

**Case Study on State and County Costs Associated  
with Capital Adjudication in Arizona:  
Data Set III Research Report to  
Arizona Capital Case Commission**

Submitted by The Williams Institute

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**In Consultation with the Data/Research Subcommittee  
of the  
Arizona Capital Case Commission**

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## Introduction

The Attorney General's Capital Case Commission was established in 2000 for the purpose of examining the death penalty process in Arizona. Four subcommittees within the Commission are charged with the responsibility of conducting a comprehensive review of the death penalty litigation process, each with its own specific area of focus: pretrial issues, trial issues, direct appeal/postconviction relief issues, and data collection and statistical analyses.

The Data/Research Subcommittee is exploring three distinct data sets. Analyses of Data Sets I and II are being performed by the Center for Urban Inquiry, College of Public Programs, Arizona State University. A report of the results of the research on Data Set I was submitted to the Commission in March 2001. It examines the characteristics of the 230 Arizona death sentence cases from 1974 through July 1, 2000. Data Set II will facilitate a comparative analysis of capital cases and other first degree murder cases during the five-year period, January 1, 1995, through December 31, 1999, for Maricopa, Pima, Coconino, and Mohave counties.

This report summarizes the results of Data Set III, a proposed smaller exploratory study of 30 cases designed to estimate the incremental state and county resource costs of adjudicating first degree murder cases capitally and noncapitally in Arizona. Data Set III research was conducted by The Williams Institute under contract to the Attorney General's Office. In recognition of the understanding that this study would be conducted within specifically limited time and resource constraints, it compares selected cost-related details/activities in each type of case:

- The number of pretrial/trial motions filed and Arizona Superior Court minute entries recorded
- The number and cost of trial-related psychiatric/medical evaluations and exams, including expert testimony
- The number and cost of trial-related special investigators
- The length and cost of a jury trial, including three component parts:
  - The length and cost of jury selection
  - The length and cost of jury deliberations
  - Costs of trial preparation/trial as recorded in case files (outside of normal budget costs)
- The length and cost of aggravation/mitigation hearings, including the length of time from verdict to sentencing
- The length of time from indictment to sentencing, including the county costs of housing the inmate prior to sentencing
- The cost of trial preparation/trial hours expended by defense counsel and county attorneys
- Some specific state and county costs associated with appeals as reflected in estimates provided by the Attorney General's office, Court of Appeals, and the Arizona Supreme Court

It is important to note that the costs reflected in this report are limited to specific areas of study and represent only *a portion* of the costs associated with the adjudication of capital and noncapital murder cases in Arizona. Costs for which only a portion of the data were available and costs beyond the scope of this study are highlighted throughout the report.

## Research Methodology

### Literature Review:

- Bortner, Peg, and Andy Hall. *Summary of Death Sentence Process: Data Set I Research Report to Arizona Capital Case Commission*. Tempe, AZ: The Center for Urban Inquiry, College of Public Programs, Arizona State University. March 2001.
- Cook, Philip J., and Donna B. Slawson. *The Cost of Processing Murder Cases in North Carolina*. Durham, NC: Terry Sanford Institute of Public Policy, Duke University. May 1993.
- Kansas Legislative Research Department. *Memorandum: Cost Considerations of Implementing the Death Penalty*. Topeka, KS: Kansas Legislative Research Department. February 15, 1994.
- Maryland House Appropriations Committee. *Committee to Study the Death Penalty in Maryland, Final Report: The Cost and Hours Associated with Processing a Sample of First Degree Murder Cases for which the Death Penalty was Sought in Maryland Between July 1979 and March 1984*. Maryland House Appropriations Committee. 1985.
- National Center for State Courts. *Final Report: Does the Death Penalty Impose additional Costs on the Criminal Justice System?—A Research Design*. Williamsburg, VA: National Center for State Courts. 1986.
- Nebraska Legislative Research Division. *Cost of the Death Penalty: An Introduction to the Issue*. LRD Report #95-2; NE DOCS #3800 B012.0052-1995. Lincoln, NE: Nebraska Legislative Research Division. January 1995.

### Research Methodology/Design:

Within the time and resources available, Data Set III compares the state and county resource costs of adjudicating first degree murder cases capitally and noncapitally in Arizona. Specific major costs were identified for inclusion in this exploratory study, recognizing that an exhaustive review of the topic would need to include *all* of the identified costs associated with the adjudication process. Appendix A provides a comprehensive list of potential costs associated with imposing the death penalty in Arizona.

