

An Analysis of the Economic Cost of Maintaining A Capital Punishment System In The
Pelican State

Presented by Honorable Calvin Johnson, retired Chief Judge of the Orleans
Criminal District, and William P. Quigley, Professor of Law, Loyola University New
Orleans College of Law

TABLE OF CONTENTS

TABLE OF CONTENTS	i
FINDINGS	ii
LIST OF APPENDICES	iii
Executive Summary	- 1 -
METHODOLOGY	- 3 -
I. Background on capital punishment in Louisiana	- 4 -
A. Statutory Provisions	- 4 -
B. Executions - Background	- 5 -
1. Death Sentences In Louisiana since 1976.....	- 6 -
2. Outcomes for death-sentenced people in Louisiana.....	- 7 -
3. Death Row	- 9 -
4. Race.....	- 10 -
5. Geography	- 12 -
6. Rate of executions.....	- 13 -
7. Average time on death row.....	- 14 -
8. Rate of Death Verdicts.....	- 14 -
C. Trial / Death Sentencing Rates in 2005-2019.....	- 16 -
D. Trial Statistics.....	- 17 -
II. Louisiana Costs	- 19 -
A. Individual Case-Costs of Capital Trials	- 20 -
B. Costs of Operating Death Row.....	- 22 -
C. Cost of Defending Death Penalty System	- 23 -
D. Aggregate Yearly Costs of Death Penalty System – Ten Years (2007-2016)	- 24 -
E. Previous Under-Estimations of the Cost of Our Capital Justice System	- 27 -
F. Chronic Underfunding of the Defense System.....	- 27 -
III. Cost Savings	- 31 -
A. Executions v. Housing Inmates.....	- 31 -
B. Plea Bargains	- 32 -
IV. Other Jurisdictions	- 32 -
CONCLUSION	- 37 -

FINDINGS

The Cost of Louisiana's Death Penalty:

Over the past fifteen years, Louisiana has spent over two hundred million dollars on its death penalty system resulting in a single execution. Maintaining Louisiana's capital punishment system – prosecution, defense, court and corrections – imposes a cost on the State of Louisiana of at least fifteen million, six hundred thousand dollars (\$15,600,000) per year.

To maintain a capital punishment system from arrest to execution for an offense committed after August 1, 2019, the State will have to pay at least two hundred and eighty one million dollars (\$281,000,000). This more than a quarter-billion dollars is *above* the ordinary costs that these cases would otherwise impose.

Cases

- There are on average 80 potentially capital first degree murder arrests each year in Louisiana resulting in an average of 32 capital indictments.
- 96% of these potentially capital cases are resolved with a non-capital trial, a plea to a lesser offense, or a plea to life without parole.
- There are on average three capital trials per year.

Time

- It takes approximately three years from the date of arrest to trial.
- The average length of time on the row for those currently sentenced to death is 17.6 years.

Outcomes

- There is on average one death sentence per year.
- 83% of death sentences imposed at trial that have completed appellate review have been overturned.
- There was one execution in the last fifteen years. The defendant volunteered for execution.

Louisiana has the highest reversal rate in capital cases in the country, and has the highest per capita exonerations from death row.

LIST OF APPENDICES

Appendix A1-Louisiana Death Sentences and Outcomes between 1977 and 2019 Totals Chart.

Appendix A2- Louisiana Death Sentences and Outcomes between 1977 and 2019 Executions Chart.

Appendix A3- Louisiana Death Sentences and Outcomes between 1977 and 2019 Reversals Chart.

Appendix A4-Louisiana Death Sentences and Outcomes, between 1977 and 2019 Suicide or Natural Causes

Appendix A5- Louisiana Death Sentences and Outcomes, between 1977 and 2019 Exonerations.

Appendix A6- Chart of Louisiana Death Sentences 1977-2018, Defendants on Death Row.

Appendix A7-(List of Defendants Removed From Death Row between 1972 and 1977).

Appendix B1-Louisiana Public Defender Data, List of Trials and Outcomes 2005-2019

Appendix B2-Louisiana Public Defender Data, Individuals Sentenced to Death 2005-2019

Appendix B2-Louisiana Public Defender Data, Individuals Sentenced to Death 2005-2019

Appendix B3-Louisiana Public Defender Data, Reversals of Individuals Sentenced to Death 2005-2019

Appendix B4-Louisiana Public Defender Data, Number of First Degree Indictments and Outcomes

Appendix B5-LPDB Report 4.12.2019

Appendix B6-LPDB Contracts FY2011-2020

Appendix B7- LPDB Contracts FY2008-2019

Appendix C1 –Department of Corrections Costs Total – Angola 5

Appendix C2 –Department of Corrections Costs, Angola 5, Court Costs.

Appendix C3 –Department of Corrections Costs, Angola 5, Expert Costs.

Appendix C4 –Department of Corrections Costs, Angola 5, Defense Costs.

Appendix C5 –Department of Corrections Costs, Angola 5, Prosecution Costs.

Appendix D1 DOC Costs of Operating Death Row

Appendix D2 DOC Costs of Operating Camp F

Appendix D3 DOC Costs of Litigation

Appendix E – DOC Statistical Information

Appendix F – Legislative Fiscal Office Estimates of Repeal 1999

Appendix G - Legislative Fiscal Office Estimates of Repeal 2018

Executive Summary

Louisiana has had the death penalty in its current form since 1977. Since that time, there have been 242 death sentences. Twenty-eight (28) of the people condemned to death sentences have been executed. Sixty-six (66) individuals remain on death row in the midst of appeals or litigation concerning the validity of their conviction or death sentence. One hundred and twenty-eight (128) of these death sentences have been reversed. Ten (10) additional individuals convicted since 1977 have been exonerated and released. An additional ten (10) death row prisoners have died on the row of natural causes or suicide while their appeals remained pending.

Commentators have noted that Louisiana has the highest reversal rate in the country, and one of the highest per capita exoneration rates. Little has been written about the actual cost of Louisiana's death penalty. Costs of capital punishment include defense costs, prosecution costs, court costs (including the costs of court reporters, sequestered juries, transcripts and security), costs of maintaining a separate death row, and as well the costs of preparing for, defending and administering execution protocols.

We have undertaken an analysis of the total cost of maintaining a death penalty system, including defense costs, prosecution costs, court costs, and the costs associated with maintaining death row.

Between 2008 and 2017, Louisiana spent an average of *at least* \$15,600,000 total criminal justice costs *per year* to maintain a capital punishment system. The state executed one person over that period. The actual costs may be significantly higher, as the costs do not include the prosecution or court costs spent on capital cases that ultimately did not go to trial as a capital case, or the costs of Louisiana Supreme Court review. Under conservative estimates, maintaining a system of capital punishment for an offense committed after August 1, 2019 through the person's trial in 2022 and through an execution in 2037 would cost: two hundred and eighty-one million dollars (\$281,000,000).

For this cost, the capital punishment system produces little results. Ninety-six percent of every potential capital case results in a reduced charge, a non-capital trial or a plea. Of the cases (the 4% of total cases) that proceed to trial, 60% result in sentences other than a death sentence. This means that only 1.6% of the potential capital cases result in a death sentence. Of the 1.6% of cases that result in a death sentence, 83% are ultimately reversed with others resulting in a natural death before

appeals are exhausted. The greatest likelihood in every case is death in prison, despite the broad costs expended on the death penalty.

Other state assessments have suggested that the costs per capital case are significantly higher than non-capital cases. These assessments reveal that the death penalty costs between \$750,000 to \$4,000,000 per case more than non-capital cases. These costs are higher because of unique breadth of capital cases, procedural and substantive constitutional protections imposed on states, as well as heightened concerns over wrongful executions. Staffing costs across the board, from defense to prosecutor function, from courts to Department of Corrections are all significantly higher.

Costs previously expended on maintaining a capital defense system are non-recoverable. However, given past costs, consideration of future expenditures is important. It is noteworthy that the office of Louisiana's Chief Public Defender has reported extensive delays and at times, including currently, lengthy waiting lists for the assignment of defense counsel to indigent defendants facing capital prosecutions, suggesting that future costs may be higher, and that the periods between the initiation of proceedings and their conclusion may be longer than estimated in this paper.

We can say, with confidence, that the costs for maintaining a capital defense system for the foreseeable future, for instance between the charging of defendants now with a capital offense and the date upon which one such defendant may ultimately be executed are monumental. These costs are described more fully herein.

METHODOLOGY

The authors have taken publicly available information, and information requested from public agencies to return these findings. In order to encourage discussion and consideration of costs, we have attached as appendices many of the documents upon which we have relied. As in assessments of costs conducted in other states, analysis depends upon averages, variances in outcome and other factors. We have identified other cost studies in order to provide comparable cost-study information. Cost studies in other states have attempted to assess the costs of maintaining the death penalty in two different ways: 1) carefully detailing the costs of a small number of cases, and then predicting the cost of the system by multiplying that by the number of cases to generate a total cost of the system; 2) capturing the total costs of the system and then dividing it by the number of cases to identify a cost-per case analysis. We have looked at the cost both ways, and found consistency across the system.

We are in debt and express our appreciation to Secretary of the Department Corrections James LeBlanc and Jay Dixon of the Louisiana Public Defender Board for providing and maintaining this information. Ben Cohen, of counsel at the Promise of Justice Initiative, has been instrumental in collecting and organizing information. We are likewise indebted to Tim Lyman and Frank Baumgartner for collecting underlying data concerning convictions and death sentences in Louisiana, and rendering that data publicly available for further research. We welcome engagement, criticism, and suggestions for further study.

I. Background on capital punishment in Louisiana

To understand the actual cost of a death penalty case, it is important to understand the scope of the capital punishment system. For every death sentence, there are numerous arrests, indictments, pre-trial litigation, non-capital trials, pleas, and trials that end without a death sentence. For every case that results in a death sentence, there are appeals, post-conviction and habeas litigation which result in the reversal or setting aside of the death sentence in 85% of the completed cases. Heightened security required for death row prisoners has significant attendant costs which when combined with the length of time on death row and the high-likelihood that the death sentence will at some point be converted into a life sentence, eliminates any cost savings from the execution of a sentence.

At a minimum, the state funded components that comprise our capital punishment system includes the prosecution, the defense, the court and corrections. For each component of our system, the scope of work and the expense associated with capital, rather than non-capital prosecutions is greatly increased.

A. Statutory Provisions

The only valid statutory provisions in Louisiana providing for capital punishment are first degree murder and treason.¹ We have no information concerning capital prosecutions for treason in Louisiana's modern death penalty. There was a statute authorizing capital punishment for non-homicide offense of aggravated rape. That statute was ruled unconstitutional by the United States Supreme Court.²

The Louisiana Code also provides the conditions precedent to an execution,³ the place and manner of execution,⁴ and the manner of representation of capital defendants.⁵

¹ See La. R.S. 14:30; La. C. Cr. P. Art. 905.1 et seq., and treason. See La. R.S. 14:113 (c) ("Whoever commits the crime of treason shall be punished by death.").

² See *Kennedy v. Louisiana*, 540 U.S. 408 (2008). In counting the number of trials and reversals over the last forty years, we include the two death sentences imposed under the capital rape statute, which were ultimately reversed by the decision of the United States Supreme Court.

³ See La. R.S. 15:567 (Conditions Precedent to Execution).

