

The Economic Impact of the Death Penalty on the State of Nebraska: A Taxpayer Burden?

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Goss & Associates Economic Solutions
600 17th Street, Suite 2800 South
Denver, Colorado 80202-5428
303.226.5882
ernieg@creighton.edu

Ernest Goss, Ph.D., Principal Investigator
Scott Strain, M.S., Senior Research Economist
Jackson Blalock, Research Assistant



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Executive Summary

The Economic Impact of the Death Penalty On the State of Nebraska: A Taxpayer Burden?

This study concluded that Nebraska's maintenance of the death penalty cost the state, in 2015 dollars, approximately \$14.6 million annually⁴, and each additional death penalty arraignment costs the state almost \$1.5 million, also in 2015 dollars.

I. Cost of the Death Penalty (DP): evidence from previous research:

- Factors adding to the costs of maintaining the DP:
 - **Defense costs** - In a North Carolina study, DP defense costs per case were found to exceed that of non-DP cases by almost \$50,000. A study using data collected from Nevada defense attorneys estimated that between \$170,000 and \$212,000 per case was spent for the defense of a DP case above that of a life without parole (LWOP) murder case.
 - **Pre-trial costs including jury selection** - a Colorado study concluded that on average, a DP prosecution that goes to trial required in excess of six times more court days than a comparable LWOP prosecution.
 - **Court days and court costs** - In a 2012 study of the costs of capital punishment in California, it was determined that on average, DP cases involved 120 more court days than non-capital cases at a rate of \$3,589 per court day for an additional cost of \$430,680 per case.
 - **Prison costs** - California estimated that it costs an additional \$90,000 per year to house a death row inmate.
 - **Appeals costs** - In a California study it was concluded that due to appeals the average time from conviction to the filing of a federal *habeas corpus* had risen to nearly five years from 1.5 years in 1979.
- Estimated average cost for DP prosecution compared to LWOP prosecution:
 - **California**, 1978-2011, DP cases cost an additional \$121.2 million per year.
 - **Florida**, 2000, DP cases cost an additional \$51.0 million above that for LWOP prosecutions annually.
 - **Maryland**, 2008, successful prosecution of one DP case was \$2.2 million above that for a LWOP prosecution.
 - **Texas**, 1992, A DP case cost an average of \$2.3 million, or about three times the cost of imprisoning an inmate in a single cell at the highest security level for 40 years, or LWOP.

⁴2013 costs of \$14.1 million were indexed for inflation using the Consumer Price Index (CPI) for legal services.

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II. Estimated average prosecution cost for the death penalty compared to life without parole:

- Based on the most recent U.S. Census data for the U.S., Goss & Associates concludes that:
 - o As a percentage of overall state and local budgets, DP states spent 3.54 percent on justice,⁵ while NDP states spent a much lower 2.93 percent on justice.
 - Nine of the top 10 spending states were DP states.
 - o Per \$1,000 of gross domestic product (GDP), DP states spent \$6.70 on justice, while NDP states spent a much lower \$6.46 on justice.
 - Seven of 10 top spending states were DP states.
 - o Controlling for other state characteristics using multivariate statistical analysis, it is estimated that:
 - The average savings for the sentencing option of LWOP compared to the DP across all 50 states and the District of Columbia for 2012 and 2013 were \$0.145 per \$1,000 of state gross domestic product.
 - Thus for the two-year period, 2012 and 2013, the average U.S. state with the DP would have saved \$46,474,823 had the state eliminated the DP and replaced with LWOP. Alternatively, the average U.S. state with LWOP as the sentencing option would have spent an additional \$46.5 million for the two-year period had the state adopted the DP.

For 2012 and 2013, the average U.S. state with the DP would have saved \$46.5 million had the state eliminated the DP and replaced with LWOP.

III. The Nebraska experience:

- Between 1973 and 2014, there were 1,842 murders in the State of Nebraska.
 - o Of these, prosecutors obtained 281 first degree murder convictions.
 - Of these, prosecutors sought the DP in only 119 cases, or approximately 2.9 cases per year, resulting in only 33 death sentences.
 - Of Nebraska's 33 individuals sentenced to death.
 - Nebraska courts commuted 13 sentences.
 - Six individuals died in prison.
 - One individual's sentence was vacated.
 - Three individuals were executed.
 - Attorneys are currently appealing 10 sentences.

⁵Throughout this study justice spending refers to state and local spending on corrections, and judicial/legal activities. At the time of this study, 2013 census data were the latest available.

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- Based on the most recent U.S. Census data, Nebraska's savings for abolishing the DP were:
 - o In 2013, Nebraska spent \$532.8 million on justice activities. It is estimated that Nebraska would have spent \$518.7 million for justice activities with LWOP prosecution for capital cases for a savings of \$14.1 million, or \$14.6 million in 2015 dollars.
 - o Based on other studies examining the cost of a DP prosecution versus a LWOP prosecution:
 - Each DP prosecution cost the Nebraska taxpayer almost \$1.5 million above and beyond the cost of an LWOP prosecution.
 - \$740.1 thousand of post-conviction costs over the life of the prisoner.
 - \$619.4 thousand of maximum security costs over the life of the prisoner.
 - \$134.0 thousand of in-kind payments, or opportunity costs, over the life of the prisoner.