In order to maintain a consistent review of state and county costs associated with adjudicating first degree murder cases capitally and noncapitally and in recognition of the limited resources and time constraints for this exploratory study, the approach and sample were defined in a highly strategic manner. Three subsets of data reflect an approach similar to the one used in the North Carolina study referenced above. *The definition of a “capital case” for the purposes of this study is likewise drawn from the North Carolina study—a case that was prosecuted as such through the guilt phase of the trial in which a notice of intent to seek the death penalty was filed early in the adjudication process.*

#### *Subset A: A “single case” perspective*

Under the “single case” perspective, two scenarios were initially proposed for examination and cost comparison. The first examines three cases in which the defendant was declared indigent, tried capitally, sentenced to death, and ultimately executed after the sentence was affirmed on appeal and upheld. In this scenario, three cases were identified for which the executions took place between January 1, 1995, and December 31, 1999. This is consistent with the larger North Carolina study in which a total of three such cases were reviewed as well. Counties identified for inclusion in this portion of the study are Maricopa, Pima, and Yuma Counties.

The second scenario proposed to examine three cases in which the defendant was charged with first degree murder, declared indigent, tried noncapitally, found guilty by a jury of his/her peers, and sentenced to life imprisonment during the same time frame in the same three counties. Due to the length of the adjudication and appeals process, the three cases selected in response to the first scenario in which the defendants were ultimately executed represented indictments in the 1977–1979 time frame. Therefore, for consistency of analysis, sample cases for the second scenario were sought from the population of 1977–1979 indictments for first degree murder in Maricopa, Pima and Yuma Counties in which the defendants were tried noncapitally, found guilty by jury, and sentenced to life imprisonment. The identification of this 1977–1979 population from which to draw a random sample presented a difficult challenge for the three counties involved. Prior to computerized records, the level of detail maintained was less definitive, and the task of sorting cases according to the established research criteria required significant time and effort. Once the population was defined and the random sample was drawn, the task of locating the physical case files presented another challenge. During the time allotted for this study, only two of three sample case files were located and reviewed (Pima and Yuma Counties). Therefore, analyses associated with Subset A are based on a total of five cases.

Data Subset A was initially included to provide data for the purpose of examining the differences in costs and in the adjudication and appeals process for capital cases resulting in execution and noncapital cases in which the defendant was sentenced to life imprisonment. In addition to the difficulties discussed above, the availability of consistent cost data from cases originating in the late 1970s was highly uneven. Therefore, only the data associated with process were utilized in the analysis, including such information as the number of appeals and filings for postconviction relief.

#### *Subset B: A modified “cohort” perspective*

Previous studies indicate that, in practice, most defendants tried capitally are not sentenced to death. In order to produce cost estimates that include the range of relevant cases, three distinct scenarios were examined as a part of this data subset, utilizing first degree murder cases in which indictments occurred in the 1990–1993 time frame. This time frame resulted from the decision to include only cases that had reached the habeas stage of appeal. In each of the three scenarios, four cases were selected in which the defendant was declared indigent and found guilty by a jury of his/her peers: 1) four cases in which defendants were prosecuted capitally, sentenced to death, and reached the habeas stage of appeal; 2) four cases in which defendants were prosecuted capitally and ultimately sentenced to life imprisonment; and 3) four cases in which defendants were prosecuted noncapitally and sentenced to life imprisonment.

The primary level of analysis for this study compares cases prosecuted capitally and sentenced to death with those prosecuted noncapitally and sentenced to life imprisonment, i.e., the eight cases included in Subsets B.1 and B.3 and the eight cases included in Subsets C.1 and C.3. The cases in which defendants were prosecuted capitally and ultimately sentenced to life imprisonment (the four cases in Subset B.2 and the four cases in Subset C.2) provide additional data utilized in refining the study results.

The sample cases were selected from a population of first degree murder cases in which defendants were indicted in the 1990–1993 time frame in Maricopa, Pima, Mohave, and Pinal Counties. The counties of choice are based upon data received from Data Set I regarding the percentage of reported murders and murder arrests by county between 1990 and 1999. Utilizing the ranked percent of 1990–1999 cases by county based on *murder arrests*, the sample cases were randomly selected as follows:

<b>County</b>	<b>Percent of Murder Arrests</b>	<b>Sample Size</b>
Maricopa	47.4%	2 per category
Pima	29.5%	1 per category
Rural counties	23.2%	1 per category

The four counties with the largest percentage of reported murders in rank order include Maricopa, Pima, Mohave, and Pinal Counties. These data are relatively consistent with the defined population for the first of the three scenarios presented above in which defendants were prosecuted capitally, sentenced to death, and have reached the habeas stage of appeal. The 12 cases randomly selected for Subset B include six from Maricopa County, three from Pima County, two from Mohave County, and one from Pinal County.

