

# Notes on the Costs of the Death Penalty – Defense Perspective

Damon L. Preston, Public Advocate

## *Current Active Capital Trial Cases in Kentucky*

- 52 Cases** Notice of Intent to Seek Death has been filed
- 62 Cases** Possible aggravator where Notice has not been filed, but could be
- 49 Cases** Aggravator present, but death penalty not being sought  
(47 Counties have an active trial case eligible for death penalty notice)

## *Costs of Death Penalty Defense*

**\$1,574,952** – Capital Trial Branch Annual Budget (approximately 30% of capital trial representation; A majority of capital representation is provided by DPA trial office attorneys with full regular caseloads)

**\$360,930** – Capital Post-Conviction Unit Annual Budget

**\$1,021,910.78** FY17 Court-Ordered Defense Expert Funding in Capital Cases

**\$1,051,598.61** FY18 Court-Ordered Defense Expert Funding in Capital Cases

**\$61,723** – Estimated Cost of a DPA Death Penalty Direct Appeal

Compare: \$14,474 – Cost of an Appeal of a Trial Where Death Penalty Was Sought;  
\$5,753 – Cost of an Appeal of a Murder Conviction Where Death Was Not Sought

**\$555,607** – Estimated cost of a DPA capital post-conviction case through regular stages of process

## *Studies from Other States*

Texas - **\$2.3 million** average cost per death penalty case by the time of execution

Indiana (Trial and direct appeal costs only) - **\$449,887** for death penalty, \$42,658 for life without parole

Kansas (total costs, including incarceration) – **\$1.26 million** for death penalty case by execution,  
\$740,000 for non-death case through end of incarceration; 49% of costs of death penalty case were for pretrial and trial expenses.

## *Capital Trial vs. Non-Capital Trial Costs*

### DEATH PENALTY SOUGHT

- 2 Attorneys for Life of Case (sometimes 3)
- Experienced Qualified Capital Investigator
- Mitigation Specialist
- Full mitigation investigation
- More hired experts, including for mitigation
- Longer before trial (often more than 2 years)
- Trial lasts 3 to 4 weeks or longer

### DEATH PENALTY NOT SOUGHT

- 1 Lead Attorney with 2<sup>nd</sup> Added for Trial
- DPA Office Investigator
- No Mitigation Specialist
- Limited mitigation investigation
- Experts only if needed for guilt-phase defense
- Shorter before trial
- Trial lasts less than 2 weeks

## *Capital Case Outcomes Since 1976:*

97 Cases where defendant was sentenced to death

49 Reversed on appeal or post-conviction (35 sentenced to less-than-death on retrial)

34 Cases remain open

2 Granted clemency, 9 Died of natural causes, 2 Executed after waiver of further actions

1 Executed after conviction and sentence upheld through all stages of litigation