Joint Committee on Criminal Justice

Legislature of Massachusetts
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Testimony of

Richard C. Dieter

Executive Director

Death Penalty Information Center

"The Costs of the Death Penalty"

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INTRODUCTION

Good morning. Mr. Chairman, and Members of the Committee. I want to thank you for this opportunity to appear before you and to offer my remarks on the costs of the death penalty.

My name is Richard Dieter and I am the Executive Director of the Death Penalty Information Center in Washington, DC, a position I have held for the past 10 years. I am also an attorney and an adjunct professor at Catholic University Law School. The Death Penalty Information Center is a non-profit organization whose focus is research and analysis of capital punishment.

There are many controversial aspects to the death penalty debate and the question of costs often gets overlooked. Fiscal considerations, however, are important in their own right, and they have a critical impact on other aspects of this discussion.

Talk about the death penalty is really about the **safety of the community**. There are many ways to make the community safer, and most of these have costs associated with them. As legislators, you are keenly aware that there is no bottomless pot of government money to be spent on things that might help the community. The more you spend on one project, the less there is available for other worthwhile endeavors.

All of the studies regarding the cost of the death penalty have concluded that it amounts to a **net expense** to the state and the taxpayers. Hence, it must be paid for by sacrificing other projects. Or to put it another way, the extra money spent on the death penalty could be spent on other means of making the community safer: better lighting in crime areas, more police on the streets, perhaps longer periods of incarceration for some offenders, or projects to reduce unemployment. Quite a few jurisdictions with the death penalty have recently had to cut back on other vital services. In some states, people are being released from prison early as a cost saving measure.

Moreover, the costs of the death penalty are central because they play a key role in how the death penalty is implemented. Supporters and opponents of the death penalty agree that a system of capital punishment should not take unnecessary risks with innocent lives and should be applied with a strict sense of fairness. As with many things, the death penalty on the cheap is really no bargain. There is no abstract dollar figure for the cost of the death penalty -- it depends on the quality of the system you demand. In Illinois, their system was fraught with error. Over a 20-year period, they freed more innocent people from death row than they executed. As a result, a blue-ribbon commission there recommended 85 changes to make the death penalty more reliable; most of them will now cost the state even more money.[1]

There is little dispute about the fact that the death penalty is expensive. Of course, sentencing someone to life in prison is also very expensive. Death penalty costs tend to be experienced up-front, especially at trial and for the early appeals. Life-in-prison costs are drawn out over many decades.

But the most expensive system would be one which combines the most costly parts of both punishments: lengthy and complicated death penalty trials followed by incarceration for life. Surprisingly, research has shown that the most expensive system is exactly what you can expect from the death penalty. In most cases, where the death penalty is sought, it is never imposed. And even when it is imposed, it is rarely carried out.

Death penalty cases are clearly more expensive in the early stages. Everything that is needed for an ordinary trial is needed for a death penalty case, only more so:

- more pre-trial time will be needed to prepare: cases typically take a year to come to trial

[1] . Report of the Governor's Commission on Capital Punishment (Illinois, released April 15, 2002).

- more pre-trial motions will be filed and answered
- more experts will be hired
- twice as many attorneys will be appointed for the defense, and a comparable team for the prosecution
- jurors will have to be individually quizzed on their views about the death penalty
- they are more likely to be sequestered
- two trials instead of one will be conducted: one for guilt and one for punishment
- the trial will be longer: a cost study at Duke University estimated that death penalty trials take 3 to 5 times longer than typical murder trials
- and then will come a series of appeals during which the inmates are held in the high security of death row.

It is only **after an execution** that a death penalty case costs less than a non-death penalty case. However, **few capital cases result in execution**, so the "savings" disappear. A recent study at Columbia University Law School found that 68% of death penalty cases are overturned on appeal.[2] Either the conviction or the sentence is found to have serious error requiring it to be done over. When these death penalty cases are given a second hearing, approximately 82% result in a life sentence. Thus, the typical death penalty case has all the expenses of its early stages and appeal; it is then overturned, and a life sentence is imposed, resulting in all the costs of 30 to 40 years of incarceration. Only about 11% of people who have been sentenced to death have been executed.[3]

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[2] . James S. Liebman, "A Broken System: Error Rates in Capital Cases," (Columbia Univ. June, 2000) (Executive Summary).