*Subset C: A modified “cohort” perspective*

In recognition of the changes introduced by Rule 6.2 of the Arizona Rules of Criminal Procedure taking effect on January 1, 1998, i.e., in capital trials indigents are entitled to two court-appointed attorneys, three distinct scenarios were examined as a part of this data subset as well, utilizing first degree murder cases in which defendants were sentenced in the 1998–1999 time frame. This time frame was selected to compare the additional costs associated with Rule 6.2 for defendants who had been tried by a jury after January 1, 1998, and sentenced. In each of the three scenarios, four cases were selected in which the defendant was declared indigent and found guilty by a jury of his/her peers: 1) four cases in which defendants were prosecuted capitally and sentenced to death; 2) four cases in which defendants were prosecuted capitally and ultimately sentenced to life imprisonment; and 3) four cases in which defendants were prosecuted noncapitally and sentenced to life imprisonment.

Once again, the primary level of analysis compares cases prosecuted capitally and sentenced to death with those prosecuted noncapitally and sentenced to life imprisonment, i.e., the eight cases included in Subsets C.1 and C.3. These sample cases were selected using the same procedures as Subset B, i.e., from a population of first degree murder cases in which defendants were sentenced in Maricopa, Pima, Mohave, and Pinal Counties. The 12 cases randomly selected for Subset C include six from Maricopa County, three from Pima County, and three from Pinal County.

Incremental costs in this study are defined as the standard accounting costs of additional resources required to prosecute capital cases and are limited to state and county costs. Costs of key resources will be estimated using the unit costs of such resources, e.g., the time/cost of attorneys and administrative court costs. This study will focus exclusively on financial cost data, recognizing that a wide range of other possible costs/savings exist.

## Acknowledgements

We are sincerely grateful to the many individuals across the State who contributed their valuable time to make this effort possible within the five-week period allocated to this study. Without their willingness to provide resources and cost data in response to requests with short turnaround times, this research study would not have been possible. These include: **Arizona Attorney General's Staff:** Patrick Cunningham, Kent Cattani, Tim Geiger, Monica Klapper, Robert Ellman, and Diane Saunders; **Arizona Supreme Court Staff Attorney's Office:** Donna Hallam and Mary Lou Pancy; **Arizona Court of Appeals:** Tony Mackey and Glenn Clark; **Arizona State Department of Corrections:** Daryl Fischer; **Center for Urban Inquiry and College of Public Programs, Arizona State University:** Peg Bortner, Cyndee Coin, Andy Hall, and Janet Soper.

**Arizona Superior Court – Maricopa County:** John Reynolds and Nick Gallego; **Maricopa County Attorney's Office:** Paul W. Ahler, Jason Bauer, Sarah Keenan, and all the Deputy County Attorney's (past and present) who contributed estimates of time spent on individual cases in the study; **Maricopa County Public Defender's Office:** Jim Haas, Helene Abrams, Bob Briney, Christopher Johns, Vikki Lyles, Paul Prado, and Joe Stazzone. **Arizona Superior Court – Pima County:** The Honorable Cindy K. Jorgenson and Andy Dowdle; **Pima County Attorney's Office:** Rick Unklesbay, Teresa Godoy, and Tracy Miller; **Pima County Public Defender's Office:** Susan Kettlewell; **Pima County Indigent Legal Defense Office:** Caryn Carmella. **Arizona Superior Court – Pinal County:** John Woods and Stephanie Jordan; **Pinal County Attorney's Office:** Jeff Sandler, Berkeley Rourke, and Robert Brown; **Pima County Public Defender's Office:** Dwight Callahan and Robert White. **Arizona Superior Court – Mohave County:** Rick Lewis and Bunnie Morey; **Mohave County Attorney's Office:** Jace Zack and Matthew Smith; **Mohave County Public Defender's Office:** Michele Major and former Public Defender Kenneth Everett; **Mohave County Legal Defender's Office:** Ron Gilleo. **Arizona Superior Court – Yuma County:** Mergaret Guidero and Suzanne Quinn; **Yuma County Attorney's Office:** Patricia Orozco.

