



56 Arbor Street, Suite 213, Hartford, CT 06106  
860.231.1489 www.cnadp.org

## COST

*“Every dollar we spend on a capital case is a dollar we can’t spend anywhere else.... We have to let the public know what it costs [to pursue a capital case].”*

**– John M. Bailey, former Chief State’s Attorney, Connecticut**

Because of the additional resources and preparation required in death penalty cases, the separate sentencing phase, post-conviction appeals, and the added costs of death row facilities, studies over the past 25 years consistently have found the death penalty to be more costly to implement than life in prison without release.

## **Connecticut Expends Millions to Maintain Death Penalty**

- According to a 2009 estimate by the General Assembly’s Office of Fiscal Analysis, Connecticut’s death penalty costs the state four million dollars annually.<sup>1</sup>
- The annual cost in 2009-2010 of defending capital cases for the Division of Public Defenders Services was \$3,473,649 or 7.2% of the agency’s budget. Capital cases make up, however, only .06% of the Division’s total caseload.<sup>2</sup>
- As of 2003, defense costs for capital felony prosecutions ending in a death sentence had ranged from \$157,377 to \$1,073,922, with the average cost being \$380,000. Defense costs for capital felony prosecutions ending in a sentence of life without release had ranged from \$10,991 to \$371,350, with the average cost being \$159,300.<sup>3</sup>
- Northern Correctional Institution, the location of Connecticut’s death row, houses inmates at the cost of \$100,385 per year, which is \$56,000 more than the average cost to incarcerate a prisoner in the state.<sup>4</sup>
- Michael Ross’s 2005 execution cost the Department of Corrections \$316,000.<sup>5</sup>
- As of February 28, 2011, the Public Defenders Office had spent \$2,233,955 working on the cases of the two men charged in the Cheshire triple homicide. It is estimated that

<sup>1</sup> Connecticut General Assembly’s Office of Fiscal Analysis (CGA’s OFA), “Fiscal Note for HB-6578,” <<http://www.cga.ct.gov/2009/FN/2009HB-06578-R000726-FN.htm>>.

<sup>2</sup> State of Connecticut Division of Public Defenders Services, *2010 Annual Report*, “Cost Attributable to Death Penalty,” p. 41, <<http://www.ocpd.state.ct.us/Content/AnnualDPDS/2010PDAnnual.htm>>.

<sup>3</sup> *Appendix B of the Final Report on the Connecticut Commission on the Death Penalty*, January 8, 2003, <<http://www.cga.ct.gov/olr/DeathPenaltyCommissionFinalReport.pdf>>.

<sup>4</sup> Christopher Reinhart, *OLR Research Report: Cost of Incarceration and Cost of a Career Criminal*, 2008, <<http://www.cga.ct.gov/2008/rpt/2008-R-0099.htm>>.

<sup>5</sup> CGA’s OFA, “Fiscal Note for HB-6578.”

the Hayes case alone will cost taxpayers \$6 to \$8 million in defense, prosecution, corrections, and judicial costs.<sup>6</sup>

- Since Connecticut rarely carries out executions, the death penalty often ends up being another name for life without release at an exponentially higher cost.

## **State Studies Consistently Show Capital Punishment's High Costs**

- **MARYLAND:** A capital-eligible case resulting in a death sentence costs taxpayers \$1.9 million more than a capital-eligible case where the death penalty is not sought. Since 1978, the death penalty has cost the state at least \$186 million.<sup>7</sup>
- **NEW JERSEY:** Before repealing the death penalty in 2007, the state spent \$11 million annually on it, despite never executing anyone since its reinstatement in 1982. The money New Jersey spent on capital punishment each year could have put 160 police officers on the street or provided counseling to over 850 victims of violent crime.<sup>8</sup>
- **CALIFORNIA:** The death penalty costs taxpayers \$137.7 million a year, a price tag that would drop to \$11.5 million if replaced by life without parole.<sup>9</sup>
- **KANSAS:** A 2003 audit estimated the cost of the median death penalty case through to execution to be \$1.26 million. By contrast, the median non-death penalty case followed by lifetime incarceration incurs an estimated cost of \$740,000. Trial costs specifically are 16 times greater in death penalty cases (\$508,000 compared to \$32,000).<sup>10</sup>
- **NEW YORK:** Between 1995 and 2003, the state spent approximately \$160 million on capital punishment without executing anyone.<sup>11</sup>
- **NORTH CAROLINA:** One of the country's most comprehensive death penalty cost studies found that the death penalty costs the state nearly \$11 million more per year than replacing it with life imprisonment without parole.<sup>12</sup>
- **FLORIDA:** The state would save \$51 million each year by punishing all first-degree murderers with life in prison without parole, according to a 2000 estimate by the *Palm Beach Post*.<sup>13</sup>

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<sup>6</sup> Randall Beach, "Defense costs in Cheshire triple killing exceed \$2 million," *New Haven Register*, March 16, 2011, <[http://nhregister.com/articles/2011/03/16/news/aa1\\_cheshirecosts031511.txt](http://nhregister.com/articles/2011/03/16/news/aa1_cheshirecosts031511.txt)>.

