

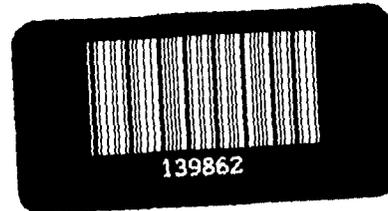
GAO

Report to the Chairman, Subcommittee
on Civil and Constitutional Rights,
Committee on the Judiciary, House of
Representatives

September 1989

CRIMINAL JUSTICE

Limited Data Available on Costs of Death Sentences



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General Government Division

B-236876

September 29, 1989

The Honorable Don Edwards
Chairman, Subcommittee on Civil
and Constitutional Rights
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

Title VII of the Anti-Drug Abuse Act of 1988, Public Law 100-690, includes provisions for the death penalty in cases of drug-related killings. It also includes a provision that we study the cost of implementing the procedures for imposing and carrying out the death sentence and issue a report on the results by November 1992.

On February 9, 1989, you requested that we evaluate certain issues pertaining to the cost of the death penalty not specifically mentioned in the act. We agreed to provide information on the costs of implementing existing federal death penalty provisions and the costs of implementing the death penalty at the state level. We also agreed to review federal efforts to implement the death penalty provisions of the act and the costs associated with these efforts. We agreed to gather information about the four general stages of the criminal justice process—investigations, trial, appeals, and imprisonment.

On July 13, 1989, we briefed your office on the preliminary results of our work. This letter summarizes the information presented at the briefing and additional information we have obtained. We will continue to monitor the federal agencies' efforts and the costs associated with implementing the act's death penalty provisions. As required by the act, we will be issuing a separate report in the future.

Results in Brief

Federal data on the cost of implementing existing death penalty provisions are nonexistent. No one has been executed under federal statutes since 1963, and at the time of our review, no federal prisoners were on death row. Furthermore, as of September 1989, federal prosecutors have not sought to use the act's death penalty provisions.

At the state level, cost data are limited. Of 37 states with death penalty laws, 34 had persons on death row. Few of these states have data on death penalty costs and even when available, the data were incomplete.

In recent years, studies, articles, and reports have been published on the costs associated with the death penalty at the state level. They have generally concluded that, contrary to what many people believe, death sentence cases cost more than nondeath sentence cases. However, we found these conclusions were not adequately supported. Most of the studies did not actually compare death sentence cases with nondeath sentence cases, and some of the studies did not contain actual cost data. Further, even in cases where cost data were cited, these data were incomplete.

As of September 1989, there have been few efforts to establish procedures for monitoring the implementation of the act's death penalty provisions. Two Justice organizations have issued guidelines concerning the provisions, and the Judiciary has held one seminar on the subject. For the most part, federal agencies have no plans to track death penalty cases. Officials believe that there will be so few cases that the easiest way to obtain data will be to review the individual cases.

Objectives, Scope, and Methodology

To determine what cost data were available on federal death penalty cases, and federal agencies' efforts and costs of implementing the act's death penalty provisions, we interviewed Justice officials from the Criminal Division, the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Executive Office for United States Attorneys, the Bureau of Prisons, and the United States Marshals Service. We also interviewed officials from the Administrative Office of the United States Courts. We reviewed federal laws with death penalty provisions and agency documents and records pertaining to case data collected. We did not include the military in this review.

To determine what cost data on implementing the death penalty were available at the state level, we contacted officials from 34 states with persons on death row and asked them for data on the cost of implementing the death penalty.

We reviewed nine studies, articles, and reports on the subject. (See app. I.) We did not verify the cost data contained in these studies nor the information provided by state officials.

Our work was done between April and July 1989, in accordance with generally accepted government auditing standards.

