the defendant had been previously acquitted of the death penalty. There were multiple opinions from the judges totaling 72 pages with more than 200 footnotes. Two years later, the re-sentencing had not been completed when the defendant sought relief by federal habeas petition. Because the case was still pending in state court, the federal judge said the defendant could bring a habeas petition later after his sentencing had been completed.[30]

---

[29] The American Psychiatric Association in 2014 reaffirmed its "Position Statement on Death Sentences for Persons with Dementia or Traumatic Brain Injury": Defendants should not be executed or sentenced to death if, at the time of the offense, they had significant limitations in both their intellectual functioning and adaptive behavior, as expressed in conceptual, social, and practical adaptive skills, resulting from mental retardation, dementia, or a traumatic brain injury.
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&ved=0ahUKEwiq3pWfoJ3RAhWGsFQKHaLzD3YQFgg_MAY&url=https%3A%2F%2Fwww.psychiatry.org%2FFile%2520Library%2FLearn%2FArchives%2FPosition-2014-Death-Sentence-Cognitive-Impairment.pdf&usg=AFQjCNHUdQ_cFjr99TMiygvBc49WnGnaqA&sig2=r3cAqg2XfZbOckYhO46i3w.

[30] *Miller v. Trammell*, 2015 WL 4666286, N.D. Oklahoma, No. 14-CV-541-JHP-TLW (2015).

The problems of ineffective assistance of counsel, inadequate expert witness resources, and prosecutorial misconduct have contributed to a high reversal rate of Oklahoma death verdicts. From 1973 to 2013, 353 people were sentenced to death in Oklahoma.[31] Of these, either the sentence or the conviction was overturned in 176 cases, or 49.85 per cent.[32] Since 2007, the federal courts have granted relief in 14 cases.[33]

Most recently, the U.S. Supreme Court reversed a death penalty from the Oklahoma District Court because the Oklahoma Court of Criminal Appeals did not follow existing law that opinions from a victim's family members about the appropriate sentence are not admissible (*Bosse v. Oklahoma,* 196 L.Ed.2d 1 (2016)).

Trial counsel in Oklahoma state court death penalty cases are hampered by heavy caseloads, insufficient support staff, severe limits on funds for training, and limits on expert witness funding provided by the courts. Defenders in Oklahoma County average about four months' work on a capital case.[34] This situation, in which the defender resources are stretched, results in their spending less time on their cases than they think they should. It also results in a distorted perspective on the real costs of death penalty cases, because the amount of time the state defenders are able to spend on the cases is less than it should be. This is particularly true when defenders have to declare a conflict of interest and the cases go to assigned counsel. In the most recent Oklahoma County case, the judge approved compensation for the second chair lawyer of only approximately $13,000. That level of funding makes it difficult to find qualified lawyers to work on the cases.

By contrast, the *federal* defender capital habeas unit (CHU) which handles the cases after the state appeals have been exhausted, assigns two attorneys, a lead investigator, and a paralegal to each new petition case that it receives, and the team spends more than half its time, sometimes as much as 90 per cent of its time, for approximately a year preparing the habeas petition for one client. The office has 25 open cases, and has six lawyers, four investigators, and three administrative staff. As compared with the more limited compensation for state defense teams, the CHU attorneys have salaries equivalent to salaries for Assistant U.S. Attorneys with similar experience.

While the state trial defender offices have teams of capital lawyers and mitigation specialists, when they have to declare a conflict of interest, defenders say that it can be difficult to find qualified lawyers willing to work for the meager compensation provided. The maximum compensation is $20,000 per case for first chair lawyers, and in two cases we reviewed, the lawyers claimed approximately 500 hours of work, yielding an hourly payment of $40. We were told that most second chair lawyers have been paid less than $7,500. In one older Tulsa County case, an appointed lawyer moved to withdraw and filed a bill for more than $8,000. He was paid $500.

Experienced assistant district attorneys in Oklahoma are paid in the $105,000 to $128,000 per year range,[35] with benefits.[36] Conflict counsel have to pay their own overhead, including any support staff, and pay for their own benefits.

---

[31] U.S. Department of Justice, Capital Punishment-2013, Statistical Tables, http://www.bjs.gov/content/pub/pdf/cp13st.pdf.

[32] *Id.*

[33] Glenn Anderson: *Anderson v. Sirmons*, 476 F.3d 1131 (10th Cir. 2007); Michael Browning: *Browning v. Trammell*,717 F.3d 1092 (10th Cir. 2013); Rocky Dodd: *Dodd v. Trammell*, 730 F.3d 1177 (10th Cir. 2013); *Douglas v. Workman*, 560 F.3d 1156 (10th Cir. 2009) (This includes opinion for Yancy Douglas and Paris Powell); James Fitzgerald: *Fitzgerald v. Trammell,* 2013 WL 5537387, N.D. Okla. (2013); Danny Hooks: *Hooks v. Workman*, 606 F.3d 715 (10th Cir. 2010); Victor Hooks: *Hooks v. Workman*, 689 F.3d 1148 (10th Cir. 2012); Emmanuel Littlejohn: *Littlejohn v. Trammell*,704 F.3d 817 (10th Cir. 2013); David Magnan: *Magnan v. Trammell*, 719 F.3d 1159 (10th Cir. 2013); Ernest Phillips: *Phillips v. Workman*, 604 F.3d 1202 (10th Cir. 2010); Lonnie Richie: *Richie v. Workman*, 599 F.3d 111 (10th Cir. 2010); Charles Taylor: *Taylor v. Workman*, 554 F.3d 875 (10th Cir. 2009); Sterling Williams: *Williams v. Trammell*, 539 Fed. Appx. 844 (10th Cir. Aug. 26, 2013) (unpublished).

[34] This and other statements about the practice in Oklahoma, if not otherwise indicated, are based on interviews with stakeholders conducted by Professor Boruchowitz and Alexa O'Brien from The Constitution Project.

[35] District Attorneys Council salary chart http://oklahomawatchdata.org/state-salaries/220.

[36] For an example of county benefits, see description of Clerk's office benefits at: http://countyclerk.oklahomacounty.org/benefits.

When counsel are appointed outside of the Federal Defender office to do capital habeas work, the hourly rates are determined by the court up to a maximum of $183 per hour.[37] Funding for defender training is an issue, and we heard reports that some state defenders are able to go to training only with scholarships from community organizations.

The Tulsa County chief defender advised us that before he came to the office he was counsel on a federal case that was resolved with a life sentence, and his fee was approximately $200,000. Expert witness costs were approximately $100,000. Both of these categories are multiple times higher than what we found to be typical expenses in state capital cases. He said that the federal courts recognize the need for expert witness expenditures more than the state courts do. Although his office has not had a capital case in the two years he has been chief defender, he categorically says he does not have the resources he needs to provide effective representation in death penalty cases. He would assign two lawyers should his office have a capital case, but those lawyers would have to continue representing other felony clients, which he said is "almost impossible" to do.

He has had three cases in which his office was able to persuade the district attorney not to seek death. He said that "almost always" there is compelling mitigation evidence, and in his experience the district attorney when presented with it will often decide not to seek death. In those cases, the chief defender led the representation with the assistance of a mitigation specialist who also is a lawyer.

The mitigation specialist told us that to prepare for a presentation to the prosecutor, she prepares a citation to the records for every fact she provides. This takes a long time and sometimes the volume of records can be overwhelming. In one case, her client had been in state custody and care for 16 years and there were four boxes of records to digest. She worked on that case for approximately nine months, but because she could not obtain the records until close to the time they were to meet with the prosecutor, she worked 19 hour days for almost a week to prepare. While it is likely that some of that kind of preparation would be needed in a non-capital homicide case, the intensity and scope of the work in preparing a mitigation presentation to the prosecutor to avoid the death penalty are significantly greater. In addition to her mitigation work, the specialist also supervises three lawyers who are handling approximately 40 murder cases. She said she would like to have more staff.

The state appeals from capital cases are handled both by the trial defender offices and by the Oklahoma Indigent Defense System (OIDS), which also handles all capital state post-conviction cases as well as trial level cases in felony, misdemeanor, and juvenile levels in the 75 counties other than Tulsa and Oklahoma. Craig Sutter, the OIDS deputy executive director, told us, "The biggest problem we've got is the sheer numbers we are dealing with." He added that his office had struggled with budget cuts and had asked for supplemental funding. He said, "If we don't get funding, these cases are just going to come back because we won't have the staff, investigators, etc. to provide adequate representation." Mr. Sutter discussed the challenge of providing effective representation to all of his clients and the drain that capital cases cause.