⁴ See La. R.S. 15:569 (Place for Execution of Death Sentence; Manner of Execution).

⁵ See La. R.S. 15:169 (Representation of Capital Defendants); La. R.S. 15: 178 (Appointment of appellate and post-conviction counsel in death penalty case); La. C. Cr. P. Art. 512 (Assignment of counsel in capital cases). The Louisiana Public Defender Board, a state agency within the Office of the Governor has adopted Mandatory Guidelines and Performance Standards for Criminal Defense Representation in Indigent Capital Cases

B. Executions - Background

There were 632 executions in Louisiana between 1722, before Louisiana was a state and 1961.⁶ There were an additional 540 lynchings in Louisiana in the period 1877 – 1950. Thirteen of the first sixteen executions were of slaves, ten of which were for revolt or desertion. Methods of execution included hanging, breaking on a wheel, and burning. From its earliest days of statehood in the 1800s, Louisiana carried out public executions by hanging. Beginning in 1910, and through 1940, hangings became the official method of execution, carried out initially at the state prison in Baton Rouge and, after 1918, at the parish prison in the parish where the crime was committed.⁷

In 1940, the state adopted electrocution as its official method of execution.⁸ The electric chair was put into use the following year. It was a portable chair that was transported between parish jails in the bed of a truck. The chair was not always entirely successful.⁹ In 1956 the legislature decided to move all executions back to the state prison, now at Angola.¹⁰

From 1961 to 1983, Louisiana carried out no executions. This period included the four-year nationwide moratorium that followed the *Furman* decision.¹¹ At least eighty-seven individuals were sentenced to death between 1968 and 1977 in Louisiana, whose death sentences were set aside based upon the Supreme Court's decision in *Furman v. Georgia*, the Supreme Court's decision in *Stanislaus Roberts v.*

under LAC 22:XV Chapter 9; LAC 22:XV Chapter 19, as authorized by La. R.S. 15:148, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq..

⁶ M. Watt Espy and John Ortiz Smykla, *Executions in the U.S. 1608-2002*, The Espy File, available at <https://deathpenaltyinfo.org/executions-us-1608-2002-espy-file?scid=8&did=269>

⁷ This move away from the state prison to the parish jails was spurred in part by the governor's opposition to Baton Rouge's status as the state's "official slaughterhouse." *Governor Hall Opposed to Capital Continuing as Slaughter-House*, *Times-Picayune*, May 21, 1912, p. 11.

⁸ Gilbert King, *The Execution of Willie Francis, Race, Murder and the Search for Justice in the American South*, Civitas, NY 2009, at pg. 220-221.

⁹ See *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); Gilbert King, [The Execution of Willie Francis, Race, Murder and the Search for Justice in the American South](#), Civitas, NY 2009. (After a botched execution attempt, Willie Francis was ultimately executed on May 9, 1947).

¹⁰ La. R.S. 15:569, as amended by Acts 1956, No. 143 ("Every sentence of death imposed in this state shall be executed at the Louisiana State Penitentiary at Angola").

¹¹ *Furman v Georgia*, 408 U.S. 238 (1972).

Louisiana, 428 U.S. 325 (1976), and then the Supreme Court’s decision in *Harry Roberts v. Louisiana*, 431 U.S. 633 (1977).¹²

Since 1983, Louisiana has executed twenty-eight (28) people. Louisiana carried out 18 executions in the 1980s. It carried out an additional seven executions in the 1990s, and three since 2000.¹³

The electric chair came back into use in 1983, but by 1991, in part as a result of botched electrocutions in other states,¹⁴ the State switched its official method of execution to lethal injection.¹⁵

1. **Death Sentences In Louisiana since 1976**

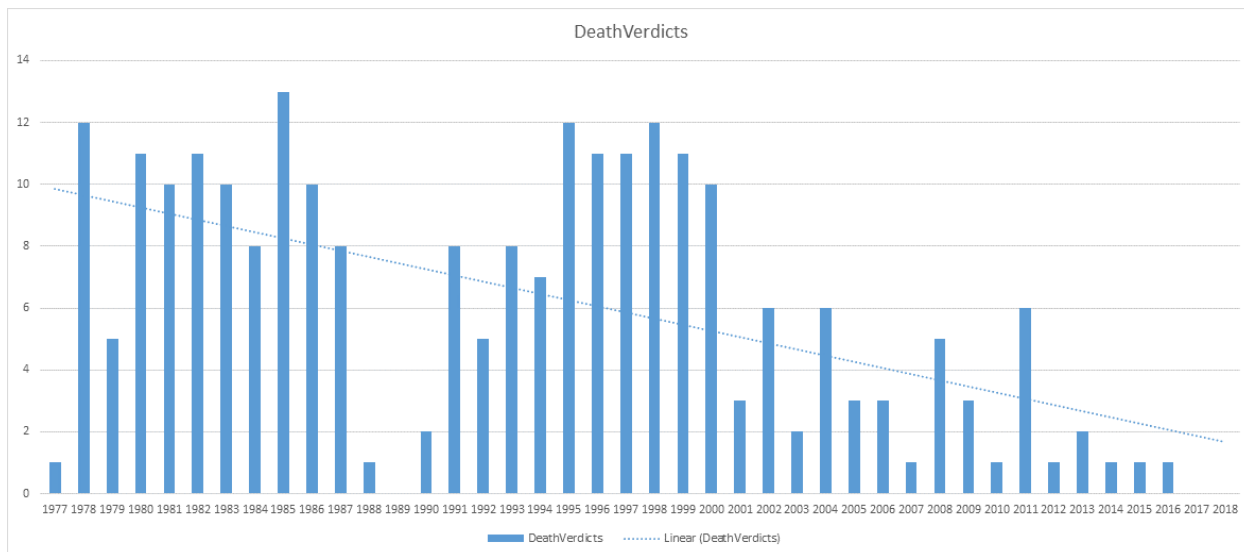
Appendix A1 provides a list of death sentences in Louisiana since 1976. This chart reveals that death sentences have dropped from a high of thirteen a year in 1985 to an average of one per year since 2012:

¹² See Appendix B (List of Defendants Removed From Death Row between 1972 and 1977).

¹³ See Appendix A2- Louisiana Death Sentences and Outcomes between 1977 and 2019 Executions Chart.

¹⁴ Austin Sarat, *Gruesome Spectacles: Botched Executions and America's Death Penalty*, Stanford Univ. Press 2014. The Death Penalty Information Center notes that in May of 1990, the state of Florida attempted to execute Jesse Joseph Tafero: “During the execution, six-inch flames erupted from Tafero's head, and three jolts of power were required to stop his breathing.” In October of 1990, Virginia attempted to execute Wilbert Lee Evans: “When Evans was hit with the first burst of electricity, blood spewed from the right side of the mask on Evans's face, drenching Evans's shirt with blood and causing a sizzling sound as blood dripped from his lips. Evans continued to moan before a second jolt of electricity was applied.” See Death Penalty Information Center, *Botched Executions*, available at <https://deathpenaltyinfo.org/some-examples-post-furman-botched-executions> .

¹⁵ La. R.S. § 15:569.



2. Outcomes for death-sentenced people in Louisiana

In the modern era of the death penalty, there have been 242 death sentences handed down.¹⁶ Of these, 28 prisoners have been executed,¹⁷ 128 have been taken off death row and given a lesser sentence.¹⁸ Ten have died of suicide or natural causes.¹⁹ Ten have been exonerated altogether and been released from the penitentiary.²⁰ Their names appear on the National Registry of Exonerations.²¹ The remainder -66 - cases remain pending.

As reflected in the chart below, and in Appendix A, this represents an actual execution rate of people tried and sentenced to death as of this date of 12%. For every three people executed, one person has been exonerated. 4% of those sentenced to death since 1977 (10 people) have had their death sentences completely reversed and have been exonerated and released. 4 % of those sentenced to death since 1977 (10 people) have died on death row of suicide or natural causes. Over half of those sentenced to death, 53% have already had their death sentences reduced from death to a lesser penalty. The fate of the 66 individuals still on death row has not been

¹⁶ See F. Baumgartner and T. Lyman, *Louisiana Death Sentenced Cases and Their Reversals, 1976-2015*, *The Journal of Race, Gender, and Poverty*, Vol. 7, 2016. See also Appendix A1-Louisiana Death Sentences and Outcomes Totals Chart.

¹⁷ See Appendix A2-Louisiana Death Sentences and Outcomes, Executions.

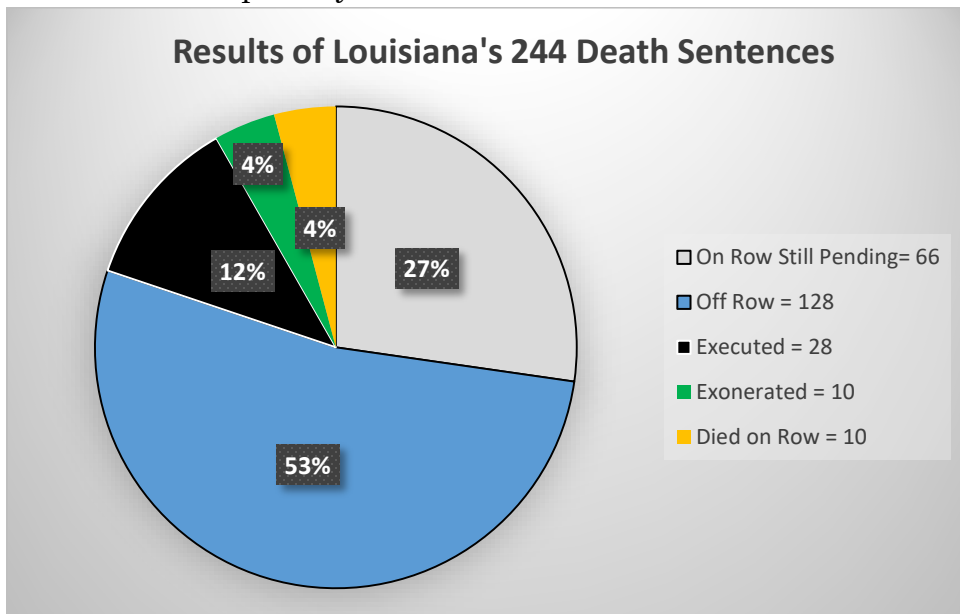
¹⁸ See Appendix A3-Louisiana Death Sentences and Outcomes, Reversals.

¹⁹ See Appendix A4-Louisiana Death Sentences and Outcomes, Suicide or Natural Causes.