Federal Data on the Cost of the Death Penalty Are Nonexistent

Presently, including the Anti-Drug Abuse Act of 1988, there are 13 federal statutes that contain death penalty provisions. These provisions allow for a possible death sentence for a variety of crimes such as murder and treason. Nevertheless, the last time a federal prisoner was executed was in 1963 for kidnapping. During our review, no federal prisoners were on death row. Consequently, actual cost data are not available on implementing existing federal death penalty provisions.

While federal agencies do not have actual cost data, two agencies, the Bureau of Prisons and the U.S. Marshals Service, have projected some of the housing and transportation costs associated with implementing death penalty provisions. The Bureau of Prisons operates a six-level system of maximum, medium, and minimum security prisons and has cost data on maintaining prisoners at the various levels. According to the Bureau, assuming that a death row prisoner was housed at the highest security level the cost would be about \$26,000 annually. The U.S. Marshals Service is responsible for transporting federal prisoners to the execution facility and certifying completion of the execution. The Marshals Service projects that it will cost approximately \$4,943 per prisoner to carry out these responsibilities.

Cost Data on State Death Sentences Are Limited

While currently no federal prisoners are on death row, as of December 1988, 2124 prisoners were sentenced to death in 34 states. We contacted these 34 states and found that little cost data were available. We also reviewed studies on the cost of the death penalty and found that some of the studies lacked either cost or comparative data. Additionally, where cost data were available, the data were incomplete.

One of the most thorough studies we reviewed identified the various stages in a death penalty case. The National Center for State Courts, which prepared this study, also developed a research model to determine what additional costs, if any, are associated with the death penalty. (See app. II.) According to the National Center study, there are eight stages in the criminal justice process in which these costs are incurred. These stages are: (1) investigations, (2) indictment (when a grand jury charges that a person has committed a criminal offense), (3) pre-trial (e.g. filing of motions, conducting psychiatric/medical evaluations, interviewing witnesses), (4) trial, (5) sentencing (when punishment is determined), (6) appeal (the number of appeal levels varies by state, but can involve as many as ten levels), (7) post-conviction (when a prisoner challenges the grounds of conviction and detention), (8) clemency (when the person convicted requests a milder sentence), and (9)

execution. The study also noted that costs are incurred as a result of imprisonment.

The study concluded that even though many experts believe that it costs more to finance a system in which the death penalty is an option, little empirical data exist that actually compare the cost of a death sentence case with a nondeath sentence case. We believe that the research model, developed to ascertain death penalty costs, is comprehensive in identifying the relevant factors that should be evaluated in determining these costs.

Generally, the other studies we reviewed concluded that death penalty cases cost more than cases in which the death penalty was not sought. However, not all of these studies contained actual cost data. For example, one study concluded that a criminal justice system of capital punishment is considerably more expensive than a criminal justice system not allowing capital punishment. It said that, considering the lengthy trial and appeals process, "it costs far more to finance a system by which we decide to execute some people and end up still maintaining for life many of the people processed through that system."¹ No cost figures were used to support this conclusion.

For the studies that did have cost data, the data were incomplete. For example, the study on death penalty costs in New York estimated it would cost at least \$1.8 million to defend and prosecute a capital case. This study included both defense and prosecution costs for the trial and the appeals process. However, other than the trial court costs (i.e. judges' time, employees' time, jury sequestration), no other costs, such as appeals court or imprisonment costs, were included. Further, even though investigation costs for the defense were included, it was not clear whether police investigations were included as part of the prosecution costs.

Most of the studies we reviewed did not actually compare death sentence costs with nondeath sentence costs. One study compared both death and nondeath costs but did not cover the full range of costs (i.e. imprisonment, appeals).² The study compared capital case trial costs, including pre-trial and sentencing; it examined defense, prosecution, and

¹Barry Nakell, "The Cost of the Death Penalty," *Criminal Law Bulletin*, Vol. 91, No. 1, p. 77.

²Committee 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*, 1985.

court costs; and concluded that a case resulting in a death sentence costs approximately 42 percent more than a case resulting in a nondeath sentence.