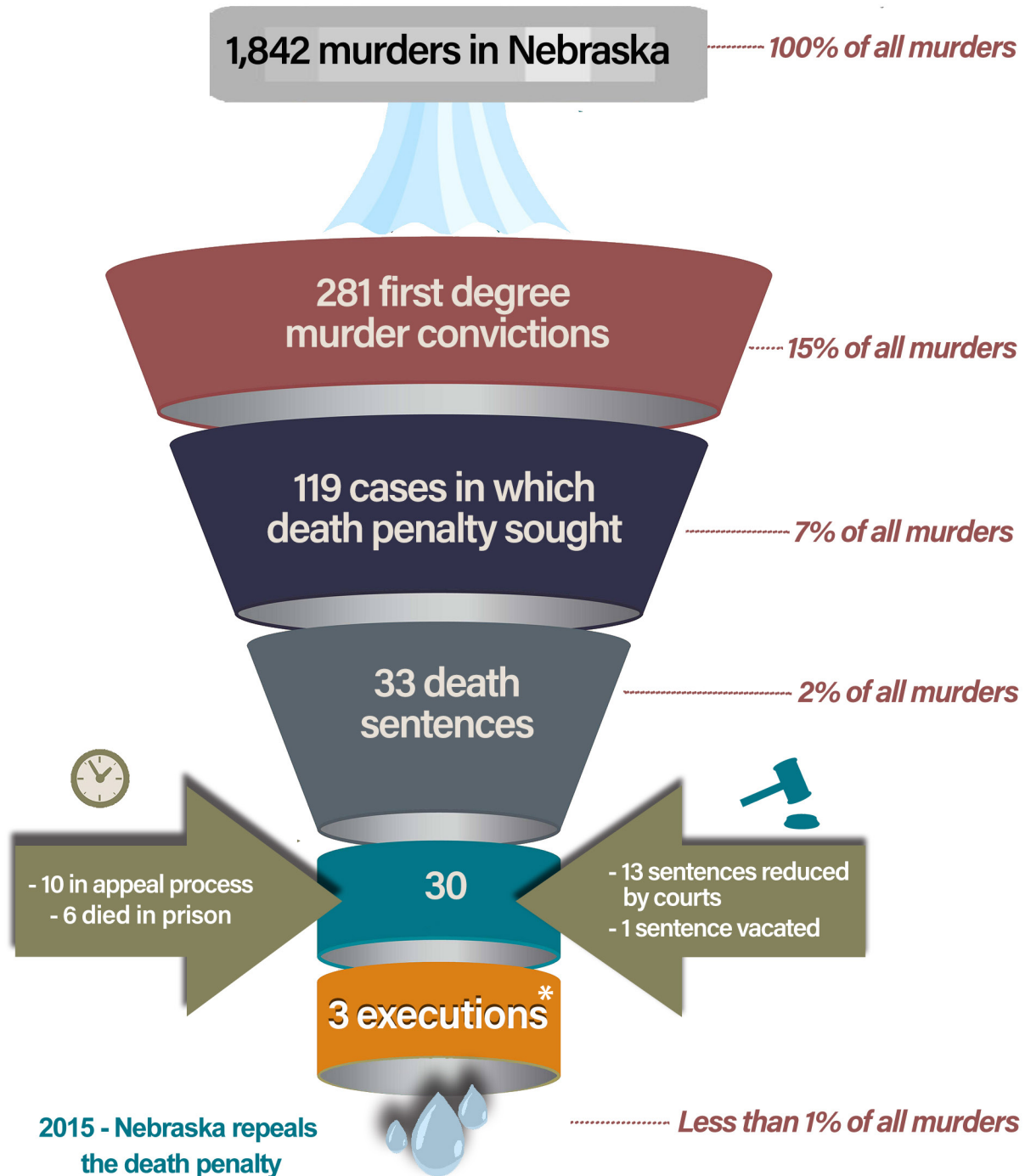
Each DP prosecution cost the Nebraska taxpayer almost \$1.5 million above and beyond the cost of LWOP.

- Plea bargaining combined with use of the DP can increase the cost to the taxpayer.

A prime Nebraska example of how plea bargaining can increase wrongful prosecutions and boost costs is that of the "Beatrice Six." The state won convictions of six individuals based on faulty forensics and five confessions which were obtained under threats that the six would be given the death penalty if they did not admit guilt. In 2008 DNA evidence exonerated all six and in July 2016, a federal jury awarded the wrongfully convicted \$28.1 million in damages.

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Figure EX.1: A snapshot of 41 years of executions in Nebraska, 1973-2014



Source: Goss & Associates adapted from Nebraska Commission on Public Advocacy study of Nebraska Capital Cases.

*No additional executions have taken place in Nebraska since 2014.