[37] See, Chapter 6, § 630: Compensation of Appointed Counsel in Capital Cases
Guide to Judiciary Policy, Vol 7 Defender Services, Part A Guidelines for Administering the CJA and Related Statutes, Chapter 6: Federal Death Penalty and Capital Habeas Corpus Representations, http://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-6-ss-630-compensation-appointed-counsel. There is no statutory case maximum. The policy also provides:

> § 630.20 Adequate Compensation of Counsel
> In the interest of justice and judicial and fiscal economy, and in furtherance of relevant statutory provisions regarding qualifications of counsel in capital cases (see: Guide, Vol 7A, § 620.60), presiding judicial officers are urged to compensate counsel at a rate and in an amount sufficient to cover appointed counsel's general office overhead and to ensure adequate compensation for representation provided.

In a FY 2017 budget document, OIDS submitted the following:

> "What services are still provided but with a slower response rate? While the agency has been able to provide constitutionally-mandated services, budget reductions of recent years have resulted in fewer attorneys handling increasing caseloads, causing a slower response time and agency attorneys exceeding caseload recommendations of national defender organizations by 50%."

The OIDS caseload increased from 38,000 in 2000 to 58,000 in 2015. Mr. Sutter described his office as being at a "breaking point" and said, "We have to triage everything."

Oklahoma's problems in this area are similar to those in other states. For example, the Florida Supreme Court called the practice of triage resulting from a public defender office's high caseload "a damning indictment of the poor quality of trial representation that is being afforded indigent defendants by the Public Defender." *Public Defender v. State*, 115 So. 3d 261, 274 (Fla. 2013) (footnotes omitted).

Patti Ghezzi, Assistant Federal Defender from the CHU in Oklahoma said that her office has the resources available to comply with ABA Guidelines. She said, "Frankly, Mr. Sutter doesn't." She said that her office's attorneys have the time and the training to be up to speed with developments in the law. She said she had a state trial court case on federal habeas "where the time to trial was just 8 months. Just not enough time." She said that lawyers cannot effectively prepare and try a capital case in that time.

The defender caseload is heavy as well in the state's two largest counties, but the number of death penalty cases is vastly different between them. Oklahoma County Public Defender Bob Ravitz had 80 first degree murder cases open when he met with our team, and ten of those were death penalty cases. Tulsa County Public Defender Rob Nigh told us that he had 43 open murder cases, none of which were death penalty cases.[38]

In 2015, the Tulsa County Defender had 22 felony lawyers who were appointed to 5,647 cases[39], an average caseload of 256 per lawyer, which is 70 per cent higher than nationally recommended maximum caseloads. When we met with Mr. Nigh in late 2016, he told us that his lawyers had 300 cases a year, double the nationally recommended maximum. He said, "To throw onto that a death penalty case? If you're doing that, you shouldn't do another case."

There are major differences in how the courts handle murder cases from one county to the next. In Tulsa, the defenders are able to have the court issue juror questionnaires to help gather information for use in jury selection. In Oklahoma City, that is not the case.

Mr. Nigh said: "I will tell you we cannot afford to do it. Economically in my office I don't have the funds. I truly believe that we cannot afford to do it." He added, "Thank God we do not have any death penalty cases right now." He noted what he called the arbitrary nature of the death penalty in Oklahoma, noting "the county boundary truly makes the difference."

Mr. Ravitz added: "I don't think there is any system that can make sure that innocent people can't get executed."

Oklahoma County District Attorney David Prater emphasized the need for defense counsel to have training

[38] The population of Oklahoma County is 776,864, and of Tulsa County, 639,242. See, Oklahoma Counties by Population, at http://www.oklahoma-demographics.com/counties_by_population.

[39] See, "Private attorneys take on cases assigned to Tulsa County public defender", Tulsa World, June 20, 2016, http://www.tulsaworld.com/news/courts/private-attorneys-take-on-cases-assigned-to-tulsa-county-public/article_883813c0-3fe2-576c-a367-453dca60b175.html.

and greater support. He noted what he called "horrific issues with underfunding of OIDS."[40] He said, "I'd rather go up against the 'biggest badass defense lawyer' than someone not trained to do it. That is the scariest thing – every second of every day you are trying to make sure you are trying every side of that case – we have to adequately fund the public defender, OIDS, and their ability to hire experts." [41]

Mr. Prater said that Defender Ravitz "has half the lawyers he should have."[42] Mr. Prater also emphasized the direct trauma that defense lawyers have in death penalty cases because they get close to their clients.

A case that raises a wide spectrum of issues relating to the effectiveness of trial counsel and the complexity of capital cases is *Williamson v. Reynolds,* 904 F. Supp. 1529 (E.D. Okla. 1995), aff'd sub nom. *Williamson v. Ward*, 110 F. 3d 1508(10th Cir. 1997), abrogated by *Nguyen v. Reynolds*, 131 F. 3d 1340 (10th Cir. 1997). On federal habeas corpus, the judge granted relief and ordered a new trial for a variety of reasons relating to ineffective assistance of counsel.

When the Tenth Circuit reviewed and affirmed the order for a new trial, it discussed how little time the appointed counsel spent on the case. The court reproduced part of what the lawyer had said at trial.

> "Judge, I've got to make a living. I can't spend all my time on this case." Rec. vol. VIII at 12. Records reveal that Mr. Ward spent twenty-one and one-half hours preparing for the preliminary hearing, thirty-two hours at the preliminary hearing, fourteen hours on trial motions, forty-three and one-half hours preparing for trial and forty-five hours in trial, for which he was paid the maximum fee provided by law, $3200. Rec. vol. IV, no. 3 at 369.
>
> *Williamson v. Ward*, 110 F.3d 1508, 1512 (10th Cir. 1997).

The lawyer stated: *"I am a solo practitioner with a staff of only one secretary. As such I do not have the resources for extensive investigation."* Id at 1517. He tried the case alone, with no investigation or expert services. The court noted that "we have pointed out that in a capital case, counsel's duty to investigate all reasonable lines of defense is strictly observed." Id, at 1514, citation omitted.

The court wrote of the compensation and lack of resources: "These factors make it economically unattractive, if not impossible in many circumstances, for appointed counsel to expend the time and effort required to adequately represent a client in a capital case." *Id,* at 1522.

While the Oklahoma courts have since held that there should be reasonable compensation for appointed counsel,[43] the reality is that both defenders and appointed conflict counsel are not being paid adequately.

Our study of the cost of the death penalty in Oklahoma cannot ignore two dimensions related to the inadequate funding for public defense in capital cases. As outlined above, what the state is spending to provide defense services in death penalty cases is dramatically less than it should be to provide effective representation. This likely results in more cases having to be heard in federal habeas proceedings. And the human and social cost from undermining the fairness and integrity of the court process should be considered.

[40] Statement at Commission meeting October 26, 2016.

[41] Id.

[42] Id.

[43] See, *State v. Lynch*, 796 P.2d 1150,1164(Okla. 1990).

F. Prosecutors

Similar to other state and local jurisdictions, we found that prosecutors, both local and state, did not systematically track time or effort on BOP and non-BOP first degree murder cases. To our benefit and for which we were very thankful, the Oklahoma County District Attorney took the time to talk to us (several times) in order to help describe his general process for capital cases and to highlight significant gaps in the system, namely the need for increased funding for public defense. We are also very thankful to the Tulsa County District Attorney who also took time out of his busy schedule to create a profile of time/effort spent on two first degree murder cases. These case profiles covered all main stages of each case, including pretrial proceedings, motions, hearings, and all other significant activities on a case. Not only did they provide line-item estimates for attorneys, but they also provided estimates for staff time on these cases as well as average salaries for both attorneys ($80,000 per year) and staff ($25,000). We used these time estimates to create basic cost per-unit profiles for each main line-item using the federal standards for full time employment (hours per year). We then combined these per-unit estimates with the OSCN docket data that we developed.

Table 13. Estimated Prosecution Costs Per Case: Trial Only.