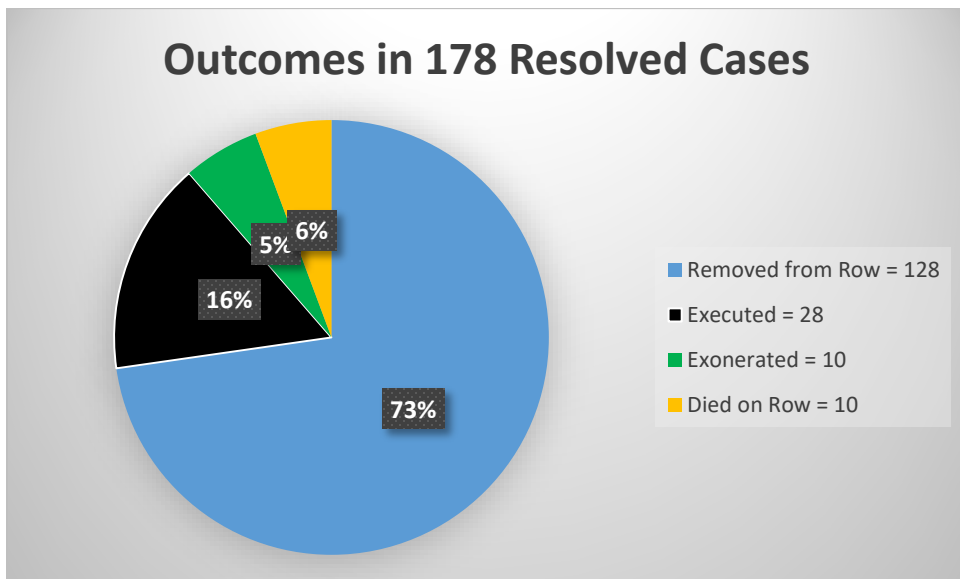
²⁰ See Appendix A5- Louisiana Death Sentences and Outcomes, Exonerations.

²¹ The National Registry reports that an eleventh person, Larry Hudson, was exonerated in 1993. He was sentenced to death in 1967. His death sentence was commuted by *Furman v. Georgia*, prior to the modern era of Louisiana's death penalty.

finally determined but given what has happened to others on death row, it is not unrealistic to surmise that a significant number will have their sentences reduced from death to a lesser penalty.



Of the 178 permanently resolved cases, this is there outcome:



Commentators have noted that Louisiana has the highest reversal rate in the country, and one of the highest per capita exoneration rates.²² Louisiana's wrongful-death sentencing rate is more than twice the average for other states.

Louisiana also has the fourth highest number of exonerations from death row of any state. Florida has 28. Illinois – which abolished the death penalty in 2011 -- has 21. Texas has 13 exonerations from death row. According to the census, Florida has more than four times the population than Louisiana; Texas has more than 5.5 times the population as Louisiana, and Illinois has almost three times the population size.²³ In short, Louisiana is one of the four states with the highest number of death row exonerations in the country and among those top four, has the highest per capita exoneration rate.

3. **Death Row**

Louisiana's death row population was as high as 93 inmates 2000.²⁴ In 2003, the Department of Corrections commissioned a new death row in order to address overcrowding on death row. The Louisiana Legislature provided for an outlay of 5,385,000 for Death House Complex, Planning and Construction, along with \$9,680,000 for Death Row Cellblock, Planning and Construction.²⁵

The Department of Corrections Demographic Profile of Death Row reflects the drop in number to 69 in this chart in June of 2018: ²⁶

²² See Baumgartner, Frank R., and Tim Lyman, *Louisiana Death-Sentenced Cases and their Reversals, 1976-2015* Southern University Law Center Journal of Race, Gender, & Poverty 7 (Spring 2016): 58–75.

²³ See <https://www.census.gov/quickfacts/geo/chart/US/PST045217>

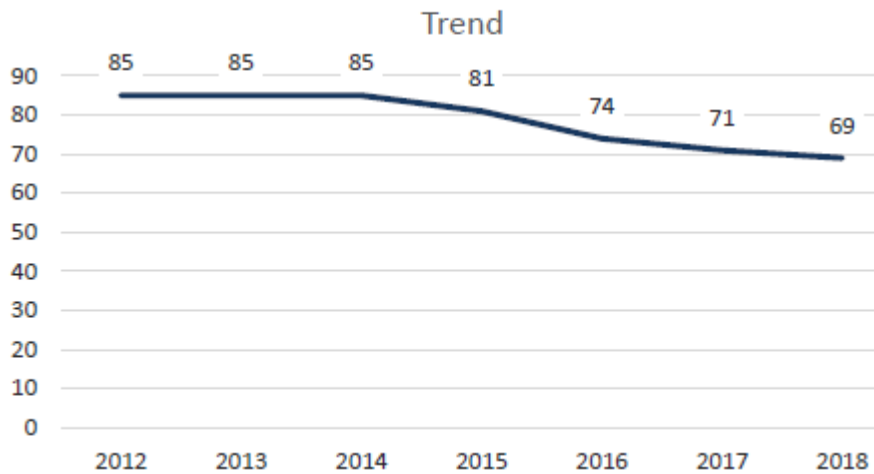
²⁴ See Death Penalty Information Center, *2000 Year End Report, A Watershed Year of Change*, December, 2000 <https://deathpenaltyinfo.org/2000-year-end-report-watershed-year-change>

²⁵ See H.B. No. 2, Signed by the Governor as Act 24, at pg 32 of 143.

²⁶ See Department of Corrections, Briefing Book, at pg. 23, available at <https://www.doc.la.gov/media/1/Briefing%20Book/July%2018/2.demographics.pdf>

This document represents a demographic snapshot of the adult offenders in the custody of the state correctional system on June 30, 2018 serving death sentences.

Presently there are 68 adult male offenders and 1 adult female offender incarcerated in state prison facilities, who received death sentences for violent crimes.



At the time the Department of Corrections released this chart in June of 2018, there were 68 male defendants on death row and one female defendant. The number of death row inmates at Angola has since dropped to 65.²⁷ The one woman condemned to death remains housed at St. Gabriel Prison.

4. Race

As of June 2018, 68.1% of Louisiana's death row was black, according to the Department of Corrections was 69.6% was minority.²⁸ Of states with more than three individuals on death row, Louisiana has the highest percentage of minorities on death row.

²⁷ Teddy Chester was removed from death row on August 8, 2018 as a result of the federal district court decision in *Chester v. Vannoy*, 2018 U.S. Dist. Lexis 99219. Brian Horn was removed from death row on September 7, 2018. See *State v. Horn*, 251 So. 3d 1069, 2016-0559 (La. 09/07/18). Lee Turner was removed from death row on December 5, 2018. See *State v. Turner*, 2018 La. LEXIS 3341 * | 2016-1841 (La. 12/05/15). The Department of Corrections also lists Rogers Lacaze as an inmate on death row. His death sentence has been set aside.

²⁸ See Department of Corrections, Briefing Book, at pg. 23, available at <https://www.doc.la.gov/media/1/Briefing%20Book/July%2018/2.demographics.pdf>

Of the 66 individuals currently on death row, 44 are African-American. That is, two thirds of the Row is African-American in a state where the general population is only one third African-American. 25 of these African-American prisoners were convicted and sentenced to death for offenses involving white victims. Eighteen of the individuals on death row are white. Sixteen of these white individuals were convicted and sentenced to death for killing white people. There are only two instances of white defendants killing black victims on Louisiana's death row.

Louisiana has not executed a white person for killing a black person in over two hundred years.²⁹ As the New York Times noted: "In Louisiana, a black man is 30 times as likely to be sentenced to death for killing a white woman as for killing a black man. Regardless of the offender's race, death sentences are six times as likely — and executions 14 times as likely — when the victim is white rather than black."³⁰

Race plays out in geographic ways as well. There are twelve individuals charged, convicted and sentenced to death on death row from East Baton Rouge.³¹ All are African-American. There are five individuals on death row from Orleans Parish; all are African-American.³² Six of the seven defendants on death row from Jefferson Parish are African-American or Hispanic.³³ Eleven of the thirteen individuals on death row from Caddo Parish are African-American.³⁴

Race appears to play a particularly sordid role where African-American defendants are convicted of killing white victims. Tim Lyman and Frank Baumgartner's research determined "Killers of white victims (24 / 4,371; 0.55%) are 14 times more likely to be executed than killers of black victims (4 / 10,530; 0.04%). That is, a death sentence is six times more likely if the victim is White, and an execution is more than 14 times more likely."³⁵ The data underlying this research demonstrates that geography and race continues to exist in disturbing ways. In Orleans, four of the five individuals on death row were convicted of killing one or

²⁹ Baumgartner, Frank R., and Tim Lyman. 2016. *Louisiana Death-Sentenced Cases and their Reversals, 1976-2015*. Southern University Law Center Journal of Race, Gender, & Poverty 7 (Spring 2016):

³⁰ The Editorial Board, *Louisiana's Color Coded Death Penalty*, The New York Times, May 9, 2016

³¹ See Appendix A6, lines 13, 16, 18, 25, 28, 31,34, 40, 45, 54, 55, 60.

³² See Appendix A6, lines 6, 14, 19, 26, 27..

³³ See Appendix A6, lines 12, 15, 23, 30, 33, 49 (w), 62.

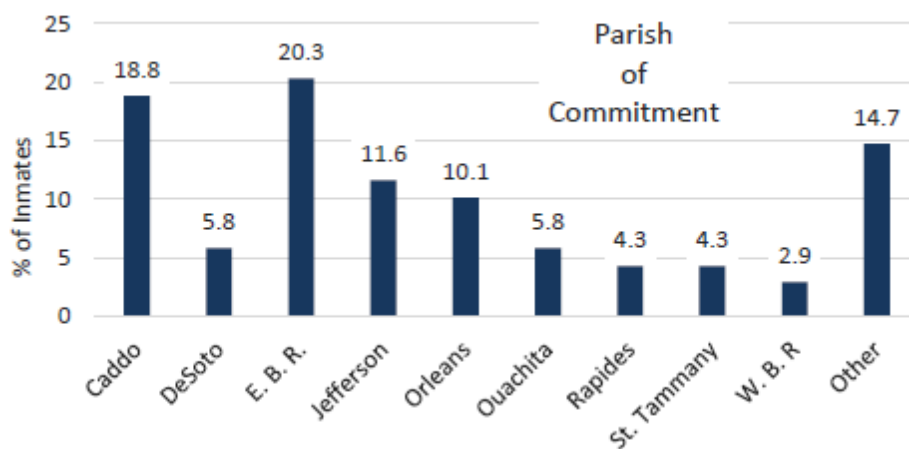
³⁴ See Appendix A6, lines 5, 8, 20, 21, 22, 24, 36 (w), 28 (w), 47, 50, 58, 61, 65.

³⁵ Baumgartner, Frank R., and Tim Lyman. 2016. *Louisiana Death-Sentenced Cases and their Reversals, 1976-2015*. Southern University Law Center Journal of Race, Gender, & Poverty 7 (Spring 2016): at 70.

more white victims. In Jefferson Parish, four of the seven victims are white. In Caddo Parish, eight of the thirteen cases involve white victims.³⁶

5. Geography

A disproportionate number of death sentences arise from a small number parishes. According to the Department of Corrections, four parishes – Caddo, East Baton Rouge, Jefferson and Orleans are responsible for more than 60% of the individuals on death row.³⁷



Capital trials are similarly skewed by geography. For example, since 2010, capital trials have only been conducted in twelve of Louisiana’s sixty-four parishes (19%), with three parishes accounting for half of all capital trials in the period. Only seven parishes have returned a death verdict in this period, with two parishes out of sixty-four accounting for more than half of the death verdicts in the state in the period.³⁸ Similarly, only fifteen of Louisiana’s sixty-four parishes has had a prisoner executed, with only three of sixty-four parishes seeing an execution this century.³⁹

³⁶ For race of victim information see Appendix A8, Baumgartner, Frank R., and Tim Lyman. 2016. Louisiana Death-Sentenced Cases and their Reversals, 1976-2015. Southern University Law Center Journal of Race, Gender, & Poverty 7 (Spring 2016): 58–75.