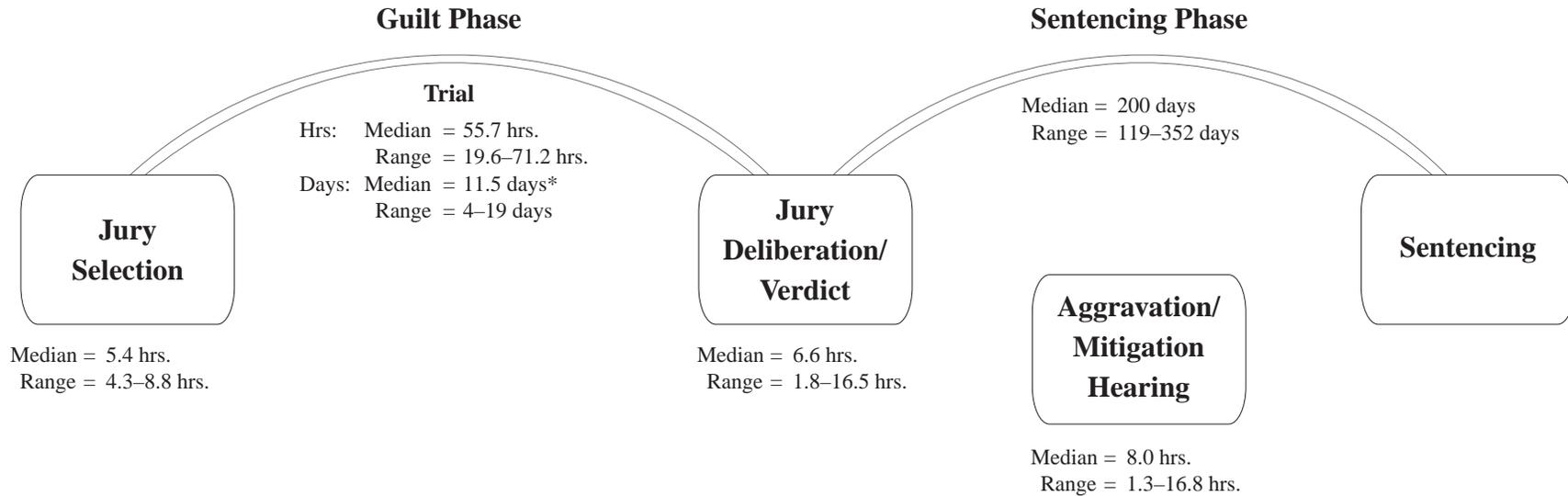
Resources for this study were provided by the Arizona Attorney General's Office, the Arizona County Attorneys and Sheriffs Association, the Arizona Prosecuting Attorneys Advisory Council, and the Arizona Association of Chiefs of Police.

## **Data Summary**

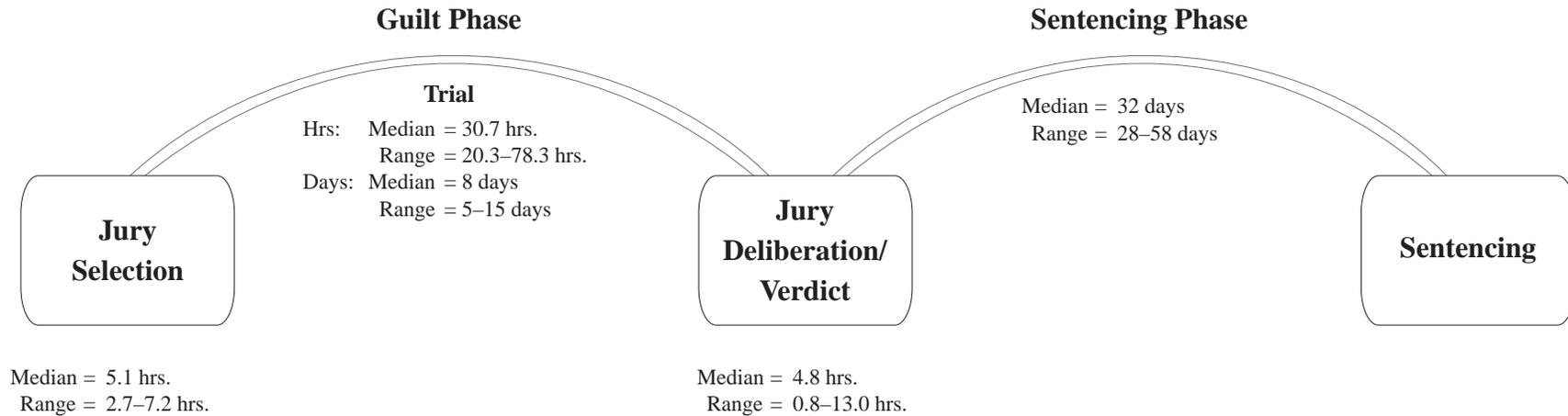
The data in this report are drawn from a random sample of 30 cases selected to be a part of this study. The study is limited to a consideration of state and county costs. The costs presented in this study are a compilation of actual recorded unit costs of resources obtained from a thorough review of individual case files; estimates based on actual recorded costs; interviews with court, county and state representatives; and estimates provided by individuals involved in the criminal justice process. Throughout the report, references will be made to the manner in which cost data were obtained. All costs are reported in 2000\$.

Although the selected cases are believed to be representative of the total number of cases across the State and provide a reasonable synopsis of some of the additional costs associated with capital adjudication in Arizona, it is important to add a cautionary note to the reader to keep in mind that only a portion of the total costs of adjudication have been examined here and the sample size is small. Only a fully comprehensive study of each cost factor would yield a high degree of statistical confidence in the incremental costs of adjudicating first degree murder cases capitally and noncapitally in Arizona, but that would require a year or more to complete. Furthermore, this study indicates that in several cases the data included are significantly understated as a result of utilizing a limited number of cost factors, and a more comprehensive study is likely to yield a greater cost differential between cases tried capitally and noncapitally.