Category		Mean	Diff	Ratio
All Other Activities	No BOP	$5,037		
	BOP	$20,876	$15,839*	4.14
Trial Days	No BOP	$3,811		
	BOP	$5,702	$1,891	1.50
	No BOP	$8,848		
Total	BOP	$26,577	$17,729*	3.00
All Other Activities	Life	$10,077		
	DP	$27,395	$17,318*	2.72
Trial Days	Life	$3,990		
	DP	$4,356	$366	1.09
	Life	$14,067		
Total	DP	$31,752	$17,684*	2.26

Notes: BOP= Bill of particulars. All other activities includes: hearings, motions, orders, and all other court filings and activities. *p< .001.

As is illustrated in Table 13 above, when assessing the cases from the front-end or at the BOP decision, the cases where a BOP was filed were approximately three times ($17,684) more expensive than cases where no BOP was filed. When analyzing differences by sentence, the BOP cases are over two times more expensive than the non-BOP cases. We included the calculations for the actual trial separately from all other filings, research, and other activities, but also report total average costs here. Also, the original per-unit calculations for time "in-court" or any other activity that we were told involves more than one attorney or staff member includes that additional effort, so these numbers represent multiple attorneys and staff per case. Again, these figures do not account for effort that was not captured in the official court docket.

Separating trial costs from other activities allowed us to estimate costs for prosecution per case. It is important to state that we make the assumption here that line-item activities are measured one-to-one, meaning that we assume that the average motion in an average non-death penalty case is the same as the average motion in an average death penalty case (in terms of time and effort), for both counties. We believe that this is a very

conservative approach. Further, we purposefully underestimated values or used averages where a range of estimates were given. Therefore, we are confident in the statement that the following estimates are likely low and they do not capture the full range of effort (as with the defenders, prosecutors work on cases outside of their standard work hours) expended on each case.[44]

Unfortunately, some prosecutors were uncooperative toward our efforts to measure fiscal impact or they stated that they could not help us because they "did not collect data" and lacked the ability or desire to help us estimate costs based on time and effort on particular cases. Some simply could not produce any helpful information. For example, the State Deputy Attorney General for Criminal Appeals stated that the office did not track any effort or time on any particular case, that the office did not track any financial data that would be identifiable at the case level, and that the office text-based information management system is outdated and is not able to be queried beyond looking at text entered in the case file (the same information could be found on OSCN). The Deputy Attorney General explained that they did not use any software to track attorney effort or performance on cases and that assignment decisions were made on an ad hoc basis based on caseload, in which each of the five death-qualified attorneys would carry six cases plus state capital work and certiorari petitions and that some of the appeals work was very good, while some was not. Asked whether the office was able to systematically measure performance of their attorneys, again, they responded that the office did nothing more systematic than monitor who was assigned to each case, although they had anecdotal knowledge that the office attorneys were working above and beyond their normal work hours.

The Deputy Attorney General also confirmed that since the annual frequency of death penalty cases has been decreasing, attorneys that would have previously only worked on capital cases (or spent a majority of their time on them) have shifted effort to help cover non-capital cases. The annual numbers of capital and non-capital cases (for state direct, post conviction, and federal habeas) in recent years, which the Deputy Attorney General could provide, are listed in Table 14, above. Although the office could not provide basic counts for the cases in our sample, there is a noticeable decrease in the number of both capital and non-capital cases over this time period.

Table 14. State Attorney General, Criminal Appeals Case Counts (2011-2016).

Year	State Cap	State Non-Cap	Fed Cap	Fed Non-Cap	ttl Cap (%)	ttl Non-Cap
2011	11	345	41	192	52 (9.68)	537
2012	7	361	42	142	49 (9.74)	503
2013	0	387	21	133	21(4.04)	520
2014	2	359	22	113	24 (5.08)	472
2015	9	367	19	119	28 (5.76)	486
2016	2	208	11	99	13 (4.23)	307

Notes: Cap= Capital Case; Non-Cap= Non-Capital Case; ttl= total. Average percentage of DP cases to non-DP cases All Years = 6.42%.

G. Courts

As with the other main sources of data, the courts (including county district courts and the Oklahoma Court of Criminal Appeals, which is the court of last resort for criminal cases at the state level) struggled to provide any case-level data beyond what is contained on the court docket. Furthermore, the Administrative Office of

[44] Federal standards regarding what generally constitutes full time employment were used to calculate costs for each category. According to the Office of Performance Management, a standard year used for civilian Federal employees is composed of 2,087 work hours. We use this divisor to calculate category costs for the prosecutors. For more information see: https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/

the Courts lacked the ability to query and provide a matched database containing the cases that were selected for this study. Instead, they directed us to OSCN.net and said that we could look each case up, one at a time, and then copy the docket entries from there. Interestingly, the courts have attempted to update the existing case management system and integrate data and information across the state system. We were told that effort stretched over six years, at a cost of around six million dollars. Unfortunately, the courts broke off the contract with the IT design company, called American Cadastre (AmCad),[45] a month before that company apparently filed for bankruptcy. The courts are still attempting to move to a modern information management system, but it is a slow process.

Table 15. Counts of Significant Activities as Captured by Court Dockets (n= 79).

Category	BOP Y/N	Mean	Diff	Ratio
Court Administrative Fees	No	$969		
	Yes	$1,957	$987	2.02
Court Admin Fee Counts	No	37.1		
	Yes	78.9	41.9	2.13
Court Appearance or Proceeding	No	5.6		
	Yes	13.2	7.6	2.37
Order or Ruling	No	17.1		
	Yes	38.6	21.5	2.26
Court Administration	No	17.8		
	Yes	29.5	11.7	1.66
Legal Filing	No	25.9		
	Yes	157.4	131.5	6.09
Free form text (MH)*	No	12.6		
	Yes	23.0	10.4	1.82
Separate free form text (MH)*	No	6.6		
	Yes	12.7	6.1	1.93
Total Averages**	No	122.6		
	Yes	353.4	230.8	2.88

Notes: *Both "free form" text entry variables consisted mainly of motions and hearings, amongst other activities. Because these were not consistent within the docket, we counted them separately from the official filing, appearance, or proceeding codes. Categories are mutually exclusive. **Total averages do not include the Court Administrative Fees category, as that is a dollar amount, rather than a count.

For the courts, the only option we were left with was to search and match the cases on OSCN.net. Fortunately, we partnered with a local software development firm called 9Tribe,[46] which was able to develop a script that pulled the unstructured data from OSCN, structured it, and converted it into a database. From there, we recoded every entry (there were 220 different types of codes/entries and over 16,000 observations) and created more general aggregated categories. These general categories include, those classified as: a court appearance or proceeding; a court administration fee; business that could be classified as general court administration; legal filings; and motions and hearings. Although we did not gain enough information regarding time per unit or activity from the courts to reliably extrapolate costs at this time, we do present the counts for each main category in Table 15, above.

[45] See: http://newsok.com/article/feed/837615
See also: http://www.businesswire.com/news/home/20101202006322/en/Supreme-Court-Oklahoma-Awards-AMCAD-Integrated-Case

[46] See: http://www.9tribe.com/

The average counts in each docket category were compared by whether there was a bill of particulars filed in the case. First, this provides clear evidence that the cases that proceed as death penalty-sought cases have greater average counts in every single category (which are mutually exclusive – meaning we did not double count any activities). Similar to the one-to-one assumption that we made with the prosecution data,[47] we expect about three times (1:2.88) the cost for death penalty cases compared to non-death penalty cases. Interpreted another way, if the court spent an average of $15,000 on a non-capital case, we would expect that a capital case would spend about $43,000 on average. These figures represent only activities recorded in the docket and do not account for any other normal activities by court personnel that may take place on the clock or outside of normal business hours.

Table 16. OCIS Court Docket Per-Case Counts (n= 103).