Underlying data

³⁷ See Appendix A2.

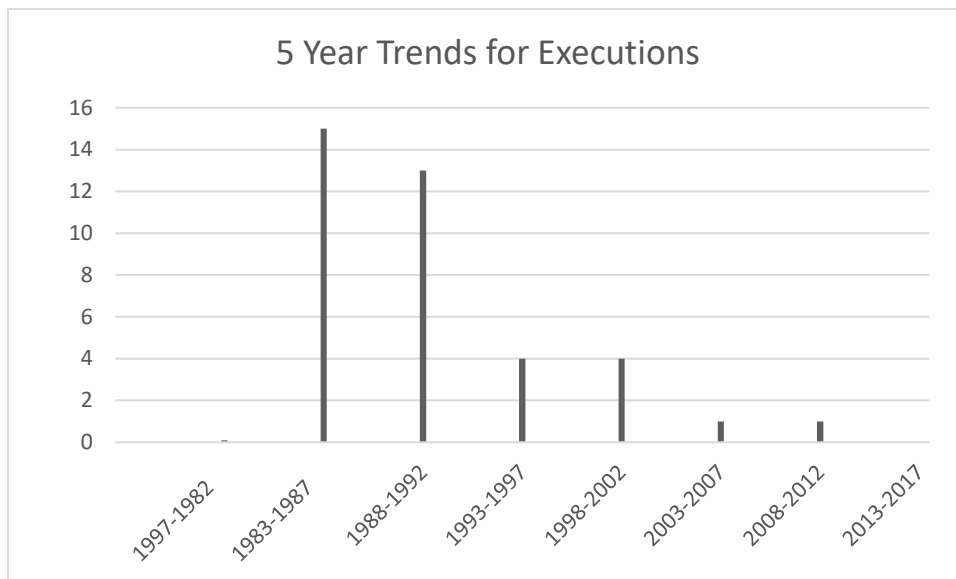
³⁸ See Appendix B2, List of Trials and Outcomes, Lines 17-28. Caddo Parish returned five death sentences during this period.

³⁹ See Appendix A2 Louisiana Death Sentences and Outcomes, Executions

This geographic concentration presents legal issues that may one day render Louisiana’s death penalty unconstitutional. However, we raise these issues to address the significant reality that the broad state appears to be incurring the costs of maintaining a capital punishment system that is used in a handful of districts.

6. Rate of executions

When Louisiana re-enacted the death penalty, the rate of executions was 15 per decade or 1.5 executions per year.⁴⁰ Between 1998 and 1998, the execution rate dropped to essentially 9 per decade or just under 1 per year.⁴¹ Execution rates dropped to 3 per decade in the early 2000’s.⁴² In the decade between 2008 and 2017 there was a single execution.⁴³



See Appendix A-2.

The last execution of a prisoner sentenced to death in Louisiana was in 2010. This prisoner “volunteered” for execution by waiving his right to pursue appeals.⁴⁴ The last two contested executions in Louisiana were in 2000 and 2002.⁴⁵

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Appendix A2, at Line 28.

⁴⁵ Appendix A2, at Lines 26, 27.

7. Average time on death row.

As of June 2018, According to the Department of Corrections Statistical Information Briefing Book, at the average time on death row for individuals currently on death row was 16.3 years.⁴⁶

<i>Time Served (Yrs)</i>	<i>Percent of Population</i>
<i>0-5</i>	<i>4.3</i>
<i>6-10</i>	<i>11.6</i>
<i>11-15</i>	<i>10.1</i>
<i>16 - 20</i>	<i>36.2</i>
<i>21-30</i>	<i>31.9</i>
<i>31+</i>	<i>5.8</i>
<i>Unknown</i>	<i>0.1</i>

**Average time served: 16.3 yrs.*

According to the Department of Corrections data from last July, 68% of death row has spent more than 16 years on death row.

Our numbers reflect an even longer period in the length of time from date of jury sentence, the average length of time is nineteen years.⁴⁷

8. Rate of Death Verdicts

There has been a drop in the average number of death verdicts per year in Louisiana. There was one death verdict in 1977 under the modern statute.⁴⁸ Between 1978 and 1982, there were 49.⁴⁹ Between 1983 and 1987, there were 49.⁵⁰ Between 1988 and 1992 there were only 16.⁵¹ Between 1993 and 1997 there were 49.⁵² At that point death sentences began to drop. Between 1998 and 2002, there

⁴⁶ Louisiana Department of Corrections, Statistical Information Briefing Books, Demographics at 24 available at <https://doc.louisiana.gov/briefing-book>

⁴⁷ Appendix A6- Chart of Louisiana Death Sentences 1977-2018, Defendants on Death Row.

⁴⁸ Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Line 1.

⁴⁹ Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Lines 2-50.

⁵⁰ Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Lines 51-99.

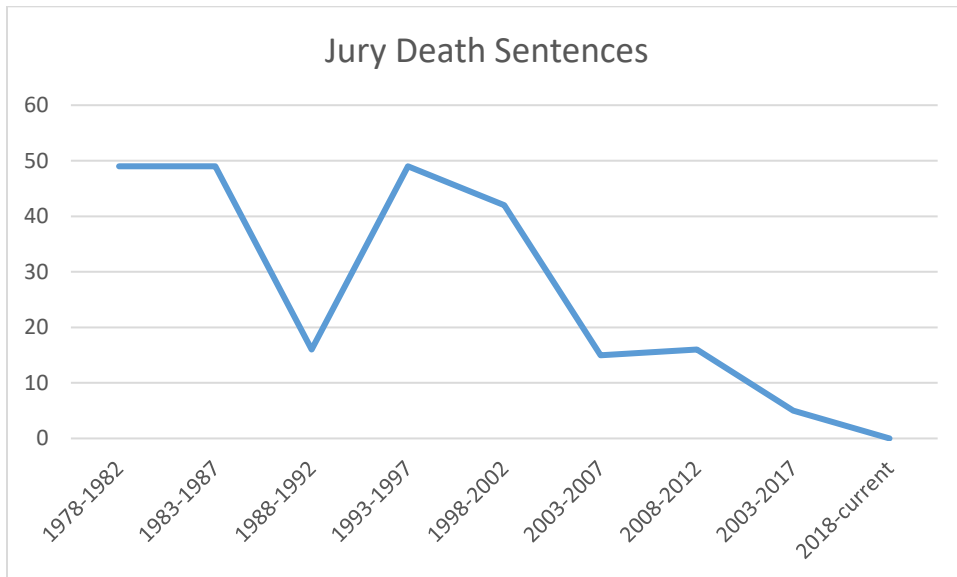
⁵¹ Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Lines 100-115.

⁵² Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Lines 116-164

were 42.⁵³ Between 2003 and 2007 there were 15.⁵⁴ Between 2008 and 2012 there were 16.⁵⁵ Between 2013 and 2017 there were 5 death sentences imposed by juries.⁵⁶ Since 2017, there have been no jury death sentences.

Date Range	Death Verdicts	Annual Average
1977	1	1
1978-1982	49	9.8
1983-1987	49	9.8
1988-1992	16	3.2
1993-1997	49	9.8
1998-2002	42	8.4
2003-2007	15	3
2008-2012	16	3.2
2013-2017	5	1
2017-	0	0

The broad decline is reflected like this:



See Appendix A-1.

⁵³ Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Lines 165-206

⁵⁴ Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Lines 207-221

⁵⁵ Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Lines 222-237

⁵⁶ Appendix A1-Chart of Louisiana Death Sentences 1977-2018, Lines 238-242.

C. Trial / Death Sentencing Rates in 2005-2019

Over the last fifteen years there has been, on average, three and a half capital trials per year.⁵⁷

Calendar Year	Death	Life	Less than Life	Total
2005	3	1	1	5
2006	3	1	1	5
2007	1	2		3
2008	5	2	1	8
2009	3	3	1	7
2010	1	1		2
2011	6	4		10
2012	1	4		5
2013	2	2		4
2014	1			1
2015	1	2		3
2016	1			1
2017	0	0	0	0
2018	0	0	0	0
2019				
Total	28	13	4	54

During this period there have been 28 death sentences.⁵⁸ The results of these trials continue to reflect the lack of an error-free process. 11 of these 28 death sentences have already been reversed including one exoneration.⁵⁹ One death sentence resulted in an execution when the defendant waived his appeals.⁶⁰ One death sentence was rendered moot when the defendant committed suicide.⁶¹ Of the fifteen defendants who remain on death row, five have cases still pending on direct appeal,⁶² the rest are in state or federal post-conviction.

⁵⁷ Appendix B1, List of Trials and Outcomes, Lines 1-55.

⁵⁸ Appendix B2, List of Trials and Outcomes, Lines 1-28

⁵⁹ Appendix B3, List of Trials and Outcomes, Lines 1-11.

⁶⁰ Appendix B1, List of Trials and Outcomes, Line 17.

⁶¹ Appendix B1, List of Trials and Outcomes, Line 18.

⁶² Appendix B2, List of Trials and Outcomes, Lines 16, 17, 18, 19, 28.

D. Trial Statistics

Every first degree murder case in Louisiana, involving a defendant over the age of 18, is a potential capital case. Prior to 2012, there was incomplete tracking of data concerning arrests, pleas, trials, and sentencing in capital cases. The Louisiana Public Defender Board (LPDB) now tracks capital arrests, indictments and the outcomes of these prosecutions.

Over the period between fiscal years 2012 and 2015, there were on average 84 capital arrests per year resulting in 32 capital indictments per year. The state announced it would not seek death in 74% of these cases prior to trial without a plea. The state agreed not to seek death in a further 21% of cases based upon a plea agreement. 3% percent of the indicted cases went to trial, each resulting in a death verdict but two of those death sentences have been reversed, with one of the defendants having been exonerated and freed.⁶³

Of the cases where the state agreed not to seek death as a part of a plea agreement, only half resulted in pleas to terms of life without parole, with one of those occurring on the first day of trial and the other occurring between guilt phase and penalty phase. The remainder resulted in pleas of guilt to terms of years. Numerically, more cases resulted in terms of life without parole where the district attorney took death off the table before trial than did so as a result of a plea agreement or trial.⁶⁴

In fiscal year 2018, LPDB recorded 79 capital arrests and 32 capital indictments, keeping pace with the rate of indictments in the earlier studied period.

As of April 9, 2019, there are 35 capitally indicted cases. The information below is taken from Appendix B5, LPDB Report 4.12.2019. The report reflects the geographical distribution and the source of funding for their representation is shown below:

INDIGENT INDICTED CAPITAL CASES 4/9/2019

District	Parishes	Program	Pro bono	Appointed	Waiting	TOTAL
1	Caddo	1			1	2
9	Rapides	3				3
10	Natchitoches	1				1
14	Calcasieu	2				2

⁶³ See Appendix B4, LPDB Data.

⁶⁴ See Appendix B4, LPDB Data.

