LA14-25

STATE OF NEVADA

Performance Audit

Fiscal Costs of the Death Penalty

2014

Legislative Auditor
Carson City, Nevada

Audit Highlights

Highlights of performance audit report on the Fiscal Costs of the Death Penalty issued on December 2, 2014. Legislative Auditor report # LA14-25.

Background

The death penalty in the United States is applied almost exclusively for the crime of murder. As of August 2014, 32 states have laws allowing death as a sentencing option although governors in Washington and Oregon have issued moratoriums on executions.

Two U.S. Supreme Court cases significantly impacted states' laws regarding the death penalty. *Furman v. Georgia* in 1972 invalidated death penalty laws because the legal system, as it was then structured, allowed for the death penalty to be imposed in an arbitrary manner. The 1976 case of *Gregg v. Georgia* upheld newly crafted statutes that ensured death penalty sentences were rationally imposed and objectively reviewable. Senate Bill 220 of the 1977 Legislative Session brought Nevada's death penalty laws into compliance with U.S. Supreme Court guidelines.

Since the death penalty was reinstated in Nevada in 1977, 153 people have been sentenced to death. Twelve inmates have been executed since that time with 11 effectively "volunteering" by giving up their right to continue appealing their conviction. Eighty-two inmates are currently sentenced to the death penalty as of September 2014. Of the remaining 59 inmates, 16 died while in prison and 43 had their sentence and/or conviction reduced.

Nevada law requires executions to be performed by lethal injection. This method of execution has become an issue nationally as historically used drugs have become difficult to obtain.

Purpose of Audit

This audit was required by Chapter 469, Statutes of Nevada, 2013 (A.B. 444). The purpose of the audit was to determine (1) the fiscal costs of prosecuting death penalty cases versus non-death penalty cases and (2) the potential savings attributable to the death penalty through plea bargaining and strategic litigation choices. Our audit focused on murder cases in Washoe and Clark counties between 2000 and 2012. We used December 31, 2013, as the cut-off date for cost accumulation.

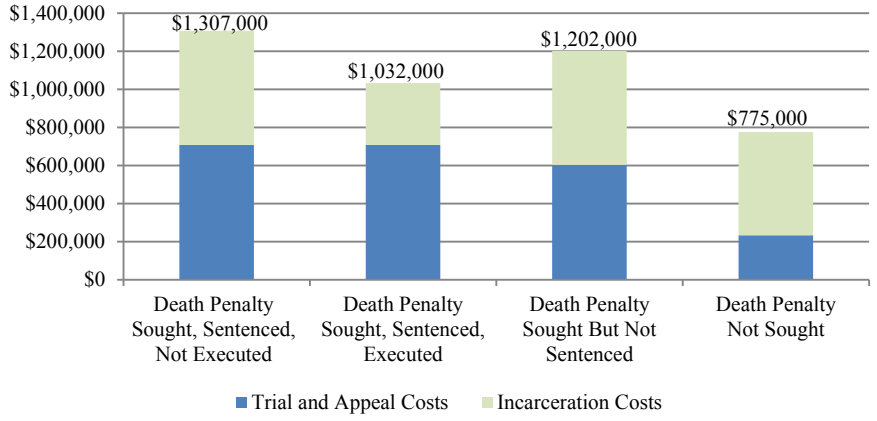
The audit was subject to certain limitations as many agencies with significant roles could not provide actual staff time and were hesitant to provide estimates. Furthermore, much of the information was based on unverifiable estimates provided by various entities. See additional discussion regarding limitations on page 8.

Fiscal Costs of the Death Penalty

Summary

Adjudicating death penalty cases takes more time and resources compared to murder cases where the death penalty sentence is not pursued as an option. These cases are more costly because there are procedural safeguards in place to ensure the sentence is just and free from error. Based on our sample of 28 cases and average costs we were able to accumulate, we estimate the death penalty, from arrest through the end of incarceration, costs about $532,000 more than other murder cases where the death penalty is not sought. (page 10)

Cost Differential of the Death Penalty



Cost estimates are based on a sample of 28 cases, 15 for trial and 13 for appeal. We also calculated incarceration and medical costs from first degree murder sentence subgroups from data provided by the Nevada Department of Corrections. Trial and appeal costs are incomplete because certain court and prosecution costs could not be obtained. Specifically, court and prosecution costs primarily include the cost of in-court activities and exclude costs incurred outside of the courtroom. Furthermore, appeal costs do not fully represent the entirety of the appeal process since many of the sample cases are still being adjudicated. The incarceration costs for the death penalty sought, sentenced, and executed subgroup is based on the one individual who was "involuntarily" executed having exhausted available appeals. (page 11)

Case costs, incorporating the trial and appeal phases, averaged about three times more for death penalty versus non-death penalty cases. Almost every cost center we were able to accumulate cost information for was higher for death penalty cases, regardless of whether the cost was an estimate or based on actual verifiable data, mainly because of enhanced procedural requirements related to death penalty trials and related appeals. Costs of death penalty cases are similar regardless of whether the death penalty is sentenced or not. In these cases, trial costs are generally the same, but appeals costs are less when the death penalty is not sentenced. (page 16)

For incarceration costs, the death penalty is the most expensive sentence for those convicted of first degree murder, but only slightly higher when compared to those sentenced to life without the possibility of parole. Costs for these two sentences largely mirror one another because incarceration periods are similar considering "involuntary" executions are extremely infrequent. Incarceration costs are higher for the death penalty subgroup, since they are typically housed at a higher cost facility, but costs were similar to those sentenced to life without the possibility of parole because inmates in this subgroup are incarcerated slightly longer due to a higher age of natural death. Further, medical costs increase as inmates age with costs nearly doubling every decade once an inmate reaches the age of 35. (page 53)

Potential cost savings due to the existence of the death penalty could not be quantified. Prosecutors strongly suggested the death penalty is not used as a strategic litigation choice to reduce or avoid a trial and its associated cost through plea bargaining. Nevertheless, plea bargains are made with defendants who are facing the possibility of death; however, they occur about 14% less often than in non-death penalty cases. Savings generated from plea bargaining are dependent upon where in the trial phase the plea bargain is finalized since any savings that may be realized are largely due to trial and appeal costs. (page 73)

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This report contains the results from our performance audit of the Fiscal Costs of the Death Penalty. This audit was required by Chapter 469, Statutes of Nevada, 2013 (A.B. 444). The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions.

This report was conducted in accordance with the provisions noted in A.B. 444 and does not include findings or recommendations. The bill required an examination and analysis of death penalty costs borne by the State of Nevada and by local governments at each stage in the proceedings. Furthermore, the bill set forth a requirement to determine if there are any potential cost savings from the use of plea bargaining or strategic litigation choices attributable to the death penalty. We are available to discuss the content of this report with any legislative committees, individual legislators, or other state officials.

Respectfully submitted,

Paul V. Townsend, CPA
Legislative Auditor

November 17, 2014
Carson City, Nevada

Fiscal Costs of the Death Penalty
Table of Contents

Introduction 1

Background 1

Scope and Objectives 8

Limitations 8

Cost Summary 10

Death Penalty Cases Cost More 16

More Time to Trial Increases Costs for Death Penalty Cases 17

Pretrial Segment 19

Trial Segment 23

Penalty Segment 28

Other Costs Between Arrest and Sentencing 33

Death Penalty Appeals Are Significantly More Expensive 37

Direct Appeals to the Nevada Supreme Court 39

State Postconviction Appeals in State Courts 44

Federal Postconviction Appeals in Federal Courts 49

Request for Clemency 51

Incarceration Cost Differences Insignificant 53

Maximum Custody Increases Facility Costs 55

Medical Costs Increase as Inmates Age 60

Execution and Burial Costs 66

Related Supporting Information 68

Fiscal Costs of the Death Penalty
Table of Contents
(continued)

Potential Cost Savings From the Death Penalty Hard to Determine 73

Prosecutors Indicate the Death Penalty Is Not Used as a Strategic Litigation Choice 73

Plea Bargains Do Occur in Death Penalty Cases 75

Appendices

A. Assembly Bill 444 79

B. Death Penalty Information by State After 1972 82

C. Individuals With Death Sentences 84

D. Judicial Process – Death Penalty Cases 87

E. Information Regarding Sampled Cases 88

F. Cumulative Estimated Incarceration and Medical Costs – 2013 Dollars 89

G. List of Exhibits 90

H. Audit Methodology 92

I. Agency Costs Not Obtained 104

Introduction

Background

The death penalty in the United States (U.S.) is applied almost exclusively for the crime of murder, even though some states allow the death penalty for other crimes, including rape of a child, treason, aggravated kidnapping, drug trafficking, and aircraft hijacking. States determine whether the death penalty will be used as a form of punishment for crimes committed within their borders. Michigan was the first state to severely limit the application of the death penalty, and Rhode Island was the first to eliminate its use entirely in 1852.

In 1972, the U.S. Supreme Court ruled in the *Furman v. Georgia* case that the imposition of the death penalty constituted cruel and unusual punishment and violated the Constitution because the legal system, as it was then structured, permitted the death penalty to be imposed in an arbitrary manner. This ruling placed a moratorium on the death penalty until states could restructure their death penalty statutes to alleviate the U.S. Supreme Court's concerns. In the 1976 case of *Gregg v. Georgia*, the U.S. Supreme Court upheld the death penalty for states in which newly crafted statutes ensured a process where sentences were rationally imposed and objectively reviewable. This ruling effectively reinstated the death penalty for states who crafted laws in accordance with two broad guidelines set by the U.S. Supreme Court.

- The scheme must provide objective criteria to direct and limit death sentencing discretion. The criteria must be ensured by appellate review of all death sentences.
- The scheme must allow the sentence to take into account the character and record of the defendant.

Thirty-two states and the federal government and military currently have laws allowing a person to be sentenced to death, although governors in Washington and Oregon have issued a moratorium

on executions and a portion of New York's statute has been declared unconstitutional. Appendix B details each state's status regarding use of the death penalty and relevant related information.

Nevada and the Death Penalty

Nevada's history with the death penalty began in 1863 when the first legal execution occurred by hanging. Until 1903, executions were conducted via hangings at the county seat in which the person was convicted. Nevada was the first state to execute a man by lethal gas in 1924 and continued use of this method until 1979. Nevada law currently authorizes lethal injection as the only means of execution.

Senate Bill 545 of the 1973 Legislative Session revised Nevada's death penalty statutes in an attempt to address the arbitrariness noted in *Furman v. Georgia*. The bill revised Nevada Revised Statutes (NRS) section 200 to make the death penalty mandatory for capital murder; however, these changes were later held unconstitutional. Senate Bill 220 of the 1977 Legislative Session ultimately brought Nevada's death penalty laws in compliance with U.S. Supreme Court guidelines and prescribed the circumstances under which the death penalty could be imposed for first degree murder. NRS 200.033 details the aggravating circumstances under which the death penalty may be sought and NRS 200.035 details mitigating circumstances that must be weighed by a jury when asked to consider the death penalty. Exhibit 1 details the aggravating and mitigating circumstances applicable in Nevada law.

Aggravating and Mitigating Circumstances To Be Considered by a Jury in Imposing the Death Penalty **Exhibit 1**

Aggravating Circumstances – NRS 200.033	Mitigating Circumstances – NRS 200.035
• The defendant was already imprisoned. • The defendant was already convicted of another murder or a felony involving the threat of violence to another. • The defendant knowingly created a great risk of death to more than one person. • The defendant committed the murder during a robbery, first degree arson, burglary, invasion of the home, or first degree kidnapping. • The murder was committed during an escape from custody or in an attempt to prevent arrest. • The defendant committed the murder to receive money or something of value for himself, herself, or another. • The victim was a peace officer or firefighter engaged in the performance of his or her official duties. • Victim(s) were tortured or mutilated. • The murder was committed at random and without apparent motive. • The victim was less than 14 years old. • The murder was committed because of the victim's actual or perceived race, color, religion, national origin, physical or mental disability, or sexual orientation. • The defendant subjected or tried to subject the victim to nonconsensual sexual activities. • The crime was committed on public or private school grounds, a school bus engaged in its official duties, or at a sponsored school activity. • The murder was committed during an act of terrorism or to conceal such an act.	• The defendant has no significant history of prior criminal activity. • The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. • The victim was a participant in the defendant's criminal conduct or consented to the act. • The defendant was an accomplice in a murder committed by another person and the defendant's participation was relatively minor. • The defendant acted under duress or under the domination of another person. • The youth of the defendant at the time of the crime. • Any other mitigating circumstances.

Source: Nevada Revised Statutes.

Since the death penalty was reinstated in Nevada in 1977, 153 people have been sentenced to death. Exhibit 2 groups the 153 people sentenced to death in Nevada by their current status.

Death Penalty Sentences and Status **Exhibit 2**
As of December 31, 2013

Individuals With a Death Sentence[2]	83
Executed	12
Suicide	4
Died While in Prison	12
Death Sentence Overturned and Individual Resentenced[2]	41
Death Sentence Overturned and Individual Released	1
Death Sentences Since 1977	**153[1]**

Source: Department of Corrections electronic and paper records.

(1) Does not include two defendants whose convictions were immediately overturned and who never served on death row and three inmates sentenced to death automatically under statutes that were declared unconstitutional.

(2) Another defendant's sentence was overturned in February 2014. As of September 2014, 82 people were incarcerated under a death sentence. For purposes of this report, we used populations as of December 31, 2013. Therefore, throughout the report we refer to the death penalty population as 83.

The Nevada Department of Corrections houses most inmates sentenced to death at the Ely State Prison, but the execution chamber is located at the closed Nevada State Prison in Carson City. Appendix C details those individuals currently housed under a sentence of death, their age, county of conviction, and sentence date.

The last execution of an inmate sentenced to death in Nevada occurred in 2006. Eleven of the 12 inmates executed since the death penalty was reinstated have effectively "volunteered" by giving up their right to continue appealing their conviction and sentence.

The death penalty has risen to the forefront of national headlines over the past year due to a shortage of drugs historically used in the lethal injection process. States continuing to carry out executions have been forced to obtain drugs from other sources or substitute drugs normally used in the process. These alternatives have provided inmates new grounds for appeal as they request transparency regarding execution methods.

Legal Process Related to Death Penalty Cases

Nevada law defines murder as the unlawful killing of a human being and manslaughter as the unlawful killing of a human being without malice, express or implied. Penalties related to the death

of a person vary based on the type and severity of the crime. Exhibit 3 details the different classifications of death of a person and related penalty options.

Death of a Person Punishable by Nevada Statute **Exhibit 3**

Classification	Definition	Penalty Options	Statute
1st Degree Murder	Willful, deliberate and premeditated killing.	• Death – if one or more aggravating circumstances exist. • Life without the possibility of parole. • Life with the possibility of parole when a minimum of 20 years is served. • Definite term of 50 years with eligibility for parole after 20 years is served.	200.030
2nd Degree Murder	All other kinds of murder.	• Life with the possibility of parole when a minimum of 10 years is served. • Definite term of 25 years with eligibility for parole after 10 years is served.	200.030
Voluntary Manslaughter	A serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.	• Minimum prison term of not less than 1 year and a maximum term of not more than 10 years. A fine of $10,000 or less may be assessed.	200.050 and 200.080
Involuntary Manslaughter	The killing of a human being, without any intent to do so, in the commission of an unlawful act, or a lawful act which might produce such a consequence in an unlawful manner.	• Minimum prison term of not less than 1 year and a maximum term of not more than 4 years. A fine of $5,000 or less may be assessed unless a greater fine is authorized or required by statute.	200.070 and 193.130
Vehicular Manslaughter	While driving or in physical control of any vehicle causes the death of another person through an act or omission that constitutes simple negligence.	• A misdemeanor offense which is punishable by up to 6 months in jail or a fine of not more than $1,000 or by both a fine and imprisonment.	484B.657 and 193.150

Source: Nevada Revised Statutes as noted.

The legal process for the death penalty differs from other types of murder or manslaughter charges. Typical death penalty process differences include longer jury selection, bifurcated trials (one for guilt and one for sentencing), and a complex appeals process for both conviction and sentence. Further, two attorneys are provided for the defense of an individual facing the death penalty. A diagram of the process discussed in the following narrative can be found at Appendix D.

Murder cases are tried in the county in which the crime occurred. District attorneys must file a notice of intent to seek the death penalty not later than 30 days after filing the indictment or information. The notice of intent must specify all aggravating circumstances the State intends to prove at sentencing. If a notice of intent to seek the death penalty is filed, an indigent defendant must be provided two public defenders to aide in his or her defense. Attorneys appointed as lead counsel in the defense of a death penalty case must meet certain experience requirements established by the Nevada Supreme Court.

Larger jury pools may be solicited for death penalty cases. Furthermore, jurors must be “qualified” to be seated on a case in which the death penalty is being sought. “Qualified” means jurors must not be staunch supporters or detractors of the death penalty. Jurors must be able to sentence an individual to death but also be capable of contemplating all sentencing options and willing to consider mitigating evidence.

Nevada statute requires separate penalty hearings when an individual is found guilty of first degree murder. Penalty hearings must be conducted in front of a jury if the death penalty is sought, regardless of whether the individual was convicted by a jury or stipulated to a plea of guilty. For cases where the death penalty is not sought, the parties may waive the requirement for a separate penalty hearing. During penalty hearings, evidence regarding aggravating and mitigating circumstances related to the offense, defendant, or victim may be presented.

A conviction and sentence of death is automatically appealed to the Nevada Supreme Court. The Nevada Supreme Court must

consider the following: errors enumerated in an appeal; whether the evidence supports the finding of at least one aggravating circumstance; whether the sentence was imposed under the influence of passion, prejudice, or any arbitrary factor; and whether the sentence of death was excessive, considering both the crime and the defendant. The Nevada Supreme Court has the authority to affirm the death sentence, set aside the sentence and remand for a new hearing, or set aside the sentence and impose a sentence of life without the possibility of parole.

Upon denial by the Nevada Supreme Court, the death penalty inmate may request a discretionary review from the U.S. Supreme Court via a writ of certiorari. If certiorari is denied, inmates may file a postconviction petition for habeas corpus in the Judicial District Court where the conviction occurred. The petition is normally filed with the record of original proceedings, and, if possible, assigned to the original judge or court. Postconviction petitions for habeas corpus typically raise the issue of ineffective assistance of counsel, but can also claim newly discovered evidence or prosecutorial misconduct on occasion. The state level appeals are litigated by the prosecuting attorney's office, and counsel is provided to the inmate under Nevada Supreme Court rules.

After postconviction appeals have been processed through state courts, death penalty inmates may continue appealing to federal jurisdictions. Death penalty inmates alert federal courts by filing a pro se petition, at which point the inmate will be provided new counsel. Newly appointed counsel requires time to review the state court record of the trial and all postconviction proceedings. The death penalty inmate is required to raise all claims at this point, both exhausted and unexhausted. If unexhausted claims have merit, the inmate can be allowed to return to the state district court and the Nevada Supreme Court to exhaust all postconviction appeals. Federal appeals eventually work through the Ninth Circuit Court of Appeals and to the U.S. Supreme Court, which can choose whether or not to consider the inmate's petition.

After all state and federal appeals have been exhausted, the inmate may request the State Board of Pardons Commissioners,

composed of the Governor, State Supreme Court Justices, and the Attorney General, commute his or her death sentence. The Commissioners may not commute a sentence to allow parole for any person sentenced to the death penalty after July 1, 1995.

Scope and Objectives

This audit was required by Chapter 469, Statutes of Nevada, 2013 (A.B. 444), included at Appendix A, and was conducted pursuant to the provisions of NRS 218G.010 to 218G.350. The Legislative Auditor conducts audits as part of the Legislature's oversight responsibility for public programs. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions.

This audit focused on the cost of death penalty and non-death penalty murder cases in Clark and Washoe counties with arraignment dates between January 1, 2000, and December 31, 2012. We used December 31, 2013, as the cut-off date for cost accumulation. The objectives of this audit were to determine:

- the cost of prosecuting and adjudicating death penalty cases compared to non-death penalty cases, and
- potential cost savings of the death penalty through plea bargaining and strategic litigation choices.

Limitations

We conducted this audit in accordance with government auditing standards; however, there were a number of limitations regarding our accumulation and verification of cost data. Readers are encouraged to review the methodology section of this report for further detail regarding data obtained and assumptions made.

- We selected a sample of cases to review. Using a select number of cases may be misleading because there will always be cost examples that are much higher or lower due to the circumstances of the particular case. Our selection was made from the best available information provided to us; however, we acknowledge that all cases are different and some variation in cost is attributable to the specific factors of each case.

- Many agencies with significant roles in the death penalty process could not provide actual staff time attributable to any specific case. Additionally, some agencies were hesitant, for various reasons, to provide estimates of time to us. As a result, we were unable to determine a complete accounting of costs related to cases in our sample. Readers should be aware that some of these exceptions may have significantly affected total case costs. For specific information regarding costs not obtained see Appendix I.

- Much of the information obtained regarding staff time attributable to specific cases was based on estimates from staff involved. In most cases, we were unable to verify the accuracy of the estimates provided because these entities did not maintain records of time spent on specific cases.

- Some unknown factors could not be accounted for. Specifically, we could not reasonably determine when, or if, a specific inmate would die by execution from "volunteering", an exhaustion of appeals, or by natural causes. Additionally, we could not adequately predict the outcome of current appeals or the extent of future appeals, although it is assumed death penalty inmates will continue to file appeals in perpetuity unless halted by the courts.

- Some limitations existed in the data received mainly related to how information was organized and the inability to query data based on the exact parameters needed for our analysis. As a result, all data may not have been captured and analyzed. We performed procedures on data received, but cannot reasonably assert that all relevant data was obtained. However, we do not believe slight inaccuracies or missing data greatly impact our analysis or results. Further information on data received and used can be found throughout the report and in our methodology section.

Cost Summary

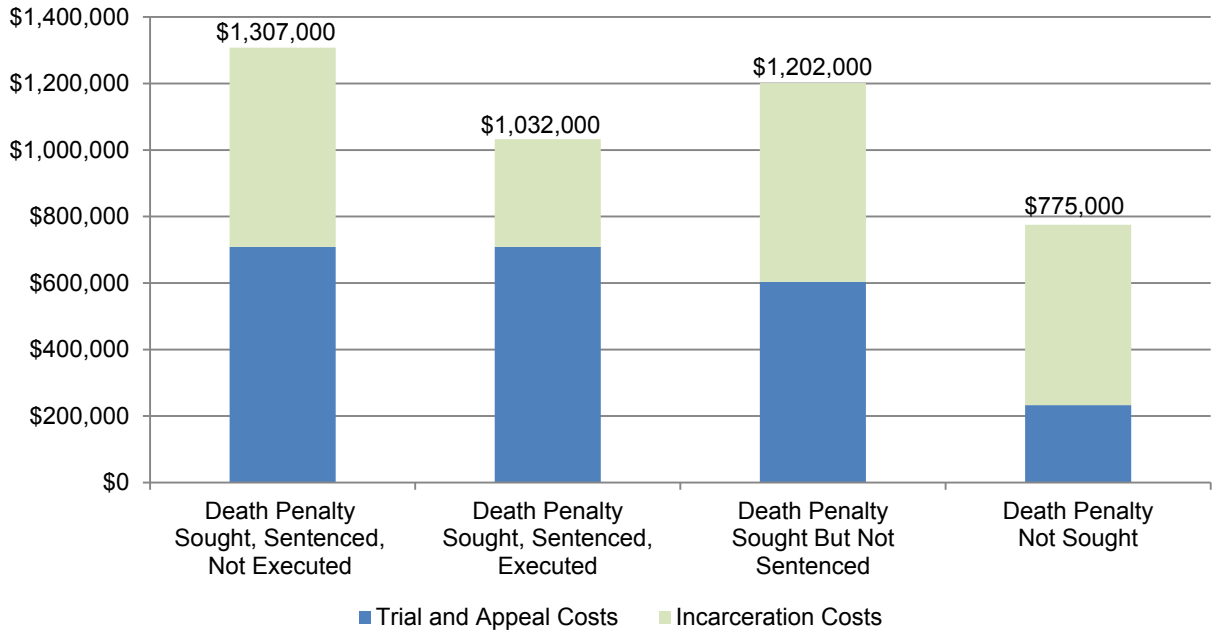
Adjudicating death penalty cases takes more time and resources compared to murder cases where the death penalty sentence is not pursued as an option. These cases are more costly because there are procedural safeguards in place to ensure the sentence is just and free from error. Based on our sample of 28 cases and average costs we were able to accumulate, the death penalty, from arrest through the end of incarceration, costs about $532,000 more than other murder cases.