Category	N	Mean	Diff	Ratio
No BOP	50	122.6		
BOP	15	353.4	230.8	2.88
Total	79	168		
Dismissed	1	28		
Case	13	33		
Other Co-Def Not Selected for Study	18	110.6		
Agency	6	1		
Grand Total	103	108.1		

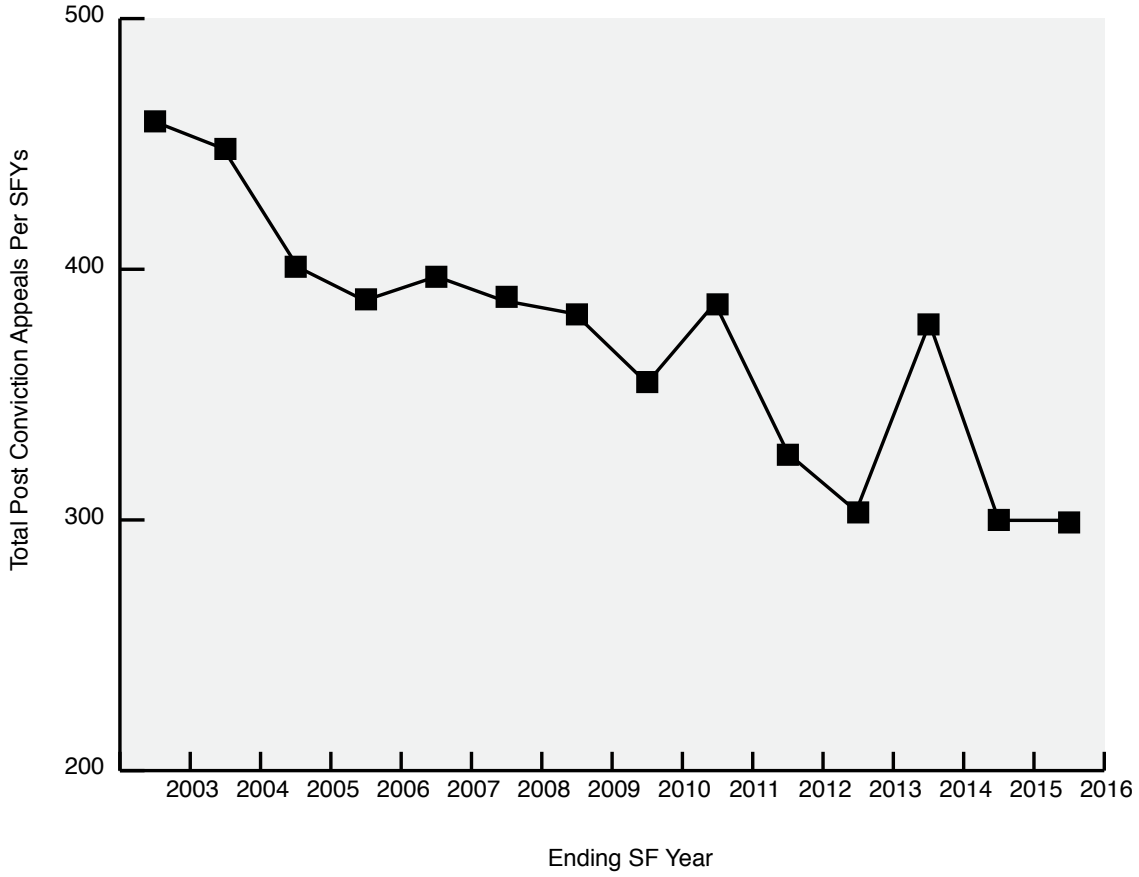
Notes: Agency= filing or billing to an outside agency – always a police department. Other and Case = both of these entries were for either co-defendants or an activity that could not be reliably linked to the defendant named in the particular case – these related to cases where there were codefendants.

Additionally, we were able to control for parties that were not named in the cases that were selected for this study. For example, if codefendants were mentioned as the party involved in the particular activity, those data were removed. Also, the code "case" represented entries in the docket that were not tied to a particular defendant. The bottom line was that if we could not match the entry to a defendant and that defendant to our case list, that defendant was excluded. These observations are presented in Table 16 above, which includes the omitted observations.

We asked for and received some information regarding the Oklahoma Court of Criminal Appeals (OCCA) workload. The court's ability to provide comprehensive case-specific data is limited in two general ways. First, as with the entire system and as noted earlier, the OCCA is not much further along in terms of integrating a modern information management system or data repository. Second, all information pertaining to which judge is reviewing any case is kept secret. The process was explained to us by several past OCCA judges. Cases would get filed with the clerk, from there they would go to an administrator who would then assign each case, one to each judge (each judge receiving a fifth of the cases). The judges would then read the case briefs, make tentative conclusions, assign a clerk to draft the opinion (memorandum – cases resolved by summary), iron out any questions, then send the brief, memorandum, and summary to the other four judges along with a vote sheet. If all concur, the decision is handed down and if there are any separate opinions (special concur) or dissent, then they would discuss them again at conference. Once they reached an agreement, the case would be handed down (all DP opinions were published). This same judge said that back when capital punishment was sought more often, he felt that all he ever spent his time on were death penalty appeals; even into the late 2010s he felt that

[47] For example, we assume that the average motion in a non-death penalty case is on par (in terms of time and effort expended) with that of an average motion in a death penalty case.

Post Conviction Appeals Disposed (OCCA) SFYs 2003-2016

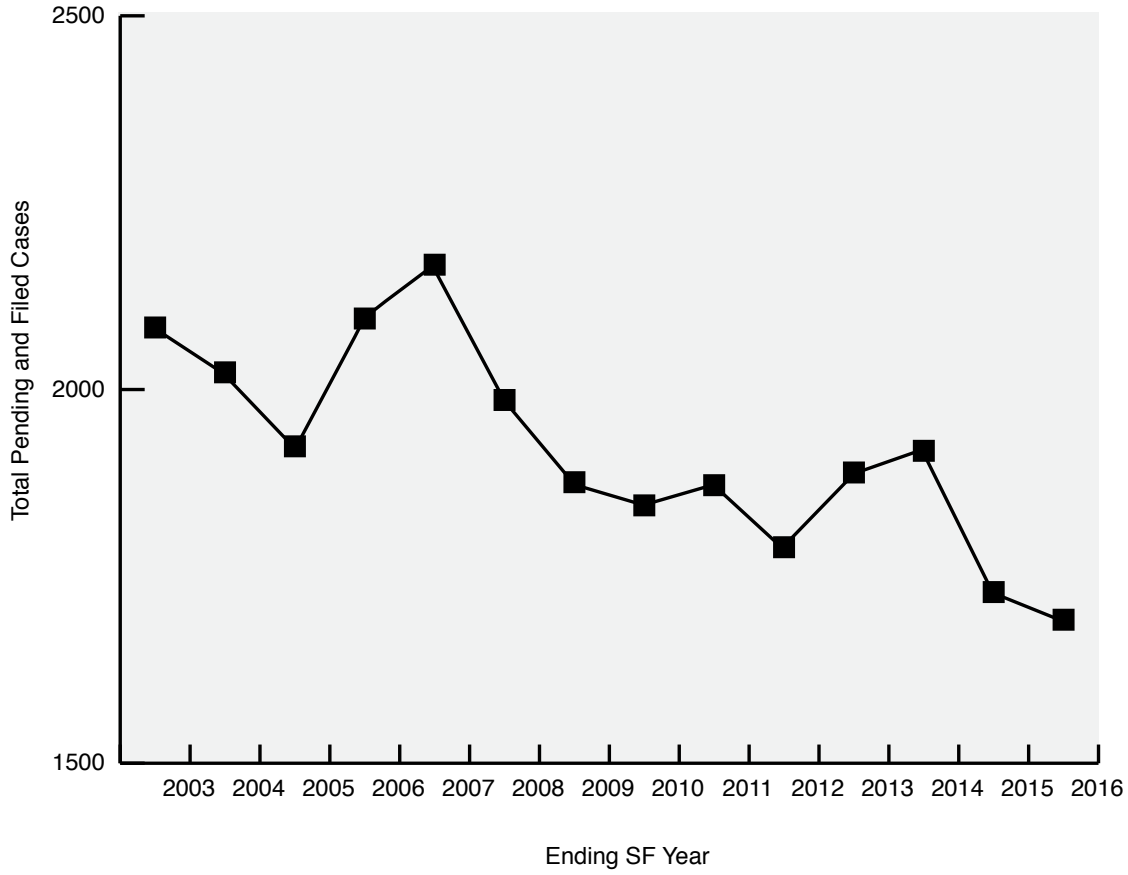


he spent roughly 40 percent of his time on death penalty cases.

We were given what the Administrative Office of the Courts referred to as "caseload inventories." These documents included state fiscal year (SFY) summaries of case that were carry-over pending, new filings that year, and disposed cases within that particular SFY.

The chart above shows the number of post-conviction appeals from the end of SFY 2003 (June 30th) to the end of SFY 2016. There is a significant decline in the number of post-conviction appeals over the study period ($r = -.889$, $p < .001$). This overall trend in the number of death penalty cases as well as post-conviction appeals in general was corroborated by the judge to whom we spoke and it is a general trend in many of the data that we have collected for this study (see Appendix for additional trends analysis). The chart, below, shows a similar and significant negative trend, but with all of the cases included ($r = -.801$, $p < .001$). Also, see the appendix for additional information on trends.