15	Lafayette, Acadia Vermillion	8	1	1	1	11
16	Iberia, St. Martin, St. Mary	3			1	4
19	East Baton Rouge				1	1
21	Livingston, Tangipahoa, St. Helena			1		1
22	St. Tammany	2	1			3
23	Ascension, Assumption, St. James			1		1
24	Jefferson	1				1
26	Bossier, Webster	1				1
40	St. John	2				2
41	Orleans	1				1
42	DeSoto	1				1
		26	2	3	4	35

This chart indicates that there are thirty-five pending capital cases. Eleven of them arise from a single judicial district. This is three times more than the next busiest district. The State of Louisiana currently has funding for only 26 of the defendants. Four are awaiting counsel, three more have counsel mandatorily appointed to represent them, without a source of funding for the defense identified and two more are represented by pro bono counsel.⁶⁵

The Louisiana Legislature reduced the funding for capital defense in 2016.⁶⁶ As a result, 20% of capital indictments currently do not have funded defense counsel to represent the indigent defendants. Litigation is underway in multiple cases regarding the lack of funded defense counsel and in one case in 2019 the court ordered a halt to the prosecution under *State v. Citizen* due to the lack of identifiable funds for the defense.

One capital trial has been commenced in 2019 but had to be abandoned when it was discovered that the jury pool had been improperly assembled in violation of Louisiana's Code of Criminal Procedure and constitutional guarantee of Equal Protection. Two other capital trials are scheduled for 2019.

⁶⁵ See Appendix B5, LPDB Report of 4.12.2019, at pdf 5.

⁶⁶ See House Bill 1137 (2016) amending La. R.S. 15:167, requiring distribution of 65% of the annual budget to district defender offices. See Also Julia O'Donoghue, *Lawmakers Look to Shift Money to Public Defenders from Death Penalty Appeals*, The Times Picayune, April 7, 2016; John Simerman, *Orleans Public Defender Wins, Death Penalty Groups Lose as State Redirects Indigent Defense Money*, The Advocate, July 4, 2016.

These circumstances tend to indicate that future costs may be significantly higher than current estimates.

II. Louisiana Costs

A capital prosecution involves a trial not just on guilt or innocence, but rather places on trial the whole of a defendant's life, before and after the alleged murder in a search to determine the appropriate penalty should a conviction be returned. The individual costs of a capital prosecution vary depending upon the complexity of the case, the scope of aggravating evidence and the difficulty in identifying and developing mitigating evidence. As far back as 2002, prosecutors were recognizing the increased cost of capital cases. One article about capital cases in Bienville Parish explained:

"In 12 years there's only been one capital case in the district, and that was in Claiborne Parish, but it was moved to Webster Parish," May said. "The vote was unanimous to convict but 11-1 to execute so as a result the man got life."

May estimates capital murder trials can cost anywhere from \$50,000 to \$100,000 to prosecute. The cost rises substantially with death penalty verdicts because of the ongoing attention to appeals, he said. The budget impact will be an unknown until the cases actually go to trial.⁶⁷

As discussed below, these estimates appear to be critically low.

Louisiana does not maintain individualized cost-data for criminal prosecutions. The majority of prosecutors do not keep time-sheets or segregate their work by class of case. There are aggregate costs for separate functions: defense, prosecution, judiciary and the Department of Corrections. Within each of these functions there are varying levels of information separating the costs of capital prosecutions. We have attempted to assess costs in two separate ways. First, we have reviewed the individualized per case cost of proceeding to trial in a capital case based upon exacting records provided by the Department of Corrections concerning a single case involving five separate defendants. Second, we have assessed the entire costs of the capital defense system on a yearly basis.

⁶⁷ Vickie Welborn, Capital Murder Cases Clogging Bienville Parish Courts, Shreveport Times, 11/23/2002 quoting then District Attorney May.

A. Individual Case-Costs of Capital Trials

Generally, in Louisiana costs associated with prosecution and judicial function, and some defense costs, are pieces of larger budget in which little accounting is made of time or money spent on capital cases. Requests for timesheets from District Attorneys' offices returned no information. Indeed, we were unable to identify a single District Attorney's Office in the state that required prosecutors to keep track of billable time. Some part time prosecutors keep track of billable hours in some instances, but there appears no way to clearly measure the amount of time prosecutors spend on their cases in general, let alone on specific capital cases.

However, as a result of a specific code provision⁶⁸ making the Department of Corrections responsible for all costs of a capital case, the Department of Corrections has a detailed analysis of an individual case involving five capitally charged defendants.⁶⁹

The five defendants were indicted in March of 2004.⁷⁰ One of the defendants was permitted to plead to a life sentence in 2012 after eight years of investigation and litigation.⁷¹ Two of the defendants received life sentences by a jury verdict in

⁶⁸ See La. R.S. 15:868.

⁶⁹ See Appendix C1, DOC Costs for Knapps Case

⁷⁰ Staff Report, *Inmates Charged in Officers Slaying*, The Times Picayune, March 16, 2004 (“The inmates charged in his killing are Barry Edge, 44, of Violet; David Brown, 32, of Algiers; Robert Carley, 36, of New York; Jeffrey Clark, 45; and David Mathis, 29, both of East Baton Rouge Parish”).

⁷¹ Steven Ward, *Prosecutor Describes Vicious Attack on Angola Prison Guard*, The Advocate, October 11, 2013 (“Mathis pleaded guilty in 2011 in exchange for a life sentence.”).

2011⁷² and 2013.⁷³ Two defendants were sentenced to death.⁷⁴ The appeals for Jeffrey Clark⁷⁵ and David Brown⁷⁶ remain pending.

The total cost for the five cases between 2005 and 2019 was: \$10,671,281.⁷⁷

Court costs, including transcripts court reporters, and jury services were \$844,525.⁷⁸

Experts costs for both defense and prosecution experts were \$918,011.⁷⁹

Defense Costs were at least \$7,071,615, averaging \$1.4 million dollars per defendant. This includes the cost of a mistrial and re-trial but not the costs of appeal.⁸⁰

Prosecution Costs were in excess of \$1,587,951, a figure not including time, overhead and other services, provided by two separate District Attorney's offices.⁸¹

⁷² James Minton, *Carley to Get Life Sentence*, The Advocate, September 22, 2011, available at https://www.theadvocate.com/baton_rouge/news/communities/baker/article_6cefcd37-bddd-5a70-b2ab-d07728b0fbc1.html.

⁷³ Steven Ward, *Jury Deadlocks on Sentence; Edge to Serve Life Term for Angola Killing*, The Advocate, October 15, 2013, available at https://www.theadvocate.com/baton_rouge/news/article_69619b49-447d-5884-8280-1bb41832d600.html.

⁷⁴ Jeffrey Clark was sentenced to death in 2011. Paul Purpura, *Angola 5 convict is sentenced to death for fatally beating Prison guard*, The Times Picayune, May 2011, https://www.nola.com/crime/2011/05/angola_5_convict_sentenced_to.html. David Brown was convicted and sentenced to death on October 28, 2011.

⁷⁵ Jeffrey Clark's conviction and death sentence was initially upheld in *State v. Clark*, 2012-KA-0508 (La. 12/19/2016), 220 So.3d 583. The Supreme Court vacated that decision and remanded for a new hearing on June 25, 2018. See *Clark v. Louisiana*, 16-9541 (6/25/2018). The case remains pending.

⁷⁶ David Brown's death sentence was initially overturned by a state court judge. John Simerman, *Judge Overturns Death Sentence of One of the Angola 5*, The Advocate, December 16, 2014, available at https://www.theadvocate.com/new_orleans/news/communities/east_jefferson/article_7b384032-e226-56d8-b777-7a1b52a79190.html. But it was re-instated by the Louisiana Supreme Court. Joe Gyan Jr., *State Supreme Court Reinstates Death Penalty on Angola 5 Inmate Convicted in 199 Slaying of Correctional Guard*, February 22, 2016, available at https://www.theadvocate.com/baton_rouge/news/article_a7c9d75e-ef92-58a7-b473-72fc731bcaae.html. His appeal remains pending. John Simerman, *U.S. Supreme Court Declines to hear Angola 5 Member David Brown's Effort to Overturn Death Penalty*, The Advocate, June 20, 2016.

⁷⁷ Appendix C1 –Department of Corrections Costs Total, Line 79.

⁷⁸ Appendix C2 –Department of Corrections Costs, Angola 5 Case Court Costs.

⁷⁹ Appendix C3 –Department of Corrections Costs, Angola 5 Case Expert Costs.

⁸⁰ Appendix C4 –Department of Corrections Costs, Angola 5 Case Defense Costs.

⁸¹ Appendix C5 –Department of Corrections Costs, Angola 5 Case Prosecution Costs.

The reported appellate record for the cases reflects that the State had at least five prosecutors as counsel throughout the proceedings, although not every counsel attended every hearing.

While defense costs made up a majority of the costs, the case involved five separate defendants, requiring multiple lawyers.⁸² The costs were spread out over ten years. While some commentators suggest that there is a cost savings from plea bargains that occur as a result of the threat of capital punishment, the costs of litigating the single case that ultimately pled, was equal or greater than the costs associated with cases that went to trial and resulted in death.⁸³ This finding is consistent with similar studies of the federal death penalty where the level of funding for the defense correlated with successful outcomes for the defendant.⁸⁴

The costs of approximately two million dollars per case, not including costs of judicial time at the trial and appellate levels, is not outside the benchmarks provided in studies in other states.⁸⁵

B. Costs of Operating Death Row

The Department of Corrections has provided aggregate cost data for maintaining death row. Security on death row requires additional staffing, and more observation and oversight. The yearly security costs of staffing death row are

Fiscal Year	Total Expenditure	# of Inmates on Row	Cost per inmate
2016	\$4,008,130 ⁸⁶	73 ⁸⁷	\$54,905.89
2017	\$4,092,437 ⁸⁸	73 ⁸⁹	\$ 56,060.79

⁸² See Appendix C4- Defense Costs

⁸³ Costs for representing David Mathis, who pled and received a life sentence, was \$3,121,076. See Appendix C4-Defense Costs, Lines 8, 11, 15, 16, 17. The cost for representing Jeffrey Clark was \$772,084. See *Id.*, lines 4, 5, 12. His conviction and death sentence, however, are still pending.

⁸⁴ See Lisa Greenman, Jon Gould, Report to the Committee on Defender Services, Judicial Conference of the United States, Update on the cost and Quality of Defense Representation in Federal Death Penalty Cases, 2010, Administrative Office of the United States Courts, <https://www.uscourts.gov/services-forms/defender-services/publications/update-cost-and-quality-defensrepresentation-federal>.

⁸⁵ See Section IV below.

⁸⁶ See Appendix D1, Department of Corrections Death Row Expenditures, Total Fiscal Year 2016, Line 34

⁸⁷ See Bureau of Justice Statistics, Capital Punishment, 2016, pub. April 2018, pg 3, available at <https://www.bjs.gov/content/pub/pdf/cp16sb.pdf>

⁸⁸ See Appendix D1, Department of Corrections Death Row Expenditures, Total Fiscal Year 2017, Line 34

⁸⁹ NAACP Legal Defense Fund, Death Row USA 2017 at pg. 52 available at <https://deathpenaltyinfo.org/documents/DRUSASummer2017.pdf>

2018	4,372,509 ⁹⁰	68 ⁹¹	\$ 64,301.61
Average	4,157,692	71	\$58,285.40

At the other end of the scale, the Department of Corrections has provided aggregate cost data for maintaining Camp F, the trustee camp, at Angola State Penitentiary.

Fiscal Year	Total Expenditure	Average # of inmates	Cost per inmate
2016	\$3,047,423 ⁹²	400	\$7,618
2017	\$2,943,549 ⁹³	400	\$7,358
2018	\$2,995,138 ⁹⁴	400	\$7,487
Average	\$ 2,995,370.34	400	\$7,487

The average cost per housing inmates on death row is \$58,285 per year. The average cost of housing inmates per year at one of the camps was \$7,405 per inmate. The security costs for housing an inmate on death row are at least seven (7) times higher than the security costs for a secured camp.