## Exhibit 1. Guilt and Sentencing Phases—Capital Cases



## Exhibit 2. Guilt and Sentencing Phases—Noncapital Cases



\*Due to the small sample size of 24 cases in Data Subsets B and C, the “skewness” of each statistic was calculated as a check to measure whether the sample appears to represent a normal distribution of data; this individual statistic is slightly outside the normal range indicating the possibility that this number may be lower than actual population data for all such cases.

**Exhibit 3. Comparison of Selected Major Cost-Related Factors—  
Indictment through Sentencing<sup>a</sup>**

<b>Cost Factors</b>	<b>Capital Cases</b>	<b>Noncapital Cases</b>
Length of time indictment to sentencing	Median = 664.5 days Range = 296–1,048 days	Median = 464.0 days Range = 258–941 days
Number of pretrial/trial motions filed—defense	Median = 23 Range = 3–49	Median = 7 Range = 2–18
Number of pretrial/trial motions filed—prosecution	Median = 4 Range = 0–11	Median = 2.5 Range = 0–10
Number of experts providing mental/physical evaluations, examinations and testimony	Median = 1.5 Range = 0–6	Median = 1.5 Range = 0–5
Number of investigators providing assistance to defense counsel	Median = 1 Range = 1–2	Median = 0 <sup>b</sup> Range = 0–1
Number of Superior Court minute entries <sup>c</sup> (excluding actual trial entries)	Median = 30.5 Range = 7–47	Median = 24.5 Range = 8–43

<sup>a</sup>These data are drawn from a thorough review of court files, county attorney files, and files made available by the Attorney General’s office as well as through interviews with individuals involved in the adjudication process.

<sup>b</sup>Only two of the noncapital case files reviewed referenced the appointment of an investigator for a minimal number of hours. Statistically this level of involvement is so small that the median number of investigators utilized on a noncapital case is reported as 0.

<sup>c</sup>The number of minute entries is one additional measure of the complexity of the case and the amount of time spent by attorneys and court personnel outside of actual trial time. Each entry represents a required court action of some kind, e.g., continuances, pretrial hearings on motions, and rulings by the judge on motions taken under advisement. Each requires time spent by attorneys and court personnel either in court or in the drafting of documents or rulings. The actual court time for each minute entry varies from one minute to more than an hour.

**Exhibit 4. Comparison of Costs Associated with Selected Measures of Complexity—  
Indictment through Sentencing** (all costs are reported in 2000\$)

<b>Cost Factors</b>	<b>Capital Case Costs</b>	<b>Noncapital Case Costs</b>
Median cost to maintain an inmate in the county jail from indictment through sentencing (calculated using individual county per diem rates)	\$27,097.07	\$16,909.05
Median cost of jury trial (jury selection through verdict) <sup>a</sup>	11,188.48	6,291.53
Median court cost of aggravation/mitigation hearing <sup>a</sup>	1,252.23	—
Median recorded cost of experts providing mental/physical evaluations, examinations and testimony (median number of experts x median cost per expert)	4,225.91	3,500.12
Median recorded cost of special investigators <sup>b</sup>	1,419.07	—
Special miscellaneous trial preparation/trial cost reimbursements approved and recorded by the court beyond agency budgets, e.g., extraordinary attorney costs and travel expenses, cost of out-of-town witnesses, and extra transcription costs.	3,058.23	393.31

<sup>a</sup>The cost of courtroom time reported is significantly lower than the total court costs. For the purpose of this study, the only costs included in this figure are the average salary and fringe benefit information for a judge, courtroom clerk, court reporter, and bailiff in each county applied to the actual number of hours and minutes in court, plus the cost for a jury of 12 for each day of trial. Each office and/or individual interviewed provided either a percentage estimate or a calculated amount for fringe benefits, including items such as retirement, Social Security, and insurance. No costs for support staff, facilities or overhead are included in this figure; these costs were not readily available in the time frame allotted to this study. Attorney's costs and expert costs are reported separately in this report.

<sup>b</sup>The data for special investigators recorded in the case files reviewed appear to be significantly lower than actual costs. Narrative references to special investigators frequently are not accompanied by recorded cost data in the case files, and estimates of investigative hours/costs were not available from prosecution and defense attorneys on a consistent basis.