We selected 28 of 209 murder cases that met our criteria to provide relevant cost information from Washoe and Clark counties from January 1, 2000, to December 31, 2012. Cases were carefully chosen for either the trial or appeal phase based upon the timeframe of the case, and whether it was tried as a death penalty case and the penalty was imposed, not imposed, or the case was not tried under this sentence option. Fifteen cases were used to determine average costs related to the trial phase and 13 cases were utilized for cost analysis during the appeal phase. The average cost for both phases were combined to ascertain estimated case costs for each of the three types of cases.

Estimated incarceration and medical costs were determined through an analysis of Nevada Department of Corrections (NDOC) data. Incarceration and medical costs were calculated using the median age of inmate intake and the age at which an inmate in one of our first degree murder sentence populations would be expected to exit the system, either through natural death, execution, or parole. Utilizing fiscal year 2013 cost information, we calculated incarceration and medical costs for the time span between intake and exit, applied inflationary and discount factors, and totaled these amounts. Incarceration and medical costs were then added to the trial and appeal costs to attain a total for each case type.

The aggregation of estimated trial and appeal case and incarceration costs shows death penalty cases require more governmental resources than when the penalty is not sought. Death penalty case costs are influenced by a number of factors including higher defense costs, more pretrial activity, jury penalty hearings, more rigorous and complex appeals, and higher incarceration costs mainly prior to, but also after sentencing. As shown in Exhibit 4, even though only one "involuntary" execution has occurred in the State of Nevada since 1977, costs for the death penalty are lower if an execution is carried out; however, a timely execution does not negate all of the additional costs accumulated during the trial and appeal phases.

Cost Differential of the Death Penalty **Exhibit 4**



Source: Auditor compilation of data from state and local governmental agencies. See page 96 for a complete list.

Notes: Trial and appeal costs are based on a sample of 28 cases and incarceration costs are calculated from the Nevada Department of Corrections inmate information systems. Trial and appeal costs are incomplete because certain court and prosecution costs could not be obtained. Specifically, court and prosecution costs primarily include the cost of in-court activities and exclude costs incurred outside of the courtroom. Furthermore, appeal costs do not fully represent the entirety of the appeals process since many of our cases are still being adjudicated. If actual costs were obtained, we would anticipate trial and appeal costs to be higher.

The incarceration costs for the death penalty sought, sentenced, and executed subgroup is based on the one individual who was "involuntarily" executed. For the subgroup of death penalty sought but not sentenced, 67% of the defendants were sentenced to life without the possibility of parole. For the subgroup death penalty not sought, 56% of the defendants were given a parole eligible sentence. Therefore, we applied incarceration costs to these subgroups based on this. Further, because all of our cases were selected after 1995, we applied the higher sentence structure for parole eligible individuals. For further information please see page 58.

Although we obtained costs for most of the areas noted in A.B. 444, we were not able to determine an accurate and complete accounting of all cost centers. Specifically, some costs were determined based on estimates provided by staff involved in cases. Additionally, some costs were unable to be accumulated because entities were hesitant to provide estimates and actual time records were not maintained. Significant agencies for which we were not able to accumulate cost information, or costs are limited, include the Nevada Supreme Court, the Judicial District Courts, and county district attorneys. As a result, totals noted in Exhibit 4 are understated as many of these cost centers have pivotal roles in the process of adjudicating cases. We cannot predict exactly how this missing cost data would affect noted totals or results.

Case Costs

For the costs we were able to obtain, case costs for death penalty cases average about three times as much as non-death penalty cases. Non-death penalty case costs are not as extensive as death penalty case costs because non-death penalty cases are not subject to the same requirements. Process differences for death penalty cases include: two attorneys are appointed to represent indigent defendants; juries are death qualified; penalty hearings are conducted in front of juries to weigh aggravating and mitigating evidence; and cases are automatically appealed to the Nevada Supreme Court which must perform an extensive review. Exhibit 5 shows average case costs for the trial and appeal phases for our sampled cases.

Average Case Costs **Exhibit 5**
Trial and Appeal Phases

Case Type	Trial	Appeal	Totals
Death Penalty Sought and Sentenced	$566,352	$142,265	$708,617
Death Penalty Sought But Not Sentenced	$552,318	$ 51,138	$603,456
Death Penalty Not Sought	$177,256	$ 55,769	$233,025

Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Costs are based on a sample of 28 cases, 15 for the trial phase and 13 for the appeal phase. Trial and appeal costs are incomplete because certain court and prosecution costs could not be obtained. Specifically, court and prosecution costs primarily include the cost of in-court activities and exclude costs incurred outside of the courtroom. Furthermore, appeal costs do not fully represent the entirety of the appeals process since many of our cases are still being adjudicated. If actual costs were obtained, we would anticipate trial and appeal costs to be higher.

Death penalty trials and appeals usually take longer for the judicial system to process. With the exception of the state postconviction appeal segment, which, for many of our cases was still ongoing, death penalty cases took more time to reach a resolution than needed for non-death penalty murder cases. State postconviction appeals deal with issues outside of the trial record and typically focus on ineffective assistance of counsel. Exhibit 6 shows the average time in the judicial system for certain trial and appeal activities.

Average Time for Judicial Activities **Exhibit 6**

Case Type	Years Until Sentencing Hearing for the Trial Phase	Years Until a Decision on Direct Appeal
Death Penalty Sought and Sentenced	3.50	2.77
Death Penalty Sought But Not Sentenced	2.68	1.65
Death Penalty Not Sought	2.13	1.48

Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Overall, the various cost centers we reviewed from the time of arrest through the end of the appeals process demonstrate costs are higher for death penalty cases. While the total costs cannot be definitively determined based on the lack of certain data components and potential variables associated with the pretrial, trial, and penalty phases, the information presented does provide perspective on how much the death penalty impacts the costs of a case for state and local governments consistent with all cost centers reviewed.

Incarceration Costs

Nevada has only performed one “involuntary” execution since 1977. That execution occurred 11 years after the defendant was sentenced. As a result, death penalty inmates are incarcerated for longer periods of time in the prison system which increases facility and medical costs. Furthermore, death penalty inmates are typically housed at Ely State Prison, one of the state’s most expensive prison facilities, while inmates not sentenced to the death penalty are largely distributed to lower cost facilities within the system. Exhibit 7 details the costs related to the different

sentence types based on data from the Nevada Department of Corrections.

Total Incarceration Costs **Exhibit 7**

Sentence	Median Intake Age	Expected Years Incarcerated	Total Facility Cost	Total Medical Cost	Execution and/or Burial Cost	Totals
Death Penalty-Natural Causes	30	25	$521,164	$ 75,390	$ 2,446	$599,000
Death Penalty-Execution	30	11	$258,050	$ 18,797	$47,107	$323,954
Life Without the Possibility of Parole	31	31	$459,787	$135,876	$ 2,446	$598,109
Life With the Possibility of Parole-After 1995	27	32	$430,218	$112,065	-	$542,283
Life With the Possibility of Parole-Before 1995	27	14	$218,474	$ 21,905	-	$240,379

Source: NDOC's Nevada Offender Tracking Information System, Nevada Corrections Information System, and auditor calculations.

Note: The expected years incarcerated is the difference between the median intake age and the median age of natural death for the death penalty-natural causes and life without the possibility of parole subgroups. The median age of natural death is 55 and 62 respectively. The death penalty-execution subgroup is based on the one "involuntary" execution conducted in the State of Nevada since July 1, 1977.

We could not estimate an expected time period when executions might occur in the future. Consequently, we calculated two cost structures for death penalty inmates: 1) based on the median age of natural death occurring in the death penalty subgroup population as inmates may be expected to live a natural life in prison without executions; and 2) the elapsed time period of the one "involuntary" execution. If death penalty inmates are not executed, then those sentenced to death are the most costly to incarcerate. The death penalty subgroup shows only slightly higher incarceration costs compared to the life without the possibility of parole subgroup because the number of years they are expected to remain incarcerated is lower. This occurs because the median age of natural death was 55 for the death penalty subgroup compared to the 62 experienced by the life without the possibility of parole subgroup.

Potential Cost Savings Related to the Death Penalty

Cost savings due to the existence of the death penalty could not be quantified. Prosecutors strongly suggested the death penalty is not used as a strategic litigation choice to reduce or avoid a trial and its associated costs through plea bargaining. Nevertheless, plea bargains are made with defendants who are facing the

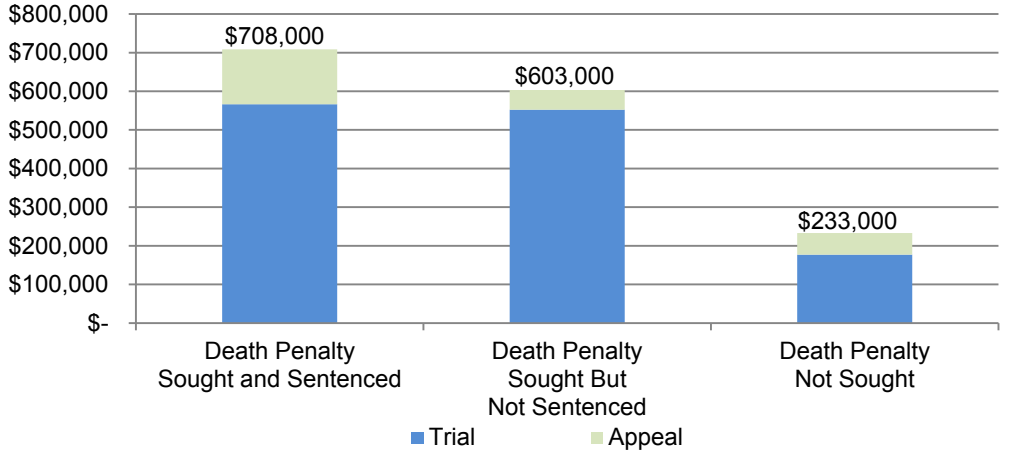
possibility of death; however, the rate at which this occurs is lower than for non-death penalty murder cases. Our review of case data from the Second and Eighth Judicial District Courts, covering Washoe and Clark counties respectively, showed about 53% of death penalty cases from 2000 to 2012 were plea bargained at some point in the case process. This is lower than the rate of plea bargaining that occurs in non-death penalty murder cases which happens about 67% of the time.

Clark County plea bargained a greater percentage of murder cases than did Washoe County, by about 25 percentage points; but, Clark County's murder case load exceeded that of Washoe County by 1,160 cases during the 12 year time period. Savings due to plea bargaining death penalty cases correlates directly to when the plea is finalized during the trial phase. Plea bargains negotiated during the early part of the pretrial segment realize the most savings.

Death Penalty Cases Cost More

Case costs, incorporating the trial and appeals phases, averaged about three times more resources than non-death penalty cases. Almost every cost center we were able to accumulate cost information for was higher for death penalty cases regardless of whether the cost was an estimate or based on actual verifiable data, mainly because of enhanced procedural requirements related to death penalty trials and related appeals. Exhibit 8 shows total case costs for sampled cases.

Trial and Appeal Average Case Costs **Exhibit 8**



Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Trial and appeal costs are incomplete because certain court and prosecution costs could not be obtained. Specifically, court and prosecution costs primarily include the cost of in-court activities and exclude costs incurred outside of the courtroom. Furthermore, appeal costs do not fully represent the entirety of the appeals process since many of our cases are still being adjudicated. If actual costs were obtained, we would anticipate trial and appeal costs to be higher.

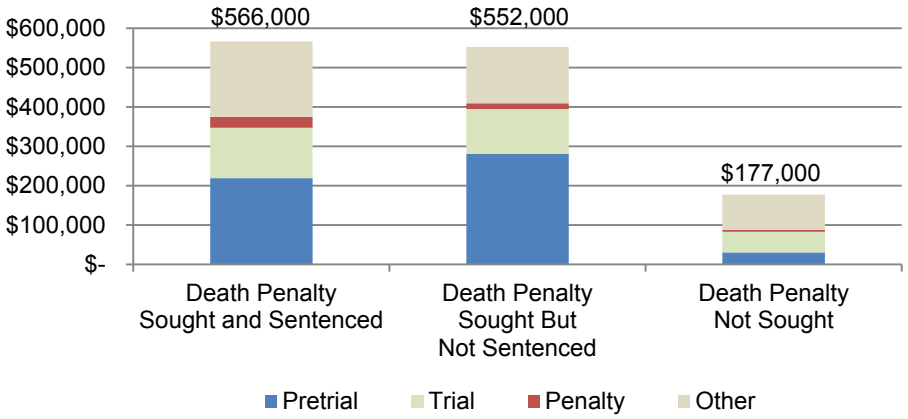
Slight cost differences occur when the sentence given is not death even if the case is pursued as such by the prosecution. In these cases, trial costs are generally the same, but appeals costs are less. Lower total appeal costs account for the difference between

the death penalty sought and sentenced and the death penalty sought but not sentenced subgroups.

More Time to Trial Increases Costs for Death Penalty Cases

Based on our sample, death penalty cases are estimated to cost considerably more during the trial phase than non-death penalty cases. Specifically, non-death penalty cases cost about one-third as much compared to when death is pursued as a sentencing option. As expected, costs are largely driven by the possibility of the death penalty since case costs were similar when the death penalty was an option regardless of whether it was sentenced. Additional costs are basically driven by a lengthy and eventful pretrial period, which, in turn, increases other amounts such as county detention costs. Totals noted below contain estimates and are not complete since certain cost components could not be provided. As a result, amounts shown in Exhibit 9 are understated and may have been different had all costs been obtained.

Average Trial Costs by Segment **Exhibit 9**



Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Pretrial, trial, and penalty segment costs are incomplete because certain court and prosecution costs could not be obtained. Specifically, court and prosecution costs primarily include the cost of in-court activities and exclude costs incurred outside of the courtroom. If actual costs were obtained, we would anticipate trial costs to be higher. Other costs are detention, forensic lab, and transport costs.

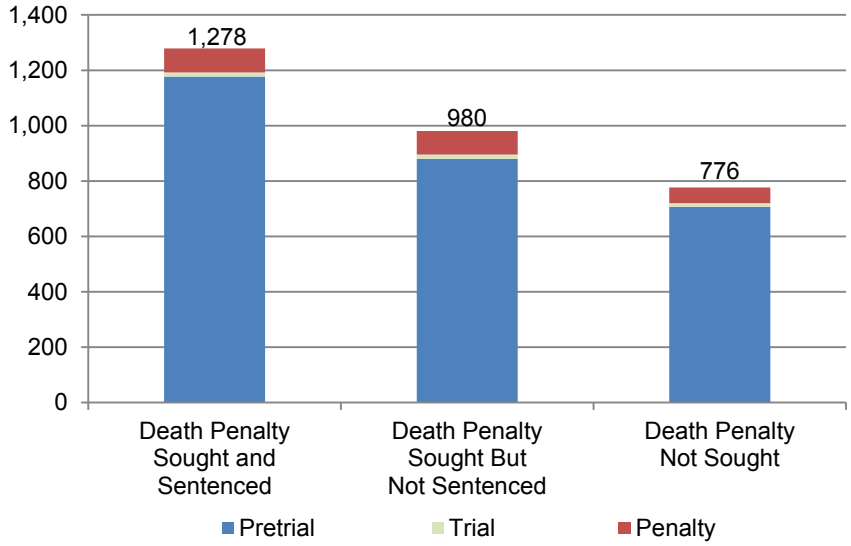
Inherently, death penalty trials cost more. Enhanced processes require multiple defense attorneys, more motions and continuances require additional court time and extend the time to trial, and jury penalty hearings increase total trial length. All of

these factors contribute to additional costs, but defense costs and longer detention terms made the biggest difference for the costs we were able to account for.

Our sample of trial cases was based on the time period between January 1, 2007, and December 31, 2012. We selected 15 cases for review. Ultimately, after a thorough analysis of court dockets, our sample contained five death penalty sought and sentenced cases, four death penalty sought but not sentenced cases, and six cases where the death penalty was not sought. Three of these cases were cases where defendants were convicted of second degree murder. Furthermore, not all cases yielded information for all types of relevant costs. As a result, we averaged costs by cost type for those cases where cost information was available if we expected similar costs would have been incurred in all cases.

We accumulated costs based on the three distinct trial segments of pretrial, trial and penalty. The pretrial segment incorporated the period from the date of the crime or arraignment until the final court hearing before the start of the trial. Actual trial days were denoted in case dockets and included all court time through the jury verdict. The penalty segment included jury penalty proceedings, if applicable, through the sentencing hearing. The vast majority of costs are incurred during the pretrial segment when attorneys are vetting various issues and building strategies. This segment was notably much longer for death penalty versus non-death penalty cases. Exhibit 10 shows the average length of time elapsed in each distinct segment.

Average Lifespan of Cases in Days **Exhibit 10**



Source: Court dockets and register of actions for selected cases provided by Washoe and Clark Judicial District and Justice Courts.

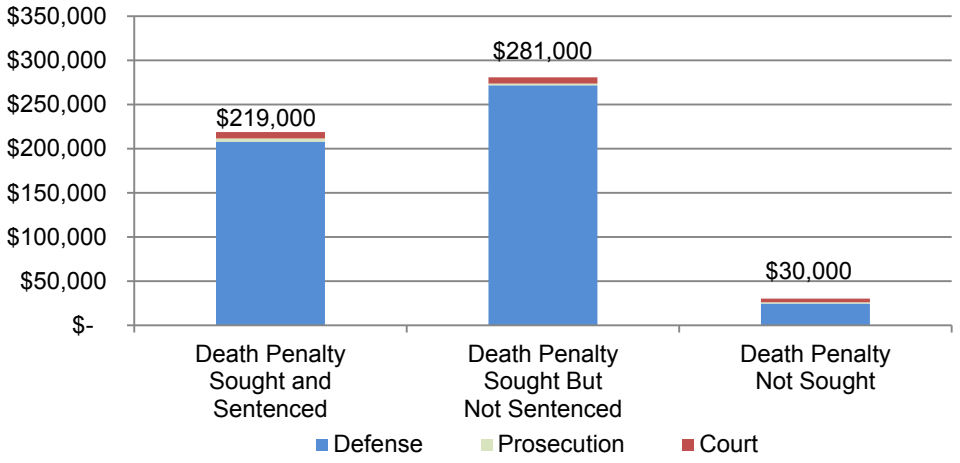
Note: Days were measured for the entire time period of the segment. Penalty segments were calculated from the day after the trial verdict to the sentencing hearing which can be weeks to months after the verdict is rendered.

Finally, we determined other costs related to the trial phase including forensic, transport, and county detention facility costs. Combined, these costs were also more for death penalty cases mainly due to longer holding times prior to trial, although all costs centers were typically more.

Pretrial Segment

Total pretrial costs were as much as nine times more when the death penalty was sought. This happens because the pretrial segment is lengthy as the defense requires adequate time to prepare the case and file motions to obtain relief from the courts. This is evidenced by the fact that death penalty cases have twice as many in-court hearings, on average, than non-death penalty cases. We were unable to determine costs related to the prosecution and court for time other than in-court hearings as responsible agencies did not maintain actual time records and were hesitant to provide estimates. As a result, totals noted below are understated, likely significantly. Exhibit 11 shows average pretrial costs for the different case types.

Average Pretrial Costs – All Components **Exhibit 11**



Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Pretrial costs are incomplete because certain court and prosecution costs could not be obtained. Specifically, court and prosecution costs primarily represent the cost of in-court activities and do not reflect costs incurred outside of the courtroom. If actual costs were obtained, we would anticipate pretrial costs to be higher for the prosecution and court.

Defense Costs

Defense costs for death penalty cases exceed those of non-death penalty cases by as much as 11 times and are highest for the pretrial segment. Our results indicate 60-80% of total defense costs are attributable to pretrial activities and functions. Defense costs during pretrial account for a significant portion of overall defense costs because the pretrial segment is much longer than the trial or penalty segments and investigators and mitigation specialists are also performing significant services for defendants during this time.

Higher defense costs for death penalty cases are one of the fundamental reasons why case costs are greater than for non-death penalty cases. In large part, defense costs are high due to Nevada Supreme Court rules requiring two attorneys be appointed to represent defendants. Two attorneys are appointed as part of the additional process requirements in place because of the finality and severity of the penalty defendants are confronted with. Non-death penalty cases do not require multiple attorneys with specific experience requirements, so costs tend to be less. As shown in Exhibit 12, average costs per case varied from as low as

$25,000 when the death penalty was not sought, to a high of $272,000 when the death penalty was sought.

Average Pretrial Defense Costs By Category **Exhibit 12**

Case Type	Attorneys and Staff	Experts, Witnesses, Investigators, Other [1]	Total
Death Penalty Sought and Sentenced	$176,265	$31,732	$207,997
Death Penalty Sought But Not Sentenced	$229,552	$42,179	$271,731
Death Penalty Not Sought	$ 16,801	$ 7,795	$ 24,596

Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Attorney and staff costs, when provided by the Office of the Public Defender and the Alternate/Special Public Defender, were estimated by the respective entities. While we applied reasonableness tests to this information and made some adjustments, we were unable to definitively verify estimated hours because time records were not obtained. Actual costs may have differed if time records had been available.

[1] Other defense costs include travel, records, and various small incidentals.

While average case costs show a large disparity between different case types (death penalty versus non-death penalty), individual cases within each case type also vary. For the non-death penalty cases we examined, the pretrial defense costs ranged from $14,000 to $38,000. Similarly, when the death penalty was sought pretrial defense costs per case ranged from $99,000 for the least costly case to over $490,000 for the most expensive case. Defense attorneys told us pretrial defense costs are unpredictable and can vary greatly depending upon the unique circumstances of each case. Items of interest with regard to the high dollar case include:

- The pretrial phase spanned roughly 4.5 years.
- Estimated time for the lead attorney exceeded 3,000 hours and co-counsel was about half that.
- Expert witness, investigator, and other costs were $54,000.
- Attorneys, staff, and experts traveled out of the state and country for mitigation work.

Defense costs were subject to the limited availability of actual cost data. For most cases, defense costs were determined based on estimates provided from staff who worked on cases. While we applied reasonableness tests to this information and made some adjustments, we were unable to verify the overall accuracy of the

estimates because time records were not maintained. Furthermore, of the 15 trial cases in our sample, 4 retained services from private counsel and attorney fees are not known.

Prosecution Costs

Although the Clark County and Washoe County District Attorneys' Offices did not provide estimated or actual hours on our selected cases, we calculated a cost based on the time they would have been in court according to the length of hearings using court case records and transcripts. The in-court costs of prosecuting a death penalty case was higher than for non-death penalty cases. The differences in costs are attributable primarily to the additional hearings in the court record for death penalty cases during pretrial. In addition, death penalty case totals are more because more staff can be assigned to provide support services. For example, court transcripts typically reflected two prosecuting attorneys were associated with death penalty cases but not always on non-death penalty cases; and, in certain instances, a victim's advocate and an investigator also provided more support on death penalty cases.

Prosecution costs were subject to the limited availability of actual cost data. Additional costs would be expected to be incurred outside of the court room. Considering the length of time between arrest and trial can span years, a certain amount of attorney and staff time would be incurred in preparing and responding to motions and getting ready for trial. These out-of-court costs are likely to be significant and much greater than time spent in-court, but we are unable to estimate this because district attorneys in both counties do not maintain time records and were hesitant to provide estimates.