C. Cost of Defending Death Penalty System

Louisiana also expends money defending the death penalty system. While we are unable to count the amount of money that the Attorney General's office expends on defending the death penalty system, it has been directly involved in litigation to secure a constitutional method of execution. The Department of Corrections has spent \$225,926 on legal bills pertaining to litigation arising from heat on death row for three inmates, and \$53,117 on legal fees to secure a constitutional method of execution.⁹⁵ This does not include costs of penalties, fees, or confidential settlements associated with this litigation.

⁹⁰ See Appendix D, Department of Corrections Death Row Expenditures, Total Fiscal Year 2018, Line 34

⁹¹ See Appendix A5, On Death Row

⁹² See Appendix D2, Department of Corrections Camp F Expenditures, Total Fiscal Year 2016, Line 34

⁹³ See Appendix D2, Department of Corrections Camp F Expenditures, Total Fiscal Year 2017, Line 34

⁹⁴ See Appendix D2, Department of Corrections Camp F Expenditures, Total Fiscal Year 2018, Line 34

⁹⁵ See Appendix D3, DOC Costs of Litigation.

D. Aggregate Yearly Costs of Death Penalty System – Ten Years (2007-2016)

A separate method of assessing the costs of capital punishment involves measuring the total yearly expenditures for programs involved in administering death penalty programs. While this method accurately captures death penalty expenditures that have specific line-items in the budget, this assessment does not fully include court or prosecution costs, as neither system disaggregates costs based upon case type. As such, it may underrepresent cost.

However, the Legislative Fiscal Note for 2017, indicated that prosecution costs are on average \$250,000 per death penalty case, and that court costs were on average \$250,000 per death penalty case.⁹⁶

As to court costs, the Fiscal Note appears accurate. Costs at a 2014 trial (*State v. Brian Horn*) reached \$105,209, simply for additional expenses such as meals, hotels, security and travel.⁹⁷ This did not include costs of preparing transcripts, court reporters, or the cost of court officials. The costs of sequestering a jury for the trial were \$39,244 for hotel rooms for jurors, \$12,313 for meals and supplies and other expenses for jurors and deputies, and for additional security, \$11,445.⁹⁸ The case was reversed by the Louisiana Supreme Court in 2018 and remains pending retrial.⁹⁹

Costs for court reporters at the four trials in the Angola 5 case were \$291,107.¹⁰⁰ Total court costs for the Angola 5 case was \$844,525,¹⁰¹ or roughly \$211,131 per trial.

Over the last fifteen years, as noted above, an average of just over four and one-quarter cases went to trial each year. Assuming, on average, 4.3 cases proceeding to trial a year, the costs of prosecution and court costs were roughly \$1,075,000 per year.

The fiscal note does not include costs for the vast majority of capitally indicted cases that do not go to capital trial (a figure of greater than 95%). As such, this calculation fails to capture the court and prosecution costs of death penalty cases that do not proceed to trial.

⁹⁶ See Appendix G, Legislative Analysis of Fiscal Cost.

⁹⁷ See Vickie Welborn, Cost of Brian Horn capital murder trial: \$105,209, Shreveport Times, August 9, 2014. <https://www.shreveporttimes.com/story/news/crime/2014/08/10/cost-capital-murder-trial/13851559/>

⁹⁸ *Id.*

⁹⁹ See *State v. Horn*, 2016-0559 (La. 09/07/18), 251 So. 3d 1069.

¹⁰⁰ See Appendix C2, Department of Corrections Costs of Angola 5 Case, Court Cost, line 3.

¹⁰¹ See Appendix C2, Department of Corrections Costs of Angola 5 Case, Court Cost, line 16.

As discussed above, the great majority of capitally indicted cases do not proceed to trial as capital cases but in each instance, the cases are prepared and conducted as capital proceedings with the attendant increased costs. Indeed, it is frequently the case that mitigation investigation or litigation specific to death penalty issues causes the state not to seek death, thus directly implicating those costs in both capital trials and those cases where death is taken off the table before trial. The state public defender board reports the following costs¹⁰²

Year	Trial Costs	Appeals & Post Conviction	Total
2011	\$5,287,347	\$4,202,515	\$9,489,862
2012	\$5,439,501	\$4,202,515	\$9,642,016
2013	\$5,197,311	\$4,254,602	\$9,951,913
2014	\$5,295,779	\$4,254,602	\$9,550,381
2015	\$5,616,676	\$4,254,602	\$9,871,278
2016	\$5,619,728	\$4,378,153	\$9,997,881
2017	\$3,510,000	\$2,741,109	\$6,251,109

Costs incurred by the State Board for 2008-2010 are captured in the contracts attached as Appendix B7¹⁰³, which provide:

2008	\$4,744,820	\$3,895,858	\$8,640,678
2009	\$5,375,504	\$4,223,276	\$9,598,780
2010	\$4,744,820	\$4,559,858	\$9,240,678

Defense costs for cases funded by the central state agency are provided below:

501(c)3 PUBLIC DEFENDER ORGANIZATIONS	Average 2008-2017	Sum 2008-2017
Trial Costs	\$5,083,149	\$50,831,486
Direct Appeal and Post-Conviction	\$4,096,709	\$40,967,090
Total	\$9,223,458	\$92,234,576

During the period between 2008 and 2017, 44% of the indigent capital trials were handled by offices funded by the state agency. The costs of defending 46% of those indigent capital trials fell to the local indigent defense districts, whose

¹⁰² See Appendix B6, ContractsFY11-20.

¹⁰³ See Appendix B7, ContractsFY08-19

expenditure is not included in the above figures, with a further 10% of the cases being funded through the DOC, as discussed in detail above. Given the known costs of the DOC and LPDB funded cases, it is safe to suggest that the cost of proceeding to trial for the defense in district funded cases per year was at least similar to the costs incurred by the prosecution.

A conservative review of the total costs per year on average over the decade from 2008-2017 includes:

PURPOSE	COST
Death Row DOC	3,200,000
Defense Trial (State offices)	\$5,083,149
Defense Trial (District Defenders)	\$537,500
Defense Trial Angola 5	\$543,970
Defense Appeal/Post Conviction	\$4,096,709
Prosecution averaging 4.3 trials per year	1,075,000
Court Costs averaging 4.3 trials per year	1,075,000
Total per year	15,611,328

During this ten year period, there were 41 trials.¹⁰⁴ Twenty-one of these trials ended in a death sentence. 7 of these individuals sentenced to death have already had their convictions reversed; an eighth individual has been exonerated entirely.¹⁰⁵ A ninth individual died on death row as a result of a suicide.¹⁰⁶ 12 remain on the row.

During this ten year period, one individual (sentenced to death in 2006) was executed when he asked the jury to impose a death sentence, and waived his appeals. No individual has been sentenced to death by a jury since 2016.

Taking into account indictment rates, trial rates, reversal rates and time elapsed to execution, our analysis of the current system indicates that a defendant arrested for a capital crime committed in 2019 is unlikely to proceed to trial until 2022, and unlikely to be executed until at least 2037. The costs for maintaining a capital defense system between now and that date are over \$281,000,000.

But we caution, that statistically speaking, beginning with cases in August of 2019, if there is one death sentence per year, and 85% of the death sentences are reversed, it may take six years to produce the one case that ends in execution. As

¹⁰⁴ Appendix B1, List of Trials and Outcomes, Lines 14-54.

¹⁰⁵ Appendix B3, List of Trials and Outcomes, Lines 4-11

¹⁰⁶ Appendix B1, List of Trials and Outcomes, Lines 17.

such, the cost to secure a single execution from a post-2019 case may be considerably longer and take up to \$85,000,000 more than the \$281,000,000.

While the number of pending capital cases, trials and death sentences has declined over the last twenty years, the cost to the system remains. These costs will continue in the future, necessarily, as long as there is a death penalty system.

E. Previous Under-Estimations of the Cost of Our Capital Justice System

We recognize that predictions concerning future costs are imprecise but it is notable that policy makers have previously been provided with wildly inaccurate data. In 1999, the Louisiana Legislative Office predicted that there would be no or little cost savings from repeal of the death penalty. See Appendix F, Legislative Analysis. In hindsight, we are able to identify significant costs associated with the decision to maintain the death penalty. Extrapolating back from the figures described above, in the twenty years since the 1999 fiscal note, Louisiana has expended, at a minimum, \$284,000,000 on its system of capital justice (twenty years at the above cited annual rate). For the reasons described above, this represents a conservative estimate of expenditure.

F. Chronic Underfunding of the Defense System

The costs of defending capital cases at trial was not always so high. However, the history reflects a lack of full payment for the delivery of the defense function. Significantly, Louisiana is still paying for the failure to fund capital defense in the 1970's through 2004, as cases involving individuals previously sentenced to death are reversed. Glenn Ford's exoneration for an offense in 1984, after almost thirty years on death row, reflects the clear consequence of a system that did not fully fund capital representation. So too, the exoneration of Rodricus Crawford in 2017, reflected deficiencies in funding of capital defense that remained in 2013.

In 1976, Louisiana established the Indigent Defense Boards (IDB), which were funded through assessments on criminal violations, principally traffic tickets; a funding mechanism that proved woefully inadequate.¹⁰⁷

In the face of legislative inaction, in 1990 the Louisiana Supreme Court appointed a Statewide IDB Committee of the state's Judicial Council to study and

¹⁰⁷ *State v. Peart*, 621 So. 2d 780, 784-89 (La. 1993) (discussing inadequacy of indigent defense funding); Richard Drew, Louisiana's New Public Defender System: Origins, Main Features, and Prospects for Success, 69 LA. L. REV. 955 (Summer 2009).

recommend changes to Louisiana's indigent defense system.¹⁰⁸ The Committee adopted the recommendations in a report it had commissioned from the Spangenberg Group which included doubling the funding of indigent defense in the state.¹⁰⁹ In July 1993, the Louisiana Supreme Court addressed the consequences of chronic underfunding of indigent defender services, stating:

Specifically, the system has resulted in wide variations in levels of funding, both between different IDB's and within the same IDB over time. The general pattern has been one of chronic underfunding of indigent defense programs in most areas of the state.¹¹⁰

The court concluded in that case that caseload levels had resulted in constitutionally ineffective assistance of counsel and found a rebuttable presumption of ineffective assistance for defendants in the section of court the subject of the proceedings.¹¹¹

The court in *Peart* sounded a warning that legislative action should be taken or the court would consider more intrusive measures:

If legislative action is not forthcoming and indigent defense reform does not take place, this Court, in the exercise of its constitutional and inherent power and supervisory jurisdiction, may find it necessary to employ the more intrusive and specific measures it has thus far avoided to ensure that indigent defendants receive reasonably effective assistance of counsel. We decline at this time to undertake these more intrusive and specific measures because this Court should not lightly tread in the affairs of other branches of government and because the legislature ought to assess such measures in the first instance.¹¹²

Two months later the court banned the involuntary, uncompensated appointment of counsel in capital cases in *State v. Wigley*, 624 So. 2d 425 (La. 1993). To that point, the state had been liberally subsidizing the costs of its capital justice system by mandatorily appointing private counsel to represent capital defendants without funding.

