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SU Study Assesses Costs of Seeking Death Penalty

By Robert C. Boruchowitz

It costs more than an additional \$1 million to pursue the death penalty than not to seek it in an aggravated murder case in Washington, according to a new study by four professors at Seattle University.

The report, "An Analysis of the Economic Costs of Seeking the Death Penalty in Washington State," found that the estimated average difference in total costs when the death penalty is sought is \$1,058,885. It also found that costs of recent cases have increased significantly, with costs exceeding \$4 million before trial.

Two death penalty trials began in King County shortly after the report was released. The Seattle Times wrote an editorial citing the SU report and called on the Legislature to end capital punishment.¹ Four days after the Times editorial, Seattle Mayor Ed Murray, City Attorney Pete Holmes and the Seattle City Council sent a letter to the Seattle members of the Legislature calling for "safe and just alternatives to the death penalty." They also referred to the findings of the SU report.

The total average cost for cases covered by the study in which the death penalty was sought was \$3.07 million, versus \$2.01 million for cases in which it was not sought, a difference of \$1.06 million (in 2010 dollars). Adjusted to 2014 dollars, the difference is \$1.15 million. Average trial level defense costs in death penalty cases are 2.8 to 3.5 times higher than cases in which the death penalty is not sought. The "death penalty not sought" cases include those in which the decision not to seek the death penalty was made

months after arraignment, during which the defense, prosecution, local jails and courts incurred expenses.

The study found that of 24 death penalty cases that have completed review, 18 resulted in either the conviction and/or death sentence being reversed, and one ended when the defendant committed suicide while the matter was on appeal.

For example, the report cites a 2012 Washington Supreme Court case that reversed a conviction and death penalty sentence because the prosecutor violated the defendant's due process rights in not disclosing exculpatory evidence. The Court previously had denied the defendant's appeal and four personal restraint petitions. The Court wrote:

A court's "duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case." ... The stakes are at their highest when, as here, a petitioner sentenced to death claims actual innocence.

A search of 298 non-death penalty, aggravated homicide trial reports filed with the Washington Supreme Court found 201 cases that sought appellate review. Of these, 186 were affirmed and only 15 resulted in reversals. Since 1981, 75 percent of death penalty cases that have completed review have resulted in reversal compared to a 7.5-percent reversal rate of the 201 non-death penalty appeals.

When appeals have been denied by the Washington Supreme Court, further review in federal court can cost hundreds of thousands of dollars. Five cases cost more than \$100,000 and two cases more than \$1 million each for appointed defense

counsel. Those two cases occupied lawyers for parts of 12 years or longer. Costs incurred by the Washington Attorney General's Office on these cases also can be in the hundreds of thousands of dollars.

The report includes an analysis of the complexity of death penalty cases and discusses the court rule requirement that defense counsel need to be specially trained and certified to be "learned in the law of capital punishment." It outlines in detail the obligations of defense counsel in capital cases.

The report was the result of seven months of research by SU Criminal Justice Department professors Peter Collins and Matthew Hickman and Law School professors Robert C. Boruchowitz and Mark Larranaga. As far as is known, it is the first such study by a team of social scientists and lawyers who have capital defense experience.

The study was funded by a grant awarded by the American Civil Liberties Union of Washington Foundation. The ACLU-WF had no role in conducting the research and did not influence the analysis and formulation of conclusions.

The report is available at: http://www.law.seattleu.edu/Documents/korematsu/deathpenalty/The_Economic_Costs_of_Seeking_the_Death_Penalty_in_WA_FINAL.pdf. ■

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¹ "No Reasonable Argument for Keeping Death Penalty," January 22, 2015.