

# 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.

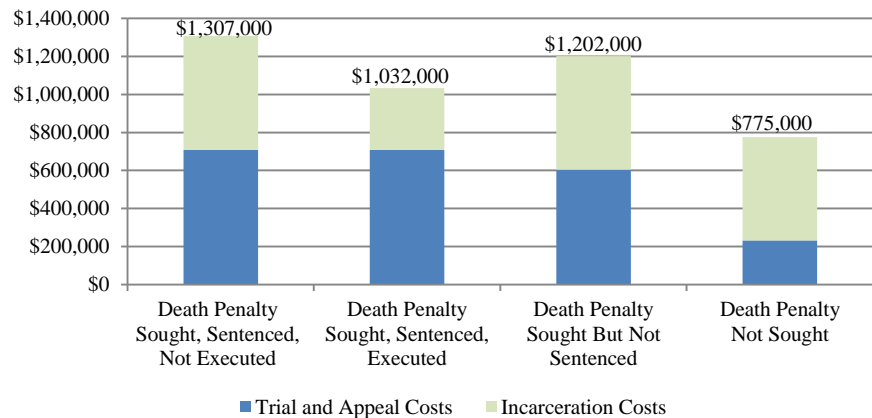
The audit was subject to certain limitations as many agencies with significant roles could not provide actual staff time and were hesitant to provide estimates. Furthermore, much of the information was based on unverifiable estimates provided by various entities. See additional discussion regarding limitations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