All Cases - Pending plus Filed (OCCA) SFYs 2003-2016



IX. Summary of Case-Level Findings

All known cases where a bill of particulars was filed, plus a stratified random sample of first degree murder defendants/cases that occurred from the beginning of 2004 to the end of 2010 were selected and included in the case-level study (N= 193). There were an estimated total of 439 first degree murder cases (572 defendants) that occurred during this same time. We collected what we assume to be all of the death penalty sought cases, while we took a random sample of the non-capital sought cases to construct a comparison group. The average age of the defendants at offense was 29 years old, while at sentencing the BOP group was about 1.38 years older at sentencing than the non-BOP group. Just over 92 percent of the sample was male. The largest race category was Black, which represented 101 cases, or just over half of the total sample, followed by White at 62 cases (32.1%).

For this study, White defendants entered into plea agreements at a higher rate than Black defendants (52% to 29%, respectively), while a greater number of the cases where the defendant was Black compared to White were dismissed (22% to 5%, respectively). There were a total of 44 cases that were identified as having a BOP filed during the years of the study, or 22.8 percent of the study sample. This number is artificially high, however, because the denominator is the random sample of cases and does not represent the total number of first degree murder cases identified by the Administrative Office of the Courts from 2004 to 2010. The total number is 420 cases. Therefore, the total number of BOP-filed cases occurring during the study period represents just 10.5 percent of the total. Additionally, only nine cases, or 2.14 percent, have resulted in a death sentence when

one takes the total number of first degree murder cases into account. Also, the defendants in these cases have not exhausted all of their appeals, are in various stages of either direct, post-conviction or habeas review. As we know from additional sources, the rate of reversal (from death to life) for death penalty cases in Oklahoma is about 50 percent.

The ODOC data and analysis must be considered with caution because there are costs that were not captured as part of this study as well as some other important methodological issues. For example, we do not know the extent of the costs surrounding an execution and we have little information on the costs surrounding exoneration. Additionally, the ODOC analysis is prospective, rather than retrospective and this presents issues with offender movement within the system, it presents issues with offenders who are released at some unknown point in the future, and we do not know which death sentenced offenders will actually be executed and for those who are, how long they will be on death row before they are executed. We do know that historically, about half of those sentenced to death end up either being released or their sentences are reduced to life without parole. On average, it costs almost twice as much per day to manage inmates on death row compared to the other inmate locations in this sample of cases.

On average, in cases that were designated death penalty or where a BOP was filed, defendants spent about 880 days in jail on average, while in non-capital sought first degree murder cases defendants spent about 556 days in jail on average (ratio of 1.62). The average cost for BOP defendants was about $44,800 total, on average (2017 dollars), while non-BOP cases average about $28,300 total, for an average difference of about $16,500 (in 2017 USD).

Depending on what measure is considered, defense costs during pre-trial through trial show an average and statistically significant difference of about $32,000 to $50,000 more, or about five to ten-times the average cost when a BOP is not filed. For prosecutors, when assessing the cases from the BOP decision, the cases where a BOP was filed were about three times ($17,684) more expensive than cases where no BOP was filed. When looking at differences by sentence, the death-sought cases are over two times more expensive than the non-death sought cases.

For appeals costs incurred by OIDS, the death penalty appeals cost an average of about $62,000, or over six times more, than the non-death penalty appeals. When sorting the cases from the BOP decision, those cases where a death sentence was sought cost about $43,000, or about five and a half times more than non-death sought cases. Overall, the average cost for defense in direct and post-conviction appeals in death penalty cases is between five and six times more than non-death penalty cases.

Although we did not receive enough information regarding time and effort expended on a per-case basis from the courts, we were able to calculate the average number of significant activities per case, as recorded in the docket. The average counts in each docket category were compared by whether there was a bill of particulars filed in the case. First, this provides clear evidence that the cases that proceed as death penalty sought cases have greater average counts in every single category (which are mutually exclusive – meaning we did not double count any activities). Similar to the one-to-one assumption that we made with the prosecution data, we expect about three times (1:2.88) the cost for death penalty cases compared to non-death penalty cases. Interpreted another way, *if* the court spent an average of $15,000 on a non-capital case, we would expect that a capital case would cost about $43,000 on average. These figures represent only activities recorded in the docket and do not account for any other normal activities by court personnel that may take place on the clock or outside of normal business hours. Finally, for the OCCA, there is a significant decline in the number of post conviction appeals over the study period. This overall trend in the number of death penalty cases as well as post conviction appeals in general was corroborated by the judge to whom we spoke and it is a general trend in much of the data that we have collected for this study.

The overall decrease in cases where prosecutors seek the death penalty in Oklahoma follows the average national trend of fewer capital cases. This trend was highlighted by the Death Penalty Information Center, in their recently released end of the year report (DPIC, 2016). Indeed, the peak number of sentences and executions occurred at the end of the 20th century and since then there has been an average decrease in both new death sentences and executions, with the total number of death sentences decreasing to the lowest annual rates since 1973 (DPIC, 2016, p.1). Although we assume that the costs listed in each category above are greatly underestimated, we can say with a great deal of confidence that on average, seeking the death penalty incurs significantly more time, effort, and costs, than when the death penalty is not sought in the first degree murder cases included in this study.

Table 17. Summary Ratios by Main Cost Category.

	Jail	Public Defense	OIDS*	Prosecutors	Courts	Total
Ratio(s)	1.58	4.65 to 9.78	5.43 to 6.26	2.26 to 3.00	2.88	3.36 to 4.7

Note: Ranges are given where there are multiple findings based on BOP or Sentence. OIDS* = Oklahoma Indigent Defense System.

The ratios listed in Table 17 above should be interpreted in the following way: "on average, for every one dollar spent on a non-death penalty first degree murder case, an average death penalty sought case costs _____ times more." For example, District Attorneys spend about three times more on cases in which they seek the death penalty than for first degree murder cases where they do not seek the death penalty. Excluding post conviction incarceration costs and focusing just on the above categories, seeking the death penalty costs about three to four and a half times more on average than when it is not sought.

Table 18. Summary of Case-Level Findings: Main Cost Estimate Categories (2017 USD).

	Jail	Defense	Prosecutors	OIDS	Total All
Non-BOP	$28,320	$3,730	$8,848	$9,770	$50,668
BOP	$44,861	$36,467	$26,577	$53,020	$160,925
Diff (ratio)	$16,541 (1.58)	$32,737 (9.78)	$17,729 (3.00)	$43,250 (5.43)	$110,257 (3.18)

Notes: OIDS= Oklahoma Indigent Defense System (direct and post-conviction appeals). Diff= Difference BOP minus non-BOP. Ratio= BOP/non-BOP. Conflict defense[2] average cost per BOP case = $49,323.

In Oklahoma and Tulsa counties, we collected what we believe to be all of the cases where a BOP was filed and the death penalty was sought, while we took a random sample of the first degree murder cases where death was not sought to construct a comparison group. For those cases in which the death penalty is sought, the average total cost per case using only the data that we were able to collect, is $161,000, while the average total for non-BOP cases is about $51,000 per case. The estimated average per-case difference in total costs when the death penalty is sought is about $110,000 (see Table 18 above). This includes some costs for incarceration (jail), defense, and prosecution during pre-trial and trial, some appeals costs from the defense side (Oklahoma Indigent Defense System, OIDS). Oklahoma Department of Corrections costs are provided as well and findings indicate that it costs about twice as much to maintain offenders on death row than off death row, on average. Many other costs, such as those incurred by the courts, costs associated with prosecution during appeals phases, federal defender habeas costs, and execution costs, to name a few, were not included because of lack of data.[48] Because of the noted lack of data regarding effort and costs, the figures in this report should be interpreted with care.

[48] Although data from the courts, prosecution, and other categories were not available, we were able to track case-level activities and calculate averages per case; ratios were also calculated and are presented below.