On May 23, 1994, the Court held that a district court could order the Parish government to defray necessary indigent defense expenses.¹¹³ Barely three months

¹⁰⁸ *Peart*, 621 So. 2d at 789 n.9.

¹⁰⁹ *Peart*, 621 So. 2d at 790.

¹¹⁰ *Peart*, 621 So. 2d at 789.

¹¹¹ *Id.*

¹¹² *Peart*, 621 So. 2d at 791 (citations omitted).

¹¹³ *State v. Craig*, 93-2515 (La. 5/23/94), 637 So. 2d 437, 439-40.

later the legislature abrogated this decision, expressly excluding the use of local city, parish or criminal court funds as a source of funding for indigent defense.¹¹⁴

On July 1, 1994 the Louisiana Supreme Court adopted Rule XXXI, establishing the Louisiana Indigent Defender Board (LIDB) and its various programs.¹¹⁵ An interbranch taskforce appointed by the Governor and chaired by the Chief Justice of the Supreme Court requested \$10 million to support a full year of the LIDB's program. *Id.*¹¹⁶

The legislature never funded LIDB at the amount requested by the interbranch taskforce. LIDB was funded \$5 million for its first partial year of operation and then at \$7.5 million per year thereafter.¹¹⁷

Beginning January 1, 1998, the legislature reconstituted the LIDB as the Louisiana Indigent Defense Assistance Board (LIDAB).¹¹⁸ The initial budget of LIDAB was \$7.5 million.¹¹⁹ This remained the budget of LIDAB until 2004, despite repeated requests by the Executive Director of LIDAB for funding to be increased to \$20 million. In 2004 the budget was increased to about \$8 million and then to \$10 million in 2005.

Beginning in the Summer of 2002, the National Legal Aid & Defender Association (NLADA) and the National Association of Criminal Defense Lawyers (NACDL) became actively involved in seeking reform of Louisiana's indigent defense funding system, ultimately producing a report describing their work in Louisiana and the inadequacy of the funding arrangements. NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, IN DEFENSE OF PUBLIC ACCESS TO JUSTICE: AN ASSESSMENT OF TRIAL-LEVEL INDIGENT DEFENSE SERVICES IN LOUISIANA 40 YEARS AFTER GIDEON (March 2004).¹²⁰

¹¹⁴ See *Citizen*, 898 So. 2d at 332.

¹¹⁵ *State v. Touchet*, 93-2839 (La. 9/6/94); 642 So. 2d 1213, 1222 (discussing historical developments).

¹¹⁶ Pascal Calogero, "The State of Indigent Defense in Louisiana," 42 Louisiana Bar Journal 454 (February 1995) at page 457.

¹¹⁷ Richard Drew, Louisiana's New Public Defender System: Origins, Main Features, and Prospects for Success, 69 LA. L. REV. 955, 965 (Summer 2009).

¹¹⁸ Acts 1997, No. 1361, eff. Dec. 31, 1997.

¹¹⁹ Richard Drew, Louisiana's New Public Defender System: Origins, Main Features, and Prospects for Success, 69 LA. L. REV. 955, 981 (Summer 2009).

¹²⁰ Available at:

<http://www.ncids.org/Systems%20Evaluation%20Project/Resources/Evaluating/nladaevalofl aexecsumm.pdf>

In 2003 the Louisiana State Bar Association passed a resolution calling for reform of the indigent defense system.¹²¹ Accepting the Bar's critique, resolutions in June 2003 the Louisiana House and Senate¹²¹ led to the establishment of the Louisiana Task Force on Indigent Defense Services to study indigent defense and report by March 2004.¹²²

In 2004, Judge Cooks of the Third Circuit Court of Appeal wrote a scathing article critiquing the structure and funding of Louisiana's indigent defense system and concluding that the State's method of funding indigent defense was constitutionally deficient.¹²³

The legislature continued the Task Force in 2004, setting a new report date of April 2005,¹²¹ prompting the Louisiana Supreme Court to state:

We assume that, given the obvious deficiencies in funding from the State to satisfy its constitutional mandate in La. Const. Art. I, § 13, this Task Force will work diligently to formulate specific recommendations on April 1, 2005, to address these problems and that the legislature will act quickly to promulgate these, or other, appropriate solutions.

Citizen, 898 So. 2d at 336.

In August, 2005, Hurricanes Katrina and Rita devastated Louisiana, and the subsequent efforts to rebuild defender services revealed previously untold deficiencies in the indigent system that had existed long before the hurricanes.

The Louisiana Public Defender Board (LPDB) was created in 2007 by the legislature to oversee implementation of standards for indigent defense, with specific responsibility for capital defense.¹²⁴ Over the last ten years, the LPDB has maintained separate categories for assessing the cost of capital defense funded from the central fisc. Between 2008 and 2017, the LPDB oversight indicates \$91,443,777 in capital defense costs.¹²⁵ This does not include expenditures by the districts, and

¹²¹ Wayne J. Lee, *Indigent Defense – A Failed Promise*, 51 LA. B.J. 174 (October/November 2003).

¹²² Richard Drew, "Louisiana's New Public Defender System: Origins, Main Features, and Prospects for Success," 69 Louisiana Law Review 955, 970 (2009). H.R. Res. 151, Reg. Sess. (La. 2003); S. Res. 112, Reg. Sess. (La. 2003).

¹²³ Sylvia R. Cooks & Karen Karre Fontenot, *The Messiah is Not Coming: It's Time for Louisiana to Change its Method of Funding Indigent Defense*, 31 S.U.L. REV. 197, 208 (Spring 2004).

¹²⁴ See e.g. La. R.S. 15:148 2 (imposing obligation to create qualification standards for capital defense) (10) (imposing obligation to establish standards for capital case representation); La. R.S. 15:169; La. R.S. 15:178.

¹²⁵ See Appendix B6 and B7.

districts were representing a significant percentage of the cases early in this period. Also, this does not include the costs of administering the program at LPDB, including monitoring, providing training, and quality control.

By 2016, LPDB was responsible for funding all of the state's capital defense function. That year there was a significant reduction in capital defense funding, reducing the budget by almost 40%. As a result, as of April 2019, there was a waiting list of four capitally indicted defendants waiting for the appointment of counsel, three other capitally indicted cases have had counsel mandatorily appointed without an identified source of funds for payment and nine additional defendants arrested for first degree murder but not yet indicted are without funded capital defense counsel.¹²⁶

III. Cost Savings

Consideration of whether there are cost savings associated with maintaining the death penalty through the extraction of plea bargains or executions is warranted.

A. Executions v. Housing Inmates

The 1999 Legislative Fiscal Office estimated that "Abolishing capital punishment will result in some costs savings associated with the execution process and inmate appeals. However, the Department of Corrections will incur the costs of incarcerating these inmates for the remainder of their lives."¹²⁷ As discussed above, the cost of maintaining an individual on death row is \$58,285 versus \$7,487 at Camp F.

The vast majority – 85% of final cases – do not result in execution. In 5.5% of the cases, the condemned individual dies on death row – so the costs of housing on death row are borne by the system with no cost-benefit. In 5.5% of the cases, the defendant is exonerated and the system paid \$58,285 per year to house someone it should never have housed – and could have been housed for \$50,000 savings per year. In 73% of final cases, the outcome is that the person moves off of death row and into main prison. As such, under the current system the State of Louisiana pays an additional \$50,000 per year to house the defendant on death row before the defendant is removed from death and housed for as little as \$7,487 per year.

Even if we assumed that for future cases every defendant would be executed, and that there would be a zero percent reversal rate, there would still be no cost savings from execution until a defendant had served at least seventy years in custody. Assuming an average length of time on death row of 18 years, a person

¹²⁶ See Appendix B5.LPDB Report 4.12.2019

¹²⁷ See Appendix F, 1999 Legislative Fiscal Office Estimate, HB 19, at pg 1

would have to serve 140 years in prison at Camp F before that cost equaled the 18 years on death row. Even if the process was expedited to secure executions in 9 years, there would be no cost savings from execution until a defendant had spent more than 70 years in custody.

B. Plea Bargains

The Legislative Fiscal Office, Fiscal Note on HB 162 (2018) observed that there may be some savings from cases where: “defendants that decided to accept a plea bargain of life in prison may not have accepted a plea bargain.”¹²⁸ While this analysis is focused on cost rather than constitutionality, a statutory scheme that exempts capital punishment where the defendant waives his right to trial presents serious constitutional problems.¹²⁹ Such a scheme could have exorbitant additional costs by providing a successful basis for challenging not only every death sentence imposed under such a scheme, but pleas to life imprisonment.¹³⁰

However, our review of data indicates that regardless of the propriety of using the death penalty to secure life pleas, that in actuality the vast majority of cases are resolved without a life plea. Between 2012 and 2015, prosecutors announce that they will not be seeking death 74% of the time, without a plea agreement. Death was taken off as part of a plea only 21% of the time. In cases where death was dropped without an agreement to resolve the case, 4 cases still plead to a life without parole sentence, and 14 went to trial.

IV. Other Jurisdictions

There are significant known quantifiable costs to administering a death penalty system. There have been at studies from 18 jurisdictions that estimate the cost associated with the death penalty. Every published study analyzing costs of

¹²⁸ See Appendix G, 2018 Legislative Fiscal Office Estimate, HB 162, at pg 2

¹²⁹ See *United States v. Jackson*, 390 U.S. 570 (1968); *Hynes v. Tomei*, 706 N.E.2d 1201 (N.Y. Ct. App. 1998) (holding New York statutory scheme unconstitutional where only defendants who assert right to trial are exposed to capital punishment); see also Joseph Hoffman, Marcy Kahn, Steven W. Fisher, *Plea Bargaining in the Shadow of Death*, 69 FORDHAM L. REV. 2313 (May 2001).