In addition, according to studies, reports, and various state officials:

- Cost data on police investigations for death penalty cases at the state level are almost nonexistent.
- Death penalty trial cost data vary from state to state. One study estimated that a death penalty trial would cost about \$1.5 million in New York. This estimate includes both defense and prosecution costs, including the use of experts, psychologists, labs, etc. The Maryland study concluded that the trial stage for death penalty cases would be about \$57,000. This figure included public defender, prosecution, and court costs.
- According to one study, the costs of appealing a sentence in New York were estimated to be about \$330,000. This figure does not include every available step in the appeals process.
- Little data were available on imprisonment costs although Alabama state officials said that it costs about \$11,400 annually to house a death row inmate versus \$10,550 for an inmate sentenced to a life sentence without parole. They estimate that a person on death row will spend an average of 10 years in prison, while a person serving a life sentence without parole will spend an average of 40 years in prison.
- Few states had execution cost data, and for those that did, the cost varied from state to state depending on what factors were included. According to a Congressional Research Service survey, Alabama estimates it costs about \$1200 to execute a prisoner, while Virginia estimates the cost to be about \$20,000.

Federal Agencies Do Not Plan Special Monitoring of Death Penalty Cases

Presently, federal agencies do not have any plans to specifically track cost data for implementing the death penalty provisions of the Anti-Drug Abuse Act of 1988. Some officials said that they expect only a few federal prosecutions will involve these provisions and that the most expedient way to gather these data would be to review the individual case records. Officials generally agreed that the National Center for State Courts research model identified factors that should be evaluated in determining the cost of a death penalty case.

As of September 1989, the Anti-Drug Abuse Act's death penalty provisions had not been applied in any federal prosecutions. According to Justice's Criminal Division officials, no U.S. attorney had requested

approval to seek the death penalty under the provisions. A November 16, 1988, internal Justice memo explaining the death penalty provisions, requires all U.S. attorneys seeking the death penalty to get approval from the Attorney General. According to the memo, the Criminal Division's Narcotics and Dangerous Drug Section will be responsible for reviewing U.S. attorneys' requests and for making recommendations to the Attorney General. Subsequently, officials said their office will have data on the number of cases considered for prosecution under the death penalty provisions and the number of cases actually prosecuted under these provisions.

The FBI and the DEA are the two principal federal agencies responsible for investigating drug cases and related killings. The FBI recently issued guidelines to its agents on making investigations in relation to the death penalty provisions of the Anti-Drug Abuse Act of 1988. Regarding investigations cost data, FBI officials said that their current system is set up to collect information by crime categories, not by individual cases. The FBI assigns numbers to types of crime. The crime category may be further broken down into subcategories. For example, category 15 is interstate theft and subcategory 15c is interstate theft by air under \$50,000. DEA's information system collects data on investigations in the following areas: (1) nature of the investigative target, (2) other agencies involved, (3) geographic scope, (4) major drug involved, and (5) priority of the investigation. In addition to this system, DEA officials said agents manually keep a record of time charges by specific cases. Subsequently, while data on staff hours is collected by specific cases, the data can only be retrieved manually. Officials from both agencies said that they plan to modify their information systems so that they can track staff hours and, thereby, track costs by individual cases. However, neither agency had any milestones established for these modifications nor did they indicate any plans to track federal death penalty cases if and when they occurred.

Officials of the Executive Office for U.S. Attorneys, which provides general executive assistance to the U.S. attorneys, said that their information system tracks all U.S. attorney cases. However, the system does not capture cost data, such as the hours spent by an attorney on a specific case, although attorneys' time charges by types of cases are recorded.