X. State-Level Approach

The analysis below was conducted in order to provide additional context to the economic costs surrounding the death penalty and to justice-related spending patterns throughout the criminal justice system in Oklahoma. Below, we assess how state-level factors, such as population size, demographics, rates of imprisonment, economic inequality, and the death penalty, among others, affect state-level justice spending over time. This is an important task, as it lends insight into what factors drive justice spending over time and it also provides some insight on where economic resource expenditures or shortages may arise in the system—for example, how the prison rate affects overall spending. It is important to note that any state, including Oklahoma, may spend less on the criminal justice system as a proportion of total state gross domestic product (GDP), but will still spend more on capital punishment at the case level on average. Again, all case-level studies, including the present study, have shown that pursuing the death penalty costs more on average than when it is not pursued in similar cases. What this multi-level analysis provides us, then, is context to further understand what factors might affect justice-related spending throughout the selected state system, why overlap or gaps in economic spending might appear, and how each state compares to the other and to national averages.

A. Background & Measures

In a recent study out of the state of Nebraska by Goss et al. (2016), the authors used multiple regression to estimate state-level justice spending and then, while controlling for several additional variables, estimated the differences in costs between whether or not a particular state had the death penalty. We were interested in exploring this technique and through contacting the author of the Nebraska study discovered that we ought to expand on their methodology. We improved on those methods in two distinct ways; first we collected data over a longer period of time, from 2007-2013. Second, we employed multilevel modeling techniques that allow for more robust estimates and allow us to control for factors for both state level spending and spending over time. Hierarchical Linear Models (HLM) is an OLS regression-based technique that is used when data are "nested," meaning individual units form clustered groups within larger groups (Luke, 2004). An easy example of nested data would be groups of students within classrooms and then classrooms within schools. One could even go further and nest schools within school districts and so on. Given the issues surrounding the case-level data collection we were experiencing, we felt that employing these techniques for the present study might provide some additional context and another point of view on a complex set of issues.

B. Justice Spending

Similar to the Goss et al. (2016) study, our dependent variable in the model below is state-level justice spending per $1,000 Gross Domestic Product (GDP). This is interpreted as simply how much money each state invests or spends on criminal justice-related activities per year. This technique and research question is much different than the case-level approach, where administrative data are collected as they relate to unique cases and average costs per case are calculated. To compare findings from the case-level approach to the multilevel approach would be illogical and is not methodologically appropriate. They should be seen as separate analytical frameworks. Here, justice spending represents annual expenditures for corrections (capital and operations), judicial, and legal spending per state GDP. Rather than searching for a ratio or percentage of spending per case, this technique allows us to develop an understanding of what factors significantly contribute to differences in justice spending at the state level and over time.

Justice spending as a proportion of state GDP should be understood here as a measure of the levels of socio-legal support and due process. Another way to think about this is the larger the proportion of state-level justice spending, the more invested a state is to social support, the rule of law, and to due process. To be clear, we are

suggesting smarter spending, not more, as large increases in spending may prove impossible given state budget shortfalls. The patterns and relationships revealed by the multi-level analysis support concerns voiced by many of the policy makers and practitioners to whom we spoke: that there are major gaps in support, especially for public defense, and that these gaps are even more prevalent in regard to capital cases, where people and budgets are stretched thin.

Our independent variable is whether the state had the death penalty at level one and the number of executions per year at level two. Because of the significant decrease of the use of the death penalty over the study period, including legal changes such as moratoria and abolition, we wanted to most accurately measure policy by the actual use of the penalty, rather than sentences or simply whether the state had the penalty or not. We did, however, run each variation and although executions remained the best fit in the model, all patterns were similar and remained significant.

We include several additional measures that had an *a priori* theoretical impact on justice spending. These include the proportion of state residents who are nonwhite, based on census data. Instead of employment rate, we adopted a more comprehensive measure of income inequality called the Gini[49] coefficient. We include the imprisonment rate[50] for each state (prisoners per 1,000 residents), collected by the Bureau of Justice Statistics and population data collected and maintained by the census. We include a measure on policy liberalism, which is an index relating to the annual policy outputs of state legislatures, higher values indicate more liberal policy outputs. We include time, measured in years from 2007-2013. We also include census regions at level two, so states are nested within the census regions of the West, Midwest, and South, with the reference category set at the Northeast.

Again, we include this analysis here because we wanted to understand what factors, if any, influence justice spending at the state level. These findings are provided in addition to the case-level findings and the systematic review of the literature that were provided above. As with the review of the previous studies, we hope that the findings presented below provide another data point for our understanding of the highly complex issue of the death penalty and that these findings provide some additional context within which we can not only understand spending in Oklahoma, but also how Oklahoma compares to other states that do and do not share the same policy.

C. Multi-Level Findings

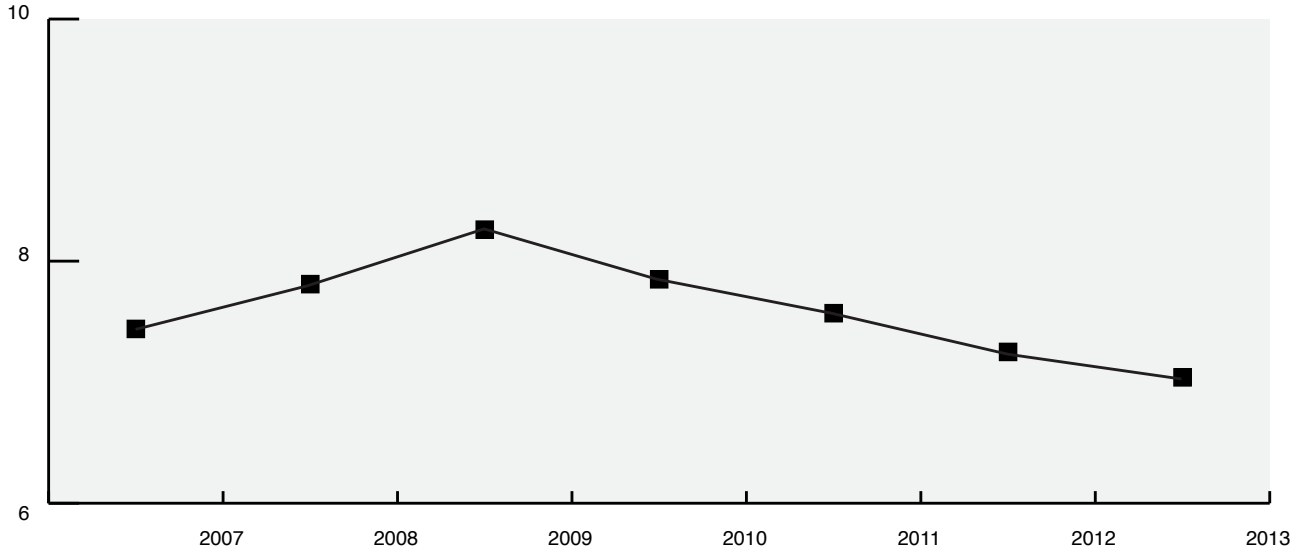
Over the time-period studied (2007-2013), we observed that justice expenditures per $1,000 GDP among the states generally increased from 2007-2009 and then declined to 2013. Summing expenditures across states, we see that overall justice expenditures increased from $7.44 per $1,000 GDP in 2007 to $8.26 in 2009 (see the figure, below). Justice expenditures then declined to $7.04 per $1,000 GDP over the next four years. We utilized trajectory analysis and fit a quadratic model to account for this time dependence. We modeled the effects of several covariates that would explain variation in the average level, rate of increase, and rate of decrease in justice expenditures per $1,000 GDP within and across states.[51] Of particular interest was the presence of the death penalty in a state and its effect on justice expenditures.

[49] Posey (2016, p. 1) explains the Gini coefficient as a: "Summary measure of income inequality. The Gini index varies from 0 to 1, with a 0 indicating perfect equality, where there is a proportional distribution of income. A Gini index of 1 indicates perfect inequality, where one household has all the income and all others have no income."
See also: http://www.shsu.edu/eco_mwf/inequality.html; http://www.shsu.edu/eco_mwf/usstatesWTID.pdf;

[50] Bureau of Justice Statistics, Prisoners Series: https://www.bjs.gov/index.cfm?ty=pbse&sid=40.

[51] For readers who are interested, the detailed multi-level statistical analysis—including formulas and statistical models—to support these findings are on file with the authors.

Justice Expenditures per $1,000 GDP



We found that states having the death penalty tended to have lower justice expenditures per $1,000 GDP over time when controlling for other time-varying explanatory and control variables, and that states actually executing individuals also had lower average justice expenditures. Expenditures among states that executed more individuals during the time period tended to increase faster and decrease faster than in other states.