Court Costs

Court costs follow other pretrial costs in that the number and frequency of motions influenced total estimated costs. Since pretrial activities for death penalty cases are about double that of non-death penalty cases, court costs follow accordingly; although, other costs, such as transcript fees, influence totals as well. Costs during the pretrial phase were minimal in comparison to those

incurred for the trial phase, as discussed later in the report, mainly because out-of-court time could not be accounted for.

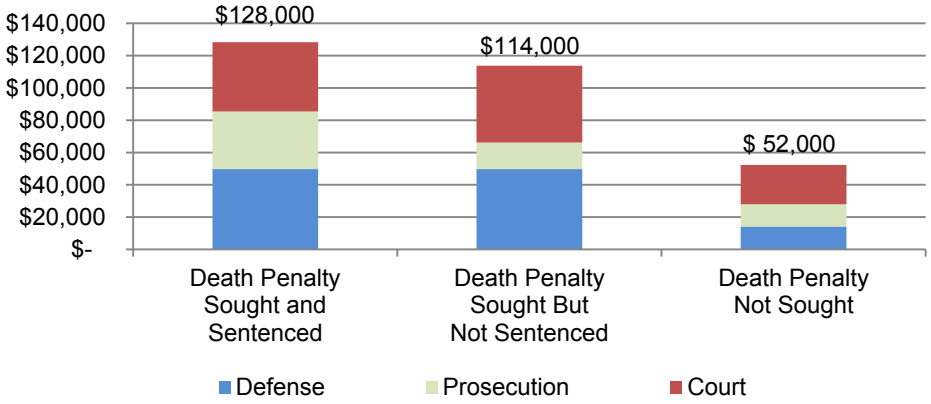
Court costs were influenced most by the extent of pretrial hearings since this was the data available to determine costs. As noted previously, death penalty cases experience about twice as many pretrial hearings as non-death penalty cases. Pretrial court costs for death penalty cases ranged from $2,500 to $15,000. Costs were much higher in one case because the court utilized an interpreter during proceedings. Non-death penalty cases can also utilize court resources with regularity. Court costs ranged from a low of $1,600 to a high of $7,600. This demonstrates that court resources necessary to adjudicate a case are not consistent from one case to the next and are largely determined by the circumstances of the case.

Court costs we calculated were subject to a limited availability of actual cost data. Consequently, costs noted above are not complete as costs incurred outside of actual hearing times were not accounted for since the court does not track this time and was hesitant to estimate it. The amount of time necessary during the pretrial segment to review motions and research arguments and case law is likely to be considerably more than in-court time. We determined in-court time through transcripts, noting the number of minutes that each pretrial hearing lasted. In some cases, we relied upon estimated hearing times provided by the courts or used transcript data to calculate time estimates for pretrial hearings, because the actual length of the hearings was not available.

Trial Segment

Trials for those facing the possibility of a death sentence are more expensive than those for non-death penalty defendants. Increased costs are the result of more trial days and more expensive transcript fees. Exhibit 13 shows these differences result in trial costs in death penalty cases being more than twice as costly.

Average Trial Costs – All Components **Exhibit 13**



Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Trial segment costs for prosecution and court primarily represent the cost of in-court activities and do not reflect costs incurred outside of the courtroom. If actual costs were obtained, we would anticipate trial costs to be higher for the prosecution and court.

Based on our sample cases, trials for defendants facing the death penalty are slightly longer. However, as noted throughout the report, great variation can exist in cases within the same sample case type. For example, death penalty trials transpired over 7 to 15 days. Correspondingly, non-death penalty trials ranged from 3 to 10 days to complete. The time period needed by the courts to conclude a case highly influences total costs for the trial segment since all cost centers are dedicating staff resources fairly equally.

Defense Costs

Defense costs for the trial phase were significantly less than those incurred in the pretrial phase but were still more for death penalty cases by more than three times. Average costs ranged from about $14,000 when the death penalty was not sought to $50,000 for death penalty cases. Attorney time was not the most expensive part of defense costs during the trial phase, as expert witnesses and other defense costs were more than half of total defense costs for those facing the death penalty. Exhibit 14 shows the average trial defense costs by expense category for the murder cases we evaluated.

Average Trial Defense Costs by Category **Exhibit 14**

Case Type	Attorneys and Staff	Experts, Witnesses, Investigators, Other [1]	Total
Death Penalty Sought and Sentenced	$19,750	$29,988	$49,738
Death Penalty Sought But Not Sentenced	$18,201	$31,566	$49,767
Death Penalty Not Sought	$ 9,243	$ 4,925	$14,168

Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Attorney and staff costs, when provided by the Office of the Public Defender and the Alternate/Special Public Defender, were estimated by the respective entities. While we applied reasonableness tests to this information and made some adjustments, we were unable to definitively verify estimated hours because time records were not obtained. Actual costs may have differed if time records had been available.

[1] Other defense costs include travel, records, and various small incidentals.

Cases in our sample incurred a wide range of costs related to the defense in the trial segment. Case totals fluctuated from $27,000 to $73,000 for death penalty cases and $7,600 to $15,000 for non-death penalty cases. Defense costs are less when defendants are represented by fewer attorneys.

Defense costs noted above contain some costs for time prior to trial. Costs included in our calculations incorporated time between the last pretrial hearing and the actual start of the trial for preparation. As a result, defense costs are slightly more than those calculated for the prosecution and courts, which encompass only the exact days the trial transpired.

As noted in the pretrial segment, some limitations were experienced in obtaining defense costs. Please see page 21 for more information.

Prosecution Costs

The cost of prosecuting a death penalty trial is nearly twice the cost of a non-death penalty case. Since costs were based on actual court time, costs are primarily driven by the length of the trial; however, prosecuting agencies often assign multiple attorneys to cases which increases costs as well. Exhibit 15 shows the average costs of attorney and staff time for trial.

Average Trial Prosecution Costs **Exhibit 15**
In-Court Time Only

Case Type	Attorneys and Staff
Death Penalty Sought and Sentenced	$17,054
Death Penalty Sought But Not Sentenced	$16,468
Death Penalty Not Sought	$10,792

Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Prosecution costs represent the cost of in-court activities and do not reflect costs incurred outside of the courtroom. We would expect the prosecution to incur some time and expenses outside of the courtroom during this phase. If actual costs were obtained, we would anticipate costs to be higher.

In addition to the attorney and staff costs in Exhibit 15, we were provided actual costs for lay witnesses, experts, and other ancillary costs for the three cases in Washoe County. The cost differences were significant between case type. For the death penalty case, expert fees totaled more than $5,000, and witness costs, including travel, were more than $13,000. The other two cases, where the death penalty was not sought, averaged about $3,000 in expert and witness fees. While these costs vary based on the nature of the case, considerably higher death penalty costs are consistent with additional due process requirements and a higher level of scrutiny imposed in death penalty cases.

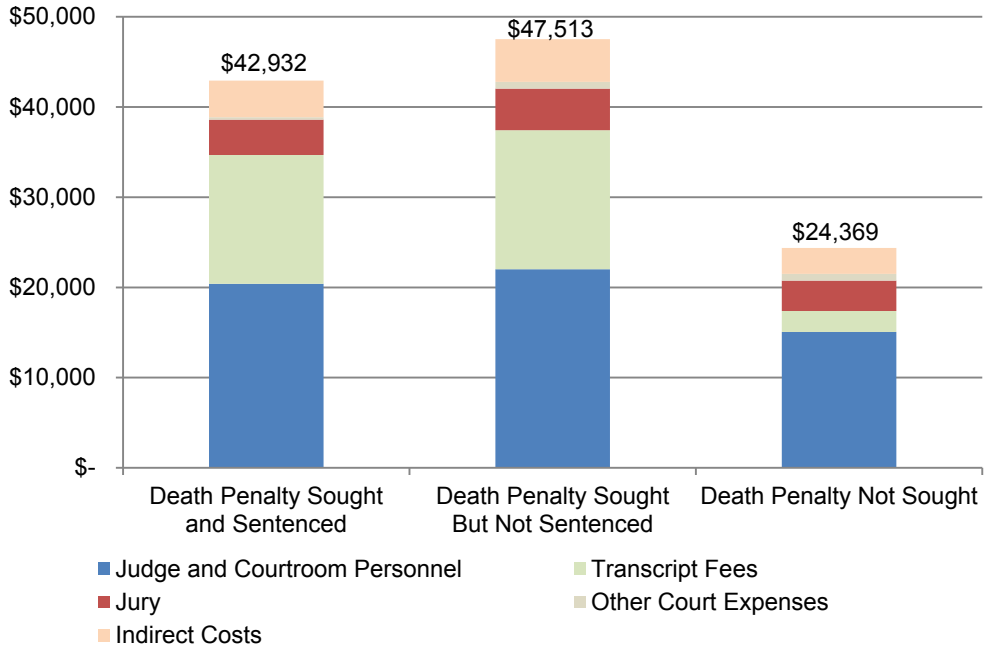
As noted in the pretrial segment, some limitations were experienced in obtaining prosecution costs. Please see page 22 for more information.

Court Costs

Court costs for the trial phase were far higher than those for the pretrial and penalty segments, as expected. Since out-of-court time was not able to be captured, the majority of the court's resources would be expected to be consumed during the trial segment. Furthermore, high costs are influenced by transcript fees which are paid at a higher rate due to the delivery requirements for death penalty cases. Again, the cost of death penalty cases exceeded that of non-death penalty cases by about twice the amount. Exhibit 16 shows average trial court costs by cost center for our selected sample.

Average Trial Court Costs
In-Court Time Only

Exhibit 16



Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Trial costs represent the costs of in-court activities and expenses and generally do not reflect costs incurred outside of the courtroom. We would expect the court to incur some time and expenses outside of the courtroom during this segment. If actual costs were obtained, we would anticipate costs to be higher. Other court expenses include court reporters, interpreters, competency evaluations, and postage for jury solicitations. Indirect costs include an allocation for administrative and operating costs.

Court costs were more for death penalty cases because the number of days over which trials occur are slightly longer. Further, transcripts are not required for non-death penalty cases and are not always ordered as part of the court record as evidenced by the fluctuation in case costs. Death penalty case costs ranged from a low of $32,000 to a high of $69,000, and non-death penalty case costs went from $9,600 to $38,000.

Transcript fees for death penalty cases can accumulate rapidly. For example, transcript fees during the trial of one death penalty case exceeded $20,000. These fees are higher for death penalty cases because Nevada Supreme Court Rule 250 requires transcripts be filed within 24 hours for each day of trial proceedings in death penalty cases. The rapid turnaround is compensated at per page rates that are double or more.

Conversely, transcripts are not required to be provided in non-death penalty cases unless requested. Our review of cases found about half of non-death penalty cases did not have transcripts provided, or they were filed at the lowest per page rate. The statutory rate for transcripts varies from $3.55 per page for a turnaround of 5 days or more, to $7.50 per page for a 1 day turnaround.

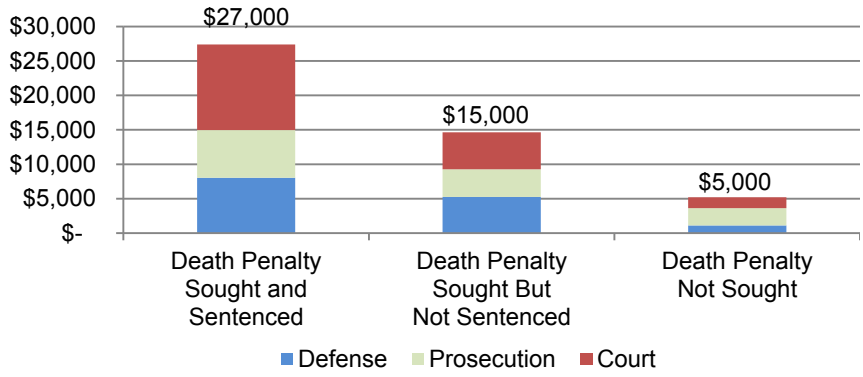
While not a significant cost overall, jury selection is more cumbersome in death penalty trials due to the necessity to qualify juries. These requirements can result in longer periods, and slight cost increases due to the need to identify and select jurors who are capable of deliberating a death penalty case. Examples of how jury selection can impact trial length include more peremptory challenges of potential jurors and use of jury questionnaires for screening purposes.

As noted in the pretrial segment, some limitations were experienced in obtaining court costs. Please see page 23 for more information.

Penalty Segment

Penalty segments are generally more costly, by more than five times as much, because separate penalty hearings are mandatory for death penalty cases. Defendants not facing the death penalty can opt to be sentenced by a judge, which more often than not, is what was requested. For the most part, the cost of a jury hearing is the primary reason why death penalty cases were more expensive for this segment. With death penalty cases, NRS 175.552 requires the jury to stay for the penalty hearing after the verdict. The penalty hearing is much like a trial in that the prosecution and defense present their cases for and against the death penalty. The penalty hearing concludes when the jury decides whether to impose the death penalty. Exhibit 17 details the cost difference by case type for the penalty segment.

Average Penalty Costs – All Components **Exhibit 17**



Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Penalty segment costs for prosecution and court primarily represent the cost of in-court activities and do not reflect costs incurred outside of the courtroom. If actual costs were obtained, we would anticipate penalty costs to be higher for the prosecution and court.

Defense Costs

Defense costs for the penalty segment were low in comparison to those for the pretrial and trial phases. This reflects the short duration of the segment, which generally commenced immediately after the jury verdict unless defendants opted to be sentenced by a judge. Average costs ranged from about $1,000 when the death penalty was not sought, to $8,000 when death was sentenced. Exhibit 18 shows the average defense costs for the penalty segment by expense category for the murder cases we evaluated.

Average Penalty Defense Costs **Exhibit 18**

Case Type	Attorneys and Staff
Death Penalty Sought and Sentenced	$8,035
Death Penalty Sought But Not Sentenced	$5,240
Death Penalty Not Sought	$1,115

Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Attorney and staff costs, when provided by the Office of the Public Defender and the Alternate/Special Public Defender, were estimated by the respective entities. While we applied reasonableness tests to this information and made some adjustments, we were unable to definitively verify estimated hours because time records were not obtained. Actual costs may have differed if time records had been available.

Defense costs were slightly lower for those not sentenced to death because two defendants opted to be sentenced by a judge, instead of facing a jury hearing, because the notice of intent to

seek the death penalty was removed by the prosecution. Defense costs during this segment ranged from $2,000 to $14,000 for death penalty cases, with the low case being one where the defendant opted out of a jury hearing because the notice of intent was removed. Non-death penalty case costs were much lower with costs between $600 and $1,800.

As noted in the pretrial segment, some limitations were experienced in obtaining defense costs. Please see page 21 for more information.

Prosecution Costs

Similar to trial costs, our calculation of the cost of prosecuting a case in the penalty phase is dependent on the length of the penalty hearing. On average, penalty hearings lasted 2 days while sentencing hearings by judges lasted not more than a few hours. Sentencing was conducted by the judge in almost all cases where the option was allowed, thus avoiding the additional time of a jury penalty trial. Average costs between the two types of cases ranged from $2,500 to nearly $7,000, about three times as much for death penalty cases. Exhibit 19 shows the differences in costs in the penalty phase.

Average Penalty Prosecution Costs In-Court Time Only **Exhibit 19**

Case Type	Attorneys and Staff
Death Penalty Sought and Sentenced	$6,932
Death Penalty Sought But Not Sentenced	$4,031
Death Penalty Not Sought	$2,495

Source: Auditor compilation of data from state and local governmental agencies. See page 96 for complete list.

Note: Prosecution costs represent the cost of in-court activities and do not reflect costs incurred outside of the courtroom. We would expect the prosecution to incur some time and expenses outside of the courtroom during this phase. If actual costs were obtained, we would anticipate costs to be higher.

Prosecution costs for death penalty cases ranged from $1,700 to $8,600 largely based on the number of days required for the penalty hearing to conclude. Non-death penalty costs were lower with variations between $1,400 and $7,000. Differences in non-death penalty prosecution costs were related to one defendant

who was represented by private counsel, resulting in no costs for the defense segment, who opted for a jury hearing even though he could have been sentenced by the judge. All other defendants in the death penalty not sought subgroup chose to be sentenced by a judge instead of facing a jury hearing.

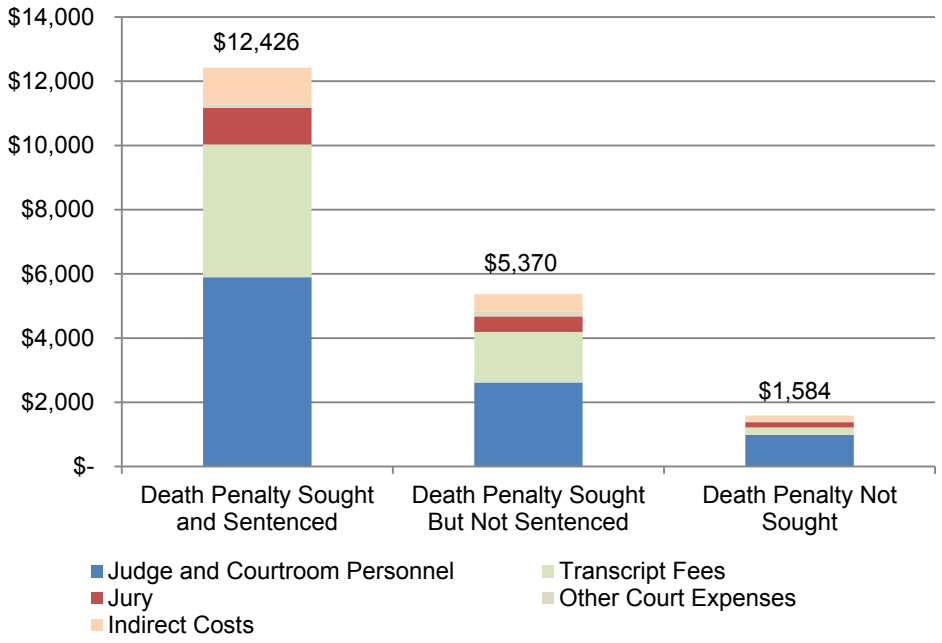
As noted in the pretrial segment, some limitations were experienced in obtaining prosecution costs. Please see page 22 for more information.

Court Costs

The overall average court costs for the penalty segment were determined by the amount of time spent in the courtroom for the penalty trial and sentencing. Within the three subgroups of murder cases, court costs for the penalty segment were highest when the death penalty was sentenced. Additional time in court, transcript fees, and jury costs were all higher for those sentenced to death. Cost differences as shown in Exhibit 20 averaged between $1,584 to $12,426.

Average Penalty Court Costs
In-Court Time Only

Exhibit 20



Source: State and local governmental agencies. See page 96 for complete list.

Note: Penalty costs represent the cost of in-court activities and expenses generally and do not reflect costs incurred outside of the courtroom. We would expect the court to incur some time and expenses outside of the courtroom during this segment. If actual costs were obtained, we would anticipate costs to be higher. Other court expenses include court reporters and interpreters. Indirect costs include an allocation for administrative and operating costs.

In contrast, we found when the death penalty was not sought the defendants generally waived their rights for the jury penalty hearing, electing instead for the judge to decide the sentence. In one of the non-death penalty cases the jury decided the penalty instead of the judge.

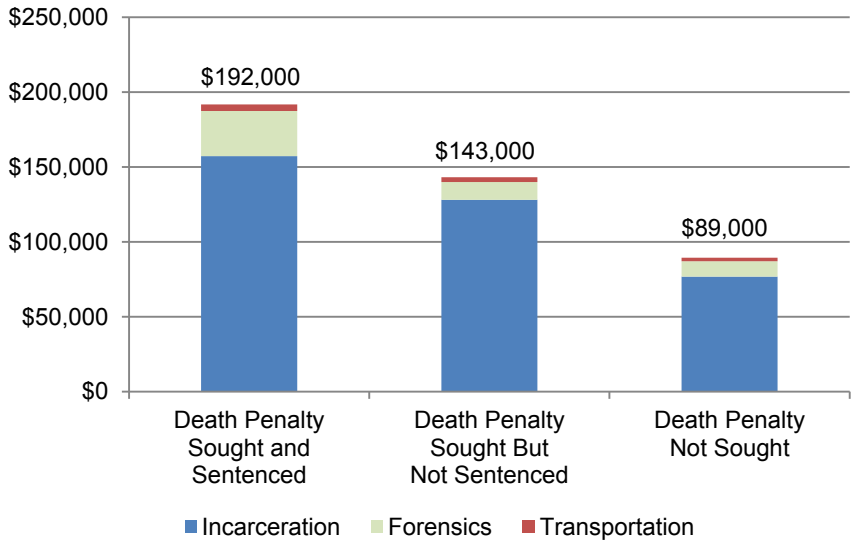
Court costs in the penalty segment had large fluctuations between case type. When the death penalty was sought court costs ranged from $4,500 to $17,600, and from $40 to $500 for non-death penalty cases. Similar to the trial segment, transcript fees for penalty hearings are also expensive. For example, transcript fees in the penalty segment for one case were $7,600. For that case, the penalty phase with the jury lasted 3 days. Furthermore, jury fees occur when penalty hearings are conducted. These costs varied from $500 to $1,800 in the penalty segment.

As noted in the pretrial segment, some limitations were experienced in obtaining court costs. Please see page 23 for more information.

Other Costs Between Arrest and Sentencing

We also determined other costs, where available, related to the trial phase including county detention facility, forensic and transportation costs. These costs include those incurred from the time of arrest through sentencing. Consistent with our observations in the preceding sections of this report, these costs are typically higher for cases where the death penalty is being sought mainly due to longer holding times prior to trial. Exhibit 21 shows other costs by primary cost component.

Average Detention Facility, Forensic Laboratory, and Transportation Costs **Exhibit 21**



Source: State and local governmental agencies. See page 96 for a complete list.

Detention Facility Costs

From arrest through sentencing, the cost of housing death penalty defendants is about twice that of those where the death penalty is not being sought. Furthermore, on average death penalty defendants are detained nearly twice as long as defendants where the death penalty is not being sought. This is consistent with the results of our pretrial and trial work indicating additional time is incurred based on the unique requirements for preparation of a death penalty trial. Exhibit 22 shows the differences in detention

time and costs for our selected cases from the time of arrest through sentencing.

Average Cost of Detention From Arrest to Sentencing **Exhibit 22**

Case Type	Average Cost of Detention	Average Days Detained	Average Daily Cost
Death Penalty Sought and Sentenced	$157,299	1,245	$126.34
Death Penalty Sought But Not Sentenced	$128,125	886	$144.61
Death Penalty Not Sought	$ 76,793	618	$124.26

Source: Clark County Detention Center, Washoe County Detention Center, Lake's Crossing Center, NDOC, and auditor analysis.

For the majority of the detention period, defendants were housed in a county detention facility. The daily cost of housing a defendant in the Clark County Detention Center or the Washoe County Detention Center was $135 and $132, respectively, for fiscal year 2013.

Some defendants were not only detained in the county detention facility. In two cases, defendants spent a portion of their time prior to trial in a NDOC facility during the pretrial phase as they were already incarcerated at NDOC for another crime. NDOC's average daily rate is significantly less at $54 per day compared to the county facility rate. Because the two cases came from the death penalty sought and sentenced and death penalty not sought subgroups, these subgroups' average daily costs were less than the county facility rate.

In two other cases, defendants were sent to the Lake's Crossing Center for inmate mental health care for a period of time. The cost of being housed in this facility is significantly more expensive at $393 per day. One of these individuals, from the death penalty sought but not sentenced subgroup, spent more than 130 days in the facility. This resulted in the subgroup's average daily cost being higher than the other subgroups.