**Exhibit 5. Comparison of Pretrial/Trial Attorneys' Hours and Costs<sup>a</sup>**  
(all costs are reported in 2000\$)

Attorneys	Capital Cases		Noncapital Cases	
	Hours	Costs	Hours	Costs
County Attorney(s)	Median = 454.0 hrs. Range = 260–750 hrs.	24,527.20	Median = 305.0 hrs. Range = 120 – 600 hrs.	20,376.50
Defense Counsel	Median = 518.0 hrs. <sup>b</sup> Range = 470–1,967 hrs.	23,946.76 <sup>b</sup>	Median = 155.5 hrs. Range = 100–900 hrs.	10,093.45

<sup>a</sup>The reliability of these data are most problematic among the selected cost factors reviewed. Attorneys in the offices of the County Attorney, Public Defender, Legal Defender and Attorney General in Arizona do not keep time logs. The same issue is raised in studies done in other states. The data provided by these offices on the number of hours expended are estimates provided by the attorneys from memory, aided by a review of case files. Although these data reflect the best estimates of those involved, the data cannot be verified as accurate. On the other hand, some of the data, such as the hours/costs reflected in invoices submitted by court-appointed counsel and the specific hourly rates (including benefits) for individuals and/or positions provided by these offices, can be verified as accurate. In each case, the costs are calculated on the basis of hourly rates provided by attorneys and/or their offices, including benefits, applied to the number of reported/estimated hours (in 2000\$). A relatively wide range of hourly rates were provided in the interviews conducted as a part of this research study. A more comprehensive study would require that an accurate log be maintained by attorneys in each of these offices for a significant period of time. This was not possible in the current study.

The number of hours expended by defense counsel in noncapital cases remained relatively consistent throughout the cases reviewed as a part of this study; however, a significant increase in the number of hours expended by defense counsel for capital cases during the 1998–1999 time frame was observed. The primary explanation for the increase is the addition of a second defense attorney in capital cases in accordance with Rule 6.2 of the Arizona Rules of Criminal Procedure. A comparison of the hours and costs expended for the periods 1990–1993 and 1998–1999 for all cases reviewed that were tried capitally, as defined in the research methodology, reveals more than a 23 per cent increase in defense hours for cases tried during the 1998–1999 time period:

1990–1993	Median = 470.3 hrs. Range = 302–518 hrs.
1998–1999	Median = 580.3 hrs. Range = 510–1,967 hrs.

An additional cost since 1998 is the increased use of mitigation specialists to assist in the defense attorneys' research of potential mitigating factors in preparation for mitigation/aggravation hearings. Although the reporting of additional costs for mitigation specialists was uneven across offices and counties, an example of the increased costs reported by one office reveals an average of 157 hours expended by mitigation specialists on death penalty cases at an average hourly rate of \$27.32, including benefits (\$4,289.24).

<sup>b</sup>Due to the small sample size, the “skewness” of each statistic was calculated as a check to measure whether the sample appears to represent a normal distribution of data; the capital case statistics for defense counsel are slightly outside the normal range indicating the possibility that this number may be lower than actual population data for all such cases.

**Exhibit 6. Comparison of Selected State and County Cost-Related Factors—Appeals Stage<sup>a</sup>**  
(all costs are reported in 2000\$)

Cost Factors	Capital Cases		Noncapital Cases	
	Hours	Costs	Hours	Costs
Appellate Defense Counsel <sup>b</sup>	Median = 298.45 hrs. Range = 44–755 hrs.	\$16,077.9 7	Median = 105 hrs. Range = 80–131 hrs.	\$4,233.60
Attorney General’s Office in death sentence cases <sup>c</sup>	410 hrs.	19,092.58	125 hrs.	5,470.01
Arizona Supreme Court <sup>d</sup>	–	17,367.14	–	–
Court of Appeals <sup>e</sup>	–	–	69 hrs.	2,963.97

<sup>a</sup>Some of the same concerns indicated in the footnotes to Exhibit 5 relating to the reliability of the data reported apply here as well. With the exception of some of the invoices submitted by court-appointed appellate counsel, the attorneys, judges and Supreme Court Justices in appeals cases also do not keep time logs. Therefore, the data presented here reflect estimates provided by attorneys in these offices from memory, aided by case notes and files, or by court administrators/staff. In each case, attorneys were asked to estimate the total number of hours expended on appeals/PCR filings. Although the data reflect the best estimates of those involved, the data cannot be verified as accurate. However, in each case, the costs are calculated on the basis of specific hourly rates provided by the individuals/offices involved, including benefits, applied to the number of reported/estimated hours (in 2000\$).

<sup>b</sup>The figures presented for appellate defense counsel is based on limited available data. In the case of court-appointed counsel, in some counties attorneys are paid a set contract amount for representation and no data exist regarding the number of hours expended or hourly rates. In other cases, attorneys involved in the defense from indictment through appeal did not or were unable to separate the appeals stage from the guilt and sentencing phases in the time allotted. In addition, although data were requested for both direct appeals and PCRs, the level of detail for the data submitted is uneven.