The pattern revealed by the model suggests that states with higher percentages of minority residents, higher degrees of economic inequality, and the death penalty, expended less money on justice-related costs as a share of their total GDP, over time. Alternatively said, states characterized by these traits tended to invest proportionally less on their justice systems over time. Additionally, states that reported a higher imprisonment rates, also spent more on average. States whose legislatures had more liberal policy outputs tended to invest proportionally more on their justice systems over time.

In addition, while average justice related expenditures per $1,000 GDP were lower among states that executed greater numbers of individuals, justice related expenditures increased faster and decreased faster among states executing greater numbers of individuals. Alternatively said, states executing more individuals tended to invest proportionally less on their justice system on average, but their expenditures increased and decreased at higher rates than states executing fewer or no individuals.

In Table 23 below, we present the seven year averages in score and rank among states on several key variables. The variables included are average justice spending per $1,000 GDP, the proportion of non-White residents, the average Gini score, the average imprisonment rate, and the average policy liberalism score. The states are presented in alphabetical order, with the total for all states listed first; Oklahoma is bolded, below.

In comparing categories from left to right, Oklahoma spends less on justice than the national average per GDP and is ranked 32nd nationally for this time period. This means that 18 states spent less and 31 states spent more on justice per $1,000 GDP. Oklahoma ranked 19th in proportion to non-White residents, 18 states had higher proportions of people of color, while 32 states had less. In comparing income inequality, Oklahoma ranked 19th nationally (Gini coefficient: where a higher score [between 0 and 1] indicates higher levels of income inequality). Oklahoma's imprisonment rate was ranked 5th in the nation, with a rate of about 7 per 1,000 residents incarcerated, on average. Last, Oklahoma ranked 40th in policy liberalism, indicating much more conservative policy-making at the state level.

Table 23. Seven-Year Average Score (2007-2013) & Rank, Selected Variables.

	Justice expenditures per $1,000 GDP			Proportion residents non-white			Gini coefficient			Imprisonment Rate			Policy Liberalism	
State	Avg.	Rank		Avg.	Rank		Avg.	Rank		Avg.	Rank		Avg.	Rank
All states	$7.16	--		0.218	--		0.608	--		4.36	--		0.06	--
Alabama	$6.37	33		0.304	11		0.609	22		6.64	7		-1.85	48
Alaska	$9.26	6		0.325	9		0.565	48		7.48	3		0.12	23
Arizona	$9.90	3		0.210	24		0.614	21		6.14	8		-0.75	32
Arkansas	$6.65	31		0.217	21		0.624	13		5.33	12		-1.76	46
California	$10.96	1		0.379	5		0.656	5		4.23	26		2.44	1
Colorado	$6.90	28		0.159	32		0.606	25		4.37	23		-0.05	25
Connecticut	$5.82	41		0.214	23		0.660	4		5.39	11		1.99	6
Delaware	$7.57	20		0.291	14		0.564	49		7.72	2		0.73	16
Florida	$8.75	8		0.234	20		0.689	1		5.44	10		-0.84	34
Georgia	$7.85	17		0.389	4		0.637	8		5.63	9		-1.86	49
Hawaii	$7.18	23		0.742	1		0.569	47		4.39	22		2.00	5
Idaho	$8.58	10		0.078	46		0.633	10		4.82	16		-1.19	43
Illinois	$5.11	48		0.277	15		0.623	14		3.67	33		0.65	19
Indiana	$5.28	47		0.150	33		0.584	39		4.42	21		-0.49	29
Iowa	$5.41	44		0.081	45		0.560	50		2.93	41		0.71	17
Kansas	$5.87	40		0.144	35		0.598	29		3.20	39		-0.80	33
Kentucky	$7.19	22		0.116	39		0.594	31		4.98	15		-0.70	31
Louisiana	$8.78	7		0.367	6		0.635	9		8.70	1		-0.91	36
Maine	$5.89	38		0.048	49		0.572	45		1.63	50		1.43	10
Maryland	$8.04	14		0.407	2		0.570	46		3.89	30		1.70	9
Massachusetts	$5.40	45		0.187	27		0.621	15		1.72	49		2.04	4
Michigan	$8.64	9		0.206	26		0.608	23		4.58	19		0.35	21
Minnesota	$5.56	42		0.135	37		0.585	38		1.86	48		1.15	13
Mississippi	$7.73	19		0.405	3		0.632	12		7.40	4		-2.32	50
Missouri	$5.29	46		0.166	31		0.606	24		5.13	13		-0.65	30
Montana	$9.47	4		0.106	42		0.632	11		3.66	34		0.31	22
Nebraska	$5.53	43		0.115	40		0.591	33		2.54	44		-0.30	28
Nevada	$9.32	5		0.272	17		0.664	3		4.80	17		-0.21	27
NHampshire	$4.88	49		0.057	48		0.578	42		2.12	47		0.71	18
New Jersey	$7.16	24		0.305	10		0.617	17		2.81	42		2.41	2
New Mexico	$10.38	2		0.275	16		0.614	20		3.26	38		1.02	14
New York	$8.24	11		0.341	7		0.681	2		2.94	40		2.39	3
N. Carolina	$6.13	35		0.300	13		0.600	28		4.09	27		-1.50	45
North Dakota	$4.65	50		0.100	43		0.592	32		2.19	46		-1.44	44

	Justice expenditures per $1,000 GDP			Proportion residents non-white			Gini coefficient			Imprisonment Rate			Policy Liberalism	
State	Avg.	Rank		Avg.	Rank		Avg.	Rank		Avg.	Rank		Avg.	Rank
Ohio	$6.98	26		0.167	30		0.575	44		4.45	20		-0.01	24
Oklahoma	$6.45	32		0.257	19		0.616	19		7.00	5		-1.10	40
Oregon	$8.01	15		0.145	34		0.590	34		3.76	32		1.33	11
Pennsylvania	$8.15	12		0.172	29		0.601	27		3.97	29		0.45	20
Rhode Island	$6.65	30		0.180	28		0.588	37		3.41	36		1.88	7
S. Carolina	$6.12	37		0.327	8		0.605	26		5.09	14		-1.78	47
South Dakota	$5.87	39		0.138	36		0.619	16		4.25	25		-1.15	42
Tennessee	$6.25	34		0.215	22		0.617	18		4.36	24		-1.00	38
Texas	$6.12	36		0.262	18		0.642	7		6.79	6		-0.92	37
Utah	$6.94	27		0.110	41		0.595	30		2.43	45		-1.12	41
Vermont	$7.21	21		0.045	50		0.589	35		3.37	37		1.81	8
Virginia	$7.01	25		0.302	12		0.583	40		4.72	18		-0.85	35
Washington	$6.71	29		0.208	25		0.589	36		2.66	43		1.28	12
West Virginia	$7.75	18		0.060	47		0.576	43		3.56	35		-0.11	26
Wisconsin	$8.09	13		0.126	38		0.581	41		4.04	28		0.80	15
Wyoming	$8.01	16		0.088	44		0.642	6		3.87	31		-1.08	39

CONCLUSIONS

The purpose of this study was to provide empirical evidence to the Commission regarding the economic costs of seeking and imposing the death penalty in Oklahoma. The main objective of the study was to estimate the difference in enumerated costs between first degree murder cases where the prosecutor sought the death penalty and similar first degree murder cases in which the death penalty was not sought.

The estimation of costs associated with seeking and imposing the death penalty and the extrapolation of those trends is complex. Despite using the most conservative estimates—in other words, likely underestimating costs, this study finds that seeking the death penalty in Oklahoma incurs significantly more time, effort, and costs on average, as compared to when the death penalty is not sought in first degree murder cases. These findings are consistent with all previous research on death penalty costs, which have found that in comparing similar cases, seeking and imposing the death penalty is more expensive than not seeking it.

At the case-level, we found a significant difference in spending patterns when comparing first degree murder cases in which the state sought the death penalty compared to similar cases in which the death penalty was not sought. The estimated average per case difference when the death penalty is sought is about $110,000, or about three times more than when the death penalty is not sought. This is an extremely conservative figure, as we purposely underestimated costs where appropriate and this figure lacks many costs incurred by the system, especially by the courts and appeals costs linked to the prosecution.

We systematically reviewed 15 state-level studies that were conducted between 2000 and 2016. On average it cost about $700,000 more in case-level costs to seek the death penalty than to not. While the Oklahoma estimate fell below this average, we believe the cost patterns and findings reported here are consistent with the

findings from other research studies.