While the average costs for the first two subgroups are relatively consistent, there were significant variations between the cases. For example, the lowest cost case was $10,795 where the defendant posted a bond and was released during a significant

portion of the pretrial phase. As a result, the average days detained for the death penalty sought but not sentenced subgroup is lower that it would have been. In the absence of this case, the average days detained would have been about 1,150 days, consistent with the death penalty cases. Conversely, the defendant in the most expensive case spent more than 1,600 days in a county facility and an additional 133 days in the Lake's Crossing facility for a total cost of more than $270,000. Both of these cases were within the subgroup where the death penalty was sought but not sentenced.

Forensic Laboratory Costs

Forensic laboratory work costs vary based on the nature and circumstances of the case. Costs are dependent on the circumstances of the crime, without direct influence by the possibility that the death penalty could be pursued. Nonetheless, it was suggested by the management from one laboratory that, in some cases, additional testing may be requested if thought to qualify as a death penalty case because the case and evidence would likely be heavily scrutinized during the trial and appeal phases. Exhibit 23 shows the results of our analysis of forensic costs by case type based on the detailed records maintained by the forensic laboratories in Washoe and Clark counties.

Average Forensic Laboratory Costs **Exhibit 23**

Case Type	Average Forensic Laboratory Costs
Death Penalty Sought and Sentenced	$30,111
Death Penalty Sought But Not Sentenced	$11,858
Death Penalty Not Sought	$10,323

Source: Washoe County Sheriff's Office Forensic Laboratory and Las Vegas Metropolitan Police Department Forensic Laboratory.

The fact that the cost of the first two subgroups are not similar supports the assumption that death penalty eligible cases do not always require the same amount of forensic work. Additionally, it should be noted that there are significant variations in costs within the two subgroups where the death penalty was sought. Forensic costs ranged from a low of $1,000 to a high of nearly $52,000.

Transportation Costs

Overall, the costs of transporting inmates by the Washoe County Sheriff's Office and Las Vegas Metropolitan Police Department suggest higher costs are incurred in death penalty cases, driven primarily by the increased number of hearings in the pretrial phase. Exhibit 24 shows the average number of transports and related costs for the different case types.

Defendant Transport Costs **Exhibit 24**

Case Type	Average Cost of Transportation	Average Number of Transports
Death Penalty Sought and Sentenced	$4,404	44
Death Penalty Sought But Not Sentenced	$3,168	36
Death Penalty Not Sought	$2,355	26

Source: Washoe County Sheriff's Office, Las Vegas Metropolitan Police Department, and auditor analysis.

Based on the results of our analysis, the death penalty cases had higher costs, driven primarily by the higher number of transports. This is consistent with our observations that there are more pretrial hearings for those cases where the death penalty is being sought.

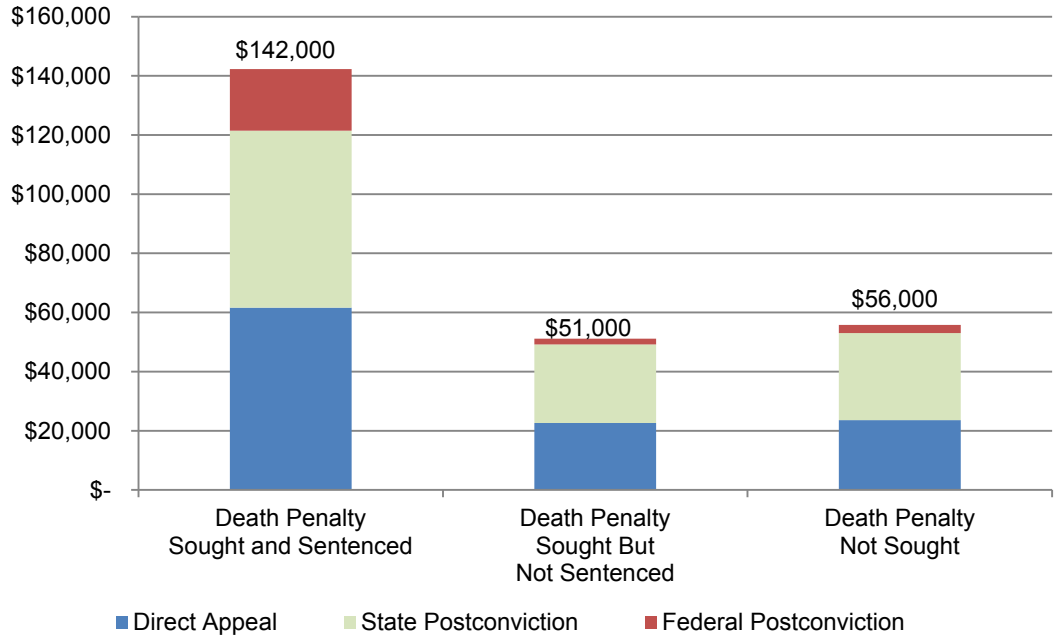
Using records of transports completed and estimated resources required to move each individual, we calculated an estimated cost for each case. For certain cases, additional staffing was utilized based on the potential threats or risks associated with each case. This may not always have a direct correlation with whether the case is a death penalty case or not. There are also significant differences between the way transports are completed between locations. Specifically, the Clark County Detention Center has underground access to the court complex, which significantly reduces the cost of a transport compared to Washoe County that must move individuals from the detention center to the court, a round trip of about 10 miles. As a result, to compensate for the significant differences in costs between locations, we weighted the cost of cases based on the overall percentages of murder cases in Washoe and Clark counties to provide a comparable average cost.

Overall, the various cost centers we reviewed from the time of arrest through the appeals process demonstrate costs are higher for death penalty cases. While the total costs cannot be definitively determined based on the lack of certain data components and potential variables associated with the pretrial, trial, and penalty phases, the information presented does provide perspective on how much the death penalty impacts the costs of a case for state and local governments consistent with all cost centers reviewed.

Death Penalty Appeals Are Significantly More Expensive

Generally, our analysis of available information reflects the estimated costs associated with the appeals process for death penalty sentenced cases are more costly. In total, appeals for death penalty convictions consume about three times as many resources as other murder convictions. Since certain cost components could not be provided or reasonably estimated, we are unable to determine a complete cost of appeals to the state and local governments. Furthermore, totals do not include federal costs which were not subject to our audit but where a significant amount of time and resources are devoted. Exhibit 25 shows the overall differences in costs by case type.

Average Appeals Costs by Segment **Exhibit 25**



Source: State and local government agencies. See page 96 for a complete list.

Note: Appeals costs are incomplete because certain court and prosecution costs could not be obtained. Specifically, court and prosecution costs only include the cost of in-court activities and exclude costs incurred outside of the courtroom. Furthermore, appeal costs do not represent the cost of the entirety of the life of active appeals as the process is ongoing and certain costs associated with the federal postconviction phase were not required by A.B. 444. If actual costs were obtained, we would anticipate appeal costs to be significantly higher.

As shown in Exhibit 25, cases where the death penalty was not sentenced incurred similar costs even though some cases were for defendants who faced the death penalty at trial. This subgroup, where the death penalty was sought but not sentenced, provides the most insight into the additional cost of sentencing an individual to the death penalty since crimes were egregious enough for prosecutors to pursue the most severe penalty at trial. Yet, the cost difference between these subgroups is substantial as death penalty appeals are nearly triple the cost. This indicates additional resource requirements are interconnected with a death sentence during the appeal phase. Moreover, the cost of appeals of non-death penalty cases were nearly identical even though sentences for these cases varied in severity.

Our sample of appeals cases was selected from murder charge arraignments between January 1, 2000, and December 31, 2006. We selected 13 cases for review. Our sample contained five

death penalty sought and sentenced cases, five death penalty sought but not sentenced, and three cases where the death penalty was not sought. Twelve of the 13 defendants were convicted of first degree murder while the remaining defendant was convicted of second degree murder. Furthermore, not all cases yielded cost information for all types of relevant costs. As a result, we averaged costs by cost type for those cases where cost information was available if we expected similar costs would have been incurred in all cases.

The appeals phase is comprised of three primary appeal segments: direct, state postconviction, and federal postconviction. Within these segments, the primary costs incurred by state and local governments are with state courts, public defense, and prosecution. Exhibit 26 shows the three primary segments and the courts and government agencies involved. The general flow of the judicial process is detailed in Appendix D and further described in the respective sections of the report that follow.

Appeals Segments and Governmental Agencies **Exhibit 26**

	Direct Appeal	State Postconviction	Federal Postconviction
Court	NV Supreme Court (State)	Judicial District Court (County) NV Supreme Court (State)	U.S. District Court, Nevada District (Federal) Ninth Circuit Court of Appeals (Federal)
Prosecution	District Attorney's Office (County)	District Attorney's Office (County)	Attorney General's Office (State)
Defense	Public Defender (County)	State Public Defender (State)	Federal Public Defender (Federal)

Source: Auditor developed from court records, discussions with various judicial process entities, and authoritative documents.
Note: A petition for writ of certiorari may be filed with the U.S. Supreme Court following a decision in the Judicial District Court, Nevada Supreme Court, or the Ninth Circuit Court of Appeals.

Direct Appeals to the Nevada Supreme Court

Death penalty cases cost more on direct appeal than cases where the death penalty is not sentenced. For cost areas we were able to obtain, death penalty cases cost about twice as much as other cases in our sample. Furthermore, non-death penalty direct

appeal costs do not seem to be influenced by whether the offender was tried with the possibility of being sentenced to death, since costs for these cases were similar to those where the death penalty was not pursued by the prosecution. Costs included in this appeal segment were largely based on estimates provided by defense counsel as not all agencies with significant involvement in the direct appeal segment were able to provide cost information. As a result, noted costs are understated and results may have varied had all costs been obtained.

Pursuant to NRS 177.055, Nevada provides for an automatic direct appeal of a death sentence to the Nevada Supreme Court (NSC). A direct appeal is initiated upon the issuance of a judgment of conviction imposing a sentence of death. The Judicial District Court is required to transmit to the Clerk of the NSC a complete record of the lower court proceedings for both the trial and penalty phases including all pertinent filings, transcripts, exhibits, and other required documentation listed in Nevada Supreme Court Rule 250. Briefs are filed by the defense and prosecution and are reviewed by a group of attorneys within NSC that specializes in death penalty cases. Pre-briefing conferences may be held and oral arguments are typically scheduled for one hour *en banc*, i.e. before all seven justices. NSC attorneys prepare a bench memo containing facts of the case, legal arguments, analysis and a recommendation to the justices. The justices issue an opinion or decision based on their analysis of the case. The defense or prosecution can petition the decision to the U.S. Supreme Court following the NSC's ruling. While direct appeals are not automatic in non-death penalty convictions, all eight of our selected non-death penalty defendants filed a direct appeal.

Based on the current judicial process, all death penalty cases and any non-death penalty cases, if pursued by the defendant, will have a direct appeal to NSC following a conviction. In certain cases, when a higher court decision results in a remand to the Judicial District Court for resentencing or retrial, a second direct appeal may occur. In such cases, we would expect to see additional direct appeal costs; however, the magnitude of those

costs may vary from those identified above and we cannot predict the frequency with which this may occur.

Defense Costs

The average defense counsel cost in the direct appeal segment for death penalty cases was more than twice the cost of the cases where there was no death penalty conviction. This occurs largely because more time is required by defense attorneys to review the case record in an effort to identify all potential issues and errors to bring forward for consideration to NSC. Exhibit 27 shows the average direct appeal defense cost by the entities that provided the defense services and related costs.

Average Direct Appeals Defense Costs **Exhibit 27**

Case Type	Average Public Defender Cost	Average Alternate/ Special Public Defender Cost	Average Appointed Counsel Cost	Overall Average Cost
Death Penalty Sought and Sentenced	$46,436	$75,773	$10,679	$51,732
Death Penalty Sought But Not Sentenced	$24,564	$14,771	-	$19,888
Death Penalty Not Sought	$23,025	-	$16,878	$21,348

Source: Washoe County and Clark County Offices of the Public Defender, Special/Alternate Public Defender, Appointed Counsel, and auditor analysis.

Note: Direct appeal defense costs were primarily estimated by the Office of the Public Defender and the Alternate / Special Public Defender for applicable counties. While we applied reasonableness tests to this information and made some adjustments, we were unable to definitively verify estimated hours because time records are not maintained. Actual costs may have differed if time records had been available.

Based on our sample cases, direct appeal defense costs for death penalty cases ranged from about $11,000 to nearly $79,000. For those cases where the death penalty was not sentenced, costs ranged from $12,000 to $34,000. Discussions with county personnel indicated that time required to prepare direct appeal information can vary significantly based on the complexity and circumstances of the case. Defense counsel also generally portrayed to us that more time is dedicated to death penalty cases due to the severity and finality of the sentence involved. The average death penalty direct appeals costs could be higher as the cost for the least expensive case appeared incomplete based on our review of available records. If the low case is excluded,

average death penalty costs increase about $52,000 to more than $61,000.

The time needed to process death penalty direct appeals is generally much lengthier and requires more effort from all agencies to complete. On average, for our sample, death penalty cases took almost 3 years between the completion of trial until a decision by NSC was rendered. This is about 68% more time than required for cases where the death penalty was sought but not sentenced and 87% more than when not sought. Lengthier times occurred because the direct appeal process for death penalty cases is generally subject to more requirements from NSC. For instance, NSC is required to review the entire case record and the jury hearing in the penalty segment for death penalty cases, but not for others. Furthermore, NSC allows for longer oral arguments related to the death penalty. Exhibit 28 shows the comparison of the average length of time for death penalty cases and non-death penalty cases.

Average Length of Direct Appeals **Exhibit 28**

Case Type	Average Length of Direct Appeal in Years
Death Penalty Sought and Sentenced	2.77
Death Penalty Sought But Not Sentenced	1.65
Death Penalty Not Sought	1.48

Source: Nevada Supreme Court records.

Defense services were provided by the Offices of the Public Defender, Alternate/Special Public Defender, or Appointed Counsel. Costs associated with the Offices of the Public Defender and Alternate/Special Public Defender were based on the recollections of the attorneys who performed the direct appeal services. Estimated hours were reviewed for reasonableness based on available information. Our calculations reduced estimates for uncompensated hours in certain cases where salaried attorneys' estimated daily hours exceeded a standard 8-hour workday. Costs associated with appointed counsel are from

actual billing records of time incurred and are based on statutory hourly rates.

Prosecution Costs

Costs for the prosecution of death penalty direct appeals also exceeded those of non-death penalty cases. Based on the information provided, death penalty cases utilized about four times as many resources as non-death penalty cases. Even though available information represents only one-fifth of our sample cases, the distribution of costs between the different sample types is generally consistent with other cost centers. Exhibit 29 shows the difference in average costs between the defendant sentenced to death and the two defendants not sentenced to death.

Washoe County District Attorney's Office Direct Appeal Prosecution Costs **Exhibit 29**

Case Type	Total Cost
Death Penalty Sought and Sentenced	$9,892
Death Penalty Sought But Not Sentenced	$2,750
Death Penalty Not Sought	$2,265

Source: Washoe County District Attorney's Office records and auditor analysis.

Note: These costs are based on three cases and may not be representative of all case costs. If case information was available from the Clark County District Attorney's Office, the average costs could be significantly different than those noted above. Costs were based on estimates. We applied reasonableness tests to this information but actual costs may have differed had time records been available.

We were able to provide the cost related to prosecuting direct appeal cases because the Washoe County District Attorney's Office provided an estimate of the time spent on three direct appeals cases. Even though an actual record of time spent prosecuting these cases was not available we believe the information provided appears reasonable. Conversely, the Clark County District Attorney's Office was unable to provide actual or estimated costs associated with the remaining eight Clark County cases as they do not track the time they spend on each case and were hesitant to provide estimates.

Court Costs

We were unable to obtain estimated or actual costs from the Nevada Supreme Court for our selected cases. The Chief Justice

indicated that NSC does not keep time records for justices, attorneys or staff for work on death penalty and non-death penalty cases. Furthermore, providing an estimate would be, in his opinion, too speculative. He also highlighted that while the Court probably spends more time on death penalty cases than non-death penalty cases, non-death penalty cases also have extensive trial records and could involve numerous complex issues. Therefore, we cannot provide a complete cost associated with this appeal segment. We presume these costs, if obtained, would be considerable and might have affected overall results.

Following NSC's decision on the direct appeal, a petition for writ of certiorari may be filed with the U.S. Supreme Court. In four of the death penalty cases, a petition was filed with the U.S. Supreme Court. Records indicate that county public defenders prepared the petition in three of the cases and the federal public defender prepared the other. The response briefs were filed by county district attorneys. In all cases, the U.S. Supreme Court denied the petitions. The costs associated with this filing are included in the defense costs noted above with the exception of costs related to the federal public defender.

State Postconviction Appeals in State Courts

Similar to direct appeals, state postconviction costs were generally more expensive for death penalty cases. In total, death penalty cases use about twice as many resources as non-death penalty cases. Additionally, as with direct appeal cases, seeking a death penalty conviction at trial does not seem to influence state postconviction appeal costs, indicating costs are influenced more by the sentence given than by other factors. Costs included in this appeal segment were largely based on actual invoices from appointed attorneys, estimates from a prosecutor, and actual court time. Not all agencies with significant involvement in this segment were able to provide cost information. As a result, noted costs are understated and results may have varied had all costs been attained.

Pursuant to NRS 34.724, the state postconviction segment begins when a defendant files a state postconviction petition for habeas corpus in the Judicial District Court. The defense can raise

issues, outside of the trial record, related to the conviction and sentence. Common issues that are claimed include ineffective assistance of counsel, juror misconduct, newly discovered evidence, or evidence that was improperly withheld from the defense. The district court judge reviews the appeal and related filings, determines whether an evidentiary hearing is required, and eventually issues a decision. The defense or prosecution can petition the decision to the Nevada Supreme Court and U.S. Supreme Court following the lower court's decision.

The costs of indigent defense in the state postconviction process are paid by the State through the Office of the State Public Defender. Attorneys appointed by the Judicial District Courts to represent a defendant for proceedings, based upon a postconviction petition for habeas corpus, submit a claim for payment. Claims are supported by a sworn statement specifying the time expended in court, the services rendered out of court and the time expended therein, the expenses incurred while the case was pending, and the compensation and reimbursement applied for or received in the same case from any other source. Upon approval by the presiding judge of the court in which the attorney was appointed, the billings are submitted to the Office of the State Public Defender for payment.

Defense Costs

State postconviction defense costs for death penalty cases are higher than in non-death penalty cases. The larger costs are attributable to the complexity of the process driven primarily by the finality and severity of the death sentence, as well as increased reimbursement rates set by statute. Exhibit 30 shows the average costs by each case type.

Appointed Counsel Costs Paid by the Office of the State Public Defender Average State Postconviction Defense Costs **Exhibit 30**

Case Type	Average Costs
Death Penalty Sought and Sentenced	$46,932
Death Penalty Sought But Not Sentenced	$22,012
Death Penalty Not Sought	$24,565

Source: Office of the State Public Defender records, Judicial District Court records, and the state accounting system.

Note: Appeal costs do not represent the cost of the entirety of the life of active appeals as the process is ongoing. Most of our selected cases were actively appealing and, as such, costs may continue to be incurred depending on the extent of the appeal activities in the state postconviction phase.

Based on our sample cases, postconviction defense costs for death penalty cases ranged from $22,000 to about $80,000. For those cases where the death penalty was not sentenced, costs ranged from $5,000 to $53,000. These totals do not necessarily represent all costs since each case is in a different appeal stage. Therefore, low amounts may eventually be much more depending on how much longer the appeal is active.

The differences in costs demonstrate the additional resources required in the defense of death penalty cases; however, attorneys are also compensated 25% more for work performed. Pursuant to NRS 7.125, attorneys are paid $125 per hour for death penalty cases compared to $100 per hour for non-death penalty cases when representing defendants for state postconviction work. We also found other costs included in attorney billings, such as expert witnesses, investigators, transcripts and records, travel and miscellaneous fees tended to be more for death penalty cases.

A case might have more than one state postconviction appeal. Appointed counsel, paid by the Office of the State Public Defender, is responsible for the representation of the defendant in the Judicial District Court and, as applicable, for a related appeal to the Nevada Supreme Court. When the first federal postconviction appeal (habeas corpus petition) is filed, a federal public defender is typically assigned by the federal courts. Cases are often returned to the Judicial District Court for resolution of unexhausted state claims because federal courts may not

consider violations or erroneous applications of state law. Three of our 13 appeals cases were returned to the Judicial District Court for a second state postconviction proceeding.

Appointed counsel was not always timely in submitting billings for services rendered. Our review of billings included many stale claims for payment of services rendered years prior. While our analysis captured some untimely attorney billings after December 31, 2013, it is likely all services for our sample cases have not been billed. Consequently, state postconviction defense costs may be understated.

Prosecution Costs

Based on available prosecution cost information, death penalty case costs were higher than non-death penalty cases. Estimates from Washoe County District Attorney staff indicate about five times more resources are utilized on death penalty cases. Even though available information represents only one-fifth of our sample cases, the distribution of costs between the different case types is generally consistent with other cost centers. Exhibit 31 details the costs by case type, as provided by the Washoe County District Attorney.

Washoe County District Attorney's Office State Postconviction Prosecution Costs **Exhibit 31**

Case Type	Total Cost
Death Penalty Sought and Sentenced	$11,840
Death Penalty Sought But Not Sentenced	$ 2,344
Death Penalty Not Sought	$ 2,076

Source: Washoe County District Attorney's Office.

Note: These costs are based on three cases and may not be representative of all case costs. If case information was available from the Clark County District Attorney's Office, the average costs could be significantly different than those noted above. Costs were based on estimates. We applied reasonableness tests to this information but actual costs may have differed had time records been available.

Appellate counsel indicated death penalty cases consume more time because research and motions are often more complex in comparison to non-death penalty cases. Additionally, because death penalty case trial and direct appeal records are generally longer, appellate attorneys have more records to review.

Costs were obtained from the Washoe County District Attorney's Office on a small number of cases, as explained further on page 43.

Court Costs

The Second and Eighth Judicial District Courts could not provide actual or estimated hours and resources incurred on our selected cases for out-of-court time as resources are not specifically tracked by case. Therefore, we were unable to fully determine the cost of the Courts' involvement in a state postconviction appeal. Amounts we were able to accumulate, based on actual court time, were minor. We presume out-of-court costs would have been considerable because this is where the bulk of the Courts' resources are consumed, compared to in-court time. The accumulation of information related to out-of-court resources is likely to have affected overall results.

We determined the cost of court resources for in-court hearings based on case records and hearing details. Our analysis included judges' and court staff's salaries, transcripts and related court fees, and an administrative and operating overhead allocation for the duration of hearings.

Based on actual court time and fees, non-death penalty cases cost more for the court. This is due to transcript fees. For non-death penalty cases, court transcripts are not required or always provided during the trial. Conversely, Nevada Supreme Court Rule 250 requires transcripts for death penalty cases to be completed each day during the trial. As a result, trial transcript fees are typically included in the trial cost for death penalty cases. In non-death penalty cases, the transcripts, if not requested during trial, are often ordered as part of the appeals process and included in postconviction costs.

Out-of-court time is generally needed by the judge, law clerk, and related staff to review and research legal motions and filings, write the decision, and perform other related activities. The court costs were relatively small because a minimal amount of time, compared to a trial, is actually spent for in-court hearings during the postconviction appeal.

Following a decision by the Judicial District Court, an appeal to the Nevada Supreme Court is likely. Of the 12 cases from our sample that completed the first state postconviction appeal process, 7 appealed the decision to the Nevada Supreme Court. As noted in our discussion of direct appeal, costs for the Nevada Supreme Court could not be obtained which compounds the understatement of total costs.