<sup>7</sup> John Roman et al., *The Cost of the Death Penalty in Maryland*, Urban Institute, 2008, <<http://www.urban.org/url.cfm?ID=411625>>.

<sup>8</sup> Jonathan Gradess, Executive Director, New York State Defenders Association, Testimony Before the New Jersey Death Penalty Study Commission, September 13, 2006.

<sup>9</sup> The California Commission on the Fair Administration of Justice, *Fair Administration of the Death Penalty*, June 30, 2008, <<http://www.ccfaj.org/rr-dp-official.html>>.

<sup>10</sup> Kansas Legislative Division of Post Audit, *Costs Incurred for Death Penalty Cases: A K-Goal Audit of the Department of Corrections*, December 2003, <[http://www.kslegislature.org/postaudit/audits\\_perform/04pa03a.pdf](http://www.kslegislature.org/postaudit/audits_perform/04pa03a.pdf)>.

<sup>11</sup> *The Times Union*, September 22, 2003.

<sup>12</sup> Philip Cook, "Potential Savings from Abolition of the Death Penalty in North Carolina," *American Law and Economics Review* 11 (2009): 498-529.

<sup>13</sup> Death Penalty Information Center (DPIC), <<http://www.deathpenaltyinfo.org/node/2289>>.

## Capital Trials are Primary Contributor to Death Penalty's Cost

- The capital trial process is complicated because a life is on the line. The United States Supreme Court requires two separate trial stages for every capital case: in the first trial a jury decides if the person is guilty and in the second trial a jury decides what the appropriate punishment should be.
- It takes longer to find a jury to sit on a capital case than a non-capital one because the law says that only those willing to send someone to death are qualified to serve.
- Death penalty law is more complex than many other areas of law, requiring special legal expertise, more time for trials, more money for experts, and more lawyers.
- Every death penalty verdict is automatically appealed, which adds further costs.
- Most death penalty trials are found to be significantly flawed and must be repeated, sometimes more than once.
- When the wrong person is sentenced to death – which has happened 138 times between 1973 and 2010 – that person can sue the state and win massive damage awards.
- The extra costs involved in a capital prosecution are incurred even when the jury acquits, convicts of a lesser offense, or returns a life sentence. Also, the extra costs still are incurred if a death sentence is overturned. A study at Columbia Law School found that 68 percent of death penalty cases nationally are overturned on appeal, and a full 82 percent of those reversals end in a life sentence.<sup>14</sup>

## Does the Death Penalty Save Money through Plea Deals?

- No. Those who point to the money capital punishment saves through plea deals ignore the scores of cases where prosecutors reject plea offers and nevertheless seek the death penalty. As Jonathan Gradess and Andrew Davies put it in a recent article, “The cost-savings argument [for capital punishment] appears akin to holding a 40% discount sale in a retail store, after marking up the price 200%.”<sup>15</sup>
- Using the death penalty to obtain plea deals can lead to wrongful convictions. Fear of the death penalty has resulted in individuals confessing to crimes of which they were innocent. For example, in 2009 DNA evidence exonerated five people in Nebraska for a rape and murder they did not commit. They had confessed to the 1985 murder so as to escape the threat of the death penalty.<sup>16</sup>

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<sup>14</sup> James S. Liebman and Jeffrey Fagan, “A Broken System: Error Rates in Capital Cases, 1973-1995,” Columbia Law School, 2000, <<http://www2.law.columbia.edu/instructionalservices/liebman/>>.

<sup>15</sup> Jonathan E. Gradess and Andrew L. B. Davies, “The Cost of the Death Penalty: Directions for Future Research,” in *The Future of America's Death Penalty*, 2009.

<sup>16</sup> DPIC, “Five Innocent People Exonerated in Nebraska,” 2009, <<http://www.deathpenaltyinfo.org/five-innocent-people-exonerated-nebraska-defendants-were-threatened-death-penalty>>.