¹³⁰ See *Gregg v. Georgia*, 428 U.S. 153, 225 (1976) (Opinion of White, J., Rehnquist, J., Burger, CJ.) (assuming as a precondition to constitutionality that prosecutors would not use the death penalty to extract pleas); *Hidalgo v. Arizona*, 583 U.S. __ (2018) (Statement Concerning Denial of Certiorari by Breyer, J., Ginsburg J., Sotomayor, J., Kagan, J.) (suggestion that “prosecutors may perform the narrowing requirement by choosing to ask for the death penalty only in those cases in which a particularly wrongful first-degree murder is at issue” is contradicted by “this Court’s precedent.”).

administering the death penalty have found the costs to be substantially higher than administering a system limited to life without parole sentences. This is true regardless of, and inclusive, any savings in DOC costs realized from execution. The studies are:

1. California: Judge Arthur L. Alarcón & Paula M. Mitchell, Executing the Will of the Voters? A Roadmap to Mend or End the California Legislatures Multi-Billion-Dollar Death Penalty Debacle, *Loyola of Los Angeles Law Review*, Vol. 44:S41¹³¹
2. Colorado: Justin F. Marceau and Hollis A. Whitson, The Cost of Colorado's Death Penalty, *University of Denver Law Review*, Vol. 3: 145¹³²
3. Connecticut: State of Connecticut Commission on the Death Penalty, January 8, 2003¹³³
4. Idaho: Financial Costs of the Death Penalty, Office of Performance Evaluations Idaho Legislature, Evaluation Report 14-02, March 2014;¹³⁴
5. Indiana: The Application of Indiana's Capital Sentencing Law: Findings of the Indiana Criminal Law Study Commission, January 10, 2005¹³⁵
6. Kansas: Report of the Judicial Council Death Penalty Advisory Committee, February 13, 2014¹³⁶
7. Maryland: Urban Institute Justice Policy Center, The Cost of the Death Penalty in Maryland, March 2008¹³⁷
8. Nebraska: Goss & Assoc. Econ. Solutions, The Econ. Impact of the Death Penalty on the State of Neb.: A Taxpayer Burden? (2016),¹³⁸
9. Nevada: Performance Audit: Fiscal Costs of the Death Penalty, LA14-25, 2014, Estimates of Time Spent in Capital and Non-Capital Murder Cases: A Statistical Analysis of Survey Data from Clark County Defense Attorneys, Miethe D. Terance, 2012. (Nevada) ¹³⁹
10. New Jersey: Mary E. Forsberg, Money for Nothing? The Financial Cost of New Jersey's Death Penalty, November 2005¹⁴⁰

¹³¹ Available at: <https://digitalcommons.lmu.edu/llr/vol44/iss0/1/>

¹³² Available at: <https://www.law.du.edu/documents/criminal-law-review/issues/v03-1/Cost-of-Death-Penalty.pdf>

¹³³ Available at:

http://www.ct.gov/redcjs/lib/redcjs/documents/commission_on_the_death_penalty_final_report_2003.pdf

¹³⁴ Available at: <https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r1402.pdf>

¹³⁵ Available at: <https://deathpenaltyinfo.org/documents/IndianaStudy.pdf>

¹³⁶ Available at: http://www.kscourts.org/pdf/studies/death_penalty_rpt11-12-04.pdf

¹³⁷ Available at: <https://www.urban.org/research/publication/cost-death-penalty-maryland>

¹³⁸ Available at:

<https://bloximages.newyork1.vip.townnews.com/omaha.com/content/tncms/assets/v3/editorial/a/6d/a6de772c-7515-11e6-8138-1f408072cffb/57d03c36d04e9.pdf.pdf>

¹³⁹ Available at: <https://deathpenaltyinfo.org/costs-death-penalty-cases-nevada-cost-200k-extra-just-defense>

¹⁴⁰ Available at: <http://www.sentencing.nj.gov/downloads/pdf/articles/death3.pdf>

11. North Carolina: Philip J. Cook, Potential Savings from Abolition of the Death Penalty in North Carolina, *American Law and Economics Review*, December 11, 2009. ¹⁴¹
12. Oklahoma: Okla. Death Penalty Rev. Comm'n, Rep. 234 (2017) ¹⁴²
13. Oregon: Aliza B. Kaplan, Oregon's Death Penalty: the Practical Reality, *Lewis & Clark Law Review*, Vol. 17:2¹⁴³
14. Pennsylvania: Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania, The Report of the Task Force and Advisory Committee, June 2018 ¹⁴⁴
15. Tennessee: John G. Morgan, Tennessee's Death Penalty: Costs and Consequences, July 2004 ¹⁴⁵
16. Washington: An Analysis of the Economic Costs of Seeking the Death Penalty in Washington State," Seattle University, January 1, 2015)¹⁴⁶
17. Wyoming: Fiscal Note Addressing Abolition, 2019. ¹⁴⁷
18. United States: Jon B. Gould and Lisa Greenman, Report to the Committee on Defender Services Judicial Conference of the United States: Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases, September 2010. ¹⁴⁸

Nine of these reports have been produced through thorough a state-level government-affiliated body, five through academic departments and four through other bodies such as policy think-tanks. While the scope and rigor of each study differs, most calculated the average cost of a capital case versus a non-capital case by gathering data on the cost of individual cases. When finding data on individual cases, most reports broke up costs into costs associated with defense, prosecution and incarceration, as well as making distinctions when finding costs associated with the Trial level versus the Appellate level.

¹⁴¹ Available at: <https://deathpenaltyinfo.org/documents/CookCostRpt.pdf>

¹⁴² Available at:

[https://s3.amazonaws.com/content.newsok.com/documents/Report%20of%20the%20OK%20Death%20Penalty%20Review%20Comm'n April%202017.pdf](https://s3.amazonaws.com/content.newsok.com/documents/Report%20of%20the%20OK%20Death%20Penalty%20Review%20Comm'n%20April%202017.pdf)

¹⁴³ Available at: <https://law.lclark.edu/live/files/13715-lcb171art1kaplanpdf>

¹⁴⁴ Available at [http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2018-06-25%20SR6%20\(Capital%20Punishment%20in%20PA\)%20FINAL%20REPORT%20June%2025%202018.pdf](http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2018-06-25%20SR6%20(Capital%20Punishment%20in%20PA)%20FINAL%20REPORT%20June%2025%202018.pdf)

¹⁴⁵ Available at: <https://deathpenaltyinfo.org/documents/deathpenalty.pdf>

¹⁴⁶ Available at:

<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1616&context=faculty>

¹⁴⁷ Available at: <https://www.wyoleg.gov/2018/Fiscal/HB0189.pdf>

¹⁴⁸ This report is available online at:

<https://www.uscourts.gov/sites/default/files/fdpc2010.pdf>

Each of these reports found significant costs associated with the death penalty. For example:

- Washington -- each death penalty case cost an average of \$1 million more than a similar case where the death penalty was not sought, resulting in \$120 million dollars in expenditures for five executions, three of which were volunteers.¹⁴⁹
- California -- \$ 4 billion of state and federal taxpayer money expended since 1978, with a of cost ranging from \$ 137 million to \$184 million per year.¹⁵⁰
- Oregon – average cost of capital case including incarceration was \$ 2.3 million versus \$1.4 million dollars for life without parole case. ¹⁵¹
- Maryland -- , Costs per case on average \$ 3 million, with the eventual costs to taxpayers for cases pursued 1978-1999 at roughly \$ 186 million.¹⁵²
- Kansas -- the costs of capital cases are 70% more expensive than comparable non-capital cases, including the costs of incarceration.¹⁵³
- Florida -- \$51 million a year above what it would cost to punish all first-degree murderers with life in prison without parole.¹⁵⁴
- North Carolina -- \$ 2.16 million per execution over the costs of sentencing murderers to life imprisonment.¹⁵⁵

¹⁴⁹ "An Analysis of the Economic Costs of Seeking the Death Penalty in Washington State," Seattle University, January 1, 2015).

<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1832&context=sjsj>

¹⁵⁰ Judge Arthur L. Alarcon* and Paula M. Mitchell*: RETHINKING THE DEATH PENALTY IN CALIFORNIA: EXECUTING THE WILL OF THE VOTERS?: A ROADMAP TO MEND OR END THE CALIFORNIA LEGISLATURE'S MULTI-BILLION-DOLLAR DEATH PENALTY DEBACLE, 44 Loy. L.A. L. Rev. 41, 109.

<https://digitalcommons.lmu.edu/llr/vol44/iss0/1/>

¹⁵¹ T. Hernandez, "How much does the Oregon death penalty cost? New study examines 100s of cases," The Oregonian, November 16, 2016.

https://www.oregonlive.com/portland/2016/11/how_much_does_the_oregon_death.html

¹⁵² The Cost of the Death Penalty in Maryland, Urban Inst. Just. Pol'y Center at Abstract (Mar. 2008), http://www.urban.org/UploadedPDF/411625_md_death_penalty.pdf

¹⁵³ Kansas Performance Audit Report, Legislative Post Audit Committee, December 2003. Available at: <http://www.kslpa.org/media/files/reports/media/files/temp/04pa03a.pdf>

¹⁵⁴ S.V. Date, "The High Price of Killing Killers," Palm Beach Post, January 4, 2000.

Available online at: <https://deathpenaltyinfo.org/node/2289>

¹⁵⁵ (Philip J. Cook, Donna B. Slawson, "The Costs of Processing Murder Cases in North Carolina," Terry Sanford Institute of Public Policy, Duke University, May 1993. Available online at: <https://deathpenaltyinfo.org/northcarolina.pdf>

- Texas – capital case an average of \$ 2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.¹⁵⁶
- Pennsylvania – average cost of death penalty case is \$3.1 million versus \$1.1 for non-capital life without parole case, and the state spends \$46 million per year on death penalty system.¹⁵⁷

Many of these studies are older, and risk being outdated. However, these studies reveal how increased costs per individual case are multiplied by the number of cases involved in a system, and then multiplied again by the number of years it takes from arrest to execution.

Savings based upon an execution can only be realized if executions are carried out in an expedited manner. Where individuals are housed on death row during the pendency of their appeals and then removed from death row or die of natural causes, all of the entire costs are borne by the system. As the Pennsylvania Legislative Report recently acknowledged:

The difference in costs between capital and non-capital trials becomes more significant when one considers the cumulative totals of capital trials over a period of decades and the unlikelihood of an execution. If the differential in costs for capital case unit inmates compared to general population inmates persists, Department of Corrections can expect to spend an extra \$39,378,735 or more to incarcerate condemnees, who are unlikely to be executed.¹⁵⁸

Noted within a number of these studies, is the fact that costs of the system rise as states take protections to avoid wrongful convictions and erroneous executions; the broader the legislature makes a death penalty statute, the more defendants require prosecution and protection, the larger number of potential capital cases and the higher costs.

¹⁵⁶ Christy Hoppe, “Executions cost Texas millions,” Dallas Morning News, March 8, 1992. Available online at: <https://standdown.typepad.com/DallasMorningNews-%20ExecutionsCostTexasMillions-1992-0308-Hoppe.pdf>

¹⁵⁷ NOTE: COSTS VERSUS BENEFITS: THE FISCAL REALITIES OF THE DEATH PENALTY IN PENNSYLVANIA, 78 U. Pitt. L. Rev. 519, 536-537

¹⁵⁸ Pennsylvania: Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania, The Report of the Task Force and Advisory Committee, June 2018.

CONCLUSION

Assessment of the full costs of Louisiana's capital punishment system is difficult to measure because of a failure by (some but not all) state and local government agencies to adequately document their use of public funds. While some costs are clear, others are included in larger budgets without strict accounting. Ordinarily, costs of prosecution, courtroom security, judicial expenses are not segregated from other expenditures. However, the Angola-5 case provides an example of specific costs for each function that is in line with review other states and consistent with broad expenditures in other cases.

Even making conservative assumptions concerning length of time, the costs of the capital punishment system are far higher than the costs for a non-capital punishment system. Although expenditures for past costs are not recoverable, it is reasonable to assume that costs to administer a capital punishment system will at the least remain as high as in the future as they have in the past.

While there appears to be some decline in the number of capital prosecutions, there is a clear decline in the number of death sentences and executions. While some savings may be achieved by discretionary decisions of individual prosecutors to restrain from seeking capital punishment, the aggregate cost of the system remain high.

Louisiana has had a dismal history in administering a capital punishment system, with some of the highest reversal and exoneration rates in the country. Indeed, the costs of preventing wrongful convictions in future cases requires more rather than less expenditures. We believe that a review of past expenditures reveals that to secure the execution of an individual arrested for a crime in 2019, Louisiana will expend over two hundred and eighty million dollars (\$280,000,000) on its capital punishment system. Whatever ones views on the morality of capital punishment, when assessing its efficacy, the cost must be considered.