Federal Postconviction Appeals in Federal Courts

Costs to the State, borne by the Office of Attorney General (AG) for federal postconviction appeals, are more for death penalty cases. While the federal postconviction segment constitutes a significant component of the appeals process of certain cases, the only measurable costs to the state or local governments are those incurred by the AG as the prosecuting agency. Other costs in this segment are incurred by federal entities which are not required to be accounted for pursuant to A.B. 444.

The state's interests, represented by county district attorneys in state postconviction appeals, are transferred to the AG as an appeal moves into the federal court system. The defense and court costs in the federal postconviction segment are provided by the federal government and are not included in the scope of our audit. Defense responsibilities are assumed by a federal public defender and the appeals are handled by the federal court system including the U.S. District Court, Nevada District; Ninth Circuit Court of Appeals; and the U.S. Supreme Court.

The federal postconviction appeals process begins with the filing of a federal habeas corpus petition and is limited to federal issues. If the defense's appeal includes issues with state law, the case is returned to the Judicial District Court until those issues are adjudicated. After state claims have been exhausted, the federal district court judge will evaluate federal appeal issues and may dismiss the petition, overturn the conviction, or overturn the sentence. With the permission of the U.S. District Court or the Ninth Circuit Court of Appeals via a notice of appealability, a federal postconviction decision can be appealed to the Ninth Circuit Court of Appeals. Following the Ninth Circuit Court's

ruling, the defense can petition the decision to the U.S. Supreme Court.

Prosecution Costs

Our analysis indicated the cost of representing the state's interests in cases with death penalty sentences, on an annualized basis, used about 1.5 times more resources than cases where the death sentence was not applied. In addition, costs related to cases that were never tried as a death penalty case were less. Six of the 13 selected appeals cases progressed into the federal court system where the AG assumed representation of the state's interests. The six cases were evenly distributed between the different case types of our sample. Although the six cases represent less than half of the sample, they provide insight into the cost differences between the subgroups. Exhibit 32 shows the average and the annualized cost of the AG's representation for our select cases.

Office of Attorney General Average Federal Postconviction Costs Exhibit 32

Case Type	Average Total Cost to Date	Annualized Cost
Death Penalty Sought and Sentenced	$20,776	$4,137
Death Penalty Sought But Not Sentenced	$ 1,955	$2,520
Death Penalty Not Sought	$ 2,740	$ 939

Source: AG records and auditor analysis.

Note: Because our selected cases' federal postconviction phases began at different times, the annualized cost is a better way to compare the costs. We do not have sufficient information to determine how long these costs could continue and whether the costs would remain similar year to year.

Since cases can remain in the federal courts for a long period of time, we annualized costs over the period each case has been active. Because our sample cases were in various stages of adjudication, overall costs do not provide an adequate representation of the cost differential between case types. However, when annualized, AG costs were more for the death penalty cases by about 140%. We recognize the costs for the selected cases do not represent the full life of the federal appeals process and thus do not represent the total costs that will eventually be incurred by the AG's Office. We do not have

enough information to determine the entire duration of each appeal to project these costs over a period of time.

We selected our appeal cases from arraignments between 2000 and 2006 to increase the probability of obtaining available and reliable records to determine costs. Had we selected cases that were significantly older, the cases would have presented more of a historical record, but it is likely some or a majority of the cost information would not have been available to analyze. While we expect the selected cases to continue through the judicial process and incur additional costs, we are unable to obtain reliable information to provide a projection of future costs.

Federal Defense Counsel and Courts

When a federal habeas corpus petition for postconviction relief is filed with the U.S. District Court, the defense counsel previously assigned by the Judicial District Court is typically replaced by a public defender from the Federal Public Defender's Office. Furthermore, proceedings occur in the U.S. District Court, Nevada District; the Ninth Circuit Court of Appeals; and the U.S. Supreme Court. Of six cases where federal postconviction proceedings occurred, four were being adjudicated by the U.S. District Court and two had moved to the Ninth Circuit Court of Appeals.

Our audit did not accumulate costs related to federal agencies since A.B. 444 did not require it. Nevertheless, the federal postconviction appeal segment can be extensive, transpiring over many years. Had federal costs been included, they are likely to have been substantial.

Request for Clemency

We found no evidence to suggest the cost of processing a request for clemency would be different for an inmate sentenced to death compared to another inmate sentenced for murder. Our review found no death penalty cases have been heard by the State Board of Pardons Commissioners (Board) in the last 10 years. Furthermore, records associated with the process are not available to calculate costs between the various components of the process. If costs could be determined, we would not expect there to be a differential in cost for death penalty cases.

In death penalty cases, the Board, composed of the Governor, the Justices of the Nevada Supreme Court, and the Attorney General, may issue a stay of execution to allow time for additional review of the case, or they may commute the sentence to life without the possibility of parole. Typically, requests are heard when all pending appeals have been resolved. Since 1976, the Board has granted clemency to one death row inmate on the grounds of the inmate's mental deficiency pursuant to a U.S. Supreme Court decision preventing the execution of mentally handicapped inmates.

Our review of the last 10 years of Board agendas indicates the Board considered a total of 42 clemency requests for 36 unique individuals convicted of first degree murder, none of whom had an active death sentence. Two of the individuals were previously sentenced to death but had their death sentences overturned by the courts before requesting clemency from their court-reduced sentences.

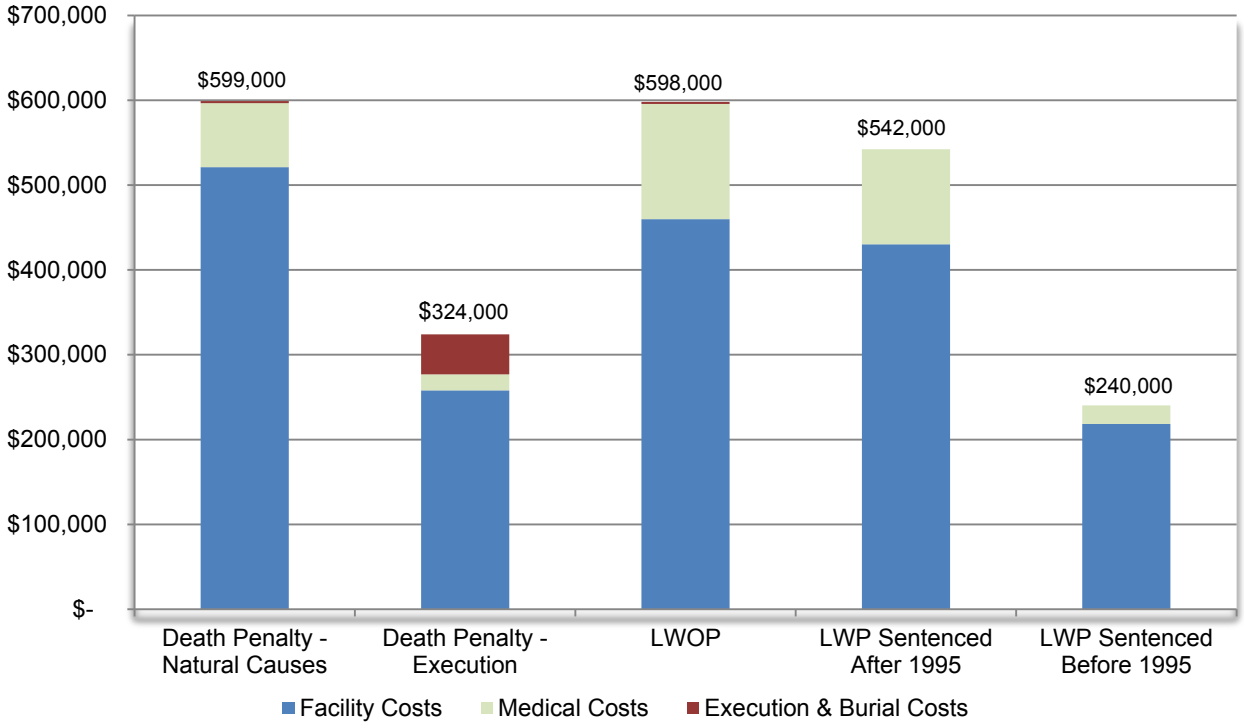
According to Board staff, about 1,000 applications are submitted for consideration for each annual Board meeting. Requests come from inmates as well as from the community. The applications are vetted against established qualification criteria, and a relatively small number are selected for the Board's consideration. When a case is included on the agenda, the State Public Defender may provide legal assistance to the inmate. Of the 36 individuals, the State provided representation for 19 inmates when private representation was not obtained. However, the State Public Defender does not maintain sufficient records to determine the costs incurred in providing legal representation in these cases.

Incarceration Cost Differences Insignificant

The death penalty is the most expensive sentence for those convicted of first degree murder, based on median intake and natural death ages, but insignificantly so when compared to those sentenced to life without the possibility of parole (LWOP). Estimated costs for these two sentences largely mirror one another because incarceration periods are similar considering "involuntary" executions are extremely infrequent. While there have officially been 12 executions since the death penalty was reinstated, all inmates waived potential appeals, essentially "volunteering", with the exception of one inmate. Life with the possibility of parole (LWP) currently costs less than LWOP and the death penalty, as the median time served before parole is 14 years instead of a natural lifetime. However, as discussed later in this report, we expect the minimum incarceration lengths for the LWP subgroup to increase substantially due to statutory changes. Exhibit 33 shows total incarceration costs for each sentence.

Total Costs of Incarceration
Death Penalty, LWOP, and LWP

Exhibit 33



Source: NDOC's Nevada Offender Tracking Information System (NOTIS) and Nevada Corrections Information System (NCIS) information systems and auditor calculations.

Note: The median age of incarceration is 27 for LWP, 31 for LWOP, and 30 for death penalty inmates. LWP inmates sentenced prior to 1995 are paroled about 14 years after intake. For those LWP inmates sentenced after 1995 we calculated 32 years as the average minimum time that would likely be served by these inmates prior to parole. Since the median intake age of 27 plus the expected minimum term of 32 is less than the median age of death of 61, we used 32 years to calculate total costs for this subgroup. The median natural age of death for LWOP and death penalty inmates is 62 and 55 respectively. The incarceration costs for the death penalty - execution subgroup is based on the one individual who was "involuntarily" executed approximately 11 years after sentencing.

Total costs for the death penalty subgroup slightly exceed that calculated for LWOP only because median natural death ages were 7 years higher for the LWOP inmates. Since the median intake age for the death penalty subgroup is 1 year younger than LWOP, the LWOP subgroup contains 6 additional years of facility and medical costs compared to the death penalty group. The median age for death due to natural causes for the LWOP subgroup was 62 while the death penalty subgroup was 55. If the difference in natural death medians narrows for LWOP and death penalty inmates, which can be expected based on death data trends, and execution rates remain constant, the total cost to incarcerate a death penalty inmate will far exceed that of a LWOP inmate.

Since one “involuntary” execution does not provide sufficient data to anticipate future executions, we could not adequately apply a predicted time period between intake and execution for those sentenced to death. As a result, we calculated incarceration costs based on the median age of natural death for the death penalty inmates. For comparison purposes, we provided the cost, in 2013 dollars, for the time period experienced by the inmate who was “involuntary” executed. As shown, costs for the death penalty subgroup would be about half as much if executions occurred after approximately 11 years.

For the 11 executed inmates who waived remaining potential appeals, essentially “volunteering”, the median cost of incarceration and execution was about $152,000. This is lower than the “involuntary” execution case cost of $324,000 because the median time incarcerated before execution was only 4 years for the “voluntary” cases, compared to 11 years for the “involuntary” case. The costs of incarceration and medical care for a specific case would vary depending on the age of the inmate and length of incarceration, as detailed in Appendix F.

Costs noted in Exhibit 33 are based on the medians of the following: age of incarceration, time incarcerated until first parole, and natural death. As discussed later in this report, we determined an expected average minimum sentence for those LWP inmates sentenced after 1995 when minimum sentences doubled. We showed the LWP group as two separate cost centers because future incarceration lengths should be longer as inmates have to serve more years before becoming eligible for parole.

Maximum Custody Increases Facility Costs

Annual facility costs for inmates sentenced to death penalty are more than other sentence types because death inmates are housed at higher security facilities for their lifetime. For the most part, inmates with death sentences are housed at Ely State Prison, which is the designated maximum security prison for the State. Conversely, inmates sentenced to LWP and LWOP are generally housed for the first 1 to 2 years at the Ely State Prison but may be transferred afterward. This results in a majority of LWP and LWOP inmates being housed in lower level facilities

after the initial custody period. Exhibit 34 shows the distribution of inmates convicted of first degree murder within NDOC on December 31, 2013.

First Degree Murder Population Distribution **Exhibit 34**
As of December 31, 2013

	LWP		LWOP		Death	
Facility	**Count**	**% of Total**	**Count**	**% of Total**	**Count[1]**	**% of Total**
Ely State Prison	64	16.79%	130	30.66%	73	89.02%
Florence McClure Women's Correctional Center	28	7.35%	15	3.54%	-	-
High Desert State Prison	100	26.25%	83	19.57%	2	2.44%
Lovelock Correctional Center	51	13.39%	64	15.09%	-	-
Northern Nevada Correctional Center	71	18.63%	89	20.99%	7	8.54%
Southern Desert Correctional Center	63	16.54%	37	8.73%	-	-
Warm Springs Correctional Center	4	1.05%	6	1.42%	-	-
Totals	**381**	**100.00%**	**424**	**100.00%**	**82**	**100.00%**

Source: NDOC's NOTIS and NCIS information systems.
(1) Inmates sentenced to death may be housed at other facilities due to medical needs or for other reasons. Stays are typically temporary.

We used the subgroups LWP and LWOP to determine a weighted average facility cost based on NDOC's distribution of inmates. Exhibit 35 shows annual operating costs by facility and the apportioned cost of each first degree murder subgroup based upon NDOC's dispersal of inmates within the prison system. As shown in this exhibit, facility costs for the LWP and LWOP subgroups are less than those sentenced to death.

Weighted Average Operating Cost Per Facility and First Degree Murder Subgroup Demographics Fiscal Year 2013 **Exhibit 35**

	Fiscal Year 2013 Per Inmate Cost	Number of LWP Inmates	Inmate Distribution	Cost[2]	Number of LWOP Inmates	Inmate Distribution	Cost[2]	Number of Death Inmates [1]	Inmate Distribution	Cost
Ely State Prison	$23,885	64	16.79%	$ 4,011	130	30.66%	$ 7,323	82	100.00%	$23,885
Florence McClure Women's Correctional Center	17,255	28	7.35%	1,269	15	3.54%	611		0.00%	-
High Desert State Prison	13,159	100	26.25%	3,455	83	19.57%	2,575		0.00%	-
Lovelock Correctional Center	13,070	51	13.39%	1,751	64	15.09%	1,972		0.00%	-
Northern Nevada Correctional Center	17,500	71	18.63%	3,261	89	20.99%	3,673		0.00%	-
Southern Desert Correctional Center	10,280	63	16.54%	1,701	37	8.73%	898		0.00%	-
Warm Springs Correctional Center	$18,671	4	1.05%	$ 196	6	1.42%	$ 265		0.00%	$ -
Correctional Programs (Per Inmate)				$ 571			$ 571			$ 571
Administration Costs (Per Inmate)				$ 1,541			$ 1,541			$ 1,541
Totals		**381**	**100.00%**	**$17,756**	**424**	**100.00%**	**$19,429**	**82**	**100.00%**	**$25,997**

Source: NDOC's NOTIS and NCIS information systems. NDOC cost reports, the state accounting system, and auditor calculations.

Note: Only inmates housed at Nevada facilities were incorporated in our analysis. There are individuals convicted of first degree murder in each subgroup that are housed in other states through out of state compacts. These individuals are included in our other analyses but not for calculation of facility costs.

(1) Even though nine death penalty inmates were housed at other facilities at 12/31/2013, we assumed death penalty inmates would be housed at Ely State Prison a majority of the time as stays at other facilities are typically temporary.

(2) Some numbers were rounded up slightly.

Distributing LWP and LWOP inmates to lower cost facilities impacts costs over time even if periods of incarceration are similar. For example, if an inmate convicted of first degree murder serves the minimum 1 to 2 years at Ely State Prison but is moved to a medium level facility afterward, the difference between this and a maximum level facility for the entire period is about $125,000 after 20 years.

Over half of LWP inmates are housed at facilities that cost nearly half that of Ely State Prison. Additionally, 43% of LWOP inmates are housed in these lower cost facilities. The ability to distribute inmates to lower cost facilities greatly reduces costs over time for the LWP and LWOP subgroups.

The Death Penalty Subgroup has Longer Median Incarceration Lengths

The death penalty subgroup has the longest median incarceration period of all three subgroups. Median incarceration lengths for the LWP, LWOP, and death penalty subgroups, not including natural

deaths, suicides, or executions, are 13, 16, and 18 years, respectively. The death penalty subgroup has the longest median incarceration period because only one “involuntary” execution has occurred since 1977 and more individuals are currently being sentenced to LWP and LWOP than death. Should the frequency of executions increase, expected median incarceration lengths for those sentenced to death would decline accordingly.

Our subgroup populations were determined using the date at which the death penalty became a sentencing option on July 1, 1977. However, our review of NDOC data found living inmates sentenced to LWP and LWOP prior to July 1, 1977, who are not incorporated in our subgroup populations. These inmates would increase the median incarceration times for the LWP and LWOP populations since they have been incarcerated the longest of all inmates. In total, we identified 12 LWP and 14 LWOP inmates with median ages of 61 and 68 who remain incarcerated. The median time these inmates have been incarcerated is 39 and 41 years with the longest serving inmate having been incarcerated for nearly 56 years.

Statute Changes Increase Incarceration Times for LWP

Changes in sentencing structures since 1995 have significantly impacted the length of time individuals may be incarcerated if given parole eligible sentences. Prior to 1995, first degree murder was punishable by a minimum term of 10 years in prison. Revisions to statutes in 1995 changed minimum sentences for first degree murder to at least 20 years. Punishments have remained unchanged since this time; however, NRS 193.165 enhances sentences when crimes are committed with a firearm or other deadly weapon. Before 2007, statutes provided for an additional punishment term equal to that of the primary offense and running consecutively to that of the crime. Revisions to the statutes in 2007 changed enhancement punishments to a minimum consecutive sentence of 1 year with a maximum of 20, based on the discretion of the court.

Individuals sentenced between 1995 and 2007 may have lengthier minimum sentences to serve than those sentenced before or after.

Exhibit 36 shows how the statutory changes affected minimum prison terms.

Minimum Prison Term for Life With the Possibility of Parole **Exhibit 36**

	Minimum Sentence for First Degree Murder NRS 200.030	Enhancement Applicable [1] NRS 193.165	Total Minimum Term
Prior to 1995	10	10	10 to 20
1995 to 2007	20	20	20 to 40
After 2007	20	1 to 20	20 to 21

Source: Statutes of Nevada.

[1] NRS 193.165 applies to enhancements applicable when a crime is committed with a deadly weapon; however, other enhancements can apply but are not detailed here for simplicity. Sentence runs consecutively to the term for the primary offense.

Changes in the sentencing structure complicated how we projected incarceration costs for this subgroup. Based on actual data, the LWP median incarceration period before being paroled is 14 years; however, this does not account for longer terms starting in 1995 since these inmates are not yet eligible for parole. Based on our review of LWP sentences from 1995 to 2013, we expect these inmates to serve, on average, 32 years prior to being parole eligible. This average was derived from review of actual sentence information for 50 of the 282 individuals sentenced after 1995. For those sentenced between 1995 and 2007, minimum sentences approached 35 years, while those after 2007 were sentenced to slightly more than 25 years. The weighted average of these two groups equaled 32 years. We believe this average is indicative of actual incarceration periods that will be experienced in the future since not all LWP inmates will be paroled after minimum eligibility is attained. However, we acknowledge these sentences may be affected by appeal and other justice system activities that we cannot adequately predict or account for. We expect the median incarceration time for the LWP subgroup to approach that of the LWOP group of about 16 years as a result of longer sentences. We have segregated total costs for the LWP subgroup to reflect the different sentence structures as shown in Exhibit 33.

Future Cost Calculations

We determined the anticipated facility costs for inmates over time using fiscal year 2013 actual cost information. Our review of the last 5 fiscal years showed facility costs, while subject to fluctuation, remained fairly consistent. Average costs, among all facilities, ranged from a low of $19,800 in fiscal year 2013 to a high of $21,400 per inmate in fiscal year 2010. While fiscal year 2013 was the lowest cost for the last 5 fiscal years, it reflects the first full year of closure of the Nevada State Prison, a high cost facility. Therefore, we anticipate costs per inmate to be more reflective of 2013 amounts than years prior.

Projected amounts are included to present an estimate of facility costs in the future; however, actual expenditures are likely to vary, possibly significantly, as many forces can impact future costs. Costs calculated for each sentence subgroup anticipates inmates will be distributed among facilities similar to that found on December 31, 2013.

We increased facility costs over time by applying the average Consumer Price Index inflation rate of 2.40% experienced over the past decade. Furthermore, to determine amounts in 2013 dollars, we present-valued costs using the average 30-year Treasury yield over the last 10 years of 4.226%. We used values from the last decade because the difference between the expected return on investments and inflationary rates appeared more reflective of current and predicted, at least short term, economic conditions. These rates may or may not reflect actual results over future periods. Our calculations are meant to determine the cost difference between sentences for first degree murder over time, based upon the best available current information, but are not meant to be used as a predictor of actual future costs. Appendix F details the cumulative facility cost for inmates based on age and years incarcerated.

Medical Costs Increase as Inmates Age

Costs for medical services increase as inmates age. Our analysis of fiscal year 2013 medical costs found costs nearly double every decade once an inmate reaches the age of 35, except for the period between ages 65 and 74. As shown in Exhibit 37, medical costs escalate for every age category except those between the

ages of 25 and 34. As a result, one or several chronically ill individuals in these age groups can affect the average cost per inmate significantly.

Average Medical Cost Increase by Age Group **Exhibit 37**
Fiscal Year 2013

Age Groupings	Cost Per Inmate	% Increase Per Age Group
Less than 25	$ 1,323	-
25-34	1,152	-13%
35-44	2,293	99%
45-54	5,386	135%
55-64	10,213	90%
65-74	12,694	24%
75+	$40,270	217%

Source: NDOC medical and census data, the state accounting system, and auditor calculations.

Note: This exhibit shows the total cost for both internal and outside medical costs. Internal medical costs were apportioned based on the number of inmates in each age category needing use of the medical facility at Northern Nevada Correctional Center. This was the best available information for determining an allocation of these costs. Costs calculated for those over 75 are higher due to fewer inmates in this group; however, based on our general understanding of medical costs and aging, we do not consider this to be outside the parameters of normalcy.

NDOC incurs costs for medical care by providing services to inmates in prison infirmaries and medical facilities, as well as by accessing health care outside of the prison system. The majority of costs are incurred through the provision of medical care by internal means, which accounts for 69% of total costs.

NDOC does not cost or track internal medical care by inmate, but does account for inmates housed in its medical facility at the Northern Nevada Correctional Center. We used NDOC's report detailing inmates cared for at this facility to apportion internal medical costs by age category as this report was the only information available to us to determine internal medical care by age. Our review of this report and discussions with NDOC medical personnel indicated this provides a reasonable estimate for medical services provided system wide. The report specified the inmate, intake date, date of birth, and complaint, but did not detail a discharge date. As a result, we could only apportion costs based upon the occurrence rate of inmates of specified ages

needing use of the facilities. We were unable to determine if older inmates were housed at the facility for longer periods of time than younger inmates. Exhibit 38 shows the occurrence rate of each age group for the Northern Nevada Correctional Center medical facility.