We created a national model that focuses on justice spending as a proportion of state GDP, controlling for several state-level variables. This analysis was conducted in an effort to better understand how justice spending in Oklahoma compares nationally as well as how justice spending is shaped by other factors such as race, economic inequality, state prison rates, and the death penalty. Overall, Oklahoma invests less in their justice system compared to the national average and much of that spending is due to higher rates of incarceration.

We recognize that a focus on the economic costs incurred by the justice system, and ultimately tax-payers, addresses only one facet of the death penalty debate. Our focus within this study rests on economic impacts within an economic and systems context. Additional and extremely important questions related to the purpose, role, and impact of the death penalty (such as Eighth Amendment concerns, proportionality and racial disparity, those surrounding deterrence, the philosophical goals of punishment, and differences in prosecutorial/defense approaches) must also be considered when weighing any significant policy changes and impacts.

XI. Limitations

As noted throughout the above text and as with any such research endeavor, this study is not without its limitations. The biggest issue presented for this study was the lack of case-specific financial data. In many cases we were able to reliably extrapolate either real costs or create an effort/activity ratio. The overall costs, however, should be interpreted with caution, as the final figures lack many costs associated with the courts and many details from other stages of the process, including costs surrounding the execution and any costs related to exoneration settlements. Additionally, when presented with multiple cost estimates on the same measure, we selected the lesser value and always underestimated so to present the most conservative estimate possible. Given these limitations, we recommend further efforts to measure costs, especially if and when the below recommendations are acted upon.

XII. Recommendations

We understand that a focus on the economic costs incurred by the justice system, and ultimately tax-payers, addresses only one facet of discussions about the death penalty. Our focus within this study rests on economic impacts within an economic and systems context. Additional and extremely important questions related to the purpose, role, and impact of the death penalty (such as Eighth Amendment concerns, proportionality and racial disparity, those surrounding deterrence, the philosophical goals of punishment, and differences in prosecutorial/defense approaches) should also be considered when weighing any significant policy changes and impacts.

It is unclear whether Oklahoma stakeholders are able to implement the recommendations in this study, particularly given the state's budget constraints and the overall economic climate regarding its criminal justice system. We have documented the differential in costs between capital and non-capital first degree murder cases in the state. To calculate these costs, we attempted to capture costs for as many components of our sample cases as possible (e.g. incarceration costs, defense costs, prosecution costs, etc.).

However, it is quite clear that a great deal of unaccounted effort is occurring regularly in every agency included in our analysis. As researchers who have conducted similar cost studies in other states, we know and understand that, for example, prosecutors do not bill their time in a way that makes it easy to track exactly how much time—and therefore, attributable costs—is spent on any particular case. However, it is also clear that just about every agency or organization is far behind in the employment of a modern information management system that may easily allow for critical information to be collected, stored, and tracked. Such information management

provides for increased overall efficiency within the system, as well as more public awareness of how the justice system operates. Indeed, these are just some of the many important issues that arose during our efforts to collect information. We believe, however, that tenable solutions currently exist for these issues and that because they are interconnected, progress in one area should also have a positive collateral impact in another. To that end, we provide the following recommendations:[52]

Increase accountability, transparency, consistency, and decrease risk through the following efforts:

1) Conduct a systematic review of justice system information gathering, sharing, and managing capabilities;

2) Leverage partnerships with local and state researchers and practitioners for the distinct purpose of developing and/or adopting best practices;

3) Openly share results with stakeholders and the community and form a short and long-term action plan for the improvement of data management, information and data dissemination, and data sharing practices;

4) State agencies and officials should work to install systems of accountability and transparency surrounding the death penalty specifically, as there are some very serious gaps. Addressing these gaps will only increase the likelihood of just outcomes for both victims and offenders and will decrease liability to the system; and,

5) Provide adequate support and training to counsel that reflects the current standards of the American Bar Association, the National District Attorneys Association, the National Legal Aid and Defender Association, and other professionally recognized resources.

We recognize that these are very broad and far-reaching recommendations. We believe, however, that these general recommendations must be met first, in order to boost the capacity for agencies to focus on any fine-tuned recommendations. For example, how would a defender's or prosecutor's office properly measure expended effort if neither collects any case-level data? Broad strokes are needed at present to produce a foundation upon which finer details may be applied with confidence.

REFERENCES

Baicker, Katherine. 2004. "The Budgetary Repercussions of Capital Convictions," *Advances in Economic Analysis &* Policy, 4: 1–26.

Collins, Peter A., R. Boruchowitz, M. Hickman, & M. Larrañaga. (2015). *An Analysis of the Economic Costs of Seeking the Death Penalty*. Technical Report to: The American Civil Liberties Union Washington Foundation, Jan., 2015.

Collins, Peter A., R. Boruchowitz, M. Hickman, & M. Larrañaga. (2016) "An Analysis of the Economic Costs of Seeking the Death Penalty in Washington State." *The Seattle Journal for Social Justice*, 14:3: 727-779.

Cook, Philip, Donna Slawson, and Lori Gries. 1993. *The Costs of Processing Murder Cases in North Carolina*. Durham, NC: Terry Sandford Institute of Public Policy, Duke University 1–114.

[52] These recommendations do not necessarily reflect the views of the Oklahoma Death Penalty Review Commission, but are simply provided to supplement the results of this independent cost study.

Cook, P. J. (2009). Potential Savings from Abolition of the Death Penalty in North Carolina. *American Law and Economics Review*, 11 (2): 498-529.

DPIC. (2016). End of the Year Report: 2016. The Death Penalty Information Center.

Forsberg, Mary. 2005. "Money for Nothing? The Financial Costs of New Jersey's Death Penalty," Trenton, NJ: New Jersey Policy Perspective.

Garey, Margot. 1985. "The Cost of Taking a Life: Dollars and Sense of the Death Penalty," *University of California, Davis, Law Review*, 18: 1221–73.

Goss, E., S. Strain, & J. Blalock. (2016). The Economic Impact of the Death Penalty on the State of Nebraska: A Taxpayer Burden? Produced for: Retain a Just Nebraska. Goss & Associates Economic Solutions, August 15, 2016.

Greenberg, D. & Phillips, J. (2013). Hierarchical linear modeling of growth curve trajectories using HLM. In G.D. Carson (ed.), *Hierarchical Linear Modeling: Guide and Applications*, pp. 219-248. Thousand Oaks, California: Sage.

Kansas Legislative Division of Post Audit. 2003. *Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections*. 04-03.

Kaplan, Aliza, Peter A. Collins, & Venitia Mayhew. (2016). *Oregon's Death Penalty: A Cost Analysis*. Technical report to: The Oregon Justice Resource Center, September, 2016.

Luke, D. A. (2004). *Multilevel modeling. Sage University Papers Series on Quantitative Applications in the Social Sciences*. Thousand Oaks, CA: Sage.

Maryland House Appropriations Committee. 1985. Committee to Study the Death Penalty in Maryland Final Report: The Cost and Hours Associated with Processing a Sample of First Degree Murder Cases for Which the Death Penalty was Sought in Maryland Between July 1979 and March 1984, Annapolis, MD, USA.

New Jersey Death Penalty Study Commission. 2007. New Jersey Death Penalty Study Commission Report.

New York State Defenders Association. 1982. *Capital Losses: The Price of the Death Penalty in New York State*. Albany, NY: New York State Defenders Association.

Raudenbush, S., Bryk, A., Cheong, Y., Congdon Jr., R. & du Toit, M. (2011). *HLM 7: Hierarchical Linear and Nonlinear Modeling*. Lincolnwood, Illinois: Scientific Software International, Inc.

Scientific Software International, Inc. (2013). *HLM 7.01*. Lincolnwood, Illinois. Raudenbush, S. & Bryk, A. (2002). *Hierarchical Linear Models: Applications and Data Analysis Methods (2nd edition)*. Thousand Oaks, California: Sage.
State of Connecticut Commission on the Death Penalty. 2003. Study Pursuant to the Public Act No. 01-151 of the Imposition of the Death Penalty in Connecticut.

State of Tennessee Comptroller of the Treasury. 2004. Tennessee's Death Penalty: Costs and Consequences.

Roman, J. K., A. J. Chalfin, & C. R. Knight. (2009). Reassessing the Cost of the Death Penalty Using Quasi-Experimental Methods: Evidence from Maryland. *American Law and Economics Review*, 11 (2): 498-529.

Washington State Bar Association. 2007. Final Report of the Death Penalty Subcommittee of the Committee on Public Defense.