[3] . See Bureau of Justice Statistics, "Capital Punishment 2001," appendix Table 3 (2002).

Perhaps if Massachusetts had the death penalty it would be more efficient. Texas, for example, has executed about one-third of the people it has sentenced to death. Even at that rate, it has been estimated that the **extra** costs of the death penalty in Texas are about $2.3 million per case.[4]

Massachusetts' history with executions indicates that the numbers here would likely be far smaller than in Texas. During the entire 20th century, when the death penalty was much **less** controversial, Massachusetts executed about 65 people, or less than one person per year.

If Massachusetts adopted the death penalty, I suspect their experience would be more like New York's. New York reinstated the death penalty almost 8 years ago. They currently have 5 people on death row and no executions. Here are some of their expenses so far, realizing that they are still many years, if ever, away from their first execution:

- Since 1995, New York has spent $68.4 million for defense of 702 defendants charged with crimes that might warrant the death penalty.

- The Queens District Attorney's Office estimates that seeking the death penalty translates into 300% to 500% more work than for a non-capital murder trial.

- The lead appellate attorney for the Brooklyn District Attorney's office spent more than 600 hours of time on state's first "successful" capital case, that of Darrel Harris.

- During the preparation of its 1,181-page brief for the Harris case, the Brooklyn District Attorney's office was assisted by prosecutors in 8 other counties.

- The defense team for Harris spent approximately $1.7 million to mount his defense, and the state's Capital Defender Office invested $1.2 million into producing the team's 779-page brief.[5]

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[4]. C. Hoppe, "Executions Cost Texas Millions," Dallas Morning News, March 8, 1992, at 1A.
[5] . New York Law Journal, April 30, 2002.

The end result of the Harris case is that his sentence was overturned and he has been resentenced to life in prison with no parole. If the death penalty had not been sought, all the extra expenses associated with the death penalty could have been avoided, and the result would have been exactly the same.

By the way, I should point out that since 1995, when New York adopted the death penalty, the murder rate in Massachusetts has dropped 36% **without the death penalty.**

COST STUDIES

It turns out to be relatively difficult to put a precise cost on the death penalty: it is like trying to put a dollar figure on heart disease -- it is easy to state the question, but complicated to answer. Nevertheless, there have been some studies by government agencies, newspapers, and independent researchers that create a clearer picture.

The studies differ widely in the states they cover, in their level of sophistication and in the assumptions they make. However, they have all come to the same conclusion, and many of their estimates of the costs are fairly similar.

COMMON PARAMETERS OF THE STUDIES

Most of these studies do not simply look at the costs of an isolated case. Rather the best analyses compare a **system** in which the death penalty is employed to a system dealing with similar crimes in which a life sentence is the most severe punishment allowed. At every step of the analysis, the question is asked: how much more, or less, does the system with the death penalty cost compared to the other system?

One important point about the better cost studies: many of the costs of the death penalty do not appear as line items in the budget. It is not accurate to say that the time spent by the prosecution, by the judges, and even in some instances by the defense, could be calculated as no expense because, if these participants weren't doing death penalty cases, they would still have to be paid the same. This ignores what the studies

call "opportunity costs." Time is money. If a prosecutor or judge works longer on a case because it is a death penalty case, then those hours are not available for other work. The same is true for the judge's staff, and even for the square feet of the courtroom used for the trial. If death penalty cases take more time, then that time difference is a net cost measured in the hours of all the participants.

HOW MUCH DOES THE DEATH PENALTY COST?

The major cost studies on the death penalty all indicate that it is much more expensive than a system where the most severe sentence is life in prison:

⇒ The most comprehensive study conducted in this country found that the death penalty costs North Carolina $2.16 million per execution over the costs of a non-death penalty system imposing a maximum sentence of imprisonment for life.[6] These findings are sensitive to the number of executions the state carries out. However, the authors noted that even if the death penalty was 100% efficient, i.e., if **every** death sentence resulted in an execution, the **extra** costs to the taxpayers would still be $216,000 per execution.