Occurrence Rate of Inmate Use at Northern Nevada Correctional Center Fiscal Year 2013 **Exhibit 38**

Age Groupings	Count	Total Population	% of All Admissions	Admissions as a % of Age Subgroup
Less than 25	8	1,714	4.79%	0.47%
25-34	12	3,934	7.18%	0.31%
35-44	24	3,127	14.37%	0.77%
45-54	53	2,567	31.74%	2.06%
55-64	44	1,085	26.35%	4.06%
65-74	18	334	10.78%	5.39%
75+	8	43	4.79%	18.60%
Totals	167	12,804	100.00%	

Source: NDOC Infirmary Census Admissions Report for Northern Nevada Correctional Center.

Note: Total population prison census data is from May 2014.

Outside medical costs are based on actual costs from medical provider invoices received and paid by NDOC. Exhibit 39 shows internal, outside, and combined medical costs by age grouping for fiscal year 2013.

Internal and Outside Medical Cost by Age Group Fiscal Year 2013 **Exhibit 39**

	Internal		Outside		Total			
Age Groupings	**Medical Costs**	**Cost Per Inmate**	**Medical Costs**	**Cost Per Inmate**	**Medical Costs**	**Cost Per Inmate**	**Medical as a % by Age Group**	**Group % of Population**
Less than 25	$1,483,500	$ 866	$ 783,452	$ 457	$ 2,266,952	$1,323	5.05%	13.39%
25-34	2,225,250	566	2,305,815	586	4,531,065	1,152	10.10%	30.72%
35-44	4,450,500	1,423	2,720,777	870	7,171,277	2,293	15.99%	24.42%
45-54	9,797,282	3,817	4,028,310	1,569	13,825,592	5,386	30.83%	20.05%
55-64	8,128,344	7,492	2,952,318	2,721	11,080,662	10,213	24.71%	8.47%
65-74	3,337,875	9,994	901,996	2,700	4,239,871	12,694	9.46%	2.61%
75+	1,483,500	34,500	248,093	5,770	1,731,593	40,270	3.86%	0.34%
Totals / Averages	**$30,906,251**	**$ 2,414**	**$13,940,761**	**$1,089**	**$44,847,012**	**$3,503**	**100.00%**	**100.00%**

Source: NDOC medical and census data, the state accounting system, and auditor calculations.

Medical Costs Based on Sentence Demographics

Using demographic data regarding each sentence type, we calculated expected medical costs per sentence. This analysis found the LWOP subgroup has the highest medical cost of the three sentences, although the death penalty subgroup is comparable. Costs are higher for the LWOP subgroup because five inmates are over the age of 75, the most expensive age group. Even though the LWP subgroup shows a similar number of individuals in this age group, costs are less because this subgroup has a much higher concentration of younger inmates. Exhibit 40 shows an average medical cost for the three sentence subgroups based on demographics.

Average Medical Costs by Subgroup - LWP **Exhibit 40**

Age Groupings	Count	% of Population	Cost Per Inmate
Less than 25	18	4.72%	$ 62
25-34	111	29.13%	336
35-44	101	26.51%	608
45-54	88	23.10%	1,244
55-64	49	12.86%	1,313
65-74	11	2.89%	367
75+	3	0.79%	317
Totals	**381**	**100.00%**	**$4,247**

Average Medical Costs by Subgroup - LWOP

Age Groupings	Count	% of Population	Cost Per Inmate
Less than 25	8	1.89%	$ 25
25-34	50	11.79%	136
35-44	127	29.95%	687
45-54	115	27.12%	1,461
55-64	88	20.76%	2,119
65-74	31	7.31%	928
75+	5	1.18%	475
Totals	**424**	**100.00%**	**$5,831**

Average Medical Costs by Subgroup - Death Penalty

Age Groupings	Count	% of Population	Cost Per Inmate
Less than 25	0	0.00%	$ -
25-34	8	9.76%	112
35-44	22	26.83%	615
45-54	29	35.36%	1,905
55-64	16	19.51%	1,993
65-74	7	8.54%	1,084
75+	0	0.00%	-
Totals	**82**	**100.00%**	**$5,709**

Source: NDOC medical and census data, the state accounting system, and auditor calculations.

Furthermore, LWP medical costs are closer to the average cost per inmate of $3,500 while LWOP and death penalty medical costs are higher. This comparison indicates the LWP subgroup better mimics the demographics of the entire prison population. This occurs because LWOP and death penalty subgroups have a higher concentration of aged inmates since inmates in these subgroups are rarely subject to release.

Intake Age Affects Medical Costs More Than Time

Medical costs increase as inmates age; therefore, the later inmates enter the system the more they cost. For example, if two inmates enter the prison system at age 20 and 30, with minimum sentences of 40 years, medical costs for each inmate are estimated to be $124,000 and $213,000 respectively over that period. Another example is if an inmate enters the prison system at the age of 60 and is incarcerated 5 years, he or she is estimated to cost the system $50,000 for medical care. Conversely, someone entering at the age of 40 and staying double the time is estimated to cost $13,000 less.

Currently, convictions for first degree murder are punished with a minimum prison term of 20 years. Only those sentenced to life with the possibility of parole and determinate sentences may exit the prison system by a manner other than death. In theory, LWP inmates cost less because most will be paroled during the years in which they would cost the most for medical care. Since LWOP inmates are not subject to release, these inmates should incur the highest medical costs of the three sentence types over time; but, inmates sentenced to death are experiencing similar terms to LWOP presently because of infrequent executions.

Future Cost Calculations and Medicaid

We determined the anticipated cost to care for inmates over time using fiscal year 2013 actual cost information. Our review of the last 5 fiscal years showed medical costs, while subject to fluctuation, remained fairly consistent. Average costs ranged from a low of $3,300 in fiscal year 2012 to a high of $3,800 per inmate in fiscal year 2010. Fiscal year 2013 medical costs averaged $3,500.

Projected amounts are included to present an estimate of medical costs in the future; however, actual expenditures are likely to vary, possibly significantly, as many forces can impact future costs. We applied increasing costs to inmates as they age based upon NDOC's experience for fiscal year 2013. The amounts calculated for each age group appeared reasonable based on our understanding of medical cost trends.

We increased these costs through time by applying the average Medical Consumer Price Index inflation rate of 3.65% experienced over the past decade. Furthermore, to determine those amounts in today's dollars we present-valued costs using the average 30-year Treasury yield over the last 10 years of 4.226%. We used values from the last decade because the difference between the expected return on investments and inflationary rates appeared more reflective of current and predicted, at least short term, economic conditions. These rates may or may not reflect actual results over future periods. Our calculations are meant to determine the cost difference between sentences for first degree murder over time, based upon the best available current information, but are not meant to be used as a predictor of actual future costs. Appendix F details the cumulative medical cost for inmates based on age and years incarcerated.

NDOC personnel have indicated that changes to Medicaid eligibility resulting from passage of the Federal Patient Protection and Affordable Care Act will reduce outside medical costs for future periods as most inmates are now eligible for Medicaid. However, due to a lack of available experience data we were unable to adequately account for this change in our calculation of future medical costs. It should be noted that NDOC may experience lower outside medical costs due to inmates qualifying for Medicaid; but, the State shares in Medicaid medical costs. Even though future medical costs, as calculated in this report, may be more than the actual cost to the State due to changes in Medicaid eligibility, we do not anticipate this change will result in drastically different figures than those noted.

Execution and Burial Costs

Pursuant to the issuance of a death sentence by a Judicial District Court, the court issues a death warrant and establishes a week for the execution, between 60 and 90 days after the judgment. The death warrant is automatically stayed at this point pending resolution of the direct appeal to the Nevada Supreme Court. After resolution of the automatic direct appeal, a court ordered stay of execution continues while a defendant has an active appeal or petition pending. Stays of execution can be issued by district court judges, the State Board of Pardons Commissioners and the Governor.

When outstanding appeals have been exhausted or the defendant decides not to pursue additional appeals, the district court judge issues a new death warrant. The Director of the Department of Corrections may then proceed with the execution of the inmate pursuant to a notice of execution date filed with the Director and the Nevada Supreme Court. State law requires executions to be conducted by lethal injection.

The cost to the State to perform an execution of a death penalty inmate is about $47,100. Salary costs include approximately 40 NDOC employees and 8 personnel from other state and county agencies, including the AG's Office and the Washoe County Coroner's Office. Exhibit 41 shows the breakdown of the costs of an execution by cost category.

Costs of an Execution **Exhibit 41**
December 31, 2013

Cost Category	Amount
Salary and Fringe Benefits	$36,465
Transportation and Meals	7,043
Medical Costs[1]	3,143
Other	456
Total	**$47,107**

Source: Auditor analysis based on NDOC records and discussions with management.
[1] Includes execution drugs, medical supplies, autopsy, and burial/cremation costs.

We recognize the actual costs of an execution could vary based on unknown factors. For example, in the event a defendant decides to pursue an available appeal immediately preceding the execution, the proceedings could be halted by a court order staying the execution. When this occurs, the majority of the total cost would have been already incurred. This process potentially could repeat resulting in additional costs.

Execution Drugs

The death penalty has risen to the forefront of national headlines over the past year, due in part to a shortage of drugs historically used in the lethal injection process. States continuing to carry out executions have been forced to obtain drugs from other sources or substitute drugs normally used in the process. These

alternatives have provided inmates new grounds for appeal as they request transparency regarding execution methods.

NDOC management indicated it has a usable supply of drugs for an execution, if one were required, at a cost of about $587. However, we do not know how many executions NDOC can perform with the existing stock of drugs, when expiration dates will be exceeded, whether it can still obtain these drugs if more are needed, and what the cost might be to obtain drugs in the future. Our cost analysis does not account for the possible shortage of available drugs and possible legal objections to the state's use of certain drugs.

Execution Chamber

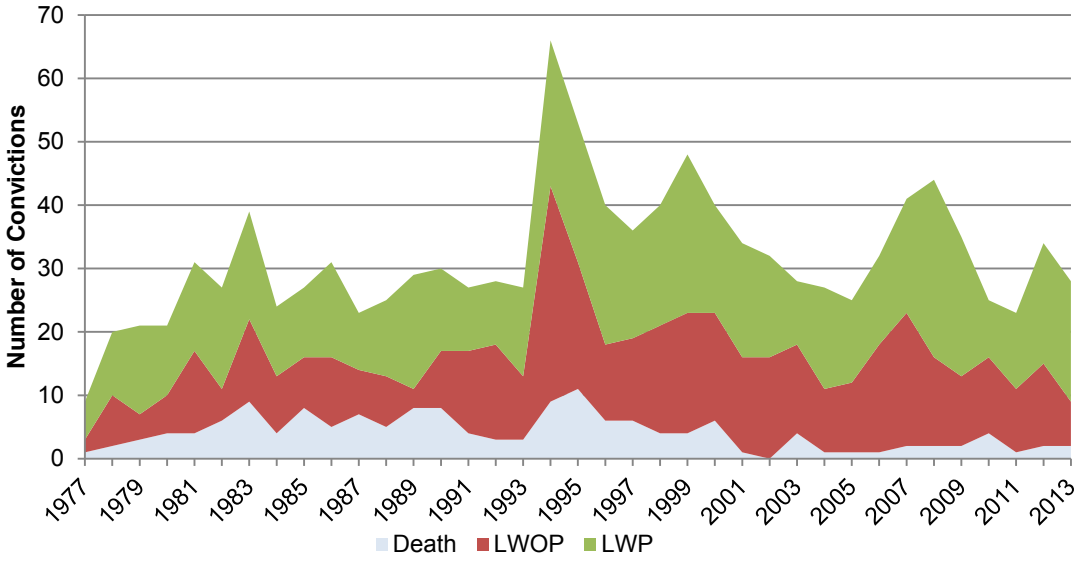
NDOC's execution chamber is located at the Nevada State Prison in Carson City, Nevada. The existing chamber was last used in 2006 for the execution of Darryl Mack. At that time, the Nevada State Prison was operational, but, in May 2012, the Nevada State Prison was closed. According to the NDOC, the execution chamber remains in an operational state. Despite this, NDOC management has testified that the chamber does not meet certain Americans with Disabilities Act requirements and would likely require modifications before an execution could proceed. NDOC management also indicated they do not know how this would impact a scheduled execution as the matter would probably be determined by the courts. The cost of such legal proceedings and to update the facility to bring them into compliance with applicable requirements has not been incorporated into this analysis. NDOC requested funding during the 2013 Legislative Session to construct a new chamber at the Ely State Prison. At that time, the new chamber was estimated to cost about $692,000.

Related Supporting Information

The number of death penalty sentences compared to LWP and LWOP has been declining over the last decade. The greatest number of sentences occurred in 1995 when 11 individuals were sentenced to death. For the most part, death penalty sentences over the last decade have accounted for less than 10% of all sentences issued for first degree murder. This is a contrast to the decade between 1985 and 1995 when death penalty sentences exceeded 10% and sometimes accounted for about 30% of

sentences in a given year. Exhibit 42 shows the frequency of death sentences compared to LWP and LWOP from 1977 forward.

Frequency of Inmates Incarcerated for First Degree Murder From 1977 to 2013 **Exhibit 42**



Source: NDOC's NOTIS and NCIS information systems.

Note: The year of incarceration was used to populate this graph. We acknowledge that this may not necessarily represent the year of conviction in all cases. Any variations between the incarceration date and the conviction date are assumed to be insignificant. This graph does not account for determinate sentences which is a first degree murder sentencing option. Due to how data was organized in NDOC's information systems we could not easily obtain those convicted of first degree murder with determinate sentences.

Since 1977, nearly 1,200 individuals have been convicted of first degree murder. Of these, nearly half will be eligible for parole or have already been paroled for this crime. Exhibit 43 reflects the LWP, LWOP and death penalty subgroups used to determine incarceration costs.

First Degree Murder Population – LWP, LWOP, and Death Penalty Sentences Only From July 1, 1977, to December 31, 2013 **Exhibit 43**

	LWP	LWOP	Death	Totals
Totals From NDOC Data	570	447	153	1,170
Paroled – Not Currently Incarcerated	(168)	0	0	(168)
Prison Deaths	(21)	(35)	(16)	(72)
Executions	0	0	(12)	(12)
Death Sentences Overturned [1]	7	29	(42)	(6)
	388	441	83	912
Housed Out of State	(7)	(17)	(1)	(25)
Incarcerated in NV Prisons	381	424	82	887
Percent of Murder Population	43%	48%	9%	

Source: NDOC's NOTIS and NCIS information systems.

Note: All LWP and LWOP inmates may not have been included due to limitations in how data is organized and retrieved from NOTIS and NCIS. However, we performed extensive procedures to attain as complete a population as possible in the timeframe available and believe we have captured the significant majority of inmates subject to these sentences.

[1] Six overturned sentences were reduced to a charge less than first degree murder and/or inmates were released because the time already served made them eligible for parole.

The median age of incarceration was very similar for all three sentence types. Even so, a wide range between the youngest and oldest individuals sentenced for first degree murder exists. Exhibit 44 shows the youngest, oldest, and median age at which individuals have been sentenced.

Age at Incarceration **Exhibit 44**

	LWP Before 1995	LWP After 1995	LWOP	Death
Youngest	15	16	16	19
Oldest	76	83	74	71
Median	27	27	31	30

Source: NDOC's NOTIS and NCIS information systems.

NDOC was able to provide data regarding inmate deaths from as far back as 1905. We reviewed this information to determine if inmates in our subgroups were dead. We also reviewed trends based on decades since 1980 to determine whether inmates were living longer. Based on this information, the median age for natural deaths for the prison population as a whole is steadily increasing. Since 1980, the median age of death due to natural causes has increased from 43 to 60. While the median age of 60

experienced from 2010 to 2013 is a short time period, NDOC medical personnel stated this is indicative of when inmates are expected to die of natural causes in the future. Exhibit 45 shows the median death age for each decade since 1980.

Inmate Deaths by Decade Since 1980
As of December 31, 2013

Exhibit 45

	1980 - 1989		1990 - 1999		2000 - 2009		2010 - 2013	
Cause	**Number of Deaths**	**Median Age**	**Number of Deaths**	**Median Age**	**Number of Deaths**	**Median Age**	**Number of Deaths**	**Median Age**
Executed[2]	3	47	4	34	4	42	-	-
Natural Causes	68	43	189	47	313	56	143	60
Suicide	16	27	22	35	15	39	11	44
Other[1]	3	42	4	32	2	26	2	36
Totals	**90**		**219**		**334**		**156**	

Source: NDOC historical death reports and auditor calculations.

(1) Other includes causes of death not able to be categorized above. Most inmates in this category were escapees who died while in escapee status.

(2) One inmate was executed in the 1970's.

We determined the number of deaths occurring in our murder population subgroups based on the NDOC death information. We further categorized this data by age group to provide clarity regarding when inmates in each subgroup are dying. Exhibit 46 reflects the number of deaths experienced by subgroup age categories and overall cause.

Number of Deaths by Sentence and Age 1977 to December 31, 2013 **Exhibit 46**

	LWP	LWOP	Death
20-29	1	0	5
30-39	2	5	3
40-49	5	4	10
50-59	3	7	7
Over 60	10	19	3
Totals	21	35	28
Natural Causes	19	33	12
Suicide	2	2	4
Execution	0	0	12[1]

Source: NDOC's NOTIS and NCIS information systems.

[1] There has been one involuntary execution since 1977 and 11 where individuals essentially "volunteered" by giving up remaining appeal opportunities.

NDOC Data

We retrieved inmate data from NDOC's NOTIS and NCIS information systems. NOTIS is NDOC's current inmate information system that was placed into service in 2007. As a result, older inmate information had to be retrieved from the predecessor system, NCIS. Due to some limitations in how the data was organized in both systems, and the age of the information we attempted to retrieve, we were unable to extract all information on first degree murders from 1977. Furthermore, inmates with determinate sentences, a first degree murder sentencing option, were not easily identifiable. We performed extensive procedures to identify and obtain as much data as possible; however, we expect that not every inmate with a sentence of LWP and LWOP since 1977 was retrieved. Nevertheless, we refer to this data population throughout the report as a "first degree murder" population; and, even though not all convictions were identifiable, we believe the information to be as complete and accurate as possible given the 37 year timeframe.

Potential Cost Savings From the Death Penalty Hard to Determine

Potential cost savings due to the existence of the death penalty could not be quantified. Prosecutors strongly suggested the death penalty is not used as a strategic litigation choice to reduce or avoid a trial and its associated costs through plea bargaining. Nevertheless, plea bargains are made with defendants who are facing the possibility of death; however, the rate at which this occurs is lower than for non-death penalty murder cases.

Prosecutors Indicate the Death Penalty Is Not Used as a Strategic Litigation Choice

Even though the judicial process is comprised of various strategic litigation choices, the choice with the most cost implications is the pursuit of the death penalty for first degree murder cases. As shown throughout this report, the death penalty is more costly. Similarly, use of the death penalty, through plea bargaining to avoid lengthy and expensive trials and appeals would result in cost savings. However, prosecutors in the two largest counties indicated the death penalty is never used to encourage defendants to reach a plea agreement. Consequently, we were unable to determine savings directly correlating to the existence of the death penalty.

Not all first degree murder cases are eligible for the death penalty and not all death eligible murder cases are pursued as such. The discretion to pursue the death penalty is borne by the District Attorney in each county in Nevada, or in limited circumstances, the Attorney General. Strategic litigation choices by the prosecution and defense primarily relate to the use and acceptance of plea bargain agreements. Other strategic litigation choices in death penalty cases generally have an insignificant impact on the overall cost of a case. Examples of these decisions include the decision between a grand jury and a preliminary

hearing, whether or not the defendant will testify, and the nature and extent of witnesses needed to testify in court.

We asked the district attorney's offices in Clark County and Washoe County if the death penalty provided cost savings due to its existence. Both offices indicated the death penalty is not used in that manner. For example, the Clark County District Attorney responded, "…it is unethical to use the death penalty as a bargaining tool in plea negotiations". Likewise, the Washoe County District Attorney responded "The Washoe County District Attorney's Office does not use the death penalty for bargaining purposes."

On the other hand, the Clark County District Attorney suggested in the absence of the death penalty prosecutors and defendants may be less willing to negotiate lower sentences since the maximum sentence would be life without the possibility of parole. The Clark County District Attorney stated they would thus pursue this sentence "…for the sake of justice and the safety of the community." The office further stated regarding cost savings and absence of the death penalty, "Trials would necessarily occur in these instances because a defendant would have no incentive to plead guilty to the maximum punishment. Therefore, there would be little, if any, savings."

We asked both prosecutors and public defenders whether they anticipated sustainable costs savings in the absence of the death penalty. Some entities indicated they did not anticipate any sustainable cost savings in absence of the death penalty as resources previously dedicated to death penalty cases would be reallocated to the prosecution or defense of the most severe cases. Others suggested savings would be generated.

Since 2000, the death penalty has been sought in about 230 cases in Clark and Washoe counties although the number of cases has dropped significantly in the last couple of years. Exhibit 47 shows the number of defendants each year since 2000 in Clark and Washoe counties where the district attorney filed a notice of intent to seek the death penalty in the Judicial District Court.

Number of Murder Cases Where Death Penalty Sought 2000 to 2012 **Exhibit 47**

Year	Clark County	Washoe County
2000	10	0
2001	11	3
2002	11	1
2003	17	0
2004	13	0
2005	19	0
2006	22	0
2007	12	1
2008	23	0
2009	37	1
2010	26	0
2011	17	1
2012	6	0
Totals	**224**	**7**

Source: Judicial District Court Records from Clark County and Washoe County.
Note: In some cases, the notice of intent to seek the death penalty could have been withdrawn by the prosecution after it was filed. The specific information regarding notice of intent withdrawals was not readily available in the information obtained from the courts.

According to information provided by the courts, as of July 31, 2014, the Eighth Judicial District Court (Clark County) had 50 defendants facing the death penalty but pending trial. As of that date, the Second Judicial District Court (Washoe County) did not have any death penalty cases pending trial.

Plea Bargains Do Occur in Death Penalty Cases

Even though Clark County and Washoe County prosecutors do not use the death penalty to encourage defendants to plead guilty, plea bargains do occur for all types of murder cases. Plea bargaining is a common practice in the United States criminal justice system. While national statistics suggest plea bargain agreements are reached in about 90-95% of criminal cases, it appears to happen less frequently for the charge of murder in Nevada. Our analysis of available court data suggests plea bargains occur in murder cases about 64% of the time. However, when the death penalty is sought, plea bargains appear to be pursued less often, by about 14%.

Our analysis of murder cases from 2000 to 2012 in Clark County indicates that plea bargain agreements were entered into in about 67% of cases. On a comparative basis, plea bargains were entered into in 42% of the murder cases in Washoe County over the same period of time, although on a much smaller number of total cases. Exhibit 48 details the percentage of cases with a plea bargain when a notice of intent to seek the death penalty was filed and when the death penalty was not sought in Clark and Washoe counties.

Clark County and Washoe County Plea Bargains Murder Cases From 2000 to 2012 **Exhibit 48**

	Death Penalty Not Sought		Death Penalty Sought		All Cases	
Clark County						
Cases	1,098		227		1,325	
Plea Bargains	767	70%	122	54%	889	67%
Washoe County						
Cases	158		7		165	
Plea Bargains	69	44%	1	14%	70	42%
Combined						
Cases	1,256		234		1,490	
Plea Bargains	836	67%	123	53%	959	64%

Source: Clark and Washoe County Judicial District Courts and auditor analysis.
Note: Information is based on available information from the courts and includes all murder charges, not just first degree.

Plea bargaining is a process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition, subject to court approval. This usually involves the defendant pleading guilty to a lesser offense or to only one or some of a multiple count indictment in return for a lighter sentence than possible for the original charge.

Plea Bargains Generate Savings

Even though the death penalty is not used as a negotiating tool, savings are realized when trials do not occur. Depending on the timing of plea bargains, trial and appeal savings could be as much as $600,000 for each case, but, actual savings are probably much lower since many cases are not plea bargained until well into the pretrial period.

