

Hearing SB 1013, April 1, 2019
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- My name is Aliza Kaplan, and I am a law professor and Director of the Criminal Justice Reform Clinic (CJRC or the Clinic) at Lewis & Clark Law School in Portland. The CJRC provides hands-on legal experience to law students in various areas of Oregon’s criminal justice system.
- In November 2016, in collaboration with Dr. Peter Collins of Seattle University’s Department of Criminal Justice and attorney Venetia Mayhew, who was then a student with the Clinic, and with research assistance from many law students, the Lewis & Clark Law School and Seattle University jointly published “Oregon’s Death Penalty: A Cost Analysis,”¹ a comprehensive study examining the economic costs of aggravated murder cases in Oregon. The study sought to determine what cost differences, if any, existed between aggravated murder cases in which the defendants were sentenced to death and those that were sentenced to some form of life. Additionally, to provide context, while recognizing the different statutory requirements and case processing, the study compared costs between those convicted of aggravated murder to those who were convicted of murder.
- I am here today in support of SB 1013 and to provide you with the results of our study; to explain our methods; the limitations in the data we had access to; and how we reached the conclusions that we did.
- We concluded that on average it costs the State of Oregon from about \$800,000 to over \$1 million more per case to sentence a defendant to death rather than to some form of a life sentence, and it is far more expensive to convict a defendant of aggravated murder than murder.
- Accordingly, on the issue of cost, there is no doubt that if SB 1013 becomes law and we limit aggravated murder cases, and thus death eligible cases, the State will pay significantly less money for aggravated murder cases.

Background

- In 2015, the Clinic began a comprehensive cost study surrounding the death penalty in Oregon because only minimal scholarship and limited data existed as to Oregon’s death penalty’s economic costs.

¹ <https://law.lclark.edu/live/files/22888-oregons-death-penalty-a-cost-analysis-2016>

- Furthermore, in several states around the country, other studies were conducted as to the economic costs of the death penalty in their states, all of which have drawn similar conclusions to our study of Oregon’s aggravated murder costs.
 - In 2015, Seattle University Professors (including Dr. Peter Collins) released a cost study concluding that in Washington State, sentencing defendants to death costs on average over \$1,000,000 more per case.
 - In 2014, the Idaho Legislature released a report on the costs of the death penalty. Because it was unable to obtain comprehensive cost data, it calculated costs by other metrics, including time. At the Public Defender’s office alone, 44 times more billable hours were worked on capital cases per defendant than non-capital cases.
 - In 2014, the Kansas Judicial Counsel’s Death Penalty Advisory Committee published a death penalty cost analysis from a small sampling of cases, finding that death penalty trials cost about 4 times more than those for non-death cases and the Kansas Supreme Court estimated that justices spend five times the number of hours on death penalty cases than non-death cases.
 - In 2011, a Ninth Circuit Court of Appeals Judge and a Loyola Law School Professor determined that California spent over \$4 billion on the death penalty since its 1978 reinstatement, despite only 13 people being executed.
 - In 2009, a Duke University professor published a report on the costs of the death penalty in North Carolina and concluded that it could have saved almost \$11 million each year by abolishing its death penalty, not to mention a yearly savings of 345 days in court for trial, 10% of the resources of the Supreme Court and Appellate Defender’s office, and the freeing up of the equivalent of nine prosecutors.
 - Despite the limitations in each of these studies, their findings all suggest that the main reason for the added expenses in pursuing capital cases relates to increased complexity; increased time to complete all phases of the trial and appellate process; and increased effort in the form of human capital, *all of which are constitutional requirements*. Our study draws the same conclusions of aggravated murder in Oregon.

Methodology

- In Oregon, unless a defendant demonstrates clear characteristics of ineligibility, such as juvenile status, he or she is automatically eligible to be sentenced to death when charged with aggravated murder.
- Death sentence eligibility means specific costs are incurred that are not incurred in non-death penalty murder cases, such as requiring a team of death-qualified attorneys, providing additional due process protections, filing motions and holding additional hearings surrounding the death penalty, hiring more experts and more investigative resources on both sides, and bifurcating the trial into a guilt phase and a sentencing phase.

- In some states, prosecutors must officially announce whether they are seeking a death sentence during pre-trial in an aggravated murder cases, but in Oregon no such requirement exists, meaning that defense teams must operate on the assumption that the State is seeking death in all aggravated murder cases.
 - In our study we examined 354 aggravated murder cases that commenced between January 2000 and December 2013 and we randomly selected 354 murder cases from the same period of time. Additionally, we examined each case from 1984 until the end of 2013 in which the defendant was sentenced to death.
 - In undertaking this study, we faced similar limitations in accessible cost data as the studies undertaken by other states. Thus, we attempted to gather whatever economic costs we could access along with other metrics that would help convey the scope of cases, such as the number of hearings held in pre-trial, the number of both prosecutorial and defense filings, and time between charges to sentencing. In addition, we interviewed various stakeholders, from Supreme Court justices, Court of Appeals judges, to prosecutors and defense attorneys in order provide a qualitative analysis.
 - We obtained records through Oregon Judicial Case Information Network (OJCIN Online), including all trial, appellate, post-conviction records and all federal habeas records from PACER, which houses case and docket information for federal courts for each case in our sample. We calculated all defendant and state filings, hearings, the length of each case, for both those that pled and those that went to trial. We were limited by the great variability in record keeping between counties and sometimes between cases in those counties. We undertook a similar assessment of the appellate and post-conviction processes again assessing the number of filings and the time that each appeal took as a method to measure the scope of each case
 - We gathered jail data as aggravated murder defendants often spent far longer in pretrial and are often held in segregated high security areas within county jails. We received data from the Department of Corrections (DOC) as to the costs of incarceration for each inmate after conviction, although those costs do not distinguish between those on death row and those in general population.
 - We received case level, cost related information for post-conviction appeals from the Department of Justice (DOJ) for 171 of the cases in our dataset.
 - We received cost data from Oregon Public Defender Services (OPDS) for trial, appellate and post-conviction costs for all 354 cases in our sample set. Costs for defense services included attorney hours, investigation, mitigation, psychiatric/psychological evaluation, other experts, forensics, paralegals, lodging, meals, interpreters, polygraph, discovery, lay witness and other expenses. OPDS was also able to provide cost related data for appeals and post-conviction review and appeals.
 - Prosecutor's offices in Oregon do not keep or bill the time attorney's spend on cases and therefore we were unable to include data associated with prosecution costs, but we interviewed prosecutors from two counties which provided context