The Administrative Office of the United States Courts is responsible for preparing reports on the volume and distribution of the federal Judiciary workload. In May 1989, the Administrative Office held a seminar for public defenders on the new death penalty provision. Administrative

Office officials said they are able to capture the following trial and appeals cost data as identified in the research model: number of cases, judges' time, trial length, cost of psychiatric evaluations and experts, number of appeals filed, and attorney time. In addition, as of July 1, 1989, their office will be collecting data on death penalty habeas corpus cases. These are cases in which a prisoner challenges his detention, either on constitutional or other grounds. Because the system is now in place, when there is a federal death penalty case and a prisoner appeals on grounds of habeas corpus, these data will be captured. Administrative Office officials said that most of the other data identified by the research model, such as sequestration costs, will have to be obtained by reviewing the individual case records. Even then, officials said some of the data, such as the time it takes to assemble case records, will be difficult if not impossible to obtain.

According to a Bureau official, the Bureau of Prisons, responsible for housing federal prisoners, has the capability to track death penalty cases. He said that the cost figures would be based on the average cost to house prisoners at a particular prison, plus any additional costs associated with housing death row inmates. He said that he is not aware of any formal plans at this time to track individual death penalty cases.

A U.S. Marshals Service official said that the agency has the capability to track cost data associated with transporting prisoners sentenced to death. At this time, the official said since there are currently no federal prisoners on death row and have not been since 1963, there are no formal plans to specifically track these costs.

We discussed the results of our review with Justice and Judiciary officials, and incorporated their comments where appropriate.

As arranged with the Subcommittee, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to the Justice Department, the Administrative Office, and other interested parties.

Major contributors to this report are listed in appendix III. If there are any questions on the contents of this report, please call me on 275-8389.

Sincerely yours,

A handwritten signature in cursive script that reads "Lowell Dodge".

Lowell Dodge
Director, Administration
of Justice Issues

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Abbreviations

DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation

List of Studies, Articles, and Reports on the Cost of the Death Penalty

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: 1985.

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The Spangenberg Group. Caseload and Cost Projections for Federal Habeas Corpus Death Penalty Cases in Fiscal Year 1988 and 1989. Newton, MA: 1987.

The Spangenberg Group. Study of Representation in Capital Cases in Virginia: Final Report. Newton, MA: 1988.

National Center for State Courts Research

Model for Determining Death Penalty Costs

(Hypothesized Differences in Costs Between Capital and Non-Capital Cases)

Stage in the process	Hypotheses in capital cases there will be	Measures	Sources of information
1. Bond	More intensive investigation	Police/prosecutor staff-hours spent on the case	Law enforcement records Interviews
2. Pre-indictment		Defense investigation staff-hours spent on the case Number/cost of lab/forensic tests	Public Defender records Court records of assigned counsel costs Interviews Prosecutor records State Police Laboratory records
3. Pretrial			
a. Extradition	More extradition proceedings	Number of requests filed	Prosecutor records Law enforcement records
b. Motions	More motions filed; more motions heard; longer hearings	Number of motions filed Number of motions heard Length of hearings	Court reporter records Court case files Dockets Prosecutor files Public Defender records State AOC ^a Transcripts Interviews
c. Psychiatric/ medical evaluations	Greater likelihood of requests for evaluations	Number of examinations conducted at behest of defense/ of prosecution Length of examination	Interviews Court case files and records Public Defender records Prosecutor case files Mental hospital State AOC records
4. Trial	A greater proportion of trials	Number of trials Number of guilty pleas	Court dockets Court reporter's notes State AOC
a. Jury Selection	Larger venires Longer voir dire	Number of prospective jurors called Length of voir dire	Interviews; court case filed Court case file Dockets Transcripts
b. Use of Experts	More expert witnesses and consultants during pretrial, trial, and sentencing stages	Number of experts employed by the court, prosecution, and defense Expert fees and costs	Interviews; case files Case files Prosecutor files Public Defender files Transcripts
c. Trial length	Longer trials; more frequent use of sequestration; more witnesses; lengthier interrogations; lengthier deliberations	Juror fees Number of hours/days Sequestration costs Witness fees Length of trial	Court records Court calendar Public Defender records Transcripts State AOC Interviews
5. Sentencing	Longer sentencing proceedings More extensive presentence investigation	Juror fees Number of hours/days Witness fees Sequestration costs Length of sentencing trial	Court calendars Court case files Public Defender Transcript Interviews