Our analysis and input from those involved in the judicial process suggests plea bargains, in cases where the death penalty is sought, are generally entered into close to the end of the pretrial phase. Delayed agreements lower potential costs savings as the pretrial phase is the most expensive segment of a case. Exhibit 49 shows the potential cost savings based on the timing of the plea bargains in an average death penalty case.

Potential Savings Associated With Plea Bargains in Death Penalty Cases **Exhibit 49**

Timing of Plea Bargain	Total Estimated Costs	Potential Cost Savings
No Plea Bargain	$708,000	n/a
Immediately Before Trial	$462,000	$246,000
Midway Through Pretrial	$256,000	$452,000
Shortly After Arraignment	$ 92,000	$616,000

Source: Auditor analysis of cost information from state and local governmental agencies.

Note: Estimated cost savings may vary significantly based on timing of the plea bargain and nature of the agreement. Additionally, cost savings are based on an average case. Actual costs and potential cost savings may vary significantly between cases.

Sentencing Generally Should Not Produce Savings

Significant cost savings are not generated through sentences and plea bargaining the death penalty. In theory, the death penalty is the least expensive incarceration total of the sentencing options if executions occur. Further, current statutes require sentences for first degree murder that are long enough, with enhancements that are typically added, that costs for the different sentences largely result in totals being comparable.

An average sentence of death is only slightly more costly than sentences such as LWOP and LWP. Based on the historical trend of executions, the cost of incarcerating a death penalty case is estimated at $599,000, relatively consistent with LWOP at $598,000. However, the cost savings are significantly impacted by whether death penalty inmates die of natural causes or are executed. Further, any cost savings generated by plea bargaining would be highly dependent upon the circumstances of each case since our incarceration totals are derived from population medians. As an example, older inmates are unlikely to generate any cost savings as they would likely spend the remainder of their

natural life incarcerated regardless of the sentence imposed. Additional information regarding sentencing and associated costs is included in Chapter 3 beginning on page 53.

Judicial District Court Data

We obtained murder case data from the Second and Eighth Judicial District Courts for arraignments between 2000 through 2012. Through our data reliability, sample selection, and analysis of court records, we found the data received did not always include all data specific to a case due to how data was organized and queried. We made adjustments to data as necessary and believe it was complete and reliable enough to use for our intended purpose of selecting samples and analyzing plea bargained cases. Specifically, data received did not always include sentencing information, especially in plea bargained cases.

Appendix A

Assembly Bill 444

Assembly Bill No. 444–Committee on
Legislative Operations and Elections

CHAPTER..469...

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

Legislative Counsel's Digest:

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

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

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

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

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

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

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

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

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

(3) Pretrial motions;

(4) Extradition;

(5) Psychiatric and medical evaluations;

Appendix A

Assembly Bill 444 (continued)

– 2 –

(6) Expert witnesses;

(7) Expenses for witnesses other than expert witnesses, including, without limitation, expenses for witnesses during the penalty phase;

(8) Facilities, including, without limitation, any additional costs to the court, such as costs for increased security;

(9) Juries;

(10) Sentencing proceedings;

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

(12) Requests for clemency;

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

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

3. The audit must also examine the fiscal costs, including, without limitation, any potential cost savings, of the death penalty on:

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

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

(c) Sentencing.

4. The audit must be conducted:

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

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

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

Appendix A

Assembly Bill 444 (continued)

– 3 –

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

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

20 ~~~~ 13

Appendix B

Death Penalty Information by State After 1972
As of August 2014

State	Death Penalty	Year Re-enacted	Year Repealed	Number Executed	Year of Last Execution	Death Row Population
Alabama	Yes	1976		56	2013	198
Alaska	No					0
Arizona	Yes	1973		37	2014	124
Arkansas	Yes	1973		27	2005	38
California	Yes	1974		13	2006	742
Colorado	Yes	1975		1	1997	4
Connecticut	No	1973	2012	1	2005	11
Delaware	Yes	1974		16	2012	18
District of Columbia	No					0
Florida	Yes	1972		88	2014	410
Georgia	Yes	1973		54	2014	94
Hawaii	No					0
Idaho	Yes	1973		3	2012	12
Illinois	No	1974	2011	12	1999	0
Indiana	Yes	1973		20	2009	14
Iowa	No					0
Kansas	Yes	1994		0		10
Kentucky	Yes	1975		3	2008	34
Louisiana	Yes	1973		28	2010	88
Maine	No					0
Maryland	No	1975	2013	5	2005	5
Massachusetts	No					0
Michigan	No					0
Minnesota	No					0
Mississippi	Yes	1974		21	2012	48
Missouri	Yes	1975		77	2014	48
Montana	Yes	1974		3	2006	2
Nebraska	Yes	1973		3	1997	11
Nevada	Yes	1973		12	2006	82
New Hampshire	Yes	1991		0		1
New Jersey	No	1982	2007	0		0
New Mexico	No	1979	2009	1	2001	2
New York	No	1995	2004[1]	0		0
North Carolina	Yes	1977		43	2006	159
North Dakota	No					0
Ohio	Yes	1974		53	2014	144

Appendix B

Death Penalty Information by State After 1972
As of August 2014 (continued)

State	Death Penalty	Year Re-enacted	Year Repealed	Number Executed	Year of Last Execution	Death Row Population
Oklahoma	Yes	1973		111	2014	51
Oregon	Yes	1978		2	1997	35
Pennsylvania	Yes	1974		3	1999	193
Rhode Island	No					0
South Carolina	Yes	1974		43	2011	49
South Dakota	Yes	1979		3	2012	3
Tennessee	Yes	1974		6	2009	76
Texas	Yes	1974		515	2014	278
U.S. Government	Yes	1988		3	2003	59
U.S. Military	Yes	1984		0		6
Utah	Yes	1973		7	2010	9
Vermont	No					0
Virginia	Yes	1975		110	2013	9
Washington	Yes	1975		5	2010	9
West Virginia	No					0
Wisconsin	No					0
Wyoming	Yes	1977		1	1992	1

Source: Death Penalty Information Center.

(1) A portion of New York's death penalty statute has been declared unconstitutional. The State has not taken measures to restore the death penalty, but it also has not formally repealed existing statutes.

Appendix C

Individuals With Death Sentences
As of September 2014

Count	Inmate Name	Current Age	Ethnicity	Year Placed on Death Row	Years Under Death Sentence	County of Conviction
1	Wilson, Edward	55	Caucasian	1979	35	Washoe
2	McKenna, Patrick	68	Caucasian	1980	34	Clark
3	Ybarra, Robert	61	Caucasian	1981	33	White Pine
4	Rogers, Mark	57	Caucasian	1981	33	Pershing
5	Petrocelli, Tracy	63	Caucasian	1982	32	Washoe
6	Williams, Cary	51	African American	1983	31	Washoe
7	Howard, Samuel	66	African American	1983	31	Clark
8	Hill, James	51	African American	1983	31	Clark
9	Sechrest, Ricky	53	Caucasian	1983	31	Washoe
10	Crump, Thomas	74	Caucasian	1984	30	Clark
11	Snow, John	72	African American	1984	30	Clark
12	Hogan, Michael	65	Caucasian	1985	29	Clark
13	Lopez, Manuel	55	Hispanic	1985	29	Clark
14	Flanagan, Dale	49	Caucasian	1985	29	Clark
15	Moore, Randolph	49	Caucasian	1985	29	Clark
16	Adams, Larry	65	Caucasian	1986	28	Clark
17	Browning, Paul	57	African American	1987	27	Clark
18	Haberstroh, Richard	59	Caucasian	1987	27	Clark
19	Emil, Rodney	53	Caucasian	1988	26	Clark
20	Bejarano, John	53	Hispanic	1988	26	Washoe
21	Valerio, John	49	Caucasian	1988	26	Clark
22	Robins, Charles	48	African American	1989	25	Clark
23	Canape, Richard	59	African American	1989	25	Clark
24	Homick, Steven[(1)]	74	Caucasian	1989	25	Clark
25	Leonard, William	53	Caucasian	1989	25	Carson City
26	Kirksey, Jimmy	53	African American	1990	24	Clark
27	Riley, Billy	64	African American	1990	24	Clark
28	Guy, Curtis	47	African American	1991	23	Clark
29	Echavarria, Jose	53	Hispanic	1991	23	Clark
30	Powell, Kitrich	56	Caucasian	1991	23	Clark
31	Smith, Joseph	74	African American	1993	21	Clark
32	McNelton, Charles	57	African American	1993	21	Clark
33	Byford, Robert	44	Caucasian	1994	20	Clark
34	Bollinger, David	51	Caucasian	1994	20	Washoe
35	Sonner, Michael	46	Caucasian	1994	20	Pershing
36	Wesley, Herbert	49	African American	1995	19	Clark

Appendix C

Individuals With Death Sentences As of September 2014 (continued)

Count	Inmate Name	Current Age	Ethnicity	Year Placed on Death Row	Years Under Death Sentence	County of Conviction
37	Doyle, Antonio	43	African American	1995	19	Clark
38	Atkins, Sterling	40	African American	1995	19	Clark
39	Nika, Avram	44	Caucasian	1995	19	Washoe
40	Gutierrez, Carlos	46	Hispanic	1995	19	Washoe
41	Witter, William	51	Hispanic	1995	19	Clark
42	Greene, Travers	38	African American	1995	19	Clark
43	Williams, Antoine	47	African American	1996	18	Clark
44	Lisle, Kevin	43	Caucasian	1996	18	Clark
45	Rippo, Michael	49	Caucasian	1996	18	Clark
46	Bolin, Gregory	58	African American	1996	18	Clark
47	Castillo, William	41	Caucasian	1996	18	Clark
48	Chappell, James	44	African American	1997	17	Clark
49	Sherman, Donald	50	Caucasian	1997	17	Clark
50	Thomas, Marlo	41	African American	1997	17	Clark
51	Collman, Thomas	43	Caucasian	1997	17	White Pine
52	Middleton, David	53	African American	1997	17	Washoe
53	Leonard, Gregory	52	African American	1998	16	Clark
54	Mulder, Michael	54	Caucasian	1998	16	Clark
55	Harte, Shawn	37	Caucasian	1999	15	Washoe
56	Vanisi, Siaosi	44	Asian American	1999	15	Washoe
57	Rodriguez, Pedro	35	Hispanic	1999	15	Washoe
58	Randolph, Charles	48	African American	2000	14	Clark
59	Rhyne, Kelly	55	Caucasian	2000	14	Elko
60	Floyd, Zane	39	Caucasian	2000	14	Clark
61	Hernandez, Fernando	51	Hispanic	2000	14	Clark
62	Johnson, Donte	35	African American	2000	14	Clark
63	Weber, Timmy	41	Caucasian	2003	11	Clark
64	McConnell, Robert	42	Caucasian	2003	11	Washoe
65	Blake, Alfonso	44	African American	2004	10	Clark
66	Archanian, Avetis	56	Caucasian	2005	9	Clark
67	Maestas, Beau	31	Caucasian	2006	8	Clark
68	Walker, James	58	African American	2007	7	Clark
69	Dozier, Scott	43	Caucasian	2007	7	Clark
70	Hamilton, Tamir	36	African American	2008	6	Washoe
71	Nunnery, Eugene	35	African American	2008	6	Clark
72	Mendoza, Frederick	67	Hispanic	2009	5	Clark

Appendix C

Individuals With Death Sentences As of September 2014 (continued)

Count	Inmate Name	Current Age	Ethnicity	Year Placed on Death Row	Years Under Death Sentence	County of Conviction
73	Richardson, Thomas	47	Caucasian	2009	5	Clark
74	Burnside, Timothy	33	African American	2010	4	Clark
75	Biela, James	33	Caucasian	2010	4	Washoe
76	Watson, John	74	Caucasian	2010	4	Clark
77	Conner, Charles	65	Caucasian	2010	4	Clark
78	McCarty, Jason	42	African American	2011	3	Clark
79	Keck, William	31	Caucasian	2012	2	Clark
80	Bradford, Julius	29	African American	2012	2	Clark
81	Hall, Bryan	33	Caucasian	2013	1	Clark
82[(2)]	Hover, Gregory	42	Caucasian	2013	1	Clark

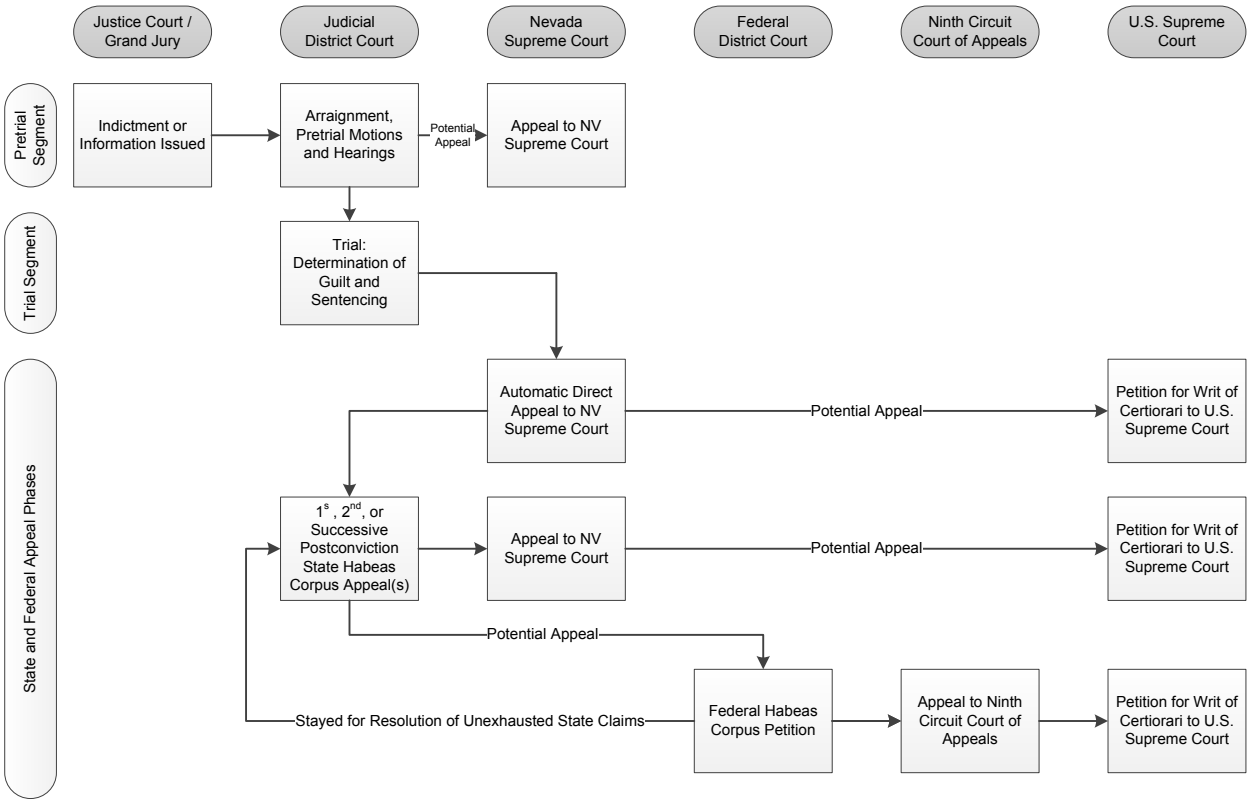
Source: NDOC's NOTIS information system.

(1) Steven Homick is incarcerated in California's San Quentin State Prison.

(2) David Riker was removed from death row and received a life without the possibility of parole sentence in February 2014. As of December 31, 2013, 83 people were sentenced with the death penalty because Riker's sentence was such at that time.

Appendix D

Judicial Process – Death Penalty Cases



Source: Auditor developed from discussions with state and local government personnel and authoritative publications.

Appendix E

Information Regarding Sampled Cases

Year of Conviction	Murder Conviction	Proceeded As a Death Penalty Case	Sentence	Minimum Time to Serve[2]	Maximum Time to Serve[2]	Trial Costs[1]	Appeal Costs[1]
2008	1st	Yes	Death			$439,994	
2012	1st	Yes	Death			$542,423	
2013	1st	Yes	Death			$545,835	
2010	1st	Yes	Death			$288,904	
2010	1st	Yes	Death			$613,694	
2009	2nd	Yes[3]	Life With Parole	20	Life	$149,280	
2012	1st	Yes[4]	Life With Parole	25	Life	$471,851	
2012	1st	Yes	Life Without Parole		Life	$939,545	
2012	1st	Yes	Life Without Parole		Life	$275,843	
2011	2nd	No	Life With Parole	30	Life	$274,743	
2009	1st	No	Life Without Parole		Life	$213,245	
2013	1st	No	Life With Parole	48	Life	$143,211	
2009	1st	No	Life Without Parole		Life	$155,973	
2007	2nd	No	Life With Parole	20	Life	$ 70,315	
2012	1st	No	Time	21	62	$102,487	
2003	1st	Yes	Death				$153,798
2007	1st	Yes	Death				$116,223
2007	1st	Yes	Death				$112,912
2005	1st	Yes	Death				$ 69,095
2004	1st	Yes	Death				$105,822
2003	1st	Yes	Life Without Parole		Life		$ 36,755
2009	1st	Yes	Life Without Parole		Life		$ 34,398
2010	1st	Yes	Life Without Parole		Life		$ 19,080
2007	2nd	Yes[5]	Life With Parole	63	Life		$ 40,091
2006	1st	Yes	Life Without Parole		Life		$ 54,710
2006	1st	No	Life Without Parole		Life		$ 30,183
2006	1st	No	Life Without Parole		Life		$ 62,218
2003	1st	No	Time	50	130		$ 37,805

Source: Compiled from court documents and audit work performed.

(1) As detailed in our methodology, costs for each case were either for trial costs or appeal costs depending on the arraignment date and other factors considered. Therefore, costs noted here will be the aggregate total of costs for each case for either the trial or appeal portion, but not both. Because cost centers varied by case, the average case cost was determined by individual cost center, not an average of overall case costs. Therefore, a simple average of these cases will not agree exactly to that noted in the report body.

(2) Sentences are shown in years and include time for other charges if court documents stipulated sentences were to run consecutively.

(3) The Notice of Intent to Seek the Death Penalty (NOI) was withdrawn 10 days before the trial due to an agreement between the prosecution and defense.

(4) The NOI was withdrawn immediately following the jury trial and verdict. The defense agreed to allow the presiding judge to determine the sentence.

(5) The NOI was withdrawn during the pretrial phase, approximately 8 months before the trial.

Appendix F

Cumulative Estimated Incarceration and Medical Costs – 2013 Dollars

	Prison Facility Costs			Medical Costs - Intake Age						
Years Incarcerated	LWP	LWOP	Death Penalty	20	30	40	50	60	70	75+
1	$ 17,756	$ 19,429	$ 25,997	$ 1,323	$ 1,152	$ 2,293	$ 5,386	$ 10,213	$ 12,694	$ 40,270
2	34,885	38,176	51,091	2,631	2,291	4,561	10,713	20,313	25,248	80,096
3	51,715	56,594	75,745	3,933	3,424	6,816	16,010	30,358	37,733	119,702
4	68,250	74,689	99,968	5,227	4,551	9,059	21,278	40,347	50,148	159,089
5	84,495	92,467	123,766	6,513	5,672	11,289	26,517	50,281	62,496	198,259
6	100,455	109,934	147,147	7,628	7,890	16,499	36,396	62,560	101,449	237,212
7	116,136	127,095	170,118	8,736	10,095	21,680	46,220	74,771	140,186	275,950
8	131,542	143,955	192,687	9,838	12,289	26,832	55,990	86,914	178,710	314,473
9	146,679	160,520	214,861	10,934	14,470	31,956	65,706	98,991	217,021	352,784
10	161,550	176,794	236,646	12,024	16,640	37,052	75,369	111,000	255,120	390,883
11	176,160	192,784	258,050	13,108	18,797	42,119	84,978	122,944	293,008	428,771
12	190,515	208,493	279,078	14,186	20,943	47,159	94,534	134,821	330,687	466,451
13	204,618	223,927	299,738	15,258	23,076	52,171	104,037	146,633	368,158	503,921
14	218,474	239,091	320,037	16,324	25,198	57,154	113,487	158,379	405,422	541,185
15	232,087	253,989	339,979	17,384	27,308	62,111	122,886	170,061	442,480	578,243
16	245,462	268,626	359,572	19,482	32,237	71,457	134,502	206,914	479,333	$ 615,096
17	258,602	283,006	378,822	21,569	37,139	80,752	146,055	243,563	515,982	
18	271,513	297,135	397,735	23,644	42,014	89,995	157,544	280,010	552,429	
19	284,197	311,016	416,316	25,708	46,861	99,188	168,969	316,255	588,675	
20	296,658	324,654	434,572	27,760	51,682	108,329	180,332	352,300	624,720	
21	308,902	338,053	452,508	29,802	56,476	117,420	191,631	388,146	$ 660,566	
22	320,931	351,217	470,129	31,831	61,244	126,461	202,868	423,794		
23	332,749	364,151	487,442	33,850	65,986	135,452	214,043	459,245		
24	344,360	376,858	504,452	35,857	70,701	144,393	225,156	494,500		
25	355,768	389,342	521,164	37,854	75,390	153,285	236,208	529,560		
26	366,976	401,608	537,582	42,517	84,233	164,275	271,074	564,426		
27	377,988	413,658	553,714	47,155	93,026	175,205	305,748	599,100		
28	388,806	425,498	569,562	51,766	101,771	186,075	340,230	633,582		
29	399,435	437,130	585,133	56,353	110,468	196,884	374,521	667,873		
30	409,878	448,559	600,431	60,914	119,117	207,634	408,623	701,975		
31	420,138	459,787	615,462	65,450	127,718	218,324	442,536	$ 735,888		
32	430,218	470,819	630,228	69,960	136,271	228,955	476,262			
33	440,122	481,657	644,736	74,446	144,777	239,528	509,802			
34	449,852	492,305	658,990	78,907	153,236	250,042	543,156			
35	459,411	502,767	672,995	83,344	161,649	260,497	576,326			
36	468,804	513,045	686,753	91,709	172,047	293,484	609,313			
37	478,031	523,144	700,271	100,029	182,387	326,288	642,117			
38	487,097	533,065	713,552	108,303	192,671	358,912	674,740			
39	496,004	542,813	726,600	116,531	202,898	391,354	707,183			
40	504,755	552,390	739,420	124,713	213,068	423,618	739,447			
41	513,353	561,799	752,015	132,850	223,182	455,703	$ 771,532			
42	521,800	571,043	764,390	140,943	233,240	487,611				
43	530,099	580,126	776,547	148,990	243,242	519,342				
44	538,253	589,049	788,492	156,993	253,190	550,898				
45	546,264	597,816	800,227	164,952	263,082	582,280				
46	554,134	606,429	811,757	174,790	294,290	613,489				
47	561,867	614,891	823,085	184,573	325,326	644,524				
48	569,464	623,206	834,214	194,302	356,190	675,389				
49	576,928	631,374	845,148	203,977	386,884	706,082				
50	$ 584,261	$ 639,399	$ 855,891	$ 213,599	$ 417,408	$ 736,607				

Source: NDOC data and information and auditor calculations.

Note: Costs are based on fiscal year 2013 expenditures incurred by NDOC. Future values were based on the 10 year average Consumer Price Index inflation rate and medical inflation rate of 2.40% and 3.65% respectively. Costs were then determined in 2013 dollars by using a 30-year Treasury yield over the last 10 years of 4.226%. LWP and LWOP are defined as life with the possibility of parole and life without the possibility of parole.