as to the scope of person-power required in a capital case, which is generally an extensive burden on the resources of the office.

- Courts did not provide us with cost-specific information. Instead, we relied on open access court documents in forming many of our databases.

Findings

- Our economic findings underestimate the economic costs of capital punishment because no cost data was available or provided by district attorneys' offices or the courts. Our findings also exclude costs surrounding law enforcement and other local and state government actors not explicitly included.
- Therefore, the cost data we received from jails, DOC, OPDS, and DOJ only represent a portion of the total costs imposed by pursuit of the death penalty in Oregon. Our conclusions are thus conservative and do not reflect the true economic costs imposed upon the State.
- Including all costs that we were able to gather, the average cost for someone sentenced to death (excluding DOC) is \$1,390,616 and the average cost for someone sentenced to some form of life sentence is \$334,522. Many of the costs imposed in aggravated murder cases come through the appellate process after conviction. This is where the divergence in state costs between those sentenced to death and those sentenced to a form of life often exist.
- OPDS provided average costs for the appellate process. It is over 10 times more expensive to fund death penalty appeals, than appeals for defendants convicted of aggravated murder and sentenced to a form of life. It is nearly 30 times more expensive than non-aggravated murder appeals.
- The DOJ provided us with its prosecutorial appellate costs which are over 6 times more expensive for those sentenced to death over life.
- Importantly, costs continue to increase decade by decade. The average cost in the 1980's from the cases in which defendants were sentenced to death was \$274,209 per person. In the 1990's, average costs increased to \$1,107,441 per person and in the 2000's the average death penalty case cost was \$1,783,148. We could not reach a reliable conclusion from 2010 to 2013 due to the fact that we only had 3 years of data to analyze. However, it is reasonable to conclude that the costs will keep increasing.
- In addition to economic data, we calculated average numbers of hearings, defense and prosecutorial filings, judicial orders, and average number of days from the date that charges were filed to sentencing date.
 - The average length of time from charging to sentencing for non-aggravated murder cases was 417 days, for non-death aggravated murder cases was 562 and for cases resulting in a death sentence was 741 days.
 - The average number of hearings was double for aggravated murder cases in which the defendant was sentenced to death.

- The average number of judicial orders issued in cases where the defendant was sentenced to death was just over 52 per case, and was just under 17 per case for those where the defendant was sentenced to some form of life.
- These differences are far more glaring when comparing death penalty cases to non-aggravated murder cases. There are on average 5 times the number of judicial orders, 8 times the number of prosecutorial filings, 7 times the number of defense filings and 3 times the number of hearings for death cases over regular murder cases. These ratios illustrate the immense amount of human labor that goes into death penalty cases over lesser murder cases.
- We were also able to assess the costs of specific cases which further demonstrate the huge economic costs imposed by a death sentence. The longest serving inmate on death row, was first sentenced to death in 1988. Since then his case had been reversed three times by the Oregon Supreme Court and was finally affirmed in 2015. At the time the study was published, his case had cost the State of Oregon at least \$3.5 million excluding DOC costs and it is still going on.

Cost impact of SB 1013

- By limiting aggravated murder cases, and thus death penalty eligible cases to the few circumstances proposed in SB 1013, it will vastly decrease the number of cases that will automatically trigger constitutional death penalty protections that so dramatically increase the cost of an aggravated murder case to the State. These costs commence at charging with the constitutional requirements of a death eligible defense team and continue through the appellate and post-conviction processes.
- The costs to the State are not just calculated in dollar terms – but also in the costs that occur when state employees, from judges to jailers, are taken away from other worthy work to focus on the time-consuming requirements of a death penalty case.
- While our study does not provide a complete picture of the true economic costs imposed by the current aggravate murder statute, it provides enough evidence to support the conclusion that the death penalty imposes vast additional costs upon the State that will be diminished through this enactment.
- Maintaining capital punishment in its current form is an expensive public policy choice. The funds currently spent on maintaining a death penalty could be used for indigent defense services, to enhance law enforcement such as solving cold cases and improving forensic science, and on other criminal justice needs.

Thank you for the opportunity to discuss the cost of the death penalty. I am happy to answer any questions and encourage you to read the qualitative parts of the study to learn the perspectives of justices, judges, defense attorneys, prosecutors, and mitigators to the cost implications of Oregon's aggravated murder statute.