(continued)

**Appendix II
National Center for State Courts Research
Model for Determining Death Penalty Costs
(Hypothesized Differences in Costs Between
Capital and Non-Capital Cases)**

Stage in the process	Hypotheses in capital cases there will be	Measures	Sources of information
6. Appeal			
a. Motions for new trial	More motions for new trial Lengthier motion hearings More motions granted	Number of motions Number of motions heard Length of hearings Number of motions granted	Court case files Prosecutor records Public Defender records Transcripts Interviews
b. Appeals	Higher proportion of appeals Longer appellate proceedings Longer opinions	Number of appeals filed Transcript costs Time to assemble case record Number of issues presented Time required to review record and briefs Number of cases with oral argument Amount of time devoted by defense and district attorney Time spent by appellate defender Length of oral argument Length of opinion Number of petitions for rehearing Number of convictions/ sentences upheld, vacated, modified Number of state/federal petitions for Writs of Certiorari filed Number of cert. petitions granted Number of issues presented Number of cases with oral argument Amount of time devoted by defense and district attorney Time spent by appellate defender Number of petitions for rehearing Number of convictions/ sentences upheld, vacated, modified	Trial court case files and records Appellate court case files Administrative Office of the Courts records Prosecutor and Attorney General Records Public Defender records U.S. Supreme Court records Appellate briefs Transcripts Appellate Defender records Interviews Observations and time sheets
7. Post-conviction	More state and federal post-conviction petitions	Number of post-conviction petitions Time required to review petition Number of defense attorneys appointed for petitioners Amount of time spent by petitioner's and state's attorneys Number of hearings Length of hearings Number of retrials or resentencings granted Number of petitions denied Number of appeals filed	Trial court cases files Prosecutor records Public Defender records Corrections department records Appellate court records U.S. District Court of Appeals and Supreme Court records Interviews

(continued)

**Appendix II
National Center for State Courts Research
Model for Determining Death Penalty Costs
(Hypothesized Differences in Costs Between
Capital and Non-Capital Cases)**

Stage in the process	Hypotheses in capital cases there will be	Measures	Sources of information
		Number of petitions for rehearing filed Number of petitions for a Writ of Certiorari filed	
8. Clemency	More requests for clemency	Number of clemency requests Length of review process Number of requests granted	Department of Corrections records Gubernatorial records
9. Execution	(There is no comparable stage for non-capital cases. Costs at this stage represent an absolute difference.)	Cost special equipment and its maintenance Number of staff involved in execution Special training for staff Special facilities for observers and press	Department of Corrections records
Other sources of differences in costs:			
1. Security/Corrections			
a. Prior to sentencing	Fewer defendants released; higher level of security for those incarcerated both in jail and in the courthouse	Number of defendants released on bail or on own recognizance Number of defendants detained Length of detention Use of special equipment or facilities Number of detention review hearings held	Sheriff's department or local corrections department records Court case files Prosecutor records Public Defender records
b. Post-sentencing	Higher custodial costs; loss of prisoner labor	Use of special facilities and equipment Higher staffing levels Value of labor performed by inmates Number of trips for hearings	Department of Corrections records
2. Attorney fees			
	Higher prosecution and defense attorneys costs	Number of hours spent by prosecutors and staff Number of hours spent by defense attorneys and staff Number of hours spent by Attorney General's Office personnel Hourly rates Time required to review requests for payment by assigned counsel Number of hours spent by appellate defender	Prosecutor records Public Defender Trial court records Appellate court records Appellate defender records Interviews

^aState AOC - Administrative Office of the Courts.

Source: National Center for State Courts

GAO Note: See also pp. 3 and 4 of this report.

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