Appendix G
List of Exhibits

Exhibit Number	Exhibit Title	Report Page
1	Aggravating and Mitigating Circumstances To Be Considered by a Jury in Imposing the Death Penalty	3
2	Death Penalty Sentences and Status As of December 31, 2013	4
3	Death of a Person Punishable by Nevada Statute	5
4	Cost Differential of the Death Penalty	11
5	Average Case Costs, Trial and Appeal Phases	12
6	Average Time for Judicial Activities	13
7	Total Incarceration Costs	14
8	Trial and Appeal Average Case Costs	16
9	Average Trial Costs by Segment	17
10	Average Lifespan of Cases in Days	19
11	Average Pretrial Costs - All Components	20
12	Average Pretrial Defense Costs by Category	21
13	Average Trial Costs - All Components	24
14	Average Trial Defense Costs by Category	25
15	Average Trial Prosecution Costs, In-Court Time Only	26
16	Average Trial Court Costs, In-Court Time Only	27
17	Average Penalty Costs - All Components	29
18	Average Penalty Defense Costs	29
19	Average Penalty Prosecution Costs, In-Court Time Only	30
20	Average Penalty Court Costs, In-Court Time Only	32
21	Average Detention Facility, Forensic Laboratory, and Transportation Costs	33
22	Average Costs of Detention From Arrest to Sentencing	34
23	Average Forensic Laboratory Costs	35
24	Defendant Transport Costs	36
25	Average Appeals Costs by Segment	38
26	Appeals Segments and Governmental Agencies	39
27	Average Direct Appeals Defense Costs	41
28	Average Length of Direct Appeals	42
29	Washoe County District Attorney's Office, Direct Appeal Prosecution Costs	43
30	Appointed Counsel Costs Paid by the Office of the State Public Defender, Average State Postconviction Defense Costs	46
31	Washoe County District Attorney's Office, State Postconviction Prosecution Costs	47
32	Office of Attorney General Average Federal Postconviction Costs	50
33	Total Costs of Incarceration, Death Penalty, LWOP, and LWP	54
34	First Degree Murder Population Distribution As of December 31, 2013	56
35	Weighted Average Operating Cost Per Facility and First Degree Murder Subgroup Demographics, Fiscal Year 2013	57

Appendix G

List of Exhibits (continued)

Exhibit Number	Exhibit Title	Report Page
36	Minimum Prison Term for Life With the Possibility of Parole	59
37	Average Medical Cost Increase by Age Group Fiscal Year 2013	61
38	Occurrence Rate of Inmate Use at Northern Nevada Correctional Center, Fiscal Year 2013	62
39	Internal and Outside Medical Cost by Age Group, Fiscal Year 2013	63
40	Average Medical Costs by Subgroup - LWP Average Medical Costs by Subgroup - LWOP Average Medical Costs by Subgroup - Death Penalty	64
41	Costs of an Execution, December 31, 2013	67
42	Frequency of Inmates Incarcerated for First Degree Murder From 1977 to 2013	69
43	First Degree Murder Population - LWP, LWOP, and Death Penalty Sentences Only, From July 1, 1977, to December 31, 2013	70
44	Age at Incarceration	70
45	Inmate Deaths by Decade Since 1980, As of December 31, 2013	71
46	Number of Deaths by Sentence and Age, 1977 to December 31, 2013	72
47	Number of Murder Cases Where Death Penalty Sought, 2000 to 2013	75
48	Clark County and Washoe County Plea Bargains, Murder Cases From 2000 to 2012	76
49	Potential Savings Associated With Plea Bargains in Death Penalty Cases	77

Appendix H
Audit Methodology

To gain an understanding of the requirements outlined in Assembly Bill 444 (A.B. 444) we reviewed state laws and minutes of legislative committees. To familiarize ourselves with the death penalty we reviewed information regarding the history of the death penalty both nationally and for Nevada, significant U.S. Supreme Court cases, and judicial processes. We searched extensively for other reports or studies regarding the cost of the death penalty and reviewed results, conclusions, methodologies, and limitations. Furthermore, we discussed the death penalty process, A.B. 444 requirements, and our informational needs with local and state governmental agencies.

While the crime of murder may be committed in any one of Nevada's 17 counties, we limited our review to murders occurring in Clark and Washoe counties because Nevada does not have a central repository of criminal case information. Due to time and logistical constraints, we did not contact all of the district courts in the State to obtain data regarding murder cases during our scope period. As a result, we do not know the entire population of murder cases occurring in the State; however, those captured represent the two largest demographic centers and a vast majority of cases meeting the criteria for case selection.

We bifurcated our cost and case analysis between the trial and appeal phases largely to ensure information obtained on cases was available and as reliable and accurate as possible. Exhibit 50 shows the distribution of the two cost analysis phases and the applicable time period used for case selection.

Exhibit 50

Cost Analysis Phase	Time Period (Arraignment Dates)
Trial	January 1, 2007, to December 31, 2012
Appeal	January 1, 2000, to December 31, 2006

By segregating case costs and reviewing more recent cases for each cost phase, presumably data and records would be more readily available. Furthermore, access to those directly involved in cases would be more likely, and information received would be able to be compared and verified. We acknowledge those cases selected for appeals analysis, because they are more recent, may not fully represent the breadth and depth of the ongoing nature of the process. However, selecting older cases would likely not have resulted in more relevant cost information as records for preceding decades could be nonexistent or unavailable due to the destruction of physical records and superseded information systems.

Case Data

We requested the Second and Eighth District Courts provide us with first degree murder cases with arraignment dates occurring between January 1, 2000, and December 31, 2012. Because many defendants are charged with open murder, the courts were unable to limit our request to first degree murder cases. Furthermore, specific conviction information (first or second degree murder) was not always captured by the data query as that information can be detailed in court minutes or transcripts. As a result, our data included cases where defendants were convicted of second degree murder.

We performed procedures to ensure the data received from the District Courts was complete and accurate. Through our testing we found instances where the court data contained minor inaccuracies compared to detailed records. We also noted instances where court records contained multiple lines of data but the query did not return all lines of relevant information. However, this data was the best available information from which we had to select a sample of cases from since collecting cost information on the entire population would have been impossible. As noted below, this incomplete information did affect the final makeup of our sample population but did not significantly impact our results or conclusions.

Case Selection

Cases were stratified into three categories based on the case type. We removed cases showing guilty pleas, plea bargains,

defendants choosing to represent themselves, and cases with no sentencing information. Exhibit 51 shows the population information.

Exhibit 51

	Population	Exclusions [1]	NOI and Death Sentence	NOI and Sentence Other Than Death	No NOI and Sentence Other Than Death
Washoe	170	(104)	4	2	60
Clark	1,772	(1,629)	9	32	102
Totals	**1,942**	**(1,733)**	**13**	**34**	**162**

Source: Second and Eighth District Courts.

(1) Cases were excluded for sample selection purposes when the data indicated an initial guilty plea, a plea bargain agreement, the defendant was not represented by counsel (self-representation), data was duplicated, or no sentence information was available.

(2) A Notice of Intent to Seek the Death Penalty (NOI) must be filed by prosecutors within 30 days of an indictment or information and must specify all aggravating factors intended to be proven at trial.

We stratified the cases into three categories as shown in Exhibit 52 and judgmentally selected 30 cases for analysis. Our judgmental selections were primarily based on trial length and sentence; however, all data was analyzed and reviewed in an effort to select the best possible cases for comparison and analysis. Sentences for cases where a Notice of Intent to Seek the Death Penalty (NOI) was not filed were given significant weight in our selection; however, there were not enough cases in this case type where the sentence was life without the possibility of parole to focus exclusively on. We selected, based on our analysis, three cases in each case type that appeared average, one complex, and one less complex to obtain the best representation possible between cases.

Exhibit 52

Case Type	Trial Phase (January 1, 2007, to December 31, 2012)	Appeal Phase (January 1, 2000, to December 31, 2006)	Totals
NOI Filed and Death Sentence	5	5	10
NOI Filed and Sentence Other Than Death[1]	5	5	10
No NOI Filed and Sentence Other Than Death	5	5	10
Totals	**15**	**15**	**30**

(1) Case type selected as these cases provide the closest comparison to death penalty cases in the trial phase in terms of severity. Furthermore, these cases provide the best comparison regarding the difference a death penalty conviction can have on appeal costs.

In order to obtain certain information from the courts necessary for us to fulfill the requirements of A.B. 444, the courts requested we

not provide specific identifying information regarding cases selected. Our case selections, with limited information, are shown in Appendix E.

We selected our sample cases from the data provided from the Second and Eighth District Courts; however, as noted above, our population contained both first and second degree murder cases and the data contained certain inaccuracies. As a result, convictions for six selected cases were for second degree murder. Two of these six cases, selected for appeal activity, yielded no meaningful cost information and were removed from our sample population. Additionally, one trial case had to be re-categorized after a detailed review of court records revealed a NOI had never been filed. Exhibit 53 reflects the composition of the final sample.

Exhibit 53

Case Type	Trial Phase (January 1, 2007, to December 31, 2012)	Appeal Phase (January 1, 2000, to December 31, 2006)	Number of 2nd Degree Murder Cases
NOI Filed and Death Sentence	5	5	0
NOI Filed and Sentence Other Than Death	4	5	2
No NOI Filed and Sentence Other Than Death	6	3	2
Totals	**15**	**13**	**4**

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. We have not projected the costs to the population because the entire population of murder cases is not known and projecting costs to the population would not be appropriate because each case is unique and costs for one case likely do not mimic another. Judgmental selections were made based on the type of case, date of arraignment, conviction, and sentence although we considered all available data when selecting sample cases. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

State and Local Agencies

To gain an understanding of the judicial process and related costs regarding death penalty and non-death penalty cases, we held discussions with personnel from the following entities:

- Washoe County Sheriff's Office
- Sparks Police Department
- Reno Police Department
- Las Vegas Metropolitan Police Department
- Reno Justice Court
- Sparks Justice Court
- Las Vegas Justice Court
- Second Judicial District Court
- Eighth Judicial District Court
- Washoe County District Attorney's Office
- Clark County District Attorney's Office
- Washoe County Public Defender's Office
- Washoe County Alternate Public Defender's Office
- Washoe County Office of Appointed Counsel
- Clark County Public Defender's Office
- Clark County Special Public Defender's Office
- Clark County Office of Appointed Counsel
- Office of the State Public Defender
- Nevada Supreme Court
- Administrative Office of the Courts
- Nevada Attorney General's Office
- Federal Public Defender Office, District of Nevada
- Nevada Department of Corrections
- State Public Works Division
- State Board of Pardons Commissioners
- Clark County and Washoe County accounting sections
- Northern Nevada Mental Health Services, Lake's Crossing Center

We requested entities provide actual cost information, or estimated costs if records were not maintained, regarding our select cases. In certain instances, we sent letters requesting a written response regarding the availability of information. From the information obtained, we performed a comparative analysis by cost center between the three primary case types: death penalty sought and sentenced, death penalty sought but not sentenced, and death penalty not sought. The following provides additional detail regarding the analysis performed on the different types of information obtained.

Court Case Information

For each selected case, we obtained court dockets and transcripts from Justice Courts and Judicial District Courts and identified the number and length of hearings; court dates for the pretrial, trial and penalty phases; and information regarding the nature of costs incurred. We used available information from court hearings transcripts to determine an average length of pretrial hearings based on the number of transcript pages. For trial dates, we assumed a full day in court. We then utilized this information to calculate the time court was in session for each case and related costs incurred for the judge and court staff (court clerk, law clerk, judicial assistant, court recorder and bailiff). This methodology was also used to determine costs for prosecutors and related staff. Transcripts, interpreters, court reporters, juries, and other direct costs were determined from court records. We also determined an administrative and operating cost allocation for the courts based on discussions with personnel and county financial statements.

We also obtained court records from other courts where our cases had activity. These included, when applicable, the Nevada Supreme Court; U.S. District Court, Nevada District, Ninth Circuit Court of Appeals; and U.S. Supreme Court. We used these records to identify the extent of legal activity for each case and to identify the defense and prosecuting attorneys involved in each court to assist in determining the completeness of salary cost information.

Personnel Costs

To determine personnel costs for our selected cases, we obtained salary and fringe benefit costs from various state and local governmental entities. We performed reasonableness tests to assess the reliability and accuracy of salary information provided. When salary information was not provided, we obtained salary and fringe benefit information from *Transparentnevada.com*. We utilized salary and fringe benefit information from 2013, when possible, to provide a standardized cost comparison. When current salary information could not be provided, we calculated the present value of historical salary costs or used current salary information from similar positions.

Estimated Costs

When records of actual time incurred by attorneys and staff for our cases were unavailable, we obtained estimates from personnel involved in the cases. Estimates were provided by certain defense and prosecution attorneys. We requested the entities to provide supporting methodology and rationale for their estimates which we reviewed for reasonableness. For salaried individuals, we adjusted estimates to only reflect paid hours when applicable.

Actual Costs

When cost information was supported by records, we reviewed the supporting details for accuracy and reasonableness. Supported cost information included certain defense attorney costs, expert and witness fees, detention costs, forensic costs, and investigator fees. Actual cost information was compared to various forms of supporting documentation including the state accounting system, agency accounting records, agency case management records, forensic laboratory records, attorney billings and invoices, and court orders for authorization and payment of costs. In certain instances, actual records were not provided and we relied on expenditure approval forms to support costs. Actual payment may have differed from that noted on the expenditure approval form but we expect these variances would not be significant. When attorneys were paid statutory rates, we verified the proper rates were used based on whether the case was a death penalty case or not.

Key Assumptions

Cost information was gathered as of and through December 31, 2013. We selected this date as many of the costs associated with the appeals cases will likely continue for years. By determining a cut-off date, we were able to compare the cost information between cases. We used salary information as of December 31, 2013, because it provided the most recent salary information and a standardized date to value costs. Finally, we performed procedures to identify all costs incurred before December 31, 2013; however, not all costs may have been captured if they were not billed or recorded timely. When necessary, we used the Consumer Price Index to present value historical costs to December 2013.

For determining in-court time, we estimated the duration of hearings based on available information from certain transcripts to calculate an average length of hearings based on the number of transcript pages. For trial and penalty phase dates, we assumed a full day of proceedings with the exception of sentencing hearings that clearly were not a full day.

While we reviewed estimates provided for reasonableness, we could not verify the accuracy of provided totals to supporting documentation. Because estimates were not broken down by segment (pretrial, trial, and penalty) we allocated estimated time based on dates noted in court dockets.

Costs Not Captured

Certain costs were not captured by our analysis due to the insignificance of the cost, the complexity in determining the cost, or because necessary information was not readily available. Examples include the construction cost of buildings and capital improvements, or leasing costs for courts, jails, prisons or other government buildings. Additionally, with the exception of the courts, operating and administrative costs for local and state government agencies were not determined including services provided county or state wide such as accounting, human resources, or purchasing. Furthermore, costs for meetings occurring at District Attorney's Offices to determine whether the death penalty should be pursued in a given case were not captured.

Finally, we did not capture certain costs related to inmate incarceration and release. Specifically, we were unable to capture transport costs for NDOC with the exception of those related to an execution. Inmates may be transported between NDOC facilities, to outside medical facilities, or to court proceedings as necessary. The cost of parole supervision for LWP inmates was not captured, in addition to the cost of Parole Board hearings.

The items noted above are not comprehensive and should not be assumed to be the only costs not captured. Costs accumulated in the report provide insight into the largest and most significant cost centers for our cases and we believe these costs not captured would not impact our results or conclusions.

Incarceration and Medical Costs

Death, LWOP, and LWP Inmate Populations

To calculate incarceration and medical costs, we identified the population of inmates entering the NDOC for first degree murder convictions with a sentence of death, LWOP and LWP. This was accomplished through a review of historical NDOC death penalty reports, and NDOC's current NOTIS and prior NCIS information systems used for tracking inmate information. Our prior audit, Department of Corrections—Accuracy of Criminal History Information 2013, provided us with assurance of the accuracy and reliability of information in NOTIS. The reviews and comparisons with NOTIS and other source documents provided us with assurance of the accuracy of inmate information in NCIS.

Specifically, we reviewed historical NDOC death sentence reports to identify all inmates serving a death sentence at some point between July 1, 1977, and June 2007, the implementation date of NOTIS. In addition, we identified the number of death sentence inmates exonerated by legal action and the number of voluntary and involuntary executions. Next, we obtained reports for all inmates with a death, LWOP, or LWP sentence from NOTIS as of December for each year between 2007 and 2013. In addition, we obtained downloads from NCIS for information as of December 1998, 2002, and 2006. Because of the way sentence information is able to be queried from both systems, we were unable to capture inmates serving determinate sentences for murder. Further, these downloads retrieved inmate information as of a point in time because the systems were unable to be queried for the 37 year period. As a result, not all inmates may have been included if they entered and exited NDOC before or between our snapshot dates.

Using these reports, we removed any inmates serving a LWOP or LWP that did not have a first degree murder conviction. In addition, we removed all inmates serving a sentence for first degree murder prior to July 1, 1977, or for crimes committed in other states.

Our review identified nearly 1,200 inmates that have served a sentence of death, LWOP, or LWP for a first degree murder conviction since July 1, 1977. We performed extensive

procedures comparing data between the systems and obtaining additional information from NOTIS regarding individual inmate history when necessary. We also compared data to supporting information when available. Finally, we performed an extensive review of NDOC historical death penalty reports and comparisons to Federal Public Defender Office's records, to ensure all defendants sentenced to death since July 1, 1977, were identified.

Inmate Death Information

We obtained NDOC's listing of inmate deaths since 1905. To document the accuracy of the listing, we randomly selected five inmates from the listing and compared the information with the inmate's death certificate. Next, we randomly selected five death certificates from NDOC files and compared them to information in the listing. Finally, we randomly selected five deceased inmates from our death, LWOP, and LWP analyses and compared the information in NOTIS with NDOC's inmate death listing. We found this information to be complete and accurate for use in our analyses.

Length of Inmate Sentence Analysis

We calculated the median age of inmates at the time of incarceration at NDOC for those with a sentence of death, LWOP, and LWP as of December 31, 2013. For death sentence inmates, we determined the median age of death as a result of natural causes, suicide, or execution. In addition, for LWOP and LWP inmates we determined the median age of death as a result of natural causes or suicide. For inmates serving LWP, we determined the median length of incarceration prior to parole being granted. Because of changes to the law for LWP pertaining to the minimum sentence length and sentence enhancements, we randomly selected 50 inmates serving for first degree murder sentenced after July 1, 1995. Using these inmates, we calculated the average minimum sentence for LWP sentences for those inmates sentenced after 1995 when changes in the law took effect.

Incarceration and Medical Costs Analysis

Because NDOC does not track cost based on level of custody (maximum, close, medium, and minimum), we obtained annual inmate costs for each of NDOC's institutions for fiscal years 2007

through 2013. We compared fiscal year 2013 with previous years to verify consistency and reasonableness of reported costs. In addition, we compared NDOC incarceration costs with other western states for reasonableness. Using NOTIS reports showing the current institution of incarceration for the 887 death, LWOP, and LWP inmates in NDOC as of December 31, 2013, we calculated the 2013 cost of incarceration using weighted averages for each sentence type.

Similar to incarceration costs, NDOC does not track all medical costs specific to an inmate. NDOC provided a report for outside medical costs by age grouping based on actual invoices paid. We allocated internal medical costs using an NDOC report for Northern Nevada Correctional Center infirmary census information. We used the census information to determine an occurrence rate by age grouping and allocated internal medical costs by the occurrence rate. Based on discussions with NDOC medical personnel, this was determined to be an adequate representation of inmate usage of internal medical costs. Based on our review of this information, it appeared reasonable and consistent with our understanding of medical costs and aging.

Using Consumer Price Index inflation rates and 30-year Treasury yields, we calculated the net present value of incarceration and medical costs. We calculated the estimated incarceration and medical costs for each type of sentence based on the anticipated length of incarceration, using the inmate death, parole, and length of sentence information previously discussed.

Potential Cost Savings

To identify potential costs savings associated with the death penalty, we discussed the use of the death penalty and plea bargains as strategic litigation choices with representatives from the Washoe and Clark County District Attorneys' Offices and public defense attorneys. Using the data from the Second and Eighth Judicial Courts, we also calculated the frequency of plea bargains when a notice of intent to seek the death penalty was filed compared to when the death penalty was not sought. We also gathered information on the number of death penalty cases pending trial in the courts as of July 31, 2014. Using the cost information gathered previously in the audit, we compared the

costs of a death penalty case with no plea agreement to potential cost when a plea bargain was agreed upon. Lastly, we computed the different costs associated with sentencing options including the death penalty, LWOP and LWP for first degree murder convictions.

Our audit work was conducted from June 2013 to September 2014. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

There are no findings or recommendations included in this report. As such, we did not provide any agency a copy of the preliminary report nor did we request a formal response to the report. Contributors to this report included:

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Appendix I

Agency Costs Not Obtained

Cost Area Per A.B. 444	Responsible Entity(s)		Government Level	Cost Data Deficiencies	Effect
Legal Counsel	Prosecution	District Attorney	Local	No cost data provided.	No costs calculated outside of court time.
	Defense	Public Defender, Special/Alternate Public Defender	Local	Time was estimated by staff involved.	Estimates cannot be verified for accuracy.
Investigation		City Police, County Sheriff	Local	No cost data provided with the exception of one case.	No costs calculated but investigations largely not affected by applicability of the death penalty as much as the nature of the crime.
Pretrial Motions	Prosecution	District Attorney	Local	No cost data provided.	No costs calculated outside of court time.
	Defense	Public Defender, Special/Alternate Public Defender	Local	Time was estimated by staff involved.	Estimates cannot be verified for accuracy.
	Judicial	District Court	Local / State	Limited to actual court time.	A majority of costs related to out-of-court time could not be determined.
Extradition		Attorney General	State	None	
Psychiatric and Medical	Prosecution	District Attorney	Local	No cost data provided by Clark County.	Costs not included for Clark County cases.
	Defense	Public Defender, Special/Alternate Public Defender	Local	Some estimates provided when actual invoices were unavailable.	Actual amounts paid may differ from those provided.
	Judicial	District Court	Local	Cost estimates based on contracted rates.	Actual amounts paid may differ from those provided.
Expert Witnesses	Prosecution	District Attorney	Local	No cost data provided by Clark County.	Costs not included for Clark County cases.
	Defense	Public Defender, Special/Alternate Public Defender	Local	Some estimates provided when actual invoices were unavailable.	Actual amounts paid may differ from those provided.
Witnesses	Prosecution	District Attorney	Local	No cost data provided by Clark County.	Costs not included for Clark County cases.
Facilities		Justice Court, District Court, NV Supreme Court	Local / State	Limited to actual court time. No cost data provided by the NV Supreme Court.	A majority of costs related to out-of-court time could not be determined. Some costs not captured.

Appendix I

Agency Costs Not Obtained (continued)

Cost Area Per A.B. 444		Responsible Entity(s)	Government Level	Cost Data Deficiencies	Effect
Juries		Justice Court, District Court	Local	None	
Sentencing	Prosecution	District Attorney	Local	No cost data provided.	A majority of costs related to out-of-court time could not be determined.
	Defense	Public Defender, Special/Alternate Public Defender	Local	Some time was estimated by staff involved.	Estimates cannot be verified for accuracy.
		District Court	Local	Limited to actual court time.	A majority of costs related to out-of-court time could not be determined.
Appeals and Postconviction	Direct Appeal	District Attorney, Public Defender, Special Public Defender, NV Supreme Court	Local / State	Some time was estimated by staff. No cost data provided.	Estimates cannot be verified for accuracy. Costs not included.
	Postconviction	District Attorney, Office of the State Public Defender, District Court	Local / State	Limited cost data provided by prosecution. Not all costs may be captured due to late billings. No cost data provided.	A majority of costs related to out-of-court time could not be determined. Some costs may not be captured.
	Federal Habeas Corpus	Attorney General, Federal District and Appeal Courts, U.S. Supreme Court	State / Federal	None / Federal costs not captured.	Federal costs not included.
Clemency		Pardons Board	State	None	
Incarceration	Jail	NV Counties	Local	None	
	Prison	Department of Corrections	State	None	
Execution		Department of Corrections	State	Certain employee time was unable to be captured.	Minor deficiency affecting execution costs.