<sup>c</sup>The Attorney General’s Office provided an estimate of an average of 410 hours expended by attorneys for each capital appeals case: 250 hours for direct appeal, 80 hours for a PCR briefing, and 80 hours for a PCR evidentiary hearing. In addition, this office estimated an expenditure of \$12,500 for PCR experts. For noncapital cases, the Attorney General’s Office estimated 125 hours expended by attorneys for each direct appeal. Costs were calculated by obtaining the hourly rate, including benefits, for the specific individuals assigned to each of the cases in the study multiplied by the estimated number of hours and reported in 2000\$.

Costs associated with additional hours expended by the Attorney General’s Office at the habeas stage of appeal are not included as a part of this study. Attorneys estimate an additional 400 hours at this level: 200 hours in District Court, 100 hours in the Ninth Circuit Court, and 100 hours in the U.S. Supreme Court.

<sup>d</sup>The costs for the Arizona Supreme Court are likely to be significantly understated. Once again, Supreme Court Justices and court personnel do not keep time logs. However, an informal survey was taken recently

among the justices in which each chamber estimated the time spent on death cases. Interviews with court personnel indicate that a safe estimate is 30 per cent of each chamber's time. For each case, the costs include a Justice (including the Chief Justice), law clerks, a staff attorney, and a deputy clerk (capital desk). Calculations using hourly rates, including benefits, for each of these positions resulted in an estimated annual cost of \$468,912.60 spent on death penalty cases, excluding overhead costs. In 1999, the Court received seven direct criminal appeals and 20 Post-Conviction Relief (PCR) filings. Although direct criminal appeals require considerably more time than PCRs, an average cost per death case was calculated using these figures.

The data for the Court of Appeals were calculated with the assistance of court personnel using the estimated number of hours expended by the Court in reaching and finalizing its decision. Hours at various stages of the process include a staff attorney, three judges, and six law clerks. Costs are calculated using hourly rates provided for each of these individuals, including benefits.

### Exhibit 7. Summary of Selected Cost-Related Factors—Appeals Stage

Cost Factors	Capital Cases <sup>a</sup>	Noncapital Cases
Number of postconviction defense motions filed	Median = 10.5 Range = 4–50	Median = 3.5 Range = 0–11
Number of Superior Court minute entries (postconviction)	Median = 34.5 Range = 13–59	Median = 7.5 Range = 3–16
Number of motions for new trial filed	Median = 1.5 Range = 1–4	Median = .5 Range = 0–1
Number of appeals filed	Median = 1.5 Range = 1–4	Median = 1 1 filed by each defendant
Number of Post-Conviction Relief filings	Median = 2 Range = 1–4	Median = 1 Range = 1–2
Number of motions for reconsideration or petitions for review	Median = 3 Range = 1–9	Median = 1 Range = 1–2

<sup>a</sup>These data are drawn from cases that have reached at least the habeas stage of appeal (Data Subset B).

**Exhibit 8. Summary Comparison of Cost-Related Factors Included in This Study<sup>a</sup>**  
(all costs are reported in 2000\$)

Cost Factor	Death Sentence Cases (1990–1993/1998–1999)	Capital Cases (prosecuted capitally but resulting in life sentences, 25–life, or 35–life)		Noncapital Cases (resulting in life sentences, 25–life, or 35–life)
		1990–1993	1998–1999	
<b>Costs Indictment through Sentencing</b>				
Trial costs	\$11,188.48	\$11,188.48		\$6,291.53
Aggravation/mitigation hearing	1,252.23	1,252.23		—
Mitigation specialists (only applies to 1998–1999 cases)	2,144.62	—	4,289.24	—
Expert evaluations and testimony	4,225.91	4,225.91		3,500.12
Investigators	1,419.07	1,419.07		—
Other costs	3,058.23	3,058.23		393.31
County attorney(s)	24,527.20	24,527.20		20,376.50
Defense counsel	23,946.76 <sup>b</sup>	20,886.00	26,885.17	10,093.45
County per capita incarceration costs (indictment to sentencing)	27,097.07	27,097.07		16,909.05
Subtotal	\$98,859.57	\$93,654.19	\$103,942.60	\$57,563.96
<b>Cost of Appeals:</b>				
Appellate Counsel	16,077.97	16,077.97		4,233.60
Attorney General’s Office (including PCR expert assistance and testimony) <sup>c</sup>	31,592.58	5,470.01		5,470.01
Arizona Supreme Court	17,367.14	—		—
Court of Appeals	—	2,963.77		2,963.77
Total <sup>d</sup>	\$163,897.26	\$118,165.94	\$128,454.35	\$70,231.34

<sup>a</sup>Exhibit 8 includes only those major cost factors for which costs were calculated as a part of this study. See Appendix A for a list of other cost factors that would need to be included in a comprehensive study of costs associated with capital adjudication in Arizona.

<sup>b</sup>Due to the small sample size, the “skewness” of each statistic was calculated as a check to measure whether the sample appears to represent a normal distribution of data; the capital case statistics for defense counsel are slightly outside the normal range indicating the possibility that this number may be lower than actual population data for all such cases.