⇒ Some years ago, the *Miami Herald* estimated that the costs of the death penalty in Florida were $3.2 million per execution, based on the rate of executions at that time.[7] Florida's death penalty system has bogged down for a number of reasons, including a controversy over the electric chair. As a result, a more recent estimate of the costs in Florida by the *Palm Beach Post* found a much higher cost per execution: Florida spends $51 million a year above and beyond what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida had carried out from 1976 to 2000, that amounts to a cost of $24 million for each execution.[8]

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[6]. P. Cook, "The Costs of Processing Murder Cases in North Carolina," Duke University (May 1993).
[7]. D. Von Drehle, "Bottom Line: Life in Prison One-sixth as Expensive," The Miami Herald, July 10, 1988, at 12A.
[8]. S. V. Date, "The High Price of Killing Killers," Palm Beach Post, Jan. 4, 2000, at 1A.

⇒ In Texas, the *Dallas Morning News* concluded that a death penalty case costs an average of $2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.[9]

⇒ The *Sacramento Bee* found that the death penalty costs California $90 million annually beyond the ordinary costs of the justice system - $78 million of that total is incurred at the trial level.[10] Since California has averaged much less than one execution per year, the costs per execution are astronomical, approaching $100 million per execution. Recently, the governor of California requested an additional $220 million from the legislature to construct a new death row.

⇒ A recent study by Indiana's Criminal Law Study Commission found that the total costs of the death penalty projected into the future for the state's current capital cases would be about $51 million, exceeding the future costs of life without parole sentences by about 38%.[11]

In a report from the Judicial Conference of the United States on the costs of the **federal death penalty**, it was reported that defense costs were about 4 times higher in cases where death was sought than in comparable cases where death was not sought. Moreover, the **prosecution** costs in death cases were 67% higher than the defense costs, even before including the investigative costs of law enforcement agencies.[12]

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[9] . C. Hoppe, "Executions Cost Texas Millions," Dallas Morning News, March 8, 1992, at 1A.
[10] . S. Maganini, "Closing Death Row Would Save State $90 Million a Year," Sacramento Bee, March 28, 1988, at 1.
[11] . Indiana Criminal Law Study Commission, January 10, 2002 (assuming that only a modest 20% of death sentences are overturned and resentenced to life).
[12] . See, "Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation," Judicial Conference of the United States (May 1998).

A recent article in the *Wall Street Journal* noted that in states where counties are chiefly responsible for prosecuting capital cases, the expenses can put an extraordinary burden on local budgets, comparable to that caused by a natural disaster.[13] Katherine Baicker of Dartmouth concluded that capital cases have a "large negative shock" on county budgets, often requiring an increase in taxes. She estimated the extra expenses on counties to be $1.6 billion over a 15-year period.[14]

The net effect of this burden on counties is a widely disparate and somewhat arbitrary use of the death penalty. "Rich" counties that can afford the high costs of the death penalty may seek this punishment often, while poorer counties may never seek it at all, settling for life sentences instead. In some areas, this geographical disparity can have racial effects, as well, depending on the geographical location of racial minorities within the state.

Even counties that do pursue capital cases have found that they have had to cut back on other services such as libraries, ambulances, or even patrol cars for the police. Some counties have approached the brink of bankruptcy because of one death penalty case that has to be done over a second or third time.[15]

Many of the costs of the death penalty are inescapable and have likely increased even since the studies mentioned here were conducted, as the demands for a more reliable and fairer system are heard. The appeals process is now longer, the defense attorneys, the prosecutors and the judges all cost more per hour, the re-trials are long and more expensive. The majority of the costs occur at the trial level, and cannot easily be streamlined or reduced.

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[13]. R. Gold, "Counties Struggle with High Cost of Prosecuting Death-Penalty Cases," Wall St. Journal, Jan. 9, 2002.

[14]. K. Baicker, "The Budgetary Repercussions of Capital Convictions," National Bureau of Economic Research, Working Paper 8382, July 2001.

[15] . See generally, R. Dieter, "Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty," (revised edit., 1994) (available from the Death Penalty Information Center).

The death penalty absorbs huge amounts of money. Millions of dollars are spent on a few people with almost no control over the outcome. It is true that you cannot put a price on justice. But you can put a price on more police on the streets, better lighting in crime areas, job and education programs, or even prison cells. A state has to choose where to put its limited resources.

Thank you for this opportunity. I would welcome any questions the Committee may have.