°Costs associated with additional hours expended by the Attorney General’s Office at the habeas stage of appeal are not included in this figure. Attorneys estimate an additional 400 hours at this level: 200 hours in District Court, 100 hours in the Ninth Circuit Court, and 100 hours in the U.S. Supreme Court.

“This study deals solely with the state and county costs associated with capital adjudication in Arizona. With the exception of the costs associated with housing defendants from indictment to sentencing, this report does not address the cost of incarceration. A more comprehensive comparison of the total incremental costs of pursuing a case capitally and noncapitally would be likely to include the length and cost of imprisonment as well. However, these calculations would present a significant research challenge.

Using a “single case” perspective, the average time from sentencing to execution in a death case was calculated for the 22 inmates executed between January 1, 1990, and December 31, 2000. The average length of time on death row before execution was 15.1 years, but the Data Set I Research Report reveals that not all death-sentenced defendants are executed. Therefore, it would be inaccurate to use 15.1 years in calculating incarceration costs for death-sentenced defendants. If a comprehensive study was conducted, an accurate approach to calculating incarceration costs would be to use a true “cohort” perspective in which data for a much larger sample reflected the impact of reversals, remands and modifications. The Data Set I research reveals that between 1974 and July 1, 2000, 33.8 per cent of the individuals death-sentenced were either resentenced to life, resentenced to a term of years, found not guilty or acquitted on retrial, or died during the retrial process. One possible example of the impact of these data from Data Set I is a case in which a death-sentenced defendant is resentenced to life or a term of years. All of the increased costs associated with adjudicating death sentence cases would still exist, but the cost of incarceration would be calculated using per capita death row costs until the time of resentencing and prison costs for the appropriate level of security for the remainder of the sentence. In fact, we know from Data Set I that this case does exist for 30.3 per cent of the individuals death-sentenced between 1974 and July 1, 2000.

Another “cohort” would include those defendants who were tried capitally, incurring all of the increased costs of adjudication associated with a capital case, but were ultimately sentenced to life imprisonment or a term of years, subject to later reversals, remands and modifications. Incarceration costs for these defendants would be calculated at the prison costs for the appropriate level of security for the number of years of imprisonment. For the cases in which the defendants were sentenced to natural life sentences, costs would be calculated using life expectancy tables. However, no research on the life expectancy of Arizona prison inmates could be located at the time of this study.

Using this same “cohort” perspective for cases prosecuted noncapitally and sentenced to either life imprisonment or a term of years, we know that these cases are also subject to reversals, remands and modifications. However, no known data currently exist in Arizona to quantify the impact or reversals, remands and modifications on incarceration costs for defendants sentenced to life imprisonment or a term of years. A comprehensive study of a much larger sample would be required to make any accurate projection regarding incarceration costs.

## **Appendix A. Cost Factors Recommended for Inclusion in a Comprehensive Study of Capital Adjudication in Arizona**

### *Pretrial:*

- Cost of extradition proceedings
- Costs associated with change of venue
- Cost of investigations by law enforcement officials
- Cost of special investigations and forensics experts
- Cost of challenges to the constitutionality of death penalty procedures
- Number of pretrial/trial motions filed/heard
- Cost of trial preparation
- Number and cost of subpoenas
- Number/cost of psychiatric/medical evaluations and exams, including expert testimony

### *Trial:*

- Length/cost of jury selection
- Cost of a death qualified jury
- Number/cost of prospective jurors/jurors called
- Number and cost of special investigators and mitigation specialists
- Cost of victim-witness coordinator and other support staff
- Cost of special testing (polygraph, mental health, medical)
- Number and cost of prisoner transport orders
- Number and cost of mistrials
- Length/complexity/administrative cost of trial, including overhead and facilities costs
- Length/cost of jury deliberations

### *Postconviction:*

- Length/administrative cost of aggravation/mitigation hearings and sentencing proceedings
- Length of time from verdict to sentencing
- Length of time from indictment to sentencing
- Number/cost of expert witnesses and consultants
- Hours/cost associated with direct appeals and PCR filings to the Supreme Court, including overhead and facilities costs
- Number of motions for new trial filed/heard
- Number/cost of appeals/rehearings filed/heard
- Number/cost of petitions for postconviction relief/heard
- Number/cost of requests for clemency
- Length/cost of imprisonment
- Number and cost of prisoner transport orders for hearings

### *Execution:*

- Cost of staff and facilities associated with execution, including quarterly review procedures

### *Cumulative Costs:*

- Fees and expenses of court-appointed defense attorney(s)
- Cost of hours spent by public/legal defenders, including overhead and staff support
- Cost of hours spent by prosecutors, including overhead and staff support
- Cost of hours spent by appellate counsel, including overhead and staff support
- Cost of hours spent by the Attorney General's Office, including overhead and staff support